

Director Modification Assessments
Planning Services
Department of Planning and Environment
GPO Box 39
Sydney 2001



RE: Objection to MP 06 _ 0309 MOD 3

Dear Sir/ Madam,

I am one of 7000 residents who is affected by Johnson's Property Group (JPG) new development application for the NSW Department of Planning (DoPE) to assess this application as a modification to an approved concept plan.

Background

The Department of planning's assessment report for JPG's concept plan of 2007 N:\37429\PPR\Jun 09; rightfully removed the proposal **"*for a helipad and the operation of a small number of helicopter movements (approximately 4 movements per day as a worse case situation) attached to the marina.*"** The DoPE assessment clearly states on pages 8 and 15 of the assessment report, **"*The proposed helipad has been deleted following concerns raised by the community.*"** The assessment also challenged the helicopter justification and stated **"*that compliance with acoustic amenity did not mean support, and summarised that the helipad component as proposed was not supported.*"**

1. The community continues to oppose JPG's application

The community relies upon planning authorities and local politicians to make decisions which adhere to legislation and the subsequent regulations. This was applauded in 2009 as the decision to remove the helipad from the original concept plan reflected;

- The negative impact helicopter operations would have on the community.
- A planning authority's decision made in the best interests for the community.

Under the legislation and regulations DoPE rightfully declared JPG's helipad application a State Significant Development (SSD) and is therefore **not a transitional Part 3A project** and cannot be assessed as a modification to a transitional Part 3A project.

More importantly, the community requires planning authorities to uphold the regulations by refusing to accept JPG's application as a modification when clearly under the regulatory requirements DoPE declared the application as a State Significant Development.

The community has not changed their opinion about this non regulatory application which has major environmental consequences. In fact, more adversity is generated given that the helipad was withdrawn from a non – approved concept plan 8 years ago.

Any application by JPG to modify a concept plan which does not exist and involves significant changes to the purpose and business operations for a marina is considered as unlawful and unjust.

Over the years, the community has lost confidence and respect for JPG and the planning authorities and it is unacceptable (to the community) that a developer continues to state to approving authorities; **"No helipad means no tourist development."**

¹ Refer to JPG's concept plan 2007 page 15.



I support Morisset Park & District Action Groups (MPDAG) and other local associations objections to Johnson Property Group new development application.

2. Modification - the legalities

- a) According to the Environmental Planning and Assessment Regulation 2000 clause 113 item c. The proponent lodged an application for a modification to the concept plan MP 06_0309 MOD 3 on the 01/10/2013. The proponent did not adhere to this regulation as the requirement clearly states that *"a development application is taken to be refused if a consent authority has not determined the application within the **deemed refusal period.**"* In this case DoPE refusal should have occurred on 30/12/2013. However there is no documentation to substantiate that the modification was refused.
- b) Under the transitional regulatory arrangements for a part 3A modification when an application is received and declared a State Significant Project (SSP) project it is deemed as **not a transitional Part 3A project** and cannot be assessed as a modification for a transitional Part 3A project.
- c) Apart from the fact that DoPE should never have accepted an outdated and non-compliant modification application under the state significant criteria for a concept plan that was never approved there are significant environmental factors which needs to be addressed by DoPE and the proponent in relation to the legislative and regulations for a modification under the 3A.

Comment

It is unfair and unjust that the community is required to research legislation and regulatory requirements to oppose an application from a developer that never should have been accepted by the planning authority as the application contravenes legislative and regulatory policies.

Legislation and Regulations

Under the terms and conditions for part 3A modifications;

- a) The Minister for Planning's power to modify a Part 3A approval under section 75W can only be used for changes that have ***'limited environmental consequences beyond those approved in the original project assessment'***.
- b) Cannot be a ***'radical transformation' from the existing concept plan that takes it beyond the scope of the current approval***

Comment

The community is disappointed that DoPE has accepted this application as a 'modification' as;

- a) It contravenes the regulatory requirements.
- b) The application has a long- term history of community objection
- c) The application was refused 8 years ago and deleted by DoPE due to community opposition.
- d) The environmental impacts for aviation operation (either helicopter or seaplane) and the subsequent effects it has on the community.

It is well known (by the community) that the developer cannot be trusted. The community will not tolerate any approval by DoPE for a helipad or any other aviation landing platform within Bardens Bay. The community considers there is no room for negotiation as the proponent has not adequately considered;

- a) The environmental consequences to over 7000 residents

I support Morisset Park & District Action Groups (MPDAG) and other local associations objections to Johnson Property Group new development application.

- b) Suitable existing alternatives where helicopters and seaplanes can land and take off.

There is also no room for negotiation (from the community or DoPE) for a helipad / seaplane operations with reduced flights as the application does not meet;

- a) The 1999 acoustic standards.
- b) The environmental threatened bird life legislation.
- c) The requirements from Crown Lands
- d) The requirements of a part 3A modification
- e) The requirements of a State Significant Project.

Recommendation

It is therefore recommended that the Department of Planning reject JPG's application for this modification under part 3A transitional arrangements as it does not comply with legislation and regulatory requirements

Table 1

Item	Yes	No	Comment	Recommendation
Does this Helipad meet the 3A modification requirements		X	<ol style="list-style-type: none"> 1. It is a radical transformation for the marina operations. 2. It requires substantive different legislation & regulations. 3. There are no similarities between the operation of a marina and a helipad. 4. The modification takes it beyond the 3A transitional arrangements. 	<ol style="list-style-type: none"> 1. This modification application is refused on the basis that; <ul style="list-style-type: none"> a) Applications from the proponent did not meet the required DoPE timelines and processes. b) The application is a radical transformation from the marina operations to aviation requirements. c) The application makes no reference and the requirement from Roads and Maritime Services (RMS) request for details on berthed boats in the marina see
Does this application from JPG require a radical transformation from the approved marina operations?	X		<p>Yes; this is a radical transformation between Marina operations and aviation operations. It is understood the marina was approved to berth boats in a safe and secure area. Professional skippers, boat owners and insurance companies will not berth boats in 'high wind areas.' This application from JPG contravenes and transforms the operation for a secured marina site.</p>	<ol style="list-style-type: none"> 1. This modification is refused on the basis that; <ul style="list-style-type: none"> a) There are no similarities between the operation of a marina and a helipad. b) Marinas and helipads do not mix in regards to safety and noise. c) No boat owner or insurance company would ever secure their boat in a marina subjected to 100 klms downdraft from a helicopter. d) Any decision made by a consenting authority where no precedent exists for a helipad to be attached to a marina would be liable for damage costs.

Modification Vs an additional development objection for MP 06_0309 MOD 3

Item	Yes	No	Comment	Recommendation
Does this application take it beyond the scope of the current approval?	X		Yes; the application requires additional approval from other state and federal agencies outside of the current approval.	This modification is refused on the basis; a) It was removed and was never included in the approved concept plan. b) There are no documents to support (as requested by RMS) the effects of downdraft on boats/ yachts berthed at the marina.
Is there an impact, and who is likely to be affected by this proposal?	X		There are over 7000 residents who will be affected by this proposal.	The acoustic report submitted by the proponent in their EAR did not meet the current acoustic measuring standards AS2363 -1999. The proponent selected an outdated noise measurement standard to meet their own needs. The acoustic report is invalid as it is based on outdated and superseded Australian Standards.
Is the impact likely to be significant overall? (Yes if two or more of the above are 'Yes' or 'Unknown')	X		Yes, there is a significant effect on all residents. Each resident purchased their home in a quiet residential zone. No ANEF contours exists in this area. The effect of any helicopter and/ or seaplanes in this area will result in an ANEF contour being placed on their property and a reduced property value	1. The proponent has no right to reduce property values based on their ANEF report. 2. The application from JPG does not meet the part 3A modification requirements. 3. The application from JPG is outdated (8 years) from a non-approved application and must not be considered. 4. This application has no consideration or respect for the residents. There are no benefits for the residents.
Is there significant concern among potentially affected people and groups regarding the social impact? (Yes or No --- explain reasons, based on engagement)	X		Yes, there is a social impact on the community, state government departments and politicians as this development application from JPG should never have been accepted as a modification.	The community relies on planning authorities to 'make the right decision' according to regulations and legislation. 1. The community does not accept statements from the proponent to others stating that; "No helipad approval will result in no financial support from the tourist developers." 2. The community will oppose and will continue to challenge any application made by JPG for a modification under the now defunct part 3 A legislation as it has now been determined as a State Significant Project and subject to new legislation.

I rely on those who represent me in state and local government planning authorities.

I rely on those who will make decisions according to the regulations and the legislation. A developer who consistently maintains that "no tourist development will occur unless the helipad is approved!" reveals that the process for approval is flawed. The community does not accept any negotiation for reduced helicopter movements or seaplane operations as the developer has not demonstrated that they have;

1. Met the required legislation and regulations
2. Justified the radical transformation between the operation of the proposed helipad operations and the marina.

I object to **ANY** helipad or helicopter operations being approved in this area. I have not made any political donations in the last 2 years.

Signed



Date:

11/1/17.

I support Morisset Park & District Action Groups (MPDAG) and other local associations objections to Johnson Property Group new development application.

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