



MODIFICATION REQUEST:

***Mixed Residential and Tourist Development
Cattle Bay Road, Eden***

***MP05_0032 MOD 2 – Modification to the lapsing period of the
Concept Plan Approval***



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

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1. BACKGROUND

1.1 The Site

The site is located within the Bega Valley Shire local government area, approximately 1km west of Eden on the NSW south coast. The site is bounded by Bass Street to the north, Flinders Street to the east, Cattle Bay to the south and Bay Street to the west. The site comprises 4 separate areas with a total area of 8.1 hectares as seen below in **Figure 1**.

Figure 1: Site Location



1.2 Original Major Project Application

Concept Plan Approval MP05_0032

On 22 August 2008, the then Minister for Planning approved the Concept Plan (MP05_0032) for a mixed residential and tourist development.

This approval was granted subject to conditions including Part A *Date approval is liable to lapse* and Condition A4 *Lapsing of Approval* of the consent, which stipulate that the Concept Plan Approval lapses 5 years from the date of approval (22 August 2013).

1.3 Previous Modifications

MP05_0032 (MOD 1) was approved under delegation on 22 December 2008 to make minor amendments to the wording of conditions to correct anomalies and amend demolition and remediation to be subject to Part 4 and not Part 3A.

2. PROPOSED MODIFICATION

This application seeks to modify the Concept Plan Approval (MP05_0032) by amending the wording of conditions relating to the lapsing period of the approval as follows:

- Modification of Part A of Schedule 1 that states "5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the Act." to read **"5 years from the date of determination unless a project application or development application has been lodged to carry out the project or a part of the project for which this concept plan approval has been given."**
- Modification of Condition A4 that states "Approval shall lapse 5 years after the determination date in Part A of Schedule 1 of this approval unless Stage 1 is approved and physically commenced" to read **"Approval shall lapse 5 years after the determination date in Part A of Schedule 1 of this approval unless a project application or development application has been lodged to carry out the project or a part of the project for which this concept plan approval has been given."**

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

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

In accordance with Clause 3C of Schedule 6A of the EP&A Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A.

3.2 Environmental Assessment Requirements (DGRs)

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGRs.

3.3 Delegation

The Minister for Planning and Infrastructure has granted delegated authority to the Directors in the Major Projects Assessment Division to determine requests under Section 75W of the *Environmental Planning and Assessment Act 1979* to modify Part 3A approvals where:

- there have been no reportable political donations in connection with any previous Concept Plan or Project Application made;
- there are less than 10 public submissions in the nature of objections in respect of the modification request; and

- where the relevant council has not objected to the modification.

The above criteria apply to this Section 75W request as Council did not object to the proposal and no public submissions were received.

No reportable political donations were declared in relation to this Section 75W request and previous applications. The application can therefore be determined by the Directors in the Major Projects Assessment Division under delegated authority.

4. CONSULTATION AND SUBMISSIONS

In accordance with Section 75J of the *Environmental Planning and Assessment Act 1979* and Clause 8G of the *Environmental Planning and Assessment Regulation 2000*; the modification request was made available to the public on the Department's website. Due to the minor nature of the proposed modification, the modification request was not consulted or exhibited by any other means.

No public submissions were received in respect of the proposed modification.

5. ASSESSMENT

The original requirement of the Concept Plan Approval limits the life of the approval for 5 years unless specified action has been taken in accordance with Section 75Y of the Act, however does not specify the action which would prevent the approval from lapsing.

The intent of the modification is to provide greater clarity and specify the action to be the submission of a project application or development application for approval to carry out the project or part of the project for which concept approval has been given. This specified action will allow the approval to remain in perpetuity.

The modified wording is in keeping with current Departmental practice for Major Project Applications and should it be approved, would ensure consistency in the Department's approvals.

The Department considers that the modification is acceptable on the basis that it will now provide a specified action to ensure the approval remains valid during construction while still satisfying the objectives of the original assessment. The modification will not result in any additional environmental impacts. In particular, the proposed amendment to the Concept Plan will ensure that the development of the site will proceed in an orderly planned manner.

6. CONCLUSION

The Department has assessed the application on its merits and the proposed modification is considered reasonable and will not result in any significant changes to the development as approved.

The proposal seeks to modify the requirement for the lapse date of the approval for the Concept Plan only. The proposed modification does not change the original assessment as to the site's suitability for this development.

7. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects South, as delegate for the Minister for Planning and Infrastructure:

- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification under delegated authority, under Section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification for MP05_0032 (MOD 2) (**Appendix B**).

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