

1 February 2013



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Director General
Department of Planning
33 Bridge Street
Sydney NSW 2000

Attention: Mark Schofield

Dear Mark,

**RE: BARLINGS BEACH, GEORGE BASS DRIVE, TOMAKIN
SECTION 75W APPLICATION - MODIFICATION NO 8 - DEVELOPMENT CONSENT 77-03-2002**

1.0 INTRODUCTION

This application is submitted to the Director General, Department of Planning ('the Department') under the provisions of section 75W of the Environmental Planning and Assessment Act, 1979 ('the Act') to modify development consent No. 77-03-2002 relating to Barlings Beach, at George Bass Drive, Tomakin ('the site').

The application seeks approval for a modification to the approved development consent (Modification 7) pursuant to the transitional provisions of section 8J(8) of the EP&A Regulation. The applicant is President Property Group (PPG) as owner of Barlings Beach Community Pty Ltd (BBC), the owner of the site.

This Environmental Impact Assessment describes the consent proposed to be modified, the scope of the modification, the basis of the modification and relevant statutory considerations. The following documents are included as Annexures to this report:

- Annexure 1 - A Survey Plan of Lot 81 DP 1158006;
- Annexure 2 - Copy of Cultural Facilities Deed;
- Annexure 3 - Copy of letter from DECC dated 7 April 2011;
- Annexure 4 - Preliminary drawings for Mogo Community Centre prepared by Walker Corporation dated 2 August 2012; and
- Annexure 5 - Copy of letter from Acting CEO Mogo LALC dated 11 January 2013.

2.0 SITE DESCRIPTION

2.1 Location

The Barlings Beach site is located to the east and south of Tomakin. It comprises 33.5 ha defined by Red Hill Parade to the west, George Bass Drive to the north, the Barlings Beach Caravan Park to the east and the foreshore dunes and Aboriginal Place to the south. The location of the site is shown at Figure 1.

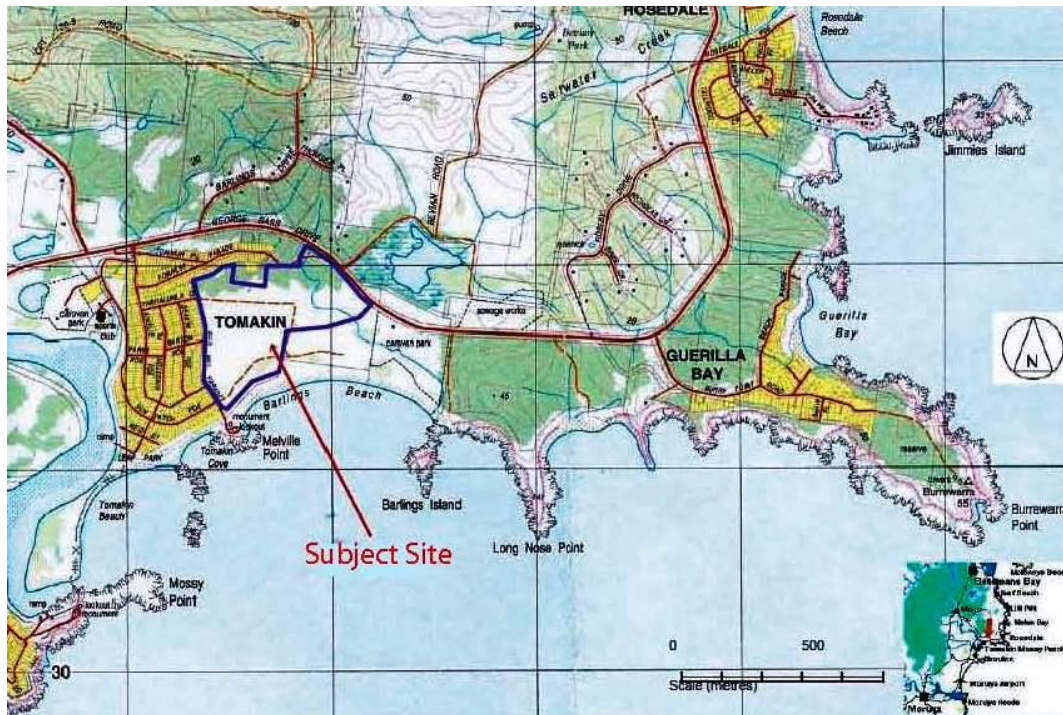


Figure 1 Location Plan



Figure 2 Aerial View

2.2 Legal Description

The site is legally described as Lot 81 in DP 1158006. An extract of the DP is shown at Figure 3a a copy of which is included as **Annexure 1**.

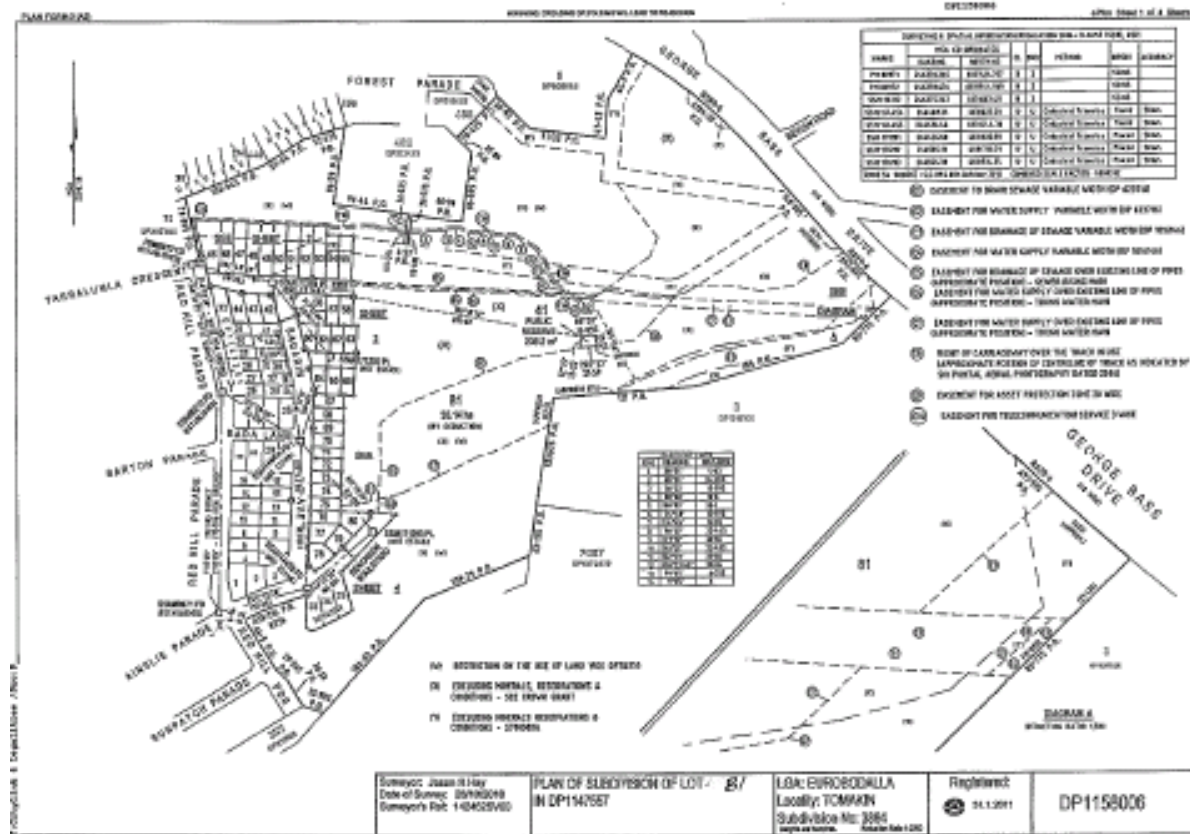


Figure 3 – Survey Plan

3.0 BACKGROUND

3.1 DA No. 77-03-2002

On 17 December 2005, the Minister of Planning granted consent, subject to conditions, to DA 77-03-2002 and to the following development:

- Torrens title subdivision comprising 159 residential lots, 2 integrated housing allotments and 1 allotment to accommodate and Aboriginal Cultural and retail facility;
- clearing of vegetation;
- filling and earthworks;
- provision and construction of roads and associated infrastructure, conservation zones and open space; and
- construction of a bridge over the on-site creek in order to link George Bass Drive with the proposed development site.

The consent was granted pursuant to Section 80(1)(a) of the Act and a declaration dated 5 February 2002 was made under 76A(7) of the Act.



Modifications undertaken to DA 77-03-2002 since December 2005 and approved are the following:

- G:\PPG\President Property Group\Barlings Beach\Krystyna\Eurobodalla\Mod 8 - Mogo\SEE\EIA - 010213.doc

- Modification 6 - Development Application Modification Development application to modify the consent 77-03-2002 was lodged on May 2011 2 approved integrated housing lots with 24 low density housing lots. Consent was granted to the modification DA 802/2007 (Mod 5) on **11 January 2012**.
- Modification 7 – Correction of minor errors in Condition E9 in Schedule 2 was lodged 8 March 2012. Consent was granted to the modification DA 802/2007 (Mod 7) on **27 March August 2012**.

4.0 PROPOSED MODIFICATION

4.1 Cultural Facilities Deed

The modification sought has arisen as a result of discussions with the Mogo Local Aboriginal Land Council ('Mogo LALC') in relation to the terms of the Cultural Facilities Deed ('the Deed'). Under the terms of the Deed executed in July 2005, BBC is required, among other matters, to transfer Lot 202 (formerly Lot 162) to the Mogo LALC for the purposes of a shop, cultural centre and associated car parking, obtain approval, to construct the facilities and to provide funding up to an amount not exceeding \$250,000.00, indexed to the CPI (See **Figure 5** below). The Cultural Facilities Deed is included as **Annexure 2**.

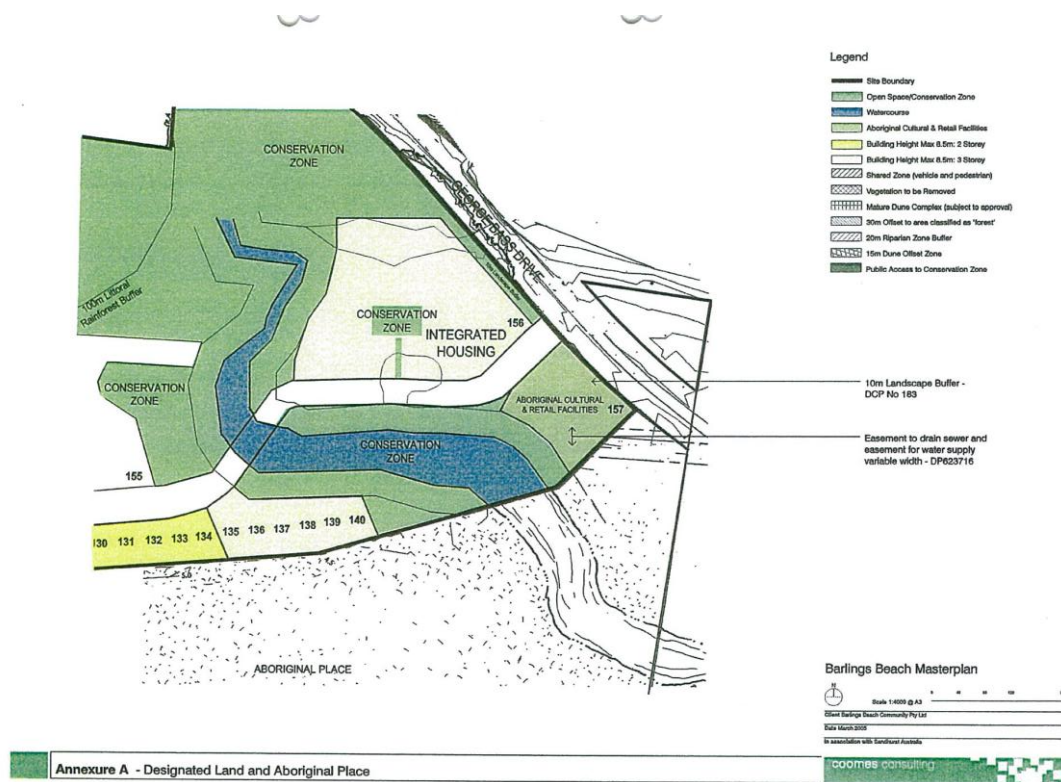


Figure 5 – Designated Land in Cultural facilities Deed – Lot 162 (no Lot 202)

4.2 Relevant Conditions

The terms of the Deed are relevant to Condition C15 – Archaeological Salvage, Condition E3 – Dedication to Mogo Local Aboriginal Land Council and Condition F1 – Lot 162 and Aboriginal Cultural/Retail Facility.

Condition C15 - Archaeological Salvage states:

'Prior to commencement of any works the applicant shall undertake the archaeological salvage excavation program the subject of Condition No. C14 as approved by the Department of Environment and Conservation and in accordance with any terms of that approval provided that the terms of approval shall conform with the document entitled "Archaeological Salvage Excavation Program within Barlings Beach" comprised in Annexure B to the Barlings Beach: Cultural Facilities Deed dated July 2005 between Mogo Local Aboriginal Land Council, the Department of Environment and Conservation, Eurobodalla Shire Council and Barlings Beach Community Pty Ltd and such work may be staged with the consent of the Department of Environment and Conservation.'

Condition E3 – Dedication to Mogo Local Aboriginal land Council states:

Prior to issue of a Subdivision Certificate that creates Lot 162, documentary evidence shall be forwarded to Council confirming that the Mogo Local Aboriginal Land Council has accepted Lot 162.

Condition F1 – Lot 162 and Aboriginal Cultural/Retail Facility states:

'The applicant shall transfer Lot 162 within the subdivision to the Mogo Local Aboriginal Land Council no later than three (3) years after the first development consent has been issued for construction of a dwelling within the subdivision.

The unencumbered freehold title of Lot 162 is to be transferred to the Mogo Local Aboriginal Land Council at no cost to the Mogo Local Aboriginal Land Council (i.e. the cost of transfer is to be met by the applicant).

Prior to the transfer of Lot 162 to the Mogo Local Aboriginal Land Council for the purchase price of \$1.00, an Aboriginal cultural/retail facility shall be approved by the relevant consent authority and constructed on that lot. Any development application to facilitate the provision of the Aboriginal cultural/retail facility must propose and address the following:

- (a) a built structure to be used for the purposes of a shop and Aboriginal Cultural facility which has a maximum 60m² floor area and a maximum building height of 8.5 metres (with maximum two storeys) above natural ground level;*
- (b) paved car parking associated with the shop and Aboriginal Cultural facility as required necessary by Council; and*
- (c) the total cost of designing the Aboriginal cultural/retail facility, obtaining all necessary approvals, associated construction costs and costs associated with satisfying any conditions imposed on any development consent granted to develop Lot 162 for its intended purposes shall not exceed \$250 000.00 (as adjusted for CPI from the date this consent commences).*

Note: Subsequent management, use and 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 and not unnecessarily delay the provision of the Aboriginal cultural/retail facility'.

4.3 Community Centre at Mogo

The Mogo LALC has requested that the obligation for BBC to provide a cultural facility on Lot 202 (formerly 162) be amended only in so far as the requirement be transferred to the existing Mogo LALC Community Centre located in Mogo.

The Community Centre in Mogo is centrally located in a more accessible location and adjoins the local child care centre. The Mogo LALC proposes that it would be of greater benefit to the Mogo community to upgrade the existing facility which is well patronised by the local community and visitors and to incorporate the exhibition and storage of the found aboriginal objects at the Mogo community centre,

rather than construct a new facility on Lot 202 which is somewhat removed from the Mogo community and visitors to Mogo. In addition, the burden of managing and operating two competing premises within a relatively small geographic catchment is considered to be unsustainable.

The Archaeological Salvage works have been completed by Navin Officer as required by Condition 14 and the analysis and cataloguing of the found objects is nearing completion. It is estimated that the analysis and reporting will be completed in the first half of 2013. The objects are presently located in a secure shipping container located at Navin Officer's offices at Number 4, Kingston Warehouse, 71 Leichhardt Street, Kingston ACT.

A letter was sent to the Department of Environment, Climate Change and Water (DECC) by the CEO of the Mogo LALC seeking a variation to Permit 2603 concerning the Care and Control of Aboriginal objects. DECC advised the CEO by letter dated 7 April 2011 that there was no mandatory requirement to store the objects at Lot 202 (formerly Lot 162) and that it is up to the Mogo LALC to determine which of the two locations are to be used for permanent storage. The letter from DECC dated 7 April 2011 is included as **Annexure 3**.

Subsequently, further discussions have been held with Mogo elders and Eurobodalla Council and a preliminary drawings prepared for the upgrading of the existing community centre at Mogo. The drawings are included as **Annexure 4**.

4.4 Modification Sought

It is therefore proposed to modify Conditions E3 and F1. The proposed modifications are shown as bold strike out and bold underline as follows:

F1 - Lot ~~162~~ 202 and Aboriginal Cultural/Retail Facility

*The applicant shall transfer **Lot ~~162~~ 202** within the subdivision to the Mogo Local Aboriginal Land Council no later than three (3) years after the first development consent has been issued for construction of a dwelling within the subdivision.*

*The unencumbered freehold title of **Lot ~~162~~ 202** is to be transferred to the Mogo Local Aboriginal Land Council at no cost to the Mogo Local Aboriginal Land Council (i.e. the cost of transfer is to be met by the applicant).*

*Prior to the transfer of Lot ~~162~~ 202 to the Mogo Local Aboriginal Land Council for the purchase price of \$1.00, an Aboriginal cultural/retail facility shall be approved by the relevant consent authority and constructed at **the Mogo Community Centre, 32 Sydney Street, Mogo.** on that lot. Any development application to facilitate the provision of the Aboriginal cultural/retail facility must propose and address the following:*

- (a) ~~a built structure to be used for the purposes of a shop and Aboriginal Cultural facility which has a maximum 60m² floor area and a maximum building height of 8.5 metres (with maximum two storeys) above natural ground level;~~*
- (b) ~~paved car parking associated with the shop and Aboriginal Cultural facility as required necessary by Council; and~~*
- (c) ~~the total cost of designing the Aboriginal cultural/retail facility, obtaining all necessary approvals, associated construction costs and costs associated with satisfying any conditions imposed on any development consent granted to develop Lot 162 for its intended purposes shall not exceed \$250 000.00 (as adjusted for CPI from the date this consent commences).~~*

Note: Subsequent management, use and 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 and not unnecessarily delay the provision of the Aboriginal cultural/retail facility.'

Annexure 5 includes a letter from the Acting CEO of Mogo LALAC dated 11 January 2013 supporting the proposed modification to Condition F1.

It is also proposed to make consequential amendments Condition E3 to correctly describe the relevant Lot, the numbering which has changed as a consequence of previous modifications to lot numbers within the approved plan of subdivision as follows:

E3 – Dedication to Mogo Local Aboriginal Land Council states:

Prior to issue of a Subdivision Certificate that creates **Lot 462–202**, documentary evidence shall be forwarded to Council confirming that the Mogo Local Aboriginal Land Council has accepted **Lot 462–202**.

5.0 STATUTORY FRAMEWORK

5.1 Modification of Minister's approval

The proposed modification is sought under the provision of Section 75W of the Act which states:

'(1) In this section:

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

modification of approval means changing the terms of a Minister's approval, including:

(a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and

(b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.

(2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.

(3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

(4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

(5)

(6)

(7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.'

The proposed amendment is consistent with the provisions of 75W (1) in that the proposed amendment is limited to varying 2 conditions attached to the Minister's consent. The modifications are considered to be minor and substantially consistent with the existing approval and therefore not requiring the Minister's approval. It is therefore also considered that the Director General is unlikely to notify of environmental assessment requirements in addition to those submitted as part of this application.

6.0 ENVIRONMENTAL ASSESSMENT

6.1 Compliance with relevant Environmental Planning Instruments

The following is our assessment of the environmental effects of the proposed modifications as described in the preceding sections of this report.

This environmental assessment of the proposed modification does not vary the assessment contained in the Statement of Environmental Effects and Supplementary Report dated March 2005 prepared by Coomes Consulting that accompanied the development application DA 77-03-2002 for the Barlings Beach Master Plan and should be read in conjunction with that report.

Therefore it is considered that the proposed modification can be described as being of minor environmental impact and will result in a development that is substantially the same as the development for which consent was originally granted.

6.1.1 National Parks and Wildlife Act 1974 and Amendment Act 2001

The intent of the provisions of the National Parks and Wildlife Act 1974 and Amending Act 2001 is to conserve the State's natural and cultural heritage; to foster public appreciation, understanding and enjoyment of the State's natural and cultural heritage and to manage lands reserved for this purpose. The National Parks and Wildlife Act is the primary legislation to manage and protect the State's aboriginal cultural heritage. The site of the Barlings Beach subdivision is a significant repository of aboriginal archaeology including objects and burial sites, however, Lot 202 is zoned R2 Residential and does not form part of the Aboriginal Conservation Areas which are identified as 'Zone 3 – Areas to be preserved' in Figure 6 below.

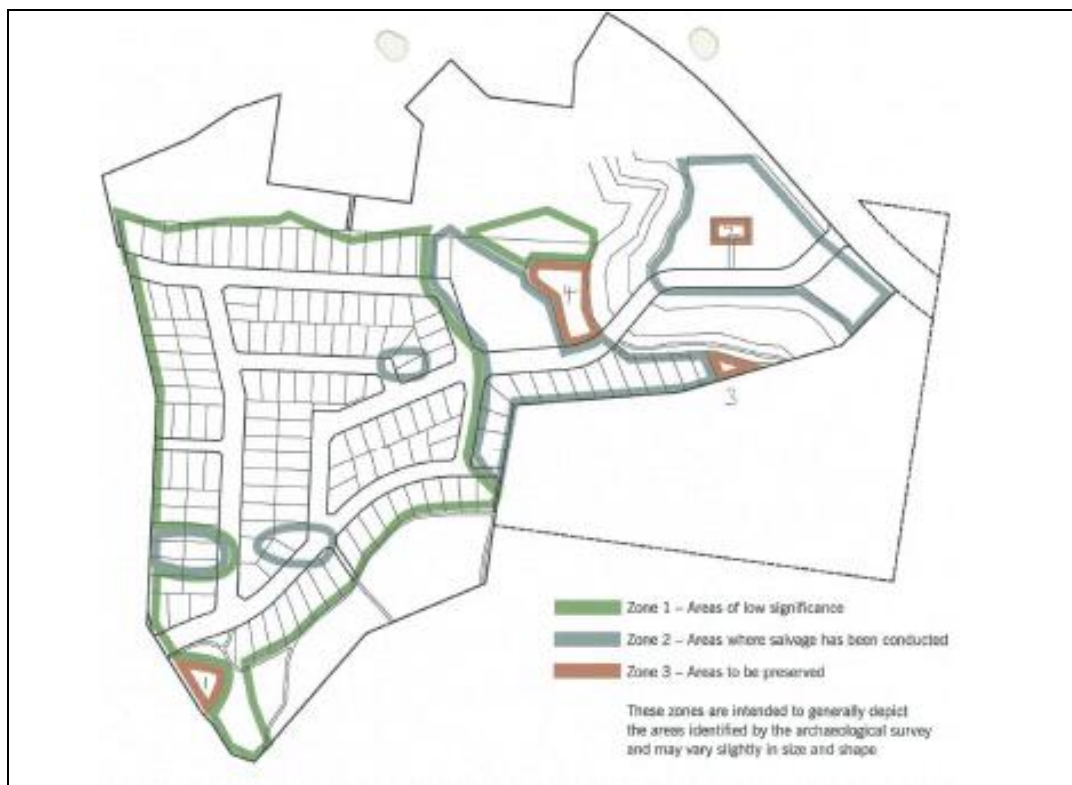


Figure 6 – Management of Significant Aboriginal Conservation Areas

The proposed modification will not materially affect the significance or management of the site in terms of aboriginal cultural heritage. In addition, the proposed transfer of the Cultural Facility to Mogo will result in no disturbance to Lot 202 which will be transferred to the ownership of Mogo LALC as required by Condition E3. See Letter from DECC dated 7 April 2011 included as **Annexure 3** and letter from the Acting CEO of the Mogo LALC dated 11 January 2013 at **Annexure 5**.

In addition, the proposed modification will have no adverse impact on the identified Aboriginal Conservation Areas. The Cultural Facilities Deed of Agreement makes provision for the Eurobodalla Council to be responsible for the maintenance and upkeep of public open space that has been created in the Development and which it will own of at the end of the development period.

6.1.2 Eurobodalla Local Environmental Plan 2012

Eurobodalla Local Environmental Plan 2012 (ELEP 2012) is the principal local planning instrument affecting the site. Lot 202 is zoned R2 – Low Density Residential and the proposed modification will have no material impact on the lot.

The aims of the objectives of ELEP are as follows:

- (a) to preserve the urban growth boundaries of Eurobodalla as identified in the Eurobodalla Settlement Strategy,*
- (b) to ensure development embraces the principles of ecologically sustainable development and quality urban design, and encourages walking, cycling and public transport use,*
- (c) to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, which respond to lifestyle choices, emerging markets and changes in technology,*
- (d) to identify and protect the established residential neighbourhoods and ensure a sufficient supply of suitable land to meet the future residential needs of Eurobodalla,*
- (e) to restrict development of land that is subject to flooding, coastline hazard, bush fires and land slip,*
- (f) to ensure that resource lands, including agriculture, mineral resources and extractive materials are not rendered sterile from incompatible land use,*
- (g) to provide measures to protect and manage the biodiversity and environmental values of the land and waterways,*
- (h) to ensure that development takes into account the environmental constraints of the land and minimises any off site and on site impacts on biodiversity, water resources and natural landforms,*
- (i) to identify and protect the cultural and architectural heritage of Eurobodalla, including Aboriginal relics and places, and assist in its promotion as a tourism asset.*

The proposed modification is not inconsistent with any of the aims of ELEP 2012 and will support in particular the stated aims contained in clauses (c) and (i) in that the proposed upgrading of the local Mogo community centre will strengthen the economic base of Mogo and is consistent with the protection of the aboriginal objects consistent with the desires of the Mogo LALC.

6.1.3 Residential Zones Development Control Plan (Residential Zones DCP)

Eurobodalla Council adopted the Residential Zones DCP on October 2011 to support the relevant provisions in ELEP 2012. The Residential Zones DCP repealed all other DCPs in the Shire to the extent that the DCPs applied to the land. There are no controls relevant to the proposed modification within the residential Zones DCP.

7.0 CONCLUSION

This development application is submitted to modify the consent granted by the Minister to DA 77-03-2002 (Mod 7) in accordance with Section 75W of the EP&A Act. It is submitted that the development as proposed to be modified will be substantially the same as the approved development.

The proposed modification arises as a result of the Mogo LALC's request to transfer the obligation BBC has to develop a Cultural Facility on Lot 202 (previously Lot 162) and to instead upgrade the existing Mogo Community Centre in Mogo. The modification entails the consequential amendment of conditions of consent E3 and F1 attached to DA 77-03-2002.

The proposed amendment will not result in any adverse environmental impact on the site, but rather will result in no disturbance to Lot 202, the ownership of which will still be transferred to the Mogo LALC.

We therefore request that the Director General approve this application and modify Development Consent DA 77-03-2002 by amending Conditions E3 and F1 as requested.

We trust that this statement provides sufficient information to enable a prompt assessment of the proposed modification. Should you have any questions about this matter do not hesitate to contact me on 8273 9630 or 0423 814 091.

Yours sincerely



Krystyna Luczak
Consultant Planner
President Property Group