



11 March 2009
Our Ref: 6376C.22DK

The Director-General
Department of Planning
GPO Box 39
SYDNEY 2001

Attention: Caitlin Bennett

By email: caitlin.bennett@planning.nsw.gov.au

Dear Caitlin,

**Section 75W Modification
Major Project Application No 06_0025
Vincentia District Centre**

INTRODUCTION

Further to our letter of 30 January 2009, the purpose of this letter is to formally apply to the Department of Planning for an amendment to the District Centre Project approval dated 7 January 2009 in accordance with the provisions of Section 75W of the Environmental Planning and Assessment Act 1979.

Attachments to this letter include:

- **Attachment A** – S.75W application form including owners consent from Stockland Development Pty Ltd.
- **Attachment B** – A letter from RIM Property Group dated 25 February 2009 providing their agreement to the making of the application. This letter has been obtained given that RIM property Group has entered into a conditional contract to acquire the District Centre site from Stockland.
- **Attachment C** – Political Disclosure Statements from Stockland Development Pty Ltd and RIM Property Group Pty Ltd as required under Section 147(3) of the Environmental Planning and Assessment Act 1979.

PROPOSED MODIFICATION

Schedule 2 of the Instrument of Approval for the District Centre (the "*District Centre Approval*") contains two conditions relating to the provision of a pedestrian underpass/cycleway under Naval College Road. Upon reviewing Condition 2.17 and 2.18 potential conflicts have been identified with the terms and conditions of the Project Approval for MP06-0058 for the residential component of the Vincentia Coastal Village development (the "*Residential Approval*").



Conditions 2.17 and 2.18 of the *District Centre Approval* provide:

- 2.17 *If Council is willing to pay the 50% contribution for the pedestrian/cycleway underpass or this contribution can be recouped from a lawful source, then the underpass shall be constructed prior to occupation of Stage 1 of the district Centre in conjunction with the approved road upgrades to Naval College Road. The design of the underpass shall suitably incorporate urban design measures to maximise safety and accessibility for users, and maximise integration into adjoining pedestrian/cycleway networks.*
- 2.18 *In the event that Shoalhaven Council cannot fund the 50% contribution from a lawful source for the pedestrian/cycleway underpass, the Proponent shall provide an alternative at-grade pedestrian crossing (such as a refuge island or zebra crossing) at the Proponent's expense and the design and location of the crossing shall be determined in consultation with Council and the Sydney Anglican Schools Corporation.*

For the reasons outlined in the balance of this letter, this Section 75W Modification proposes to delete Conditions 2.17 and 2.18 contained in Schedule 2 of the Instrument of Approval dated 7 January 2009.

We understand that Conditions 2.17 and 2.18 have been imposed to address a submission made by the Sydney Anglican Schools Corporation which raised concerns regarding the viability of the school if they are required to fund 50% of the cost of the underpass (\$125,000) as well as the need for the underpass and safety concerns.

RESIDENTIAL APPROVAL – MP06-0058

The *Residential Approval* contains the following Statement of Commitment (No. 59):

Stockland will design and construct the Naval College Road pedestrian/cycleway underpass with a 50% contribution from Council as Section 94 offset in accordance with Appendix B of the Don Fox Planning Report: Review of Developer Contributions and Associated Works Proposed Residential and Commercial Development Vincentia District Centre, February 2006 and as modified in October 2006 as part of the Preferred Project Report.

REASONS FOR THE PROPOSED MODIFICATION

Concerns with Conditions 2.17 and 2.18

1. Relationship between Approvals

Conditions 2.17 and 2.18 of the *District Centre Approval* conflict with the approved Statement of Commitment No. 59 for the *Residential Approval*. This could create a compliance problem.

If Condition 2.17 cannot be satisfied then Condition 2.18 becomes relevant. In this event, the Statement of Commitments for the *Residential Approval* cannot be fulfilled, potentially exposing Stockland to a breach of the *Residential Approval*.



2. Timing differences between Approvals

The construction of the road works including the underpass is the responsibility of Stockland as per the *Residential Project Approval*. The *Residential Project Approval* has been acted upon and construction has commenced.

The timing for commencement of the *District Centre Approval* is not aligned with the *Residential Approval* which is well advanced. Commencement of the District Centre project will be dependent upon the program for construction of RIM Property Group who has recently entered into a conditional contract to acquire the District Centre site from Stockland. The time lag between the works program for the Residential project and the District Centre is likely to see the underpass constructed under the *Residential Approval* before the *District Centre Approval* could reasonably be acted upon.

The different Proponents for the Residential and District Centre components of the development make it more critical for the Residential and District Centre Approvals to be consistent and to avoid any conflicts in their terms and timing.

3. Purpose of conditions

In effect Conditions 2.17 and 2.18 are seeking to resolve an issue between Council and the Sydney Anglican Schools Corporation in relation to the conditions imposed on a development consent issued by Shoalhaven Council. We understand that the development consent issued for the School required a contribution of \$125,000 towards the funding of the underpass. The School submitted a Section 96 modification application to Council seeking to amend this condition. We understand that this Section 96 modification has been refused by Council.

Conditions 2.17 and 2.18 do not alter the fact that Sydney Anglican Schools Corporation has a development consent with a condition which we understand is unsatisfactory to them. Further, Conditions 2.17 and 2.18 will not necessarily persuade Council to amend the condition requiring a contribution of \$125,000. Accordingly, the Project Approval cannot influence the outcome of a separate development application.

Whilst we understand that the Department is attempting to resolve the School's concerns, the resultant implications and inconsistencies between the conditions between the *Residential Approval* and *District Centre Approval* should be given overriding weight.

4. Terms of Conditions 2.17 and 2.18

Condition 2.17 does not nominate who is responsible for determining if Council is not willing to pay the 50% or it cannot be recouped from a lawful source. Further, the condition does not provide a time frame for this to occur. These issues pose a timing risk as Council could indefinitely argue that all avenues have not been exhausted and it is seeking to recoup the money through other lawful means. This would delay construction of the underpass and therefore completion of the Naval College Road upgrades and completion of subsequent stages of the development. The timing is essentially left open ended.

The decision as to an underpass or at grade crossing needs to be determined well in advance because the timing of its provision is linked to the occupation of Stage 1 of the District Centre. If it is left unresolved, then it could prevent an accredited certifier from issuing an occupation certificate for the District Centre.

Condition 2.18 requires the design of the at-grade crossing to be developed in consultation with the School and Council. This is also likely to lead to further delays in the construction program.



CONCLUSION

Conditions 2.17 and 2.18 of the *District Centre Approval* conflict with the *Residential Approval*. Both approvals should be consistent in their terms. Owing to the timing differences (and ownership differences) between the District Centre and Residential components of the development, the *District Centre Approval* should be amended to reflect the *Residential Approval* which has already been acted upon. The *District Centre Approval* should therefore be amended to be consistent with the *Residential Approval*. Accordingly, we recommend that Schedule 2 of Major Project Approval 06_0025 for the District Centre be amended by deleting Condition 2.17 and Condition 2.18.

The requirement for Stockland to construct the underpass will remain as a Statement of Commitment forming part of the *Residential Approval* and will ensure that the requirement for this work is contained in one approval only. Further given the very recent ownership change of the District Centre this amendment will also ensure that the responsibility for the construction of the underpass rests with Stockland, not the future owner of the District Centre.

The District Centre development will remain consistent with the application as originally made. The Section 75W Modification does not alter the remainder of the District Centre Project Approval. We are therefore of the opinion that the proposed deletion of Conditions 2.17 and 2.18 can be approved in accordance with Section 75W of the Environmental Planning and Assessment Act.

Should you have any further questions, please do not hesitate to contact David Kettle.

Yours faithfully

DON FOX PLANNING PTY LIMITED

A handwritten signature in black ink, appearing to read 'D. Kettle', written over a light blue rectangular background.

DAVID KETTLE
SENIOR TOWN PLANNER

A handwritten signature in black ink, appearing to read 'Katerine Sheppard', written over a light blue rectangular background.

Reviewed: _____

Encs.



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ATTACHMENT A

Request to modify a major project



NSW GOVERNMENT
Department of Planning

Date duly made: ____/____/____

Modification No. _____

1. Before you lodge

This form is required under section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) in order to request the Minister to modify the Minister's approval to carry out a project or concept plan to which Part 3A of the Act applies.

Before making this request, it is recommended that you first consult with the Department of Planning (the Department) concerning your modification. The Director-General may issue environmental assessment requirements that must be complied with before your request will be considered by the Minister. If the changes proposed by the modification will result in a project that is consistent with the existing approval, the Minister's approval for a modification is not required.

Disclosure Statement

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Note: For more details about political donations disclosure requirements, including a disclosure form, go to www.planning.nsw.gov.au/donations.

Lodgement

All modification requests must be lodged with the Director-General of the Department of Planning, by courier or mail. An electronic copy should also be e-mailed to the assessment contact officer assigned to the project.

NSW Department of Planning
Ground floor, 23-33 Bridge Street, SYDNEY NSW 2000
GPO Box 39 SYDNEY NSW 2001
Phone 1300 305 695

2. Details of the proponent

Company/organisation/agency

ABN

Stockland Development Pty Ltd

71000064835

☒ Mr ☐ Ms ☐ Mrs ☐ Dr ☐ Other

First name

Family name

Kelly

Miller

Position

Dev. Manager, Dev. & Capital Transactions

STREET ADDRESS

Unit/street no.

Street name

133

Castlereagh Street

Suburb or town

State

Postcode

Sydney

NSW

2000

POSTAL ADDRESS (or mark 'as above')

as above

Suburb or town

State

Postcode

Daytime telephone

Fax

Mobile

9035 2986

8988 2986

0413 420 569

Email

kelly.miller@stockland.com.au

3. Identify the land

STREET ADDRESS (where relevant)

Unit/street no.

Street or property name

Vincentia District Town Centre

Suburb, town or locality

Postcode

Vincentia

Local government area(s)

State Electorate(s)

Shoalhaven City Council

REAL PROPERTY DESCRIPTION

Lot 802 DP 1022286, Lot 73 DP 874040

Note: The real property description is found on a map of the land or on the title documents for the land. If you are unsure of the real property description, you should contact the Department of Lands.

Please ensure that you place a slash (/) to distinguish between the lot, section, DP and strata numbers. If the proposed modification applies to more than one piece of land, please use a comma to distinguish between each real property description.

OR: detailed description of land attached: ☐

MAP: A map of the site and locality should also be submitted with this request.

4. Details of the original major project or concept plan

Briefly describe what the original approval allows

MP 06_0025 \

Project approval was issued for Stage 1 of the Vincentia District Centre, including:

site preparation works;

subdivision;

approx 14,000m2 of floor area comprising 10,000m2 of retail space and 4,000m2 of commercial/community space;

fit out and occupation of the Woolworths and Aldi supermarkets;

roads and access/public domain works within the District Centre;

683 parking spaces, two loading docks and trolley storage;

infrastructure for water, sewerage, electricity and telecommunications;

water sensitive urban design; and

associated works

What was the original project application no.?

MP 06_0025

What was the date of the approval?

7 January 2009

What was the original application fee?

Note: Clause 245K of the *Environmental Planning and Assessment Regulation 2000* provides information on calculating the maximum fee for a request for modification.

5. Describe the modification you propose to make to the approval

Describe the proposed modification

This Section 75W modification application proposes to delete Conditions 2.17 and 2.18 from Schedule 2 of the Instrument of Approval dated 7 January 2009.

Your modification request may need to be accompanied by an Environmental Assessment, including plans. An electronic and hard copy of this document will be required.

ESTIMATED CAPITAL INVESTMENT VALUE

Please indicate the estimated capital investment value (CIV) of the modification to the project approval or concept plan (excluding GST).

\$Nil

FULL TIME EQUIVALENT JOBS

Please indicate the number of jobs created by the proposed modification. This should be expressed as a proportion of full time equivalent (FTE) jobs over a full year.

Construction jobs (FTE)

N/A

Operational jobs (FTE)

N/A

6. Landowner's consent (where required)

As the owner(s) of the above property, I/we consent to this request being made by the proponent:

Land

LOT 73 DP 879090
LOT 802 DP 1022286

Signature



Name

KELLY MILLER

Date

6/3/09

Land

Signature

Name

Date

Note: Under Clause 8F of the *Environmental Planning and Assessment Regulation 2000* (the Regulation), certain applications for approval under Part 3A of the Act do not require consent of the landowner, however, the proponent is required to give notice of the application (e.g. linear infrastructure, mining & petroleum projects, and critical infrastructure).

7. Political donation disclosure statement

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Have you attached a disclosure statement to this request?



Yes



No

Note: For more details about political donations disclosure requirements, including a disclosure form, go to www.planning.nsw.gov.au/donations.

8. Proponent's signature

As the proponent(s) of the project and in signing below, I/we hereby:

- provide a description of the modification to the project approval or concept plan and address all

matters required by the Director-General pursuant to Section 75W of the Act, and
▪ declare that all information contained within this form is accurate at the time of signing.

Signature



In what capacity are you signing if you are not the
proponent

DEVELOPMENT MANAGER

Name

KELLY MILLER

Name, if you are not the proponent

Date

6/3/09



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ATTACHMENT B

RIM Property Group Pty Ltd
ACN 113 484 478

25 February 2009

The Director General
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Suite 3001
Level 30
Northpoint
100 Miller Street
North Sydney NSW 2059
AUSTRALIA

PH: +61 (2) 9460-1805
FAX: +61 (2) 9460-4090

Major Project Application No. 06_0025
Vincentia District Centre

Attention: Caitlin Bennet

By email: caitlin.bennett@planning.nsw.gov.au

Dear Caitlin,

On 24 December 2008 RIM Property Group Pty Ltd entered into a conditional contract to acquire the Vincentia District Centre site from Stockland Development Pty Ltd.

As purchaser of this site we have been asked to comment on the proposed amendment of conditions 2.17 and 2.18 of the District Centre Approval MP 06_0058 to reflect the Residential Approval (Statement of Commitment No. 59) which has already been acted upon.

We agree with the proposed amendment and the deletion of the conditions 2.17 and 2.18 in the District Centre Approval as outlined in the letter from Don Fox Planning dated 30 January 2009.

Should you have any further questions, please do not hesitate to contact me on (02) 9460 1805.

Yours faithfully,



Ben Isaac
Director



planning consultants

ATTACHMENT C

Level 25,
133 Castlereagh Street
SYDNEY NSW 2000
GPO Box 998 Sydney
NSW 1041

T 02 9035 2695
F 02 8988 2695

www.stockland.com.au



**S.147 DISCLOSURE STATEMENT
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

Name of recipient See attached Schedule


Date of gift/donation See attached Schedule

Name of donor entity See attached Schedule

Address of donor
entity See attached Schedule

Value of gift/donation See attached Schedule
(\$)

Signed for and on behalf of
Stockland Development Pty Limited


.....
Benjamin Phillip Dodwell as
Attorney under Power of Attorney
Book 4541 No. 461

Date:

Stockland Group
NSW Donations Disclosure
1st July 2006 to 30 June 2008



Stockland

Stockland has not donated at the NSW local level during this period and ceased donations at all levels of government on July 1 2008

Date	Political Party	Description	Address	Donation \$ Incl GST
Labor Party				
24/07/2006	Australian Labor Party (NSW)	LBD Associate Partner	PO Box K408, Haymarket	19,250.00
2/11/2006	Australian Labor Party (NSW)	Lunch	PO Box K408, Haymarket	250.00
13/02/2006	Australian Labor Party (NSW)	D Campbell MP Lunch	247 Princes Highway	2,000.00
2/03/2007	Australian Labor Party (NSW)	Donation	PO Box K408, Haymarket	20,000.00
13/09/2007	Australian Labor Party (NSW)	LBD Associate Partner	PO Box K408, Haymarket	\$ 21,450.00
NSW Division Total				62,950.00
Australian Labor Party Total				62,950.00
Liberal Party				
21/11/2006	Liberal Party Of Australia (NSW Div)	Donation	Suite 207, 304 The Kingsway Caringbah	1,499.00
		Millenium Forum		
1/03/2007	Liberal Party Of Australia (NSW Div)	Membership	Locked Bag 2, Kings Cross	20,000.00
28/06/2007	Liberal Party Of Australia (NSW Div)	Donation	Locked Bag 2, Kings Cross	11,000.00
7/08/2007	Liberal Party Of Australia (NSW Div)	N Greiner Lunch	Locked Bag 2, Kings Cross	250.00
	Property Council of Australia (Peter Costello			
1/03/2008	Dinner)	2007 Advocacy Fund	Lvl 1, 11 Barack St, Sydney	5,500.00
28/03/2008	Liberal Party Of Australia (NSW Div)	Millenium Forum	Locked Bag 2, Kings Cross	20,000.00
NSW Division Total				58,249.00
Australian Liberal Party Total				58,249.00
Total Payment				121,199.00

ABN 71 000 064 835
133 Castlereagh St, Sydney, NSW 2000

Political Donations Disclosure Statement to Minister or the Director-General

If you are required under section 147(3) of the Environmental Planning and Assessment Act 1979 to disclose any political donations (see Page 1 for details), please fill in this form and sign below.

Disclosure statement details				
Name of person making this disclosure JOHN ANTHONY ISAAC		Planning application reference (e.g. DA number, planning application title or reference, property address or other description)		
Your interest in the planning application (circle relevant option below)				
You are the APPLICANT YES / NO OR You are a PERSON MAKING A SUBMISSION IN RELATION TO AN APPLICATION YES / NO				
Reportable political donations made by person making this declaration or by other relevant persons				
* State below any reportable political donations you have made over the 'relevant period' (see glossary on page 2). If the donation was made by an entity (and not by you as an individual) include the Australian Business Number (ABN). * If you are the applicant of a relevant planning application state below any reportable political donations that you know, or ought reasonably to know, were made by any persons with a financial interest in the planning application, OR * If you are a person making a submission in relation to an application, state below any reportable political donations that you know, or ought reasonably to know, were made by an associate.				
Name of donor (or ABN if an entity)	Donor's residential address or entity's registered address or other official office of the donor	Name of party or person for whose benefit the donation was made	Date donation made	Amount/ value of donation
RIM PROPERTY GROUP PTY LIMITED	NIL			
ABN 97113484478				
ACN 113 484 478				
Please list all reportable political donations—additional space is provided overleaf if required.				
By signing below, I/we hereby declare that all information contained within this statement is accurate at the time of signing.				
Signature(s) and Date [Signature] 11.03.09				
Name(s) JOHN ANTHONY ISAAC DIRECTOR				