



NSW GOVERNMENT
Department of Planning

North Cooranbong Residential Estate Proposed by Johnson Property Group

Modification MP07_0147 MOD 1

Modification of Minister's Approval under Section 75W of the
Environmental Planning and Assessment Act 1979

February 2009



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1. INTRODUCTION

On 18 December 2008 Johnson Property Group (the Proponent) wrote to the Director-General requesting to modify MP 07_014 (**Tag B**) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act). On 4 February 2009, the Proponent requested further modification of the application (**Tag C**).

The Proponent is seeking to modify the existing approval to include the following changes:

- Amend further assessment requirement 3.7 to specify that Core Riparian Zones are to apply to the 7(1) Conservation (Primary) zone only; and
- Amend further assessment requirement 3.8 to alter the requirement for submission of a whole site contamination assessment with the first subdivision application, to staged area specific assessments being submitted with the first residential subdivision applications involving 'areas' of the site identified as potentially contaminated in preliminary assessments.

In addition, it has come to the Department's attention that the Instrument of Approval contains an administrative error in relation to the amount of residential development (201.24ha instead of 200.43ha). This administrative error will be rectified and minor formatting improvements undertaken concurrent to the modifications requested by the Proponent.

2. THE SITE

The township of Cooranbong is located approximately 40km southwest of Newcastle and 100km north of Sydney in the Lake Macquarie Local Government Area. The North Cooranbong site is 355.26ha in area and consists of two separate development sites, the first being known as the 'Main Development Site' and the second as the 'Town Common'.

Features of the Main Development Site include:

- Frontages to both Freemans Drive and Avondale Road
- Avondale aerodrome (now decommissioned) including runway and hangar buildings
- Existing Avondale School
- A number of rural and rural residential allotments
- Large areas of remnant vegetation including species of National Environmental Significance

Features of the Town Common include:

- Frontage to Freemans Drive
- Course of Dora Creek adjoins north boundary, with associated riparian vegetation
- Largely cleared of vegetation
- Established community park

3. ORIGINAL APPLICATION AND APPROVAL MP 07_0147

On 15 December 2008, the Minister for Planning approved Major Project 07_0147 in accordance with Section 75O of the Act. In summary the Concept Plan approval provides for:

- 201.24ha for residential development
- 2.75ha for commercial development
- 17.70ha for schools (existing and proposed)
- 15.25ha for public open space/recreation and community facilities
- 119.13ha for environmental conservation

The projected cost of development allowed under the Concept Plan is \$587 million. A copy of the original approval is provided at **Tag D**.

This application is the first modification (Mod 1) to this approval.

4. DESCRIPTION OF PROPOSED MODIFICATIONS

Section 75W of the Act provides for modification of the Minister's approval. The modification application seeks approval for the following amendments to the existing approval:

4.1 AMENDED CORE RIPARIAN ZONES REQUIREMENT – FURTHER ASSESSMENT REQUIREMENT 3.7

The existing further assessment requirement 3.7 states:

Riparian Zones

3.7 Any subdivision plan should achieve the following minimum Core Riparian Zones:

- Minimum of 10m for any intermittently flowing 1st order watercourse
- 20m for any permanently flowing 1st order watercourse or any 2nd order watercourse
- 20m – 40m (merit based assessment) for any 3rd order or greater watercourse

The Proponent seeks to amend further assessment requirement 3.7 to specify that Core Riparian Zones are to apply to the 7(1) Conservation (Primary) zone only. Approved further assessment requirement 3.7 currently applies to all land subject of the approval, regardless of the zone.

In requesting the modification Johnson Property Group indicated they were of the opinion that the Core Riparian Zones relate only to the 7(1) Conservation (Primary) zone, as the land which had been agreed to under the Concept Plan for conservation had already taken into consideration watercourses.

4.2 AMENDED CONTAMINATION ASSESSMENT REQUIREMENTS – FURTHER ASSESSEMENT REQUIREMENT 3.8

The existing further assessment requirement 3.8 states:

Contamination

3.8 The first application for subdivision of the land must be accompanied by a Stage Two detailed site contamination assessment in accordance with SEPP 55 (and associated guidelines), with particular focus on the areas identified in the Douglas Partners Reports reference 31720 and dated 11 December 2001, 24 July 2002, 23 October 2003 and 7 March 2005.

The Proponent seeks to amend further assessment requirement 3.8 to alter the current requirement for a detailed whole of site contamination assessment to accompany the first subdivision application. It is requested that the requirement be amended to require that a detailed contamination assessment accompany the first residential subdivision application on an 'area' of the site identified as potentially contaminated in preliminary assessments.

5. STATUTORY CONTEXT

5.1 MODIFICATION OF A MINISTER'S APPROVAL

The modification application has been lodged with the Director-General pursuant to Section 75W of the Act, which provides for the modification of the Minister's approval, including revoking or varying a condition of the approval or imposing an additional condition of the approval.

Under Section 75W(2), 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. In this instance, it is concluded that the proposed modifications (as listed above) require a formal application to modify the approval as they involved changes to further assessment requirements of future development applications. The power to make such a change therefore lies with the Minister.

On 18 December 2008, the Proponent submitted an application to modify the approval of the Minister, pursuant to Section 75W(3) of the Act. On 4 February 2009, the Proponent amended the

application to modify an additional further assessment requirement. The assessment of this application is based upon the application as amended.

5.2 ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)

Section 75W(3) of the Act provides that the Director-General may notify the Proponent of environmental assessment requirements (DGRs) for the proposed modification that the Proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W(3), as sufficient information was provided to the Department to consider the application.

6. CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

7. CONSIDERATION OF PROPOSED MODIFICATIONS

7.1 CORE RIPARIAN ZONES – FURTHER ASSESSMENT REQUIREMENT 3.7

The Proponent seeks to amend further assessment requirement 3.7 to specify that Core Riparian Zones are to apply to the 7(1) Conservation (Primary) zone only. Approved further assessment requirement 3.7 currently applies to all land subject of the approval, regardless of the zone.

Under the Concept Plan approval the two main conservation corridors accord with the higher order watercourses which traverse the development site. Several lower order watercourses are located within the land identified in the Concept Plan approval for residential development. A plan showing the development site and the location and order of watercourses is provided at **Tag E**.

The further assessment requirement setting minimum Core Riparian Zones was included in the Instrument of Approval consistent with a recommendation from the Department of Water and Energy (DWE). The requirement ensures that detailed subdivision applications have regard for Core Riparian Zones, as this level of detail was not resolved during assessment of the Concept Plan.

Further discussions with DWE officers and review of their Riparian Corridors guideline have provided additional background information on determining the appropriate width of Core Riparian Zones. The guideline advises the width should be determined by assessing the importance and riparian functionality of the watercourse, merits of the site and long-term use of the land.

It is accepted that the watercourses that project into the residential land are of lower order and a merit assessment may determine that the recommended minimum Core Riparian Zones could be varied from those currently recommended.

The Proponent requested that further assessment requirement 3.7 be amended to specify that Core Riparian Zones are to apply to the 7(1) Conservation (Primary) zone only. Under the Lake Macquarie LEP subdivision is prohibited in the 7(1) Conservation (Primary) zone with the exception of some minor exemptions. As such the modified wording proposed by Johnson Property Group would effectively void the further assessment requirement.

It is therefore recommended that the further assessment requirement be modified to:

3.7 Any subdivision plan should achieve the following minimum Core Riparian Zones:

- Minimum of 10m for any intermittently flowing 1st order watercourse
- 20m for any permanently flowing 1st order watercourse or any 2nd order watercourse
- 20m – 40m (merit based assessment) for any 3rd order or greater watercourse

Variation to the minimum widths may be considered by the Consent Authority following a merit assessment of the importance and riparian functionality of the watercourse, the site and the long-term use of the land in accordance with the Department of Water and Energy's Guidelines for controlled activities Riparian Corridors February 2008.

7.2 CONTAMINATION ASSESSMENT – FURTHER ASSESSMENT REQUIREMENT 3.8

The Proponent seeks to amend further assessment requirement 3.8 to alter the requirement for a detailed site contamination assessment to accompany the first subdivision application. It is requested it be amended to require that a detailed assessment should accompany the first subdivision application creating residential allotments on an 'area' of the site identified as a potentially contaminated. The wording proposed by the Proponent is:

3.8 *The first application for subdivision **creating residential lots on an area of the site identified as potential contamination sites within the Douglas Partners Reports referenced 31720 and dated 11 December 2001, 24 July 2002, 23 October 2003 and 7 March 2005 must be accompanied by a Stage Two detailed site contamination assessment in accordance with SEPP 55 (and associated guidelines).***

A number of technical reports containing preliminary contamination assessments accompanied the Concept Plan application. The reports identified that the North Cooranbong site is generally considered suitable for residential development, provided remedial works and additional detailed investigations are undertaken.

The preliminary assessments identified a number of allotments within the development site that were potential contamination sites and recommended that additional assessment be undertaken. Further assessment requirement 3.8 was imposed in response to these recommendations.

Lake Macquarie City Council officers were consulted on the proposed modification. They advised of their preference that Stage Two detailed assessments accompany each development application, as opposed to a single Stage Two detailed assessment being undertaken for the entire site and accompanying the first development application only, as is required by the current approval.

It is noted that the current requirement for a Stage Two detailed assessment for the entire development site at the time of the first development application may create assessment difficulties for Council officers given the expected 20 year life span of development at North Cooranbong. Additionally, contamination impacts and remediation measures may also change over this time. Council's preference that detailed assessments, where required are provided with each development application is therefore supported.

The Proponents request to provide a detailed assessment with the first residential subdivision application on an 'area' identified as a potential contamination site in the technical reports supporting the Concept Plan application is not supported. The technical reports identify general areas of contamination by map, but refer specifically to the potential contamination sites by title reference. The technical reports make it clear that additional detailed assessment is required for specific allotments and noting that to date only preliminary contamination assessments have been undertaken broader areas of contamination to those currently identified may be discovered.

On this basis it is appropriate to modify the further assessment requirement to require that the first application for subdivision creating residential lots on an allotment of the site identified as 'Potential Site Contamination' be accompanied by a Stage Two detailed site contamination assessment. In addition, it is recommended that the further assessment requirement be expanded to require all subdivision applications to comply with the provisions of SEPP 55 – Remediation of Land, to ensure any issues not identified in the preliminary contamination assessments can be appropriately investigated and addressed.

It is therefore recommended that the further assessment requirement be modified to:

3.8 *Any application for subdivision creating residential lots on an allotment of the site identified as 'Potential Site Contamination' within the Douglas Partners Reports referenced 31720*

and dated 11 December 2001, 24 July 2002, 23 October 2003 and 7 March 2005 must be accompanied by a Stage Two detailed site contamination assessment in accordance with SEPP 55 (and associated guidelines).

All residential subdivision applications are to demonstrate compliance with the provisions of *State Environmental Planning Policy No. 55 – Remediation of Land*.

7.3 AMENDMENTS TO CORRECT MINOR TYPOGRAPHICAL ERRORS & GENERAL FORMATTING

During assessment of the proposed modifications the Department has found that the original determination contained a minor typographical error. Although this modification application does not request that this be rectified, it is an opportune time to amend this error.

It is therefore recommended that in Schedule 1 of the Instrument of Approval that land comprising residential development be amended from 201.24ha to 200.43ha.

The title particulars of the land subject of the approval were originally provided as a table separate from the front page of the Instrument of Approval. The table of title particulars has been deleted and provided on the front page of the Instrument to improve readability.

8. MODIFICATIONS TO INSTRUMENT OF APPROVAL

The recommended modifications to the Instrument of Approval are provided at **Tag A**.

9. CONCLUSION

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. This report describes the Department's assessment of the requested modifications and recommends approving the modifications.

The proposed modifications are minor in detail and do not result in significant changes to the overall development as approved.

It is considered that the proposal, as modified, achieves the same objectives as assessed for the originally approved development under Major Project 07_0147 and does not alter the overall nature, need or justification of the approved project.

10. DELEGATION

Under the instrument of delegation dated 7 June 2007, the Minister has delegated the functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director, Strategic Sites and Urban Renewal. It is appropriate that the application be determined under this delegation.

11. RECOMMENDATION

It is recommended that the Executive Director, Strategic Sites and Urban Renewal, as delegate of the Minister for Planning:

- (a) **Consider** the findings and recommendations of this report; and
- (b) **Approve** the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (c) **Sign** the attached Instrument of Modification (**Tag A**).

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24/02/09

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