



Section 75W Modification Request
Subdivision, 13 Millingandi Road, Millingandi
MP06_0032 Modification 1



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

August 2013

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1 INTRODUCTION

This report assesses a modification request made by Caddy, Searl and Jarman Surveyors (the proponent) on behalf of the owners, G and K Clements, for the project approval MP06_0032 at 13 Millingandi Road, Millingandi within the Bega Valley local government area.

The modification request seeks to amend the approved subdivision layout from a ten lot subdivision to a nine lot subdivision and stage the development in three stages.

2 THE SITE

The subject site is located in Millingandi, a rural/residential area, approximately 5km north of Pambula and 4km west of Merimbula on the south coast of New South Wales. The site is located 80m west of the Princes Highway.

It has an approximate area of 10.77ha and a legal description of Lot 101 DP 1087389. It is an irregular shape as seen in **Figure 1**. The site is substantially cleared and contains a brick dwelling and two sheds.

Figure 1 – Subject site



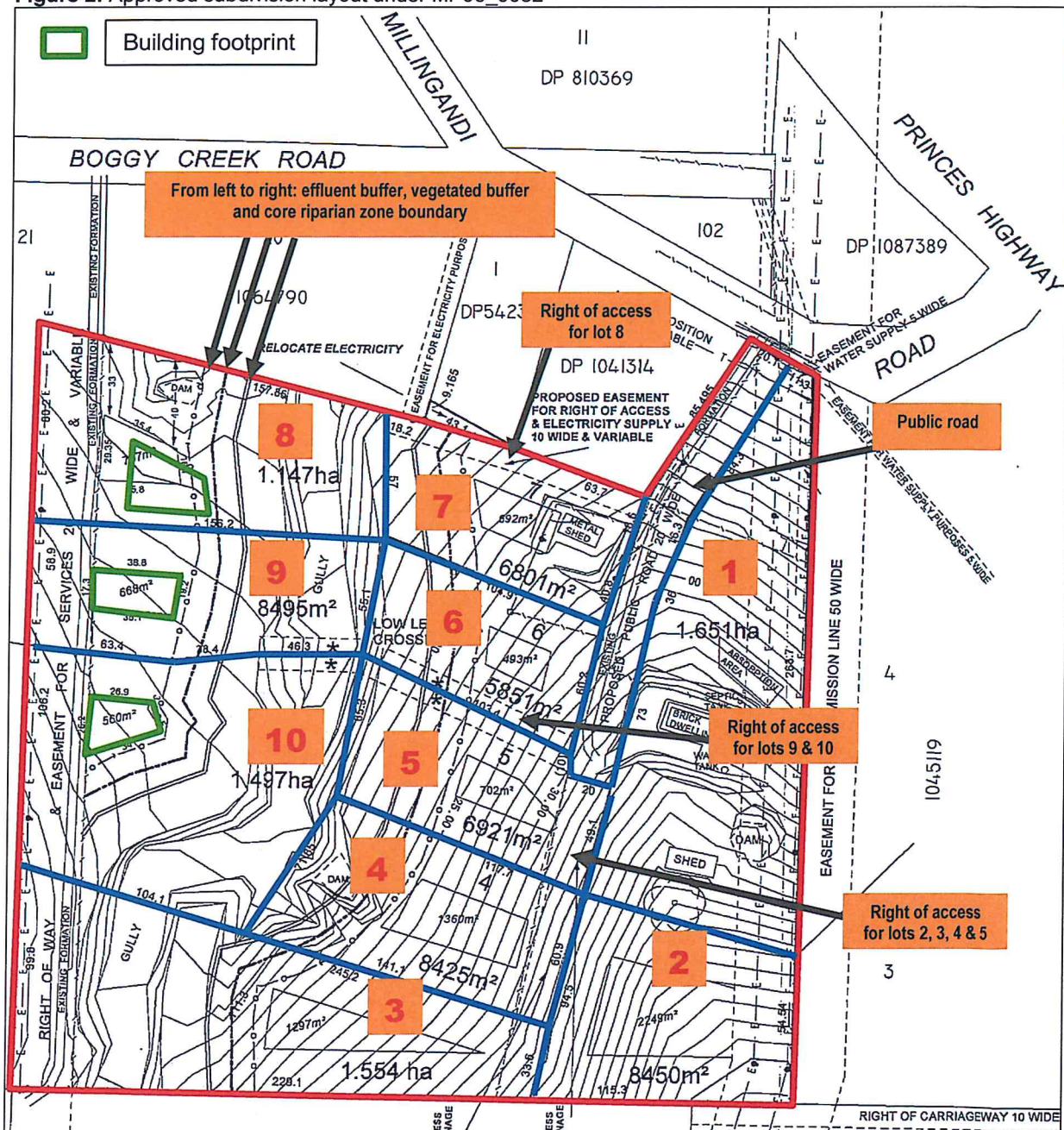
3 BACKGROUND

On 29 October 2010 the A/Deputy Director-General approved a subdivision for 10 lots including the construction of roads and landscape works on the subject site (MP06_0032). The subdivision layout can be found in **Figure 2**. The development was not approved to be staged.

Access to lots 1, 6 and 7 were approved off a new public road, off Boggy Creek Road. Access to the remaining lots was approved via rights of access – one to access lots 2, 3, 4 and 5, one over the north of lot 7 to access lot 8 and one over lots 5 and 6 to access lots 9 and 10.

Each lot was approved to have on site sewer management, no lot was proposed to be connected to the town sewerage system. Development in lots 3-10 was confined to an area to allow for an effluent buffer, a vegetated buffer and the core riparian zone.

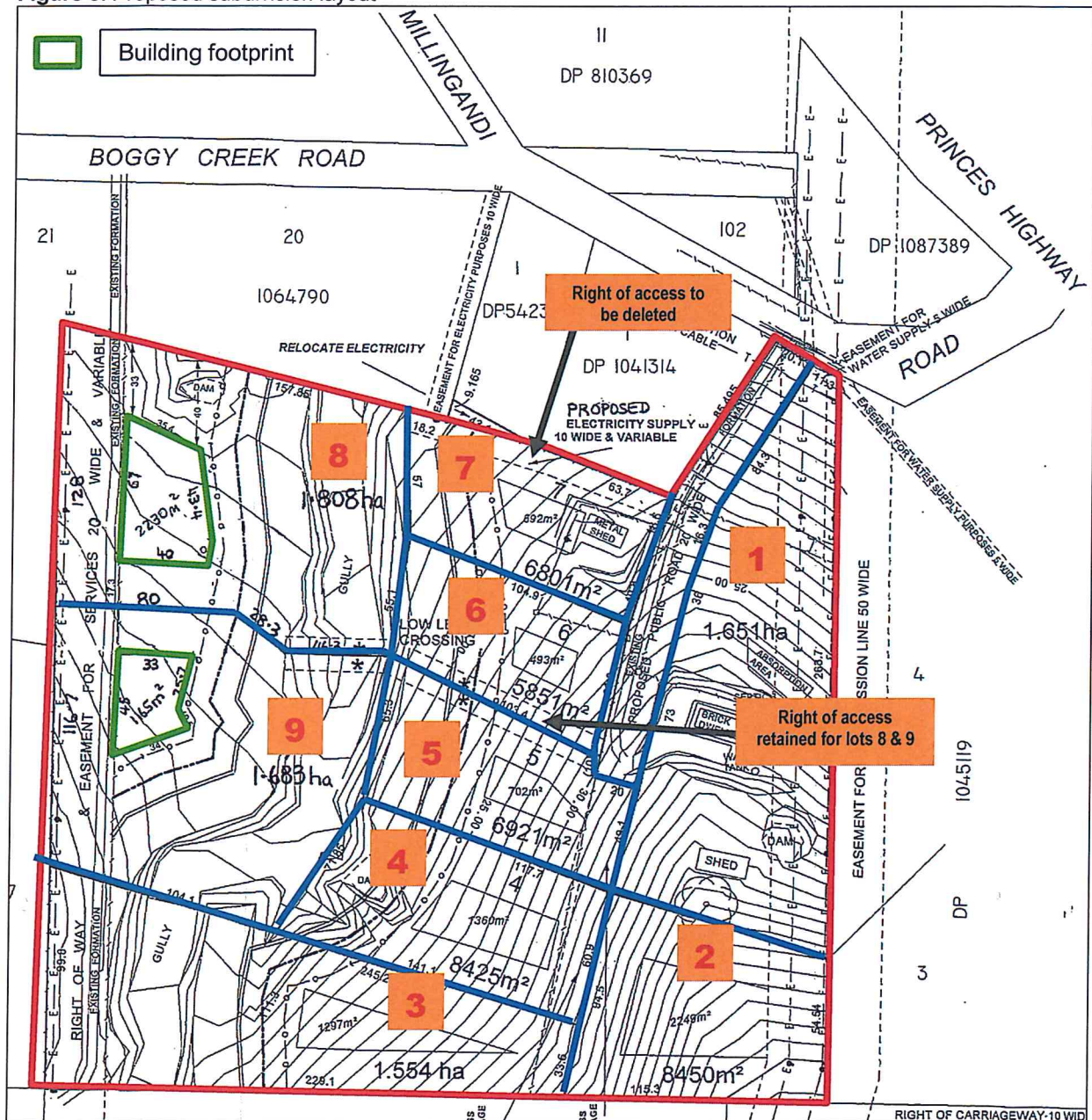
Figure 2: Approved subdivision layout under MP06_0032



4 PROPOSED MODIFICATION

The modification request seeks to reduce the subdivision by one lot, for development to occur in three stages and delete a right of access over lot 7. Lots 8-10 will become lots 8 and 9. See **Figure 3** for the proposed layout and further details below.

Figure 3: Proposed subdivision layout



4.1 Subdivision

The subdivision was approved as 10 lots, with lots 8-10 on the western side of the site (see **Figure 2**). Two lots (8 and 9) are now proposed in this location (see **Figure 3**). No changes to the size or building footprints of any other lots are proposed. The approved and proposed lots that are proposed to change are compared in **Table 1**.

Table 1 – Approved and proposed lots on the western side of the site

	Approved lots			Proposed lots	
	8	9	10	8	9
Area (ha)	1.15	0.85	1.50	1.81	1.68
Building footprint (m ²)	767	668	560	2230	1165
Access	Right of access via lot 7	Right of access via lot 6	Right of access via lot 5	Right of access via lot 6	Right of access via lot 5

Lots 8 and 9 will now be substantially larger in area, and building footprint. They will be accessed via rights of access over lots 5 and 6. The building footprints are still proposed to be outside the restricted area which includes an effluent buffer, a vegetated buffer and the core riparian zone. The existing right of access over lot 7 is no longer required because lot 8 will now be accessed via the approved right of access over lot 6. Access to lots 2, 3, 4 and 5 will remain as approved (via a right of access to the south of the approved access road).

4.2 Staging

Construction of the subdivision is now proposed to be in three stages as follows:

- Stage 1 - access road and lots 5, 6 and 7;
- Stage 2 - lots 2, 3 and 4; and
- Stage 3 - lots 1, 8 and 9.

5 STATUTORY CONTEXT

5.1 Modification of the Minister's Approval

Project approval for MP06_0032 was granted under section 75J of the *Environmental Planning and Assessment Act 1979* (the Act). Section 75W of the Act provides for the modification of the Minister's approval.

In accordance with clause 3 of Schedule 6A of the Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Pursuant to section 75W(2) of the Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is at Attachment B.

Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Given the relatively minor nature of the modification request, DGRs were not considered necessary.

5.2 Delegated Authority

On 14 September 2011 and taking effect from 1 October 2011, the Minister delegated his powers and functions under section 75W of the Act to Directors in the Major Projects Assessment Division in cases where the relevant local council has not made an objection, a political disclosure statement has not been made and there are less than 10 public submissions in the nature of objections.

As no submissions from the public were received, council did not make an objection and a political disclosure statement has not been made, the Director, Industry, Social Projects and Key Sites may determine the modification request under delegated authority.

6 EXHIBITION AND SUBMISSIONS

6.1 Exhibition and Submissions

Under section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the Regulation, the request for modification was made publicly available on the department's website.

A referral was sent to Bega Valley Shire Council (the council). No public submissions were received and council provided a submission that did not object to the modification. Council provided recommended conditions of approval which have been incorporated, where relevant.

7 ENVIRONMENTAL ASSESSMENT

7.1 Subdivision layout and access

The subdivision layout is the same as that approved except for the western part of the site where it is proposed to change from three into two lots. The two lots will be substantially larger than those approved and still provide a sufficient building footprint to avoid buffer areas for effluent management, vegetation and the core riparian zone.

Access to proposed lots 8 and 9 will not change from that already approved and will be via rights of access via lots 5 and 6. As there is one less lot in that location, the right of access over lot 7 is no longer required and has therefore been deleted (see **Figures 2 and 3**).

The subdivision layout and access to all lots is substantially the same at that approved. No additional adverse environmental impacts will result and accordingly the department supports the modification to reduce the subdivision by one lot.

7.3 Staging

The department raises no objections to staging the development in three stages as no adverse environmental impacts will result. The proponent requested three stages with stage 1 including lots 5, 6 and 7. It is noted that the proposed public road into the site will also need to be included in stage 1.

A condition relating to staging will be included in the consent and other conditions will be amended accordingly with reference to the timing of s94 contributions payments and the timing of conditions relating to works to be completed prior to the issue of construction and subdivision certificates.

8 AMENDMENTS TO CONDITIONS

The proposed amendments to the instrument of approval include:

- *Condition 1.1 Terms of Approval* - update to include relevant documents submitted with the modification request;
- *Condition 1.2 Terms of Approval* – update to reference updated condition 1.1;
- *Condition 1.7 Staging* – a new condition;
- *Condition 2.3a Vegetation management plan* – update for compliance prior to issue of a construction certificate for stage 1;
- *Condition 2.3b Weed control plan* – update for compliance prior to issue of a construction certificate for stage 1;
- *Condition 2.3e Road design and right of access design plan* – update to reference correct lots;
- *Condition 5.3 Complete of construction works* – update so all construction certificates are included;
- *Condition 5.4 s94 Contributions* – update with regard to staging and recent contribution amounts;
- *Condition 5.5 Compliance certificates* – update to reference each subdivision certificate;
- *Condition 5.6 Services* – update for compliance prior to the subdivision certificate for stage 1;

- *Condition 5.7 Services* - update to reference each subdivision certificate;
- *Condition 5.10 Rehabilitation of core riparian zone and associated vegetation buffer* - update for compliance prior to issue of a subdivision certificate for stage 1;
- *Condition 5.11 Defects and damage* - update to reference any subdivision certificate; and
- *Condition 5.13 Registration of easements etc* – update to reference correct lots and to reference each relevant subdivision certificate.

9 CONCLUSION

This modification request seeks to amend the approved ten lot subdivision to a nine lot subdivision to be completed in three stages.

The department is satisfied that the proposed amendments to the development are justified and the existing and proposed conditions will ensure the proposal does not result in any additional adverse environmental impacts.

The amendments to the subdivision layout will mean the development will remain substantially the same as that originally approved. Furthermore, it will facilitate the continued supply of housing in New South Wales.

Consequently, the department is satisfied that the proposed modifications are minor and should be approved.

10 RECOMMENDATION

It is recommended that the Director, Industry, Social Projects and Key Sites, as delegate of Minister for Planning and Infrastructure:

- **consider** the recommendations of this report;
- **approve** the modification, subject to conditions, under section 75W of the *Environmental Planning & Assessment Act 1979* by **signing** the attached instrument of modification (refer **Tag A**).

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