

North Cooranbong Residential Estate Proposed by Johnson Property Group

Modification MP07_0147 MOD 3

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

December 2009



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1. INTRODUCTION

On 3 November 2009, Johnson Property Group (the Proponent) wrote to the Director-General requesting to modify MP 07_014 (**Tag C**) 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:

- Amend the Statement of Commitments for the approved Concept Plan to reflect the contributions to public authorities outlined in a Regional Voluntary Planning Agreement relating to the project.

2. THE SITE

The township of Cooranbong is located approximately 40 kilometres southwest of Newcastle and 100 kilometres north of Sydney in the Lake Macquarie Local Government Area. The North Cooranbong site is 355.26 hectares 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:

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

On 23 October 2009, the Executive Director of Urban Renewal and Major Sites, as delegate for the Minister for Planning, approved Modification 2 (Mod 2) to this approval. The modification amended the terms of the Minister's Determination to explicitly reference a planning agreement referred to in the Statement of Commitments dated 27 October 2008. This modification was necessary to enable the planning agreement to operate.

This application is the third modification (Mod 3) to this approval. It seeks to modify the Statement of Commitments for the approved Concept Plan in respect of development contributions for regional infrastructure.

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 TO STATEMENT OF COMMITMENTS

The application seeks to modify the terms of the Minister's determination for the Concept Plan. The modification proposes to amend the Statement of Commitments dated 27 October 2008 for the approved Concept Plan which includes a Regional VPA Summary Table, setting out proposed contributions to be levied for regional infrastructure (**Tag D**). It is proposed to amend the Summary Table to reflect the commitments set out in the finalised Regional Planning Agreement. Execution of the finalised Agreement is currently being considered by the Minister.

Three amendments are proposed:

4.1.1 Contributions to Roads and Traffic Authority

The Regional VPA Summary Table includes details of development contributions to the RTA. These contributions are to be made as works in kind in the form of specified road improvement works. It is proposed to amend the Summary Table to make the scope of works and the threshold for their completion consistent with the works defined in the planning agreement.

The amended item is to read as follows:

Agency	Scope of Works	Regional Infrastructure Panel Allocated Cost / Value	Timing	How works will be delivered
Roads and Traffic Authority	<p>Traffic works on the RTA controlled road network, including:</p> <ul style="list-style-type: none"> Dora Creek Road Improvement Works, and Morisset Road Improvement Works <p>As defined in the executed State Planning Agreement (committed to as referenced in the Statement of Commitments – Item 1 of Table 4)</p>	\$30,000,000 (\$12,000 / lot*)	<ul style="list-style-type: none"> 300 lots 1000 lots 	Works In Kind

4.1.2 Contributions to Department of Environment and Climate Change

The Summary Table provides details of contributions to the Department of Environment and Climate Change. Reforms to the infrastructure contributions system in December 2008 following Concept Plan approval allowed the timing of the contribution payment to be altered from prior to subdivision consent to prior to the issue of subdivision certificate to help cash flow.

The amended item in the table is to read as follows:

Agency	Scope of Works	Regional Infrastructure Panel Allocated Cost / Value	Timing	How works will be delivered
Department of Environment and Climate Change	<p>Environmental offsets to achieve a maintain / improve biodiversity outcome.</p> <p>Funds to go toward priority conservation corridor defined in DECC's Regional Conservation Plan.</p>	<p>\$2,640,000 (\$1,056 / lot*)</p>	<p>\$105,600 prior to the date of issue of a Subdivision Certificate in respect of the 1st residential lot</p> <p>If the Land Owners elect not to transfer the Environmental Contribution land, \$2,534,400 prior to the date of issue of a Subdivision Certificate in respect of a Development Application for the 101st residential lot</p>	Cash contribution or land to DECC satisfaction

4.1.3 Contributions to Ministry of Transport

Item 3 of the Summary Table relates to a bus subsidy to be paid to the Ministry of Transport. It is proposed that this item be removed from the Table as Government reforms to State infrastructure contributions following Concept Plan approval no longer require such contributions.

The following item is therefore proposed for deletion:

Agency	Scope of Works	Regional Infrastructure Panel Allocated Cost / Value	Timing	How works will be delivered
Ministry of Transport	<p>Start up bus services based on the following parameters:</p> <ul style="list-style-type: none"> 1 bus per 1200 people; \$250,000 per new bus; Subsidy for 5 years; 	<p>\$5,077,500 (\$2,031 / lot*)</p>	Per lot	Cash contribution

* Assuming a lot yield of 2,500 residential lots

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 amend the Statement of Commitments for the approved Concept Plan. It is therefore appropriate for the Executive Director of Urban Renewal and Major Sites to determine the modification application on the Minister's behalf, in accordance with the Instrument of Delegation 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 make amendments to the Statement of Commitments of 27 October 2008 for the approved Concept Plan. The Statement of Commitments for the Concept Plan was complemented by a table (Table 5 – Regional VPA Summary) which summarised the proposed contributions to be made in respect to regional infrastructure. The Summary Table established the proposed scope, value and timing of contributions to public authorities, and the manner in which these were to be delivered in connection with the North Cooranbong development.

Three items in the Regional VPA Summary Table accompanying the Statement of Commitments are proposed to be modified under this application, as outlined in section 4.1 of this report. The merits of these modifications are considered below.

7.1 Contributions to Roads and Traffic Authority

Following finalisation of the revised Statement of Commitments in October 2008, the Regional Planning Agreement was negotiated and is currently being executed between the Proponent, Landowners and the Minister for Planning. The planning agreement provides details of Regional infrastructure requirements of the project, generally in line with the VPA Summary Table.

Clause 1.1 of the VPA defines all terms used throughout the planning agreement including definitions of Road Improvement Works that are required to be undertaken in conjunction with the Concept Plan. While the scope of works has not changed from the details proposed in the VPA

Summary Table, the works are now inconsistently described in the two documents. The threshold for the completion of these works has also been revised, and should change from 1200 to 1000 lots to be consistent with the planning agreement and the thresholds required by RTA in their submission to the exhibition of the draft Regional VPA dated 16 December 2008.

The Regional Planning Agreement referenced in the Statement of Commitments is close to being finalised. In order to adequately reflect the content of the planning agreement, it is appropriate to rectify inconsistencies between the documents. It is appropriate to amend the Summary Table accompanying the Statement of Commitments to make the Statement consistent the Planning Agreement, given the planning agreement relies on the Concept Plan approval (including the Statement of Commitments) to legally operate.

On this basis it is considered appropriate that the scope of works in the table be revised to reflect the description of works and thresholds defined in the Planning Agreement.

7.2 Contributions to Department of Environment and Climate Change

Significant reforms to the infrastructure contributions system were introduced in December 2008, following the approval of the Concept Plan. The reforms allowed deferral of the point at which contributions need to be paid to assist cash flow.

The Voluntary Planning Agreement adopts this reform specifying that contributions to the Department of Environment and Climate Change are payable prior to a subdivision certificate being issued. It is appropriate that Item 2 of the Summary Table be amended to reflect this change to the development contributions system and to ensure consistency with the content of the Planning Agreement.

7.3 Contributions to Ministry of Transport

The Regional VPA Summary Table included a commitment from the Proponent to make monetary contributions to the Ministry of Transport to subsidise local bus services.

Government reforms to State infrastructure contributions occurred in December 2008, following the approval of the Concept Plan. One aspect of these reforms was removal of requirements for bus contributions. This aspect of the Voluntary Planning Agreement Summary Table is consequently redundant.

It is appropriate to delete this item from the Summary Table to ensure that the Statement of Commitments is consistent with the Planning Agreement, given the planning agreement relies on the Concept Plan approval (including the Statement of Commitments) to legally operate.

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 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

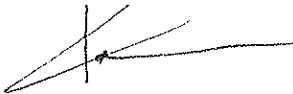
Under the instrument of delegation dated 4 March 2009, the Minister has delegated certain functions under Section 75W of the Act relating to modifying Part 3A approvals to the Executive Director of Urban Renewal and Major Sites. It is appropriate that the application be determined under this delegation.

11. RECOMMENDATION

It is recommended that the Executive Director of 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 A**).

Prepared by:



Katie Stevenson
Planning Officer, Strategic Assessment

Endorsed by:



Simon Bennett
A/Director, Strategic Assessment

Approved by:



Giovanni Cirillo
Executive Director
Urban Renewal and Major Sites