



Our Ref: CM:TM:239585  
01 May 2017

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

Dear Madam

**RE: SECTION 75W MODIFICATION APPLICATION – PROPOSED ONE (1) YEAR EXTENSION TO LAPSE DATE,  
CONCEPT APPROVAL 10\_0089 FOR MIDDLE CAMP (CATHERINE HILL BAY),  
LOT 202 DP 702669, LOT 2030 DP 841175, PART LOT 6 DP 746077, PART LOT 5 DP 736170, PART LOT 12 DP 854197, LOT 223 DP 1102989 AND LOT 16 DP 755266.**

## **1. INTRODUCTION**

This Section 75W modification application has been prepared on behalf of the proponent and seeks to Modify Concept Approval (MP10\_0089) which was granted by the Planning and Assessment Commission on 12 July 2012. The Middle Camp Concept Approval includes the following:

- A 222 lot residential subdivision with a conceptual lot layout, density and urban design, with a developable area of 28.2ha contained within Hamlet A – Sawmill Camp (59 dwellings within 7.32ha of land) and Hamlet B – Colliery Hamlet (163 dwellings within 20.88ha of land); and
- Dedication of 525.87ha of environmentally significant conservation lands.

This proposed modification to the Concept Approval seeks to extend the consent lapse date by one (1) year from 12 July 2017 (current) to 12 July 2018 (proposed). This proposed modification has been previously discussed with NSW Department of Planning & Environment (DPE) staff.

The proposed one year time extension is being sought to provide the proponent with an adequate timeframe to undertake key actions in accordance with the Concept Approval, and to prepare and lodge a development application with Lake Macquarie City Council.

## **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On 1 October 2011, Part 3A of the EP&A Act 1979 was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011 No. 22*.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 and continuation provisions identified in Clauses 2 and 3 of Schedule 6A of the EP&A Act 1979 as follows:

### **Central Coast**

5 Pioneer Avenue, Tuggerah NSW 2259  
PO Box 3717, Tuggerah NSW 2259  
Ph. 02 4305 4300  
Fax. 02 4305 4399  
Video Conf. 02 4305 4374  
Email. coast@adwjohnson.com.au

**ADW JOHNSON PTY LIMITED**  
ABN 62 129 445 398

[www.adwjohnson.com.au](http://www.adwjohnson.com.au)

### **Hunter Region**

7/335 Hillsborough Road, Warners Bay NSW 2282  
Ph. 02 4978 5100  
Fax. 02 4978 5199  
Video Conf. 02 4954 3948  
Email. hunter@adwjohnson.com.au

## ***“Schedule 6A Transitional arrangements—repeal of Part 3A***

### ***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) or other instrument 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 3(c) 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 relating 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 modification to the approved Concept Plan can be assessed as a Section 75W application. Section 75W of the EP&A Act is addressed further below.

Clause 11(3)(b) of Schedule 6A of the EP&A Act 1979 confirms that the approval of Concept Plan for a transitional Part 3A project lapses 5 years after the repeal of Part 3A unless the Concept Plan is subject to a condition under Section 75Y of the EP&A Act 1979 that provides for the approval to lapse on a later day:

## **11 Lapsing of Part 3A approvals**

- (3) *The approval of a concept plan for a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:
  - (b) the approval of the concept plan is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.*

Clause 75Y(2) of the EP&A Act 1979 allows the Minister to extend the lapsing period of a consent.

### **75Y Lapsing of approvals**

- (1) *An approval under this Part may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the project or the submission of an application for approval to carry out a project for which concept approval has been given).*
- (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 may make other modifications to the approval (whether or not requested by the proponent).*

Additionally, Clause 11A(3) of Schedule 6A of the EP&A Act 1979 confirms that the Minister may grant modification approval to extend a lapse date for a Concept Plan and the Concept Approval will continue in force in accordance with the determination.

### **11A Requests to extend date that Part 3A approval lapses**

- (1) *This clause applies to an approval for carrying out, or an approval of a concept plan for, a transitional Part 3A project in respect of which a request has been duly made to the Minister to extend the date on which the approval would otherwise lapse (a relevant modification request). This clause extends to any such request that was duly made before the commencement of this clause.*
- (2) *If a relevant modification request is made before the date on which the approval would otherwise lapse and the request has not been determined before that date, the approval does not lapse on that date but continues in force until:
  - (a) the request is determined or withdrawn, or
  - (b) the date that is 12 months after the request was made,whichever first occurs.*
- (3) *If a relevant modification request is determined and the date on which the approval would otherwise lapse is extended, the approval continues in force in accordance with the determination despite subclause (2).*

As noted above, the appropriate mechanism to modify the Concept Approval is 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 modification to the Concept Plan approval. It is considered that the proposed modification remains consistent with this section of the EP&A Act 1979.

### **3. PROPOSED MODIFICATION & AMENDMENTS TO CONCEPT PLAN APPROVAL (10\_0089)**

This Section 75W modification application seeks to extend the Concept Plan Approval lapse date by one (1) year from 12 July 2017 (current) to 12 July 2018 (proposed).

The proponent is strongly committed to progressing the Middle Camp project. As previously noted, the Concept Approval contains a number of conditions requiring certain issues to be resolved in consultation with the NSW DPE and Council prior to lodgement of the first Development Application for subdivision associated with the Concept Approval. In particular this includes revised Urban Guidelines, a modified lot layout and a staging plan for delivery of contributions. The one (1) year Concept Plan approval lapse date

extension requested will allow the proponent to properly investigate and progress these matters.

### 3.1 Proposed Amendments to Concept Plan Approval (10\_0089)

The proposed amendments to the Concept Plan approval conditions to facilitate the one (1) year timing extension are as follows (where a whole condition is stated, refer to the underlined section for suggested amendment):

- Schedule 2, Part B – Administrative Conditions. Conditions 1.1 and 1.2 to be updated to reference this Section 75W Modification dated 01/05/2017 prepared by ADW Johnson.
- Schedule 2, Part B – Administrative Conditions. Condition 1.3. currently states:  
*'1.3 This Concept Approval shall lapse five years after the date on which it is granted, unless an application is submitted to carry out a development for which concept plan approval has been given.'*

The suggested rewording for this condition is as follows:

- '1.3 This Concept Approval shall lapse on 12 July 2018, unless an application is submitted to carry out a development for which concept plan approval has been given.'*
- Schedule 3, Part A – Administrative Conditions. The unnumbered condition under the heading 'Development in Accordance with Plans and Documentation' to be updated to reference this Section 75W Modification dated 01/05/2017 prepared by ADW Johnson.
- Schedule 3, Part A – Administrative Conditions. The unnumbered condition under the heading 'Lapsing of Approval' currently states:

*'The project approval will lapse 5 years after the approval date of this project approval.'*

The suggested rewording for this condition is as follows:

*'The project approval will lapse on 12 July 2018.'*

## 4. JUSTIFICATION & ENVIRONMENTAL ASSESSMENT

As the Department is aware Coal & Allied have been working on a number of sites in the Hunter Valley that have been of strategic importance in delivering housing and conservation outcomes consistent with the Regional Strategy. Coal & Allied have made significant progress on the preparation of a Development Application for the site consistent with the Concept Approval. However, since the time the Concept Approval was granted there has been a significant change to the proposed water and waste water servicing strategy previously approved by Hunter Water Corporation. The developer of the land at the southern end of Catherine Hill Bay has withdrawn from the servicing strategy

and instead engaged a private water authority for their site. This has necessitated further consideration of alternative ways to service the proposed development which has caused consequential delays in the ability to lodge the Development Application for the site. . In addition market conditions have been fluid over the last five years however currently support development options.

Coal & Allied are selling the Middle Camp site with the existing Concept Approval to a new developer keen to deliver an outcome. The new proponent will now require time to lodge a development application.

Commitment to the outcomes of the Concept Plan has been demonstrated to date with significant environmental lands already dedicated as provided for under the Concept Plan.

The proposed one (1) year extension to the Concept Approval lapse date will have no adverse environmental, social or economic impacts and so the proposed timing extension can be supported.

## **5. LANDOWNERS CONSENT**

The subject lands are owned by Catherine Hill Bay Land Pty Ltd and Coal & Allied Operations Pty Limited and they have consented to the lodgement of this Section 75W application. A landowner's consent will be issued to the NSW DPE under separate cover.

## **6. CONCLUSION**

The proposed modification under Section 75W of the EP&A Act 1979 seeks to extend the lapse date of Concept Approval 10\_0089 by one (1) year from 12 July 2017 (current) to 12 July 2018.

The proposed modification will remain entirely consistent with the original Concept Approval. The proposed lapse date extension will not result in any adverse impacts and it is considered that the Section 75W application can be supported.

The proposal will provide the proponent with a suitable timeframe to investigate and resolve key issues in consultation with the NSW DPE and Lake Macquarie City Council including development of revised Urban Design Guidelines suitable to inform future development within the Middle Camp site in accordance with the Concept Plan approval.

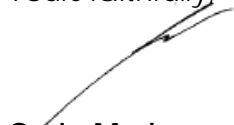
The proposal will contribute to the realisation of the Middle Camp development, which is of significance to the state and Lower Hunter region. The Middle Camp development will generate substantial positive benefits including:

- Substantial biodiversity conservation outcomes through the dedication of 525.87ha of environmentally significant lands (already dedicated);
- Preservation of the historical significance of Catherine Hill Bay;
- Establishment of urban design guidelines to encourage suitable development in the Catherine Hill Bay locality;

- Improve public access between historical precincts, biodiversity conservation lands and the Catherine Hill Bay coastline;
- The Middle Camp development will provide substantial investment into the region as well as the creation of local employment opportunities; and
- Provision of additional residential land to contribute towards achieving regional strategy objectives.

If you wish to discuss this matter please do not hesitate to contact me on 49785100 or [craigm@adwjohnson.com.au](mailto:craigm@adwjohnson.com.au).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Craig Marler', written over a thin horizontal line.

**Craig Marler**  
**Planning Manager**  
ADW Johnson  
Hunter Office

*N:\239585\Planning\DA Prep\Section 75W Application April 2017\Section 75W Application April 2017.doc*