



planning consultants

2 December 2013
Our Ref: 8717A.1DK

The Director-General
Department of Planning and Infrastructure
GPO Box 39
Sydney 2000

Dear Sir

Section 75W Modification of Project Approval (MP08_0096) – Modification No. 1 Bayswood Retirement Living Village

1.0 Part 3A Transitional Provisions

A Project application for the Bayswood Retirement Living Village was approved by the Minister for Planning on 28 January 2009. This approval is valid for 5 years and will therefore lapse on 28 January 2014.

Schedule 6A of the EP&A Act sets out the transitional arrangements for the repeal of Part 3A of the Act. Clause 2 – Transitional Part 3A projects defines transitional Part 3A projects as follows:

- 2 (1) *The following are, subject to this Schedule, **transitional Part 3A projects**:*
- (a) *an approved project (whether approved before or after the repeal of Part 3A),*
 - (b) *a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),*

In this instance the Project application was approved prior to the repeal of Part 3A and is therefore a transitional Part 3A project.

Clause 3 of Schedule 6A provides that “*Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.*” The repealed provisions of Part 3A continue to apply to the Project approval, which includes section 75W dealing with modifications of approvals.

2.0 Background

MP 06_0060 is a Concept Plan approval for the Vincentia Coastal Village and District Centre. The Concept Plan included:

- A residential subdivision which is under construction;
- A residential housing development for an adaptable housing area (which later became the Bayswood Retirement Living Village the subject of this modification);
- A commercial development (being the Vincentia District Centre which is yet to commence construction); and
- Environmental protection measures.

The Bayswood Retirement Living Village is one element of the wider Vincentia Coastal Village comprising the above elements. All components were designed to complement one another. In

relation to the Vincentia Coastal Village, the District Centre was seen as being of benefit to the future residents for services and facilities immediately adjacent to the District Centre. The Vincentia Coastal Village is well advanced. Stockland has constructed approximately half of the residential subdivision (including associated infrastructure). However, the Bayswood Retirement Living Village and District Centre have not commenced construction.

The District Centre approvals were obtained by Stockland, however Stockland sold the District Centre site to Fabcot several years ago. The timing of its construction is subject to Fabcot's program. And we note that the District Centre Project Approval has been the subject of several modifications.

More recently Stockland placed the remaining residential subdivision and Bayswood Retirement Living Village on the market. Stockland has recently entered into a contract for sale with Wakefield Ashurst Developments Pty Limited to purchase the remainder of the residential estate being those areas shaded red in **Figure 1** below. The sale includes the Bayswood Retirement Living Village site. The sale is due to settle in June 2014.



Figure 1: Red shading illustrates the location of land being sold by Stockland

3.0 Description of Proposed Modification

It is proposed to modify the Project Approval to provide an extra 3 years to the lapsing period (i.e. a total of 8 years). This modification to the approval would involve two amendments to the Determination as set out below.



Condition 1.4 – Lapsing of Approval

The condition would be amended to read as follows:

*Pursuant to section 75Y of the Act, the project approval will **lapse 8 years** after the date on which it is granted unless construction work on the project has commenced.*

Part A – Table to Schedule 1 also references a lapsing period. We understand that the Department might delete this row from the table such that Condition 1.4 is the only reference to the lapsing period of the approval. If this row is not deleted it will also need to be amended to reference the proposed lapsing period of 8 years.

4.0 Need for the Modification

There is a need to modify the Project Approval for the following reasons:

1. The construction of the Retirement Living Village has been delayed. The sale of the remainder of the residential lands to Wakefield Ashurst will not settle until June 2014. The settlement will take place after the lapsing of the Project Approval. If the lapsing period of the Project Approval is not amended then the approval will lapse and Wakefield Ashurst (as the incoming developer) will not have an opportunity to act upon the Project Approval.
2. If the approval lapses, then it would be a lost opportunity for a retirement living village proximate to the services and facilities which will be provided in the District Centre. Further approval could be sought, but this would involve further documentation and assessment of a development that has already been assessed and determined as being an appropriate form of development.
3. Whilst the retirement living Project Approval is not dependent upon the District Centre, the delayed construction of the District Centre has been a contributing factor in the timing of the retirement living village. The timing of the District Centre is subject to different developer. An extension to the Project Approval would provide for the opportunity for the District Centre to commence which could encourage the Retirement Living Village to commence. Providing an extension to the lapsing period will provide further opportunity to review the timing of the construction of the retirement living project.

5.0 Consistency with the Concept Plan and Project Approvals

The proposed modification to the lapsing period does not alter the approved development, but simply extends the life of the approval in order for the approved Project to be carried out.

Extending the lapsing period will also remain consistent with the Concept Plan approval that preceded the Project Approval.

The zoning of the land has not changed since the approval of the Project Approval. The land is remains zoned Residential R2 – Low Density Residential under Part 29 of Schedule 3 to State Environmental Planning Policy (Major Development) 2005 and seniors housing is permissible with development consent. The extension of the approval will therefore be consistent with the zoning of the land.



6.0 Summary and Conclusion

The proposed modification to the Project Approval is submitted in accordance with the now repealed provisions of section 75W of the Act to request that the Minister modify Project Approval (MP08_0096).

The proposal involves the modification of the Project Approval to extend the lapsing period from 5 years to 8 years. The project has not commenced and the current owner (Stockland) has entered into a contract to sell the undeveloped parts of the residential estate to Wakefield Ashurst Developments. The settlement is not due to take place until June 2014 which is after the lapsing date of 28 January 2014. The proposed extension to 8 years will allow further time for the new owner to act on the approval.

The proposed modification retains consistency with the original approvals.

We therefore recommend that the Approval issued for MP08_0096 is amended as set out in this letter. Should you have any questions in relation to this application please do not hesitate to contact David Kettle on 9980 6933.

Yours faithfully

DFP PLANNING CONSULTANTS

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**DAVID KETTLE
DIRECTOR**

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Reviewed: _____

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