

Annexure A

**Johnson Property Group Pty Ltd v Minister for Planning**

## **Modification of Concept Plan Approval**

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

Sydney

2019

### **SCHEDULE 1**

<b>Concept Approval:</b>	MP 06_0309 granted by the Minister for Planning on 5 September 2009
<b>Proponent:</b>	Johnson Property Group
<b>For the following:</b>	<p><b><u>Concept approval for the Trinity Point marina and mixed-use development, comprising</u></b></p> <ul style="list-style-type: none"><li>• 188 berth marina and associated club facilities;</li><li>• A maximum of 315 accommodation units (no more than 50 per cent may be used for residential purposes);</li><li>• restaurant, café, function centre, shops and office; and</li><li>• site access arrangements, parking, servicing, landscaping and boardwalk.</li></ul>
<b>Approval Authority:</b>	New South Wales Land and Environment Court
<b>Modification:</b>	<b>MP 06_0309 MOD 3:</b> modification to the concept approval to include a helipad, with the construction and operation (in accordance with the Helipad Operations Manual) subject to future development application(s).

**SCHEDULE 2**

The above approval is modified as follows:

- (a) In Schedule 1, Part A – Table, the table is amended by the insertion of the **bold and underlined** words and the deletion of the ~~struckout~~ words/numbers as follows:

<b>Application Made by:</b>	Johnson Property Group
<b>Application made to:</b>	Minister for Planning
<b>Project Application</b>	MP 06_0309
<b>On land comprising</b>	Lots 101 and 102 in Deposited Plan 1256630, Part Lot 32 in Deposited Plan 1117408, Lot 34 in Deposited Plan 1117408, and Part of Crown Reserve 1012129, which includes land for lease shown on DP 1252681.
<b>Local Government Area</b>	Lake Macquarie City Council
<b>For the carrying out of:</b>	<ul style="list-style-type: none"> <li>• 188 berth marina and associated club facilities;</li> <li>• A maximum of 315 accommodation units (no more than 50 per cent of which may be used for residential purposes);</li> <li>• Restaurant, café, function centre, shops and office;</li> <li>• <b><u>A helipad</u></b>; and</li> <li>• Site access arrangements, parking, servicing, landscaping and boardwalk.</li> </ul>
<b>Type of development:</b>	Major Project
<b>Determination made on:</b>	5 September 2009

- (b) In Schedule 2, Modifications and Requirements for Future Applications, Part A – Terms of Concept Approval, Term A1 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

**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) as modified by the s75W modification dated 30 September 2013 (MOD 1) prepared by Johnson Property Group;
  - b) the section 75W modification application dated 6 August 2014, (MOD 4) prepared by Johnson Property Group;
  - c) the section 75W modification dated 15 August 2014, (MOD 2) prepared by Johnson Property Group; ~~and~~
  - d) 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; and
  - e) the section 75W modification dated 2 December 2015, (MOD 6) prepared by Johnson Property Group; **and**
  - f) **the section 75W modification application (MOD 3) and Environmental Assessment Report prepared by ADW Johnson dated November 2016, as amended by the Preferred Project Report prepared by ADW Johnson dated April 2018 and Further Preferred Project Report prepared by ADW Johnson dated May 2019 (excluding Appendix F).**

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,
  - c) restaurant, bar and café with below ground car parking.

**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.

The basement car park is permitted to sit between 1.2 m and 1.5 m above the finished ground level.

**Additional Works / Uses**

3. The following building/works/uses will be undertaken as shown on the Concept Plan and the Revised UDG, as modified by Term B5 of this approval:
    - a) a marina, use for a helipad 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.
- (c) In Schedule 2, Modifications and Requirements for Future Applications, Part A – Terms of Concept Approval, Term A2 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

**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 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;
  - c) the section 75W Environmental Assessment dated October 2014 (MOD 5) prepared by AdW Johnson, except where as 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;
  - d) **the section 75W modification application (MOD 3) and Environmental Assessment Report prepared by ADW Johnson dated November 2016, as amended by the Preferred Project Report prepared by ADW Johnson dated April 2018 and Further Preferred Project Report prepared by ADW Johnson dated May 2019 (excluding Appendix F);** and
  - e) the following drawings except as modified by the terms in Part Band C of the approval below:

<b>Revised Principles, Objectives &amp; Urban Design Guidelines (Revised UDG) Prepared by Johnson Property Group June 2015-May 2019, as amended below</b>			
Drawing No.	Revision	Name of Plan	Date
Principles 1 to 9	N/A	Revised Principles, Objectives & Urban Design Guidelines Trinity Point Marina and Mixed Use Development	June 2019
Not provided	N/A	Indicative Outcome – Summary Figure Plan by Squillace Architects in part C of Revised UDG	Part of Revised UDG June 2015
<b>Modified Concept Plan Marina Layout Prepared by RHDHV</b>			
8A0379- MA_LB031	B	Concept Marina Layout - Overall	4 August 201
8A0379- MA_LB021	B	Concept Marina Layout - Stage 1a & 1b	4 August 2014
8A0379- MA_LB011	C	Concept Marina Layout - Stage 1a	15 January 2014
<b>As modified by the following plans for the helipad, prepared by adw johnson for Johnson Property Group</b>			
<b><u>37429(4)-DA- 001-L</u></b>	<b><u>L</u></b>	<b><u>Location &amp; Marina Context of Proposed Helipad</u></b>	<b><u>22.11.19</u></b>
<b><u>37429(4)-DA- 001-L</u></b>	<b><u>L</u></b>	<b><u>Plan of Proposed Helipad</u></b>	<b><u>22.11.19</u></b>
<b><u>37429(4)-DA- 001-L</u></b>	<b><u>L</u></b>	<b><u>Typical Elevation of Proposed Helipad</u></b>	<b><u>22.11.19</u></b>
<b><u>37429(4)-HELI- 08-E</u></b>	<b><u>E</u></b>	<b><u>Designated Helicopter Take Off &amp; Landing Area</u></b>	<b><u>16/4/19</u></b>

- (d) In Schedule 2, Modifications and Requirements for Future Applications, Part A – Terms of Concept Approval, Term A3 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

#### **A3 Project in Accordance with Documents**

The following documentation (including any appendices therein) is approved as part of the Concept Plan:

- Environmental Assessment Report Volume 1, prepared by AdW Johnson, dated 18 November 2008.
- Environmental Assessment Report Volume 2, prepared by Patterson & Britton and Partners, dated 17 November 2008.
- Additional Groundwater Sampling and testing prepared by Douglas and Partners, dated 21 May 2008 Project 39823.04
- Trinity Point Marina proposal, Numerical Modelling Investigation Addendum 1, prepared by Worley Parsons, dated 8 March 2009.
- Report on Geotechnical Investigation, prepared by Douglas Partners, Project No.. 39823 dated December 2007.
- Report on Geotechnical Investigation, prepared by Douglas Partners, Project No.. 39823B dated December 2007.
- Acid Sulfate Soils Report, prepared by Douglas Partners, Project 39823A, dated December 2007.
- Validation Report, prepared by David Lane Associates Version 2.
- Site Audit Report, prepared by JBS Environmental Pty Ltd, JBS 40108-11796, dated September 2007.

- Visual Assessment Report, prepared by Richard Lamb Associates, dated November 2008.
- Socio – Economic Report, prepared by Key Insights Pty Ltd, dated June 2008.
- Acoustic Assessment Report, prepared by Arup Acoustics, Job No. 96790 dated November 2008, as amended by Memorandum by Arup Acoustics dated 8 December and The Concept Plan document Principle 16 – Acoustics dated 5 June 2009.
- Air Quality Report, prepared by Arup Sustainability, Job No. 86790, dated May 2008.
- Aquatic Ecology Report, Prepared by The Ecology Lab Pty Ltd, dated November 2008.
- Terrestrial Ecology Assessment, prepared by Harper Somers O'Sullivan for Job Reference 20970 dated November 2008.
- Traffic Report, prepared by Better Transport Futures, dated November 2008.
- Crime Risk and Security Report, prepared by Harris Crime prevention Services, dated December 2007.
- Bushfire Assessment Report, prepared by harper Somers O'Sullivan for Job Reference 20970, dated November 2007.
- Stormwater and Flooding Report, prepared by Patterson Britton & Partners Pty Ltd, dated November 2008.
- Breakwater Design Study, prepared by Patterson Britton & Partners Pty Ltd, dated December 2007.
- Coastal Processes Study, prepared by Patterson Britton & Partners Pty Ltd, dated December 2007.
- Marina Berth Demand Study, prepared by Patterson Britton & Partners Pty Ltd, dated November 2008.
- Numerical Modelling Investigation Report, prepared by Patterson Britton & Partners Pty Ltd, issue Nov 2008.
- Sediment Sampling Analysis Plan, prepared by Patterson Britton & Partners Pty Ltd, in December 2007.
- Heritage Assessment Report, prepared by Insite Heritage Pty Ltd, dated 30 October 2008.
- Landscape Plan & Report, prepared by Terras Landscape Architects, dated 14/11/2008 for project No. 7279.5.
- External Infrastructure Investigation, prepared by Worley Parsons Recourses and Energy, dated December 2007.
- Financial & Economic Assessment Report, prepared by Ernst & Young, dated 20 June 2008.
- The s75W modification dated 30 September 2013 (MOD 1) prepared by Johnson Property Group,
- Response to Lake Macquarie City Council comments, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 8 October 2014.
- Response to public and community group submissions, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 10 October 2014.
- Response to requested clarifications, section 75W MOD 2 to Concept Plan (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 12 November 2014.
- Response regarding floating beakwater design, prepared by Royal Haskoning DHV, dated 12 November 2014.
- Additional response regarding incorporation of boats in excess of 20 m within the Marina, prepared by Royal Haskoning DHC, dated November 2014.
- Supplementary Visual Impact Assessment, prepared by Richard Land and Associates, undated

- The s75W modification dated August 2014 (MOD 4) prepared by Johnson Property Group,
  - The Environmental Assessment (MOD 5) dated October 2014, prepared by AdW Johnson including all its appendices, except where amended by RtS (MOD 5) dated April 2015, prepared by AdW Johnson, including all its appendixes and the Revised UDG dated June 2015, prepared by Johnson Property Group
  - **the Environmental Assessment (MOD 3) prepared by ADW Johnson dated November 2016, as amended by the Preferred Project Report prepared by ADW Johnson dated April 2018 and Further Preferred Project Report prepared by ADW Johnson dated May 2019 (excluding Appendix F).**
- (e) In Schedule 2, Modifications and Requirements for Future Applications, Part A – Terms of Concept Approval, Term A7 is amended by the insertion of the **bold and underlined** words as follows:

**A7 Limits on Approval for Helipad**

**Mod 3 to the concept approval does not approve the construction and operation of the helipad, which will be subject to future development application(s) to be determined in accordance with the concept approval (as modified)**

- (f) In Schedule 2, Modifications and Requirements for Future Applications, Part A – Terms of Concept Approval, insert new Term A8 as follows:

**A8 Revision of the Helipad Operations Management Plan**

**The Helipad Operations Management Plan dated December 2019 (as described and noted in Conditions C2 and C31) may be revised to the satisfaction of Council, as long as it complies with the concept approval (as modified through Mod 3).**

- (g) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, delete Term B5 and replace it with the following:

**B5 Changes to Revised Urban Design Guidelines dated May 2019**

**The design guidelines are to be reviewed and amended to reflect the terms of this approval, and where an inconsistency exists the terms of the approval prevail**

**Principle 15 – Helipad should be modified to reflect the approved hours of operation.**

**All future development applications must demonstrate consistency with the Revised Principles, Objectives and Urban Design Guidelines dated May 2019, as amended under the terms of this approval.**

- (h) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, Term C2 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struck out~~ words/numbers as follows:

**C2 Development Parameters**

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

Tourism and Hospitality Precinct Requirement	
Development Parameter	
Helipad	
<u>Maximum size of pontoon</u>	<ul style="list-style-type: none"> <li>• <u>25m x 25m helipad pontoon with associated gangway</u></li> </ul>
<u>Landing and Take-off Area</u>	<ul style="list-style-type: none"> <li>• <u>All helicopters to land and take off within the designated landing and take off area as shown on the Plan within Principle 15.</u></li> </ul>
<u>Maximum number of movements</u>	<ul style="list-style-type: none"> <li>• <u>6 movements per day (3 landings and 3 departures) and</u></li> <li>• <u>34 helicopter movements per week (17 landings and 17 departures)</u></li> <li>• <u>The Development Consent may require changes to the number of movements after operations commence, in accordance with any recommendations in an audit or noise monitoring report required under that consent. Any increase to the number of movements will be subject to approval of the consent authority.</u></li> </ul>
<u>Maximum hours of operation</u>	<ul style="list-style-type: none"> <li>• <u>8am to 5pm Monday to Saturday, extended to 8am to 7pm during daylight saving time, provided that only two helicopter movements occur between 5pm and 7pm during daylight saving time.</u></li> <li>• <u>9am to 5pm Sunday.</u></li> <li>• <u>9am to 5pm Public Holidays, extended to 9am to 7pm during daylight saving time, provided that only two helicopter movements occur between 5pm and 7pm during daylight saving time.</u></li> <li>• <u>The Development Consent may require changes to the hours of operation after operations commence, in accordance with any recommendations in an audit or noise monitoring report required under that consent. Any increase to the hours of operation will be subject to approval of the consent authority.</u></li> </ul>
<u>Safe operation of the helipad</u>	<ul style="list-style-type: none"> <li>• <u>The Helipad Operations Management Plan dated December 2019 (or as revised under Condition A8).</u></li> <li>• <u>Implement a managed safety zone of at least 66.5m surrounding the helipad (measured from the centre of the helipad) within which there are to be no members of the public (including on any boats berthed within the safety zone) during helicopter landing and take-off only</u></li> <li>• <u>Provide a weather station in the vicinity of the helipad to be operated by a qualified radio operator to provide current weather information and communicate with incoming and outgoing pilots on whether the safety zone is clear of members of the public</u></li> <li>• <u>Provides for closure of the helipad in times of unsuitable wind conditions.</u></li> </ul>

	<ul style="list-style-type: none"> <li>• <u>Helipad landing site manager to be appropriately qualified and suitably trained to communicate relevant information to pilots, including completion of a suitable course prepared and delivered by a qualified aviation safety consultant.</u></li> <li>• <u>Helipad staff suitably trained on handling any potential safety or fuel spill issues are to be available at all times a helicopter is landing or taking-off</u></li> <li>• <u>No landing or take-off where watercraft of any kind would be situated under the helicopter during landing or take-off within 200m of the helipad (under includes 20m surrounding the expected flight path)</u></li> <li>• <u>Implementation of a restricted landing and take-off zone where no helicopter using the helipad can fly (whether before, during or after landing and/or take-off)</u></li> <li>• <u>Only one helicopter to be on the helipad at any time</u></li> <li>• <u>Implementation of a prior permission protocol for all helicopters accessing the site</u></li> <li>• <u>Identification of helicopter models and types permitted to use the helipad site</u></li> <li>• <u>Restricts the use of the helipad to single or twin-engine helicopters with maximum seating capacity of 8 persons, such as the AgustaWestland AW109, as revised under Condition A8).</u></li> <li>• <u>An alternate landing site protocol for any helicopter which arrives but cannot land at the helipad because the development parameters in this condition C2 are not met</u></li> <li>• <u>Annual compliance and safety monitoring by review of data and records of the Applicant by an appropriately qualified and experienced helicopter consultant for an initial 2 years and if no issues, to continue once every 3 years unless otherwise required by the Department or Council to investigate alleged non-compliances, the expense of which to be borne by the Applicant.</u></li> </ul>
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- (i) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, Term C3 is amended by the insertion of **the bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

### **C3 Urban Design**

The proposed development must comply with the **Revised Principles, Objectives and Urban Design Guidelines** Revised UDG, prepared by Johnson Property Group, dated June 2015 **May 2019, as amended by the requirements of Term B5 of this approval**. A final Urban Design Guideline incorporating the changes identified in Term B5 must be submitted to and approved by the Department of Planning & Environment within three (3) months of the dated that the modification is determined. 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~~ **May 2019**.

All future development applications for residential flat buildings must address the requirements of *State Environmental Planning Policy No. 65 Design Quality of Residential Flat **Apartment** Development*.

- (j) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, Term C25 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

**C25 Public Access**

A detailed acoustic assessment addressing the concept plan conditions and modifications to minimise noise to 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.~~ **Revised Principles, Objectives and Urban Design Guidelines dated May 2019, as amended under Term C3 of this approval.**

- (k) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, insert new Term C31 as follows:

**C31 Compliance Monitoring and Mitigation Measures – Helipad Operations**

**Future development application(s) for the construction and operation of the helipad must include and demonstrate compliance with the Helipad Operations Management Plan dated December 2019 (or as revised under Condition A8), the development parameters in condition C2 and the following monitoring and mitigation measures:**

- a) **Identification of the location of all unattended noise loggers required to demonstrate compliance against the approved noise limits**
- b) **An annual acoustic monitoring program for a five-year period demonstrating compliance against the approved noise limits**
- c) **The installation of a GPS tracking system (Spidertracks or similar) on all helicopters accessing the helipad to verify compliance with the concept approval (as modified through Mod 3)**
- d) **Access by the Secretary to the data captured by the GPS tracking system and noise loggers to assess compliance with the conditions of approval**
- e) **Suitable mitigation measures where actual impacts exceed the approved noise limits.**

**The Helipad Operations Management Plan dated December 2019 (or as revised under Condition A8) must be:**

- a) **implemented prior to the issue of an Occupation Certificate or prior to commencement of operations; and**

**b) implemented over the life of the project.**

- (l) In Schedule 2, Modifications and Requirements for Future Applications, Part B – Modifications to the Concept Plan, insert new Term C32 as follows:

**C32 Consultation with Roads and Maritime Services – Helipad Operations**

**Any development application for the construction and operation of the proposed helipad must provide for the following:**

- a) **Prior to commencement of construction of the helipad, consultation with the RMS Senior Boating Safety Officer with regards to the placement and installation of additional navigational markers at the contractors expense (including lighting costs), including**
- **a lit East Cardinal Marker, located due east of the helipad to improve the safety of navigation**
  - **2 x lit special marks, located north and south on the circumference of the maximum managed safety zone**
- b) **Prior to the issue of an Occupation Certificate, or the commencement of operations, implementation of the following to the satisfaction of the RMS Senior Boating and Safety Office:**
- i. **Management procedures should a vessel be in the designated maximum managed safety zone when a helicopter is trying to land or take-off**
  - ii. **an Emergency Operating Plan Over Water.**

**End of Modification**