



ASSESSMENT REPORT

Section 75W Modification

Trinity Point mixed used development, Morisset Park (MP06_0309 MOD 4)

1. BACKGROUND

The purpose of this report is to assess a modification application to the approved concept plan known as Trinity Point mixed use development under Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act). The modification application proposes to extend the lapsing date of the concept plan approval from 5 September 2014 to 1 October 2016. This extension is sought as the development of the site cannot physically commence before the current lapse date.

The department approved a modification application (MOD 1) for a similar extension to the lapse date on 1 April 2014. However, in that application the proponent had incorrectly stated that the relevant landowner's consent had been obtained. In fact, landowner's consent from Lake Macquarie Council (1 of 3 relevant landowners) for Lot 32 DP 1117408 had not been granted before the application was approved.

As a precaution against any potential challenge to validity of MOD 1, the proponent has submitted a fresh application to extend the lapse date for the department's assessment, with landowners' consent from all 3 relevant landowners (see **Appendix B**).

The site is located at 48C, 49 and 71 Trinity Point Drive Morisset Park and over part of Lake Macquarie, (Lot 31, Pt Lot 32, Pt Lot 33 DP 1117408 and Pt Crown land – the lake). The subject site is located within the local government area of Lake Macquarie City Council (see **Figure 1**).

2. PREVIOUS APPROVALS

On 5 September 2009, the Minister for Planning approved a concept plan for the following (see **Figure 2**):

- a marina with 188 berths and associated workshop/maintenance and club facilities;
- 150 accommodation units (75 tourist and 75 residential);
- mixed use activities, including a restaurant, café, function centre, shops and office; and
- associated parking, landscaping and a boardwalk.

The department is currently assessing another modification to the concept plan to amend the marina staging, layout, restriction to public access on the other marina breakwater wall, removing reference to Petite Lake in conditions C11 & C12 and delinking various conditions to the first development application that relate to the residential components of the site.

3. MODIFICATION DESCRIPTION

On 6 August 2014, Johnson Property Group (the proponent) submitted a request to modify the Part 3A concept plan approval under section 75W of the Act. The Proponent seeks to amend Condition A5 - Lapsing of Approval, to extend the current lapse date to 1 October 2016.

At present, the project approval lapses on 5 September 2014 (i.e. 5 years from the date of approval), unless stage 1 of the concept plan receives project approval and physically commences. The proponent has advised that starting the development soon after the approval was granted was not viable because of an economic downturn in the industry at the time.

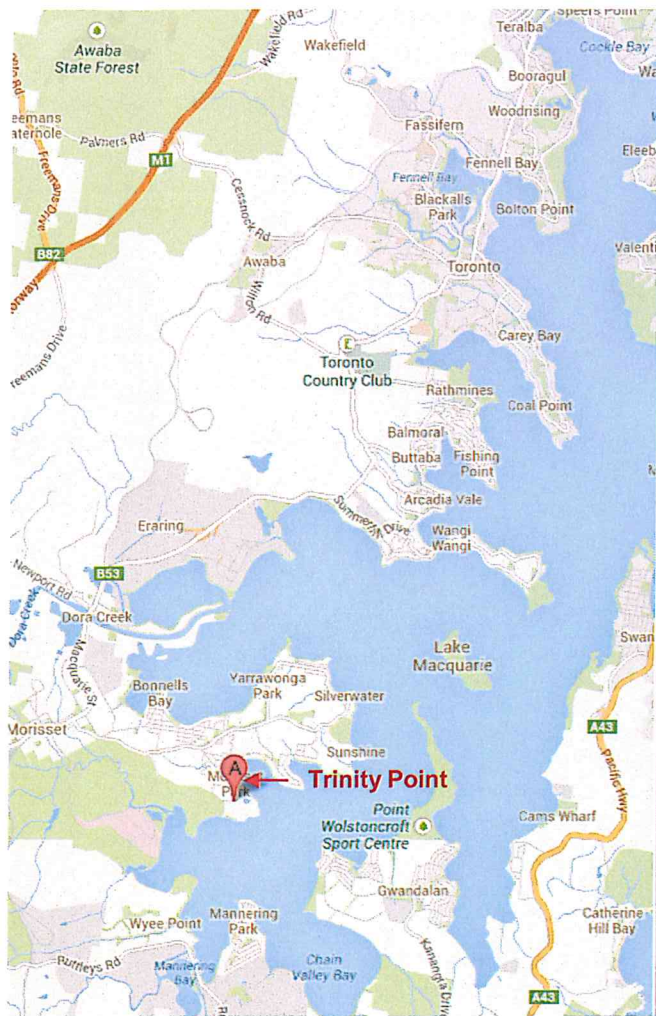


Figure 1: Project Location

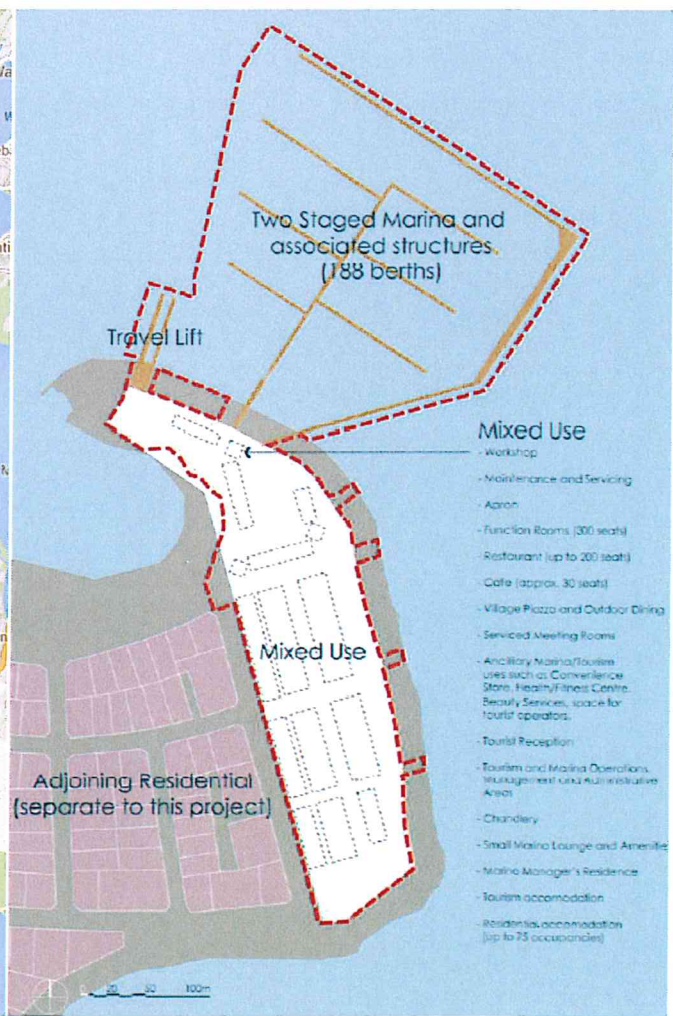


Figure 2: Approved Concept Plan Layout

The proponent has recently found a new investor for the project and plans to soon commence work on the site. However, given the passage of time since the approval and the imminent lapse date, the proponent is unable to physically commence the project in time to prevent the approval lapsing. Therefore, the proponent is requesting extension to the lapse date.

4. CONSULTATION

The modification request was made publically available on the department's website. The department also notified Lake Macquarie City Council. The modification was not exhibited more widely because of its minor nature. Council advised that it did not have any issues with the proposal to extend the lapse date and there were no public submissions.

However, there were 8 submissions concerning the project at the time the original modification to extend the lapse date (MOD 1) was assessed (see **Appendix C**). One of the submissions supported the project, while the other 7 raised issues about changes to the approved development that were proposed in modifications MOD 2. The department has not yet determined this modification.

The issue that was raised in the 7 submissions that is related to MOD 1 and the current modification (MOD 4) is that the approval should not be extended because the project should no longer be considered a Part 3A project. The reason given is that the revised capital investment value no longer meets the relevant threshold criteria.

5. MODIFICATION AUTHORITY

Under Clause 3 of Schedule 6A of the Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011, continues to apply to transitional Part 3A projects. The project is a transitional Part 3A project, notwithstanding the issues raised in the submissions about the lesser capital investment value. The Minister for Planning is the approval authority for the modification.

Under the Ministerial delegation of 14 September 2011, the Director – Industry, Key Sites & Social Projects may determine the modification as Council did not object, there were no political donation disclosures, and there were fewer than 10 public submissions.

6. ASSESSMENT

The proposed lapse date of 1 October 2016 coincides with the lapse date specified in clause 11(3) of Schedule 6A of the Act for transitional Part 3A projects where no lapsing provisions have been included in an approval. These transitional provisions were included upon the repeal of Part 3A, as not all Part 3A approvals included a built-in lapse date.

For the Part 3A approvals that had built-in lapse dates, the department has routinely extended the lapse date to the clause 11(3) default date where the proponent has so requested, has demonstrated a reason for not commencing within the specified lapsing period, and stated an intention to commence work before October 2016.

In this case, the proponent was unable to secure financial support for the project until recently and intends to commence work on the site imminently subject to a number of other modification proposals, which remain under the department's assessment. The department considers that extending the lapse date in the concept approval to the default lapse date in the transitional provisions is appropriate. Any outstanding issues with the proposed modifications in MOD 2 should be addressed in those modifications and need not be considered with the proposal to extend the lapse date in the current modification (MOD 4).

7. RECOMMENDATION

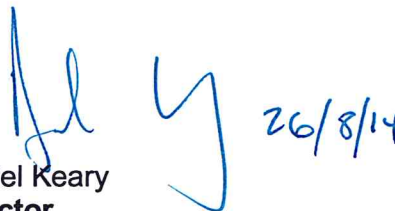
Under delegation of the Minister, it is RECOMMENDED that the Director – Industry, Key Sites & Social Projects:

- approve the proposed modification under Section 75W of the Act; and
- sign the attached instrument (**Appendix A**).

Necola Chisholm
Planning Officer



Chris Ritchie 22/8/14.
Manager
Industry, Key Sites and Social Projects



Daniel Keary
Director
Industry, Key Sites and Social Projects

APPENDIX A NOTICE OF MODIFICATION