



**Land and Environment
Court**
of New South Wales

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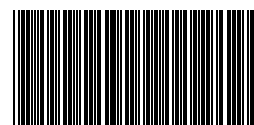
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D0000XD9CV

10 November 2017

NOTICE OF ORDERS MADE

Case number 2017/00035436
Case title Heinrich Ruiz de Roxas v Bega Valley Shire Council

On 10 November 2017 the following orders (and/or directions) were made:

The final orders to give effect to the parties' agreement under s34(3) of the Land and Environment Court Act 1979 are:

1. The appeal is upheld.
2. The section 96 modification application 2014.430 lodged on 15 May 2016 seeking to modify conditions 11 and 66 is approved subject to the conditions in Annexure 'A'.
- 3(a). Condition 11 is amended to read as follows including table listed in Condition 11 of Annexure 'A':

"Payment to Council of the following contributions pursuant to Section 94A of the Environmental Planning and Assessment Act and Bega Valley Section 94 and 94A Contributions Plan 2014 prior to the issue of the occupation certificate for each nominated stage within the development.

Indexation: Where the monetary contribution is not paid before the first anniversary of the date of this development consent, the contribution amount must be indexed between the date of the consent and the date of payment, in accordance with annual movements in the Consumer Price

Index (All Groups Index) for Sydney published by the Australian Statistician.

Time for payment: Deferred payments of contributions may be accepted in certain circumstances and will need to be secured by bank guarantee. Refer to the contributions plan for Council's policy on deferred payments. Reason: To ensure the provision and adequacy of public infrastructure within the Bega Valley Shire for the users of new developments."

(b). Condition 66 is amended to read as follows:

“Prior to the issue of any occupation certificate for any part of the approved development, Cattle Bay Road shall be designed and constructed in accordance with the engineering plans prepared by Tasman Engineering Consultants entitled “Cattle Bay Road Upgrade Concept” drawing number E191 (sheets 1 to 5 inclusive) dated 19 June 2017.”

For the Registrar

Annexure 'A'

Conditions of Consent

Part A - Deferred Commencement

This is a 'Deferred Commencement Consent' under Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended). This Consent does not become operative until the proponent has satisfied the following requirements:

- (a) The developer, in consultation with Council, shall secure an easement of access 6 metres wide over Council's foreshore public reserve (Lot 4 DP1138056). A copy of the registered plan of easement shall be submitted to Council upon registration at the Office of Land and Property Information.

All issues shall be satisfactorily resolved within a period of 30 months from the 'Determination Date', as shown on this Consent.

Upon compliance with the issues specified, and written confirmation from Council to that effect, the Consent shall become operative from a 'Consent to Operate Date' (to be included on the written confirmation) subject to the conditions listed in Part B to this Consent and any additional conditions arising from the requirement of Part A.

Part B - Conditions of Approval

1. Development shall take place in accordance with the Approved Development Plan, the application form and any supporting documentation received with the application, except as may be amended by the following conditions.

The plans and supporting documentation for the purpose of this condition are:

- a. Environmental Impact Statement Proposed Marina and Temporary Land Facilities Cattle Bay Road Eden Royal inclusive Appendices number 1 to 20 Haskoning DHV and Inspire Urban design and Planning 4 August 2014.
- b. Cattle Bay Marina Response to Agency Submissions Relating to Aquatic Ecology Ocean Environmental Consulting 30 March 2015.
- c. Cattle Bay Marina Operational Environmental Management Plan Royal Haskoning DHV and Advanced Marina Management Pty Ltd March 2015.
- d. Cattle Bay Marina Construction Environmental Management Plan Royal Haskoning DHV April 2015.
- e. Cattle Bay Marina Response to Submissions on EIS Geotechnical Investigations Royal Haskoning DHV April 2015.
- f. Cattle Bay Marina Operational Noise Management Plan at Cattle Bay Road Eden West and Associates Pty Ltd 7 April 2015.
- g. Cattle Bay Marina Construction Noise Management Plan at Cattle Bay Road Eden West and Associates Pty Ltd 7 April 2015.
- h. Cattle Bay Marina Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts Royal Haskoning DHV 8 April 2015

- i. Cattle Bay Marina Response to Submissions on EIS Refurbishment and Maintenance Works for the Existing Jetty Royal Haskoning DHV 8 April 2015.
- j. Response to Submissions Development Application No.2014.430 For Cattle Bay Marina Andrew Wilson Town Planning Consultancy Service 10 April 2015.
- k. Supplementary Report Cattle Bay Marina – Acoustic Services – Wave Attenuator Noise West and Associates Pty Ltd 3 June 2015.
- l. Cattle Bay Marina Water Quality Management Plan Version #2 Ocean Environmental Consulting 23 June 2015.
- m. Supplementary Report Cattle Bay Marina Response to Agency Submissions relating to Aquatic Ecology #2 Ocean Environmental Consulting 30 June 2015.
- n. Development Application No. 2014.430 For Eden Cattle Bay Marina – Response to Second Round of Submissions Andrew Wilson Town Planning Consultancy services 9 July 2015.
- o. Modified Plans – Proposed Cattle Bay Marina and Wave Attenuator Detail General Arrangement Stages 1 and 2 Plan reference 8A0458/MA/SK 10 and SK 11 Royal Haskoning DHV 7 August 2015.
- p. Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden West and Associates Pty Ltd Issue E 13 October 2015.
- q. Cattle Bay Marina Development Application Air Quality Report at Cattle Bay Road Eden West and Associates Pty Ltd Issue C 14 October 2015.

Reason: To ensure that the proposed development is undertaken in accordance with the above documentation and the conditions imposed in this Consent.

Construction Certification and Nomination of Principal Certifying Authority

- 2. The proponent shall obtain a construction certificate for both the land and water based components of the approved marina development from the Bega Valley Shire Council or an appropriately accredited private certifier prior to the commencement of any work. The proponent shall forward a copy of any construction certificate issued by a private certifier to the Bega Valley Shire Council at least 2 days before the commencement of work.
- 3. The proponent shall appoint a principal certifying authority before the commencement of work and provided details of the principal certifying authority (if not the Bega Valley Shire Council) to the Bega Valley Shire Council at least 2 days prior to the commencement of work.

Reason: To ensure that work associated with the construction of the approved marina development is compliant with the requirements of this consent and relevant construction standards.

Design Parameters

- 4. The proposed marina development shall be designed and constructed in accordance with:
 - a. Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.
 - b. Australian Standard AS4997 – 2005 'Guidelines for the Design of Maritime Structures'.

c. NSW Maritime Authority Guidance Note 8.3.02.

5. Prior to the issue of any construction certificate, a design verification statement shall be submitted to the Principle Certifying Authority confirming compliance with the above Standards. The design verification statement shall be prepared by a suitably qualified and experience professional to the satisfaction of the Principle Certifying Authority.
6. The Construction Environment Management Plan shall be amended accordingly to give effect to this condition.

Reason: These conditions are required to ensure that the proposed marina development is designed and constructed to a standard which is structurally sound and does not comprise safe navigation, patron and public safety.

7. As part of any subsequent construction certificate application, detailed siting and engineering design plans for the wave attenuator shall be submitted to the Principal Certifying Authority for endorsement.

The siting and design of the wave attenuator shall be consistent with Approved Development Plans and the modelled design in the report prepared by Carno 'Cattle Bay Marina, Eden – Wave Modelling' dated 28 July 2014 and subsequent correspondence by Royal Haskoning DHV entitled "Cattle Bay Marina – Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts" dated 8 April 15.

The plans shall be prepared and certified by a chartered professional engineer.

8. All work required in the construction of the wave attenuator shall be undertaken and completed in accordance with the certified siting and engineering design plans. On completion, the works are to be certified by the chartered professional engineer as being compliant with the endorsed plans and documentation submitted to the Principal Certifying Authority to give effect to this condition.

Reason: These conditions are considered warranted to ensure that the wave attenuator has been suitably designed and constructed.

9. No approval is granted for any use or works on the E2 Environmental Conservation zoned land other than the upgrade of the existing wharf facility and associated services and public access.
10. Development on Lot 4 DP 1138956 be restricted to a access point only of a width of approximately 6-7 metres.

Developer Contribution

11. Payment to Council of the following contribution pursuant to *Section 94A of the Environmental Planning and Assessment Act* and *Bega Valley Section 94 and 94A Contributions Plan 2014* prior to the issue of the occupation certificate for each nominated stage within the development.

Contribution type	\$ Total	Allocation No.
Section 94A contribution	Stage 1 - \$26,785.71 Stage 2 - \$28,214.29	11320.1600.1612

Indexation: Where the monetary contribution is not paid before the first anniversary of the date of this development consent, the contribution amount must be indexed between the date of the consent and the date of payment, in accordance with annual movements in the Consumer Price

Index (All Groups Index) for Sydney published by the Australian Statistician.

Time for payment: Deferred payments of contributions may be accepted in certain circumstances and will need to be secured by bank guarantee. Refer to the contributions plan for Council's policy on deferred payments.

Reason: To ensure the provision and adequacy of public infrastructure within the Bega Valley Shire for the users of new developments.

State Agency Requirements

Trade and Investment - Crown Lands

12. Prior to the issue of any construction certificate by the Principal Certifying Authority, the proponent shall enter into an appropriate lease arrangement with Trade and Investment Crown Lands over the occupation of Crown Lands associated with the construction and operation of the proposed marina development.

A copy of the lease shall be submitted to Council prior to the commencement of works or occupation of the lands nominated in the lease.

Reason: To ensure the requirements of Trade and Investment Crown Lands.

NSW Environment Protection Authority

13. The marina development shall comply with the General Terms of Approval issued by the NSW Environment Protection Authority on 16 October 2015.

Note: The General Terms of Approval issued by the Authority are provided as Attachment A to this development consent.

Reason: To ensure the requirements of NSW Environment Protection Authority are imposed as conditions and are fully implemented to the satisfaction of the Authority.

Department of Primary Industries – Fisheries NSW

14. The marina development shall comply with the General Terms of Approval and supplementary conditions issued by the Department of Primary Industries Fisheries NSW on 28 May 2015 and 18 August 2015.

Note: The General Terms of Approval and supplementary conditions issued by the Department are provided as Attachment B to this development consent.

Reason: To ensure that the requirements of the Department of Primary Industries - Fisheries NSW are imposed as conditions and are fully implemented to the satisfaction of the Department.

Roads and Maritime Services

15. A Network of Aids to Navigation shall be installed on and around the proposed marina in consultation with Roads and Maritime Services (and in compliance with System A of the International Association of Lighthouse Authorities) at the proponent's cost.
16. The permissive occupancy licence issued by NSW Crown Lands for the proposed marina shall not include waters west of the fixed marina structure, or waters to the east

of the fixed marina structure without further consultation with Roads and Maritime Services (to date, the extent of any occupation licence has not been provided to Roads and Maritime Services, and this will have implications for mooring relocation and navigation).

17. The proponent shall acknowledge that Roads and Maritime Services has provided comment only on the implications for navigation safety and swing moorings of the proposed development, and in doing so Roads and Maritime Services has not provided support or otherwise towards any other aspect of the proposal including whether government funding is to be provided for any part of the proposed infrastructure such as the breakwater/attenuator.

Reason: To ensure that the requirements of the Roads and Maritime Service are imposed as conditions and are fully implemented to the satisfaction of the Service.

Port Authority of NSW

18. Prior to the commencement of waterside construction works, Harbour Master approval for the proposal is required to be obtained under Clause 67 of the Management of Waters and Waterside Lands Regulations – NSW in relation to the proposed disturbance of the bed of a ‘special port’.
19. Consultation with the Harbour Master for the Port of Eden regarding the proposed development should occur to discuss the requirements for the Harbour Master approval as well as to deal with concerns relating to lighting of the development during construction and operation and impacts on shipping navigation.
20. The Harbour Master shall be consulted in the development and endorsement of any subsequent swing mooring relocation plan.
21. For reporting purposes, Section 4.4 of the Construction Environmental Management Plan shall be appropriately amended nominating the Harbour Master as the first point of contact in the event of any spills or leaks into the waterway.
22. Section 9 of the Operational Environmental Management Plan shall be amended to include an additional management task to ensure all relevant authorities (including the Harbour Master) are immediately contacted in the event of any spills or leaks from vessels resident to or visiting the marina and/or from any marina infrastructure associated with the operation of the marina.

Reason: To ensure that the requirements of the Port Authority NSW are imposed as conditions and are fully implemented to the satisfaction of the Authority.

Public Access

23. Prior to the issue of any construction certificate, the proponent shall negotiate with and enter into a lease arrangement with the Department of Trade and Investment – Crown Lands which, among other things, shall secure lawful public access over the existing wharf component of the proposed marina development. A copy of the endorsed lease shall be submitted to Council within 3 months of its endorsement date to give effect to this condition.
24. Unrestricted public access to the existing wharf component of the marina shall be maintained at all times to Council's satisfaction unless closure is in the interest of public safety and/or security.

25. Public access to the floating component of the marina and proposed new wharf shall be maintained between the hours of 7am to 8pm (Summer daylight saving) and 7am to 5pm (non daylight saving) to Council's satisfaction unless closure is in the interest of public safety and/or security.

Reason: These conditions are required to ensure public access to the marina development.

Sustainable Design

26. The following requirements shall be designed and installed in the development:
- a) water efficient fixtures and fittings of minimum rating in accordance with Australian and New Zealand Standard AS/NZS 6400.2005;
 - b) high efficiency lighting throughout the development;
 - c) solar hot water system to service the needs of the management/facilities building.

All sustainable commitments shall be fully detailed on the construction plans and/or associated specifications and submitted to Council for endorsement prior to the issue of any subsequent construction certificate by the Principal Certifying Authority.

The Construction and Operational Environmental Management Plans shall be amended accordingly to Council's satisfaction.

Reason: This condition is required to help ensure an acceptable level of sustainability.

27. The Construction and Operational Environmental Management Plans shall be amended to reference the report prepared by Ocean Environmental Consulting entitled "Cattle Bay Marina Water Quality Management Plan #2 dated June 2015 inclusive of the water quality management and mitigation measures to be initiated during construction and operation of the marina and water quality monitoring protocols.

The Construction and Operational Environmental Management Plans shall be submitted to Council for endorsement prior to the issue of any subsequent construction certificate by the Principal Certifying Authority.

Reason: This condition is required to ensure water quality and the implementation of appropriate mitigation measure as warranted.

28. The Construction and Operational Environmental Management Plans shall be amended to address the management (inclusive of storage, resource recovery and spill prevention/mitigation) of solid, liquid and hazardous waste during the construction stage and over the long term whilst the marina is operating.

The Construction and Operational Environmental Management Plans shall be submitted to Council for endorsement prior to the issue of any subsequent construction certificate by the Principal Certifying Authority.

Reason: To ensure that appropriate waste management strategies are endorsed and implemented to ensure environmental quality, public safety and health.

Hazard Management

29. A flood emergency response plan shall be prepared and submitted to Council for endorsement prior to the issue of any construction certificate by the Principal Certifying Authority.

The Plan shall be referenced for implementation in the Construction and Operational Environmental Management Plans.

Reason: This Condition is required to ensure the appropriate monitoring of localised flood events and that appropriate protocols are adopted and implemented to

mitigate the impact of flood events on public safety, marina infrastructure and property.

30. Prior to the issue of any construction certificate for work on Lot 2 DP 1138056, a preliminary site contamination report shall be submitted to Council for concurrence.
31. Prior to the issue of any occupation certificate, a site contamination validation report is to be submitted to Council for concurrence. Any subsequent Construction Environmental Management Plan shall be amended accordingly to give effect to this condition.

Reason: These conditions are required to ensure that potential site contamination is adequately addressed and as warranted, appropriate remediation works are carried to ensure environmental integrity and public health.

Off-Street Car and Bicycle Parking

32. A minimum of 97 off street carparking spaces comprising 50 carparking spaces in Stage 1 of the development and 47 carparking spaces in Stage 2 of the development shall be provided in accordance with Council's adopted Bega Valley Development Control Plan 2013 and the Roads and Traffic Authority publication "Guide to Traffic Generating Development 2002. Carparking is to be provided generally in accordance with the approved plans or in an alternative arrangement to the satisfaction of Council.

Engineering design plans for the carpark including parking layout, surface paving and drainage, shall be prepared and certified by a chartered professional engineer and submitted to Council for endorsement prior to the issue of any construction certificate by the Principal Certifying Authority for work on Lot 2 DP 1138056.

All works required in the construction of the carpark shall be undertaken and completed in accordance with the certified engineering plans prior to the issue of any subsequent occupation certificate by the Principal Certifying Authority.

33. The design and construction of the carpark and driveway areas shall incorporate the provision of suitable landscaping. A detailed landscape plan for the carpark area shall be submitted and approved by Council prior to the issue of any construction certificate by the Principal Certifying Authority for work on Lot 2 DP 1138056. The plan shall be prepared by a qualified landscape architect.

All landscape works shall be completed in accordance with the approved landscape plan prior to the issue of any occupation certificate for Lot 2 DP 1138056 and maintained at all times thereafter to Council's satisfaction or until such time as the mixed tourist and residential development endorsed by the Major Project Concept Approval (05_0032) comes to fruition.

Reason: These conditions are required to ensure that a suitable carpark is provided on site which satisfies the traffic generating potential of the marina development and to ensure that the carpark is constructed to a standard which ensures its effective use with a minimum of maintenance whilst effectively reducing its visual impact.

34. Secure bicycle parking in accordance with AS 2890.3 1993 – Parking Facilities – Bicycle Parking Facilities, shall be provided and made available to staff and patrons of the marina and the general public at all times. Details shall be submitted to Council for endorsement prior to the issue of any occupation certificate by the Principal Certifying Authority.

Reason: To ensure the provision of suitable on-site bicycle parking which meets the operational needs of the marina and the recreational opportunities of the general public.

Biodiversity

35. Prior to the issue of any construction certificate by the Principal Certifying Authority, a Construction Environmental Management Plan shall be prepared in consultation with all relevant authorities and submitted to Council for endorsement. The form and content of the Plan shall be compliant with the Plan prepared by Royal Haskoning DHV - Cattle Bay Marina Construction Environmental Management Plan dated April 2015 and shall include (but not all inclusive) the following amendments:
- (a) Section 1.3 of the CEMP being amended to address the scope of works associated with:
 - i. the final alignment of the wave attenuator inclusive of documentation being submitted by Royal Haskoning and/or Cardno which certifies that the final design and location of the attenuator is consistent with the modelled design in the report prepared by Cardno 'Cattle Bay Marina, Eden – Wave Modelling' dated 28 July 2014 and subsequent correspondence by Royal Haskoning DHV entitled "Cattle Bay Marina – Response to Submissions on EIS Supplementary Statement on Wave Attenuator and Potential Impacts" dated 8 April 15; and
 - ii. the renovation and landscaping of the carpark area and site generally as required by this consent.
 - (b) Section 1.4 of the CEMP being amended to reference and to ensure compliance with the South Australian Government Department of Planning Transport and Infrastructure Underwater Piling Noise Guidelines 2012.
 - (c) Section 4.5 of the CEMP being amended to acknowledge the presence of the *Posidonia australis* weed bed to the east of the marina site and to facilitate its location on-site as an exclusion zone during construction.
 - (d) Section 4.8 of the CEMP being amended in relation to the public notification to the effect that an introductory letter (inclusive of the construction program and sketches of the project) shall be circulated to all residences within a 250 metre radius of the construction site as measured from the end of the existing wharf structure.
 - (e) Section 4.12 of the CEMP being amended to preclude Council's foreshore public reserve (Lot 4 DP 1138056) and Cocora Beach and adjacent foreshore areas from being used as a staging area for works associated with the refurbishment of the existing wharf or the construction of the floating components of the marina or wave attenuator
 - (f) Section 4.12 of the CEMP being amended to facilitate the erection of security fencing of the boundaries of Council's foreshore public reserve (excluding the access corridor) to Council's satisfaction for the purpose of precluding direct access from the construction site and Cattle Bay Beach during construction.
 - (g) Section 4.2 of the CEMP being amended to ensure that appropriate soil and water management controls are implemented and maintained in accordance with the Landcom publication Managing Urban Stormwater: Soils and Construction 4th Edition March 2004 (Blue Book)

On endorsement, the Construction Environmental Management Plan shall be fully implemented to the satisfaction of Council and all relevant State Agencies.

36. Prior to the issue of any construction certificate by the Principal Certifying Authority, an Operational Environmental Management Plan shall be prepared in consultation with all relevant authorities and submitted to Council for endorsement. The form and content of the Plan shall be compliant with the Plan prepared by Royal Haskoning DHV - Cattle Bay Marina Operational Environmental Management Plan dated March 2013 and shall include (but not all inclusive) the following amendments.

- (a) Appendix A of the OEMP being amended to reflect the final alignment of the wave attenuator.
- (b) Section 4 of the OEMP shall be amended to facilitate:
 - i. the independent environmental audit process being undertaken by suitably qualified and experienced persons acceptable to Council and relevant State Agencies in all fields of operation as detailed in the OEMP.
 - ii. the submission to Council for endorsement of the environmental audit inclusive of any recommendations and/or actions considered warranted to ensure the effective operation of the marina.
 - iii. the implementation, to the satisfaction of Council and relevant State Agencies, of any recommendations and/or actions identified by the environmental audit process.
 - iv. a review of the endorsed OEMP as part of the environmental audit process and the update of the OEMP as considered warranted.
 - v. the submission upon written notice of any and all matters relating to the operation of the marina which are tracked and managed through the OEMP. The information being submitted to the relevant authority within 14 business days from the endorsement date of the notice and includes (but not limited to) logs, licenses, monitoring and incident reports, registers, training, insurances, complaints, check lists and agreements.
- (c) Section 14 of the OEMP shall be amended to facilitate:
 - i. The provision and use of a minimum of 2 mobile sewage pump out units.
 - ii. The operation of mobile sewage pump out units being only carried out by suitably trained marina personnel.

On endorsement, the Operational Environmental Management Plan shall be fully implemented to the satisfaction of Council and all relevant State Agencies.

Reason: These conditions are required to ensure that the form and content of the Construction and Operational Environment Management Plans fully address the potential impacts of the proposed marina development on biodiversity.

Aboriginal Cultural Heritage

37. Prior to the commencement of any works associated with the renovation of the existing concrete slabs, the provision of service infrastructure and site landscaping on Lot 2 DP 1138056, an Aboriginal Heritage Management Plan (AHMP) shall be prepared by a

qualified archaeologist in consultation with the Office of Environment and Heritage and submitted to Council for endorsement.

38. No Aboriginal objects may be harmed unless an Aboriginal Heritage Impact Permit has been issued by the NSW Office of Environment and Heritage.
39. If any Aboriginal objects are unearthed during construction all work must cease immediately and the NSW Office of Environment and heritage must be contacted for advice before any works re-commence.
40. All site workers and contractors must be provided with induction training on the identification of Aboriginal artefacts, Aboriginal cultural awareness and procedural protocols as outlined in the Aboriginal Heritage Management Plan during the construction phases of the development.
41. Section 4.10 of the Construction Environmental Management Plan shall be amended to embody the requirements of above conditions
42. Section 4.10 of the Construction Environmental Management Plan shall be amended by deleting reference to 'Heritage Act 1977' and its replacement by National Parks and Wildlife Act 1974.

Reason: These conditions are required to ensure the integrity of Aboriginal culture and heritage.

Visual Quality

43. Detailed design and construction plans of the proposed temporary building shall be submitted to Council for endorsement prior to the issue of any construction certificate by the Principal Certifying Authority for work on Lot 2 DP 1138056. The design of the building shall have regard to the visual quality of the locality and shall include:

- (a) a design solution which positively mitigates potential visual impacts;
- (b) external building finishes (including glazing);
- (c) a colour palette (including colour samples)

The buildings shall be constructed and finished in accordance with the approved plans to the satisfaction of the Principal Certifying Authority.

44. A detailed landscape plan shall be submitted and approved by Council prior to the issue of any construction certificate by the Principal Certifying Authority for work on Lot 2 DP 1138056. The plan shall be prepared by a qualified landscape architect. The plan shall have regard to the visual quality of the locality and shall provide for:

- (a) the provision of landscaping having a minimum width of 6 metres across the Cattle Bay Road frontage of the site;
- (b) the provision of landscaping within the carpark area including the curtilage of the temporary building;
- (c) the provision of landscaping having a minimum width of 3 metres across common boundary with Council's public reserve (Lot 4 DP 1138056).

All landscape works shall be completed in accordance with the approved landscape plan prior to the issue of any occupation certificate by the Principal Certifying Authority and maintained at all times thereafter to Council's satisfaction or until such time as the

mixed tourist and residential development endorsed by the Major Project Concept Approval (05_0032) comes to fruition.

45. Lighting of the marina component shall be in accordance with Australia Standard AS 3962-2001 'Guidelines for Design of Marinas'.
46. All exterior lighting of the land based components of the marina shall be located and directed in such a manner so as not to create a nuisance to the surrounding land use. The lighting shall be the minimum level of intensity needed to ensure safe access and operation of the marina.

The lighting shall be designed in accordance with Australian Standard 4282 "Control of obtrusive effects of outdoor lighting" (1997).

Reason: These conditions are required to reduce potential visual impact of the marina development when viewed from adjoining and adjacent lands and Twofold Bay.

Noise and Vibration

47. Prior to the issue of any construction certificate by the Principal Certifying Authority, Construction and Operational Noise Management Plans shall be submitted to Council for endorsement. The Plans shall be generally compliant with the Report prepared by West and Associates entitled 'Cattle Bay Marina Development Application Acoustic Report at Cattle Bay Road Eden' October 2015.

The Construction and Operational Noise Management Plans shall be referenced in both the Construction and Operational Environmental Management Plans for the marina and shall be implemented to the satisfaction of Council.

Reason: To ensure that appropriate mitigation measures are adopted and implemented to ensure the acoustic amenity locality both during construction and operation of the marina.

48. To the satisfaction of Council, Section 4 of the Construction Environmental Management Plan is to be amended to reference and give effect to German Standard DIN 4150 – 3 – Effects of vibration on structures 1999 or any subsequent Standard.
49. Prior to the issue of any construction certificate, the proponent shall submit to the Principal Certifying Authority a dilapidation report for all individual properties likely to be affected by vibration associated construction piling. Section 4 of the Construction Environmental Management Plan shall be amended to give effect to this requirement.
50. Any substantiated damage caused to dwellings in the immediate locality of the marina development caused as a result of construction piling works shall be made good and repaired to a standard at least equivalent to that existing prior to commencement of construction. Such repair works will be undertaken as a priority to ensure minimal disruption and inconvenience to affected landowners.

Reasons: These conditions are required to ensure the structural integrity of nearby dwellings during the construction stage of the marina development.

Aquaculture Integrity

51. The Draft Construction and Operational Environmental Management Plans shall be amended as appropriate to give reference to the mitigation measures and recommendations made in the Report prepared by Marine Pollution Research Pty Ltd

entitled "Cattle Bay Marina Project EIS – Aquatic Ecology Assessment May 2013 to Council's satisfaction.

Reason: To ensure environmental integrity in the interests of sustainable aquaculture.

Public Interest

52. Sections 6 and 18 of the Operational Environment Management Plan shall be amended to facilitate:
- a. the provision of emergency berthing of vessels.
 - b. the casual and emergency overnight stay on vessels but limiting the period to a maximum of 6 nights to any calendar month.
 - c. the minor emergency repair and/or maintenance of vessels to restore sea worthiness.

Reason: To provide safe anchorage in the interest of public maritime safety.

Signage and Advertising

53. No advertising sign shall be erected, painted or displayed without prior approval from Council except those in accordance with Schedule 2 of Bega Valley LEP 2013 and/or the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: To ensure that appropriate signage is erected which contributes to the visual quality of the locality.

Building and Health Conditions

54. The final construction plans shall demonstrate compliance for the access of people with disabilities and must be provided in accordance with the requirements of the Building Code of Australia, AS 1428.1, AS3962 and with regard to the Disability Discrimination Act 1992 - Access to Premises Standards 2010. These plans shall be submitted to Council for concurrence prior to the release of any construction certificate.
55. A revised design of the shore based amenities incorporating an additional unisex sanitary compartment with shower and an outside cold water shower are to be submitted to Council for concurrence prior to the release of any construction certificate.
56. A separate application to obtain approval to connect to council's sewerage system, undertake sanitary drainage and plumbing work under Section 68 of the Local Government Act 1993 shall be submitted to Council for approval prior to the issue of any construction certificate. A plumbing and drainage design plan is to be submitted with the application to Council.
57. A fire safety list of essential fire or other safety measures shall be submitted prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building premises in the event of fire. The fire safety list must distinguish between the measures that are:-
- a. Currently implemented in the building premises; and
 - b. To be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.

58. Toilet and shower facilities shall be made available to casual and emergency users at all times during their stay at the marina.
59. Sanitary facilities are to be made available to all visitors to the wharf during daylight hours.
60. All wharf, ramp and pontoon decks are to be finished with non-slip surface.
61. All pontoon arm gates shall be readily openable in the direction of egress without a key by way of a single downward acting handle.
62. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
63. 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.
64. The owner of a building, to which an essential fire safety measure is applicable, shall provide Council with an annual fire safety statement for the building premises. The annual fire safety statement for a building premises must: -
 - a. Deal with each essential fire safety measure in the building premises; and
 - b. Be given:-
 - Within 12 months after the last such statement was given; or
 - If no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.
65. As soon as practicable after the annual fire safety statement is issued, the owner of the building premises to which the statement relates:-
 - a. Must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades; and
 - b. Prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

Reasons: To ensure the provision of adequate public amenity in all likely circumstances in the construction and operation of the approved marina development given its coastal location and isolation.

Engineering Conditions

Roads and Easements

66. Prior to the issue of any occupation certificate for any part of the approved development, Cattle Bay Road shall be designed and constructed in accordance with the engineering plans prepared by Tasman Engineering Consultants entitled "Cattle Bay Road Upgrade Concept" drawing number E191 (sheets 1 to 5 inclusive) dated 19 June 2017.

Reason: to provide an appropriate standard of access to the land and to accommodate the traffic likely to be generated by this development

Erosion and Sediment Control

67. Detailed construction plans must include all erosion and sediment control works necessary to ensure that the quality of stormwater discharge 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.

Reason: to ensure that the development does not cause erosion, sedimentation or pollution due to uncontrolled stormwater runoff.

Traffic Control

68. No work shall be carried out within 3 metres of the carriageway of the public road subject to motor vehicle traffic until Council has endorsed a satisfactory Traffic Control plan relating to that work.

The Traffic Control plan shall be prepared by a person who is authorized by Roads and Maritime Services to prepare these plans.

The Traffic Control Plan must bear the name, signature and Traffic Control at Worksites Certificate Number of the person who prepared it.

All measures described in the Traffic Control Plan shall be implemented and maintained for the duration of any work within or adjacent to the road carriageway.

69. The Council endorsed Traffic Control Plan shall be referenced in any subsequent Construction Environment Management Plan for the marina development and shall be implemented to give effect to this condition.

Reason: so as to ensure construction works on or adjacent to public roads are performed safely.

Protection of Existing Services and Provision of Easements

70. Prior to any site works commencing, a detailed stormwater and sewerage asset protection plan shall be submitted to and endorsed by Council. The Plan is to be developed in consultation with relevant Council Staff and is to detail all protection arrangements to ensure the integrity of Council's infrastructure with regard to the movement of heavy plant in and around the development site.

71. The endorsed asset protection plan shall be referenced in any subsequent Construction Environment Management Plan for the marina development and shall be implemented to give effect to this condition.

Reason: to ensure the integrity of Council's infrastructure during the construction works.

72. Establishment of easements to drain water not less than 3.0 metres wide in favour of Bega Valley Shire Council within Lot 2 DP 1138056 to contain stormwater drainage works that form part of the Council-controlled drainage system. 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.

Reason: to secure the authority for Council to operate and maintain stormwater drainage works.

73. Establishment of easements to drain sewage not less than 3.0 metres wide in favour of Bega Valley Shire Council within Lot 2 DP 1138056 to contain sewerage reticulation works that form part of the Council controlled sewerage system. 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.

Reason: to secure the authority for Council to operate and maintain the sewerage system.

74. Establishment of easements for services as necessary to provide for the connection of water supply, sewerage and electricity services over Lot 4 DP 1138056 to service the proposed marina berths. 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.

Reason: to secure the authority for land benefited to install, use and maintain connections to utility services across other land.

Access Parking and Driveways

75. The on-site driveways and carparking areas associated with the proposed marina development shall be made available at all times to the general public for the purpose of access and parking until such time as alternative carparking has been provided to Council's satisfaction.
76. Deleted

Entrance Driveway Location

77. Detailed design of the driveway and carpark area shall avoid conflict with existing and any proposed sewer manholes.

Reason: To ensure that proposed driveway accessing the site does not encumber the function of the sewer manhole.

Soil and Stormwater Management

78. Any subsequent flood emergency response plan shall be prepared to the satisfaction of Council and shall include (but not limited to) a review of existing flood modelling and shall include inundation plans showing the extent and depth of flooding during a range of extreme storms 10, 20, 50 and 100 year ARI.

If possible, a secondary flow path through the site to convey overland flow shall be located and provided.

Reason: To minimise human risk and damage to property during an extreme storm event.

79. Prior to the issue of any subsequent construction certificate for work on Lot 2 DP 1138056 full engineering detail of the Gross Pollutant Trap and proposed method of installation shall be submitted to and approved by Council.

Stormwater runoff from the proposed car park shall be directed through a Gross Pollutant Trap, prior to discharge to a Council controlled stormwater system, or an existing waterway.

The Gross Pollutant Trap shall be designed and Installed in such a way that there is no reduction in capacity of the existing stormwater pipelines and backflow through the Gross Pollutant Trap is prevented during surcharged conditions.

Reason: To ensure the Gross Pollutant Trap is adequately sited and designed so as not to adversely impact on the function and capacity of existing stormwater infrastructure and to ensure its effectiveness with a minimum of maintenance at all times.

Utility Services

80. A Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 must be obtained prior to the issue of a Construction Certificate.

Note: The development has been assessed as imposing an additional load of 59.4ET to the water supply system and 59.4ET to the sewerage network. The payment due will be calculated at the rate specified in Council's adopted Fees and Charges *at the time of payment*.

Reason: To ensure that an equitable monetary contribution is payable for the provision of water supply and sewerage treatment infrastructure required to meet the loadings generated by this development.

81. Liquid Trade Waste application is required for this development. A separate application to obtain approval to discharge liquid trade waste to council's sewerage system under Section 68 of the Local Government Act 1993 shall be submitted to council for approval prior to issue of the construction certificate. If the applicant is not the owner of the site, the applicant must obtain the owner's consent to the application. Application forms are available from Council.

82. A detailed waste water management plan shall be provided to Council for endorsement. The waste water management plan shall include, but not be limited to, the management of discharge of any boat pump out system wastes including Bilge Water, Galley Waste, Toilet Waste and Chemical Toilet Waste, carting and disposal arrangements.

Note: Council does not permit any discharge of bilge water to the sewerage system.

Reason: These conditions are to ensure compliance with the Liquid Trade Waste regulation Guidelines.

83. Detailed design of a dockside waste water pump out point, or an on-land connection point to the local sewerage system for a mobile waste water pump out unit shall be submitted to, and approved by Council.

Any on-land connection point for a mobile waste water pump out unit shall be contained entirely within the development, and may not encroach onto road reserve or public land. This connection point shall include:

- a) Physical measures for the prevention of spills
- b) Provision for wash down / cleaning of the mobile unit within a bunded area
- c) Provision of a sampling point for the quality of discharge to Council sewer
- d) Measures for the prevention of odour
- e) Physical measures to exclude unauthorised public access
- f) Ongoing maintenance and ownership of this connection point will remain the responsibility of the marina owner/operator.

Reason: To ensure the provision of a sanitary method of disposal of waste water from vessels moored at the marina facility.

General Engineering Conditions

84. Conditions to be satisfied prior to Engineering Construction Certificate (approval under Section 138 of the Roads Act and Section 68 of the Local Government Act).

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

- a. approval of detailed construction plans and specifications for access road works by Council's Group Manager Infrastructure Waste and Water 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.

Reason: To ensure that the development is compatible with the design of specified works and to specify technical standards.

- b. It appears that this proposed development may be located below Council's sewerage system. The applicant is to provide an internal sewer drainage diagram and a concept reticulated sewerage design which verifies that the proposed development can adequately drain to the Council's reticulated sewer.

Reason: To ensure that the development can drain to Council's reticulated sewer system

- c. Lodgement of security with Council in an amount of \$10,000.00 (Allocation No. 1096 7009) as security for remedying any defects in any public work required in connection with this consent (such as road work, footway construction, stormwater drainage, water supply and sewerage works and environmental controls) that arise within six months after the works are completed, and for making good any damage caused to Council property as a consequence of the doing of anything to which the consent relates.

The security lodged with Council shall be either in money or unconditional bank guarantee in a form acceptable to Council.

The funds realised from this security may be paid out by Council to meet any costs referred to in this condition. A Bond Administration Fee may be payable to Council.

This condition is authorised by Section 80A(6)-(10) of the Environmental Planning and Assessment Act 1979.

Reason: To ensure that public works are in satisfactory condition when transferred to Council and that any damage to council property is remediated.

- d. Qualifications and insurance of engineering designers (Public Works)

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.

Reason: to ensure appropriate professional standard.

e. Contractor's insurance (Public Works)

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.

Reason: To ensure that contractors hold suitable public liability insurance.

85. Conditions to be satisfied prior to occupation subject to Council acceptance.

The following matters shall be completed prior to the occupation 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. Extension of Sewer

Council's existing reticulated sewerage shall be extended by at least 1m past the boundary of Cattle Bay road and Lot 2 DP 1138056, and shall terminate at a manhole. This manhole shall form the junction between Councils reticulated sewer, and the service line to the marina development.

Detailed design of all sewerage works to service this development shall be in accordance with Council's Development Design Specification D12 and all plans and specifications for proposed sewerage works are to be submitted to, and approved by Council.

Construction shall be carried out by a Bega Valley Shire Council accredited contractor(s) and in accordance with Council's Development Construction Specification C402 – Sewerage System.

Reason: to ensure all waste discharge is managed within the development boundary, and to provide a clearly delineated separation between private and public sewer

b. A bulk water meter, compliant with the relevant standards for fire service, shall be provided to serve this development. The water service and water meter shall be sized by a qualified person and is subject to application. The qualified person shall undertake calculation as required by the current AS 3500 and the New South Wales Code of Practice - Plumbing and Drainage and certified as true correct and satisfactory to serve the proposed development.

This certification shall be lodged with, and approved by Council prior to making application for the metered service.

Reason: To ensure that all water connections to both the land and water based components of the marina development are appropriately metered in accordance with Council's requirements.

- c. A suitably qualified person shall undertake a survey for a backflow device and the results of the survey shall be lodged with Council. Upon the results of the survey being lodged with Council, if required, an approved backflow prevention device (as approved by Council) shall be fitted and tested by approved qualified personnel and registered with Council.

Reason: To protect water quality in Council's reticulated town water supply.

- d. The existing water service and water meter sizes may not be suitably sized for the proposed development and may require upsizing of the water service and water meter arrangement. A hydraulic consultant or similarly suitable qualified person is required to ascertain this. The qualified person shall undertake calculation as required by the current AS 3500 and the New South Wales Code of Practice - Plumbing and Drainage and certified as true, correct and satisfactory to serve the total development. This certification shall be lodged with Council and where required, make application for modification to the metered service.

Reason: To ensure an adequate water supply and pressure to the development.

- e. Construction of bitumen sealed vehicular entrance serving lot2 DP 1138056 in conformity with Council's standard drawing 2111. The entrance is to be sealed to the property boundary.

Reason: To provide an appropriate standard of access to the land and to accommodate the traffic likely to be generated by this development.

- f. Compliance Certificate(s) in relation to the inspection and testing of all public works associated with this consent (such as road work, 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 placement of all signs in accordance with the approved Traffic Control Plan.
- after stripping of topsoil from roads and fill areas, all Soil & Water Management Plan controls shall be in place at this stage.
- After completion of road subgrade.
- After placement and compaction of each layer of gravel pavement material.
- Prior to the application of bitumen seal or asphaltic concrete wearing surface.
- After laying and jointing of all stormwater pipelines prior to backfilling.
- After laying and jointing of all sewerage pipelines prior to backfilling.
- During pressure testing of all sewerage pipelines.
- During testing of all sewer manholes.
- 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.

Reason: to demonstrate that works are completed in conformity with development consent conditions and to appropriate technical standards.

g. Works as executed plans

Upon completion of all development work, Council shall be provided with one complete copy of the plans to which the Construction Certificate relates, clearly marked up to show all variations of the completed works from the approved design in regard to alignment, levels and other details of the works. These plans must show the location and depth of any filling placed on any lot. Works-as-executed plans must be prepared and certified by a Registered Surveyor or Chartered Professional Engineer as a complete and accurate record of the development work.

A complete record of all cadastral information, roads, stormwater drains, water supply and sewerage infrastructure works for this development shall also be provided to Council in an electronic format.

The electronic / digital data must be suitable for inclusion in Council's Geographic Information System with a brief metadata description of the projection, survey control and layers.

The preferred format for this electronic/digital data is as follows:

- File format: AutoCAD DWG or DXF files.
- Map Projection: MGA94 Zone 55
- Map Layers: To delineate map data into subdivision, water, sewer and drainage.
- Survey Control: map point location and name or table format of control points showing name and coordinates used for survey.

Data will need to be resupplied if coordinates are not valid for the surveyed area.

The works as executed plans must be examined and accepted by Council's engineering staff prior to the endorsement of the Subdivision Certificate by the Principal Certifying Authority (Council).

Reason: To ensure that Council holds complete records of civil engineering works being transferred to Council ownership.

86. Conditions to be satisfied prior to occupation subject to engineer's certification.

The following matters shall be completed prior to the commencement of use of any part of this development: The satisfactory completion of these works must be evidenced to Council by certification from a suitably qualified and experienced Chartered Professional Engineer confirming that the works identified in this condition satisfy the specified performance and acceptance criteria, and recognised good engineering practice.

- a. construction of electricity reticulation works and associated facilities to service both the land and water based components of the marina, in accordance with the requirements of the appropriate supply authority.

Reason: to provide appropriate electricity servicing for the development.

- b. construction of telecommunications cabling and associated facilities to service the land based component of the marina, in accordance with the requirements of the appropriate supply authority.

Reason: to provide appropriate telecommunications servicing for the development

Engineering Notes

- a. Contributions/fees/charges payable will be those applicable at the time of payment.
- b. The applicant should be aware of Bega Valley Shire Council's current fees and charges.
- c. Bega Valley Shire Council Water and Sewerage Services section can provide an estimate of cost for construction works relating to Council's water and sewer infrastructure and upon acceptance and payment of the relevant fees can carry out such works.
- d. Section 64 of the Local Government Act authorises the Council to issue Certificates of Compliance under section 305 of the Water Management Act 2000.
- e. Section 64 of the Local Government Act authorises the Council under section 306 of the Water Management Act 2000 to impose a pre-condition on the grant of a Certificate of Compliance requiring payment of a specified amount by way of contribution towards the cost of water management works.

The above conditions are in the public interest to reduce any potential environmental impact and to ensure the proposed development complies with:

- the provisions of the *Environmental Planning and Assessment Act 1979* and Regulations
- any environmental planning instruments applying to the subject land
- Council's codes and policies
- *Section 94 Development Contribution Plan* and *Tree Preservation Order*.

Notes:

1. In accordance with the provisions of Section 82A of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request must be made within a period of 6 months from the date shown on this determination. A fee, as prescribed under Council's current Management Plan – Fees and Charges, is payable for such a review.
2. Section 97 of the *Environmental Planning and Assessment Act 1979* (as amended), gives the applicant the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice. Section 97 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.
3. In accordance with Section 95 of the *Environmental Planning and Assessment Act 1979*, this development consent will lapse 5 years after the date from which it operates ('Consent to Operate' date) unless work is physically commenced, on the land to which

the consent applies, before the date on which the consent would otherwise lapse ('Consent to Lapse' date).

4. Before any building or subdivision works are commenced a Construction Certificate must be obtained from Council or an accredited certifier.
5. It is the applicant's responsibility to advise Council of any changes to contact details in a timely manner. Council will not be held responsible for any lost documents, delays or missed inspections if any of the details are in any way not up-to-date. Should duplicate documents be required they will incur an additional fee in this circumstance.

R M Slapp
Senior Planner
FOR BEGA VALLEY SHIRE COUNCIL

APPENDIX 2 - COPY OF DEPOSITED PLAN 1138056

PLAN FORM 2 (A2)

WARNING CREASING OR FOLDING WILL LEAD TO REJECTION

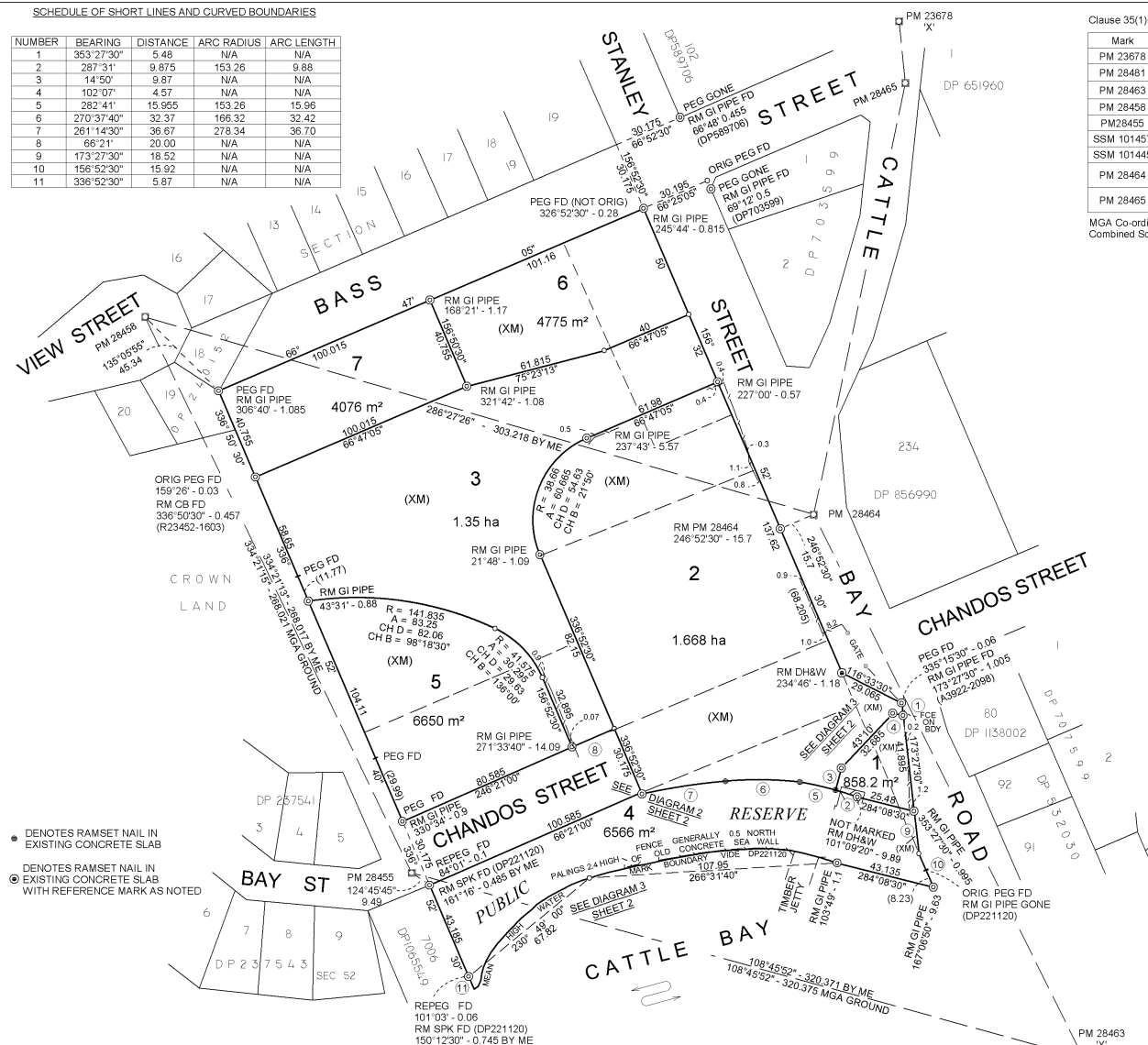
DP1138056

e-plan

Sheet 1 of 2 sheets

SCHEDULE OF SHORT LINES AND CURVED BOUNDARIES

NUMBER	BEARING	DISTANCE	ARC RADIUS	ARC LENGTH
1	353°27'30"	5.48	N/A	N/A
2	287°31'	9.875	153.26	9.88
3	14°50'	9.87	N/A	N/A
4	102°07"	4.57	N/A	N/A
5	282°41'	15.955	153.26	15.96
6	270°37'40"	32.37	166.32	32.42
7	261°14'30"	36.67	278.34	36.70
8	66°21"	20.00	N/A	N/A
9	173°27'30"	18.52	N/A	N/A
10	156°52'30"	15.92	N/A	N/A
11	336°52'30"	5.87	N/A	N/A



Clause 35(1)(b) and Clause 61(2) of the Surveying Regulation 2006

Mark	MGA Easting	MGA Northing	Class	Order	Method	Origin
PM 23678	7860533.30	5894132.114	B	3		SCIM
PM 28481	7562699.906	5893946.527	B	3		SCIM
PM 28463	7581710.164	5893421.357	B	3		SCIM
PM 28458	7577550.642	5893766.176	B	3		SCIM
PM28455	757866.691	5893524.458	B	3		SCIM
SSM 101457	758302.231	5893603.968	B	3		SCIM
SSM 101445	758365.799	5893479.386	B	3		SCIM
PM 28464	758041.55	5893680.24	U	N/A	Cadastral Traverse	Fountaingate
PM 28465	758041.47	5893667.90	U	N/A	Cadastral Traverse	Fountaingate

MGA Co-ordinates adopted from SCIMS as at 17 September 2008 and 15 January 2009.
Combined Scale Factor = 1.000416 Zone 55

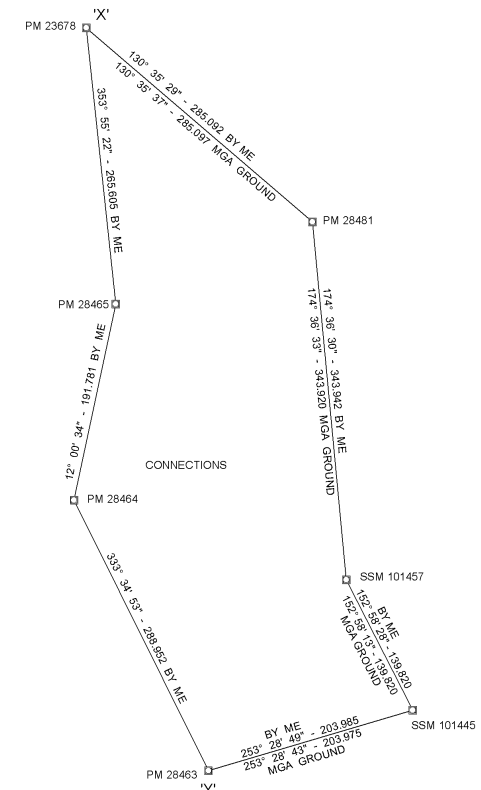


DIAGRAM 1
R.R. 1:3000

(XM) LAND EXCLUDES MINERALS - SEE CROWN GRANT

IT IS INTENDED TO DEDICATE LOT 4 AS PUBLIC RESERVE

BOUNDARIES ARE UNFENCED UNLESS NOTED OTHERWISE.
ALL FENCING SHOWN IS 'CYCLONE' & BW FENCING 2.4 HIGH, > 20 YRS.
UNLESS NOTED OTHERWISE

Surveyor: ROBERT GORDON WEBB
35 FLINDERS STREET
EDEN

Date of Survey: 29/01/2009

Surveyor's Ref: 1472 E-0

PLAN OF SUBDIVISION OF LOT 1 DP221120,
LOTS 1 & 2 DP249511, LOT 117 DP750205,
LOTS 3, 4, 5, 8, 9, 13, 16 & 17 SEC 15
DP 758379

0	LGA: BEGA VALLEY SHIRE
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Locality: EDEN

Subdivision No: 12/09

Lengths are in metres. Reduction Ratio 1:1250

Registered

100

 25-08-20

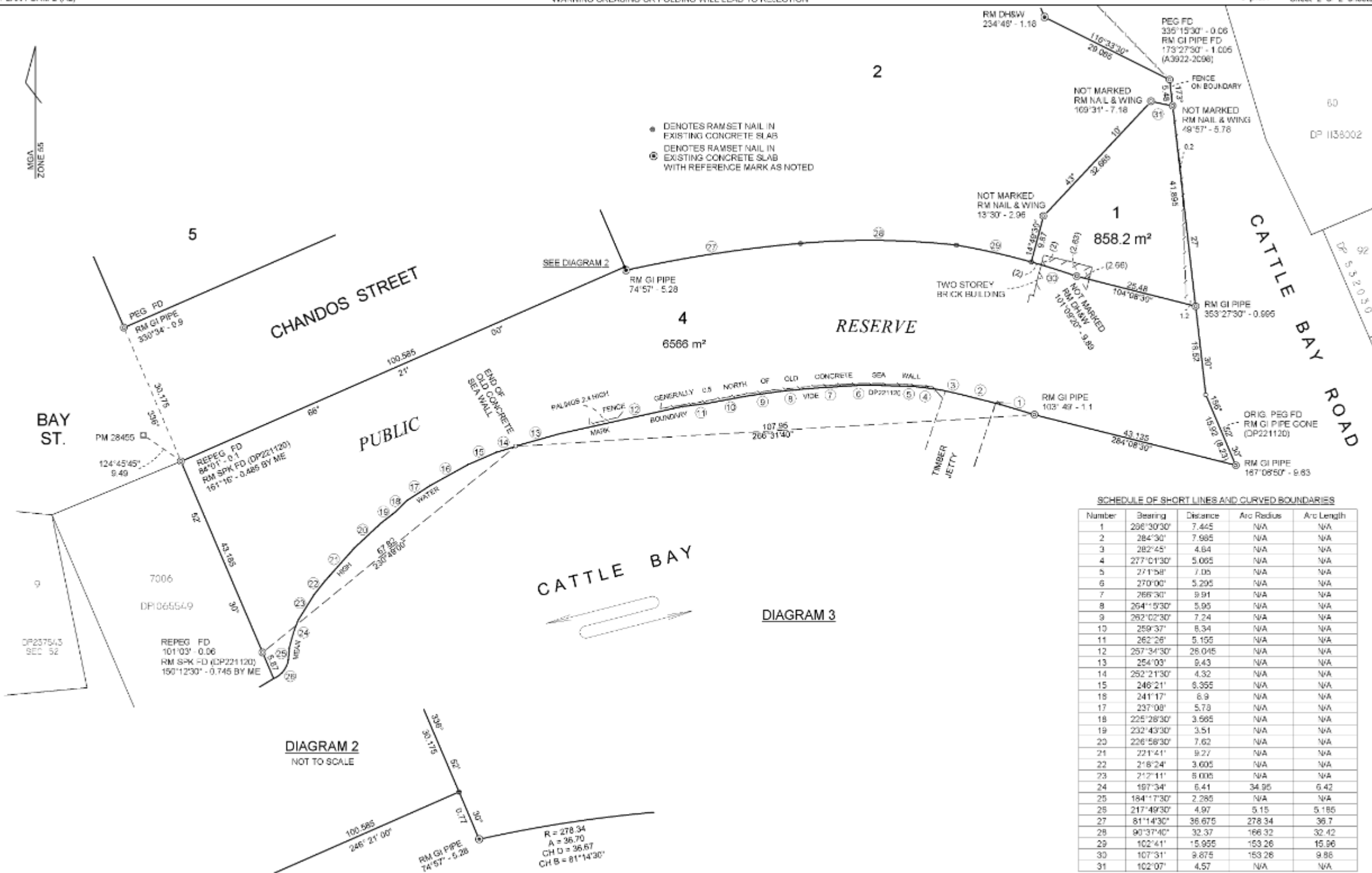
DP1138056

TYPE: 1472 E-1 - Plan

Box:e-IDS /DocID 1138056 P /Rev:25-Aug-2009 /Sts:SC,OK /Prt:26-Aug-2009 03:11 /Pgs:ALL /Seq:1 of 4
WARNING : Electronic Document Supplied by IPI NSW for Your Internal Use Only.

10	20	30	40	50	Table of mm	90	100	110	120	130	140
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MPR PERMANENT



IT IS INTENDED TO DEDICATE LOT 4 AS PUBLIC RESERVE

BOUNDARIES ARE UNFENCED UNLESS NOTED OTHERWISE
ALL FENCING SHOWN IS 'CYCLONE' & DW FENCING 2.4 HIGH > 20 YRS.
UNLESS NOTED OTHERWISESurveyor: ROBERT GORDON WEBB
35 FLINDERS STREET
EDEN

Date of Survey: 29/01/2009

Surveyor's Ref: 1472 E-0

PLAN OF SUBDIVISION OF LOT 1 DP221120,
LOTS 1 & 2 DP249511, LOT 117 DP750205,
LOTS 3, 4, 5, 8, 9, 13, 16 & 17 SEC 15
DP 758379

LGA: BEGA VALLEY SHIRE

Locality: EDEN

Subdivision No: 12/08

Lengths are in metres. Reduction Ratio 1:500

Registered



25-08-2009

DP1138056

Att: Cecily Hancock
MODIFICATION APPLICATION

To Modify A Development Consent and/or Construction Certificate (S96 & Cl. 148)
To Modify A Complying Development Certificate (S87)

Use this form to apply for a modification to development consent, and/or Construction Certificate or to modify a Complying Development Certificate. If the changes you propose mean the development will not be substantially the same as originally approved, you need to submit a new development application (please do not use this form).

PIIA DISCLAIMER: The personal information provided on this form is collected by Bega Valley Shire Council for the purposes of processing this application by Council employees and other authorised persons. This form will be stored within Council's record management system and may be available for public access and/or disclosure under various NSW Government legislation.

Tick applicable box(es) below

I am modifying a Development Consent: ☒

I am modifying a Construction Certificate: ☐

I am modifying a Complying Development Certificate: ☐

1 Applicant details

Please tick ☐ Mr ☐ Ms ☐ Mrs ☐ Other (specify) ACTION

Your name

Print name in full EDEN CATTLE BAY MARINA PTY LTD

Mailing Address ☒

Street PO BOX 363

Town EDGECLIFF NSW

Postcode 2027

Daytime contact

Phone

Mobile

Fax

Email

2 Property details

You can find the Lot, Section and DP details on a map of the land or on the title documents for the land. If you need more room, please attach a schedule and/or map with these details.

Lot 2

DP 113805

Section

Parcel

Street CATTLE BAY ROAD

Town EDEN

Postcode 2551

☐ Attachments

3 Details of the original development consent

Development consent ...

DA No. 2014-0430

Date of determination 1, 12, 2015

Describe what the original consent allows

MARINA

4 Original consent authority

Please tick ☒ the one that applies

☐ Bega Valley Shire Council

☐ Land and Environment Court

☒ JRP

OFFICE USE ONLY

Date paid 21.8.17

Allocation No.

CS initial

LYNNE

Receipt No. 1066855

Application fee 2827.00

Contact Building Inspector / Planner for fee quote.

See 96(2)

REC. 1066855

5 Describe the modification you propose to make

Please tick ✓ the type of modification you propose to make.

☐ S96 (1) Modification to correct minor error, misdescription or miscalculation

Describe the error, misdescription or miscalculation

☐ S96 (1A) Modification that will have minimal environmental impact

Describe the modification and its expected impact

☒ S96 (2) Any other modification

Describe the modification and its expected impact

MODIFICATION TO METHOD OF SEWER DISPOSAL FROM APPROVED MARINA AS DESCRIBED IN ACCOMPANYING STATEMENTS

☐ S96 AA Modification by consent authorities of consents granted by the Court

Describe the modification and its expected impact

Will the modified development be substantially the same as the development that was originally approved?

☐ No ☒ Yes

→ Please provide evidence that the development will remain substantially the same (if you need to attach additional pages, please list the material attached).

Is another construction certificate required for this modification? If in doubt, please speak to Council's Development Specialist.

☒ No ☐ Yes

→ If a construction certificate is required, a separate application must be made.

6 Political Donations and Gifts Disclosure Statement

Have you or any person with a financial interest in this development application made a political donation or gift within the last 2 years?

☐ Yes ☐ No

If yes, have you completed and attached a Political Donations and Gifts Disclosure Statement?

☐ Yes ☐ No

7 Owner's signature

All the owner(s) of the land being developed must sign this application form or provide a separate letter of consent.

If the property is owned by a company, the company's seal (where issued) and ABN number must be provided with at least one executive signature. Any person signing on behalf of the owner must state the authority by which that person acts. In the case of STRATA PLANS, the Body Corporate seal must be provided and the date of resolution authorising owner's consent.

If the land is Crown land, an officer of the Department of Lands must sign the application.

As the owner(s) of the above property, I consent to this application.

Owner's signature

X

X

[Signature]

Print name

HENRI DE ROMAS (DIRECTOR)

Date

25/07/2017

Print name

Date

8 Applicant's signature

Public Exhibition of this Proposal

I understand that plans showing internal floor layouts will be used for public exhibition / notification of my application.

I also understand that documents supplied with my application can be accessed under the Government Information Public Access (GIPA) Act.

The applicant or the applicant's agent must sign the application.

Applicant's signature

X

P. Ruiz de Roxas

Date 25/07/2017

Print name (if you are not
the applicant)

In what capacity are you signing
If you are not the applicant?

Guidelines for the lodgement of a Modification Application

A Section 96 Application to modify consent made under the *Environmental Planning and Assessment Act 1979* can be made under various parts:

- S96(1)** This relates to a minor error, misdescription or miscalculation made in the consent which requires correction.
- S96(1A)** This relates to a modification involving minimal environmental impact. Council must be satisfied that the development is substantially the same as the original.
- S96(2)** This relates to any other type of modification that Council considers is substantially the same as the original.
- S96AA** This relates to a modification by consent authorities of consents granted by the Court.

The Applicant may be required to provide evidence that the modification(s) requested does not substantially change the development from the original approval. If this evidence cannot be provided, a new Development Application may be required.

How to lodge a Modification Application

Application must be made on the application form provided by Council. The original consent number that requires modification **MUST** be stated along with the date of the original determination.

- The applicant must have the consent of all the property owners to lodge the application. Applications cannot be accepted unless the owners consent can be provided in writing, either on the application form or by way of a separate letter.
- The fee must be paid at the time of lodgement. This can be up to 50% of the original Development Application, Complying Development Certificate or Construction Certificate fee depending upon the type of modification sought. In many cases this fee cannot be determined until the application and plans are received and the full extent of the modification can be assessed.
- Please note that an administration fee and a fee to place your application in the newspaper once determined will also be payable.
- Depending on the type and detail of the modification, the proposal may also need to be re-notified to adjoining and adjacent landowners, and may even need to be advertised in the local newspaper.
- Plans (4 full size sets) need to be provided for any alteration to the original approved configuration. These plans should clearly indicate the modification/alterations requested. Where possible the original approved configuration should also be shown for comparison.
- Plans (4 reduced A4 sets) need to be provided for any alteration to the external configuration of the approved configuration. These will be sent to the adjoining property owners as part of Council's notification process.
- If the modification sought relates to conditions of the original consent, the details of these conditions, as well as the condition numbers, must be indicated on the application. This can be done on a separate sheet if necessary.

- **WARNING:** Any S96 application that involved any modification to structures will likely require a new or modified Construction Certificate application to be lodged. This is a separate application that may require new specifications and is subject to a separate fee. This will also require the full owners consent.

If you have any queries regarding these requirements, please contact Customer Service or the Council's Development Specialist on (02) 6499 2222.



Ocean Environmental
124 Mitchell St Merewether,
NSW, 2291, Australia
Telephone: 0425 325 410
ABN 61 001 279 812

29 July 2017

Andrew Wilson

AW Planning

PO Box 67 Cremorne NSW 2090

**Re. SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. 2014.430 FOR EDEN
CATTLE BAY MARINA - IMPACT ON MARINE ECOLOGY AND WATER QUALITY**

Dear Andrew,

I have reviewed the Section 96 Application to modify Development Consent No 2014.430 for Cattle Bay Marina, Eden. It is understood that the proposed modification involves changes to the method of sewer disposal from the approved marina development. Rather than sewage being pumped directly from mobile sewage carts into the sewer, the proposed modification involves the installation of on-site sewage holding tanks for sewage waste from marina vessels and land-based building amenities for collection and servicing by a commercial waste management contractor and disposal into Council's sewer system off-site.

This modification does not present any additional potential impacts to aquatic ecology or water quality which have not been identified previously in either the Aquatic Ecology Impact Assessment or Water Quality Impact Assessment for the proposed marina. However, the modification does present some increased risk of impact. Increased risk from the proposed modification could result from accidental spillage or leakage of sewage during transfer from the mobile units to the holding tanks or from holding tanks into trucks, or due to leaks / breakages in the holding tanks, which is then able to make its way into the waterway via runoff or through the ground and impact on aquatic ecology or water quality.

To mitigate the increased risk of accidental spillages / leakages due to increased handling of sewage and on-site storage the following additional measures should be implemented:

- Holding tanks should be constructed well away from the beach and waterway, over a non-permeable surface of suitable surface area, to prevent any spills / leaks being able to leach into the water table or runoff into the waterway. It is noted that the storage tanks would be placed over the existing concrete slab which is deemed suitable.
- Holding tanks should be fully bunded, at a level high enough to contain any accidental spills / leaks, to prevent runoff of sewage into the waterway should a spill or leak occur. Any pipes / lines used to transfer sewage between the mobile carts and into trucks should be designed to be able to pass over this bunded area.
- All staff undertaking sewage transfer operations (from mobile cart to tank, or tank to truck) should be fully trained and aware of the risk of spills on local water quality and aquatic ecology.



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- Emergency Procedures and a Pollution Incident Response Management Plan for any spills / leaks (including a list of suitable local emergency contacts) should be put in place and all staff aware of them. Copies of these should be located at the storage site and in the marina administration offices.
- Emergency spill response kits should be kept on-site.

It is my opinion that if these additional measures are implemented, no additional impacts on local aquatic ecology or marine water quality from the proposed modification are likely.

Regards

Dr Katie Smythe

Principal Marine Consultant

Ocean Environmental
0425 325 410
oceanenviron@gmail.com



11 August 2017

The General Manager
Bega Valley Shire Council
Zingel Place
Bega NSW 2550

Dear Ms Barnes

**RE: SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. 2014.430 FOR
EDEN CATTLE BAY MARINA**

1. INTRODUCTION

This Statement of Environmental Effects (SEE) accompanies an application to Bega Valley Shire Council under Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a modification to Development Consent No.2014.430 for Eden Cattle Bay Marina. The proposed modification is to the method of sewage disposal from the approved marina development.

This SEE has been prepared by Andrew Wilson (PIA Registered Planner) on behalf of the applicant, Eden Cattle Bay Marina Pty Ltd, in accordance with the provisions of the EP&A Act. It provides information on the subject land, existing development consent and proposed modification of consent. It also provides an assessment of relevant planning considerations under sections 96 and 79C of the EP&A Act.

The S96 Application is also accompanied by the following documents:

- Statement on Method of Sewage Disposal prepared by Royal Haskoning DHV dated 10 August 2017; and
- Statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting dated 29 July 2017.

2. SUBJECT LAND

The site of the proposed marina development at Eden includes Crown land in Cattle Bay / Twofold Bay and foreshore land described as Lot 2 and part of Lot 4 in DP 1138056 as shown in Figure 1.

3. EXISTING DEVELOPMENT CONSENT AND APPROVED PLANS

Development Consent No.2014.430 for Eden Cattle Bay Marina was granted by the Southern Joint Regional Planning Panel on 1 December 2015 based on an assessment report by Bega Valley Council and subject to 86 conditions. The approved plans and staging of the marina development are in Figures 2 to 4 below.

The approved method of sewage disposal in the marina development involves vessel discharge into mobile pump-out carts, manual transfer to the land base in mobile carts, and discharge from both the mobile carts and amenities on the land base into a sewer pipe on-site with connection and pump to Council sewer system on Cattle Bay Road.

Section 96 Application - Cattle Bay Marina



Figure 1 – Location of the subject land (shown with red outline)

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PROJECT : SITE ONE - PROPOSED MARINA DEVELOPMENT, CATTLE BAY, EDEN, NSW		CLIENT : EDEN RESORT HOTEL PTY LTD		TOWN PLANNING CONSULTANT : INSPIRE URBAN DESIGN + PLANNING Tel. 0411 486 760 www.inspireplanning.com PO Box 7277 South Sydney Business Hub NSW 2015		ARCHITECT : BLACK architecture and project management Tel. 0439 439 439, Alexandria, NSW 1545 10/100 Regent St, Sydney, NSW 1545 Tel (02) 8571 6666 Mob 0414 765 104 Email: kevin@black@black.com		DRAWING TITLE : PROPOSED SITE DEVELOPMENT AND STORMWATER PLAN		Dwg No. DA-A-02	
SCALE PROJECT NO.		1:300(A3)		ISSUE		DRAWN BY KLB		CHECKED BY KLB		DATE 27.06.14	
ISSUE DATE 27.06.14		ISSUE FOR CLIENT APPLICATION		1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12		1 2 3 4 5 6 7 8 9 10 11 12	

4. PROPOSED MODIFICATION OF DEVELOPMENT CONSENT

The Section 96 Application seeks a modification to the method of sewage disposal in the approved Cattle Bay Marina development to be implemented in modifications to the relevant conditions in Development Consent No.2014.430 for the marina.

4.1 Modification to Development

The proposed modification to the method of sewage disposal in the approved Cattle Bay Marina development is described in the table below.

Approved Method of Sewage Disposal	Proposed Modification
• Vessel discharge into mobile pump-out carts.	• Vessel discharge into mobile pump-out carts.
• Manual transfer to land base in mobile carts.	• Manual transfer to land base in mobile carts.
• Discharge from mobile carts into sewer pipe on the land base on site with connection and pump to Council sewer system on Cattle Bay Road.	• Discharge from mobile carts into on-site holding tanks on the land base adjoining the approved marina administration and amenities building.
• Discharge from building amenities on land base into sewer pipe with connection and pump to Council sewer system on Cattle Bay Road.	• Discharge from building amenities on land base directly into adjoining holding tanks.
	• Collection and disposal by commercial waste contractor into Council sewer system off-site.

The proposed modification involves the installation of on-site holding tanks for sewage waste from marina vessels and land-based building amenities for collection and servicing by a commercial waste management contractor and disposal into Council's sewer system off-site.

The modification to the method of sewage disposal for the approved marina is proposed on the basis of the unique circumstances of the site and marina development and the strategy for staging of development at Cattle Bay.

The approved land based component of the marina development and the proposed holding tanks in this S.96 modification are temporary facilities until a tourist facility is developed on the land base that provides direct connection to Council's sewer system on site in accordance with an existing Part 3A Concept Plan Approval. The marina is the first stage and a catalyst for future development at Cattle Bay.

The site of the land based component of the marina and proposed holding tanks is currently a former industrial site covered by concrete slab with blocked sewer pipes. The site conditions together with the amount of sewer connection headworks charges for the marina in the consent present excessive costs for direct connection to Council sewer on site in this initial stage of development which undermine its viability and would in any case be superseded by the future tourist development on the land base.

The proposed modification is described in further detail in the statement on Method of Sewage Disposal prepared by Royal Haskoning DHV dated 10 August 2017 which accompanies this S.96 Application. The proposal involves the installation of a septic tank and collection well. The septic tank allows solids to settle to form a sludge while the lighter fraction would float to the surface to form a scum layer. The liquid component (effluent) would flow to the separate collection well. The septic tank would be typically cleaned out every two to three years and checked more regularly. The effluent in the collection well would be pumped out every week or so depending on the rate of waste generation which would be seasonal.

The capacity of the proposed holding tanks includes a septic tank of 4,000 litres capacity and collection well of 7,000 litres capacity. The proposed location is on top of the existing concrete slab at the northern end of the temporary buildings in a location that is readily accessible by the mobile sewage pump out units (wheeled carts) and road tankers. Fencing with a lockable gate is erected around the tanks screening them from view and securing them from public access.

The environmental protection and pollution control measures associated with the method of sewer disposal with on-site holding tanks include mobile pump out units fitted with a range of safety features such as automatic parking brake, runaway cart protection and automatic pump cut off, standard procedures of licensed commercial waste contractor, and bunding provided around the area of transfer of waste from mobile pump out unit to holding tank and from holding tank to tanker truck. Mobile carts, holding tanks and tanker trucks are all sealed to minimise odour generation.

4.2 Modifications to Consent

The S.96 Application is to modify the following conditions of consent in order to implement the proposed method of sewage disposal with holding tanks on-site and disposal by commercial waster contractor off-site:

- modification to Condition 1 to include the proposed method of sewage disposal;
- modification to Condition 80 to delete the requirement for a Certificate of Compliance for sewer connection under the Water Management Act 2000;
- deletion of other various conditions relating to the design, approval and construction of a direct sewer connection to Council's sewer system.

The proposed modifications to these conditions are described in detail below.

Condition 1 - Approved Plans and Supporting Documentation

Condition 1 is proposed to be amended by inserting the additional items (r) and (s) shown below after item (q) in Condition 1:

(r) Statement titled Section 96 Application to Modify Development Consent No.2014.430 for Eden Cattle Bay Marina – Method of Sewage Disposal prepared by Royal Haskoning DHV dated 10 August 2017.

(s) Statement titled Section 96 Application to Modify Development Consent No.2014.430 for Eden Cattle Bay Marina - Impact on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting dated 29 July 2017.

Condition 74 - Easements

Condition 74 is proposed to be amended by deleting the requirement for a sewerage easement as shown struckthrough below:

74. Establishment of easements for services as necessary to provide for the connection of water supply, ~~sewerage~~ and electricity services over Lot 4 DP 1138056 to service the proposed marina berths. 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.

Condition 80 - Utility Services

Condition 80 is proposed to be modified to delete the requirement for a certificate of compliance for sewerage network connection on-site as shown below with additions underlined in bold and deletions struckthrough:

*80. A Certificate of Compliance **for water supply** under Division 5 of Part 2 of Chapter 6 of the Water Management Act 2000 must be obtained prior to the issue of a Construction Certificate.*

Note: The development has been assessed as imposing an additional load of 59.4ET to the water supply system ~~and 59.4ET to the sewerage network~~. The payment due will be calculated at the rate specified in Council's adopted Fees and Charges at the time of payment.

Reason: To ensure that an equitable monetary contribution is payable for the provision of water supply ~~and sewerage treatment~~ infrastructure required to meet the loadings generated by this development.

Various Conditions - Design and Approval of Direct Connection to Council Sewer System

Conditions 54, 83, 84(b), 85(a) relating to detailed design plans and separate Council approval for direct connection to the Council sewer system are proposed to be deleted.

Schedule of Contributions, Fees and Charges

The sewage charges in the Contributions, Fees and Charges schedule attached to the consent are proposed to be deleted from the consent.

5. ASSESSMENT OF PLANNING CONSIDERATIONS

5.1 Section 96(2) – Substantially the same development and minimal environmental impact

Section 96(2) of the EP&A Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

The proposed modification satisfies Section 96(2) of the EP&A Act in resulting in substantially the same marina development as in the original consent in terms of its land use, layout, number of berths and management plans.

It is open for the proponent to have lodged this application under Section 96(1A) of the EP&A Act as there is minimal environmental impact, however adopting a conservation approach the application is lodged under Section 96(2).

5.2 Section 96(3) and 79C Assessment – Matters for Consideration

Section 96(3) of the EP&A Act states:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Section 79C(1) of the EP&A Act states as follows:

“79C Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest."*

The original Environmental Impact Statement lodged with the original DA includes a comprehensive consideration of planning matters relevant to the marina development under Section 79C of the EP&A Act. The proposed modification of consent give rise to the S.79C considerations described below.

Planning Instruments and Controls

The relevant planning instruments and controls applying to the proposed modification are:

- Bega Local Environmental Plan 2013;
- State Environmental Planning Policy No 71—Coastal Protection;
- Bega Development Control Plan 2013.

The proposed modification is consistent with the relevant planning instruments and controls as described in the attached tables of compliance.

Environmental Impacts

The environmental impact considerations of relevance to the proposed modification relate to water quality and aquatic ecology, odour and visual amenity.

Water Quality and Aquatic Ecology

A statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting is submitted with this S.96 Application. The Statement provides an assessment of potential impacts of the proposed modification to the method of sewage disposal in the approved marina development, and finds that finds it will have no additional impact on aquatic ecology or water quality in Twofold Bay subject to recommended risk mitigation measures being implemented. The statement with the recommended risk mitigation measures are included in the proposed modification of consent.

Odour

The proposed on-site holding tanks, commercial collection tankers and approved mobile pumpout carts are all sealed and accommodate sealed transfer of sewage with minimal generation of odour.

Visual Amenity

The visual amenity of the site and locality will not be impacted by the proposed modification as the holding tanks are small in scale, located 50m from the beach, and designed with screening and as an integrated part of the approved marina amenities and administrative building.

Suitability of The Site

The site is suitable for the proposed modification and temporary holding tanks in the following respects:

- it is a vacant former industrial site with an existing concrete platform foundation with large separation distances to any residential or other sensitive uses;
- it is subject to a concept plan approval for future tourist and residential development that will include new sewer infrastructure on-site with direct connection to Council's sewer system;
- it is currently the site of the approved marina and in particular the temporary land based administrative and amenities building for the marina.

6. CONCLUSION

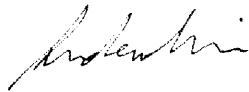
The Section 96 Application seeks approval for a modification to the method of sewage disposal in the approved Cattle Bay Marina development with installation of on-site sewage holding tanks for collection and servicing by a commercial waste contractor and disposal into Council's sewer system off-site.

The proposed modification to the method of sewage disposal for the approved marina is proposed on a temporary basis taking into account the unique circumstances of the site and marina development and the strategy for staging of development at Cattle Bay.

The proposed modification satisfies the requirement in Section 96(2) of the EP&A Act in resulting in a marina development that is substantially the same as in the original consent. It is consistent with relevant planning instruments and controls, and will not have an unreasonable impact on the environment subject to the implementation of recommended measures for managing water quality, aquatic ecology and odour.

Given the above assessment, the proposed modification is justified and has planning merit on which the S96 Application can be approved by modifying relevant conditions in Development Consent No.2014.430 for Cattle Bay Marina as described in this statement.

Yours sincerely



Andrew Wilson
Principal
AW Planning
B.Urb.Reg.Plng.
PIA Registered Planner

TABLES OF COMPLIANCE WITH PLANNING INSTRUMENTS AND CONTROLS

State Environmental Planning Policy No 71—Coastal Protection

SEPP No.71 Provisions	Proposed Modification
Clause 2 Aims of Policy	
(1) <i>This Policy aims:</i>	The proposed modification of consent is consistent with the aims of SEPP 71 as described below.
(a) <i>to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and</i>	The proposed modification will facilitate the development of Cattle Bay Marina which is a significant recreational, cultural and economic asset and piece of infrastructure for Eden and the district. A Statement on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting submitted with the S.96 Application finds the proposed modification will not have a significant impact on water quality or aquatic ecology in Twofold Bay subject to recommended impact mitigation measures being implemented to protect the environment which are included in the proposed modifications to consent conditions.
(b) <i>to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	Public access along the coastal foreshore is not affected by the proposed modification.
(c) <i>to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	
(d) <i>to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and</i>	Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge are not affected by the proposed modification.
(e) <i>to ensure that the visual amenity of the coast is protected, and</i>	The visual amenity of the coast is not significantly affected by the proposed modification. The proposed sewage holding tanks are small in scale and designed

SEPP No.71 Provisions	Proposed Modification
	with screening and an integrated part of the approved amenities and administrative building for the marina.
<i>(f) to protect and preserve beach environments and beach amenity, and</i>	No beach is affected by the proposed modification as the tanks are setback approximately 50m from the beach, and are designed as an integrated part of the approved amenities and administrative building for the marina with visual screening, and certain measures are included in the design and management of the holding tanks to minimise environmental impacts.
<i>(g) to protect and preserve native coastal vegetation, and</i>	No native coastal vegetation is affected by the proposed modification.
<i>(h) to protect and preserve the marine environment of New South Wales, and</i>	
<i>(i) to protect and preserve rock platforms, and</i>	No rock platform is affected by the proposed modification.
<i>(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and</i>	The proposed modification is consistent with the principles of ecologically sustainable development as it includes an assessment of potential impacts and measures to protect the environment and biodiversity for future generations.
<i>(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and</i>	The proposed holding tanks are small in scale and designed as an integrated part of the approved amenities and administrative building for the marina with visual screening with a negligible impact on scenic quality.
<i>(l) to encourage a strategic approach to coastal management.</i>	The proposed modification is a part of facilitating the strategic staging of development at Cattle Bay commencing with marina infrastructure that will be a catalyst for future development on the land base at which time the sewer can be connected. It is a strategic approach to significant development at Eden.
Clause 8 Matters for consideration	
<i>The matters for consideration are the following:</i>	
<i>(a) the aims of this Policy set out in clause 2,</i>	The aims of the Policy are addressed above in this table.

SEPP No.71 Provisions	Proposed Modification
<i>(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.</i>	Public access along the coastal foreshore is not affected by the proposed modification.
<i>(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.</i>	
<i>(d) the suitability of development given its type, location and design and its relationship with the surrounding area,</i>	The proposed holding tanks with design and management measures to protect the environment are suitable for the site being a former industrial site and the site of the approved temporary office and amenities building for the marina.
<i>(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,</i>	A Statement on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting submitted with the S.96 Application finds the proposed modification will not have a significant impact on water quality or aquatic ecology in Twofold Bay subject to recommended impact mitigation measures being implemented to protect the environment which are included in the proposed modifications to consent conditions. No significant overshadowing or view loss is caused by the proposed modification.
<i>(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,</i>	The scenic qualities of the coast will not be significantly affected by the proposed holding tanks which are small in scale and designed as an integrated part of the approved amenities and administrative building for the marina with visual screening.
<i>(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,</i>	A Statement on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting submitted with the S.96 Application includes measures to conserve aquatic fauna, fish and habitat.
<i>(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats</i>	

SEPP No.71 Provisions	Proposed Modification
<i>(i) existing wildlife corridors and the impact of development on these corridors,</i>	No wildlife corridors are significantly affected by the proposed modification.
<i>(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,</i>	Coastal processes and hazards will not impact, and will not be impacted by, the proposed holding tanks given the small scale and setback from the foreshore.
<i>(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,</i>	The proposed holding tanks are compatible with the marina on the site which it is servicing.
<i>(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,</i>	No Aboriginal cultural heritage, places, values, customs, beliefs or traditional knowledge is affected by the proposed modification.
<i>(m) likely impacts of development on the water quality of coastal waterbodies,</i>	A Statement on Marine Ecology and Water Quality prepared by Ocean Environmental Consulting submitted with the S.96 Application finds the proposed modification will not have a significant impact on water quality in Twofold Bay subject to recommended impact mitigation measures being implemented to protect water quality which are included in the proposed modifications to consent conditions.
<i>(n) the conservation and preservation of items of heritage, archaeological or historic significance,</i>	No items of heritage, archaeological or historic significance are affected by the proposed modification.
<i>(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,</i>	Not applicable.
<i>(p) only in cases in which a development application in relation to proposed development is determined:</i>	
<i>(i) the cumulative impacts of the proposed development on the environment, and</i>	The proposed modification is unique and will have no significant cumulative impact.
<i>(ii) measures to ensure that water and energy usage by the proposed development is efficient.</i>	The proposed modification will have no significant effect on water and energy use.

SEPP No.71 Provisions	Proposed Modification
Clause 15 Effluent disposal <i>The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.</i>	A Statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting is submitted with the S.96 Application. The Statement provides an assessment of potential impacts of the proposed holding tanks as a modification to the approved development and finds that the proposed modification will not have a significant impact on water quality in Twofold Bay subject to recommended impact mitigation measures being implemented to protect water quality which are included in the proposed modifications to consent conditions.

Bega Local Environmental Plan 2013

Bega LEP 2013 Provisions	Proposed Modification
Part 2 Permitted or prohibited development	
<i>The site is zoned SP3 Tourist. The objective of the zone is:</i> - <i>To provide for a variety of tourist-oriented development and related uses.</i>	The proposed modification is consistent with the objective of the zone in facilitating a marina which is a tourist-oriented development.
<i>The SP3 Tourist Zone permits marinas with development consent.</i>	The proposed modification is for the purpose of a marina and permissible with consent in the zone.
Clause 5.5 Development within the coastal zone	
<i>(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:</i>	
<i>(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:</i> <i>(i) maintaining existing public access and, where possible, improving that access, and</i> <i>(ii) identifying opportunities for new public access, and</i>	Public access along the coastal foreshore is not affected by the proposed modification which is a small scale modification to an approved marina facility.
<i>(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:</i> <i>(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and</i> <i>(ii) the location, and</i> <i>(iii) the bulk, scale, size and overall built form design of any building or work involved, and</i>	The proposed holding tanks are suitable and have a compatible relationship with the area with no significant impact on natural scenic quality following respects: - the proposed holding tanks are suitably to service the approved marina on the site and are compatible with it; - the proposed holding tanks are suitably setback from the foreshore and sited adjoining the approved amenities and administrative building for the marina; - the proposed holding tanks are small in scale and designed as an integrated part of the approved amenities and administrative building for the marina with visual screening.

Bega LEP 2013 Provisions	Proposed Modification
<i>(c) the impact of the proposed development on the amenity of the coastal foreshore including:</i> <i>(i) any significant overshadowing of the coastal foreshore, and</i> <i>(ii) any loss of views from a public place to the coastal foreshore, and</i>	The amenity of the coastal foreshore is not significantly impacted by the proposed holding tanks as they are small in scale and designed as an integrated part of the approved amenities and administrative building for the marina with visual screening. No significant shadows are cast and no significant views are lost by the proposed modification.
<i>(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and</i>	The visual amenity and scenic qualities of the coast are not significantly impacted by the proposed holding tanks as they are small in scale and designed as an integrated part of the approved amenities and administrative building for the marina with visual screening.
<i>(e) how biodiversity and ecosystems, including:</i> <i>(i) native coastal vegetation and existing wildlife corridors, and</i> <i>(ii) rock platforms, and</i> <i>(iii) water quality of coastal waterbodies, and</i> <i>(iv) native fauna and native flora, and their habitats, can be conserved, and</i>	
<i>(f) the cumulative impacts of the proposed development and other development on the coastal catchment.</i>	The proposed modification is unique and will have no significant cumulative impact.
<i>(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:</i>	Council can be satisfied of the matters described below.
<i>(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and</i>	Public access along the coastal foreshore is not affected by the proposed modification which is a small scale modification to an approved marina facility.
<i>(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</i>	The proposed modification involves holding tanks on the site from which sewage will be collected and disposed into Council's sewer system off-site by a commercial waste contractor. A Statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting is submitted with the S.96 Application and finds that the proposed

Bega LEP 2013 Provisions	Proposed Modification
	modification will not have a significant impact on water quality in Twofold Bay subject to recommended impact mitigation measures being implemented to protect water quality which are included in the proposed modifications to consent conditions.
<i>(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</i>	The proposed modification does not significantly change the existing stormwater conditions on the site.
<i>(d) the proposed development will not:</i> <i>(i) be significantly affected by coastal hazards, or</i> <i>(ii) have a significant impact on coastal hazards, or</i> <i>(iii) increase the risk of coastal hazards in relation to any other land.</i>	Coastal hazards will not impact, and will not be impacted by, the proposed holding tanks given the small scale and setback from the foreshore
Clause 6.4 Coastal risk planning	
<i>(2) This clause applies to:</i> <i>(a) land in the coastal zone below the 3 metre AHD contour, or</i> <i>(b) land at or below the level of a 1:100 ARI (average recurrent interval) coastal inundation or erosion event.</i>	The site of the proposed holding tanks is lower than 3m AHD.
<i>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</i>	
<i>(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and</i>	Coastal risks will not be impacted by the proposed modification which is of a minor scale.
<i>(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and</i>	Coastal processes and hazards will not be altered by the proposed modification which is of a minor scale.
<i>(c) incorporates appropriate measures to manage risk to life from coastal risks, and</i>	The proposed modification is a minor scale modification to the approved marina which will not affect risk to life from coastal risks.

Bega LEP 2013 Provisions	Proposed Modification
<i>(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and</i>	The proposed holding tanks are setback 50m from the mean high water mark and will not be impacted by coastal processes and hazards.
<i>(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.</i>	The proposed holding tanks are part of the approved temporary land based facilities for the marina, and will over time be replaced with facilities in a permanent land based development on the site.

Bega Valley Development Control Plan 2013

Bega DCP 2013 Provisions	Proposed Modification
Section 5.7 On-Site Sewer Management	
<i>Objective – Safeguard and improve the quality of public and environmental health within the Bega Valley Shire by regulating the approval of systems of on-site sewage management.</i>	The proposed modification for on-site holding tanks includes design and management measures to protect environmental health, and is the subject of a Statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting which finds that it will not have a significant impact on water quality or aquatic ecology in Twofold Bay.
<i>Application This Section applies to all land in the Bega Valley Shire where a reticulated sewerage service approved by Council is not available.</i>	The approved marina is a unique development in the locality with a unique sewage management system. The approved marina includes on-site sewage management in the discharge and collection from vessels into mobile carts and transfer to a disposal pipe on site connected to Council's sewer system. The proposed modification is for the approved mobile carts to transfer and discharge into on-site sewage holding tanks for collection and disposal into Council's sewer system off-site by a commercial waste contractor. The proposed modification is due to the circumstances of the site and approved marina development as described in Section 4.1 of this statement. The proposed modification does not involve sewage disposal on-site.
5.7.1 OSM Assessment	
<i>This Section must be read in conjunction with Council's On-site Sewage Management Policy and related procedures, guidelines and forms.</i>	See Council's On-site Sewage Management Policy and related procedures addressed below.
<i>In this Section an environmentally sensitive area is that land described in the Local Government (General) Regulations 2005 and Council's On-site Sewage Management Policy.</i>	Noted.
• Council will consider all forms of OSM systems proposed by applicants, however systems must be practical and be capable of easy maintenance by future owners.	The proposed system of sewage holding tanks on site is practical and capable of easy maintenance as described in Section 4.1 of this statement.

• Before granting consent to development that will result in the generation of sewage or other effluent, consideration must be given by the consent authority to:	
– whether the site of the proposed development must be connected to public sewerage facilities, and, if so, whether the land is capable of being connected to public sewerage facilities either now or in the future, or	The approved marina includes some on-site sewer management with mobile carts, and the proposed on-site sewage holding tanks are consistent with this on-site management. No on-site disposal of sewerage is proposed. The proposed modification for temporary holding tanks is a part of the strategic staging of development at Cattle Bay commencing with marina infrastructure that will be a catalyst for future development on the land base at which time the sewer can be connected. The need for the proposed holding tanks on site is described above in Section 4.1 of this statement and relates to the unique circumstances of the site and approved marina which includes a degree of on-site sewer management.
– the suitability of the site for on-site disposal of effluent and the ability of the effluent disposal system to function effectively over the long term without causing adverse effects to adjoining land or water, and	No on-site disposal of effluent is proposed. The proposed holding tanks with design and management measures to protect the environment are suitable for the site being a former industrial site and the site of the approved temporary office and amenities building for the approved marina. A Statement on Marine Ecology and Water Quality prepared by Dr Katie Smythe of Ocean Environmental Consulting is submitted with the S.96 Application and finds that the proposed modification will not have a significant impact on water quality in Twofold Bay subject to recommended impact mitigation measures being implemented to protect water quality which are included in the proposed modifications to consent conditions. The site and its surrounds do not have waterlogged soils.
– the likely effect of any on-site effluent disposal on any water bodies, water supply catchments, groundwater resources, or seasonally waterlogged soils in the vicinity, and	
– the likely cumulative environmental impacts of all on-site systems or works in the area with respect to water quality, soil degradation and odour.	
5.7.2 Requirements	
5.7.2.1 Subdivision	Not applicable.
5.7.2.2 Dwellings and Dual Occupancies	Not applicable.
5.7.2.3 Industrial Development	Not applicable. However the site is a former industrial site.

5.7.2.4 Development for all other purposes or where the estimated volume of effluent exceeds 2000l/day.

Not applicable as the projected volume of effluent is far less than 2,000l/day.

Bega Valley Shire Council Policy 3.03 - On-Site Sewage Management

Bega On-Site Sewage Management Policy	Proposed Modification
<i>Bega Valley Shire Council will address the matter of 'On-site sewage management' in a systematic manner by:</i>	
<i>Implementing procedures that minimise risks to public and environmental health associated with systems of on-site sewage management</i>	The proposed modification for on-site holding tanks includes design and management measures to protect environmental health, and is the subject of a Water Quality and Aquatic Ecology Statement prepared by Dr Katie Smythe of Ocean Environmental Consulting which finds that it will not have a significant impact on water quality or aquatic ecology in Twofold Bay.
<i>Implementing procedures that minimise the impact that on-site sewage management systems have on surface groundwater, land and native vegetation.</i>	The proposed holding tanks are sited on a concrete platform on a former industrial site and will have no significant impact on surface groundwater or native vegetation.
<i>Ensuring that water is conserved and that wastewater production is minimised and appropriately reused</i>	The proposed modification to the approved marina development with the addition of temporary sewage holding tanks will not have a significant effect on water usage or wastewater production.
<i>Ensuring that on-site sewage management systems enhance and protect the local community amenity and are consistent with BVSC's obligations to promote ecologically sustainable development</i>	The visual amenity of the site is not significantly affected by the proposed sewage holding tanks as they are small in scale, setback 50m from the beach, and designed as an integrated part of the approved marina amenities and administrative building with screening. The proposed modification is consistent with the principles of ecologically sustainable development as its includes an assessment of potential impacts and measures to protect the environment and biodiversity for future generations.
<i>Promoting the improvement of systems of on-site sewage management through incentives to upgrade systems, the opportunity to trial innovative systems of on-site sewage management and the reduction of high risk sites over time</i>	The proposed modification for temporary holding tanks is a part of the strategic staging of development at Cattle Bay commencing with marina infrastructure with land based facilities on a former industrial site that will be a catalyst for future development on the land base at which time the sewer can be connected.
<i>Providing fair and consistent administration for the ongoing operation of systems of on-site sewage management</i>	

<i>Targeting the removal of on-site sewage management systems within areas provided with a reticulated sewer service</i>	
<i>Facilitating the provision of appropriate 'dump points' for boats and vehicles within the shire.</i>	
<i>Procedure 3.03.1 Approvals to operate and re-inspection program</i>	The procedure is for 1, 3 or 5 year operational approvals by Council according to the level of environmental risk. The site of the proposed holding tanks is approximately 50m from the mean high water mark at Twofold Bay, and involves no disposal of sewage on site.
<i>Procedure 3.03.2 OSM Interpretations</i>	
<i>Procedure 3.03.3 Restricted development in unsewered villages</i>	Not applicable.



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Dear Andrew

**SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT
NO. 2014.430 FOR EDEN CATTLE BAY MARINA – METHOD OF SEWAGE DISPOSAL**

Background

Development Consent No. 2014.430 for Eden Cattle Bay Marina was granted by the Southern Joint Regional Planning Panel on 1 December 2015. The marina development comprises 154 berths, proposed to be constructed in two stages, with stage 1 comprising 85 berths and Stage 2 comprising 69 berths.

The approved method of sewage disposal from vessels within the marina involves:

- discharge of sewage from the holding tanks onboard vessels into mobile pump-out carts, carried out by trained marina staff (refer **Figure 1**);
- manual transfer of the mobile carts by trained marina staff to the adjacent marina land base and discharge into an onland system for pumping to Council's nearby sewerage system on Cattle Bay Road (refer **Figure 2**).

The marina development also includes two temporary buildings and amenities on land. The approved method of sewage disposal from the temporary amenities is, similarly, pumping to Council's sewerage system on Cattle Bay Road.



Figure 1 Example mobile sewage pump-out cart on a floating marina



Figure 2 Mobile sewage pump-out cart on a hinged gangway leading from a floating marina to land

It is proposed to modify the existing approved method of sewage disposal from the vessels on the marina and from the temporary amenities having regard to:

- the temporary nature of the buildings and amenities¹;
- the high cost of direct connection to Council's sewerage system for the temporary facilities and the staged marina development which undermines the viability of the marina development².

The proposed modification to the existing approved method of sewage disposal involves storage of sewage on site and its periodic collection by a licensed commercial waste contractor, as opposed to direct pumping to Council's sewerage system, as discussed in more detail below.

2. Description of Proposed Modified Method of Sewage Disposal

The proposed modification is limited to the method of removal of sewage from the site, which would be temporary in nature until such time as the tourist facility is developed. It would involve collection of sewage by a licensed commercial waste contractor for transport and disposal at Council's sewage treatment facility as opposed to direct pumping of the sewage into Council's sewerage system on Cattle Bay Road.

The proposal would involve installation of a septic tank and a collection well on the site. The septic tank would allow solids to settle to form a sludge while the lighter fraction would float to the surface to form a scum layer. The liquid component (effluent) would flow to the adjacent, separate, collection well.

¹ These facilities are temporary until a tourist facility is developed on the land at which time the temporary facilities would be removed and infrastructure associated with the tourist facility, including sewerage infrastructure, would be developed.

² In turn the high cost also undermines the viability of the subsequent tourist development as the marina is a catalyst for this development.

The septic tank would be typically cleaned out every two to three years but checked more regularly. The effluent in the collection well would be pumped out every week or so depending on the rate of waste generation, which would be seasonal in the case of a marina development. A float and alarm system would be fitted to monitor levels in the collection well and ensure timely removal.

The septic tank and collection well would need to cater for Stage 1 of the development, ie. 85 berths and the two temporary buildings. Subject to detailed design, the anticipated nominal capacity of the system would be as follows:

- septic tank: 4,000L
- collection well: 7,000L

The location of the septic tank and collection well would need to be readily accessible by the mobile sewage pump-out carts and commercial road tankers. The proposed location is on top of the existing concrete slab at the northern end of the temporary buildings as shown marked on attached Drawing DA-A-02. The area would be suitably screened from view by fencing and located behind a lockable gate. The location is well removed from the waterway. The area of the septic tank and collection well would be fully bunded.

The WCs, hand basins, urinals, and shower located in Building No 1 would be directly connected to the septic tank by fixed pipework. A pump would be installed in the plumbing system if required to transfer the waste to the septic tank.

The mobile pump-out cart would be coupled to the septic tank during discharge operations. The cart is fitted with a range of safety features which include an automatic parking brake, runaway cart protection and automatic pump cut off.

The collection well and the septic tank would be pumped out as required by a licensed commercial contractor into a tanker truck for disposal at Council's sewage treatment facility. This is a well established practice and follows standard procedures.

We trust the above is sufficient for Council's consideration of the modification application.

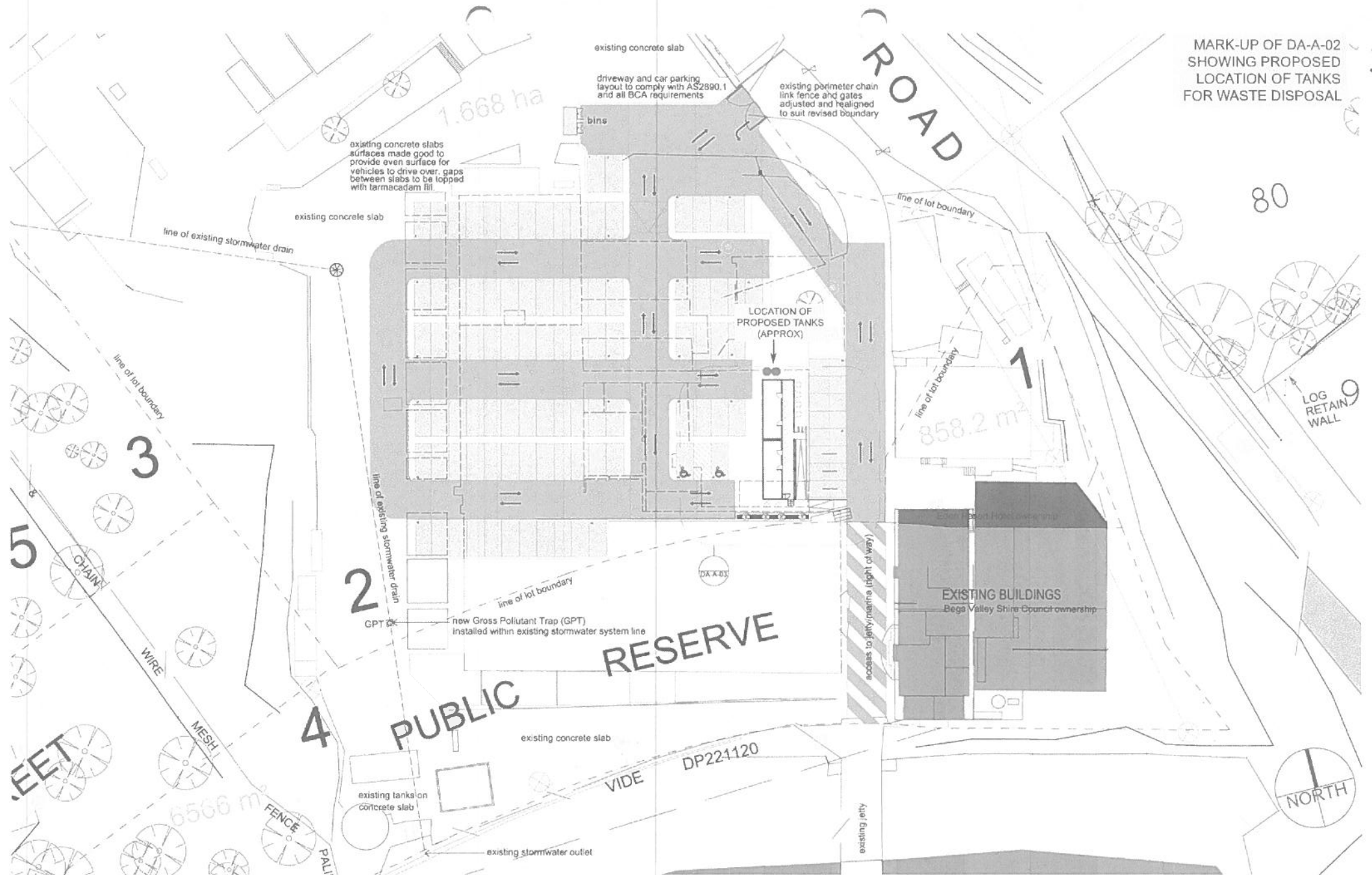
Please contact me should you require any clarification or additional information.

Greg Britton



Managing Director
Maritime & Aviation, Australia

MARK-UP OF DA-A-02
SHOWING PROPOSED
LOCATION OF TANKS
FOR WASTE DISPOSAL



NOTE: all work protected under copyright law

PROJECT :

STAGE ONE - PROPOSED
MARINA DEVELOPMENT,
CATTLE BAY, EDEN, NSW

CLIENT :

EDEN RESORT
HOTEL PTY LTD

TOWN PLANNING CONSULTANT :

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DRAWING TITLE

PROPOSED
SITE DEVELOPMENT AND
STORMWATER PLAN

DWG NO :

DA-A-02

SCALE 1:500@A3 ISSUE

PROJECT NO. KLR

DRAWN BY KLR

CHECKED BY KLB

ISSUE DATE 27-06-14

ISSUED FOR D'MENT APPLICATION

B



Public Works

APPENDIX 4 - EXTRACT FROM DEVELOPMENT SERVICING PLAN - EDEN



Development Servicing Plan – Water Supply Bega Valley Shire Council Adopted 12th June 2013



Bega Valley Shire Council

Document Control

Version	Author	Reviewer	Approved for Issue	
			Name	Date
Draftv1	Paul Kamlade	John Stanmore		
Draftv2	John Stanmore	Roshan Iyadurai	Roshan Iyadurai	2/4/2013
Draftv3	John Stanmore	Roshan Iyadurai	Roshan Iyadurai	5/4/2013
Draftv4	John Stanmore	Roshan Iyadurai	Roshan Iyadurai	8/4/2013
Final	Mark Hankinson		Minor amendment to section 5.7.2 included as per council resolution	26/06/2013

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Abbreviations

Abbreviation	Description
ABS	Australian Bureau of Statistics
ADWG	Australian Drinking Water Guidelines
DC	Developer Charges
DCP	Development Control Plan
DSP	Development Servicing Plan
EP	Equivalent Persons
ERP	Estimated Resident Population – the census population of the shire corrected to account for: - people staying in other parts of Australia on census night - an estimate of people overseas on census night - people who did not return the census - an estimate of births, deaths and migration to account for change in population between census night and the 30th of June
ET	Equivalent Tenements (Equal to one occupied residential single detached dwelling)
kL	1,000 Litres
kL/ET/year	Kilolitres per ET per year
L/ET/d	Litres per ET per day
L/s	Litres per second
LOS	Levels of Service
IPART	Independent Pricing and Regulatory Tribunal
LWU	Local Water Utility
NHMRC	National Health and Medical Research Council
NOW	The New South Wales Office of Water, the Office of the NSW Department of Primary Industries responsible for the management of the State's surface and ground water resources
NPV	Net Present Value
NRMMC	Natural Resource Management Ministerial Council
NSW	New South Wales
OMA	Operation, Maintenance and Administration Costs
PDD	Peak Day Demand
PV	Present Value
ROI	Return on Investment
TRB	Typical Residential Bill

Executive Summary

This Development Servicing Plan (DSP) covers water supply developer charges for the following Bega Valley Shire Council service areas:

- The Bega-Tathra Water Supply and Tantawanglo-Kiah Water Supply;
- The Bemboka Water Supply; and
- The Brogo-Bermagui Water Supply.

This DSP has been prepared in accordance with the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater (2002) issued by the Minister for Land and Water Conservation, pursuant to section 306 (3) of the Water Management Act (2000). This DSP is to be registered with the NSW Office of Water (NOW).

This DSP achieves the following outcomes for Council:

1. Allows Council to require an equitable monetary contribution for the provision of water supply infrastructure to meet the loadings generated by both residential and non-residential development.
2. Facilitate the future provision of water supply services to the Council service area which meets the required levels of service (Section 4) with regard to flows, pressure, water quality, water quantity and the frequency of restrictions.
3. Sets out the schedule of proposed works to meet increasing water supply demands generated by development (Section 3).
4. Details the resultant developer charges and payment policies (Section 5).

A future water supply demand estimate for the Council service areas has been undertaken. This estimate is the basis used for determining the infrastructure required to meet the need generated by future development. The demand estimate is outlined in the supporting document – Population and Water Cycle Projections.

The Council development servicing areas covered by this DSP are outlined in Appendix A. It is to be noted that not all land within the mapped DSP boundary can necessarily be serviced. Individual development proposals are required to provide layouts including elevation details of the proposed allotments to determine if levels of service for water supply will be achievable.

Developer charges are applicable for existing and proposed works which service future development. Section 3 details the existing works and proposed works schedule for water supply infrastructure to service the expected growth.

In its meeting on 12th June 2013, Council resolved to levy developer charges for water supply services lower than the calculated value. The calculated developer charges based on full cost recovery as well as Council's proposed developer charges are shown in Table S1.

Table S1 Bega Valley Shire Council Water Supply Developer Charges

Water Supply Service Area	Calculated Developer Charge / ET (\$2012/13)	Proposed Developer Charge / ET (\$2012/13)
Bega-Tathra and Tantawanglo-Kiah	10,063	7,500
Bemboka	18,816	7,500
Brogo-Bermagui	17,607	7,500
Weighted Average	10,975	7,500

Adopting the proposed developer charges and maintaining the current level of Typical Residential Water Bill (TRB) of \$540 p.a. for the next 5 years (until 2017/18) will result in \$18 per year cross-subsidy by each residential customer over the model forecast period. Note the works schedule has been adjusted to maintain the current level of typical residential water bill for the next 5 years. Figure 1 graphically represents the impact of the proposed developer charges on the typical residential water bill.

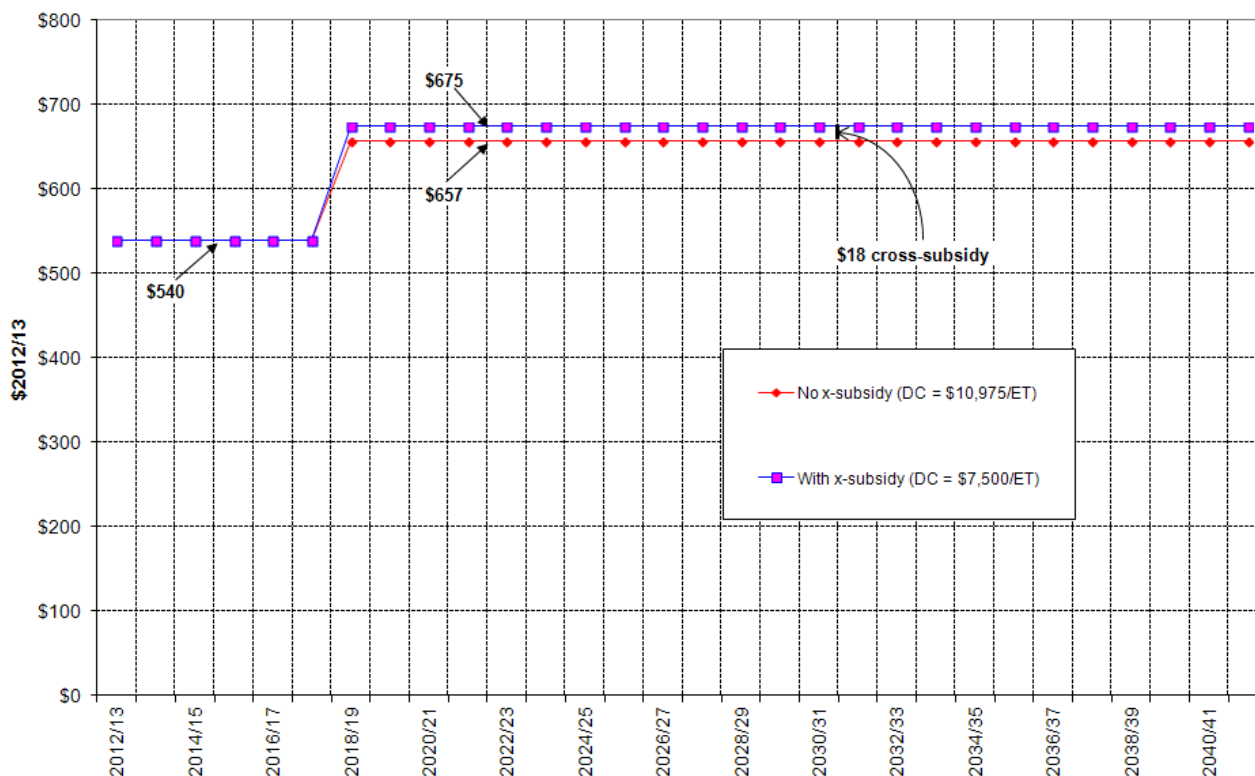


Figure 1 Impact of DC cross subsidy on Typical Residential Water Bill

Developer charges calculations relating to this DSP will be reviewed after a period of five years, or when any significant changes occur in proposed works, growth projections or standards.

In the period between any reviews, developer charges will be revised on 1 July each year on the basis of movements in the Consumer Price Index (CPI) for Sydney, in the preceding 12 months to December, excluding the impact of GST.

The developer shall be responsible for the full cost of the design and construction of water supply reticulation works within subdivisions and associated infrastructure (e.g. lead-in mains, reservoirs etc.) not contained in the proposed works schedule (Section 3).

1 Introduction

Section 64 of the *Local Government Act 1993* enables a local government council to levy developer charges for water supply, sewerage and stormwater. This derives from a cross-reference in that Act to Section 306 of the *Water Management Act 2000*.

A Development Servicing Plan (DSP) documents developer charges (DC) payable by developers to water utilities for water supply, sewerage and stormwater. This DSP for water supply services achieves the following outcomes for Council:

1. Allows Council to require an equitable monetary contribution for the provision of water supply infrastructure to meet the demands generated by both residential and non-residential development.
2. Facilitate the future provision of water supply services to the Council service area which meets the required levels of service (Section 4) regard to flows, pressure, water quality, water quantity and the frequency of restrictions.
3. Sets out the schedule of proposed works to meet increasing water demands generated by development (Section 3).
4. Details the resultant developer charges and payment policies (Section 5).

This DSP covers water supply developer charges for the following Bega Valley Shire Council service areas:

- The Bega-Tathra Water Supply and Tantawanglo-Kiah Water Supply;
- The Bemboka Water Supply; and
- The Brogo-Bermagui Water Supply.

Figure 2 shows the Bega Valley Shire Council Area. The development servicing areas covered by this DSP are outlined in Appendix A. It is to be noted that not all land within the mapped DSP boundary can necessarily be serviced. Individual development proposals are required to provide layouts including elevation details of the proposed allotments to determine if levels of service for water supply will be achievable.

This DSP has been prepared in accordance with the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater (2002) issued by the Minister for Land and Water Conservation, pursuant to section 306 (3) of the Water Management Act (2000). This DSP is to be registered with the NSW Office of Water (NOW).

This DSP was adopted by Bega Valley Shire Council on 12th June 2013 and came into effect on 1st July 2013.

DC will be levied pursuant to this DSP, as a condition of development consent granted on or after the day this DSP came into effect.

This DSP supersedes any other requirements related to water supply DC for the area covered by this DSP. This DSP takes precedence over any of Bega Valley Shire Council's codes or policies where there are any inconsistencies relating to water supply DC. (The term "Developer Contributions" may formerly have been used to refer to Developer Charges.)

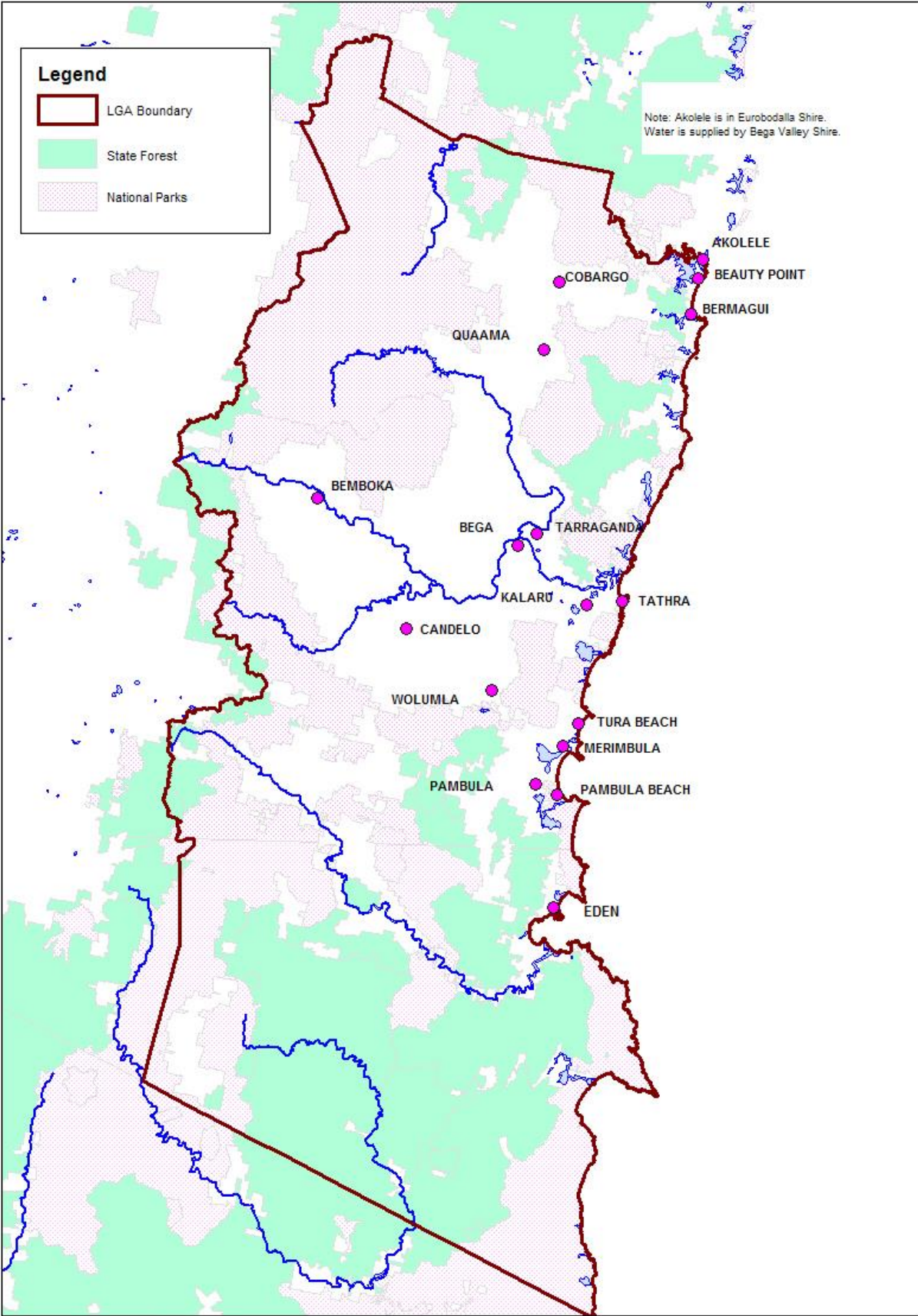


Figure 2 Bega Valley Shire

2 Demographic Information

2.1 Growth Projections

A future water supply growth estimate for the Council service areas has been undertaken. This estimate was the basis used for determining the infrastructure required to meet the need generated by future development. The water supply growth estimate has taken the following factors into account as part of the analysis:

- Historical ABS information;
- Historical spatial and temporal trends in water usage; and
- Utilisation of Council's demographic projections (via the consultant ForecastID) for the quantum and timing of growth while consulting with Council's Planning Department for identification of which growth is relevant for the serviced water supply areas.

Details relating to the water supply growth estimate are outlined in the supporting document – Population and Water Cycle Projections. Table 2-1, Table 2-2 and Table 2-3 show the projected permanent equivalent tenements (ET) for the water supply service areas.

Table 2-1: Projected Permanent Residential ET

Water Supply Service Area	2012	2017	2022	2027	2042	2012-42 (% p.a.)
Bega-Tathra and Tantawanglo-Kiah	7,728	8,085	8,462	8,856	9,541	0.8%
Bemboka	120	124	128	132	145	0.7%
Brogo-Bermagui	1,110	1,174	1,264	1,362	1,566	1.3%
All	8,958	9,383	9,854	10,350	11,252	0.8%

Table 2-2: Projected Permanent Non-Residential ET

Water Supply Service Area	2012	2017	2022	2027	2042	2012-42 (% p.a.)
Bega-Tathra and Tantawanglo-Kiah	1,309	1,398	1,484	1,544	1,596	0.7%
Bemboka	18	18	18	19	19	0.2%
Brogo-Bermagui	190	194	203	216	241	0.9%
All	1,517	1,610	1,705	1,779	1,856	0.7%

Table 2-3: Projected Permanent Total ET

Water Supply Service Area	2012	2017	2022	2027	2042	2012-42 (% p.a.)
Bega-Tathra and Tantawanglo-Kiah	9,037	9,483	9,946	10,400	11,137	0.8%
Bemboka	138	142	146	151	164	0.6%
Brogo-Bermagui	1,300	1,368	1,467	1,578	1,807	1.3%
All	10,475	10,993	11,559	12,129	13,108	0.8%

3 Water Supply Infrastructure

3.1 Assets Relevant to this DSP

The existing and proposed water supply assets servicing the areas covered by this DSP are listed in Appendix C.

3.2 Estimates of Capital Costs

A capital works program consisting of works to improve levels of service, meet growth demand and to renew and replace existing assets has been developed for the next 30 years. Table 3-1 shows the summary of costs for these types of assets while the detailed water supply capital works program and the associated costs can be seen in Appendix B.

Table 3-1: Summary of Water Supply Capital Works

Type of Sewerage Capital Works	Capital Cost over 30 years (\$M)
Works to Improve Levels of Service	\$66.5
New Assets for Growth	\$42.1
Renewals / Replacements	\$52.5
Total	\$161.1

3.3 Works Program and Expenditure

The 30-year annual capital works expenditure for water supply is shown graphically in Figure 3.

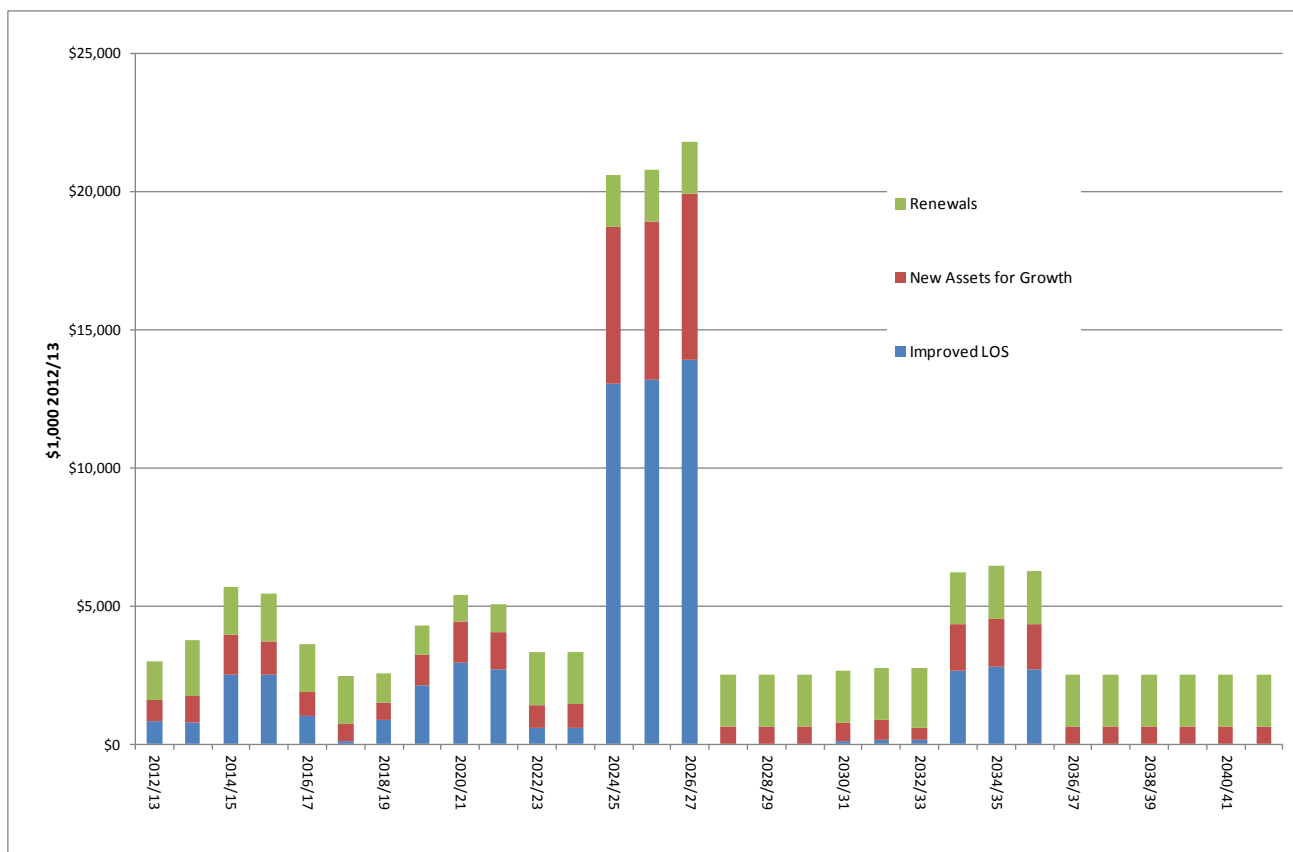


Figure 3 Thirty-Year Water Supply Capital Works Program

4 Levels of Service and Design Parameters

4.1 Levels of Service

The levels of service (LOS) are the standards required from the water supply systems from the perspective of the individual customer. LOS shape the objectives and requirements for operation, maintenance and provision of the 30-year capital works plan (see Section 3). LOS are a target and are not intended as a formal customer contract.

Table 4-1 shows the water supply LOS relevant to this DSP. For the full list of LOS relevant to water supply refer to the current Bega Valley Shire Council Strategic Business Plan for Water Supply and Sewerage Services.

Table 4-1 Water Supply Levels of Service

DESCRIPTION	UNIT	LEVEL OF SERVICE	
		Current Target	Future Target
AVAILABILITY OF SERVICE			
Unrestricted Quantity Available:			
Domestic Peak day			
Urban Areas	L/ET/day	2,000	2,000
Non Urban (connected to trunk main)	L/ET/day	No guarantee	No guarantee
Domestic Average Annual Consumption			
Urban Areas	kL/ET/year	205	190
Non Urban (connected to trunk main)	kL/ET/year	No guarantee	No guarantee
Urban Supply Pressure at Meter:			
Minimum pressure when delivering 0.1 L/s			
Urban Areas	Metres	20	20
Urban Areas (Existing high level zones)	Metres	10	10
Non Urban (connected to trunk main)	Metres	No guarantee	No guarantee
Drought Restrictions:			
– Level, frequency and duration of restrictions	Refer to Council's Drought Management Plan		
WATER QUALITY (Potable Water) (Compliance with ADWG, NHMRC&NRMMC 2011)			
Microbiological Compliance:		Pre-filtration	Post-filtration
Urban customers	% compliance	100%	100%
Non-urban customers	% compliance	No guarantee	No guarantee
Physical-Chemical Compliance:		Pre-filtration	Post-filtration
Urban customers	% compliance	90%	100%
Urban customers (Villages between Tantawanglo Weir and Yellow Pinch Dam)	% compliance	No guarantee	No guarantee
Non-urban customers	% compliance	No guarantee	No guarantee

4.2 Design Parameters

The following documents have been relied upon for the design of water supply components relevant for this DSP:

- *Water Supply Investigation Manual* (1987). This manual was prepared by NSW Public Works is administered by NOW;
- Water Supply Code of Australia WSA 03-2002;
- Bega Valley Shire Council Development Design Specification D11 Water Reticulation; and
- Bega Valley Shire Council Development Construction Specification C401 Water Reticulation.

Technical reports relating to the system components in the DSP are included in the References Section.

5 Calculated Developer Charges

5.1 Overview

DC are up-front charges levied to recover the infrastructure costs incurred in servicing new developments or additions/changes to existing developments.

The DC calculation is based on the net present value (NPV) approach adopted by the Independent Pricing and Regulatory Tribunal (IPART) for the metropolitan water utilities. The fundamental principle of the NPV approach is that the investment in assets for serving a development is fully recovered through up-front charges (i.e. DC) and the present value (PV) of that part of annual bills received from the development in excess of operation, maintenance and administration (OMA) costs.

$$\text{Developer Charge} = \text{Capital Charge} - \text{Reduction Amount}$$

The DC process is described fully in the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater (2002).

NSW Local Water Utilities (LWU) which propose to levy DC for water supply and/or sewerage need to prepare a DSP. The DSP details the calculation of the DC and is required to be fair and transparent.

The method of calculations of charges for developments other than a standard ET, is based on values published in Council's Annual Fees and Charges, derived from industry standard publications and, where appropriate, the actual measured load of similar specific types of development in the shire or other local government utilities of a similar nature. Note that 1 ET is equal to one occupied residential single detached dwelling currently consuming 205 kL/ET/year on an average basis. Refer to Table 4-1 for water usage targets.

5.2 Capital Charge

In accordance with the Guidelines the capital charge is calculated using the following formula:

$$\text{Capital Charge} = \text{Capital Cost} \times \text{Return on Investment (ROI) Factor}$$

The capital cost includes the cost of providing, extending or augmenting assets required, or likely to be required, to provide services to a development area. The capital cost per ET is the value of the relevant assets divided by the capacity of these assets (in ET).

Typically, the capacity of an asset would not be fully utilised until some time after construction of the asset. The ROI, also known as a holding charge, is based on the cost of early investment, and recovery of the cost over time. The ROI factor is dependent on the period for take-up of the asset capacity, and the rate of return for the asset.

The calculated capital charges for the area serviced by this DSP are shown in Table 5-1. Detailed information relating to the capital charge can be found in Appendix C.

Table 5-1 Capital Charge for each Water Supply Service Area

Water Supply Service Area	Calculated Capital Charge / ET (\$2012/13)
Bega-Tathra and Tantawanglo-Kiah	\$14,490
Bemboka	\$23,243
Brogo-Bermagui	\$22,034
Weighted Average	\$15,402

5.3 Reduction Amount and Calculated Developer Charge

In accordance with the Guidelines, Council has adopted the NPV of Annual Charges method for calculation of the Reduction Amount. This method involves calculation of the PV of the difference between annual rates and charges revenue, and operating costs projected for new development over the next 30 years. This is divided by the PV of the new ETs over the planning horizon to give the reduction amount. The method involves 30-year forecasting of income and expenditures relating to new development.

Table 5-2 shows the calculated capital charge, reduction amount and weighted average calculated developer charge. Detailed information relating to the reduction amount can be found in Appendix C.

Table 5-2 Bega Valley Shire Council Water Supply Developer Charges

Supply Service Area	Weighted Capital Charge / ET (\$12/13)	Reduction Amount / ET (\$12/13)	Calculated Developer Charge / ET (\$12/13)
Water Supply	15,402	4,427	10,975

5.4 Summary of Proposed Developer Charges

In its meeting on 12th June 2013 2013, Council resolved to levy developer charges for water supply services lower than the calculated value. The calculated developer charges based on full cost recovery as well as Council's proposed developer charges are shown in Table 5-3.

Table 5-3 Bega Valley Shire Council Water Supply Developer Charges

Water Supply Service Area	Calculated Developer Charge / ET (\$12/13)	Proposed Developer Charge / ET (\$12/13)
Bega-Tathra and Tantawanglo-Kiah	10,063	7,500
Bemboka	18,816	7,500
Brogo-Bermagui	17,607	7,500
Weighted Average	10,975	7,500

Adopting the proposed developer charges and maintaining the current level of Typical Residential Water Bill (TRB) of \$540 p.a. for the next 5 years (until 2017/18) will result in \$18 per year cross-subsidy by each residential customer over the model forecast period. Note the capital works schedule (as outlined in Section 3) has been adjusted to maintain the current level of TRB for the next 5 years. Table 5-4 summarises the impact on the TRB of adopting the proposed developer charges.

Table 5-4 Bega Valley Shire Council Sewer Level of Cross Subsidy

Supply Service Area	Current Typical Residential Bill (\$/assessment) (\$2012/13)	TRB (\$2012/13) from 2018/19 with:		Level of cross subsidy (\$2012/13)
		No cross-subsidy	With cross-subsidy	
Water Supply	540	657	675	18

Figure 4 graphically represents the impact of the proposed developer charges on the TRB for water supply.

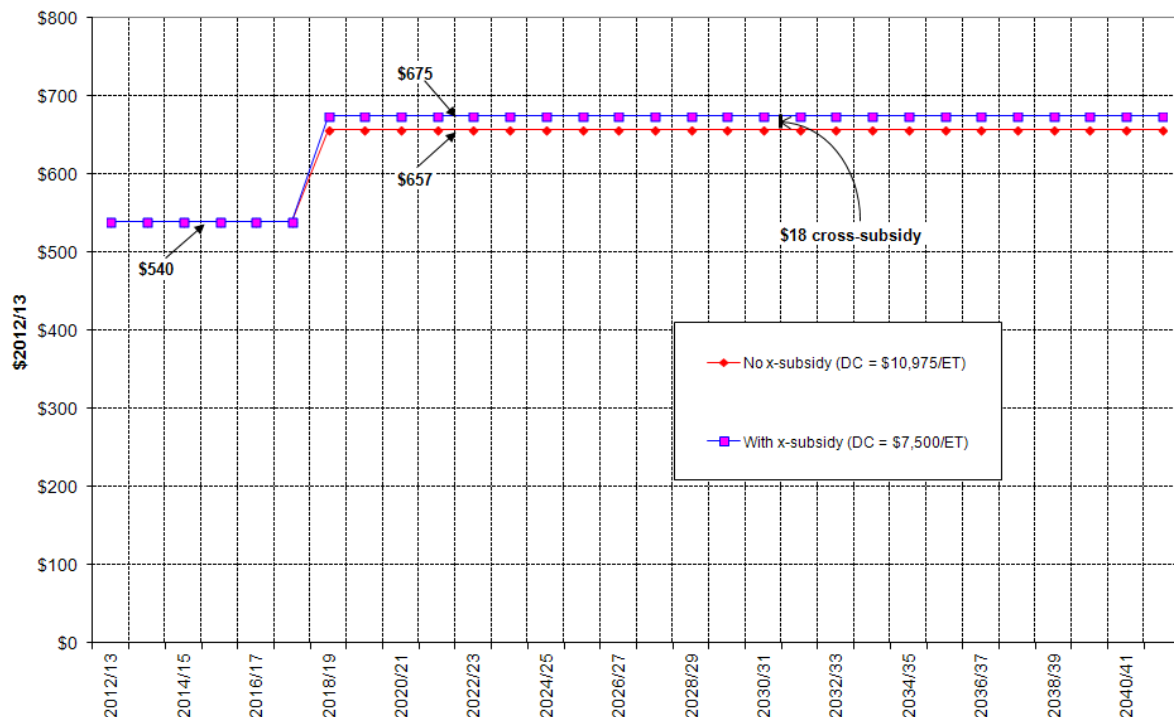


Figure 4 Impact of DC cross subsidy on Typical Residential Water Bill

5.5 Reviewing / Updating of Developer Charges

DC calculations relating to this DSP will be reviewed after a period of five years, or when any significant changes occur in proposed works, growth projections or standards.

In the period between any reviews, DC will be revised on 1 July each year on the basis of movements in the Consumer Price Index (CPI) for Sydney, in the preceding 12 months to December, excluding the impact of GST.

5.6 Exclusions

The DC do not cover the costs of reticulation works and assets commissioned pre-1970. The developer shall be responsible for the full cost of the design and construction of water supply reticulation works within subdivisions and associated infrastructure (e.g. lead-in mains, reservoirs etc.) not contained in the proposed works schedule (Section 3).

5.7 Payment of Developer Charges

Section 64 of the *Local Government Act 1993* enables a local government council to levy developer charges for water supply, sewerage and stormwater. This derives from a cross-reference in that Act to Section 306 of the *Water Management Act 2000*.

5.7.1 Timing of Payments

Subject to clauses 5.7.2 the timing for payments of developer charges is as follows:

For <u>complying development</u>	Prior to the issuing of a complying development certificate (whether or not the certificate is issued by Council or an accredited certifier).
For <u>other development</u>	Prior to the release of the Construction Certificate.
For <u>subdivision</u>	Prior to the release of the Linen Plan.

5.7.2 Method of Payment

DC must be made in the form of monetary payments to Bega Valley Shire Council. Development Consents requiring the payment of a DC will contain a condition specifying that a Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* must be obtained prior to the issue of a Subdivision / Construction / Occupation Certificate.

A note will be attached to the consent indicating the granting of a Certificate of Compliance is dependent on the payment of DC. The note will indicate the calculated additional load the development will impose on the water supply system expressed in ETs. The DC per ET will be specified for the financial year in which the consent is issued.

The note will advise that the payment of DC will be at the rate which applies at the time of payment, as published in Council's annually revised Fees and Charges schedule. That is the rate may increase, through indexation or replacement of this DSP with a new one, from the time the condition appears on the notice of development consent until the time the DC is actually paid to Council.

5.8 Developments Outside Boundaries of DSP

After the adoption of the DSP, new development may be proposed outside the boundary of the DSP (see Appendix A). Provided that there are no planning or other constraints to the development, Council may approve construction of essential assets to service such a development. These assets will be sized to suit all potential development in the proposed development area with the full capital cost being met by the developer, in addition to the DC levied on the development.

References

Background information and calculations relating to this DSP are contained in the following documents:

- Bega Valley Shire Council Development Design Specification D11 Water Reticulation; and
- Bega Valley Shire Council Development Construction Specification C401 Water Reticulation.
- Bega Valley Shire Development Servicing Plan for Water, February 2006
- Bega Valley Shire Council Strategic Business Plan for Water Supply and Sewerage Services
- Bega Valley Shire Council Report on Valuation of Water Supply and Sewerage Assets as at 30 June 2012
- Developer Charges for Water Supply, Sewerage and Stormwater Guidelines, December 2002
- NHMRC 2011. *Australian Drinking Water Guidelines Paper 6 National Water Quality Management Strategy*. National Health and Medical Research Council, National Resource Management Ministerial Council, Commonwealth of Australia, Canberra.
- NSW Public Works 2013. Population and Water Cycle Projections – Development Servicing Strategy for Bega Valley Shire Council
- *Water Supply Investigation Manual* (1987). This manual was prepared by NSW Public Works is administered by NOW;
- Water Supply Code of Australia WSA 03-2002;

Appendices

Appendix A Development Servicing Plan Boundaries

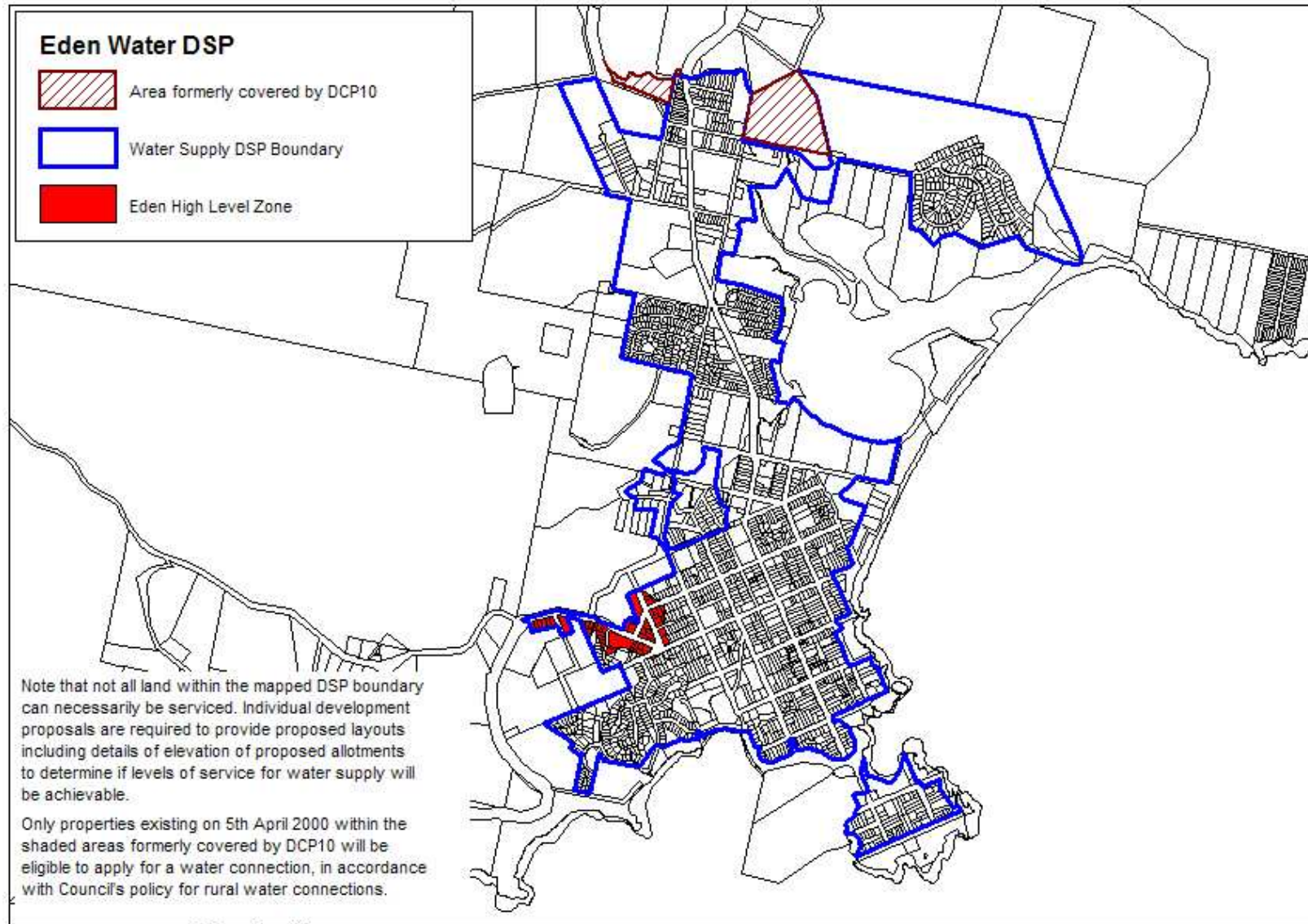


Figure 15 Eden Water DSP Boundary



Public Works
NSW Water Solutions

Level 16 McKell Building
2-24 Rawson Place
Sydney NSW 2000

www.publicworks.nsw.gov.au

5.7 On-site Sewerage Management

Objective

- Safeguard and improve the quality of public and environmental health within the Bega Valley Shire by regulating the approval of systems of on-site sewage management.

Application

This Section applies to all land in the Bega Valley Shire where a reticulated sewerage service approved by Council is not available.

5.7.1 OSM Assessment

This Section must be read in conjunction with Council's On-site Sewerage Management Policy and related procedures, guidelines and forms.

In this Section an environmentally sensitive area is that land described in the Local Government (General) Regulations 2005 and Council's On-site Sewerage Management Policy.

- Council will consider all forms of OSM systems proposed by applicants, however systems must be practical and be capable of easy maintenance by future owners.
- Before granting consent to development that will result in the generation of sewage or other effluent, consideration must be given by the consent authority to:
 - whether the site of the proposed development must be connected to public sewerage facilities, and, if so, whether the land is capable of being connected to public sewerage facilities either now or in the future, or
 - the suitability of the site for on-site disposal of effluent and the ability of the effluent disposal system to function effectively over the long term without causing adverse effects to adjoining land or water, and
 - the likely effect of any on-site effluent disposal on any water bodies, water supply catchments, groundwater resources, or seasonally waterlogged soils in the vicinity, and
 - the likely cumulative environmental impacts of all on-site systems or works in the area with respect to water quality, soil degradation and odour.

5.7.2 Requirements

5.7.2.1 Subdivision

- Subdivision creating one additional lot outside of an environmentally sensitive area may be supported with basic site and soil assessments provided by a licensed plumber.
- A detailed site and soil assessment is required for the subdivision of land for the purpose of multiple lots where the lot(s) created do not contain existing dwelling(s) with a current approval to operate a system of OSM. The base figure for the calculation of daily hydraulic load will be a minimum of 1000L/day per lot.
- Where lots are created, and part of the lot is deemed unsuitable for on-site effluent re-use, this area will be clearly identified on the lots in a restriction on title- S88B instrument. In this case, Council will be the authority nominated to release, vary or modify the instrument. Applicants who apply to Council to modify a S88B instrument for the purpose of constructing or installing an on-site sewage management facility must demonstrate

consistency with the original site and soil assessment and provide a revised detailed site and soil assessment in accordance with this plan.

- Council will not support the following types of subdivision proposals with OSM:
 - Where the proposed land application area/s are within 100m of an environmentally sensitive area; or
 - Where the proposed land application area/s are within 150m of a nominated waterway (see Table 5.3); or
 - For a multi-lot subdivision where the proposed land application area/s are within 2 kilometres flow path upstream from a town water supply.

5.7.2.2 Dwellings and Dual Occupancies

- The minimum hydraulic load for a single dwelling is generally based on a four person load with standard water reduction as defined in Australian Standard 1547 – 2012 On-site domestic wastewater.
- Where it is possible to locate the system of OSM facilities wholly outside of an environmentally sensitive area a basic site and soil assessment is required.
- Where feasible, dwellings or dual occupancy development that are proposed within 100m of an environmentally sensitive area, or 150m of a nominated waterway (see Table 5.3), or within a 2 kilometre radius upstream from a town water supply, will have the final reuse of treated effluent from systems of OSM located outside of the environmentally sensitive area with an appropriate buffer area. Generally a minimum secondary treatment standard would be required. Such applications require a basic site and soil assessment, generally provided by a licensed plumber.
- Where a dwelling or dual occupancy development is proposed on a lot that is wholly within an environmentally sensitive area, the applicant will submit a detailed site and soil assessment and a detailed, engineered design for the reuse of effluent on the site. Generally a minimum secondary treatment standard would be required if approved.
- Where the application is within 150m of a nominated waterway (see Table 5.3) or within a 2 kilometre radius upstream from a town water supply the applicant will submit a detailed site and soil assessment and a detailed, engineered design for the reuse of effluent on the site. A minimum advanced secondary treatment standard including appropriate nutrient reduction is required.

5.7.2.3 Industrial Development

- A detailed site and soil assessment is required for any application for industrial development in unsewered areas.
- Routine pump-out systems are encouraged in Industrial Zones. Such proposals do not require a site and soil assessment for the purpose of OSM.
- The design of the on-site sewage system is to be specific for the intended use and concurrence from other relevant Government departments may be required.

5.7.2.4 *Development for all other purposes or where the estimated volume of effluent exceeds 2000l/day.*

- A detailed site and soil assessment is required for any applications for effluent-generating activities in unsewered areas. Reports provided for proposed developments will also include at least one firm design proposal. The figure for the calculation of daily hydraulic load will be based on the specific load of the proposal.
- The recommendations and designs of any such study will be incorporated into the development proposal. Information relating to ongoing system maintenance is to be included.
- The design of the on-site sewer system is to be specific for the intended use and concurrence from other relevant Government departments may be required.

Nominated waterways in the Bega Valley Shire

Back Lake	Bermagui River
Bega River (tidal sections)	Curalo Lagoon
Blackfellows Lagoon	Merimbula Lake
Cuttagee Lake	Murrah Lake
Middle lake	Nullica River (tidal sections)
Nelson Lake	Pambula River
Pambula Lake (tidal sections)	Towamba River (tidal sections)
Wallaga Lake	Wallagoot Lake
Wapengo Lake	Wonboyn Lake (from the confluence of Wonboyn River and Bull Creek to Bay Cliff)
Barragoot Lake	Yowaka River

Table 5.3: *Nominated Waterways in the Bega Valley Shire*

Policy 3.03 On-site Sewage Management

Department	Planning and Environment Group
Responsible Officer	Environmental Health and Building Services Manager

Scope

This policy and procedure manual encompasses the processes implemented by the Planning and Environment Group (PEG) to manage on-site sewage in the Bega Valley Shire in order to minimise the risk of harm to the environment.

Purpose

- To promote sustainable on-site sewage management and to guide landholders or developers towards best practice.

Definitions

Nil

Legislative requirements

Nil

Policy Statement

Bega Valley Shire Council will address the matter of 'On-site sewage management' in a systematic manner by:

- Implementing procedures that minimise risks to public and environmental health associated with systems of on-site sewage management.
- Implementing procedures that minimise the impact that on-site sewage management systems have on surface water, groundwater, land and native vegetation.
- Ensuring that water is conserved and that wastewater production is minimised and appropriately reused.
- Ensuring that on-site sewage management systems enhance and protect the local community amenity and are consistent with BVSC's obligations to promote ecologically sustainable development.
- Promoting the improvement of systems of on-site sewage management through incentives to upgrade systems, the opportunity to trial innovative systems of on-site sewage management and the reduction of high-risk sites over time.
- Providing fair and consistent administration for the on-going operation of systems of on-site sewage management.
- Targeting the removal of on-site sewage management systems within areas provided with a reticulated sewer service.
- Facilitating the provision of appropriate "dump points" for boats and vehicles within the shire.

Policy Version Control

Policy title	On-site Sewage Management
Policy No.:	3.03
Department	Planning and Environment Group
Function	Environmental sustainability planning, management and compliance
Key theme area	A Sustainable Place
CSP Position Statement(s)	Health, Growth, Housing, Asset Management
Responsible Officer	Environmental Health and Building Services Manager
Version	2
Adopted	8 June 2010
Next revision	May 2017

Procedures, guidelines and supporting documents

- 3.03.1 Approvals to operate and inspection program
- 3.03.2 OSM Interpretations
- 3.03.3 Restricted development in unsewered villages

Related BVSC policies

Policy No.:	Title
3.01	Development Administration
3.04	Environment Management

Note: Policy details may change prior to review date due to legislative changes. For the most up-to-date version please refer to Council's website
www.begavalley.nsw.gov.au

Procedure 3.03.2

OSM Interpretations

Department	Planning and Environment Group
Responsible Officer	Manager Health, Building and Compliance

Risk Criterion

Critical-Risk

An OSMS is considered as 'Critical' if it has been identified as being:

- within 150m of the tidal part of an Oyster growing catchment
- within 2 km upstream of a town water intake points catchment

Reason

Potential for contamination from failing OSMS that are close to oyster growing catchments and town water intakes pose the greatest risk to human health.

High-Risk

An OSMS is considered 'High Risk' if it has been identified with one or more of the criteria for high-risk listed below:

- Any OSMS within an environmentally sensitive area.
- Any OSMS sited on allotments smaller than 2000m² with a reticulated water supply.
- OSMS adjacent to or less than 100m from permanent freshwater streams or swamps.
- OSMS adjacent to or less than 40m from intermittent streams and dams.
- OSMS adjacent to or less than 150m from a nominated waterway (saltwater estuaries).

Reasons:

Potential to overload the system; Potential for contamination from failing OSMS that are close to waterways, swamps, sensitive areas and vegetation, Potential for from failing OSMS that are close to neighbours to cause public health risks.

Low-Risk

Any OSMS is considered 'Low-Risk' if it is not identified as either being critical or high risk.

Definitions

Council interprets an environmentally sensitive area to include:-

Within 100m of identified lands (Environmental Planning & Assessment Regulation 2000)

- Land identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitat, plant communities, escarpments, wetland or foreshore or land protected or preserved under State Environmental Planning Policy No 14-Coastal Wetlands or State Environmental Planning Policy No 26-Littoral Rainforests; or
- Land reserved as national parks or historic sites or dedicated as nature reserves or declared as wilderness under the National Parks and Wildlife Act 1974; or

-
- An area declared to be an aquatic reserve under Division 2 of Part 7 of the Fisheries Management Act 1994; or
 - Land reserved or dedicated within the meaning of the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or land declared as wilderness under the Wilderness Act 1987; or

Within 100m of a natural water body, wetland or coastal dune field

- Is defined to mean permanent running or still water that is usually above the ground in all seasons of the year.
- Within 40m of intermittent creeks, farm dams or other types of impoundment.
- Note: Where drainage lines are altered as a result of a road or track construction, building works, etc. this would not apply to such drainage lines, so long as they are adequately diverted away from the land application areas.
- A wetland or swamp can be either fresh or salt water, it could be naturally occurring or man-made but does not apply to constructed wetlands to be used for the purpose of polishing effluent.
- Coastal dune field means an area adjacent to the coast supporting the relevant plant and animal species that are dependent on this type of eco-system; or

High water table

Defined as within 3m of the natural surface at any time or within 250m of a ground water well whether or not such a well is on the property in question or not; or

Highly permeable soils

Defined as giving a result based on the constant head method defined in Australian Standard 1547-2000 as being greater than 2.5m per day; or

Acid sulphate, sodic or saline soils

Potential and actual occurrences of acid sulphate soils are defined on maps provided by Planning NSW and the DLWC and available for inspection at Councils offices. Sodic and saline soils need to be determined through site assessment; or

Within a drinking water catchment

Means within 100m of any permanent fresh water that any person is or is likely to be using for the purpose of drinking water whether untreated or treated and regardless of whether it is for a town supply or private use; or

Within 150m of a nominated waterway

Has the same meaning as defined in Schedule 6 of the BVSC Local Environmental Plan 2002 and the associated Development Control Plan – 6.



APPENDIX 8 - ENVIRONMENT
PROTECTION AUTHORITY
SUBMISSION

Your reference: DA 2014-430 mod
Our reference: SF17/41246, DOC17/471578-01
Contact: Tristan Johnston, Regional Operations Officer (02) 62297002

Bega Valley Shire Council
PO Box 492
BEGA NSW 2550
(via email: council@begavalley.nsw.gov.au)

Attention: Rob Slapp, Senior Planner

Scan _____

CDM _____

REC - 3 NOV 2017

Dear Mr Slapp,

Proposed Modification to DA 2014-430 – Cattle Bay Marina Lot 4 DP 1138056 – Sewage Management

Thank you for the opportunity to comment on the above project modification proposal as received by the Environment Protection Authority (EPA) on 15 September 2017. In assessing this proposed, the EPA has considered the potential impact of modification against the following criteria:

- The pollution caused or likely to be caused by the carrying out of the activity or work concerned and the likely impact of that pollution on the environment;
- The practical measures that could be taken:
 - To prevent, control, abate or mitigate that pollution, and
 - To protect the environment from harm as a result of that pollution
- In relation to any activity or work that causes, is likely to cause or has caused water pollution:
 - The environmental values for the water affected by the activity or work, and
 - The practical measures that could be taken to restore or maintain those environmental values

Potential pollution risks

The EPA considers that where a reticulated sewage network is nearby or already existing in close proximity to a proposed development, the network should be used for effluent disposal as it delivers the best environmental outcome. In this regard, the EPA consider the most appropriate method of sewer disposal is the currently approved method because it limits potential pollution risks, due to the limited holding of effluent on the premises. In contrast, the proposed method results in a significant quantity of effluent (up to 11,000 L) that would be stored on site and a significant increase in the frequency of manually handling the effluent, thereby increasing the potential pollution risk on each occasion. The EPA therefore considers that the proposed method unnecessarily increases the potential risk to the environment.

The receiving environment for the proposed holding site is Cattle Bay, which is a high conservation value ecosystem that supports numerous environmental values. Sewage overflows can have significant impacts on the environment and public health. They can make waterways unsafe for recreational use and be toxic to aquatic ecosystems. Human exposure to pathogens can occur through direct contact or indirectly by the consumption of contaminated seafoods. Overflows can also have serious economic impacts on the fishing industry, in particular oyster-growing, and the suitability of waters for recreational use.

The EPA considers that the proposed modification increases the potential for effluent handling at the premises to have an adverse impact on the water quality with the high conservation value ecosystem of Cattle Bay and Eden Harbour. Therefore, the EPA does not support the proposal as the best method of sewage disposal.

Practical control, abatement or mitigation measures

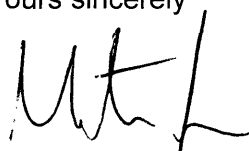
If the modification is not supported the EPA considers that the currently approved method to be the best reasonable and feasible option for disposal of effluent at the site.

If the proposal is supported, the EPA advises that any proposed management strategies should include, but not necessarily be limited to, the following:

- Holding tanks should be constructed well away from any watercourses and over a non-permeable surface of suitable surface area.
- Holding tanks should be fully bunded, at a high enough level to contain any spills or leaks.
- All staff undertaking sewage transfer operations should be fully trained and aware of the potential pollution impact any spill or leak will have on the environment.
- Emergency Procedures and a Pollution Incident Response Management Plan (PIRMP) for any spills or leaks should be installed and maintained.
- Emergency spill response kits should be kept on-site.

If you have any queries or wish to discuss this matter further, please contact Tristan Johnston, Regional Operations Officer on (02) 62297002 or queanbeyan@epa.nsw.gov.au

Yours sincerely



25-10-2017

MATTHEW RIZZUTO

Unit Head - South East Region

Environment Protection Authority



R M Slapp
Bega Valley Shire Council
PO Box 492
Bega NSW 2550

Your Ref: DA 2014.430
10 October 2017

Re: SEPP 62 referral for proposed DA Consent at Lot 2 DP 1138056, Lot 4 DP 1138056, Cattle Bay Road, Eden

Thank you for referring the above development application to the NSW Department of Primary Industries (NSW DPI) in accordance with SEPP 62 – Sustainable Aquaculture.

NSW DPI can confirm that Priority Oyster Aquaculture Areas (POAA) are present in the estuarine waters in proximity to the proposed development. These POAA areas are mapped and described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). This strategy also details the required water quality growing and harvest standards for the NSW oyster industry in chapters 3 & 4. OISAS can be accessed at: <http://www.dpi.nsw.gov.au/fishing/aquaculture/publications/oysters/industry-strategy>

The harvest standards are prescribed under the NSW Shellfish Program administered by the NSW Food Authority and the NSW oyster industry has a statutory responsibility to meet these standards. These standards also reflect the Australian standards for shellfish harvest prescribed in the Australian Shellfish Quality Assurance Program. These internationally accepted water quality standards are designed to protect the consumers of shellfish from human pathogenic bacteria and viruses that may accumulate in shellfish where shellfish growing waters are polluted by sewage or stormwater effluent.

Given the sensitivity of the adjacent waters, the most critical issue for consideration in the proposed on-site treatment and/or disposal system is the ability of the system to adequately removal or inactivate human pathogenic viruses and bacteria that may be present to ensure the protection of the sanitary water quality of the adjacent oyster growing areas.

It is recognised that protecting water quality in oyster growing and harvest areas is crucial to the long term future of the oyster industry and protecting water quality in oyster growing and harvest areas from incompatible development is the primary purpose of Part 3A of SEPP 62 Sustainable Aquaculture.

NSW DPI would like to reiterate the requirement for council to ensure the proposed wastewater infrastructure for the subject development is consistent with AS/NZS

1547:2012 On-site domestic wastewater management. Key criteria NSW DPI requires to be enforced are:-

- Appropriate setbacks from waterways;
- Avoidance of pump-out systems;
- Appropriate dispersal areas;
- Soil type is suitable to accommodate loading;
- Design components will result in mean pollutant loads meeting required levels; and
- Regular inspection program.

Regarding the amended DA to include onsite storage and not use the reticulated sewerage system does increase the risk of impact. The mitigating factors listed in the amended DA acknowledge the higher risk of having onsite systems.

The preferred outcome would be connection to the reticulated sewerage system and remove the effluent from the site. If the amended DA proposal of onsite storage is to proceed the measures listed in the "Ocean environmental" consultants report would be required to be implemented. Included in this would be listing the NSW Food Authority as a contact in the event of spills. One further addition would be the regular scheduled routine pumping of the tanks preferably with a proof of receipt supplied to local council on a routine basis and more often when in a high use peak period.

The amended DA is acknowledged as being higher risk than the use of the reticulated sewerage system.

Further, as the NSW Shellfish Program is administered by the NSW Food Authority, this agency should also be consulted as part of the development approval process, NSWSP@foodauthority.nsw.gov.au.

Please also note that NSW DPI notifies the potentially affected sectors of the oyster industry for all applications referred to NSW DPI under SEPP 62– Sustainable Aquaculture.

It is also strongly recommended that Council classify systems that are not connected directly to a Council operated STP as high risk under Council's on-site sewage management system and that these systems be inspected annually for compliance.

Should you have any enquiries, please do not hesitate to contact me on (02) 4916 3824.

Yours sincerely



Ryan Jefferson
Aquaculture Officer



DA No. **2014.430**

APPENDIX 10 - DRAFT NOTICE OF DETERMINATION

PO Box 492, Bega NSW 2550
P. (02) 6499 2222
F. (02) 6499 2200
E. council@begavalley.nsw.gov.au
www.begavalley.nsw.gov.au

ABN. 26 987 935 332
DX. 4904 Bega

DATE

Eden Cattle Bay Marina Pty Ltd
PO Box 363
EDGECLIFF NSW 2027

MODIFICATION OF DEVELOPMENT CONSENT

under Section 122 of the *Environmental Planning
and Assessment Regulations 2000*.

We have determined the application for modification of development consent no. 2014.430
as follows:

DEVELOPMENT APPLICATION	2014.430
APPLICANT	Eden Cattle Bay Marina Pty Ltd
LOCATION	Lots 1, 2 and 4 DP 1138056 and waterway area Cattle Bay Road, EDEN
ZONE	Zone SP3 Tourist
PROPOSED MODIFICATION	Change in the method of collection and disposal of sewage from approved marina development
PROPOSED DEVELOPMENT	Staged 154 berth marina and associated wave attenuator and piles in the waters of Cattle Bay, ancillary carparking, offices and amenities

Modification of consent

Refusal of modification

Grounds of Refusal

1. The request to modify Condition 1 is not approved for the following reason:
 - (a) The proposed change in the method of sewage collection and disposal is not supported by Council and as such, there is no cause to insert the technical reports as referenced in the application into the Condition.
2. The request to delete Condition 54 is not approved for the following reason:
 - (a) The purpose of the Condition is to ensure the provision of equitable compliant access for people with disabilities across all elements of the approved marina development. The deletion of the Condition would obviate the applicant's obligation to provide such access.
3. The request to modify Condition 74 is not approved for the following reason:
 - (a) The easement is required to secure the authority (legal and practical access) for the approved marina development to transport sewage across Council's reserve (Lot 4 DP 1138056) to a land based sewerage connection point to Council's reticulated sewerage system. The proposed modification would effectively preclude lawful access across Council's reserve for that purpose.
4. The request to modify Condition 80 is not approved for the following reasons:
 - (a) The approved marina development is located within a development servicing area as nominated in Council's adopted Development Servicing Plan – Sewerage Services dated 12 June 2013 and therefore must be connected to Council's reticulated sewerage system.
 - (b) Direct on-site connection to Council's reticulated sewerage system is available and there are no justified or sustainable grounds in this instance which would support the acceptance of an alternate method of sewage treatment which would be superior in operation to direct connection to Council's reticulated sewer.
 - (c) The assessment methodology applied in the calculation of appropriate Section 64 Contributions at the time of the assessment and determination of the original development application was considered fair and reasonable and based on sound engineering practice.
 - (d) The proposed change in the method of sewage collection and disposal from the approved marina would be contrary to the provisions of State Environmental Planning Policy 71 (Coastal Protection) 2002, more specifically:
 - Clause 2(a), (b), (c), (f), (h), (i), (j); and
 - Clause 8(a), (b), (c), (g), (h), (k) (m) and (n).
 - (e) The proposed change in the method of sewage collection and disposal from the approved marina would be contrary to the provisions of the Bega Valley Local Environmental Plan 2013, more specifically:
 - Clause 1.2(a), (b), (c) and (j); and
 - Clause 5.5(1)(a), (b)(i), (ii), (iii), (vi), (viii), and (x).

- (f) The proposed change in the method of sewage collection and disposal from the approved marina would be contrary to the provisions of Council's adopted Bega Valley Development Control Plan 2013 (Section 5.7) and Council's adopted Policy 3.03 On-site Sewage Management and therefore must be connected to Council's reticulated sewerage system.
 - (g) The proposed change in the method of sewage collection and disposal from the approved marina would pose unacceptable and avoidable public health and environmental risks.
 - (h) The proposed change in the method of sewage collection and disposal from the approved marina would be inconsistent with Council's obligations to promote ecologically sustainable development.
5. The request to delete Conditions 83, 84(b) and 85(a) is not approved for the following reason:
- (a) The proposed change in the method of sewage collection and disposal is not supported by Council and as such, the Conditions are essential components of the Consent and are required to ensure the suitable design and construction and the effective and efficient operation of the approved marina development.

Notes:

- 1. It is important that the applicant note that the consent will still lapse on the date shown on the original consent.
- 2. If the applicant is dissatisfied with Council's determination, the applicant can appeal to the Land and Environment Court under Section 97AA of the *Environmental Planning and Assessment Act 1979* within 6 months from the date of this notice.
- 3. In accordance with the provisions of Section 96AB of the *Environmental Planning and Assessment Act 1979* (as amended) the applicant can request Council to review this determination. The request must be made within 28 days from the date of this notice. A fee, as prescribed under Council's current Management Plan – Fees and Charges is payable for such a review.
- 4. It is an offence under the *National Parks and Wildlife Act 1974* to destroy, deface or damage an Aboriginal relic. If during works on site any Aboriginal relic is discovered then you should immediately stop work and contact representatives of the National Parks and Wildlife Service and the Local Aboriginal Land Council.
- 5. Before any building or subdivision works are commenced a Construction Certificate must be obtained from Council or an accredited certifier.