



Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 82-10-2007 Modifying DA 77-3-2002

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 82-10-2007 modifying DA 77-3-2002 under section 96(1A) of the Act. The application was lodged by Lee Dunn for Barlings Beach Community Pty Ltd on 28 September 2007.

The application seeks to modify Development Application DA 77-3-2002 which was approved by the Minister on 17 December 2005.

The site is located at Lot 2 DP1016146, George Bass Drive, Barlings Beach, Tomakin (**Tag B**).

Under the instrument of delegation dated 5 April 2006 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by the Executive Director, Major Project Assessments.

It is recommended that the modification application be approved and the Determination of Modification at **Tag A** be signed.

1.1 *Relevant approvals / modifications:*

DA 77-3-2002 was approved on 17 December 2005 for a residential subdivision comprising 162 allotments. 159 of these allotments are conventional allotments, 2 allotments are for integrated housing and 1 allotment to accommodate an Aboriginal Cultural and Retail facility. Also included are the provision and construction of roads and associated infrastructure, conservation zones and open space, clearing of vegetation, filling and construction of a bridge over the on-site creek to link George Bass Drive with the proposed development site.

MOD 49-5-2007 sought the deletion of condition B9 of the determination of DA 77-3-2002 under Section 96(1A) of the Act. Condition B9 required the lodgement of a security bond for on-going maintenance of works carried out in the riparian zone. The condition was not deleted but amended to include a provision that the requirement for a bond was of no effect should a bond be paid as a requirement of the Part 3A Permit under the Rivers and Foreshores Improvement Act, 1948. The modification was approved under delegation of the Minister on 2 August 2007.

2 THE PROPOSED MODIFICATION

The applicant is seeking to modify the approved development as follows:

- Condition E1 (b) – Insert the words “*to be created*” after the word ‘instrument’;
- Condition E1 (f) – Insert the words “*as they relate to a stage of the development the subject of a Subdivision Certificate*” after ‘complied with’;

- Condition E2 – Insert the words “*Council must be satisfied that the*” after ‘Subdivision Certificate, the’ and replace ‘shall’ with “*will*”;
- Condition E5 – Insert the words “*Council must be satisfied with the*” after ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”;
- Condition E6 – Replace the second paragraph of the condition with the following:-
“The applicant must advise prospective purchasers/owners of the classification made by the geotechnical engineer for their particular lot promptly after any fill on the lot has been placed and the classification is available for that lot”
- Condition E8 – Insert the words “Council must be satisfied that the” after the words ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”;
- Condition E9 - Insert the words “Council must be satisfied that the” after the words ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”; and,
- Condition E9 – Replace the following setbacks table included as part of this condition with a new setback table shown in italics.

Existing:

Proposed Lot No.	Building Setback
1, 3, 16, 19, 20, 23, 34, 37, 57, 68, 71, 72, 83, 84, 109, 145, 150, 152 & 159.	6 metre front setback 3 metre side setback (from street) 1 metre side setback (other boundaries) 1 metre rear setback
2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 144, 146, 147, 148, 149, 151, 153, 154, 155, 156, 157 & 158.	6 metre front setback 1 metre side setback 1 metre rear setback.
110, 111, 112, 113, 114, 115, 116, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 140, 141, 142 & 143.	6 metre front setback 1 metre side setback 6 metre rear setback
117, 118 & 128.	6 metre front setback 3 metre side setback (from walkway or access road) 1 metre side setback 6 metre rear setback
137, 138 & 139.	Front setbacks as indicated on the Subdivision Layout Plan (Ref No. 140374G15 Revision 3) 1 metre side setback 6 metre rear setback
160 & 161	6 metre front setback (from road) NB: other setbacks to be determined by relevant consent authority if and when development application is lodged for construction of the integrated housing.
162	6 metre front setback 10 metre side setback (from George Bass Drive) 1 metre side setback

	6 metre rear setback
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Replace with:

<i>Proposed Lot No.</i>	<i>Building Setbacks</i>
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37	<i>5.5 metre front setbacks (Up to 50% of the front façade of the dwelling – excluding garages or carports, may be setback 4.5m from the front boundary)</i> <i>7.5 metre front upper storey setbacks</i> <i>1 metre side setbacks</i> <i>3 metre to dwelling and 1 metre to ancillary building rear setbacks</i> <i>3 metre corner side setbacks (lots 1, 3, 16, 19, 20, 23, 34, 37)</i> <i>Foreshore setback N/A</i> <i>Reserve setback N/A</i>
38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159.	<i>5.5 metre front setbacks (up to 50% of the front façade of the dwelling – excluding garages or carports, may be setback 4.5m from the front boundary)</i> <i>7.5 metre front upper storey setbacks</i> <i>1 metre side setbacks</i> <i>3 metre to dwelling and 1 metre to ancillary building rear setbacks</i> <i>3 metre corner side setbacks (lots 57, 68, 71, 72, 83, 84, 109, 145, 150, 152, 159)</i> <i>Foreshore setback N/A</i> <i>Reserve setback N/A</i> <i>5.5 metre front setbacks (Up to 50% of the front façade of the dwelling, excluding garages or carports, may be setback 4.5m from the front boundary)</i> <i>7.5 metre front upper storey setbacks</i> <i>1 metre side setbacks</i> <i>3 metre to dwelling and 1 metre to ancillary building rear setbacks</i> <i>Corner side setbacks N/A</i> <i>Foreshore setbacks N/A</i>
110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143	<i>5.5 metre front setbacks: Lots 110-136. Up to 50% of the front façade of the dwelling, excluding garages or carports, may be setback 4.5 metres from the front boundary</i> <i>Front setback as indicated on Subdivision Layout Plan: Lots 137-139</i> <i>Front setback as indicated on Subdivision Layout Plan: Lots 140-143</i> <i>7.5 metre front upper storey setbacks</i> <i>1 metre side setbacks</i> <i>6 or 8 metre rear setbacks: See building envelopes</i> <i>6 metre rear setbacks: Lots 110, 113, 114, 117-121, 123, 124, 126, 128-143</i> <i>8 metre rear setbacks: Lots 111, 112, 115, 116, 122, 125, 127</i> <i>12 metre rear upper storey setbacks</i>

Proposed Lot No.	Building Setbacks
	3 metre corner side setbacks: Lots 117, 118, 128 (from walkway or access road) Foreshore: Direct access to foreshore from lots 110-127 is not permitted Reserve: Direct access to the aboriginal place from lots 127-143 is not permitted
160 and 161	9 metre (minimum) front setbacks to the lots in this precinct Side setbacks: Minimum setback of 4.5m from external allotment boundaries of Lots 160 and 161. Other setbacks are to be determined by the relevant consent authority when the applicant is preparing a development application for lodging Rear setbacks: Minimum 4.5m setback applies to the rear boundary of Lots 160 and 161 Reserve setback N/A Foreshore setback N/A
162	6 metre front setback 10 metre side setback (from George Bass Drive) 1 metre side setback 6 metre rear setback

The new proposed setbacks outlined here originate from the 'Barlings Beachside Development Control Plan' (DCP) adopted by Council on 25 September 2007. The DCP is attached to this report at **Tag C**. The setbacks highlighted in bold in the modified table above indicate the setbacks that are either new or are proposed to be modified.

3 STATUTORY FRAMEWORK

3.1 Statement of permissibility

The subject site is zoned Urban Expansion Zone No. 10 under the provisions of the Eurobodalla Rural Local Environmental Plan (1987). The land use table identifies any purposes other than agriculture, which is permitted without development consent (and which includes animal boarding, breeding or training establishments, building structures ancillary to agriculture, feed lot establishments, activities involving land clearing, pig keeping establishments and poultry farming establishments) as permissible development with consent. The land use table does not identify any component of the proposed development as prohibited development.

3.2 Instrument of consent and other relevant planning instruments

Proposed development on this then Council owned site was declared State Significant due to considerable concerns expressed by government agencies and the community. Contentious issues included Aboriginal cultural heritage, traffic, development adjacent to the fore dunes, vegetation clearing, bushfire protection, visual impact and coastal impacts. On 5 February 2002, Michael Egan, MLC, the Acting Minister for Planning (at the time) declared all development on the subject site for the purposes of residential and tourist development, to be State Significant development pursuant to Section 76A (7). By virtue of the declaration and Section 76A (9) the Minister for Planning was the consent authority for the proposed development.

The development was integrated development requiring general terms of approval from the former Department of Environment and Conservation (now Department of Environment and Climate Change), the former Department of Land and Water Conservation (now Department of Water and Energy) and Eurobodalla Shire Council under the Roads Act, 1993.

The proposed modification of conditions of consent is not considered to have any impact on relevant matters of concern to the Department of Environment and Climate Change, the Department of Water and Energy nor is it relevant under the Roads Act, 1993. Therefore, notification was not undertaken to the integrated approval bodies under the terms of the draft Urban Assessments Notification Policy, February 2004.

Eurobodalla Shire Council has adopted the DCP and has written to the Department by letter dated 28 September 2007 advising that they support the modification of Condition E9 to remove any conflict with the DCP. Council were also given the opportunity to comment on the proposed modifications (see Section 7 in this regard).

3.3 Legislative context and Statutory provisions

i) State Environmental Planning Policy No. 11 – Traffic Generating Development

The RTA was not consulted during assessment of this application as there will be no impact on roads or traffic under this proposal modification.

ii) State Environmental Planning Policy No. 26 – Littoral Rainforest

SEPP 26 mapped areas are within 100 metres of the northern portion of the site however there will be no impact on SEPP 26 mapped areas under this proposed modification.

iii) State Environmental Planning Policy No. 44 – Koala Habitat

The subject land area is more than 1ha and as such Schedule 1 of SEPP 44 applies to the land. The original assessment process concluded that there is no core koala habitat on the subject site.

iv) State Environmental Planning Policy No. 55 – Remediation of Land

The subject site was originally found to contain no contamination and no further action was required. The modification under consideration has no impact in this regard.

v) State Environmental Planning Policy No. 71 – Coastal Protection

The proposal to modify the conditions of consent has no impact on the amenity of the coastal zone. The setbacks proposed to be modified in Condition E9 to the foreshore dunes are either the same or greater than contained in the existing condition. The modifications will have no significant impact in terms of the aims of the policy (i.e. clause 2) or the specified matters for consideration (i.e. clause 8).

vi) Lower South Coast Regional Environmental Plan 1

The proposed modification has no impact on the issue of height of structures on the site raised in the Lower South Coast Regional Environmental Plan 1 and specified in the Determination. No change in the restriction to height is proposed.

vii) Lower South Coast Regional Environmental Plan 2

The natural environment and regional issues are not affected by the proposed modifications.

viii) Rural Fires Act 1997

The Rural Fire Service was not consulted as the proposed modification has no impact in consideration of the Rural Fires Act 1997.

ix) Coastal Design Guidelines for NSW

The changes proposed to the design of the subdivision, in terms of the changes to setbacks in the modified Condition E9 are minor and there is no impact in consideration of the Coastal Design Guidelines for NSW.

x) NSW Coastal Policy 1997

The Coastal Policy 1997 considers hazards, acid sulphate soils and impact on water quality. There is no impact in this regard from the proposed modification of the original application for subdivision.

xi) Eurobodalla Rural Local Environmental Plan 1987

The provisions of the Eurobodalla Rural Local Environmental Plan 1987 have been taken into consideration and no impact is posed from the modification of consent.

4 CONSULTATION / PUBLIC EXHIBITION

Consultation of the proposal was not considered necessary given the minor nature of the modification. Furthermore, Council considered the matter at its meeting on 25 September 2007 when it adopted the Barlings Beach Development Control Plan. Council also advised by letter dated 28 September 2007 that:

"Council will support any application by Barlings Beach Community Pty Ltd under Section 96 of the Environmental Planning and Assessment Act, 1979 for a modification of DA Condition E9 to remove any conflict between these and the Barlings Beach DCP"

The other amendments proposed to Conditions E1, E2, E5, E6 and E8 do not alter the intent of the condition, however Council has been given the opportunity to comment on them in their final draft form. This is discussed in more detail in Section 7 of this report. As previously outlined, the proposed modification of the conditions of consent is not considered to have any impact on relevant matters of concern to the Department of Environment and Climate Change, the Department of Water and Energy nor is it relevant under the Roads Act, 1993. Therefore, notification was not undertaken to the integrated approval bodies under the terms of the draft Urban Assessments Notification Policy, February 2004.

5 ASSESSMENT

5.1 Modifications to Wording of Conditions

Condition E1 - Existing Condition

E1 Subdivision Certificate Application

Prior to the issue of a Subdivision Certificate, the applicant is to provide to the Council or an accredited certifier:

- a. an original survey plan of subdivision prepared by a registered surveyor;
- b. any applicable instrument under Section 88B of the *Conveyancing Act 1919* (as required by these conditions);

- c. relevant development consent;
- d. detailed subdivision engineering plans endorsed with relevant construction certificates;
- e. written confirmation from Eurobodalla Shire Council of its acceptance of all local internal roads, parks and open space areas (including conservation zones);
- f. a report demonstrating all conditions of this consent have been complied with; and
- g. all necessary compliance certificates from the relevant authorities as indication in Condition E2.

In addition to the above, the applicant shall also submit to the Council or an accredited certifier documentary evidence that all matters contained in Section 109J of the Act have been complied with. Furthermore, the applicant shall furnish written evidence from Council that all proposed road/street names have been approved.

Note: *The Environmental Planning and Assessment Act 1979 makes no provision for works required under other legislation such as the Water Supplies Authorities Act 1987 which require certification by an accredited certifier.*

Proposed Modifications:

- Condition E1 (b) – Insert the words “*to be created*” after the word ‘instrument’; and,
- Condition E1 (f) – Insert the words “*as they relate to a stage of the development the subject of a Subdivision Certificate*” after ‘complied with’.

The 2 modifications suggested here seek to further clarify the condition (i.e. E1 (b)) and relate the reporting requirement to staging and timing (i.e. E1 (f)). These do not alter the intent of the condition. These 2 modifications are supported in the manner put forward.

Conditions E2, E5, E8 and E9 – Existing Example Condition E8:

E8 Building Heights

Prior to issue of a Subdivision Certificate the applicant shall create a Restriction as to User over all allotments to be created within the subdivision pursuant to Section 88B of the *Conveyancing Act, 1919*. The Section 88B Instrument shall prohibit the height of any future dwelling or built structure on allotments within the subdivision exceeding 8.5 metres from the finished ground level.

Proposed Modifications:

- Condition E2 – Insert the words “*Council must be satisfied that the*” after ‘Subdivision Certificate, the’ and replace ‘shall’ with “*will*”;
- Condition E5 – Insert the words “*Council must be satisfied with the*” after ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”;
- Condition E8 – Insert the words “*Council must be satisfied that the*” after the words ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”;
- Condition E9 - Insert the words “*Council must be satisfied that the*” after the words ‘Subdivision Certificate the’ and replace ‘shall’ with “*will*”

The four wording modifications proposed by the applicant presented here are identical and propose placing an onus of responsibility onto Council that it will be satisfied the applicant will create the respective easement or restriction. The wording presented will create a level of uncertainty as to the means by which Council "must be satisfied" is unclear. It is proposed to put forward new modified wording in each of the above instances to make the conditions more definitive. The following example utilising Condition E8 is suggested, the proposed new words are shown in italics and the existing words are struck through:

- **E8 Building Heights**

~~Prior to issue of Subdivision Certificate the applicant shall create~~ *The applicant will ensure the creation of* a Restriction as to User over all allotments to be created within the subdivision pursuant to Section 88B of the Conveyancing Act, 1919. The Section 88B Instrument shall prohibit the height of any future dwelling or built structure on allotments within the subdivision exceeding 8.5 metres from the finished ground level.

With regard to Condition E2 – Dedication to Council, a further addition of words to deal with the timing of dedication to Council is required at the end of the condition. For this reason, it is proposed to add the words '*upon registration of the plan of subdivision*' at the end of the condition.

Condition E6 – Existing Condition:

E6 Earthworks and Fill

Prior to issue of a Subdivision Certificate, the applicant shall submit to Council a geotechnical report detailing the classification of soil type generally found within the subject site. A general classification for each lot within the subdivision must be provided and such classifications must be made by a geotechnical engineer in accordance with the requirements of Australian Standard AS2870.

Prior to issue of a Subdivision Certificate, the applicant shall create a Restriction-As-To-User over all allotments to be created within the subdivision pursuant to Section 88B of the *Conveyancing Act, 1919*. The Section 88B instrument shall advise prospective purchasers/owners of the classification made by the geotechnical engineer.

Proposed Modifications:

- Condition E6 – Replace the second paragraph of the condition with the following:-

"The applicant must advise prospective purchasers/owners of the classification made by the geotechnical engineer for their particular lot promptly after any fill on the lot has been placed and the classification is available for that lot"

The existing second paragraph to Condition E6 outlines a course of action that is inappropriate and should be modified. It currently requires the placement of a 'Restriction-As-To-User' over all lots in the subdivision requiring advice relating to the classification of the fill put on each lot. This does not represent a restriction as such, rather an advice or notation. The above modified wording suggested by the applicant to replace the existing second paragraph is also unacceptable as it places a responsibility on the applicant that is outside the scope of the determination and impossible to enforce.

A better outcome would be to have the first part of the condition as a stand alone requirement for the geotechnical classifications to be submitted to Council as part of a technical report. The responsibility would then be on the prospective purchaser to ascertain the various characteristics of the land, such as the classification of the soil type of the fill, as part of the normal procedure for the purchase of property.

5.2 Modifications to Setbacks Contained in Condition E9

The existing condition and the proposed modification are set out in Section 2 of this report. The setbacks addressed in Condition E9 relate to front, side and rear setbacks. The amended setbacks contained in the modification application also contain additional setbacks, such as setback for first floor level. The key setbacks requiring detailed consideration here are:

- Setbacks to the foreshore reserve;
- Setbacks to the Aboriginal Place; and,
- Setbacks to Red Hill Parade.

The first 2 dot points are considered to be the most sensitive areas environmentally and in each of these instances, the setbacks specified in the proposed modification are either the same (i.e. 6 metres) or greater. A varied setback of 6 to 8 metres is included in the DCP to provide some variation in setback and a resulting articulation in built form. The DCP also includes an upper storey 12 metre setback in these locations which was not in the original condition. The proposed additional setbacks are supported and Council's rationale for a resulting variation in setback to the dunes and Aboriginal Place is sensible and should result in a more natural response to the setting rather than uniformity which seems out of place adjacent the dunes.

The setbacks to Red Hill Parade are significant as this street represents the interface with the existing neighbourhood to the west. The setbacks proposed for Red Hill Parade are half a metre less than contained in Condition E9. The DCP and proposed modification also specifies more detailed setback provisions and states that 50% of the façade (excluding garages or carports) may be setback 4.5 metres from the front boundary. This is a front setback, including the 50% provision that is consistently applied throughout the development. This minor variation is considered to be acceptable and adequate space remains between the dwelling and street for landscaping and private open space. The houses adjacent on Red Hill Parade have varied setbacks, with many not being perpendicular to the front boundary, thus presenting a staggered presentation to the street. The variation in setback will allow for variation along the streetscape and is considered to be an appropriate urban design response.

The modified setback table also contains examples where side setbacks are increased and these are considered to be acceptable and will not result in any environmental impact. In the case of Lots 160 and 161, new side and rear setbacks are included. This was anticipated in the original determination, where there was a notation to the effect that other setbacks were to be determined by the relevant consent authority. These proposed additional setbacks are considered to be acceptable and were arrived at through the DCP process.

5.3 Section 96

The application is considered to meet the prerequisites of Section 96(1A) of the Act in that the proposed modifications are considered to be of minimal environmental impact,

and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

5.4 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act (see **Tag D**). It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives.

6 CONSIDERATION

The Minister for Planning is consent authority for modifications to consents he has granted.

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 79C of the Act. The modifications proposed are generally acceptable, subject to some minor suggested wording changes. The modifications proposed to Condition E9, being the inclusion of a modified setback table is considered to be acceptable and the changes have been arrived at through a consultative planning process through the preparation and adoption of a DCP. The development as modified will be substantially the same development and the changes to setbacks proposed to the foreshore dunes and the Aboriginal Place represent an improvement to that originally put forward.

On balance, it is considered that the proposed development as modified is acceptable and should be approved.

7 CONSULTATION WITH COUNCIL – DRAFT CONDITIONS

The Council was consulted regarding the proposed wording modifications due to the role of Council in the implementation of the conditions. Condition E2 deals with dedication and it was considered appropriate that Council be given the opportunity to comment on any wording changes to this and the other conditions.

Council was forwarded the proposed modifications on 29 November 2007 and they responded on the same day and advised they had no objections to the proposed modifications. Council officers suggested, with respect to Condition E5 that a draft 88B instrument accompany the Subdivision Certificate when submitted to Council. This suggestion is considered acceptable and the modification was made.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 29 November 2007. The applicant responded on 3 December 2007 and requested that Condition E9 be modified in the following manner:

The words, “shown on the subdivision Layout Plan (reference No.140374G15 Revision 3) prepared by Coombes Consulting and dated 30 September 2005” be deleted.

The plan referred to in Condition E9 is no longer relevant in terms of setbacks, as it is now proposed to modify these setbacks and hence the building envelopes. Removal of reference to the plan of subdivision as it relates to Condition E9 is appropriate. The suggested modification was made.

9 DELEGATION

Under the instrument of delegation dated 5 April 2006, the Minister has delegated to the Executive Director, Major Project Assessments, his functions under Section 96(1A) of the Act relating to modifying development consents.

It is considered appropriate that the application be determined under delegation by the Executive Director, Major Project Assessments.

10 CONCLUSION

The proposed modifications as recommended at **Tag A** will result in a clear and certain set of conditions of consent. The modifications to Condition E9 will reflect the setbacks contained in the new DCP for the site and will provide for more detail in this regard. The modified setbacks have been arrived at through a planning process and are considered to embody the overall intention of the original approval granted. The modifications will not substantially alter the approved development.

11 RECOMMENDATION

It is recommended that the Minister for Planning pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (**Tag A**), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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