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30 March 2010

Director General
Department of Planning
33 Bridge Street
Sydney NSW 2000

Attention: Lisa Pemberton

Dear Lisa,

**RE: BARLINGS BEACH, GEORGE BASS DRIVE, TOMAKIN
S96 (1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT 77-03-2002 (MOD 3)**

1.0 INTRODUCTION

This application is submitted to the Department of Planning ('the Department') under the provisions of Section 96 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 S96 application seeks approval for modifications to the approved development pursuant to Section 96(1A) of the Act.

The applicant and owner of the site is President Property Group. The Owner's Consent and Political Donations Disclosure Statement accompany the application.

This submission 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 the report:

- Copy of the Notice of Determination for DA 802/2007(Mod 3);
- Drawings Barlings Beach – Revised Subdivision Overlay and Stages 1a - 5 inclusive prepared by George Carone Architect dated 23 March 2010;
- Drawings Barlings Beach – Amendments to Setbacks prepared by George Carone Architect Stage 1a dated 24 March 2010 and Stages 2 to 5 inclusive dated October 2009;
- Services Plan - John Penn Drive Drawing No. 142462G16-01 Rev A prepared by CPG dated March 2010;
- Bushfire Compliance advice prepared by Australian Bushfire Assessment Consultants dated March 2010;
- Coastal Hazard Assessment Update prepared by Coastal Engineering Solutions dated November 2009;
- Barlings Beach Coastal Engineering Advice – Mapping of Year 2050 and Year 2100 Coastal Hazard Lines prepared by gbaCoastal Pty Ltd dated March 2010;
- Letters from Eurobodalla Council dated 25 March 2010 and 30 March 2010;
- Statement prepared by CPG (Coomes Consulting) in relation to Impact on Fill dated 30 October 2009; and
- Statement prepared by CPG (Coomes Consulting) in relation to Impact on Drainage Strategy 30 October 2009;

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.

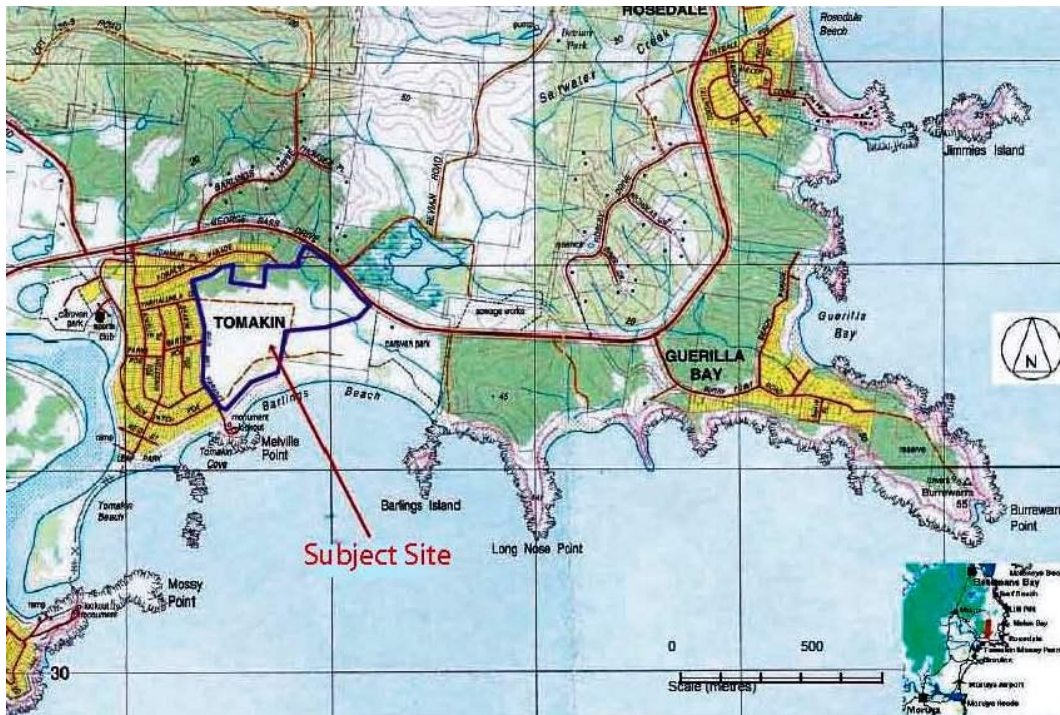
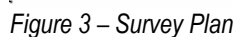


Figure 1 Location Plan



Figure 2 Aerial View

The site is legally described as Lot 2 in DP 1016146. A copy of the DP is shown at Figure 3.



3.1 DA No. 77-03-2002

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

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Figure 4 – Approved Plan of Subdivision

3.2 Modifications to DA 77-03-2002

Development application to modify the consent 77-03-2002 was lodged on 17 May 2007 to amend Condition B9 - Security Bond Protection of Works. Consent was granted to Modification (MOD49-5-2007) on **2 August 2007**.

Development application to modify the consent 77-03-2002 was lodged on 28 September 2007 to amend Conditions E1 (b), E1 (f), E2, E 5, E6, E 8, E9 and modified setback tables E9. Consent was granted to Modification (MOD82-10-2007) on **10 December 2007**.

Development application to modify the consent 77-03-2002 was lodged on 20 April 2009 to increase the number of lots in Stage 1 by 3 i.e. a total increase of residential dwelling lots from 159 to 162 and to reduce the side setback for a number of lots (4) from 3m to 2m and to make consequential amendments to Conditions A1, A2 and E9. Consent was granted to the modification DA 802/2007 (Mod 3) on **12 August 2009**. A copy is included as **Annexure 1**

4.0 PROPOSED MODIFICATION

4.1. Increase in Number of Lots - Stages 1a to 5

The proposed modification relates to the remainder of the residential lots for the approved plan of subdivision excluding Stage 1, i.e. Stages 1a to 5 as described in Figure 5 below. Drawings prepared by George Carone Architect describing the proposed amendments are included as **Annexure 2**.



The proposed increase in the total number of dwelling lots in Stages 1a to 5 is 15. This will result in the total increase of 18 lots over the whole site, including the previously approved modification to Stage 1. The proposed increase in lot numbers will not result in a change to the road layout as approved, and can be readily accommodated within the existing layout. A minor change to the road alignment of John Penn Drive is proposed as part of this application, however, this is due to the location of services and is discussed in Section 4.2.

In addition, the numbering of Lots 25a, 27a, 29a, 31a, 33a and 35a and the remainder of the lot numbering is amended to run sequentially to reflect the project staging for purposes of the Deposited Plan. Drawing Number MA-01 included in **Annexure 2** shows the proposed modification by superimposing the proposed changes over the approved plan of subdivision.

A schedule of new and proposed lot sizes is shown in Table 1 included as **Annexure 3**. A comparison and analysis of the proposed modification to Stages 1a to 5 is described in Table 2 below.

Table 2 – Comparison of Change in lot size

Lot Size m ²	Approved Number Stages 1a -5	Proposed Number Stages 1a-5	Change +/-
Lots 500 to 599	0	63	+63
Lots 600 to 699	77	29	-48
Lots 700 to 799	17	18	+1
Lots 800 to 899	27	6	-21
Lots 900 to 999	2	3	+1
Lots greater 1,000	0	22*	+22
Total	123	138	

* The 22 lots on the northern side of John Penn Drive with proposed integrated APZ within the lots but with building restriction.

The proposed modification will result in the creation of a greater number of lots ranging in site area between 500m² and 599m² as compared with the approved plan, however, the size of most is between 550m² and 599m². This is in response to market demand and to provide a greater range of affordable lot sizes.

The plan of subdivision still provides 75 out of the 138 lots above 600m², with the number of lots ranging in size between 700m² and 799m² increasing from 17 to 18. The 22 lots on the northern side of John Penn Drive as amended exceed 1,000m². These lots are proposed to be modified to integrate the approved APZ within the lots. However, the proportion of the site that can be built on is limited to approximately 65%. The proposed integration of the APZ is discussed in Section 4.4.

4.2. Change to road alignment—John Penn Drive/Red Hill Parade and adjoining lots

As part of the detailed design of John Penn Drive in consultation with Eurobodalla Shire Council for construction certificate approval, it became apparent that the alignment of John Penn Drive as approved would require some modification.

There are 3 main trunk infrastructure items that traverse the site from Red Hill Parade through to George Bass Drive, these being a 200mm and 250mm water main and a 450mm sewer rising main. It is understood that these utility services currently service the townships of Tomakin, Mossey Point and Broulee. In addition, the Telstra service is proposed to be relocated to the rear of the northern lots. The Eurobodalla Shire Council requires these services to remain outside the road corridor so as to avoid future road closures to John Penn Drive when maintenance of these essential services is required.

To realign these services, 45° and 90° bends would be required as part of the design. This would impact on the integrity of the pipes due to their age and the fact that new bends could create weak spots which would result in possible leaks and breakages of the pipe system.

Manual pot holing of each of the services has been undertaken to confirm their exact location. This information has been presented to the Eurobodalla Shire Council's Development Engineer. On this basis it has been agreed that the most effective solution in protecting these major Eurobodalla Shire Council's services is to realign John Penn Drive.

The realignment would enable the services to remain untouched and also enable Council easy access to the pipes if and when future maintenance is required without causing both major traffic interruptions to John Penn Drive and delays to the surrounding town ships serviced by these infrastructure items.

There will be a consequential change in the boundaries of 'new' lots 45, 46 and 47. The detailed drawing describing the location of services realignment is included in **Annexure 4**.

4.3. Corner lot setbacks – Stages 1a to 5

Consistent with the modification approved as part of Stage 1, we request that for a number of corner lots in Stages 1a to 5, the 3m setback requirement for a number of corner lots be modified to 2m. The lots are 'new' lots 56, 60, 64, 78, 105, 115, 120, 139, 142, 146, 151, 155, 161 and 165.

As previously submitted, architects and building designers acting for the purchasers and potential purchasers are finding the 3m setback restrictive resulting in the design and configuration of dwellings being overly constrained within the lot, and limiting the style and size of dwellings.

In addition, a similar variation is requested to reduce the 3m setback requirement from a walkway access or access road to 2m for 'new' lots 85, 124 and 161 for the same reason.

The lots for which the variation to setback is requested are identified in the enclosed annotated plans entitled Revised Subdivision Setbacks – Stage 1a, Stage 2, Stage 3, and Stage 4 prepared by George Carone Architect dated October 2009 included in **Annexure 5**

4.4. Integration of Approved APZ into adjoining lots

A 30m APZ was approved as part of the plan of subdivision adjoining the northern lots and within land designated as a Conservation Area to be dedicated to Council. It is also identified as an APZ easement in the Barlings Beachside DCP. Following discussion with Eurobodalla Council in relation to the future maintenance of the 30m APZ, it was considered that a better outcome would be for the APZ to be integrated within the corresponding adjoining lots and the APZ be maintained by the respective landowners. A copy of a letter from Eurobodalla Council to this effect is included as **Annexure 6**.

As part of pre lodgement discussions with the Department concerning the proposed modifications, the Department requested investigation as to the possibility of reducing the extent of land designated as Conservation Area affected by the APZ, to enable a net gain of land unaffected by the clearing requirements of an APZ. Discussions were held with the Rural Fire Services, and as a result of these discussions, the APZ as it affects the Conservation Area is proposed to be reduced by 10m and the APZ incorporated within the adjoining lots i.e. increasing the lot depth from 45m to 65m and reducing the affect on the Conservation Area by a corresponding 10m.

The proposal was supported by the Rural Fire Services including the transfer of responsibility of asset protection to the individual land owner. A Bushfire Compliance report prepared by Australian Bushfire Assessment Consultants dated March 2010 is included as **Annexure 7**.

4.5. Coastal Hazard Report

A Coastal Hazard Report prepared by Coastal Engineering Solutions dated May 2005 formed part of the original assessment and determination of the development application for the plan of subdivision. In response to a request from Eurobodalla Council, an updated report was prepared Coastal Engineering Solutions dated November 2009 and is included as **Annexure 8**. Eurobodalla Shire Council requested that a number of additional matters be clarified.

These were as follows:

- Profile data to support application of the Bruun rule;
- Consideration of 1% design storm events to calculate shoreline recession and storm bite over a 100 year planning period;
- Consideration of projected increased wave energy outlined in McInnes et al and referenced within the 2009 assessment. The conclusions reached regarding no increased wave energy need to be clarified and justified further. The southerly aspect of Barlings Beach exposes the site to the larger storm events therefore it is difficult to accept that there will not be an increase in wave energy over a 100 year planning period. The brief statement relating to this point has not been supported by any detailed assessments of the Barlings Beach compartment or the wider bay of the Broulee precinct;
- The map presented is from the 2005 assessment. The updated assessment is not represented on the map and the hazard line presented has no reference to scale. The hazard line from the 2005 assessment is not placed in the context of impacts on building design and broader sub-division design. For example, where does the hazard line stand in reference to the zone of stable foundations and building setbacks; and
- The hazard line for a 1% design storm event based on the NSW sea level rise planning bench marks for the planning periods to 2050 and 2100 be calculated and presented in mapping diagrams.

Gba Coastal Pty Ltd was commissioned to address the matters raised by Eurobodalla Council and to prepare refined maps of the 2050 and 2100 coastal hazard lines for the site. The report, *Barlings Beach Coastal Engineering Advice Mapping of YR 2050 and YR 2100 Coastal Hazard Lines* prepared by gba Coastal Pty Ltd dated March 2010 is included as **Annexure 9**.

4.6 Conditions proposed to be modified

The following conditions are proposed to be modified as a result of the proposed amendments to the approved subdivision. The requested deletions are described by bold strike through and modifications in bold underline as follows:

The conditions proposed to be modified include Conditions A1 and A2 to reflect the changes in the description of the total lot numbers and amended plans. In addition, condition E9 needs to be amended to also reflect the changes arising from the changes in lot numbering and setback requirements.

PART A – ADMINISTRATIVE CONDITIONS

A 1 – Development description

Development consent is granted only to carrying out the development described in detail below:

- a. Torrens title subdivision comprising ~~162~~ 177 residential lots, 2 integrated housing allotments and 1 allotment to accommodate and Aboriginal Cultural and retail facility;
- b. clearing vegetation;
- c. filling and earthworks;
- d. provisions and construction of roads and associated infrastructure, conservation zones and open space; and
- e. construction of a bridge over the on-site creek in order to link George Bass Drive with the proposed development site.

A2 – Development in accordance with plans

The development shall be generally in accordance with development application 77-03-2002 submitted by the applicant on 22 March 2002, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

Architectural (or Design) Drawings prepared by Coomes Consulting Group Pty Ltd			
Drawing Reference No.	Revision	Name of Plan	Date
140374G15	3	Subdivision layout Plan	30 September 2005
150374	4	Preliminary Fill and Drainage Plan	14 October 2005
150374G08	2	Preliminary Fill Depths	14 October 2005
140374G14	1	Barlings Beach Site Cross Sections	9 September 2005
140374G16	1	Dune Lot Views	30 September 2005

and as amended by the following drawings:

Architectural (or Design) Drawings prepared by Coomes Consulting Group Pty Ltd			
Drawing Reference No.	Revision	Name of Plan	Date
01	0	Revised Subdivision	March 2009
03	0	Revised Subdivision	February 2009

and as amended by the following drawings:

Architectural Drawings prepared by George Carone Architect and Services plan prepared by CPG			
Drawing Reference No.	Revision	Name of Plan	Date
<u>OV – 02</u>	<u>0</u>	<u>Revised Subdivision Overlay</u>	<u>24 March 2010</u>
<u>S1A – 11a</u>	<u>0</u>	<u>Revised Subdivision – Stage 1a</u>	<u>24 March 2010</u>
<u>S2 – 12</u>	<u>0</u>	<u>Revised Subdivision – Stage 2</u>	<u>24 March 2010</u>
<u>S3 – 13</u>	<u>0</u>	<u>Revised Subdivision – Stage 3</u>	<u>24 March 2010</u>
<u>S4 – 14</u>	<u>0</u>	<u>Revised Subdivision – Stage 4</u>	<u>24 March 2010</u>
<u>S5 – 15</u>	<u>0</u>	<u>Revised Subdivision – Stage 5</u>	<u>24 March 2010</u>
<u>142462G-01</u>	<u>Rev A</u>	<u>Existing Services Plan John Penn Drive</u>	<u>22 March 2010</u>

and as amended by these conditions:

PART E –CONDITIONS

E9 Building Setbacks

The applicant will ensure a Restriction as to user over all allotments is created within the subdivision pursuant to Section 88B of the Conveyancing Act, 1919. The Section 88B instrument shall prohibit construction of any future dwelling or built structure on allotments within the subdivision outside the identified building envelopes on the subdivision layout Plan. The building setbacks indicated on Subdivision Layout Plans and to be applied to the development of lots created within the subdivision are to be measured from the property boundary of each proposed allotment and can be summarised as follows:

Proposed Lot No	Building Setback
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25a , 26, 27, 27a , 28, 29, 29a , 30, 31, 31a , 32 , 33 , 33a , 34 , 35 , 35a , 36 , 37 , 38 , 39 , 40 , 41 , 42 , 43 , 44	5.5 metre front setbacks (up to 50% of the front façade of the dwelling- excluding garages or car ports, may be set back 4.5m from the front boundary) 7.5 metre front upper story setbacks 1 metre side setbacks 3 metre to dwelling and 1 metre to ancillary building rear setbacks 2 metre corner side setbacks (Lots 1, 3, 16, 18, 21, 22, 25, 32, 37-42 , only) <i>where the side boundary has frontage to a road.</i> <i>Where the allotment shares a side boundary with another allotment, the minimum setback on that boundary is 1m</i> Foreshore setback N/A Reserve setback N/A
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, 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, 110, 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, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155 156, 157, 158, 159	5.5 metre front setbacks (up to 50% of the front façade of the dwelling- excluding garages or car ports, may be set back 4.5m from the front boundary) 7.5 metre front upper story setbacks 1 metre side setbacks 3 metre to dwelling and 1 metre to ancillary building rear setbacks 3 2 metre corner side setbacks (lots 57, 56, 68, 139, 71, 142, 72, 146, (83, 60, 84, 64, 109, 78, 145, 120, 150, 155, 152, 151, 159, 115 only) <i>where the side boundary has frontage to a road. Where the allotment shares a side boundary with another allotment, the minimum setback on that boundary is 1m.</i> Foreshore setback N/A Reserve setback N/A 5.5 metre front setbacks (up to 50% of the front façade of the dwelling- excluding garages or car ports, may be set back 4.5m from the front boundary) 7.5 metre front upper story setbacks

	<p>1 metre side setbacks 3 metre to dwelling and 1 metre to ancillary building rear setbacks Corner side setbacks N/A Foreshore setback N/A</p>
<p><u>33,34,35, 110, 111, 112,113,114,115,116,117,118,119,120,121, 12, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143</u> <u>81,82,83,84,85,124,125,126,127,128,129,156,157,158,159,160,161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177.</u></p>	<p>5.5 metre front setbacks: Lots 110-136, 33, 34, 35, 81-85, 124-129, 156-170. Up to 50% of the front façade of the dwelling, excluding garages or car ports, may be set back 4.5m from the front boundary Front and setbacks as indicated on Subdivision Layout Plan: Lots 137-139 171-173 Front and setbacks as indicated on Subdivision Layout Plan: Lots 140-143 174-177 7.5 metre front upper story setbacks 1 metre side setbacks 6 or 8 metre rear setbacks: See building envelopes 6 metre rear setbacks: Lots 110, 33, 113 81, 114 82, 117, 121 85-128, 123, 156, 124, 157, 126 159 128-143 156-177 8 metre rear setbacks: Lots 111 34, 112 35, 115 83, 116 84, 122-128, 129, 125 158, 127 160 12 metre rear upper storey setbacks 3 2 metre corner side setbacks: Lots 117 85, 118-124, 128-161(from walkway or access road) Foreshore: Direct access to foreshore from lots 110-127 33-35, 81-85, 124-129, 156-160 is not permitted Reserve: Direct access to the aboriginal place from lots 127-143 160-177 is not permitted</p>
<p><u>160-178</u> and <u>161 179</u></p> <p><u>162-180</u></p>	<p>9 metre (minimum) front setbacks to the lots in this precinct (Side Setbacks: Minimum setback of 4.5m from external allotments boundaries of Lots 160 178 and 161 179. Other setbacks are to be determined by the relevant consent authority when the applicant is preparing a development application for lodging. Rear setbacks: minimum boundary 4.5m setback applies to the rear boundary of Lots 160-178 161 179 Foreshore setback N/A Reserve setback N/A 6 metre front setback 10 metre side setback (from George Bass Drive) 1 metre side setback 6 metre rear setback.</p>

5.0 STATUTORY FRAMEWORK

5.1 Substantially the same development

Section 96(1A) of the Act states that a consent authority may modify a development consent if:

- “(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”.*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The proposed modification falls within the category of minor environmental impact in that the proposed modification will alter the approved development in a minimal manner. The proposed increase in lot numbers is 15 in addition to the 138 lots that constitute Stages 1a to 5, equivalent to an increase of 8.3%. The total increase in single residential lot numbers for the whole site, including the previous approved modification of Stage 1 which increased the lot numbers by 3, is therefore 18. This constitutes a total increase in single residential dwelling lots from 159 to 177, equivalent to an increase of 11.3%.

The proposal to incorporate the approved APZ within the adjoining lots does not materially alter the effect or purpose of the APZ, but rather transfers the maintenance to the adjoining lot owners, the preferred means of maintaining an APZ and consistent with Eurobodalla Council's residential design guidelines.

Therefore it is considered that the proposed modification will result in a development that is substantially the same as the development for which consent was originally granted. The proposed modification therefore satisfies the requirements of section 96(1A)(a) and (b) of the EP&A Act.

5.2 Section 79C(1)

Section 96(3) of the EP&A Act states:

“In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.”

The provisions of section 79(C)(1) are the following:

- (a) the provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
 - (iii) any development control plan, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest."*

The following is our assessment of the environmental effects of the proposed modifications as described in the preceding sections of this report. The assessment includes only those matters under Section 79C(1) that are relevant to the proposal.

6.0 ENVIRONMENTAL ASSESSMENT

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.

6.1 Compliance with relevant Environmental Planning Instruments

6.1.1 National Parks and Wildlife Act 1974

The intent of the provisions of the National Parks and Wildlife Act 1974 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 1974 is the primary legislation to manage and protect the State's aboriginal cultural heritage. The site is a significant repository of aboriginal archaeology including artefacts and burial sites. The proposed modification will not materially affect the significance or management of the site in terms of aboriginal cultural heritage.

6.1.2 Water Management Act 2000

The object of the *Water Management Act 2000* is the sustainable and integrated management of the State's water for the benefit of both present and future generations. The provisions of the Water Management Act affect the riparian zone adjoining the creek that traverses the site. The proposed modification will not alter the affectation of the provisions of the Water Management Act in that the proposed 'new' lots remain within the curtilage of the approved plan of subdivision as it affects the riparian zone. A Part 3A permit (now Controlled Activity Approval) has been renewed for the works within the riparian zone.

6.1.3 Native Vegetation Conservation Act 1997

Development consent has been granted for the clearance of native vegetation on the site, including the clearance for purposes of an APZ, in accordance with the provisions of the Native Conservation Act. Twenty (20) metres of the 30 metre APZ that is now identified as adjoining the site is proposed to be integrated within the lots. Ten (10) metres will revert to land that is not affected by the clearance requirements of the approved APZ resulting in a net gain of land of 10m that will remain undisturbed as compared with the approved plan of subdivisions. In addition, a restriction on title will be included to identify the land 20m from the boundary as land that can only be cleared for the purposes of an APZ and as land that cannot be built upon.

6.1.4 Rural Fires Act

The approved plan of subdivision includes a 30m Asset Protection Zone separating the lots adjoining the Littoral Rainforest at the northern end of the site and within this northern conservation area. The APZ that is now proposed is shown in the drawings included in **Annexure 2**. The total lots abutting northern conservation area is proposed to be increased by 2 lots from 19 to 22. A Bush Compliance report has been prepared by Australian Bushfire Assessment Consultants dated 16 March 2010 and included as **Annexure 7**.

The minimum specified APZ or setback distance required for bushfire safety compliance is 20m as derived from the PBP requirements applicable to Eurobodalla Local Government Area (or NSW far South Coast Fire Weather Area).

An Outer Protection Area (OPA) of 10m and an Inner Protection Area (IPA) of 20m is identified. The basis of the 20m IPA is to facilitate a lower AS 3959 construction level.

The amended northern lots and associated OPA and IPA will readily facilitate PBP requirements. Any new residential building constructed within the new allotments can easily be separated at least 20m from the potential bushfire hazard within the adjoining conservation area.

The report concludes that the amendments proposed provide as good or better outcome for bushfire safety compliance in that the proposed integration reduces that area of APZ impact by 10m which would otherwise affect the native vegetation in the adjoining Conservation Area, places the onus and responsibility of maintaining the APZ on the land owner; and enables residential buildings to be constructed to lower AS3959 standards.

6.1.5 Regional Environmental Plans (Deemed SEPPs)

Lower South Coast Regional Environmental Plan (No.1)

The Lower South Coast REP No 1 affects coastal land within the Bega Valley and Eurobodalla Shire. The plan aims to conserve the scenic and environmental character and to protect the coast's visual quality by setting height limits generally at 14 metres measure between ceiling and natural ground level. The maximum height of development permissible on the site is 8.5m measured from finished ground level. The propose modifications do not propose to vary any building height or materially affect the height of buildings as approved.

Lower South Coast Regional Environmental Plan (No.2)

The Lower South Coast REP No 2 provides the regional framework for development control and local planning policies within the Bega Valley and Eurobodalla Shire. Key objectives of this policy include the development of regional policies to protect the natural environment and to promote the orderly development and economic development and use of land consistent with the conservation of natural and made features. Various assessment criteria include the impact and or effect of development on pollution/siltation, flora and fauna, water quality, drainage patterns and shoreline erosion, waterway access and congestion and noise impacts. An updated coastal hazard assessment has been prepared which indicates the site would be protected from erosion and recession hazard to YR 2100 and beyond and that no special provision need apply to the foundations of buildings located in the subdivision. In addition, the proposed amendment has been assessed as to the effect of the additional lots on swales proposed as part of the WSUD (See Section 6.5.4 of this report).

6.1.6 State Environmental Planning Policy

SEPP (Infrastructure) 2007

SEPP Infrastructure rationalizes consultation required in relation to traffic generating development. The policy requires consultation with the RTA as part of the assessment process if the development proposed is a new premise or an enlargement or extension of an existing premise defined in Schedule 3. A subdivision of more than 50 allotments requires referral of the proposal to the RTA. However, the RTA has previously advised that the Eurobodalla Shire Council is the consent authority in relation to development adjacent to that George Bass Drive as George Bass Drive is not a classified road.

SEPP 26 – Littoral Rainforests

SEPP 26 has as its objective to preserve littoral rainforests in their natural state and applies to an area of land at the northern boundary of the site. The policy applies to both identified mapped areas and a buffer area of 100 metres surrounding the core mapped area. The lots proposed to be modified are located outside the area affected by SEPP 26 and will not have any material impact on the littoral rainforest. However, the proposed modification will result in an additional 10m of buffer areas surrounding the Littoral Rainforest being unaffected by clearing for the purposes of the approved APZ.

SEPP 44 – Koala Habitat

SEPP 44 applies to land area of more than 1ha in Eurobodalla Shire the subject of a development application. A flora and fauna assessment that accompanied DA 77-03-2002 found that the site did not contain any core koala habitat.

SEPP 55 – Remediation of Land.

The assessment of DA 77-03-2002 considered the likelihood of site contamination based on the previous use of the site and concluded that the site is not contaminated. The proposed modification will not affect this conclusion in any way.

SEPP 71 – Coastal Protection

The policy aims to ensure development in the NSW coastal zone is appropriately located, ensure a consistent approach to coastal planning and management and to provide a development assessment framework for the coastal zone. The application was submitted before SEPP 71 came into effect. However, the master plan for the site was tested against the provisions of SEPP 71.

A Coastal Hazard Report prepared by Coastal Engineering Solutions dated May 2005 formed part of the original assessment and determination of the development application for the plan of subdivision and updated in November 2009.

In response to the matters raised by Eurobodalla Council, gba Coastal Pty Ltd was commissioned to address the outstanding matters and to prepare refined maps of the 2050 and 2100 coastal hazard lines for the site. The report responds to each of the concerns raised by Eurobodalla Council. The report prepared by gba Coastal Pty Ltd is included as **Annexure 9**.

The report has been prepared in recognition of the NSW Sea Level Rise Policy Statement 2009, the current NSW development and planning bench marks.

The report reviewed the component hazards to develop the refined assessment of year 2050 and 2100 coastal hazard lines for the site which included storm bite, shoreline recession, beach rotation, width of Zone of Slope Adjustment (ZSA) and width of Zone Reduced Foundation Capacity (ZRFC). The report concludes that the refined assessment confirms that the seaward boundary of the subdivision is well landward of the YR 2100 ZRFC. At its most critical location, the report concludes that the subdivision will not be encroached closer than 27m from the YR 2100 ZRFC (lot 81) and that the subdivision would be protected from erosion and recession hazard to YR 2100 and beyond and that no special provision need apply to the foundations of buildings located in the subdivision.

The report was forwarded to Eurobodalla Council for review in the light of its Draft Interim Sea Level Rise Adaptation Policy adopted on 9 March 2010. The Council has advised by letter dated 30 March 2010 that it is satisfied that due diligence has been applied and accepts the conclusions of the report. Council is satisfied that the study demonstrates that no properties will be at risk from coastal hazards within the planning period to 2100. A copy of the letter from Eurobodalla Council is included as **Annexure 10**.

6.1.7 Local Environmental Plans

Eurobodalla Rural Local Environmental Plan 1987

Eurobodalla Rural Local Environmental Plan 1987 (LEP 1987) is the principal environmental planning instrument affecting the site. The site is located in the Urban Expansion Zone 10 under the LEP 1987. The subdivision of land for residential use is permissible with the consent of Council within the Urban Expansion zone subject to consistency with the zone objectives. No use is prohibited.

Zone objectives

Under the provisions of LEP 87, the land is zoned 'Urban Expansion 10'. The objectives of the zone are as follows:

- '(a) to identify areas within which urban development may be accommodated;*
- (b) to ensure that consideration is given by the Council to –*
 - (i) the impact of urban development on the physical environment;*
 - (ii) the social and economic impact of urban development;*
 - (iii) the range and pattern of land uses appropriate to the land;*
 - (iv) the limits of urban development within the urban expansion zone in view of the fact that urban development will not necessarily proceed over all of the land within this zone; and*
 - (v) the extent, range and capacity of services to be provided to the land and the economic, social and environmental cost of providing those services;*
- (c) to ensure that adequate services and community facilities are provided with development especially but not exclusively within residential areas within this zone;*
- (d) to ensure that no development is permitted within this zone which would, in the view of Council, jeopardise the future use of any of the land within this zone for urban purposes; and*
- (e) to ensure that sensitive environmental features, including wetlands, archaeological sites and areas of high scenic or scientific value, are identified and permanently conserved.'*

It can be assumed the objectives of the Urban Expansion Zone No 10 were satisfied by the proposed subdivision of the site for residential use. The proposed amendment is consistent with the approved use and therefore consistency with the zone objectives and the provisions of LEP 1987 will be maintained.

6.2 Compliance with relevant draft Environmental Planning Instruments

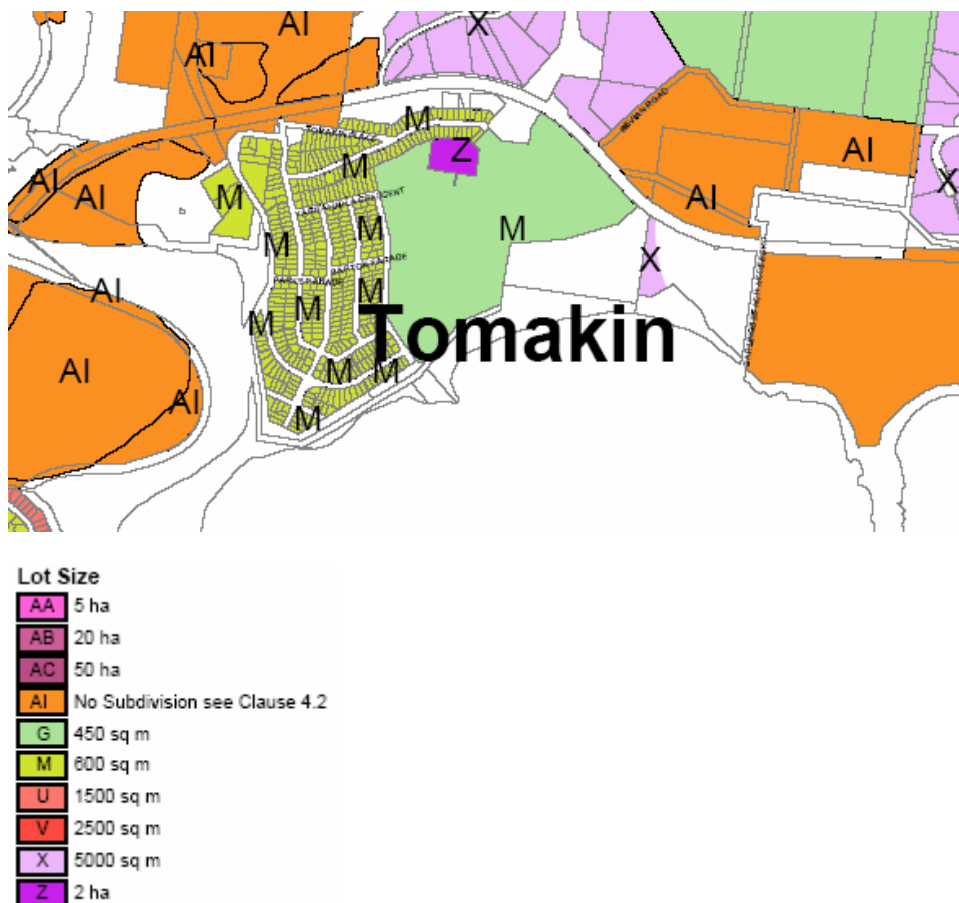
Eurobodalla Council has prepared and exhibited a consolidated draft Eurobodalla Local Environmental Plan 2009 (Draft LEP 2009) and is therefore a matter the consent authority must have regard to. Draft LEP 2009 includes development standards which are currently in the Councils Development Control Plans. A draft Eurobodalla Development Control Plan to support Draft LEP 2009 has not been prepared as yet. The relevant provisions of Draft LEP 2009 are the following:

Subdivision

Clause 2.6(1) permits subdivision through out the shire with consent

Minimum subdivision lot size

Clause 4.1 of draft LEP 2009 applies to the subdivision of any land shown on the Lot Size Map that requires development consent and carried out after the commencement of this Plan. Clause 4.3 limits the size of any lot resulting from a subdivision of land to be not less than the minimum size shown on the Lot Size Map in relation to that land.



The site is shown coloured deep green but is denoted as being 'M' in the key, with 'M' bright green colour is designated as having a minimum lot size of 600sqm. 'G' deep green colour is designated as having a minimum size of 450sqm lots. Eurobodalla Council has advised that the intended minimum lot size is 450sqm and therefore the proposed lot sizes readily satisfy this standard.

6.3 Compliance with relevant Development Control Plans

6.3.1 Barlings Beachside Development Control Plan 2007

The Barlings Beachside DCP is a 'site specific' development control plan. The objectives of the DCP are to:

- Encourage leading coastal architectural response in design;
- Ensure the orderly development of the land; and
- Create a vibrant and sustainable community at Barlings Beachside.

The DCP contains development guidelines including:

- Maximum FSR of 0.5:1- 0.65:1
- Maximum Height of 8.5-10m above finished ground level
- Setback requirements;
- Building envelopes;
- View sharing corridors;
- Residential amenity;
- Landscaping;
- Environmental Management
- Aboriginal Heritage and Cultural Management; and
- Parking

The modification sought will remain consistent with the key requirements of the Barlings Beachside DCP including the building envelope and setback requirements.

(i) Increase in lot numbers and consequential variation to lot size

The Barlings Beachside DCP was adopted by Council following determination of the DA 77-03-2002 as a site specific DCP, reflecting the Barlings Beach Master Plan. The proposed modifications will not materially affect the existing approved plan subdivision and compliance with the requirements of the Barlings Beachside DCP is generally maintained. The increase in the number of lots by a total 15 will result in the size of a number of lots being reduced and others increased. The proposed dimensions of the lots can accommodate all set back requirements contained in condition 9 of the consent for DA 77-03-2002.

The additional range of smaller lots will result in a greater mix of housing types and price points, consistent with the Eurobodalla Council's residential housing mix policy objective.

(ii) Modification to setback for number of lots

Modification is sought to the setback requirements for a number of corner lots from 3m to 2m. The Eurobodalla Residential Design and Development Guidelines DCP contains a requirement for corner lots, where a side setback fronts a **major road**, the minimum setback is to be 3m. This was brought into the Barlings Beachside DCP which states in relation to the following lots in stages 1a to 5 i.e. 57, 68, 71, 72, 83, 84, 109, 145, 150, 152 and 159 (corresponding to new lots 56, 60, 64, 78, 120, 139, 142, 146, 115, 151, 155), that “ *where an allotment shares a side boundary with another allotment the minimum setback is 1m. A minimum setback of 3m applies to the side boundaries for lots 57, 68, 71, 72, 83, 84, 109, 145, 150, 152 and 159 where the boundary has frontage to a road.*”

The roads within the subdivision are not major roads in our view, and we therefore request the reduction in the minimum requirement to 2m for side setbacks fronting a road. The modified lots are able to satisfy all requirements relating to residential amenity including and rear and front setback and solar

access as required by conditions of consent. We consider that the proposed reduction will not affect the amenity of the corner lots but will have a positive outcome in the design of the dwellings and present a level of variation in building design of benefit to the streetscape and subdivision generally.

It is also requested that the side setback from the public walkways to foreshore and access road be reduced from 3m to 2m in relation to new lots 85, 124 and 161. It is considered that the requirement for 3m is not warranted as 2m will provide adequate separation for individual lots to maintain privacy and planting area to preserve amenity as well as screening housing from the walkways and the access road.

As no change is proposed to the street configuration, other than a minor change in John Penn Drive near the intersection with Red Hill Parade and minor modification to setback requirements on a number of lots, it is not anticipated that there would be any significant adverse impact to views, pedestrian amenity, environmental management or other general development requirements.

6.3.2 Eurobodalla Residential Design and Development Guidelines DCP

The Eurobodalla Residential Design and Development Guidelines DCP applies to all residential land zoned for residential purposes under Eurobodalla LEP 1999 and to land zoned Urban Expansion under Eurobodalla Rural LEP 1987. The DCP specifies design and development guidelines for dwelling houses, dual occupancies and medium density housing and subdivision.

The Barlings Beach Master Plan was developed having regard to the Eurobodalla Residential Design and Development Guidelines DCP. The proposed modification concerns that part of the DCP guidelines that control subdivisions.

The modification will not result in change to the existing road layout or lot orientation. The amendment will increase the range of lot sizes but still remain well above the minimum lot size for a single dwelling of 450m² as required in clause 2.2.2 of the DCP.

The proposed integration of the APZ within the lots adjoining the conservation area proposed to be dedicated to Council is consistent with the bushfire protection requirements contained in clause 2.2.3 in that the asset protection zone will be wholly contained within each allotment and will not require Council maintenance of an asset protection zone over a future public urban bushland.

6.4 Environmental Planning and Assessment Regulations

There are no known regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates.

6.5 Likely impacts of the development and suitability of the site

6.5.1 Residential Amenity

The modified lots are able to generally satisfy all requirements relating to residential amenity including setbacks and solar access as required by conditions of consent. The size of the modified lots is consistent with Council's draft planning instrument and generally larger than lots on the western side of Red Hill Parade, opposite the site to the west. The dimensions of the modified lots will satisfy residential amenity objectives.

6.5.2 Public domain and streetscape impacts

The proposed modifications will have an imperceptible impact on the public domain and streetscape. The increase in lots in each stage ranges from 2 to 3 lots. The width of the street frontages of lots will be reduced, but this will be imperceptible in the context of the overall plan of subdivision. The street frontage will provide adequate area for landscaping, provision of WSUD swales and building setback requirements.

6.5.3 View impacts and relationship to adjoining development

The approved plans include a view analysis and sections extending from Red Hill Parade. The modification will not result in any change to the approved plans which ensure protection of views by limiting the height of development 8.5m above finished ground level. As stated above, the dimension of the lots proposed to be modified is generally consistent with the lots on the western side of Red Hill Parade, and in most instances lots as proposed will remain larger for the greater proportion of the subdivision.

6.5.4 Drainage

The approved subdivision includes swales as the principal form of stormwater drainage on the site. The impact of the increased lot numbers and the reduction in the site area of the modified lots has been reviewed by CPG (formerly Coomes Consulting). CPG has concluded that the additional lots would not affect the original drainage strategy with respect to the infiltration system. The statement prepared by CPG is included in **Annexure 11**.

6.5.5 Services

Sewer and Water Supply

The site is located within the Tomaga Sewerage Scheme under the management of the Eurobodalla Shire Council. Discussions have been held with Eurobodalla to ascertain the impact of the proposed modification. Stages 2-5 require service augmentation as part of the approved plan of subdivision. The modification to the alignment of John Penn Drive have resulted from discussions with Eurobodalla Council as part of the ongoing design and development of required services and which can be readily accommodated.

6.5.6 Traffic Impact

The originally projected traffic generation for the site was 2,150 vehicles per day. Assuming the single dwellings typically include 3 bedrooms, the maximum increase in car generation would be 30, based on a requirement of 2 spaces for a 3 bedroom dwelling. As a percentage of the projected traffic generation, this is equivalent to an increase of 1.3%. The impact on traffic will be imperceptible in the context of the overall traffic volumes of some 2,150 vehicles per day projected to be generated by the subdivision. The increased traffic generation is therefore considered to be negligible in the context of the approved subdivision.

6.5.7 Aboriginal Cultural Heritage

Following considerable investigation, it was determined that the best way to manage the aboriginal cultural significance of the site was to cover the natural ground level with fill. A fill plan has been approved as part of the original consent. The impact of the increased lot numbers on the approved fill plan has also been reviewed by CPG.

CPG has concluded that the approved fill plan will not constrain the proposed increased in lots and the 15 additional lots can be readily accommodated within the approved profile. The requested modification will retain the same fill profile as that approved and will not have any additional material effect on the cultural significance of the site as result of the proposed amendments. CPG's statement is included as **Annexure 12**.

7.0 CONCLUSION

This statement accompanies the Section 96 Application to the Department of Planning to modify the consent granted to DA 77-03-2002 (Mod 3) in accordance with Section 96(1A) of the EP&A Act. The proposed modification does not have any material additional planning issues. It is submitted that the modified development will be substantially the same as the approved development.

In assessing the original application, all likely impacts of the proposal were assessed and it was concluded the proposal was acceptable against the relevant considerations under section 79C of the Environmental Planning and Assessment Act 1979. The proposed modification does not alter this conclusion.

We therefore request that the Department of Planning approve this S96 application and modify Development Consent DA 77-03-2002 by amending Conditions A1 and A2 in order to describe the amended total lot numbers and plan of subdivision as modified. In addition, it is requested the Condition E9 be also amended as requested, for the reasons outlined in this statement.

We trust that this statement provides sufficient information to enable a prompt assessment of the proposed modifications.

Should you have any questions about this matter do not hesitate to contact me on 9233 8325 or 0423 814 091.

Yours sincerely



Krystyna Luczak
Consultant Planner
President Property Group