

Modification of Minister's Approval

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

As delegate of the Minister for Planning under delegation executed on 14 September 2011, we the Planning Assessment Commission of New South Wales (the Commission) approve the modification of the Concept Plan referred to in Schedule 1, subject to the conditions in Schedule 2.

Member of the Commission

Member of the Commission

Sydney

2015

SCHEDULE 1

Concept Approval:

MP 06_0309 granted by the Minister for Planning on 05 September 2009.

Proponent:

Johnson Property Group

For the following:

- 188 berth marina and associated facilities;
- 150 accommodation units (75 tourist and 75 residential);
- restaurant, café, function centre, shops and office; and
- parking and landscaping.

Modification:

MP06_0309 MOD 5 applies to the land based component and permits:

- the creation of 315 accommodation units on site (no more than 50 per cent may be used for residential purposes);
- an increase in the gross floor area and floor space ratio to 29,482 m² and to 0.8:1 respectively;
- the reconfiguration of the building envelopes across the site;
- an increase the number of seats in the café from 30 to 40;
- modification of the Urban Design Guidelines; and
- the reconfiguration of the public domain.

SCHEDULE 2

The above approval is modified as follows:

1. On the cover sheet of the Concept Approval:
 - a) delete point b in its entirety; and
 - b) delete the following from point c 'for all land based development (except marina buildings and associated structures)'.
2. In Schedule 1, delete 'Part A- Table' and replace with the following:

PART A – TABLE

Application made by:	Johnson Property Group
Application made to:	Minister for Planning
Project Application:	MP 06_0309
On land comprising:	Lot 31 in Deposited Plan 1117408, Part Lot 32 in Deposited Plan 1117408, Lot 34 in Deposited Plan 1117408, and Part of Crown Reserve 10121129
Local Government Area	Lake Macquarie City Council
For the carrying out of:	<ul style="list-style-type: none"> • 188 berth marina and associated club facilities; • 315 accommodation units (no more than 50per cent may be used for residential purposes); • restaurant, café, function centre, shops and office; and • site access arrangements, parking, servicing, landscaping and boardwalk.
Type of development:	Major Project
Determination made on:	5 September 2009

3. In Schedule 1, 'Part C – Definitions', delete the definitions of 'Building Height' and Gross Floor Area' and insert the following new definitions in alphabetical order:

Accommodation Unit means both short stay accommodation (hotel accommodation and serviced apartments) and residential accommodation. Where proposed, 'dual key' short stay accommodation is considered jointly as one (1) accommodation unit for purposes of yield and mix calculations. All residential accommodation can also be used for short stay accommodation.

Building Height has the same definition as outlined in the *Standard Instrument (Local Environmental Plans)*.

Gross Floor Area has the same definition as outlined in the *Standard Instrument (Local Environmental Plans)*.

Ground Level (finished) means, for any point on a site, the ground surface after completion of any earthworks (excluding any excavation for a basement, footings or the like) for which consent has been granted.

RTS (MOD 5)

means the Response to Submissions for Trinity Point Marina and Mixed Use Development (Modification 5), prepared by AdW Johnson, dated April 2015 including all its appendices.

Revised UDG

means the Revised Principles, Objectives and Urban Design Guidelines, prepared by Johnson Property Group, dated June 2015.

3. In Schedule 2, replace all references to 'future applications' with 'future development application/s'.
4. In Schedule 2, replace all references to 'Preferred Project Report prepared by AdW dated, 5 June 2009' with 'Revised UDG prepared by Johnson Property Group, dated June 2015', except in terms A1 and A2.
5. In Schedule 2, delete Term A1 and replace with the following:

A1 Development Description

Concept Plan approval is granted only to carrying out the development solely in accordance with the Concept Plan as described in:

- i the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009, as modified by the following documents:
 - a) the section 75W modification application dated 6 August 2014, (MOD 4) prepared by Johnson Property Group;
 - b) the section 75W modification dated 15 August 2014, (MOD 2) prepared by Johnson Property Group; and
 - c) the Environmental Assessment dated October 2014 (MOD 5) prepared by AdW Johnson, except where amended by the RtS (MOD 5) dated April 2015, prepared by AdW Johnson and the Revised UDG dated June 2015, prepared by Johnson Property Group.

The future buildings/uses on the land will be contained within two areas as follows:

Tourism and Hospitality Precinct

1. The tourism and hospitality precinct will contain the following buildings:
 - a) the northern most building consists of a four storey building comprised of marina offices, retail, sales centre, hotel foyer, car parking and associated uses at ground level with up to 3 storeys of hotel accommodation and associated uses above; and
 - b) the building along the eastern edge of the precinct consists of a two storey building containing a function centre, restaurant, bar and café with below ground car parking.

Note: the basement level car park will sit 1.2 m to 1.5 m above the finished ground level.

Tourism and Residential Precinct

2. The tourism and residential precinct will contain buildings ranging in height between 3 and 4 storeys with basement level car parking.

Note: the basement car park will sit between 1.2 m and 1.5 m above the finished ground level.

Additional Works

3. The following building/works will be undertaken as shown on the Concept Plan and the Revised UDG (Principles 1-19):
- a) a marina and associated facilities;
 - b) a walkway/cycle path around the eastern and southern edge of the development between the buildings and the lake edge;
 - c) internal vehicular access roads and pedestrian pathways;
 - d) at-grade and basement parking areas;
 - e) stormwater management measures;
 - f) bulk earthworks; and
 - g) landscaping.
6. In Schedule 2, delete Term A2 and replace with the following:

A2 Project in Accordance with Plans

The development must be undertaken in accordance with:

1. The Environmental Assessment, dated November 2008, prepared by AdW Johnson, as amended by the Preferred Project Report, dated 5 June 2009, prepared by AdW Johnson/Johnson Property Group, as modified by the following documents:
- a) the section 75W modification dated 6 August 2014 (MOD 4) prepared by Johnson Property Group;
 - b) the section 75w modification dated 15 August 2014 (MOD 2) prepared by Johnson Property Group;
 - c) the section 75W Environmental Assessment dated October 2014 (MOD 5) prepared by AdW Johnson, except where amended by the RtS (MOD 5) dated April 2015, prepared by AdW Johnson and the Revised UDG dated June 2015 prepared by Johnson Property Group; and
 - d) the following drawings except as modified by the conditions in Part B and C of approval below:

Revised Principles, Objectives & Urban Design Guidelines (Revised UDG) Prepared by Johnson Property Group June 2015			
Drawing No.	Revision	Name of Plan	Date
Principles 1 to 19	N/A	Revised Principles, Objectives & Urban Design Guidelines Trinity Point Marina and Mixed Use Development	June 2015
Not provided	N/A	Indicative Outcome - Summary Figure Plan by Squillace Architects in Part C of Revised UDG	Part of Revised UDG June 2015
Modified Concept Plan Marina Layout Prepared by RHDHV			
8A0379- MA_LB031	B	Concept Marina Layout - Overall	4 August 2014
8A0379-MA_LB021	B	Concept Marina Layout - Stage 1a & 1 b	4 August 2014
8A0379-MA_LB011	C	Concept Marina Layout - Stage 1a	15 January 2014

7. In Schedule 2 insert the following additional documents after the final bullet point in Term A3 as follows:
 - Environmental Assessment (MOD 5) dated October 2014, prepared by AdW Johnson including all its appendices, except where amended by the RtS (MOD 5) dated April 2015, prepared by AdW Johnson, including all its appendices and the Revised UDG dated June 2015, prepared by Johnson Property Group.
8. In Schedule 2, after Term A6 insert new Term A7 as follows:

A7 Dispute Resolution

In the event that a dispute arises between the Applicant and Council or a public authority, in relation to an applicable requirement in this approval, either party may refer the matter to the Secretary for resolution. The Secretary's determination of any such dispute shall be final and binding on the parties.

9. In Schedule 2, delete Term B4 in its entirety.
10. In Schedule 2, delete Term B5 and replace with the following:

B5 Changes to Revised Urban Design Guidelines dated June 2015

Principle 2 - Building Setbacks should be modified to include an additional guideline stating: Future applications for buildings with a zero setback are to demonstrate a suitable level of detailing and articulation to ensure they add to the streetscape. Blank walls are to be avoided.

Principle 4 - Public Access and Open Space should be amended as follows:

Under Guidelines add an additional dot point stating that the design and construction of the roads and pedestrian path will allow for Public Authorities to access the 6(1) zoned land for maintenance and the like.

Principle 10 – Roads, Vehicular Access and Parking

Add an additional dot point stating that the Proponent will pay a proportional contribution to the RMS toward the upgrade of the Fishery Point Road/Macquarie Street intersection in accordance with the Deed of Agreement required under Term C7 of the Concept Approval.

Principle 16 - Acoustics should be amended by:

- deleting sections 16.1, 16.2, 16.3, Table 7, Section 3.26 and Table 8; and adding the following additional requirements:
- the general EPA criterion of background + 5 dB(A) when measured as an Leq level over 15 minutes at any residential boundary is a standard noise criterion used and will apply to this development;
- this background + 5 dB(A) criterion is commonly identified as the EPA's "intrusive noise" criterion and will cover all noise emitted from the operations of the development. The intrusive criterion will cover mechanical plant noise;
- due to the intermittent nature of noise from the construction of the development the EPA's relevant Construction Noise Criteria will be adopted for the development;
- the noise limits for construction noise require extensive noise control measures to be maintained throughout the construction phase of the development with on-going noise and vibration monitoring to occur and the provision of a dedicated noise complaint hotline;
- the NSW Road Noise Policy will be applied to all traffic generating developments;
- as part of an overall acoustic control the proponent will be required to produce a Noise Management Plan that provides self-imposed noise control measures; and
- whilst the Concept Plan has indicated preliminary acoustic concepts for the development and has been modified during the consultation process to address some of the acoustic

issues, the actual controls that will be incorporated into the development have yet to be finalised, due to the concept nature of the application.

11. In Schedule 2, delete Term C2 and replace with the following:

C2 Development Parameters

Future development application/s must comply with the following development parameters:

Tourism and Hospitality Precinct	
Development Perimeter	Requirement
Number of Storeys (maximum)	
Northern Mixed Use Building	4 storeys exclusive of basement level car parking, which is permitted up to a maximum of 1.5 m above the finished ground level.
Eastern Building	2 storeys exclusive of basement level car parking, which is permitted up to a maximum of 1.5 m above the finished ground level.
Building Setbacks to the Foreshore Reserve	
Northern Mixed Use Building	7m (to the external wall of main building) to the east. Exceptions: <ul style="list-style-type: none"> • single level retail area is setback 6m; and • balconies/terraces, slab/roof overhangs and blade walls.
Eastern Building	15 m (to the external wall of main building) setback to the eastern boundary. Exceptions: <ul style="list-style-type: none"> • 13 m setback on the north-eastern corner; • balconies/terraces, slab/roof overhangs, outdoor dining, terracing and pool
Building Setback to the Unnamed Inlet to the West (minimum)	
All Buildings	18m, with the exception of slab/roof structures and associated columns.
Tourism and Residential Precinct	
Number of Storeys (maximum)	
Six accommodation buildings	4 storeys exclusive of basement level car parking, which is permitted up to a maximum of 1.5 m above the finished ground level. These buildings are in the form of residential flat buildings with basement parking.
Two accommodation buildings on southernmost part of site adjacent to Bluff Point	3 storeys exclusive of basement level car parking, which is permitted up to a maximum of 1.5 m above the finished ground level. These buildings are in the form of residential flat buildings with basement parking.
Building Setbacks to the Foreshore Reserve (minimum)	
Six accommodation buildings	Minimum of 6 m, with the setback variations as shown in approved Principle 2 for the eastern ends of the envelopes for future buildings A to E.
Two accommodation buildings on southernmost part of site facing	Between 22.8 m and to 35.7 m

Bluff Point	
All Development	
Floorspace	
Total Floor Space Ratio (maximum)	0.80:1
Total Gross Floor Area	29,282 m ²
Total Number of Accommodation Units	
A maximum of 315	
Residential Development	
A maximum of 50 per cent of the total number of units can be used as permanent residences. The site must maintain a dominant tourist character at all times.	

Note: GFA, building height, and storey must be measured in accordance with the definitions contained within the *Standard Instrument (Local Environmental Plans)*.

Future development application/s shall demonstrate the cumulative maximum GFA and dwelling yield across the Concept Plan area.

12. In Schedule 2, delete Term C3 and replace it with the following:

C3 Urban Design

The proposed development must comply with the Revised UDG, prepared by Johnson Property Group, dated June 2015. A revised urban design guideline incorporating changes identified in Term B5 must be submitted with the development application for the first land based development. All future buildings must exhibit design excellence and consider whether:

- a) a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;
- b) the form and external appearance of the buildings will improve the quality and amenity of the public domain; and
- c) the buildings meet sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency.

All future development application/s must demonstrate the building materials and colours comply with Principle 7 – Building Materials and Colours in the Revised UDG prepared by Johnson Property Group, dated June 2015.

The residential buildings (where applicable) must demonstrate compliance or satisfactorily justify any non-compliance, with the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

13. In Schedule 2, delete Term C7 and replace with the following:

C7 Traffic and Parking

1. The developer shall enter into an agreement with Roads and Maritime Services to pay a contribution of \$769,494 (inclusive of GST) towards the cost of the future upgrade of the Fishery Point Road/Macquarie Street intersection. The agreement is to be executed prior to the issue of the first Occupation Certificate (interim or final) for residential apartments and/or short stay accommodation on-site. The agreement must incorporate details of staged payment of the contribution that will be linked to the staged development of the residential apartments and short stay accommodation. The total agreed contribution of \$769,494 (inclusive of GST) must be indexed quarterly in accordance with *the NSW Road and Bridge Construction Index*.

2. Future development application/s must demonstrate compliance with Principle 10 – Roads, Vehicular Access & Parking in the Revised UDG, prepared by Johnson Property Group, dated June 2015. This is to include the provision of a roundabout at the intersection of Trinity Point Drive and the site entrance for the land based development.
3. Parking numbers are to be provided in accordance with in accordance with the relevant *Lake Macquarie Development Control Plan* and *AS 3962-2001 (Guidelines for the Design of Marinas)*. Where it is demonstrated that vehicle parking will be used to access a variety of uses, or that the DCP 1 rates are inappropriate, total parking provision may be reduced.
4. A Parking Management Strategy should be provided to manage parking on the site including during peak events within the northern and southern precincts.

14. In Schedule 2, delete Term C4 and replace it with the following:

C4 Use of Accommodation for Tourist Purposes

The use of the tourist accommodation units is to be for short stay tourist accommodation purposes only and no tourist accommodation units are to be occupied by a person for more than 42 consecutive days or in aggregate no more than 150 days in any 12 month period. Any future development consents must include a condition which restricts the use of all short stay tourist accommodation units and prohibits the use of these units as permanent residential accommodation.

All future development applications for the residential and tourist accommodation must provide a detailed Management Plan outlining all operational and design measures that will be implemented to minimise potential conflict between permanent resident and tourist user groups. In addition, where tourism and residential accommodation is proposed within a single building envelope, the Proponent must demonstrate how the tourism and residential land uses will be physically separated to ensure an adequate level of amenity for future residents.

15. In Schedule 2, delete Term C9A and replace it with the following:

C9A Vegetation Management – Whole of Site Plan

A whole of site VMP shall be prepared and submitted with the development application for the land based development. The VMP must be:

- (a) prepared by a suitably qualified person;
- (b) be generally consistent with the VMP approved under Term C9 of this approval;
- (c) comply with the requirements of the *Guidelines for Vegetation Management Plans on Waterfront Land*; and
- (d) be generally consistent with Principles 4, 8 and 9 of the Revised UDG.

The consent authority must include a condition in any development consent issued for the first development application for the land based development requiring the implementation of the whole of site VMP.

16. In Schedule 2, delete Condition C10 and replace with the following:

C10 Landscape Plan

A detailed Landscape Management Plan shall be submitted with each development application and approved in accordance with Principle 9 – Landscape in the Revised UDG, prepared by Johnson Property Group, dated June 2015. It must provide details of the staging of the landscape treatment of the site with the intention of implementing the landscaping on site as soon as possible. Where relevant the Landscape Plan must provide information regarding:

- (a) a detailed species list appropriate to the site and the circumstances;
- (b) details of landscaping around the outdoor pool;

- (c) surface areas for all pedestrian pathways, boardwalk and public access areas;
- (d) fencing and any other works in the public domain;
- (e) details of landscape treatments and planting for parking areas;
- (f) the landscape interface between the private and public domain, including street setback areas and to adjoining Trinity Point Drive road reserve; and
- (g) retention of cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point.

17. In Schedule 3, delete Term C17 and replace it with the following:

C17 Bushfire Protection

The consent authority must include a condition in any development consent issued for any development permitting the construction of tourist or visitor accommodation requiring the Proponent to obtain a Bushfire Safety Authority in accordance with section 100B of the *Rural Fires Act 1997*.

In addition, all landscaping on-site must comply with the principles of Appendix 5 of *Planning for Bushfire Protection 2006*. The enhancement of the foreshore vegetation must not increase the bushfire risk on site.

18. In Schedule 2, delete Term C19A and replace it with the following:

C19A Stormwater Management

Future development application/s shall include a detailed Stormwater Management Plan (SMP) for each relevant stage which addresses Site Principle 11 – Water Management in the Revised UDG, prepared by Johnson Property Group, dated June 2015, and the “Stormwater and Flooding Management Plan” prepared by AdW Johnson and dated April 2015.

The SMP shall include details of the proposed stormwater management system and shall be consistent with the SMP required by Term C19 of this approval and include all matters where relevant listed in Term C19. The SMP must be approved by the consent authority as part of the development application for the first stage of the land based development.

19. In Schedule 2, delete Term C20 and replace it with the following:

C20 Groundwater

Future development application(s) involving excavation are to provide details of how the water table and ground water will be managed during and after construction. Particular detail is to be provided in regard to the impacts to any EEC (e.g. saltmarsh community) that relies on this water table and ground water.

In addition, the Proponent shall ensure that each development application proposing excavation is accompanied by a report which includes:

- (a) an estimate of the volume of groundwater that is likely to be intercepted during construction works; and
- (b) an estimate of the volume of groundwater that is likely to be intercepted following completion of the construction works.

Should groundwater extraction volumes exceed 3 ML/year, a licence under Part 5 of the *Water Act 1912* must be obtained prior to the commencement of construction works.

20. In Schedule 2, delete Term C21 and replace it with the following:

C21 Flooding

Future application/s for development on the flood prone land shall address sea level rise adaption measures and strategies and evacuation plans and suitable flood level having

regard to climate change for each relevant stage. In that regard the future design and strategies should be:

- (a) prepared by a qualified engineer; and
- (b) consistent with Principle 12 – Flooding in the Revised UDG, prepared by Johnson Property Group, dated June 2015, and the whole of site Concept “Stormwater and Flooding Management Plan” prepared by AdW Johnson and dated April 2015.

21. In Schedule 2, delete the second paragraph and in Term C22 in its entirety.

22. In Schedule 2, add new Term C22A as follows:

C22A European Cultural Heritage

Future development applications must demonstrate that the following requirements regarding European cultural heritage have been satisfied for each relevant stage of the development:

- (a) retain and conserve built heritage items including the sundial and grotto adjoining the foreshore lands;
- (b) significant built heritage items are to be retained and are to be adequately protected during the works from potential damage. Protection systems must ensure that historic fabric is not damaged or removed;
- (c) retain cultural landscape plantings including figs, palms and Norfolk Island Palms located near Bluff Point; and
- (d) and archival photographic record of the historic areas of the site in accordance with the NSW Heritage Council Guidelines for Photographic Archival recording in a Digital Capture Format prior to the commencement of any works on-site. The recording shall be referenced to a survey plan identifying the locations of all of the images. A hard copy of the recording shall be lodged with the Heritage Branch of the OEH and the Council.

23. In Schedule 2, delete Term C25 and replace with the following:

C25 Acoustics

A detailed acoustic assessment addressing the terms of the Concept Plan and associated modifications to minimise noise in the surrounding area shall be provided for each relevant stage of the development. This is to include a Construction Noise and Vibration Management Plan, Road Traffic Noise Plan and Operational Noise Management Plan. The proposal must comply with Principle 16 – Acoustics in the Revised UDG, prepared by Johnson Property Group, dated June 2015.

24. In Schedule 2, delete Term C26 and replace with the following:

C26 Public Access

The future applications must demonstrate compliance with Principle 4 – Public Access & Open Space in the Revised UDG, prepared by Johnson Property Group, dated June 2015.

The design should maximise access opportunities through the site and ensure a high level of amenity and safety for pedestrians. Future applications must provide:

- (a) appropriate building setbacks to the foreshore reserve (as nominated in Principle 2 – Building Setbacks of the Revised UDG and Term C2);
- (b) an appropriate setback from south-eastern corner of the site to create a publicly accessible open space at Bluff Point on the elevated part of the site (as nominated in Principle 2 – Building Setbacks of the Revised UDG and Term C2);
- (c) a publicly accessible pathway around the southern and eastern edge of the development, either within the development Site, or within the adjoining Council foreshore reserve;
- (d) pathways within Council land are subject to agreement from Council. Provide a network of east-west publicly accessible pathways from Trinity Point Drive to the lake;

- (e) all pedestrian through-site links, perimeter pathways and nominated open space areas are to be made publicly accessible. Future development applications are to incorporate an appropriate legal mechanism for creating a right of public access to those areas. The future development applications are also to incorporate appropriate measures to ensure those areas are managed and maintained to a high standard by future owners;
- (f) public access along the landward floating boardwalk parallel to the foreshore and its connections to the foreshore, in accordance with drawing number 8A0379-MA_LB031, revision B dated 4 August 2014;
- (g) public access to the northern part of the site, access is not to be impeded by the marina;
- (h) a publicly accessible pedestrian pathway from Trinity Point Drive along the edge of the western access way, may be provided either within the development site or within the adjoining Council reserve, subject to agreement from Council, to a point south of the marina car park, to allow access across the car park to the eastern foreshore.

24. Insert new Term C32 in Schedule 2 as follows:

C32 Section 94 Contributions

Future development applications shall be required to pay developer contributions to the Council in accordance with the requirements of the section 94 Contribution Plan current at the time of determination.

25. In Schedule 3, delete the Statement of Commitments and replace them with the Statement of Commitments prepared by Johnson Property Group and dated July 2015.

END OF MODIFICATION MP 06_0309 MOD 5