

Attachment A: Refusal reasons – Iron Gates

Preconditions/threshold issues

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy Clauses 6.5(3), 6.6(4), 6.8(4) and 6.10(4) of the *Richmond Valley Local Environmental Plan 2012* ('RVLEP 2012') which require satisfaction prior to the grant of consent in that:
 - (a) The proposal does not adequately demonstrate consistency with the matters required to be satisfied in relation to flooding pursuant to Clause 6.5(3) of the RVLEP 2012 including:
 - (i) Whether the proposal is compatible with the flood hazard of the land including if the floor levels and filling of the proposed lots are in accordance with Council policies, including a climate change allowance,
 - (ii) Whether it is likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
 - (iii) Whether it incorporates appropriate measures to manage risk to life from flood including evacuation of the site via Iron Gates Drive for a full range of floods,
 - (iv) Whether it is likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.
 - (b) The proposal has not been designed, sited or will be managed to avoid significant adverse environmental impacts pursuant to Clause 6.6(4) of the RVLEP 2012 given the proposed extent of clearing of vegetation including with an EEC, the lack of buffers provided to the rainforest area on the site and the lack of an adequate consideration of the ecological impacts of the proposal through unsatisfactory ecological surveys of the site. Since this impact could have been reasonably avoided by adopting feasible alternatives, including buffer zones and adapting the development footprint to site conditions and not to the previous development footprint and the proposed mitigation measures are unsatisfactory, the consent authority cannot be satisfied that the proposal has achieved this precondition to the grant of consent.
 - (c) The proposal has not adequately demonstrated pursuant to Clause 6.8(4) of the RVLEP 2012 that the water quality within watercourses in the riparian land and key fish habitats will be protected or maintained given the proposal has not clearly outlined the proposed stormwater management arrangements for the site and the buffer zones to the Evans River and the wetland area have not been provided. This results in an adverse impact on the riparian land and key fish habitats which has not been avoided, minimised or mitigated.
 - (d) The proposal has not adequately demonstrated pursuant to Clause 6.10(4) of the RVLEP 2012 that the wetlands are preserved and protected from the impacts of development due to the encroachment into the recommended buffer zone and the lack of a stormwater management plan resulting in an adverse impact on the wetland which has not been avoided, minimised or mitigated.

Accordingly, consent cannot be granted as the consent authority is not satisfied as to these matters.

2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy Clause 6.2 of the *Richmond Valley Local Environmental Plan 2012* in relation to **essential services** in that:
 - (a) The proposal has not outlined that adequate arrangements have been made in relation to the supply of water and the disposal and management of sewage for the consent authority to be satisfied pursuant to Clause 6.2(a) and (c) of the RVLEP 2012 as the condition of the existing services is unknown and therefore the extent of the works required to provide these services is unknown and cannot be readily demonstrated.
 - (b) The proposal has not outlined that adequate arrangements have been made in relation to the supply of electricity for the consent authority to be satisfied pursuant to Clause 6.2(b) of the RVLEP 2012 as it does not outline the provision of electricity services on or to the site, does not make any comments in relation to whether this electricity will be provided overhead or underground.
 - (c) The proposal has not outlined that adequate arrangements have been made in relation to the stormwater drainage for the consent authority to be satisfied pursuant to Clause 6.2(d) of the RVLEP 2012 as insufficient information has been provided and the current arrangement are unsatisfactory.
 - (d) The proposal has not outlined that adequate arrangements have been made in relation to the suitable road access for the consent authority to be satisfied pursuant to Clause 6.2(e) of the RVLEP 2012 as insufficient and inconsistent information has been provided in relation to the upgrade works to Iron Gates Drive.

Accordingly, consent cannot be granted pursuant to Clause 6.2 of the RVLEP 2012 as the consent authority is not satisfied as to these matters.

3. The proposed development is considered unacceptable pursuant to the provisions of s5A of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') (as in force at the time of lodgement of the development application) as the development is likely to significantly affect threatened species, populations or ecological communities, and their habitat and a **Species Impact Statement** prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995* should have been lodged with the application pursuant to then Section 78A of the EP&A Act.
4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to adequately demonstrate the proposed **stormwater management** arrangements for the site pursuant to Clause 16 of SEPP 71 and therefore it is unknown whether the proposal is likely to discharge untreated stormwater into the Evans River. Accordingly, the proposal fails to satisfy this matter and consent cannot be granted.
5. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal

will result in adverse impacts on **groundwater** of the site as likely impacts rising from construction dewatering are unknown and have the potential to adversely affect the riparian and wetland areas in the vicinity of the site. Water NSW has not issued general terms of approval for the relevant approvals under the *Water Management Act 2000* arising from concerns of impacts from the proposal on groundwater.

6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and 4.23(3) of the *Environmental Planning and Assessment Act 1979* as the application does not contain the information required **to be included in the concept development application** in lieu of a development control plan (formerly a draft master plan under *State Environmental Planning Policy No 71 – Coastal Protection – ‘SEPP 71’*) as it has failed to adequately demonstrate the following matters pursuant to Clause 20(2) of SEPP 71:
- (a) That the design principles have been drawn from an analysis of the site and its context as the proposed subdivision lacks clear design principles which arise following a thorough site analysis and contextual site study, which are generally attributed to a lack of integrated urban and landscape design (CI 20(2)(a));
 - (b) That the proposal is consistent with the desired future locality character in that the proposed subdivision lacks an adequate consideration of the likely future built form on the site, which combined with the absence of design principles for the proposed subdivision arising from a thorough site analysis, results in the proposal being unable to achieve a desired future locality character consistent with its setting (CI 20(2)(b));
 - (c) That the location of the development has been planned after consideration of the natural features of the site, including coastal processes and coastal hazards as the proposal has not adequately demonstrated that the proposal will be safe from the flooding and bushfire hazards which occur on the site (CI 20(2)(c));
 - (d) That the scale of the development and its integration with the existing landscape is satisfactory given there is a general lack of an integrated approach to the design of the subdivision with the site conditions (CI 20(2)(d));
 - (e) That the proposed pedestrian, cycle and road access and circulation networks are satisfactory, as there is a lack of an overarching hierarchy of structuring elements to enhance the legibility of the precinct (CI 20(2)(g));
 - (f) That the proposal will provide sufficient infrastructure for the development as such provision has not been adequately outlined (CI 20(2)(i));
 - (g) That the proposal will result in an acceptable built form outcome given there has been no consideration of the future built form controls for the site (CI 20(2)(j));
 - (h) That the proposal has not adequately provided for the conservation of Aboriginal cultural heritage (CI 20(2)(k));
 - (i) That the site will not require remediation as the land contamination issue has not been adequately demonstrated (CI 20(2)(l));
 - (j) That the provision of open space is satisfactory as the proposed open space areas are small and awkwardly shaped areas, located on the edge of the site

and the proposed ownership and management of the littoral rainforest is unknown (CI 20(2)(n));

- (k) That the proposal will result in the conservation of water quality as the proposed stormwater management arrangements for the site are not provided and therefore any potential impacts on the water quality of the Evans river arising from discharged stormwater from the site are unclear (CI 20(2)(o)); and
- (l) That the conservation of animals (within the meaning of *the Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act), and their habitats has not been satisfactorily demonstrated unclear (CI 20(2)(p)).

Merit Issues

- 7. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal will result in adverse impacts on the **biodiversity values** of the site and is inconsistent with:
 - (a) The objects of the *Environmental Planning and Assessment Act 1979* pursuant to Section 1.3(e) in that the proposal does not protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;
 - (b) The objectives of the zones on the site pursuant to Clause 2.3 of the *Richmond Valley Local Environmental Plan 2012* ('RVLEP 2012') in that:
 - (i) The proposal is contrary to the objectives of the C2 Environmental Conservation zone in that it does not protect, manage or restore areas of high ecological value and does not prevent development that could destroy, damage or otherwise have an adverse effect on those values as a result of the impacts of the proposal arising from a lack of buffer zones and mitigation of edge effects and fragmentation;
 - (ii) The proposal is contrary to the objectives of the R1 General Residential zone in that it does not minimise conflict between land uses within the R1 zone and land uses within adjoining C2 zone in that the rainforest vegetation is not sufficiently protected from impacts arising from the proposal within the R1 zone.
 - (c) Clause 2.3(3) of the RVLEP 2012 in that the proposal is inconsistent with the zone objectives;
 - (d) Clause 6.6 of the RVLEP 2012 as a result of the adverse impacts on biodiversity; and
 - (e) *State Environmental Planning Policy No 71 – Coastal Protection – 'SEPP 71'* including:
 - (i) The aims of the Policy in Clause 2(1)(g) as the proposal does not protect and preserve native coastal vegetation;
 - (ii) The matters for consideration when determining development applications as the proposal does not provide 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.

8. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal will result in adverse impacts on the **biodiversity values** on the site in that:
- (a) The proposal provides an inadequate flora and fauna assessment which cannot be relied upon to adequately quantify the extent of clearing required on the site or the impacts on flora and fauna within the proposed development footprint. The flora and fauna assessment does not reflect the most updated information given it was prepared eight (8) years ago and was considered to be a very limited 'snap-shot', as a consequence of the short survey period.
 - (b) The proposal involves the clearing of vegetation which comprises threatened species habitat and includes an Endangered Ecological Community, which will have significant adverse impacts on threatened species, populations and ecological communities, and their habitats in particular the Littoral rainforest within the site. The proposal undervalues the regrowth vegetation on the site and underestimates the potential impacts on species that currently use this regrowth as habitat.
 - (c) The flora and fauna assessment does not quantify or assess the full extent of clearing required for the proposal as there has been no consideration of vegetation clearing required for services, including Road No 5 between the portions of Littoral rainforest and footpaths including the proposed 3 -5 metre wide clearing proposed for footpaths in the CPTED Report.
 - (d) The proposed mitigation measures are inadequate including:
 - (i) The proposed 'bush regeneration activities' outside of the rainforest areas, comprising the construction of a 6.25m high crib green wall, weed management and revegetation works comprising landscaping with introduced and native species are not adequate mitigation measures for the removal of approximately 7.54 hectares of vegetation,
 - (ii) The planting of vegetation in the road reserve to attract wildlife is not a mitigation measure given the likely vehicle strikes which would occur in such an environment, particularly for koalas. This cannot be considered to offset the removal of natural vegetation.
 - (iii) The proposed restriction on the speed limit within the site to 50km/h is not reflected in the engineering report which states the design speed of the internal roads is proposed to be 70km/hr and appears contrary to the aims of revegetation of the site to conserve habitat for threatened species.
 - (iv) The provision of the conservation areas within proposed Lots 136 and 137 will not adequately compensate for the loss of vegetation elsewhere on the site and has not adequately considered the likely edge effects and isolation of this vegetation. The proposed ownership and stewardship agreement for the protection and enhancement of the biodiversity values in perpetuity for these conservation lots has not

been adequately demonstrated.

- (v) The proposed offset package remains unresolved as the Biodiversity Conservation Trust has not provided any commitments to the package.
 - (e) The proposal will result in habitat fragmentation and edge effects to the Littoral Rainforest as the proposal has the potential to disturb and diminish the structure, function, and composition of the areas of Littoral rainforest and the development has not designed or sited to avoid significant adverse environmental impacts to these areas.
 - (f) The proposal does not provide suitable buffers to the retained rainforest vegetation within the C2: Environmental Conservation zone on the site
9. The proposed development is considered unacceptable pursuant to the provisions of s1.3(g) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the objects of the Act in that the proposed subdivision does not promote good design and amenity of the built environment arising from the inappropriate **design of the subdivision** arising from a lack of an integrated urban and landscape design that is responsive to the site conditions.
10. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal is of an **inappropriate design** arising from a lack of an integrated urban and landscape design that is responsive to the site conditions in that:
- (a) The proposal results in a lack of diversity in the proposed lot sizes to cater for different households, different building forms and a variety of dwelling types;
 - (b) The proposal subdivision lacks a site responsive subdivision design required by Part 2.4 of the *Coastal Design Guidelines for NSW* prepared by the Urban Design Advisory Service February 2003) as it has not been designed to be compatible with the site topography, site-specific environmental characteristics or the natural hazards which impact the site. This proposed design has also primarily been based around the former subdivision approval and lacks an integrated and coordinated approach to the site;
 - (c) The proposal requires extensive earthworks, demonstrating that the proposal has not been designed to suit the site conditions;
 - (d) The proposal does not provide sufficient buffers to important environmental features of the site including the Evans River, the wetland listed under *State environmental Planning Policy No 14 – Coastal Wetlands* and the littoral rainforest located within the site;
 - (e) The proposal lacks a perimeter road and the lot dimensions and encumbrances of proposed Lot 60 is unsatisfactory;
 - (f) The proposal provides insufficient public open space as such lots are located more than 400 metres from the majority of the proposed allotments in the north-east section of the site, which is inconsistent with the *Residential Subdivision: Handbook for the Design and Planning of New Neighbourhoods* ('the Subdivision Handbook') prepared by the Urban Design Advisory Service and the NSW Department of Urban Affairs and Planning (November 2000) and

comprise small, awkward shaped lots which are dominated by stormwater infrastructure and Aboriginal cultural heritage. It is also unknown if these areas will be embellished with park infrastructure.

- (g) A legible and connected pedestrian network within and external to the site has not been clearly outlined in the proposal.
 - (h) The proposal does not consider the future built form on the site which is required to be considered under Clause 8(d) and 20(2)(j) of *State Environmental Planning Policy No 71 – Coastal Protection*.
11. The proposed development is considered unacceptable pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal will have an adverse impact on the **terrestrial biodiversity** on the site and in this way is contrary to:
- (e) Clause 6.6(1) of the *Richmond Valley Local Environmental Plan 2012* in that the proposal does not maintain terrestrial biodiversity by protecting native fauna and flora, protecting the ecological processes necessary for their continued existence or encouraging the conservation and recovery of native fauna and flora and their habitats.
 - (f) Clause 6.6(3) of the *Richmond Valley Local Environmental Plan 2012* in that the proposal is likely to have an adverse impact on the ecological value and significance of flora and fauna on the site, will fragment retained habitat on the site and surrounding sites and will adversely impact on the importance of the vegetation on the land to the habitat and survival of native fauna. Furthermore the proposed mitigation measures are insufficient to avoid, minimise or mitigate the impacts of the development. Accordingly, the proposal does not satisfy the matters for consideration prior to the granting of consent.
12. The proposed development is considered unacceptable pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is contrary to *State Environmental Planning Policy No. 44 Koala Habitat Protection* and is likely to have an adverse impact on the local **Koala** population in that:
- (a) The land is core koala habitat and a Koala Plan of Management has not been provided pursuant to Cause 9(1) of SEPP 44 and therefore consent cannot be granted;
 - (b) The proposal is contrary to the aims of SEPP 44 pursuant to Clause 3 as it does not encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline;
 - (c) The proposal does not provide adequate measures to mitigate the impact of the loss of koala habitat trees from the site as there are no koala habitat trees proposed as compensatory / offset planting in the proposed public reserves (Lot 141 and Lot 142) and the proposed reserves are of an insufficient area to undertake adequate offset planting;
 - (d) The proposal fails to appropriately achieve the requirements of *State Environmental Planning Policy No. 44 Koala Habitat Protection* and the

guidelines contained in *Circular No. B35: State Environmental Planning Policy No. 44-Koala Habitat Protection* ('Circular B35') dated 22 March 1995 as a vegetation map, which identifies the components of the tree layer and a description of the shrub layer, of the part of the site in which the Koala habitat trees are proposed to be removed, has not been provided;

- (e) The proposed removal of 1,400 square metres of koala habitat from the site is considered likely to result in a significant impact on the koala.
13. The proposed development is considered unacceptable pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is contrary to the **aims** of the *Richmond Valley Local Environmental Plan 2012* pursuant to Clause 1.2(2) in that:
- (a) The proposal does not encourage the proper management, development and conservation of natural and man-made resources as a result of the adverse impacts on the **ecological and biodiversity** and groundwater resources on the site (Objective (a)); and
 - (b) The proposal does not support and encourage social benefits within Richmond Valley as the capacity of the **social resources** within Evans Head to cater for the proposed increased population arising from the proposal has not been adequately considered (Objective (b)).
14. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the likely impacts of the development from the **bushfire** hazard on the site have not been adequately mitigated arising from:
- (a) The proposal does not provide a perimeter road along the north-eastern and eastern boundaries of the site which is inconsistent with Section 4.1.3[1] of *Planning for Bushfire Protection 2006* ('PfBP'), increases the bushfire hazard to the site and is contrary to the objectives for subdivision of PfBP.
 - (b) Proposed Road 5, which separates the two (2) rainforest lots (proposed Lots 136 & 137), is only seven (7) metres wide, which does not satisfy the requirement of PfBP for all public roads to have a minimum carriageway width of 8 metres. This road is not supported as it does not satisfy the requirements of PfBP for public roads and does not allow the RFS sufficient room within the road reserve for firefighting. The proposed road is also surrounded by vegetation which is of a height that may cause a blockage to this road area.
 - (c) The proposed internal road system relies on a prohibition of on-street car parking to satisfy PfBP results in the proposed internal road system being unsatisfactory as such a prohibition is difficult to enforce and is not supported.
 - (d) The proposal has not satisfactorily demonstrated consistency with the intent of measures for public roads or the performance criteria of Section 4.1.3[1] of PfBP in that safe operational access via Iron Gates Drive to structures within the site for emergency services, while residents are seeking to evacuate from an area, has not been provided. This lack of clarity over Iron Gates Drive is exacerbated by the site's relatively isolated location within the Evans Head locality and the lack of a secondary access or egress point to the site.

- (e) There are no APZs wholly located in either public reserves or road reserves, which result in a significant percentage of proposed lots being burdened by easements for an APZ. The proposed APZs on proposed Lots 1 to 21 and Lot 60 are to be located predominately within the proposed lots, with a 21 metre APZ representing a significant encroachment into the developable land of these proposed allotments, which is unsatisfactory.
 - (f) The proposal is inconsistent with the specific objectives for subdivision pursuant to Section 4.1.2 of PfBP as the proposal:
 - (i) does not minimise perimeters of the subdivision exposed to the bush fire hazard as a result of the lack of a perimeter road along the norther-eastern and eastern boundaries of the site (adjoining Lots 1 to 20 and 60)
 - (ii) does not minimise bushland corridors that permit the passage of bush fire arising from the retention of the two areas of Littoral rainforest (Lot 136 and Lot 137) in the centre of the subdivision. The vegetation within Lot 136 is contiguous with the vegetation to the east of the site.
 - (iii) does not provide open space and public recreation areas as accessible public refuge areas or buffers.
 - (iv) cannot ensure the ongoing maintenance of asset protection zones as there will be multiple landowners who properties are in the asset protection zones.
15. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal will have unacceptable impacts on the **wetlands** on and adjoining the site and the **Evans River** and is inconsistent with:
- (a) Clause 2 of *State environmental Planning Policy No 14 – Coastal Wetlands* in that the proposal is inconsistent with the aims of the Policy as it does not ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State arising from the proposed earthworks, stormwater discharge, lack of an adequate buffer from the proposed development and the filling in of the artificial drainage channels on the site.
 - (b) Clause 6.8(1)(a) of the RVLEP 2012 in that the proposal does not protect or maintain the water quality within watercourses as the proposed stormwater management arrangements for the site and the buffer zones to the Evans River have not been provided.
 - (c) Clause 6.8(3)(a) and (c) of the RVLEP 2012 in that the proposal is likely to have any adverse impact on the water quality within the Evans River as it has not been demonstrated that stormwater leaving the site will not adversely impact on the river and there have not been any appropriate measures proposed to avoid, minimise or mitigate the adverse impacts of the development on the Evans River.
 - (d) Clause 6.10(1) of the RVLEP 2012 in that the stormwater discharge and the proposed encroachment of the development in close proximity to the wetland area does not reserve or protect the wetland from the impacts of the development, contrary to the aims of this clause (wetlands).
16. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy Clause 7 of *State Environmental Planning Policy No 55 -*

Remediation of **Contaminated Land** ('SEPP 55') in that:

- (a) Consent cannot be granted by the consent authority as consideration of whether the land is contaminated cannot be undertaken due to a lack of sufficient information for this assessment pursuant to Clause 7(1) of SEPP 55.
- (b) A detailed investigation should have been prepared pursuant to Clause 7(3) of SEPP 55 as the site has previously been used for *agricultural/horticultural activities* and *mining and extractive industries*, which are both included in Table 1 of the *Managing Land Contamination Planning Guidelines* prepared by the Department of Urban Affairs and Planning and Environment Protection Authority dated August 1998 and the site is proposed for a land use change from vacant land to residential development. A detailed investigation would have included on-site testing of soils to inform the assessment of contaminated land.

Accordingly, consent cannot be granted as the application has not satisfied Clause 7 of SEPP 55.

17. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy Clause 6.1 of the *Richmond Valley Local Environmental Plan 2012* in relation to **acid sulphate soils** in that:

- (a) The proposal is inconsistent with the objectives of Clause 6.1(1) as the development does not ensure that the development does not disturb, expose or drain acid sulfate soils and cause environmental damage as the report and site investigations are inadequate given the outdated data used in the Acid Sulphate Soils Report. There has been no assessment of the potential for acid sulphate soils to be disturbed during the proposed earthworks on the site and for such disturbance to result in pollution of the Evans River.
- (b) The proposal fails to satisfy Clause 6.1(3) as an adequate Acid Sulfate Soils Management Plan has not been prepared for the proposed works in accordance with the Acid Sulphate Soils Manual as the provided Management Plan is inadequate and relies on testing of the site for the recommended actions and therefore does not satisfy this requirement of the LEP.

18. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy Clause 6.3 of the *Richmond Valley Local Environmental Plan 2012* ('RVLEP 2012') in relation to **earthworks** in that:

- (a) The proposal is inconsistent with the objectives of Clause 6.3(1) as the development does not adequately demonstrate that the proposed earthworks will not have a detrimental impact on environmental functions and processes on the site or on neighbouring uses. In particular, there has been no consideration of the potential impacts arising from the proposed earthworks (filling and retaining walls) on the Littoral rainforest in proposed Lot 137, on adjoining land to the east, the wetlands both on and adjoining the site or on the Evans River; and
- (b) The proposal has not adequately demonstrated that the matters for consideration prior to the grant of consent pursuant to Clause 6.3(3) have been satisfied particularly the likely disruption of, or any detrimental effect on,

existing drainage patterns and soil stability in the locality, the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area, and whether any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development are proposed.

Accordingly, consent cannot be granted pursuant Clause 6.3(3) of the RVLEP 2012 as the matters for consideration cannot be thoroughly assessed.

19. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy the objectives for **heritage conservation** pursuant to Clause 5.10 of the RVLEP 2012 as the proposal is likely to impact on natural (cultural) environment in that:
 - (a) There has been no inclusion of recommendation 2 (Cultural Interpretation) of the Aboriginal cultural heritage report into the proposal,
 - (b) Significant concerns with the proposal have been raised by the local Aboriginal Community but not resolved,
 - (c) Two (2) lithic artefacts identified in the Aboriginal Cultural Heritage Report are located in close proximity to the proposed residential footprint, with no detailed survey work having been carried out to ensure such items are not impacted by the proposal and no recommendation is made in regard their on-going protection and conservation,
 - (d) There has been no Aboriginal cultural heritage assessment for the proposed removal of vegetation and ground disturbance for the proposed upgrade works to Iron Gates Drive for bushfire safety, and
 - (e) The proposal has failed to satisfy the heritage conservation objectives of Clause 5.10(1) of the RVLEP 2012 in that the proposal does not conserve Aboriginal objects and Aboriginal places of heritage significance.
20. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy the objectives and matters to be satisfied pursuant to Clause 6.5 of the RVLEP 2012 and the proposal is likely to impact on natural environment (**flooding**) in that:
 - (a) The proposal is inconsistent with the objectives for flood planning pursuant to Clause 6.5(1) of the RVLEP 2012 as it does not adequately demonstrate that the proposal minimises the flood risk to life and property associated with the use of land, it does not allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change as this is unknown and does not avoid significant adverse impacts on flood behaviour and the environment as this has not been provided.
21. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) and 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to satisfy a number of the **matters for consideration** pursuant to Clause 8 of *State Environmental Planning Policy No 71 - Coastal Protection* which are required to be considered in accordance with Clause 7(b) including:

- (a) The proposal is inconsistent with the aims of the Policy pursuant to Clause 2(1) in that:
 - (i) the natural and cultural attributes of the NSW coast are not protected by the proposal given the vegetation clearing and significant earthworks which alter the natural topography of the site (CI 2(1)(a)),
 - (ii) the proposal does not adequately demonstrate that Aboriginal cultural heritage items on the site will be protected (CI 2(1)(d)),
 - (iii) the protection and preservation of native coastal vegetation has not been achieved by the proposal (CI 2(1)(g)),
 - (iv) The proposal is inconsistent with the principles of ecologically sustainable development as the conservation of biological diversity and ecological integrity should be a fundamental consideration (CI 2(1)(j)),
 - (v) The proposal has not been designed following a thorough site analysis, having been designed based on a former subdivision layout which does not respect the site constraints or natural features of the site which does not encourage a strategic approach to coastal management (CI 2(1)(l)).
 - (b) The design of the development and its relationship with the surrounding area is unsatisfactory given the ecological impacts arising from the proposal, the hazards from the site constraints which have not been adequately addressed and the lack of an integrated design of the subdivision with the site conditions, contrary to Clause 8(d);
 - (c) The proposal does not involve adequate measures to conserve animals (within the meaning of the *Threatened Species Conservation Act 1995*) and plants (within the meaning of that Act) on the site arising from the ecological and biodiversity impacts of the proposal, contrary to Clause 8(g);
 - (d) The proposal does not involve adequate measures to conserve and protect the existing wildlife corridors on the site arising from the ecological and biodiversity impacts of the proposal, contrary to Clause 8(i);
 - (e) The coastal hazard of flooding has not been adequately considered by the proposal, contrary to Clause 8(j);
 - (f) The proposal has not adequately demonstrated that the Aboriginal cultural heritage items on the site will be protected, contrary to Clause 8(l);
 - (g) The potential impacts on the water quality of the Evans River and the nearby coastal wetlands has not been adequately demonstrated by the proposal, contrary to Clause 8(m);
 - (h) The proposal is likely to result in adverse cumulative impacts on the environment as a result of the proposed vegetation clearing, lack of mitigation measures and buffer zones to the conservation area, wetland and the Evans River, contrary to Clause 8(p)(i).
22. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* as the proposal has failed to adequately demonstrate that the site will not be adversely impacted by **mosquitoes** as the proposed Stormwater management systems have not outlined measures to reduce potential to act as mosquito breeding areas.
23. The proposed development is considered unacceptable pursuant to the provisions of

Section 4.15(1)(d) and (e) of the *Environmental Planning and Assessment Act 1979* as the proposal is not in the public interest as it is inconsistent with the relevant planning controls and issues raised in submission have not been adequately addressed.