

19 February 2014

The Director General
NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attn: Ms Necola Chisholm,

Section 75W Modification Application – Response to Submissions

Trinity Point Marina & Mixed Use Development Concept Approval (MP 06_0309)

Dear Necola,

I write in response to your emails of 21 January 2014 and 18 February 2014 seeking a response to public submissions that have been made in response to three Section 75W Modifications that the Department of Planning are currently assessing in relation to the Trinity Point Development.

Please accept this letter and enclosed table as our response to the submissions made.

In this cover letter, I would like to make the following observations:

- The community raised concerns in numerous forums regarding the timing commitment for the sewer pump out and other facilities. Our original application was silent in this regard however, in order to clarify this issue raised in multiple submissions, **it is confirmed that public sewage pump out and oily bilge facilities will be provided within the first stage of the marina.** This is consistent with the previous commitment to provide those public benefits early in the project and as part of the overall environmentally responsible approach to constructing and operating the marina. The location of those facilities will be documented within relevant development application/s. Over the course of the staged development, the location of these facilities may be required to be relocated to ensure they continue to be appropriately located to provide public accessibility, security and management within the marina facility.
- There are a range of reasonable and relevant issues raised in submissions relating to the modification to include a limited use helipad, and an environmental assessment addressing those, as required by DOPI environmental assessment requirements (as clarified), is to be prepared and submitted. There is further formal exhibition opportunity for the community to review and make submissions on that technical information prior to any

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assessment and determination of the helipad modification (MOD 3). This submission acknowledges those helipad issues raised and we propose to address these comments in the future environmental assessment report which, as stated, will go through its own separate consultation / exhibition process in the near future.

- For clarity, in practical terms the helipad will most likely occur in conjunction with Stage 3 of the marina or later stages, and its location will not alter whether built in Stage 3, 4, 5 or 6. This matter will be incorporated into the environmental assessment of the helipad to be prepared separately.
- There are no issues raised in submissions that preclude support for the modification to extend the currency period (MOD 1) or the restaging of the marina (MOD 2).

Additional Modification Request – MOD 2

As part of the MOD 2 application before you, we would like the Department to also consider the following amendments to the Part 3A Concept Plan:

1. We note that the staging modification (MOD 2) did not specifically identify in Section 3.3 the need for consistency update to Condition C29, to align the timing of the second snapshot required by that condition to be with Stage 4. We would like the Department of Planning to therefore consider ***amending Condition C29 to require the second snapshot analysis to be attached to Stage 4 of the marina*** which is similar in intent to the other specific condition modifications sought and is entirely consistent with rationale.
2. The original determination of the Minister provided that,
 - pursuant to Section 75P(1)(a) of the Environmental Planning & Assessment Act 1979, that future applications for the marina (including the marina buildings and associated structures) be subject to Part 3A of the Act.
 - pursuant to Section 75P(1)(b) of the Environmental Planning & Assessment Act 1979, that future applications for all land based development (except marina buildings and associated structures) in association with the Concept Plan be subject to Part 4 of the Act.

The Department of Planning has previously written to JPG advising that, due to the repeal of Part 3A, future applications are to be lodged with the Council for assessment and, depending on value and other matters, may be referred to the Joint Regional Planning Panel as a consent authority.

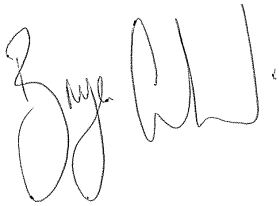
In any case, the marina (including marina buildings and associated structures) are now Part 4 matters and, to ensure consistency and clarity in the determination and approval, we would ask the Department to modify the approval by revising the Minister's determination, ***pursuant to Section 75P(1)(b) of the Environmental Planning and Assessment Act 1979, so as to provide that***

all future land and marina based applications in association with the concept plan be subject to Part 4 of the Act.

Thank you for the opportunity to respond and we look forward to the Department progressing their assessment and determination of MOD 1 and MOD 2.

Should you wish to discuss the contents of this submission please do not hesitate to contact me on 0408 991 888 or email bryang@johnsonpropertygroup.com.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bryan Garland', with a stylized flourish at the end.

Bryan Garland
Development Director
Johnson Property Group

Encl:
Response to Submissions Table

SECTION 75W APPLICATIONS TO APPROVED CONCEPT PLAN 06_0309

Trinity Point Drive, Morisset Park

Three section 75W applications are currently before Department of Planning & Infrastructure (DOPI) for assessment and determination relating to approved Concept Plan 06_0309, being:

- Extension to currency period
- Staging of marina & review of related pre-conditions
- Helipad (limited use)

DOPI have determined that there are no specific environmental assessment requirements or public exhibition requirements for the first two modification applications, and have provided specific environmental assessment requirements for the helipad modification. Once the scope of the environmental assessment requirements are clarified, and the assessment is completed and submitted, it is anticipated that the helipad modification inclusive of its environmental assessment will be publicly notified, prior to assessment and determination.

DOPI have to date received and supplied JPG with copies of fifteen (15) submissions to the section 75W applications (plus one updated submission). A summary response to matters raised in those submissions follows.

In summary, JPG are of the view that:

- There are no issues raised in submissions that preclude support for the modification to extend the currency period;
- There are a number of reasonable issues raised in submissions relating to the modification to revise staging of the marina, including the timing of provision of certain infrastructure and facilities associated with the revised stages and concern about temporary land based works. This response positively responds to those matters to provide clarification and intent. Taking into account those responses, there are no issues that preclude support for the modification to staging of the marina. The submissions question the associated modification to conditions to clarify the associated timing of various studies and information in a general sense only and in the main do not compare those with the current requirements nor the individual modification requests and their justifications; and
- There are a range of reasonable and relevant issues raised in submissions relating to the modification to include a limited use helipad, and an environmental assessment addressing those, as required by DOPI environmental assessment requirements (as clarified), is to be prepared and submitted. There is further formal exhibition opportunity for the community to review and make submissions on that technical information prior to any assessment and

determination. This submission acknowledges those helipad issues raised and we propose to address these comments in the future environmental assessment report.

Topic	Relevance to Extension to Currency (MOD 1)	Relevance to Staging (MOD 2)	Relevance to Helipad (MOD 3)	Details / Comment	JPG Response
Process or General	X	✓	✓	<ul style="list-style-type: none"> Should only proceed on basis of original approval, modifications alter the balance of original decision making Does not comply with Major Project SEPP and should be removed from Part 3A legislation & follow normal assessment processes Should be assessed by LMCC Requires separate Part 4 application for helipad Questions about availability of documentation on website, exhibition timeframes and locations of exhibition materials. EA Reporting 2008 DGRs are out of date All reports should be updated All studies should be completed prior to amendment Must continue to be assessed as an 'integrated project' and no changes should be considered unless in the context of a fully restated case for a total project, including due to time lapse and 	<p>The NSW planning system provides the mechanism for application and assessment of modifications, including to approved concept plans. The proposed modifications to the approved Concept Plan sit within those processes (as a 'transitional Part 3A project'), as documented in the applications. Modifications are sought specifically as detailed, and do not alter un-related aspects of the total project. Future modifications, if any, will be subject to the legislative processes as provided.</p> <p>DOPI have reviewed the modification applications and advised that one of the three modifications has specific environmental assessment requirements, being the helipad modification (MOD 3).</p> <p>In issuing the requirements for the helipad, DOPI sought input from Council and other agencies to ensure requirements were up to date. Subject to clarification on specific requirements relating to the helipad, appropriate and specialist inputs will be sought to address those. These will be submitted to DOPI for assessment, which will include public exhibition of that information. It is only once that has occurred will a determination be made on inclusion or otherwise of a helipad within the concept plan.</p> <p>All components of the approved concept plan (and any modifications) require additional application/s, public exhibition and assessment processes, taking into account the approved concept plan (as modified) and any conditions (as modified). The type of those</p>

				<p>should include all land based components.</p> <ul style="list-style-type: none"> • Must be a timetable to complete and not dissociate land and water based components. • Concern about JPG ability to proceed with or deliver project • Concern about land clearing and loss of natural outlook and view impacts linked to concern about width of foreshore land in public ownership 	<p>applications, who undertakes the assessment and who determines them will be determined via the NSW planning system. The project is neither 'state significant development' nor 'state significant infrastructure' and as such is likely that all components will be subject to Part 4 development applications and submitted to Lake Macquarie City Council for assessment. Some may be determined by the Joint Regional Planning Panel.</p> <p>It is a requirement for any subsequent determination to not be inconsistent with the approved concept plan and its conditions.</p> <p>It is neither an existing requirement (nor is it reasonable) to have all studies referenced in the conditions to be completed prior to determining modification applications to the concept plan as suggested in one submission. All of the study requirements remain and the modification to the marina staging simply seeks to align the timing of some of the studies to when they are of most relevance and informative to merits assessment. This is discussed further below.</p> <p>JPG are seeking modifications to the project in a currency and staging sense in order to proceed with the project.</p> <p>The proposed modifications do not alter foreshore ownership, land clearing or foreshore setback requirements as provided for the in the approved concept plan, as raised in one submission.</p>
Reduction in helicopter movements & justification for helipad	X	X	✓	<ul style="list-style-type: none"> • Asserts that helipad is not essential as it was previously removed • Questions rationale of reducing helicopter movements if committed to supporting tourism • Concern about future modification to increase flights per week • Rejects outright reintroduction of flights or construction of dangerous helipad • Questions how helipad makes a difference to viability of marina, noting major train station and M1 motorway in vicinity 	<p>Justification for the helipad will be provided within the environmental assessment that is yet to be prepared.</p> <p>Of importance to the proponent is having the option for limited helicopter movement as one mode of transport to complement and enhance the overall integrated destination being sought to be created. This desire has been reaffirmed by the proponent through the process of securing financial partners to progress the project since the previous withdrawal of the helipad from project.</p> <p>There is logic for a floating helipad integrated into the marina design and not sited within the Trinity Point land or on sites outside the</p>

				<ul style="list-style-type: none"> • Lack of logic having helipad in the lake • Better areas for helicopter landing in Morisset eg. Avondale School, Morisset Mega Markets site 	peninsula as suggested by one submission, subject to impact assessment to be prepared.
Impacts of helicopter	X	X	✓	<ul style="list-style-type: none"> • Original acoustic report flawed • Original impacts were borderline compliant, must now fail to comply if location of helipad is closer • Adverse Noise impacts from landing, taking off and flight paths • Demonstrated noise & turbulence from recent rescue helicopter exercise in bay was substantial • Ecology and fauna impacts from helipad • Helipad will create pollution and waste problem • Privacy impacts • Impact from rotor blades on water activities & use of bay by other users. • Impacts on use of bay for recreation and impost of exclusion zones • Safety issues – safe landing on pontoon, visibility of tall masts, pedestrian safety, boat owner safety, weather conditions • No information on types of helicopters, timing of movements, flight paths, safety procedures, noise impacts or use of area of lake. • Due to low numbers, cannot control flight paths or schedules, increasing risk of unexpected arrival/departure • Was removed due to adverse impacts on residents including impact on quality of life. 	<p>Public concern over the impacts of a helipad within the Trinity Point project is acknowledged. Assessment of impacts of a helipad will be provided within the environmental assessment that is yet to be prepared.</p> <p>That assessment will include:</p> <ul style="list-style-type: none"> • Helicopter Design and Operation report (location of helipad, types of helicopters, hours/frequency, flight paths, routes, safety) • New Acoustic Assessment in line with an agreed methodology relating to existing and proposed residential (including within the project) and on fauna and their habitats; <p>Additionally, addendum assessment will be provided by aquatic ecology, marine & coastal processes and marina consultants.</p> <p>That assessment will be submitted to DOPI for public exhibition and assessment.</p>
Provision of helipad in staged marina	X	X	✓	<ul style="list-style-type: none"> • If helipad location is variable with each stage, changes impacts including noise relative to location of sensitive receiver 	The public submission comments assume that due to staging of the marina, the proposed helipad will have a variable location over time. These assumptions may have arisen due to a comment in the helipad

				<ul style="list-style-type: none"> If not all stages completed, left with helipad in closer location 	<p>modification indicating that the helipad is not intended to be tied to any particular stage.</p> <p>It is intended to seek concept approval for a fixed location for the helipad only, and that helipad location will be subject to appropriate environmental assessment including noise impacts. The helipad location will not be variable as raised in submissions.</p> <p>For clarity, in practical terms the helipad will most likely occur in conjunction with Stage 3 of the marina or later stages, and as outlined above, its location will not alter whether built in Stage 3, 4, 5 or 6. This matter will be incorporated into the environmental assessment of the helipad to be provided and is not relevant to the modification seeking staging of the marina.</p>
Staging of marina	X	✓	X	<ul style="list-style-type: none"> One submission supports staging of marina in principle if DOPI don't accept the viewpoint that the original decision should not be reviewed. That support is on the basis that each stage should be standalone with appropriate services to berths, safety and environmental controls and no temporary facilities should be permitted (including land based) Concern that first stage excludes appropriate waste & sewage disposal facilities, pump out, toilets & standard environmental requirements, which can result in lake pollution. Only proposing to construct 20% of approved berth numbers and concern about viability if staged and temporary land based works, noting past supporting documentation. Seeks revised financial plan to be submitted. Questions who will be responsible if subsequent stages don't proceed, opportunity for 'white elephant' or 'temporary facility' in pristine lake, who would remove/rehabilitate? 	<p>The concept plan approval provides for two marina stages, and the modification seeks to progress in a maximum of six stages. Staging in this manner assists delivery of the development to avoid the 'white elephant' outcome feared.</p> <p>The modification for revised staging retained a commitment to provide for public boating infrastructure and other services, safety and environmental controls, but was silent on the timing of all of those relative to the six stages. It appears that submissions have interpreted that to mean that they would be deferred or not be provided until the last (sixth) stage.</p> <p><i>Timing of Facility Provision</i></p> <p>In order to clarify this issue raised in multiple submissions, it is confirmed that public sewage pump out and oily bilge facilities will be provided within the first stage of the marina. This is consistent with the previous commitment to provide those public benefits early in the project and as part of the overall environmentally responsible approach to constructing and operating the marina. The location of those facilities will be documented within relevant development application/s. Over the course of the staged development, the location of these facilities may be required to be relocated to ensure they continue to be appropriately located to provide public accessibility, security and management within the precinct.</p>

				<ul style="list-style-type: none"> • Concern that first stage excludes fuel, hardstand, maintenance, chandlery & support facilities, permanent access/roads, life-saving equipment, security - all should be provided with first stage. • Concern about adequacy of temporary structures and when they will be made permanent and whether other land based components will be indefinitely deferred or separately modified • All works should be permanent and consistent with a final project plan • Questions measures to prevent land based impacts on groundwater and water quality, including erosion & sediment associated with temporary road and parking and structures. 	<p>Additionally, the standard services to berths and environmental and other management of the marina as approved is intended to equally apply to each small stage, such that from stage one onwards the marina is not 'temporary' or substandard. This is inclusive of safety, security, lighting, fire fighting, toilets and other facilities for marina users, waste management and environmental controls. The only exclusion to that is provision of fuel facilities, which are not intended to be linked with any specific stage as this provision will be demand driven and incorporated as needed.</p> <p><i>Phased Development of Land Based Works</i></p> <p>The concept plan as currently approved is specific in not linking the boat lift facility, hardstand and maintenance uses with any particular staging of the water based marina. That intent is unaltered by the modification.</p> <p>The modification for staging the marina identifies that development application/s may be sought for a phased development of land based support facilities linked directly to the initial start-up of the first stage of the marina. Details of the nature and standard of those facilities and works are not provided. The concept plan is specific in not linking land based marina provisions directly to water based marina works and is silent on phasing of land based works other than providing for the ultimate 'full development' outcome. Phasing of development is not unusual particularly for large and longer term development concepts.</p> <p>On reflection, the terminology 'temporary' used in the application and on plans, may be perceived, wrongly, that such land based facilities and works will be substandard and undesirable. That is not the intent of JPG, who are committed to the need for a good quality building and responsible land based works for Stage 1 marina noting the lands location on the edge of the lake. Those works would be 'temporary' in the sense that they are ultimately intended to either be replaced and/or flexible for further upgrading or integration into other land based components over time. Poor delivery of any stage will not be of any benefit to JPG and all facilities provided at any point in time will be of high standard.</p>
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Need for marina	X	X	X	<ul style="list-style-type: none"> No proven demand for marina, adequate berths in existing marinas 	Not applicable to modification. This matter was dealt with during the assessment of the Concept Plan and concept approval has been given to a total of 188 berths, which is not altered by the modifications.
Marina location, design and impacts	X	✓	X	<ul style="list-style-type: none"> Questions the whole marina component as Inappropriate and unsustainable development at odds with guidelines in an unsuitable location with unacceptable and multiple impacts. Distance to marina from channel & damage to vessels using channel Marina will result in loss of Bardens Bay area, destroy ambience of the bay, impact on other users such as water skiing, sailing & fishing, takes away public access to the bay, destroys views and privacy. Design has ignored LMCC recommendation to amend design to have shorter arms to take up less space in the bay. The modification should incorporate that as well. Poorly designed to winds/weather and potential for erosion damage including from additional power boat movements. 	<p>Concept Marina Design and requirements of Condition B1</p> <p>Many of the issues raised in the submissions relate to issues that were raised, assessed and determined as part of the original Concept Plan approval and/or are addressed by current concept plan approval conditions which are to remain. This includes matters such as distance of the marina to the channel and channel related issues, use of Bardens Bay and 'lake take up' and impacts relative to other lake users, existing conditions and marina design responsive to those (including winds, weather, erosion, tidal flow, seagrass wrack management) and operational management.</p> <p>Many of these considerations are not altered by the proposal to enable smaller stages in construction, delivery and operation of the marina, noting that environmental controls will equally apply to smaller stages. As such, the issues raised are not directly applicable to the staging modification requested.</p> <p>The modification before DOPI does not alter the concept design, and simply seeks staging. JPG acknowledge that existing condition B1 requires the concept marina design to be reviewed against certain performance issues including water flow, flushing, water quality, wave</p>

				<ul style="list-style-type: none"> • Uncertainty about impact of design on natural tidal flow, sea wrack beds & aquatic ecology • Pollution risks due to boat maintenance and boating activities, further risks due to tidal flushing environment; • Noise impact from boatyard and scale of marina • Traffic impacts of marina and capacity of road system. • Current Marina Spill Management Strategy for automatic bilge pumps to be left in 'off' position contrary to marina insurance policies. 	<p>characteristics, seagrass wrack movement, weather protection and visual impact. That condition remains and is not intended to be altered by the proposed staging modification and will still require to be complied with prior to lodgement of a development application, to the satisfaction of the Director General. That requirement has not been ignored as suggested in a submission.</p> <p>It is understood that any revised design (if required following baseline verification and review against performance criteria) arising from Condition B1 process will automatically form part of the concept plan approval once that is to the satisfaction of the Director General (ie it will not in itself require a modification application to the approved concept plan as the review and any modification to design arising from that is built into the approval via condition B1 and condition C1).</p> <p>As a precursor to the condition B1 review, JPG have commissioned works to verify baseline data for the marina as required by Condition C11. Whilst this is underway it is not directly linked to the modifications as currently sought. If staging is approved as sought, the staging principles will likely be applied to any modified design (if that is the outcome) arising from compliance with conditions B1, C1, C12, C14..</p> <p>Condition C29 relating to monitoring recreational boating usage via an initial and second snapshot also remains and is unaltered by the proposed staging modification, other than to align the timing of the second snapshot analysis to the modified staging numbers. The initial snapshot is required to be submitted with first marina development application.</p>
Timing of Studies	X	✓	X	<ul style="list-style-type: none"> • No modification should be considered until JPG complies with all requirements including studies and all conditions are met • All land and water based environmental studies must be completed before any work is undertaken • Marina & aquatic reports have not been completed, lack of confidence and staging marina simply to assist in sales of expensive real estate 	<p>The concept plan approval outlines specific studies and reports required at various trigger points. Submissions make general comments about all studies being undertaken before in some submissions any modification and in other submissions before any works but without specific rebuttal to updated timing sought and rationale for each of those. Some misinterpret the existing requirements and their timing and how they are or are not sought to be modified.</p> <p>In terms of studies listed in the concept plan approval, the following is a summary of those critical ones that remain unchanged or that are</p>

				<ul style="list-style-type: none"> • Studies and assessments should be by independent authority • Concern about timing of Condition C14 being modified 	<p>sought for modification for consistency with new staging proposal or to align their provision with the site components that generate the level of impact which warrants their provision re: 'whole of site' impacts.</p> <p>In summary:</p> <ul style="list-style-type: none"> • the critical studies that directly inform or relate to the marina are either retained unchanged (conditions C11 and B1) – refer previous commentary on these conditions, or modified simply to align the trigger to the equivalent new stage to be consistent with original condition intent against vessel numbers (conditions B2, C12,C14, C29) • those studies which are considered to more directly relate to impact assessment of land based development outside the marina proposal across the entire site, are sought to be linked to those application types and not the marina applications, being conditions C3, C7, C9, C19, as individually justified within the modification application. <p>It remains our view that the requested modification to conditions which clarify timing of provision of certain studies is reasonable and well justified. JPG welcome discussion with DOPI if there is any specific aspect of the modifications sought to conditions of outstanding concern.</p>
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