



MODIFICATION REQUEST:
**Vincentia Coastal Village,
Naval College Road, Vincentia**

MP 06_0060 & MP 06_0058 MOD 13

**Modification to Statement of Commitment
for Pedestrian / Cycleway Underpass**

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

March 2013

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1. BACKGROUND

The purpose of this report is to determine a request to modify the approved Concept Plan and Project Application for the Vincentia Coastal Village and District Centre, Corner of Wool Road and Naval College Road, Vincentia. The application seeks to modify Statement of Commitment No. 59 that relates to the provision of a pedestrian / cycleway underpass.

1.1 The Site and Locality

The site is located within the Shoalhaven Local Government Area, approximately 25 to 30 kilometres south of Nowra / Bombaderry and 2 kilometres west of the Vincentia town centre (refer to **Figure 1**). The site is contained within an area known as the "Bay and Basin", which derives its name from Jervis Bay and the St George's Basin localities.



Figure 1: Vincentia Coastal Village site (red outline) and surrounding area
(Source: Department's original Assessment Report)

1.2 Previous Approvals

On 25 January 2007, the then Minister for Planning concurrently approved a Concept Plan (MP 06_0060) and a Project Application (MP 06_0058) for the Vincentia Coastal Village proposal. The Concept Plan consisted of a 604 lot residential subdivision, a residential development for adaptable housing, a commercial development, and environmental protection measures on the remaining part of the site. The Project Application related only to the residential subdivision component.

Works in accordance with the residential approval are currently being carried out on the site. The approvals (MP 06_0060 and MP 06_0058) were subject to a number of conditions and have been modified as follows:

- **MOD 1** approved by the Executive Director of Strategic Sites and Urban Renewal on 8 October 2007 to clarify that the approvals are inclusive of a display village, and to provide greater certainty in regard to the conditions which apply to the approval for the display village.
- **MOD 2** approved by the then Minister for Planning on 9 July 2008 to implement Exempt and Complying Development provisions.
- **MOD 3** approved by the Executive Director of Strategic Sites and Urban Renewal on 6 February 2009 to amend the boundaries of allotments to create three additional lots (total residential lots increased from 604 to 607).
- **MOD 4** approved by the Executive Director of Strategic Sites and Urban Renewal on 13 February 2009 to require payment of local infrastructure contributions prior to the issue of a subdivision certificate, rather than issue of a construction certificate.
- **MOD 5** approved by the Director-General on 20 April 2009 to reduce the number of residential lots from 607 to 603.
- **MOD 6** approved by the Executive Director of Urban Renewal and Major Sites on 11 December 2009 to amend the design guidelines titled "*Design Essentials – a guide to building your home at Bayswood*".
- **MOD 7** was withdrawn.
- **MOD 8** approved by the Acting Director of Regional Projects on 2 September 2010 to consolidate residential lots that reduced the number of residential lots from 603 to 582 and modifications to roads and landscaped areas.
- **MOD 10** approved by the Director of Metropolitan and Regional Projects South on 14 March 2011 to consolidate residential lots that reduced the number of residential lots to 574 and enabled the construction of a new Display Village to replace the existing Display Village.
- **MOD 9** approved by the Director of Metropolitan and Regional Projects South on 24 March 2011 to create 21 additional residential lots (increasing the total number of residential lots from 574 to 595) and amendment to conditions relating to the postponement of the construction of the roundabout intersection at Access A.
- **MOD 11** approved by the Deputy Director-General of Development Assessment and Systems Performance on 7 November 2011 subdivided four lots to create 23 residential lots (increasing the total number of residential lot from 595 to 614).
- **MOD 12** approved by the Director of Strategic Assessments on 31 May 2012 deleted references to *Exempt and Complying Development Vincentia Coastal Village*, on the basis that this document was repealed.

On 7 January 2009, the then Minister for Planning approved a Project Application (MP 06_0025) for the construction of the Vincentia District Town Centre which formed part of the Concept Plan approval. Relevant to this application under assessment, the District Town Centre approval included conditions relating to the funding and timing of the underpass. This matter is discussed in **Section 5**.

2. PROPOSED MODIFICATION

The Proponent seeks to modify Statement of Commitment No.59 that is included within the approval of the Concept Plan and Project Application (MP 06_0060 and MP 06_0058) which refers to the provision of the Naval College Road pedestrian / cycleway underpass. The Proponent proposes to modify the Commitment to enable the construction of a 'mid-block' signalised pedestrian crossing following discussions with Roads and Maritime Services, Shoalhaven City Council and Sydney Anglican Schools Corporation (**Appendix A**).

Statement of Commitment No. 59 currently states:

Stockland will design and construct the Naval College Road pedestrian / cycleway underpass with a 50% contribution from Council as Section 94 offset in accordance with Appendix B of the Don Fox Planning Report: Review of Developer Contributions and Associated Works Proposed Residential and Commercial Development Vincentia District Centre, February 2006 and as modified in October 2006 as part of the Preferred Project Report.

The Proponent seeks to modify the Commitment to the following:

*Stockland will design and construct the Naval College Road ~~pedestrian / cycleway underpass~~ **mid-block signalised pedestrian crossing** with a 50% contribution from Council as Section 94 offset in accordance with Appendix B of the Don Fox Planning Report: Review of Developer Contributions and Associated Works Proposed Residential and Commercial Development Vincentia District Centre, February 2006 and as modified in October 2006 as part of the Preferred Project Report.*

The Proponent justifies the modification by referencing the Sydney Anglican Schools Corporation Student Safety Policy which forbids students from using underpasses whilst children are in its care. The Proponent also submitted through a 'Pedestrian Usage and Traffic Impact' review undertaken by GTA Consultants that there would be limited demand for the underpass from school students and pedestrians to the shopping centre.

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W of the EP&A 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.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75W of the EP&A Act.

3.2 Modification of a Minister's Approval

The modification application has been lodged with the Director-General pursuant to Section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval."

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify a specific commitment and therefore approval to modify the application is required.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Director-General may notify the Proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W(3) with respect to the proposed modification, as suitable information was provided to the Department to consider the application.

3.4 Delegated Authority

The Minister has delegated his functions to determine Section 75W modification requests to the Executive Director of Development Assessments, Systems and Approvals, where:

- the relevant local council has not made an objection; and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions in the nature of objections.

The Department received one public submission (Vincentia Ratepayers and Residents Association) and Council has not objected to the proposal. There has been a political donation disclosure made for this application stating that no political donations have been made within the past 2 years, however a political donation was disclosed with a previous application on the site.

Accordingly, the application is able to be determined by the Executive Director of Development Assessments, Systems and Approvals, under delegation.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75X of the EP&A Act and Clause 8G of the EP&A Regulation, the Director-General is required to make the modification request publicly available. The modification request was made available on the Department's website and referred to Shoalhaven City Council, Roads and Maritime Services and the Vincentia Ratepayers and Residents Association for comment. Due to the nature of the proposed modification, the modification request was not exhibited by any other means. One public submission (from the Vincentia Ratepayers and Residents Association) was received on the modification request.

Shoalhaven City Council

In principle, Council does not object to the proposed amendment however has requested that the commitment be modified to remove Council's portion of the contribution as no Section 94 plan applies for the construction of the works described in Commitment No. 59. Council recommended that a percentage contribution be provided between Stockland and the Anglican Schools Corporation and not Council. Should Council's modification to the Commitment be supported, similar variations would be required to the approval for the Sydney Anglican Schools Corporation site (Council DA06/1619).

Council requested a number of design modifications to the layout of the pedestrian crossing, including a recommendation to relocate the intersection 50 metres to the north to improve sight distance and queue storage along Naval College Road.

Roads and Maritime Services(RMS)

RMS supports Council's recommendation to relocate the proposed intersection 50 metres further to the north. RMS provided additional comments which would need to be considered during the preparation of any Works Authorisation Deed (WAD).

Vincentia Ratepayers and Residents Association

Vincentia Ratepayers and Residents Association object to the removal of the proposed underpass and object to the underpass being replaced with a signalised pedestrian crossing.

Proponent response to Submissions

On 10 January 2013, the Proponent submitted a response to address points raised by Council, Roads and Maritime Services and the Vincentia Ratepayers and Residents Association. This response indicated that additional approvals from Council and a Works Authorisation Deed with Roads and Maritime Services would follow prior to the mid-block signalised pedestrian crossing being constructed, which will provide further opportunities to address detailed design related comments provided by Council and Roads and Maritime Services.

On 15 February 2013, the Proponent provided further clarification having regard to Council's concerns with the application and the funding arrangements for the works.

5. ASSESSMENT

The Department considers the key issues for the proposed modification to be:

- suitability of changing the pedestrian crossing from an underpass to a 'mid-block' signalised pedestrian intersection; and
- funding arrangements for the works.

Suitability of redesign

The Proponent seeks to modify a Statement of Commitment contained within the Residential Subdivision approval (MP 06_0058) requiring the provision of the Naval College Road pedestrian / cycleway underpass. The Proponent now proposes to provide a 'mid-block' signalised pedestrian crossing approximately 250 metres to the west from where the original underpass was proposed (**Figure 2**).

The modification follows as a result of further studies on pedestrian behaviour and concerns raised by the Sydney Anglican Schools Corporation who have forbidden any of its students from using an underpass on any occasion whilst under its care. It was therefore considered that an alternative design was required.

No concerns have been raised by Council or RMS subject to a relocation of the proposed pedestrian crossing being relocated a further 50 metres to the north. The Proponent has agreed to this relocation, as depicted in **Figure 2**. A number of additional comments / conditions stated by Council and RMS relate to future design considerations and are not relevant to this application. Specific design details have not been prepared at this stage as a separate WAD (which is a formal agreement between the Proponent and RMS) yet to be considered.

The Department is satisfied that the modification to the pedestrian crossing design and location is acceptable. The provision of the 'mid-block' signalised pedestrian crossing would meet pedestrian demand and also provide a safe crossing point, subject to specific design details satisfying RMS requirements under a separate WAD.

Funding arrangements for the works

During the Council's review of the proposed modification, Council requested an amendment to the Commitment that currently states that Council is to provide a 50% contribution to the cost of the construction as a Section 94 offset.

Council advises that there is no Section 94 Contribution Plan that can provide for a contribution as stated in the existing Commitment and Council has not accepted that the works generate a 50% contribution offset to the total contributions for the development.

Council also forwarded to the Department correspondence from the Sydney Anglican Schools Corporation sent to Council (dated 16 February 2010) that indicated an agreement has been reached between Stockland and Sydney Anglican Schools Corporation for the shared funding of the underpass to the value of \$125,000. Council are therefore of the view that the existing Commitment should be further amended as follows (highlighted yellow while the Proponent's amendments are bold struck out words and inserted **bold and underlined** words):

*Stockland will design and construct the Naval College Road ~~pedestrian / cycleway underpass~~ **mid-block signalised pedestrian crossing** with a ~~50% contribution from Council as Section 94 offset percentage contribution from the Anglican Schools Corporation as agreed between Stockland and the Anglican Schools Corporation~~ in accordance with Appendix B of the Don Fox Planning Report: Review of Developer Contributions and Associated Works Proposed Residential and Commercial Development Vincentia District Centre, February 2006 and as modified in October 2006 as part of the Preferred Project Report.*

The Proponent responded to Council's suggestion. The Proponent is of the opinion that as the application only seeks to modify the Commitment to build a 'mid-block' signalised pedestrian crossing instead of a pedestrian / cycleway underpass, the funding issues raised by Council are not relevant to the application. The Proponent also states that no binding agreement can be located between Stockland and the Sydney Anglican Schools Corporation, despite the correspondence from Sydney Anglican Schools Corporation to Council.

The issue of funding of the underpass has previously been considered by the Department during the assessment of an application to modify the District Town Centre approval (MP 06_0025). Modification 1 to this approval sought the deletion of conditions relating to the funding and timing of the underpass. The Department noted that the conditions generated an inconsistency between the previously approved Concept Plan and Project Application for the residential component which referenced a Commitment for the provision of the underpass (Commitment No. 59 that is the subject of this application).

The modification to the District Town Centre approval was supported on the basis that the provision of the underpass was previously formalised in a negotiated Section 94 plan between Council and the Proponent, which provided a credit for the underpass works.

Having regard to the Department's previous assessment of the funding issue and to ensure that a consistent approach on this matter is maintained, the Department does not support the modifications proposed by Council.

6. CONCLUSION

The Department has reviewed the modification request and is generally satisfied that the modification is appropriate (re-wording of Commitment as a result of proposed signalised pedestrian crossing).

The suggested amendments to the Commitment proposed by Council are not considered to be appropriate given the negotiated Section 94 contributions negotiated during the original assessment of the Concept Plan and Project Application for the residential subdivision.

Statement of Commitment No. 59 is therefore recommended to be modified as stated above.

7. RECOMMENDATION

It is recommended that the Executive Director of Development Assessments, Systems and Approvals, as delegate for the Minister for Planning and Infrastructure:

- note the information provided in this report;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (**Tag A**).

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APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5696

APPENDIX B SUBMISSIONS

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5696

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
