

Bayridge Estate

North Batemans Bay

Update and Assistance Request

03 December 2024

Presentation Topics

1. Three Points of Presentation.
2. Point 1 in Detail: The DA to Today
3. Point 2 in Detail: (Request No. 1)
4. Point 3 in Detail: (Request No. 2)

Location



1 - 3 The Three Points of the Presentation

1. Advise Council of the issue at Bayridge Estate (refer to attached summary of events).
2. Seek Council's agreement to release the Subdivision Certificate (SC) for Stage 5 followed by Stage 3, and the Subdivision Works Certificate (SWC) for the remainder of the lots in the Estate. (Request No. 1).
3. Seek Council's confirmation on whether it supports a Tunnel-Bridge crossing of Princes Highway north of Kings/Princes roundabout required by the DA (Request No. 2).

1 Point 1 in Detail: The DA to Today

1. DA approved 7 December 2006 for 157 lots. It is a Minister for Planning consent, not Council (however Council is obliged to administer it).
2. Condition 2.11 requires *“A grade separated pedestrian crossing shall be provided to link the subject site to the eastern side of the Princes Highway (north of the Kings Highway junction) in accordance with the requirements of the RTA. The exit from the structure on the eastern side of the Princes Highway will require approvals from adjoining properties owners (Department of Education and Training and the Council) to construct on their land.”*

The condition explicitly requires the approval of Council and the School.

1 Point 1 in Detail: The DA to Today



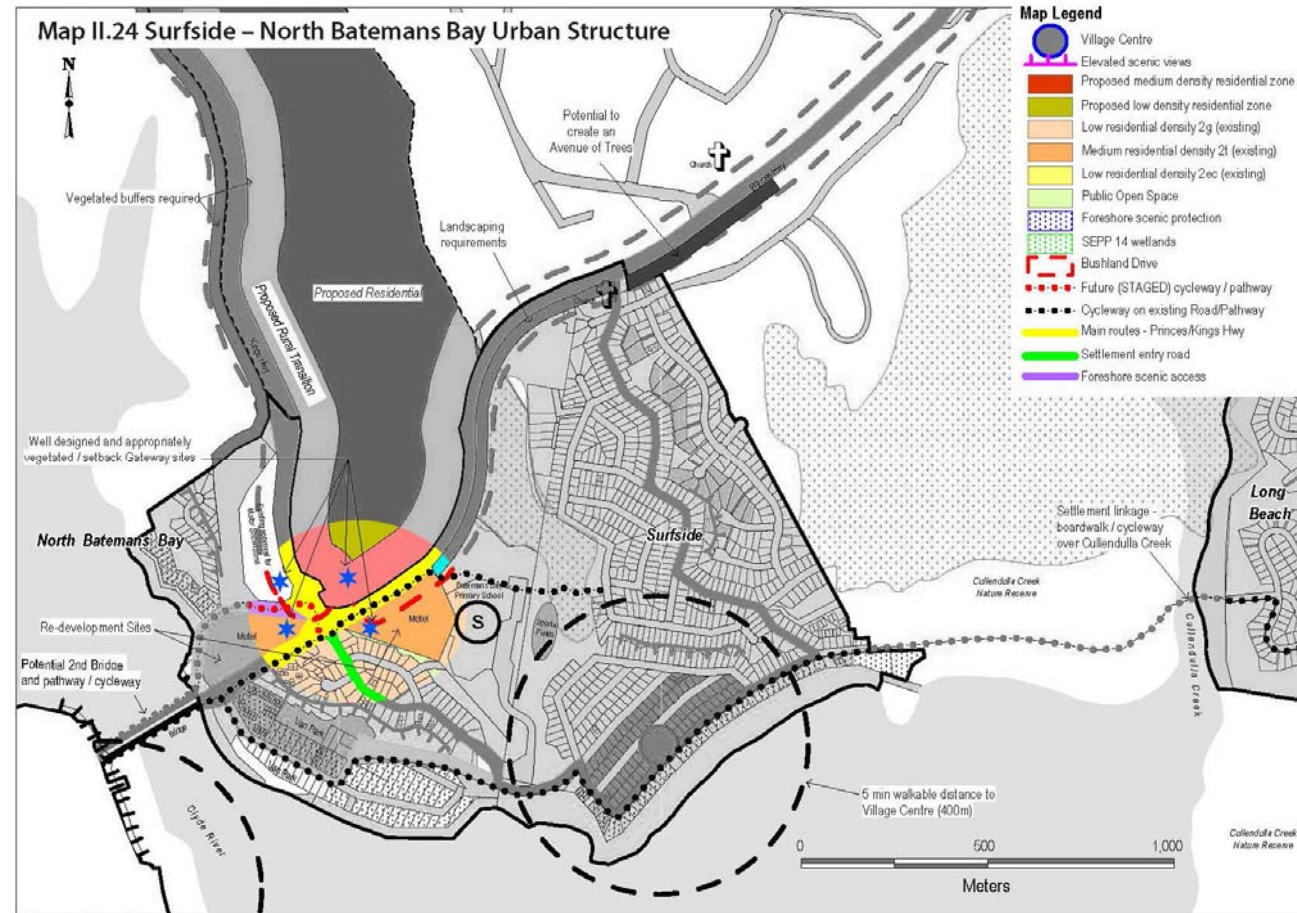
Location

1 Point 1 in Detail: The DA to Today

3. Since 2016, Council has advised it does not support either a tunnel or bridge as required by Condition 2.11.
4. Bayridge attempted to lodge a Modification to the DA to remove the condition in discussions with Council staff but was not possible due to legal issue that requires ALL landowners to support the lodgment of the DA modification . This could not be achieved.
5. Council sought and received legal advice that a new DA for a level foot crossing will satisfy condition 2.11. This has not been accepted by DPHI.

1 Point 1 in Detail: The DA to Today

6. However, Bayridge has lodged a DA for a level foot crossing as a viable alternative that in principle council staff support as it aligns with the council's future pathway strategy.



Footpath Strategy

1 Point 1 in Detail: The DA to Today

7. In response to the DA, TfNSW has requested Road Safety Audit. The audit has raised some concerns that may not be supported by TfNSW (TBC). This is despite the existence of a matching crossing on the south side of the roundabout (next to Ampol).
8. No clear timeframe for resolution at this time.



View of existing level foot crossing at Ampol

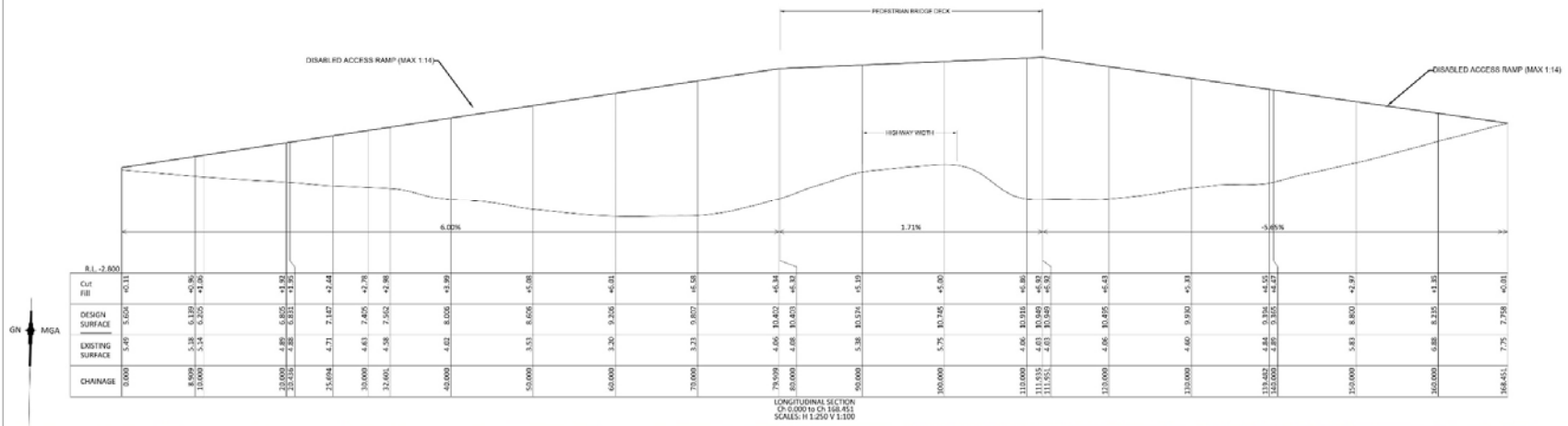
2 Point 2 in Detail: Request No. 1.

1. Lack of resolution of Condition 2.11 has been raised by Council staff as reason to delay release of SC Stages 3 and 5 and SWC for balance of project.
2. Bayridge has offered a bond to DPHI based on cost of level crossing as tunnel / bridge not accepted. DPHI refusing to accept bond as insufficient value.
3. Lack of release of SCs and SWC is unnecessarily causing hardship to purchasers and Bayridge. Council can exercise discretion to release SC and SWC as it has in the past.
4. Release of SC Stage 5, then SC Stage 3 and SWC requested as an interim measure.

3 Point 3 in Detail: Request No. 2.

1. Confirmation is requested from Council on whether it will support (or not) a bridge and grant landowner's consent to build it. A bridge is considered a more acceptable approach as less maintenance and lower safety/ security issues).
2. A Concept Plan shown on following page shows:
 - preliminary gradients and dimensions that can meet required specifications;
 - location through trees to minimise tree removal;
 - founded Council land on either side of bridge (i.e. bridge approach ramps shown on Council owned properties); and
 - The bridge will cost \$2.0 million approx.

PEDESTRIAN BRIDGE - PRINCES HIGHWAY, BATEMANS BAY NORTH



FOR INFORMATION ONLY

REDUCTION RATIO:	SURVEYED	AMENDMENTS	BY	DATE
DATUM : AUSTRALIAN HEIGHT DATUM	01/2024			
CONTOUR INTERVAL : 0.5m	DESIGNED			
ORIGIN :	C.P.			
DATE OF PLAN : 28/11/2024	DRAWN			
	C.P.			
	CHECKED			
	P.S.			

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 INCORPORATING BULLOCK & WALTERS
 SINCE 1883
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HIGHWAY FOOTBRIDGE
 CIVIL ENGINEERING WORKS

BATEMANS BAY CITY OF EUROBODALLA

REFERENCE No. U21139
DRAWING No. U21139 ENG A.dwg
ISSUE A
SHEET 01 OF 01 SHEETS
SUBDIVISION FILE : DA 172-7-2005

3 Point 3 in Detail: Request No. 2.

1. If a bridge is supported, Bayridge will build the bridge and offer security for release of SWC and SCs via a conventional "Works-in-Kind" (WIK) deed with Council.
2. If a bridge is not supported, then progress of the project remains stopped and it relies on the following:

3 Point 3 in Detail: Request No. 2.

- Implementation of Request No. 1 above is still requested (i.e. release of SWC and SCs) to enable project to continue; and
- In the event that TfNSW advises that it does not support level (at-grade) pedestrian crossing, senior Council staff assistance in resolution of the matter with TfNSW support.
- In the event that TfNSW support for the level (at-grade) crossing is not supported and Council determines that the DA cannot be approved, senior Council staff assistance in deputations to senior DPHI and TfNSW staff to secure their acceptance that Condition 2.11 cannot be addressed and the Bayridge DA cannot be modified to remove the condition and secure a more flexible position of the matter by DPHI and TfNSW.

Thanks for your time

Bayridge Estate

Summary of Current Situation

05 November 2024. Issue B

Item No.	Item	Action by	Comment
1.	Original Approval and requirement for Pedestrian Crossing of Highway	Original owner and Minister for Planning	<p>On 7th December 2006 consent was granted by the Minister for Planning. Condition 2.11 of the consent requires <i>"A grade separated pedestrian crossing shall be provided to link the subject site to the eastern side of the Princes Highway (north of the Kings Highway junction) in accordance with the requirements of the RTA."</i></p> <p>The original and operational planning approval that permits the development is DA 172 – 7 – 2005 (as modified), being approval for a low density residential subdivision of 157 lots, Bayridge Drive North Batemans Bay.</p> <p>A grade separated crossing is defined as either a pedestrian subway (underpass) or pedestrian footbridge (overpass).</p> <p>The assessment of the development application documented in the Department of Planning's Planning Assessment Report December 2006 notes:</p> <ul style="list-style-type: none"> (i) Council raised, at the time, <i>"the issue of pedestrian access across the Princes Highway and to the CBD requires resolution prior to any consent."</i> (ii) Council in subsequent correspondence dated 8th June 2006 advised: <i>"The provision of pedestrian facilities is to take the form of a grade separated crossing and is to be operational prior to the release of stage one linen plan."</i> (iii) Council in subsequent correspondence dated 7th November 2006 advised: <i>"There will be a requirement for a pathway to the developed school grounds. · Eurobodalla Shire Council has had no confirmation from RTA that an underpass has been approved to this date. · Whatever the form the grade separated structure will take, the design must accommodate an additional north bound passing lane in the Princes Highway. The grade separated pedestrian crossing is to have documentation and design for tendering prior to the release of Stage 3 and the tender indicating a completion date, let prior to the release of the linen plan for Stage 3. An estimate of the completion of the structure by the applicant was winter 2008."</i> (iv) Council subsequently provided detailed conditions to be considered by the Department in correspondence dated 1 December 2006.

Item No.	Item	Action by	Comment
			<p>(v) RTA in subsequent correspondence dated 9th November 2009 advised: <i>“The RTA has reviewed the amended plans and will not object to the development application subject to the following comments being included in the Consent Authority’s (Department of Planning) conditions of development consentThese conditions relate to ... the grade-separated pedestrian crossing.”</i> <i>“The applicant provided advice in the TTM Consulting report which recommended a signal-controlled at-grade crossing to be provided in the later stages of the proposal. The RTA and the Council were both opposed to the at-grade crossing point and accordingly, a grade-separated crossing point (i.e. either an underpass or overpass was required) spanning the entire 40 metres of the Princes Highway road reserve to allow for future road works and pedestrian linkages was to be provided. ...</i> <i>The Council and the RTA have advised that this crossing is required to form part of the current proposal. Suitable treatments should also be provided to corral pedestrians to the controlled facilities and prevent pedestrians crossing the Princes Highway at uncontrolled locations. ...</i> <i>The RTA and the Council have both provided conditions in relation to this grade-separated pedestrian crossing point which are recommended to be imposed on the development consent. The Department supports this assessment and considers a grade-separated crossing point is required by the development to be provided in Stage 3. The RTA support the provision of either a pedestrian overpass (bridge) or underpass, which the Department also considers to be satisfactory (p.40).”</i></p> <p>Council and RTA (TfNSW) agree that preferred outcome is a grade separated interchange and Dept of Planning places a condition requiring it to be delivered on the consent (condition 2.11).</p>
2.	Eurobodalla Shire Council refusal to support overpass ‘grade separated’ pedestrian crossing. Instead, it advises developer should fund at-grade pedestrian network.	ESC	<p>On 22 August 2016 Council advises TfNSW in an email that:</p> <p><i>“Council does not support a proposal to have a pedestrian overpass link from the Bay Ridge Estate, across the Princes Highway to the Batemans Bay Public School.</i></p> <p><i>Councils preferred option is to link the Bay Ridge Estate to the Batemans Bay Public School via the shared pathway system. The route for this pathway is contained within the ESC Shared Pathway Strategy – see attached map.</i></p> <p><i>In lieu of removing the requirement for a pedestrian overpass, the developer should pay 100% of the cost to:</i></p>

Item No.	Item	Action by	Comment
			<p><i>I Design & construct the missing link of shared pathway from Peninsula Drive to the school grounds. This section of pathway located on the south eastern side of the Princes Highway is about 530 metres long.</i></p> <p><i>II. Install a man proof fence and two vehicle gates across the public reserve on Bay Ridge Drive (about 40 metres long) – This site was to be the pedestrian link to the bridge from Bayridge Drive and the fence will deter pedestrians from walking across the highway at this undesirable location.</i></p> <ul style="list-style-type: none"> • <i>The design and construction of the shared pathway should be undertaken by Council, in consultation with RMS (as has been the case for many other shared pathways along the Princes Highway).</i> • <i>If a pedestrian bridge were to be installed, Council is not prepared to take on the ongoing maintenance or end of life replacement of this facility.</i> <p>Council advises it does not support an overpass.</p>
3.	Underpass Concept Design Prepared.	Bayridge Developments	In early 2022 consultants for Bayridge Developments make all reasonable effort to progress the construction of the crossing including preparation and submission of concept designs for an underpass option.
4.	Eurobodalla Shire Council repeat of refusal to support underpass 'grade separated' pedestrian crossing.	ESC	<p>On 4 October 2022 Council advises TfNSW in an email that:</p> <p><i>“Our position communicated to TfNSW in 2016 (see at bottom of this email) has not changed (that we do not support a pedestrian underpass). Additionally, we are concerned of the adverse impact when the pending duplication of Princes Hwy (4 lane/2 way road) occurs, particularly children risk with an even greater length ‘tunnel’.”</i></p> <p>Council advises it does not support an underpass.</p>
5.	Transport for NSW deferral of support for underpass 'grade separated' pedestrian crossing.	TfNSW	<p>On 7th November 2022 Transport for NSW advised Bayridge Estate Pty Ltd that prior to acceptance of an underpass, a number of matters needed to be addressed. These included:</p> <ul style="list-style-type: none"> • Approval of all landowners either side of the highway; • The subway length will need to extend to a minimum of 17 metres to permit any potential future widening of the Highway to four lanes; and

Item No.	Item	Action by	Comment
			<ul style="list-style-type: none"> The subway design will need to be dual function, permitting access by vehicles for emergency purposes. <p>Transport for NSW defers decision on support or not to an underpass to a response from Council, notwithstanding Council's stated objection to underpass.</p>
6.	TfNSW supports grade separated interchange	TfNSW	<p>On 30th March 2023 Consultants for Bayridge Development submit a concept for an at-grade pedestrian crossing to TfNSW for advice.</p> <p>The at-grade crossing is a crossing of the roadways with a median strip shelter island in the middle of the road (similar to what exists on the south side of the Kings Highway / Princes Highway intersection).</p> <p>On 26 April 2023 TfNSW responds that the concept design requires amendments to be made in order for the concept to be acceptable.</p> <p>Opportunity for an at-grade crossing identified as potentially viable.</p>
7.	DPHI advises that a modification to the original consent requires landowner consent	DPHI	<p>On the basis of the progress above, consultants for Bayridge Developments approach DPHI to discuss lodgement of a modification to the original DA to enable at-grade crossing to be developed in lieu of grade - separated crossing.</p> <p>On 27 April 2023 DPHI advises that legislation requires Bayridge Developments to obtain all landowners consent (i.e. subsequent purchasers of subdivided land that was subject to original development application) to enable modification to be lodged.</p>
8.	Bayridge Developments unable to obtain all landowners' consents.	Bayridge Developments	<p>Between May and September 2023 consultants for Bayridge endeavour to obtain the consent of the 61 subsequent landowners. The results were as follows:</p> <ul style="list-style-type: none"> 18 or 30% provided letters of landowner consent; 28 or 45% did not respond (assumed to be undecided/perplexed or uninterested); 13 or 21% could not be contacted due to inability to make contact (i.e. contact name and / or details unknown and not able to source); and 2 or 3% consciously refused to grant owner's consent (primary as a result of lack of support for the proposal).

Item No.	Item	Action by	Comment
			<p>Not all landowners' consents obtained. Bayridge cannot modify the development consent and is trapped with the requirement to construct a grade-separated pedestrian crossing (underpass or overpass) that is not supported by Council and only supported by TfNSW if is supported by Council.</p>
9.	Lodgement of Separate DA for at-grade crossing.	ESC & Bayridge Developments	<p>Between November 2023 and March 2024 consultants for Bayridge Developments continue to liaise with Council to obtain feedback on a possible solution.</p> <p>Council obtains legal advice that there is an opportunity to lodge a new DA for an alternative crossing (the at-grade crossing). Should the DA be approved, Council may elect to accept construction of the alternative at-grade crossing as a solution that addresses Condition 2.11 of the original approval</p> <p>On 22 May 2024 consultants for Bayridge Developments lodge a development application for an at-grade crossing.</p>
10.	DPHI refuses to accept new DA as solution.	DPHI	<p>On 1 August 2024 DPHI advises that “the completion of the at-grade crossing would not satisfy condition 2.11.”</p> <p>New DA solution is rejected.</p>
11.	At-grade crossing DA being assessed	ESC	<p>On 16 August 2024 Council issues RFI requesting amended plans and additional information to address comments raised by TfNSW.</p> <p>DA is progressing.</p>