

North Cooranbong Residential Estate Proposed by Johnson Property Group

Modification MP07_0147 MOD 2

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

October 2009



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1. INTRODUCTION

On 14 September 2009 Johnson Property Group (the Proponent) wrote to the Director General requesting to modify MP 07_014 (**Tag D**) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

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

- Insert a new clause relating to the application of a State Voluntary Planning Agreement for the site, set out in the Statement of Commitments for the approved concept plan.

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 E**.

On 26 February 2009, the Executive Director of Strategic Sites and Urban Renewal, as delegate for the Minister for Planning, approved a modification (Mod 1) to this approval. The modification amended the further assessment requirements for Riparian Corridors and Land Contamination.

This application is the second modification (Mod 2) to this approval.

4. DESCRIPTION OF PROPOSED MODIFICATION

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

4.1 AMENDMENT OF DETERMINATION TO ALLOW OPERATION OF STATE VOLUNTARY PLANNING AGREEMENT

The application seeks to modify the terms of the Minister's determination for the Concept Plan. The amendment proposes that the approval be subject to the Proponent entering into a previously agreed to State Voluntary Planning Agreement with the Minister for the provision of State Infrastructure.

The Proponent in their Statement of Commitments made an obligation to enter into a Planning Agreement with the Minister for Planning in relation to the North Cooranbong proposal. This commitment is not expressly referenced in the terms of the approval, but is required in order for the Planning Agreement to operate.

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 changing the terms of any determination made by the Minister under Division 3 (Concept plans for certain projects) in connection with the approval.

Under Section 75W(2), a proponent may request the Minister to modify the Minister's approval for a project. The proposed modification seeks to include an additional term of approval for the Concept Plan. It is therefore appropriate for the Executive Director, Urban Renewal and Major Sites to determine the modification application on the Minister's behalf, in accordance with the Departmental delegations dated 4 March 2009.

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 MODIFICATION

The Proponent seeks to alter the Minister's determination of the Concept Plan to facilitate the operation of a planning agreement for the project. The Proponent in their Statement of Commitments for the approved Concept Plan, has undertaken to enter into a State Voluntary Planning Agreement for the provision of contributions to State Infrastructure that are required in connection with the North Cooranbong development.

The Proponent seeks to modify the terms of the Minister's determination of the Concept Plan, to stipulate that the approval is subject to the execution of the State Planning Agreement. A Voluntary Planning Agreement has been executed by the Proponent in respect of the project. However, Clause 2(c) of the agreement states that the Planning Agreement operates only if "*the Concept Plan Approval is subject to a satisfactory arrangements provision as contemplated by section 75O(5) of the Act*".

Section 75O(5) states:

"Approval for the concept plan may be given under this Division subject to satisfactory arrangements being made, before final approval is given for the project or any stage of the project under this Part or under the other provisions of this Act, for the purpose of fulfilling the obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F)."

The Concept Plan Approval contains no such express provision. It is therefore necessary to amend the Instrument of Approval to enable the Planning Agreement to operate.

Legal advice has been obtained regarding the wording of the amended Instrument of Approval. The bold text below identifies the amended wording:

I, the Minister for Planning, under the Environmental Planning and Assessment Act 1979 ("the Act") determine:

- (a) to approve the Concept Plan referred to in Schedule 1, subject to:**
 - i. the modifications set out in Schedule 2; and**
 - ii. the proponent entering into the planning agreement referred to in the Statement of Commitments dated 27 October 2008.**
- (b) the environmental assessment requirements for subsequent project or development applications associated with the Concept Plan as set out in Schedule 2;*
- (c) that any development or activity associated with the approved Concept Plan be subject to Part 4 (with Council as the consent authority) or Part 5 of the Act, whichever is applicable, unless the development is, in the opinion of the Minister, development of a kind that is described in the State Environmental Planning Policy (Major Development) 2005;*
- (d) that any development associated with the Concept Plan is not integrated development under section 91 of the Act.*

8. MODIFICATIONS TO INSTRUMENT OF APPROVAL

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

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 modification and recommends approval of the modification.

The proposed modification is minor in detail and does 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 4 March 2009, the Minister has delegated certain functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director, Urban Renewal and Major Sites. It is appropriate that the application be determined under this delegation.

11. RECOMMENDATION

It is recommended that the Executive Director, Urban Renewal and Major Sites 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 B**).

Prepared by:



Katie Stevenson
Planner, Strategic Assessments

Endorsed by:



Michael File
Director, Strategic Assessments

Approved by:



Giovanni Cirillo
Executive Director
Urban Renewal and Major Sites