

# DEPARTMENT OF PLANNING & INFRASTRUCTURE

*Development Assessment Systems & Approvals*

## **SUBJECT: MODIFICATION REQUEST, CONCEPT PLAN APPROVAL FOR MINCHINBURY EMPLOYMENT PARK (MP09\_0099 MOD 2)**

### **1. PURPOSE**

To determine a modification request in relation to the concept plan approval for the Minchinbury Employment Park (MP09\_0099, as modified), which seeks to extend the lapsing date of the approval from 29 June 2015 until 1 October 2016 (in accordance with the lapsing date specified under clause 11(3) of Schedule 6A of the *Environmental Planning and Assessment Act 1979*, as amended).

This amendment is sought as physical commencement of the development of the site cannot commence within the current lapsing period due to continued occupation and use of the site by the Australian Quarantine Inspection Service (AQIS).

### **2. MODIFICATION DESCRIPTION**

The modification request seeks to amend the lapsing provision in term 8 of the approval. Term 8 provides that the concept plan approval shall lapse if the proponent does not physically commence the proposed development associated with the concept plan within 5 years of the date of the approval, which will be 29 June 2015.

The proponent seeks to extend this lapsing period up until 1 October 2016, so that the lapsing of the approval coincides with the lapsing date for concept plan approvals under clause 11(3) of Schedule 6A of the *Environmental Planning & Assessment Act* (being transitional arrangements for the repeal of Part 3A, where the project has not been commenced and where there is otherwise no lapsing condition in force for a concept plan approval).

The modification seeks to change the wording of term 8 of the concept plan approval as follows:

#### ***LIABILITY TO LAPSE***

***8. This approval will lapse if the Proponent does not physically commence the proposed development associated with this concept plan ~~within 5 years of the date of this approval~~ by 1 October 2016.***

### **3. THE SITE**

The site is located within the Western Sydney Employment Area (WSEA) on 21.87 hectares of land near the intersection of the M4 and M7 Orbital Motorways, in the Blacktown local government area (see **Figures 1 & 2**). The concept approval authorises the subdivision of the site into 25 lots to be used for warehousing, light industrial, high technology and business park purposes (see **Figure 3**).

The site is currently occupied by a quarantine station operated by the AQIS. The site has been held in private ownership since 2001 with the AQIS occupying the site pursuant to a lease. The AQIS has taken up an option to renew their lease over the site, until January 2016. This will delay redevelopment of the site, until such time as the AQIS facility is relocated.

and north western Sydney.

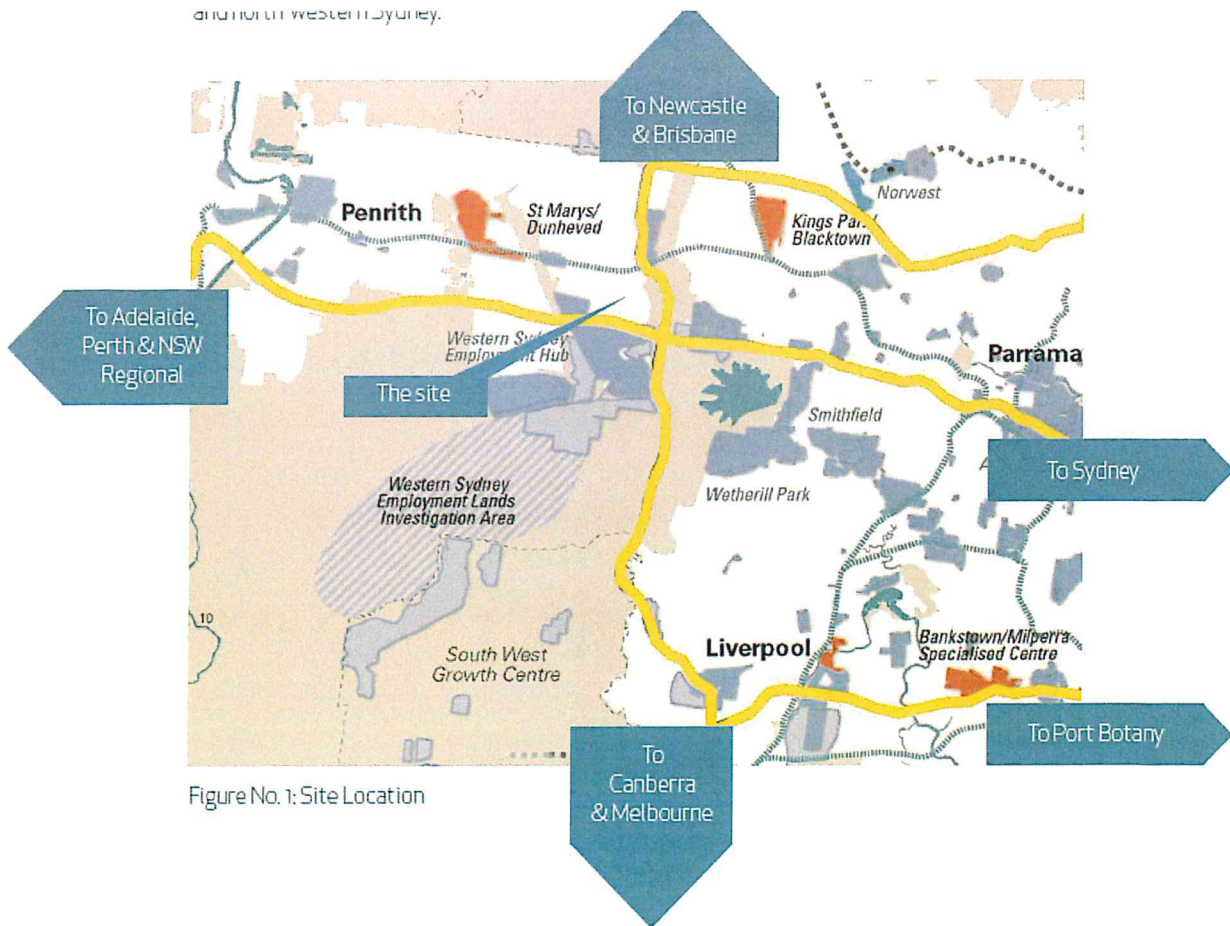
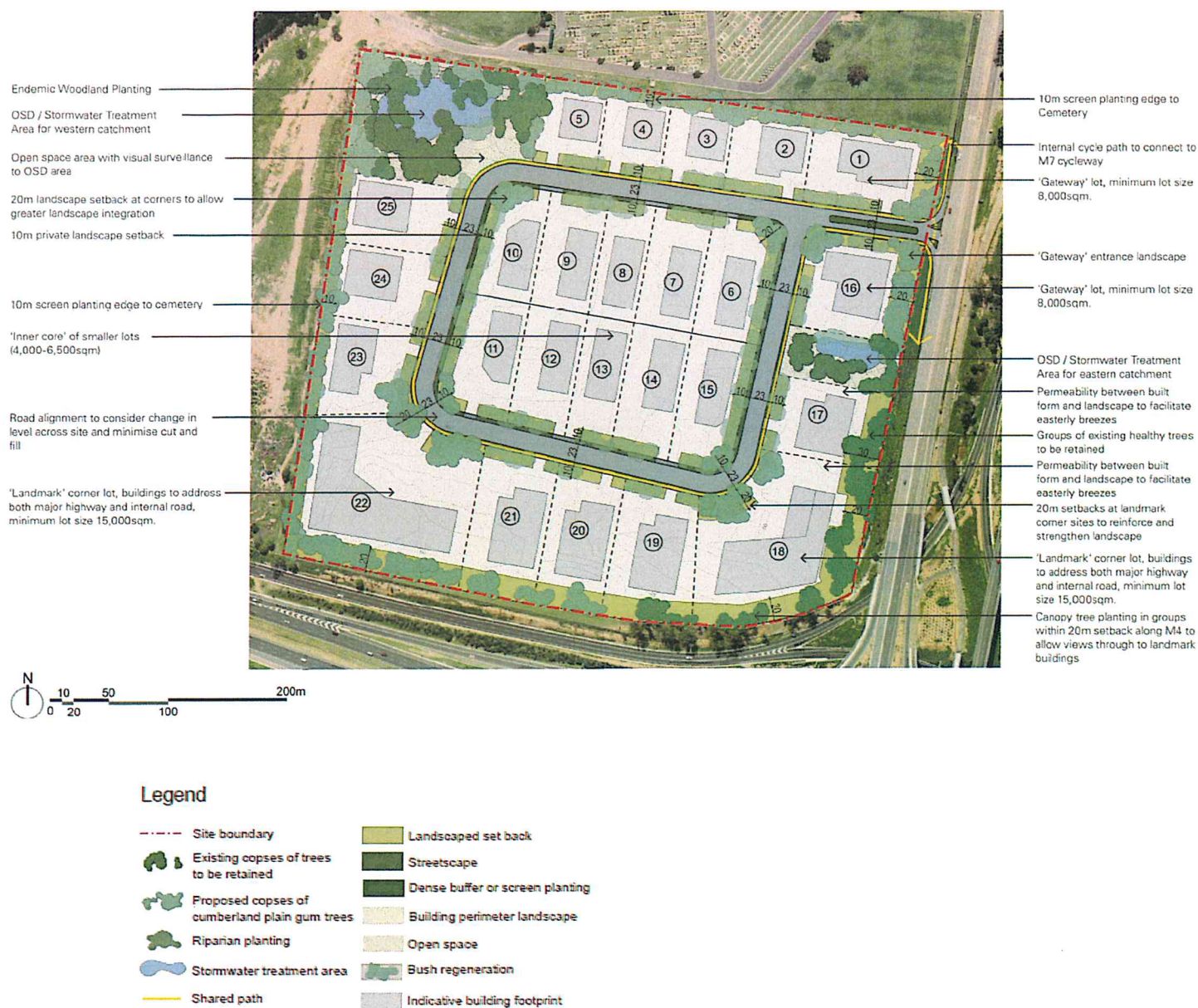


Figure No. 1: Site Location

**Figure 1: Regional Context**



**Figure 2: Site Location and Local Context**



**Figure 3: Concept Plan for the Minchinbury Employment Park**

#### 4. PREVIOUS APPROVALS

On 29 June 2010, the Deputy Director-General (as delegate for the then Minister for Planning) approved a concept plan application made by Afteron Pty Ltd to establish the Minchinbury Employment Park. The approved concept plan includes subdivision of the land, bulk earthworks, and development of a regional distribution park of warehouses, distributions centres, light industry, office premises, high technology uses, freight logistic facilities, and associated infrastructure works.

**MP09\_0099 MOD 1:** – On 4 July 2011 the Director-General as the delegate of the Minister for Planning and Infrastructure approved a modification of term 7 of the concept plan approval relating to a planning agreement for road works being entered into within 12 months of the original concept plan approval. This modification amended term 7 to allow for the planning agreement to be entered into prior to the release of the first subdivision certificate or first occupation certificate. It was required due to the extension of the lease arrangements for the existing quarantine station on the site operated by AQIS.

DA 13/683: – On 26 August 2013 development consent was granted by Blacktown City Council for Stage 1 infrastructure works, pursuant to the development approved under the concept plan approval. This Stage 1 development consent will lapse on 26 August 2018.

## **5. MODIFICATION JUSTIFICATION**

Despite the recent development consent that has been issued by council for stage 1 works on the site (DA13/683); these works cannot be commenced due to the continuing occupation of the site by the AQIS. The proponent has therefore advised that physical commencement requirements of the current lapsing provision in term 8 of the concept plan approval cannot be achieved by the time that vacant possession of the site will be available now that the AQIS occupation of the site has been extended until January 2016. Therefore works could not commence to ensure that lapsing of the concept plan approval does not take effect before the current lapsing date of 29 June 2015.

## **6. CONSULTATION**

In accordance with section 75X of the EP&A Act and clause 8G of the EP&A Regulation; the modification request was made available on the Department's website. Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means. No public submissions were received on the modification request. The request was referred to Blacktown City Council for their review, and council has raised no objections to the modification.

## **7. DELEGATED AUTHORITY**

On 14 September 2011 the Minister delegated his powers and functions under section 75W of the EP&A Act to Directors in the Major Projects Assessment Division in cases where:

- (a) the relevant local council has not made an objections, and
- (b) a political disclosure statement has not been made, and
- (c) there are less than 10 public submissions in the nature of objections.

As no submissions were received and council has not made an objection, the Director may determine the modification request under delegated authority.

## **8. KEY ISSUES**

### 8.1 Review of other terms and conditions of the approval

Section 75Y(2) of the Act provides that a condition of approval which provides for the lapsing of the approval may be modified to extend the lapsing period. This also requires that the approval is reviewed before extending the lapsing period and that other modifications may be made to the approval, whether or not requested by the proponent.

Term 7 relating to the timing of a planning agreement for road works has been modified pursuant to MOD 1, so that the planning agreement will required prior to the release of the first subdivision certificate or first occupation certificate, instead of within twelve months of the concept plan approval as originally required.

While there are no other terms of the concept plan approval (as already modified) which would be affected by the proposed modification to extend the lapsing date, it is noted that the concept plan approval does not currently include any Term of approval that specifically requires that the project is undertaken in accordance with approved plans and documents. Accordingly it is recommended that the concept plan is further modified to include a new Term 1A that specifies the project shall be undertaken generally in accordance with the indicative layout plan attached as Appendix 1 to the approval and in accordance with the EA for the concept plan, as well as the subsequent modifications. In reviewing the EA documentation for this further modification of the approval it was also noted that the definition of 'Concept Plan' in the definitions in schedule 2 of the approval incorrectly refers to the date of the EA as November 2009, instead of December 2009, and it is also intended to correct this.

## 8.2 Lapsing date

The proponent seeks to extend the present lapsing period for the concept plan approval from 29 June 2015 to 1 October 2016. The proposed lapsing date of 1 October 2016 coincides with the lapsing date specified under clause 11(3) of Schedule 6A of the *Environmental Planning & Assessment Act, 1979*. Clause 11(3) and the specified lapsing date of 1 October 2016 applies to transitional Part 3A projects where no valid lapsing provisions have been included in an approval.

Accordingly the current lapsing provisions in the concept plan approval could be deleted and then the lapsing date of 1 October 2016 specified in clause 11(3) of Schedule 6A would apply by default. It is however considered appropriate to retain a condition in the approval which provides a date on which the concept plan approval will lapse. In order to avoid any confusion with the default lapsing date specified in clause 11(3) of Schedule 6A it is preferable to nominate an earlier or later date.

In the circumstances of this case, with the commencement of works related to the approval pending the site being vacated by the AQIS after January 2016, it would be preferable to nominate a later date. Accordingly it is recommended that term 8 of the concept plan be amended to nominate the date of 31 October 2016 as the lapsing date.

## 9. **RECOMMENDATION**

It is RECOMMENDED that the A/Director:

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

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