

6 August 2014



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

Attn: Ms Necola Chisolm

**Section 75W Modification Application – Extension to Lapse Date**

*Trinity Point Marina & Mixed Use Development Concept Approval (MP 06\_0309)  
Lot 31 DP 1117408, Pt Lot 32 DP 1117408, Pt Lot 33 DP 1117408 (now Lot 410,  
DP1139690), and Pt Crown Land (the Lake)*

Dear Necola,

On 30 September 2013, JPG submitted a Section 75W modification to seek approval to extend the lapse date of the Part 3A Concept Plan. Subsequent approval of this lapse date extension was granted on 1 April 2014.

It has come to our attention that the submission did not include the landowner Consent for the area covered by the easements. Please find enclosed a copy of the landowner consent now covering the relevant lands.

It would be appreciated if the Department could issue a new determination on the basis that all relevant landowners have provided their consent. For the purposes of this submission, I enclose the original Modification request application submission from 30 September 2013 as the content of that submission still remains relevant.

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](mailto:bryang@johnsonpropertygroup.com.au)

Yours sincerely,

**Bryan Garland**  
Development Director  
Johnson Property Group

Encl:

JPG Section 75W Modification submission dated 30 September 2013  
Department of Planning MOD 1 Determination (1 April 2014)  
Department of Lands Landowner Consent  
Lake Macquarie City Council Landowner Consent  
Kendall Grange Properties P/L Landowner Consent

Level 12, 48 Hunter Street  
Sydney NSW 2000

PO Box A1308  
Sydney South NSW 1235

30 September 2013

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

Dear Mr Haddad,

**Section 75W Modification Application – Modifications to Proposed Marina**

*Trinity Point Marina & Mixed Use Development Concept Approval (MP 06\_0309)  
Lot 31 DP 1117408, Pt Lot 32 DP 1117408, Pt Lot 33 DP 1117408 (now Lot 410, DP1139690),  
and Pt Crown Land (the Lake)*

**1. INTRODUCTION**

This Section 75W modification application seeks to modify Concept Approval (MP06\_0309) which was granted by the NSW Minister for Planning on 5 September 2009. The Trinity Point marina and mixed use development concept approval includes the following:

- A 188 berth marina (to be constructed in 2 stages), associated maintenance and club facilities;
- 150 accommodation units comprised of 75 tourist units and 75 residential units;
- Restaurant, café, function centre, shops and office; and
- Parking, landscaping and boardwalk.

This proposed modification to the Concept Approval seeks to extend the consent lapse date from 5 September 2014 (current) to 1 October 2016 (proposed). This proposed modification has been previously discussed with NSW Department of Planning and Infrastructure staff.

As a result of the economic downturn since the approval was originally issued in September 2009, the proposed extension of time is essential to facilitate the development of the concept plan approval. Johnson Property Group is still very much committed to delivering the Trinity Point project and have only recently been able to secure an investor to partner Johnson Property Group on delivering the outcome.

The proposed modification is addressed in detail in **Section 3** of this Section 75W modification application.

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## 2. ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

On 1 October 2011, Part 3A of the EP&A Act 1979 was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011 No. 22*. Despite this, Part 3A continues to apply to the project based on the transitional provisions identified in Clause 2 and 3 of Schedule 6A of the EP&A Act 1979 as follows:

### ***Schedule 6A***

#### ***"2 Transitional Part 3A projects***

- (1) *The following are, subject to this Schedule, **transitional Part 3A projects**:*
- (b) *a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),*
  - (5) *A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A."*

Clause 3 of Schedule 6A of the EP&A Act 1979 states that the provisions of any State Environmental Planning Policy (SEPP) implemented under Part 3A continue to apply in respect of a transitional Part 3A project:

#### ***"3 Continuation of Part 3A—transitional Part 3A projects***

- (1) *Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.*
- (2) *For that purpose:*
- (a) *any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project,"*

Clause 3C of Schedule 6A of the EP&A Act 1979 confirms that Section 75W continues to apply for the purpose of the modification of an approved concept plan as follows:

#### ***"3C Modification of concept plans***

- (1) *Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.*
- (2) *This clause applies despite anything to the contrary in this Schedule (other than provisions to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan)."*

Based on the above legislation, it is established that the proposed modifications to the approved concept plan can be assessed as a Section 75W application. Section 75W of the EP&A Act states:

#### ***"75W Modification of Minister's approval***

- (1) *In this section:*
- Minister's approval** *means an approval to carry out a project under this Part, and includes an approval of a concept plan.*

**modification of approval** means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.
- (5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.
- (6) Subsection (5) does not apply to a request to modify:
  - (a) an approval granted by or as directed by the Court on appeal, or
  - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."

No provisions of Section 75W prohibit or restrict the proposed modifications to the concept plan approval. It is considered that the proposed modifications remain consistent with this section of the EP&A Act 1979.

### **3. PROPOSED MODIFICATIONS & ENVIRONMENTAL ASSESSMENT**

This Section 75W modification application seeks to extend the consent lapse date from 5 September 2014 (current) to 1 October 2016 (proposed).

Details of the proposed modification is confirmed below. An Environmental Assessment of the proposed modification is also provided.

#### **3.1 Proposed Modification – Extension to the Consent Lapse Date**

Condition A5 of the current consent states the following:

*"A5 Lapsing of Approval*

*Approval shall lapse five years after the determination date in Part A of Schedule 1 of this approval unless Stage 1 is approved and physically commenced".*

In addition, Schedule 1 Part A – Table states the following:

Date approval is liable to lapse	Five years from the date of determination unless works have physically commenced in accordance with Section 75Y of the Act.
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The date of determination of the Concept Plan application was 5 September 2009, therefore unless Stage 1 of the concept approval has been DA approved, CC approved and physically commenced by 5 September 2014 the Concept Plan approval will lapse.

Johnson Property Group remain strongly focussed on progressing the Trinity Point development. It is noted that Johnson Property Group Pty Ltd previously anticipated that it could have progressed with the development soon after approval of the Concept Plan. However, due to the well recognised downturn in the development industry, progressing the concept plan was not a viable activity. However, given that a degree of confidence is now returning to the development industry and an investor is now involved, Johnson Property Group are seeking to progress the Trinity Point development. Given that there is a requirement to have Stage 1 approved and works physically commenced by 5 September 2014 or else the concept approval will lapse, it is considered that this timeframe is not practical to achieve physical commencement (ie. Less than 12 months). Consequently, a time extension is required to extend the lapse period to 1 October 2016 to align with the EP&A Act Schedule 6A(11)(3) which is 5 years after the repeal of Part 3A.

The proposed amended condition A5 is as follows:

*“A5 Lapsing of Approval  
Approval shall lapse on 1 October 2016 unless Stage 1 is approved and physically commenced”.*

The proposed amendment to Schedule 1 Part A - Table

Date approval is liable to lapse	1 October 2016 unless Stage 1 is approved and physically commenced in accordance with Section 75Y of the Act.
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It is noted that the Minister can assess extending the timeframe based on Section 75Y(2) of the EP&A Act 1979, which states:

*“75Y(2) Any such condition may be modified under this part to extend the lapsing period. The Minister is to review the approval before extending the lapsing period and make other modifications to the approval (whether or not requested by the proponent).*

### **Environmental Assessment - Extension to the Consent Lapse Date**

It is considered that the proposed extension to the consent lapsing date will have no adverse environmental, social or economic impacts. The proposed extension to the lapsing date can be supported based on the following:

- The proposed modification relates to timing of commencement of the approved concept plan only. The time extension will allow suitable time for a Development Application for Stage 1 to be prepared, determined and construction commenced.
- There will be no additional environmental impacts generated other than what was considered in the Concept Plan application process.

### **Proposed Amendments to Concept Plan Approval (06 0309) Conditions to Facilitate Above Described Modifications**

The proposed amendments to the concept plan approval conditions are as follows (where whole conditions are stated, refer to the underlined section for suggested amendment):

- Part A Table to be updated to.  
Date approval is liable to lapse      1 October 2016 unless Stage 1 is approved and physically commenced in accordance with Section 75Y of the Act.
- Conditions A1, A2, A3 to be updated to reference the s75W modification letter dated 30 September 2013 prepared by Johnson Property Group (and any subsequent documentation).
- *"A5    Lapsing of Approval  
Approval shall lapse on 1 October 2016 unless Stage 1 is approved and physically commenced".*

#### **4.      LANDOWNER CONSENT**

Landowner consent is enclosed.

#### **5.      CONCLUSION**

The proposed modification under Section 75W of the EP&A Act 1979 seeks to extend the consent lapse date from 5 September 2014 (current) to 1 October 2016.

It is considered that the proposed modification remain consistent with the original concept approval. The proposed concept approval amendments will not result in any adverse impacts on the surrounding environment and it is considered that the Section 75W application can be supported.

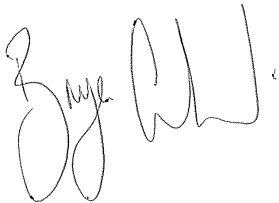
The proposed modification will result in the provision of a suitable timeframe on the concept plan consent to allow future development within Trinity Point to be planned, applied for to the relevant authority and commenced.

The proposed modifications will contribute to the realisation of the overall Trinity Point development which can be supported for a number of reasons including:

- The Trinity Point development represents the development of a world class recreational and tourism development on appropriately zoned land on the western side of Lake Macquarie.
- The development remains consistent with all current key town planning legislation and principles.
- The proposal will provide significant public access to the lake. The proposal will also provide opportunity for the public to not only enjoy the natural aspects of the lake, but also the features of the development itself (ie. patronage at the cafe overlooking the lake).
- All key constraints and sensitive environmental aspects of the site are well understood and any potential impacts can be managed with best practice environmental controls.
- The Trinity Point development will provide substantial initial and ongoing investment to the region, as well as construction employment opportunities and ongoing positions of employment in the future.

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](mailto:bryang@johnsonpropertygroup.com.au)

Yours sincerely,



**Bryan Garland**  
Development Director  
Johnson Property Group

# Modification of Minister's Approval

## Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under the instrument of delegation executed on 14 September 2011, I approve the modification of the concept plan referred to in schedule 1, subject to the modified conditions in Schedule 2.

  
Dan Keary  
Director  
Industry, Key Sites and Social Projects

Sydney      1 APRIL      2014

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### SCHEDULE 1

<b>Concept Approval:</b>	06_0309 granted by the then Minister for Planning on 05 September 2009
<b>For the following:</b>	188 berth marina and associated maintenance and club facilities;
	150 accommodation units (75 tourist and 75 residential); restaurant, café, function centre, shops and office; parking, landscaping and boardwalk.
<b>Modification:</b>	Extension to the lapse date.

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### SCHEDULE 2

The Concept approval described in Schedule 1 is modified as followed:

- In schedule 1, delete the final row from Part A – Table, which states:  

"Date approval is liable to lapse: 5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the Act."
- Insert the following note in Part B – Notes Relating to Determination of Concept Plan Application 06\_0309:  

**"Lapsing of Approval"**  
Schedule 6A of the *Environmental Planning and Assessment Act* makes provision for the lapsing of approvals and approvals of concept plans for transitional Part 3A projects."
- Insert the following words in Condition A1, immediately after the words 'dated 5 June 2009':  
"and as modified by the s75W modification dated 30 September 2013 (Mod 1) prepared by Johnson Property Group,"
- Insert the following words in Condition A2, immediately after the words 'Johnson Property Group':  
"and as modified by the s75W modification dated 30 September 2013 (Mod 1) prepared by Johnson Property Group,"
- Insert a new dot point at the end of Condition A3 as follows:
  - The s75W modification dated 30 September 2013 (Mod 1) prepared by Johnson Property Group,
- Delete term A5.

End of Modification MP06\_0309 (MOD1)