

# Barlings Beach: Cultural Facilities 2019 Finalisation Deed

Dated

Mogo Local Aboriginal Land Council (ABN 25 184 322 074) ("**MLALC**")  
Barlings Beach Community Pty Ltd (ABN 51 968 797 098) ("**BBC**")  
The Council of the Shire of Eurobodalla (ABN 47 504 455 945) ("**ESC**")

# Barlings Beach: Cultural Facilities 2019 Finalisation Deed Contents

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# Barlings Beach: Cultural Facilities 2019 Finalisation Deed Details

**Interpretation** – definitions are at the end of the General terms

<b>Parties</b>	<b>MLALC, BBC and ESC</b>	
<b>MLALC</b>	Name	<b>Mogo Local Aboriginal Land Council</b>
	ABN	25 184 322 074
	Address	Post Office, Mogo NSW 2536
	Telephone	(02) 4474 5229
	Fax	(02) 4474 5219
	Attention	Acting Co-ordinator
<b>BBC</b>	Name	<b>Barlings Beach Community Pty Ltd</b>
	ABN	51 968 797 098
	Address	GPO Box 4073 Sydney NSW 2001
	Telephone	(02) 8273 9600
	Fax	(02) 9252 7400
	Attention	Paul Marriot
<b>ESC</b>	Name	<b>The Council of the Shire of Eurobodalla</b>
	ABN	47 504 455 945
	Address	Vulcan Street, Moruya NSW 2537
	Telephone	(02) 4474 1000
	Fax	(02) 4474 1364
	Attention	General Manager
<b>Recitals</b>	<b>A</b>	The parties entered into the Cultural Facilities Deed on or about 20 July 2005.
	<b>B</b>	The parties have agreed to enter into this Deed in order to finalise a number of the parties respective obligations under the Cultural Facilities Deed.
<b>Governing law</b>	New South Wales	

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**Business Day  
place**      Sydney

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**Date of deed**      See Signing page

# Barlings Beach: Cultural Facilities 2019 Finalisation Deed General terms

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## **1 Consideration**

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and for other valuable consideration.

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## **2 Cultural Facilities**

### **2.1 Payment by BBC**

- (a) Within 30 days of the date of signing this Deed, BBC will pay MLALC the Remaining Design and Construction Budget on the date that is 20 Business Days after the date that each of the requirements in clause 2.1(b) are satisfied.
- (b) The payment of the Remaining Design and Construction Budget referred to under clause (a) is conditional on each of the following:
  - (i) MLALC issuing BBC with a valid tax invoice for the Remaining Design and Construction Budget;
  - (ii) the Development Consent being amended generally in accordance with the amendments set out in Schedule 1; and
  - (iii) ESC and the New South Wales Department of Planning providing confirmation that conditions F1 and E3 of the Development Consent will be fully satisfied by:
    - (A) the payment of the Remaining Design and Construction Budget to MLALC; and
    - (B) transfer of the Designated Land to MLALC in accordance with clause 4.1.
- (c) The parties agree that payment of the Remaining Design and Construction Budget to MLALC will be in full and final satisfaction of BBC's obligations under clause 5 of the Cultural Facilities Deed.

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## **3 Management Works – Aboriginal Place**

### **3.1 Management of Aboriginal Place**

- (a) BBC will pay the Management Works Budget Amount to ESC on or before the date that is 20 Business Days after receipt of the subdivision certificate from ESC for the final residential lot within Stage 11 of the Development.
- (b) The parties agree that payment of the Management Works Budget Amount to ESC will be in full and final satisfaction of BBC's obligations under clauses 7 and 8 of the Cultural Facilities Deed and clause 6.1 of the Contract for Sale.

### **3.2 Obligation of ESC**

- (a) ESC agrees to engage a Local Aboriginal Person from the MLALC in carrying out the maintenance of the Aboriginal Place from the date of this Deed.
- (b) The parties agree that the engagement of a Local Aboriginal Person from the MLALC by ESC pursuant to clause 3.2(a) will be in full and final satisfaction of all of ESC's obligations under clause 8 of the Cultural Facilities Deed.

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## **4 Designated Land**

### **4.1 Transfer of Designated Land**

- (a) BBC agrees to transfer the Designated Land to MLALC for \$1 on the date that is 20 Business Days after the later of:
  - (i) payment of the Remaining Design and Construction Budget to MLALC pursuant to clause 2.1(a); and
  - (ii) registration of the subdivision certificate that will create the Designated Land.
- (b) The Designated Land may be subject to change or alteration prior to the transfer of the Designated Land to MLALC, however it must be a parcel of not less than 4,000 square metres.
- (c) The Designated Land will be transferred with easements and restrictions registered on title, including a restriction which will prohibit the use of the Designated Land for residential use and any other purpose not permitted under the Development Consent and which will require the consent of BBC to be released, until such time as BBC is no longer in existence, after which the consent of ESC will be required for its release.
- (d) The Designated Land may be subject to further easements if required by a relevant authority.
- (e) BBC acknowledges and agrees that it will be responsible for any applicable stamp duty payable on the transfer of the Designated Land.
- (f) The parties agree that:
  - (i) entry into this deed is satisfactory evidence that MLALC has accepted proposed Lot 1115 for the purposes of condition E3 of the Development Consent (as amended by clause 2.1(b)(ii)); and
  - (ii) transfer of the Designated Land to MLALC will be in full and final satisfaction of BBC's obligations under clause 3 of the Cultural Facilities Deed and condition E3 of the Development Consent.

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## **5 Business Training**

- (a) BBC will pay MLALC the Training Amount to MLALC contemporaneously with the Remaining Design and Construction Budget.
- (b) The payment of the Training Amount is conditional on MLALC issuing BBC with a valid tax invoice for the Training Amount (or each relevant part of thereof).
- (c) The parties agree that payment of the Training Amount to MLALC will be in full and final satisfaction of BBC's obligations under clause 6 of the Cultural Facilities Deed.

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## **6 No partnership**

Nothing contained or implied in this deed constitutes a party the partner, agent or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way.

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## **7 Assignment**

### **7.1 MLALC not permitted to assign**

Until such time as all obligations under this deed have been satisfied, MLALC may not assign its rights under this deed without the consent of BBC which may only be withheld acting reasonably. BBC may not withhold its consent where an assignment is sought to a local Aboriginal land council with which MLALC has amalgamated.

### **7.2 BBC not to sell Designated Land**

BBC may not sell:

- (a) the Designated Land; or
- (b) the Land (other than the individual lots created on the subdivision of the Land),

unless the buyer agrees with MLALC to comply with the obligations BBC has to MLALC under this deed.

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## **8 Costs**

### **8.1 Each party bears own cost**

The parties are to bear their own legal and other costs and expenses including stamp duty in connection with the preparation and finalisation of this deed and of other related documentation.

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## **9 Goods and Services Tax (GST)**

### **9.1 Consideration does not include GST**

The consideration specified in this deed does not include any amount for GST.

### **9.2 Recovery of GST**

If a supply under this deed is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

### **9.3 Time of payment**

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

### **9.4 Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

### **9.5 Reimbursement**

If a party is entitled to be reimbursed or indemnified under this deed, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

### **9.6 Set-off**

If a recipient of a supply is obliged to pay a supplier an amount for GST under this clause 9 and does not do so, the supplier may set-off the amount due for payment against any amount due for payment by the supplier to the recipient under this deed.

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## **10 Notices**

### **10.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **10.2 Delivery**

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

### **10.3 When effective**

They take effect from the time they are received unless a later time is specified.

### **10.4 Receipt - post**

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **10.5 Receipt - fax**

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

### **10.6 Receipt - general**

Despite clauses 16.4 and 16.5, if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

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## **11 General**

### **11.1 Precedence of Contract for Sale**

In the event of any inconsistency between the terms of this deed and the Contract for Sale, the terms of the Contract for Sale will prevail to the extent of any inconsistency.

### **11.2 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

### **11.3 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **11.4 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.

### **11.5 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### **11.6 Remedies cumulative**

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

### **11.7 Rights and obligations are unaffected**

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

### **11.8 Variation and waiver**

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **11.9 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

### **11.10 Inconsistent law**

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

### **11.11 Supervening legislation**

Any present or future legislation which operates to vary the obligations of a party in connection with this deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **11.12 No fetter**

The parties acknowledge that ESC has statutory powers and duties under the Act, including statutory duties in relation to any amendment of the Development Control Plan, and nothing in this deed operates to restrict or otherwise affect the unfettered discretion of ESC carrying out those statutory powers and duties.

### **11.13 Counterparts**

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### **11.14 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

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## **12 Governing law**

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

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## **13 Disputes**

### **13.1 Parties to solve**

If any Dispute arises between the parties they must use all reasonable endeavours, in good faith, to settle the dispute expeditiously by negotiation.

### **13.2 Progress of negotiation**

For the purpose of facilitating the process of negotiation referred to in clause 13.1:

- (a) the party claiming that the Dispute has arisen must give notice to the relevant party or parties involved in the Dispute which:
  - (i) identifies the subject matter of the Dispute; and
  - (ii) designates a representative for the negotiation who will have authority to settle the Dispute on behalf of that party,  
**(Dispute Notice)**; and
- (b) each of the other parties involved in the Dispute is then to promptly designate, by notice to the party giving the Dispute Notice, its representative for the negotiation who will have authority to settle the Dispute on behalf of that other party.

### **13.3 Resolution of dispute**

The designated representatives appointed under clause 13.2 will, within seven days of the last designation required by clause 13.2, following whatever investigations each considers appropriate, use their reasonable endeavours to expeditiously resolve the Dispute.

### **13.4 Failure to resolve dispute**

Neither party may commence any court proceedings relating to the Dispute except where that party seeks urgent interim or interlocutory relief to preserve property or prevent irreparable harm unless the designated representatives appointed under clause 13.2 are unable to resolve the Dispute to the satisfaction of the parties to the Dispute within the seven day period referred to in clause 13.3.

However, if a party fails to comply with clauses 13.1 to 13.3 the other parties to the Dispute need not comply with this clause before commencing court proceedings.

### **13.5 Implementation of resolution**

Any resolution reached pursuant to clause 13.3 must be implemented as soon as possible.

### **13.6 Continued performance**

Pending resolution of a Dispute (either according to clauses 13.1 to 13.3 or by court proceedings) the parties to the Dispute are to continue to perform their obligations under this deed to the extent reasonably possible.

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## 14 Interpretation

### 14.1 Definitions

These meanings apply unless the contrary intention appears:

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Authorised Officer** means a person appointed by a party to act as an Authorised Officer for the purposes of this deed.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the place or places set out in the Details under “Business Day place(s)”.

**Consent Authority** means, in respect to a development application, the consent authority under the Act for that development application.

**Contract for Sale** means the document entitled “Contract for Sale” dated 17 January 2003 between ESC and BBC.

**Cultural Facilities Deed** means the deed entitled “Cultural Facilities Deed” dated on or about 20 July 2005, between the parties to this deed.

**Designated Land** means, subject to clause 4, that part of Land marked 1115 on the plan in Annexure A.

**Details** means the section of this deed headed “Details”.

**Development** means the development of the Land as a residential development in accordance with the Development Consent.

**Development Consent** means development consent no 77-3-2002-i as amended prior to the date of this deed.

**Dispute** means any dispute, controversy, difference or claim between any of the parties as to:

- (a) the construction of this deed;
- (b) the rights or obligations of a party under this deed; or
- (c) any other matter arising out of or relating to this deed including any question regarding the existence, validity or termination of this deed,

(other than one entitling a party to claim for urgent interim or interlocutory relief to preserve property or prevent irreparable harm).

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning it has in the GST Act.

**GST exclusive market value** has the meaning it has in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**Input Tax Credit** has the meaning it has in the GST Act.

**Land** is the land contained in certificate of title identifier 2/1016146 (including any subdivided land from that title).

**Management Works Budget Amount** means an amount of \$200,000 plus GST.

**Remaining Design and Construction Budget** means an amount of \$218,370 plus GST.

**Tax Invoice** has the meaning it has in the GST Act.

**Training Amount** means an amount of \$10,000.00 plus GST.

#### **14.2 References to certain general terms**

Unless the contrary intention appears, a reference in this deed to:

- (a) **(variations or replacement)** a document (including this deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (l) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

#### **14.3 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

#### **14.4 Meaning not limited**

The words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

#### **14.5 Schedules**

For the avoidance of any doubt the parties acknowledge that each schedule to this deed forms part of this deed and takes effect according to its terms.

**EXECUTED** as a deed

# Schedule 1 - Development Consent amendments

Amendments in underline:

## ***F1 Lot 202 & Aboriginal Cultural/Retail Facility***

*The applicant shall transfer proposed Lot 1115 within the subdivision to the MLALC no later than 20 business days after registration at the Land Titles Office of the Subdivision Certificate that creates Lot 1115. ~~three (3) years after the first development consent has been issued for construction of a dwelling within the subdivision.~~*

*The unencumbered freehold title of proposed Lot 1115 is to be transferred to the MALC for the purchase price of \$1.00 (i.e. the cost of transfer is to be met by the applicant). Prior to the transfer a contribution of \$218,370 will be made to the Mogo Local Aboriginal Land Council toward the construction of a cultural/retail facility on proposed Lot 1115, or at the Mogo Community Centre, 32 Sydney Street, Mogo.*

*Any development application to facilitate the provision of the Aboriginal cultural/retail facility must propose & address the following:*

- ~~the total cost of designing the Aboriginal cultural/retail facility, obtaining all necessary approvals, associated construction costs & costs associated with satisfying any conditions imposed on any development consent granted for its intended purposes shall not exceed \$250,000.00 (as adjusted for CPI from the date this consent commences).~~*

*Note: Subsequent management, use & occupancy arrangements of the Aboriginal cultural/retail facility shall be separately negotiated with Council to its satisfaction. In this regard Council shall use its best endeavours to reach an acceptable arrangement expeditiously & not unnecessarily delay the provision of the Aboriginal cultural/retail facility.*

Condition E3:

*Prior to issue of a Subdivision Certificate that creates proposed Lot 1115 ~~Lot 162~~, documentary evidence shall be forwarded to Council confirming that the MLALC has accepted proposed Lot 1115 ~~Lot 162~~.*

# Barlings Beach: Cultural Facilities 2019 Finalisation Deed Signing page

18-06-2020

DATED: ~~5-11-2019~~

THE COMMON SEAL of MOGO )  
LOCAL ABORIGINAL LAND )  
COUNCIL is duly affixed by )  
authority of its directors in the )  
presence of: )



*[Signature]*

Signature of authorised person

*Board Member*

Office held

*Christine Nye*  
Name of authorised person (block letters)

Signature of authorised person

*Board Member*

Office held

*MADELENE NYE*  
Name of authorised person (block letters)

EXECUTED by BARLINGS )  
BEACH COMMUNITY PTY LTD )  
in accordance with section 127(1) of )  
the Corporations Act by authority of )  
its directors: )

*[Signature]*

Signature of director

*DAVID CALLANT*  
Name of director (block letters)

*[Signature]*

Signature of director/company secretary\*

\*delete whichever is not applicable

*IAN GRIST*  
Name of director/company secretary\* (block letters)

\*delete whichever is not applicable



THE COMMON SEAL of  
EUROBODALLA SHIRE  
COUNCIL was affixed on

pursuant to resolution of Council  
dated  
in the presence of:

*Catherine Dale*  
.....  
Signature of authorised person

*GENERAL MANAGER*  
.....  
Office held

*CATHERINE DALE*  
.....  
Name of authorised person (block  
letters)

*Elizabeth Innes*  
.....  
Signature of authorised person

*MAYOR*  
.....  
Office held

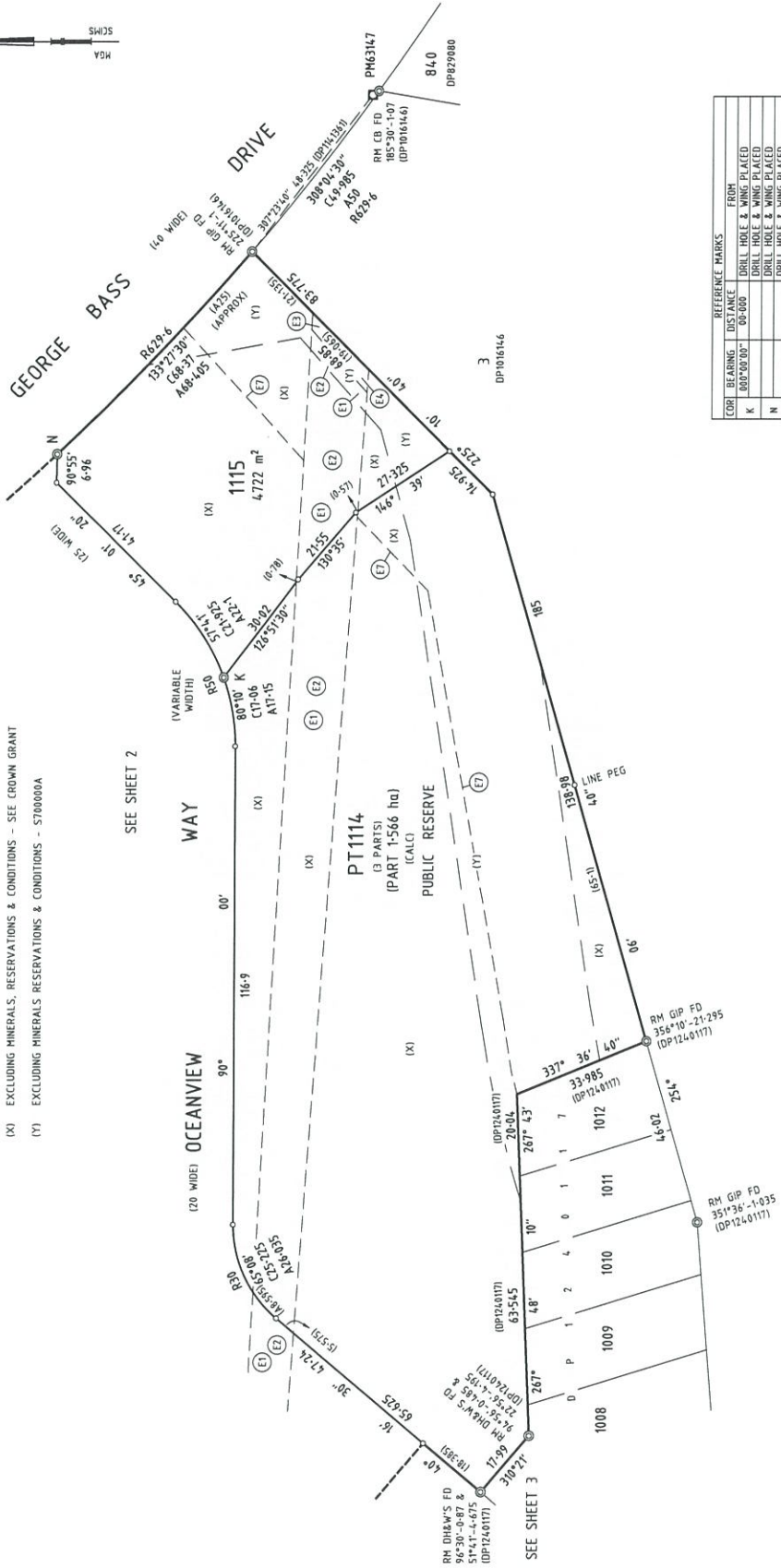
*ELIZABETH INNES*  
.....  
Name of authorised person (block  
letters)

Barlings Beach: Cultural Facilities 2019  
Finalisation Deed  
Annexure A - Designated Land

# PRELIMINARY

- (E) BOUNDARIES ARE UNFENCED EXCEPT AS SHOWN
- (E1) EASEMENT TO DRAIN SEWAGE VARIABLE WIDTH (DP623716)
- (E2) EASEMENT FOR WATER SUPPLY VARIABLE WIDTH (DP623716)
- (E3) EASEMENT FOR DRAINAGE OF SEWAGE VARIABLE WIDTH (DP1016144)
- (E4) EASEMENT FOR WATER SUPPLY VARIABLE WIDTH (DP1016144)
- (E5) EASEMENT FOR WATER SUPPLY OVER EXISTING LINE OF PIPES (APPROXIMATE POSITION) - TRUNK WATER MAIN (DP1240171)

- (X) EXCLUDING MINERALS; RESERVATIONS & CONDITIONS - SEE CROWN GRANT
- (Y) EXCLUDING MINERALS; RESERVATIONS & CONDITIONS - S700000A



REFERENCE MARKS	
COR	DISTANCE
K	800°00'00"
N	00°00'00"

**SURVEYOR**  
 Name: Jason Robert Hay  
 Date: 29/05/2019  
 Reference: 302342SV00  
 (VERSION 8 5/02/2019)

**PLAN OF SUBDIVISION OF LOT 1013  
 IN DP1240117**

**L.G.A.: EUROBOODALLA  
 Locality: TOMAKIN  
 Reduction Ratio: 1:750  
 Lengths are in metres.**

**REGISTERED  
 DRAFT**

**DP1249452**