



**MODIFICATION REQUEST:  
Amend typographical error in DA 77-03-2002  
MOD 6 relating to corner lot setbacks.  
Lot 81 in DP 1158006 George Bass Drive,  
Barlings Beach, Tomakin  
DA 77-03-2002 MOD 7**



Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

April 2012

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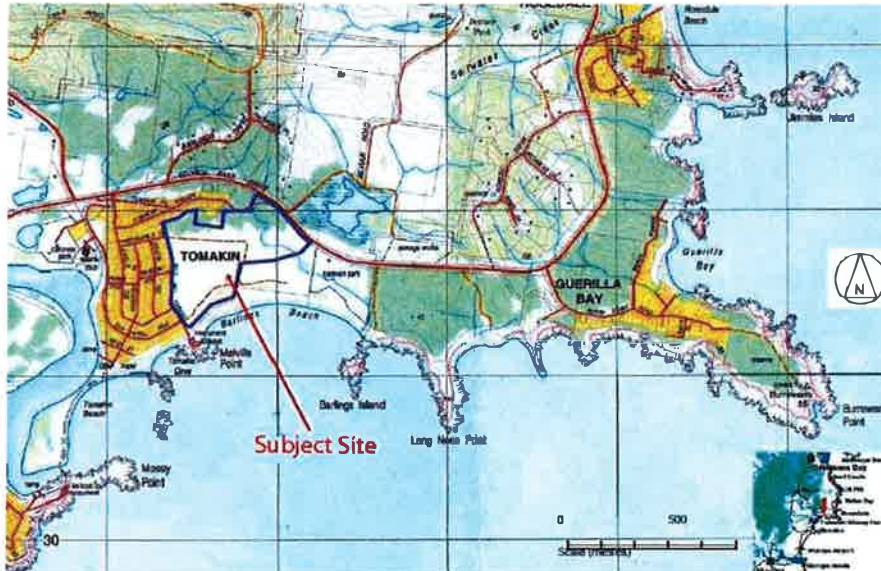
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# 1. BACKGROUND

The subject site is located on the southern side of George Bass Drive, Tomakin, on the NSW South Coast and is legally described as Lot 81 in DP 1158006. To the north, it has a frontage to George Bass Drive, to the east adjoins a caravan park, to the south it adjoins the dunal system of Barlings Beach and to the west it adjoins a residential area (refer **Figure 1.**)



**Figure 1: Location Map**

On 17 December 2005, the Minister for Planning granted approval for a 159 lot subdivision, including clearing of vegetation, filling, construction of roads and associated infrastructure, creation of conservation zones and open space areas, and construction of a bridge. The approved conservation zones include areas of archaeological and/ or natural significance. In general these areas are located around the riparian zone, the northern escarpment and dunes.

## Previous Modifications

- 1) MOD 49-5-2007 approved 2 August 2007:
  - Amend condition B9 – Security Bond Protection of Works to be paid as part of a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948*.
- 2) MOD 82-10-2007 approved on 10 December 2007:
  - Modify wording of conditions E1(b) and (f), E2, E5, E6, E8 and E9.
- 3) DA 77-3-2002 Modification 3 approved on 12 August 2009:
  - Change side setback for four corner allotments from 3m to 2m.
- 4) DA 77-3-2002 Modification 4 – Withdrawn
  - Modification 4 was submitted on 6 November 2009 and withdrawn on 13 April 2010.
- 5) DA 07-3-2002 Modification 5 approved on 20 August 2010:
  - To increase the number of lots by 15;
  - Realign John Penn Drive to allow for services within the road reserve;
  - change lot number to run sequentially; and
  - Increase lot depth of lots 45-55, 86-90 and 130-135 and integrate the APZ into these lots.
- 6) DA 07-3-2002 Modification 6 approved on 11 January 2012:
  - Subdivide 2 lots approved for integrated housing into 24 housing lots.

## 2. PROPOSED MODIFICATION

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It is proposed to amend typographical errors in Determination DA 77-03-2002 MOD 6. The amendments are as follows:

- amend Condition A2 Development in Accordance with Plans to update the previously submitted and approved plans with the correct Lot number of the Cultural Centre being Lot 202.
- amend condition E9 Building Setbacks, which requires a minimum 3m setback for corner lots, rather than the 2m setback that was approved in DA 77-03-2002 MOD 5.

## 3. STATUTORY CONTEXT

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### 3.1 Modification of the Minister's Approval

The modification application was lodged with the Director-General pursuant to the transitional provisions of section 8J(8) of the EP & A Regulation. The application is to be assessed under Section 75W of the Act, which provides for the modification of a Minister's approval including *'revoking or varying a condition of the approval or imposing an additional condition of the approval'*.

The Minister's approval for a modification is not required if the project, as modified, would be consistent with the existing approval under this Part. In this instance, approval is required as it relates to changing an approved condition.

### 3.2 Delegated Authority

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to the Director- Metropolitan and Regional Projects South, in cases where there are less than 10 public submissions, where Council does not object and where no political donations have been made.

No public submissions were received, Council has not objected and no political donations have been made, therefore the Director, Metropolitan and Regional Projects South may determine the modification request under delegated authority.

## 4. CONSULTATION AND SUBMISSIONS

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In accordance with Section 75X (2) (f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The modification request was made available on the Department's website.

## 5. ASSESSMENT

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The modification seeks to amend typographical errors and plans to be consistent with the approved development. The key issues that relate to the modification are amending Conditions A2 and E9 as discussed below.

### ***Amending Condition A2 and plans with correct lot numbering of the Cultural Centre***

The previous modification (MOD 6) subdivided 2 lots approved for integrated housing into regular housing lots. This resulted in an increase in 22 lots from the previously approved development. The lot numbers changed in accordance with the increase and the Cultural Centre changed to lot 202 (from 180).

The stamped plans show the Cultural Centre being Lot 180. This modification seeks to amend the stamped plans to be consistent with the Instrument of Approval. The Department supports amending the plans to be consistent with the DA 77-33-2002 MOD 6 Modifying Instrument.

**Amending the typographical error on Condition E9**

Modification 5 sought to reduce the side setback for 12 corner allotments from 3m to 2m as purchasers had advised that the 3m setback would result in dwellings being restricted in design and configuration.

The Department supported the proposal as it would retain adequate width for landscaping and it satisfied the objectives of the DCP control (prior to 30 August 2010). This was approved on 20 August 2010.

The Department considers that it is necessary to amend the error in Condition E9 to be consistent with previous approvals.

**6. CONCLUSION AND RECOMMENDATIONS**

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The Department has assessed the application and the proposed modification is considered to be in accordance with previous approvals and will not result in any significant changes to the development as approved.

The proposed modification is consistent with the terms of DA 77-03-2002 and does not change the original assessment of the site's suitability for the approved development. Amending the typographical error and plans are necessary to be consistent with the previous approvals.

It is therefore recommended that the proposed modification be approved.

It is **RECOMMENDED** that the Director – Metropolitan and Regional Projects South, as delegate for the Minister for Planning and Infrastructure

- **approve** the modification request, subject to conditions; and
- **sign** the attached modifying instrument.
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**Endorsed by:**

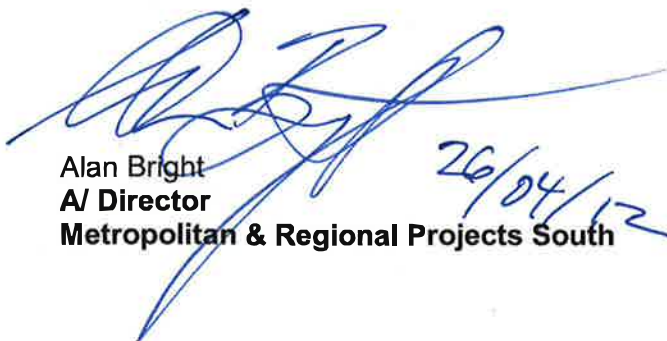


Jodie Leeds  
**Planning Officer**  
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Mark Schofield  
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**Approved by:**



Alan Bright  
**A/ Director**  
**Metropolitan & Regional Projects South**

## APPENDIX A    MODIFICATION REQUEST

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See the Department's website at [www.majorprojects.planning.nsw.gov.au](http://www.majorprojects.planning.nsw.gov.au)

## **APPENDIX B SUBMISSIONS AND RESPONSE TO SUBMISSIONS**

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## **APPENDIX C    RECOMMENDED MODIFYING INSTRUMENT**

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