



Strategic Sites and Urban Renewal, Strategic Assessment

## Planning Assessment Report

### Application to Modify the Minister's Approval for the residential development at the Dan Land

#### Major Project 06\_0031 MOD 1

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## 1 BACKGROUND

The Minister for Planning approved the Dan Land Concept Plan and Project Application (MP No. 06\_0031) on 26 September 2006. The Concept approval (subject to modifications) allowed for subdivision and future construction of 400 residential dwellings over approximately 45 hectares of the site and associated services and infrastructure, incorporating an environmental protection buffer to the adjoining Hexham wetlands; and the Project Approval (subject to conditions) for community title subdivision and associated infrastructure works consistent with the approved Concept Plan. The approved Dan Land Concept Plan including modifications is indicated in **Figure 1** below.

**Figure 1: Dan Land Concept Plan**



The subject land is located at No. 290 and 302 Minmi Road, Fletcher and comprises approximately 53.68 hectares. The site is located in the Blue Gum Hills district in the western area of Newcastle Local Government area. The site is commonly referred to as the 'Dan Land'.

## 2 THE PROPOSED MODIFICATIONS

On 28 March 2007, Planning Workshop Australia (the Proponent) submitted to the Director-General a request for modification to the Dan Land Concept Plan and Project Approval seeking approval for the following modifications:

- (A) Amendment to the staging plan, approved as part of the Project Application approval, involving an alteration to the timing of release of the various components of the subdivision;
- (B) Amendment of condition A.3.2 of the Statement of Commitments, approved as part of both the Concept Plan and Project Application approvals, to remove the requirement for two cycleways along the site frontage; and
- (C) Incorporation in the Concept Plan of proposed community recreation facilities in the northern portion of the site (currently designated as a “*pocket park*”) comprising a swimming pool, tennis court, meeting rooms, change rooms and associated car parking facilities.

A copy of the submission is attached at **Tag B**.

A further modification request was made by Planning Workshop during the assessment of the modification, seeking amendment of condition B4 of the Project Approval to remove the requirement for Council to issue the construction certificate/s for infrastructure works (roads, drainage, pavement design etc.) for the various stages of the development. The Proponent argues that a private certifier should be able to issue these CCs.

Newcastle City Council also raised a number of issues with the subdivision plans approved as part of the Project Approval, particularly with regards to a road linkage with an adjoining approved Blue Gum Vista Estate residential subdivision to the east of the Dan Land. In an effort to resolve these issues, an additional condition of consent is recommended for the Project Approval.

## 3 ASSESSMENT PROCESS

The approval for Major Project 06\_0031 was granted in accordance with Part 3A of the Act Section 75J Clause (2).

Section 75W(2) of the Act provides that a proponent may request the Minister modify his approval of a project. The Minister's approval is not required if the project as modified will be consistent with the original approval.

The proposed modifications (as listed above) seek to change the terms of the Minister's determination through amendments to the approved plans and conditions and the Minister's approval is required.

Section 75W(3) of the Act provides that Director-General with scope to issue environmental assessment requirements (DGRs) that must be addressed before the consideration by the Minister. DGRs have not been issued for the modification due to the minor scale of the proposed modifications.

Section 75W(4) of the Act gives the Minister the authority to modify the approval (with or without conditions) or disapprove the modification. On 7 June 2007 the Minister's powers and functions under s.75W of the Act were delegated to the Director-General of the Department of Planning. However the delegation may only be used where: the CIV of the development the subject of the modification request is less than 50% of the CIV of the project as originally approved; there are fewer than 10 submissions from the general public in respect of the request to modify; and the modification does not increase the approved combined GFA of all buildings or the approved maximum height of any of the buildings.

Following consideration of the proposed modification (see below), the Department recommends the modification be approved under the delegation of the Director-General, being the approval of the revised staging plan, Concept Plan and Landscape Master Plan and amendment to conditions.

## 4 CONSULTATION AND EXHIBITION

Modifications are not required to be publicly exhibited, although pursuant to Section 75X(2)(f) of the Act the Director-General is required 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. The modification application was referred to Newcastle City Council for its information and comment on 4 April 2007.

Council provided comments on 7 May 2007 and raised no significant objections to the proposed modifications (refer **Tag C**). Other issues relating to the Concept Plan approval have also been raised by Council in their submission that are not the subject of the proposed modifications. These issues have been dealt with separately by the Department.

A further submission was received from Council on 11 July 2007 (refer **Tag D**). Three additional Project approval conditions were suggested by Council to formalise a road linkage between the Dan Land and the adjoining approved Blue Gum Vista Estate residential subdivision to the east – a linkage shown on the Concept Plan but not formalised in the approved Project Application subdivision plans. Council indicated that issues raised in their letter of 7 May 2007 relating to road layout in the subdivision would be satisfied by the imposition of these additional conditions.

## 5 CONSIDERATION OF PROPOSED MODIFICATIONS

### 5.1 *Amendment to the staging plan involving an alteration to the timing of release of the various components*

The Project Approval specifies by way of Condition A2 that the development shall be in accordance with the Dan Land *Preferred Project Report Appendix 2 - Proposed Staging of Lots dated 27 July 2006 and prepared by Monteath and Powys*. Therefore, any modification to this plan requires the Minister's approval. The approved staging plan is shown at **Tag E**.

The Proponent explains in their submission that amendments to the staging plan are necessary as the engineering design process has identified constraints that were not taken into account in the original staging plan. These constraints include timing issues relating to road construction (cut and fill) and water and sewer servicing. The revised staging plan is shown at **Tag F**.

In its submission to the Department, Council outlines that the Proponent has lodged a development application with Council seeking approval for the establishment of an "Exhibition Village" on land within proposed Stage 1 and Stage 9. Council has recommended that land within Stage 9 be consolidated with Stage 1 to facilitate the construction of the Exhibition Village.

The Proponent has advised the Department however, that the model homes proposed for Stage 9 will not be constructed at the same time as Stage 1, rather, later in the life of the development when all Stage 1 model houses are expected to have been sold. It is therefore considered unnecessary to consolidate Stages 1 and 9 in the modified staging plan.

### Recommendation

The revised staging plan is generally consistent with the approved Concept Plan as it does not involve any alterations to the subdivision layout approved in the Project Application, merely the timing of the release of various components. The revised staging plan will not have any implications for the future delivery of community facilities or infrastructure. No objection is raised to the approval of the revised staging plan.

### 5.2 *Amendment to Condition A.3.2 of the Statement of Commitments to remove the requirement for two cycleways*

The Proponent's Statement of Commitment A.3.2 reads as follows:

"A.3.2. In respect of the full Minmi Road frontage of the subject land, the following road works will be undertaken:

- a) A parking lane will be provided in compliance with Section 4.4.2 of Austroads Part 14 (Guide to Traffic Engineering – Bicycles) the Roads and Traffic Authority's NSW Bicycle Guidelines.

*This parking lane will be established outside the existing east bound travel lane of Minmi Road.*

- b) Upright kerb and gutter will be provided along the full frontage.*
- c) A 4.5 metre wide footway will be provided along the full frontage and, within this footway, a reinforced concrete shared use pathway will be provided in compliance with the Guidelines referred to in a) above. The front edge of this pathway will be offset 1.8 metres behind the face of the kerb and gutter."*

The result of the inclusion of both of (a) and (c) in the commitment is the inadvertent replication of the requirement for the development of a bicycle path. This is because the guidelines referred to in (a) require a bicycle lane within the parking lane, while the 'shared pathway' referred to in (c) also includes provision for a cycleway.

The Proponent has therefore requested that Commitment A.3.2 be modified to remove the unintentional requirement for two cycleways by removing the reference to the Roads and Traffic Authority's *NSW Bicycle Guidelines* and replace with guidelines that do not include a requirement for a cycleway. Reference to "*Austroads Part 11 (Parking) and the RTA standard requirements for vehicular parking*" is suggested.

Newcastle Council's *Development Contributions Plan No. 4 - Transport Facilities* in Blue Gum Hills has recently undergone review and was adopted by Council on 8 August 2006. The new Plan and rates became effective on Monday 14 August 2006 and were required to be applied to the Dan Land development. While DCP 4 does not include contributions towards cycleways, Council's original submission requested that the proposed cycleway be repositioned so that it lies adjacent to the perimeter road. This cycleway has been provided voluntarily by the proponent.

Council has raised no objection to the requested modification provided a 2m wide reinforced concrete pathway is constructed along the Minmi Road frontage of the Dan Land site in accordance with *Council Std Dwg A304*. The Proponent has raised no objection to this requirement.

### Recommendation

The following replacement Commitment is recommended:

"A.3.2. *In respect of the full Minmi Road frontage of the subject land, the following road works will be undertaken:*

- a) A parking lane will be provided in compliance with Austroads Part 11 (Parking) and the RTA standard requirements for vehicular parking. This parking lane will be established outside the existing east bound travel lane of Minmi Road.*
- b) Upright kerb and gutter will be provided along the full frontage.*
- c) A 4.5 metre wide footway will be provided along the full frontage and, within this footway, a 2 metre wide reinforced concrete shared use pathway will be provided in compliance with Council Std Dwg A304. The front edge of this pathway will be offset 1.8 metres behind the face of the kerb and gutter."*

### **5.3 A proposed community facility in the northern portion of the site comprising a swimming pool, tennis court, meeting rooms, change rooms and associated carparking facilities**

The approved Concept Plan included a pocket park in the area identified by the Proponent for the proposed community facility (refer to amended Concept Plan at **Tag G**), in the 7(b) Environmental Protection Zone.

The Proponent is seeking to amend the approved Concept Plan to allow a swimming pool, tennis court, meeting rooms, change rooms and associated car parking facilities intended to serve the recreation needs of the residents of the Dan Land development in an area on the Concept Plan currently designated as a grassed "pocket park". The pocket park was effectively created through a modification to the Concept Plan requiring the deletion of all residential lots on the northern side of the perimeter road; covering only a very small portion of the 7(b) zoned land on the Site, on a plateau above the ephemeral wetland area (refer to Vegetation Management Plan at Tag F) and

inside the proposed northern walkway. The environmental integrity of the provided Hexham Wetlands buffer area will not be compromised as a consequence of the proposed recreation area.

The recreation facilities will be within community title land and maintained by the community association.

"Recreation areas" are permissible with consent in the 7(b) zone under Newcastle LEP 2003, where recreation areas are defined as:

- "(a) a children's playground, or*
- (b) an area used for sporting activities and sporting facilities, or*
- (c) an area used by the Council to provide facilities for the physical, cultural or intellectual welfare of the community, or*
- (d) an area used by a body of persons associated for the purpose of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those persons, and includes any associated buildings or structures used for spectator accommodation, change rooms, meeting rooms, refreshment facilities and the like."*

...and

*"recreation facility means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation and whether used for the purpose of gain or not, but does not include a place of assembly."*

Therefore, a development application will need to be approved by Council for the proposed recreation facilities. No objection is raised by Council to the proposed amendment subject to full compliance with Council's DCP 2005 in any development application lodged with Council under Part 4 of the Act.

The topography of the Dan Land site is such that suitable, level land for a recreation area is very constrained, and a flood free site is desirable to accommodate buildings for recreation activities. The subject site is the only area within the Dan Land that satisfies these criteria.

While concern was expressed by the Department of Planning over courtyard housing lots being located on the northern side of the perimeter road in the original Concept Plan, the same concerns do not apply to the proposed recreation facilities - i.e. no 'backyards' adjoining open space; no continuous run of buildings screening outward views to the north; and community, not private, use of the public open space.

Further, placement of the recreation facilities within the area of the Dan Land approved for housing would be likely to give rise to undesirable amenity impacts, such as noise, parking and floodlight spillage. Appropriate separation of the land uses is therefore desirable.

#### Local Contributions

The Proponent is not proposing to alter their commitment to the payment of s94 contributions to Council as a consequence of the provision of the proposed recreation facilities.

Council's original submission to the Concept Plan outlined that the location of the two parklands adjacent to the Minmi Road frontage was not in accordance with Council's *Development Contributions Plan No. 1 (2005)* standard for the provision of local open space. Neither of the parks proposed in the original Concept Plan met Council's standard as they were proposed on moderate to steeply sloping land at the head of existing gullies and adjacent to Minmi Road. As a consequence, Council indicated that they were not prepared to accept the provision of these public parks in lieu of a cash contribution as required by Council's *Development Contributions Plan No. 1 (2005)*.

In order to address the parkland issue, the Proponent agreed to pay the full s94 contribution amount for open space and recreation. In addition, the Proponent agreed to provide a third playground adjacent to the cycleway on the northern side of the perimeter road. It is in this playground that proposed recreation facilities will be located. This area will enjoy passive surveillance from the cycleway users and adjacent houses and scenic views across to the wetlands.

The Proponent has also agreed to pay the full s94 contributions towards “community facilities, foreshore promenade, Section 94 management and Blue Gum Hills place management” in accordance with Council’s Contributions Plan No.1.

#### Recommendation

The Department raises no objection to the proposed recreation area provided the area is maintained by the community association for recreation purposes. At this stage endorsement for the recreation facilities is in concept form only, with the detailed design and assessment to follow in a Part 4 development application to Council. It is therefore recommended that the approved Concept Plan drawings (Concept Plan, Landscape Master Plan & Vegetation Management Plan) be amended to reflect the intended active recreation uses.

#### **5.4 Amendment to Condition B4 of the Project Approval to remove the requirement for Council to issue Construction Certificates for road works**

Condition B4 of the Project Approval currently reads as follows:

##### **“B4. Road, Drainage and Pavement Works**

*Prior to the commencement of works the Council is to issue a Construction Certificate for the approval of engineering plans including, but not limited to road, drainage and pavement design required in this consent. A copy of the approved plans is to be provided to Council for its records.”*

The Proponent is seeking amendment of condition B4 to remove the requirement for Council to issue the Construction Certificate/s for infrastructure works (roads, drainage, pavement design etc.) for the various stages of the development. The Proponent argues that a private certifier should be able to issue these CCs.

The Department is in agreement with this request, particularly considering that the Proponent has given a specific undertaking in their approved Statement of Commitments that all road infrastructure including pavement, footpaths, kerb and gutter, drainage, services, street trees, street lighting, signage and markings will be provided to each stage of the subdivision in accordance with Council’s requirements (and relevant technical guidelines).

#### Recommendation

The following replacement Condition B4 is recommended:

##### **“B4. Road, Drainage and Pavement Works**

*Subdivision work for each stage, in accordance with this approval, must not be commenced until a Construction Certificate for the relevant work has been issued by Council or an accredited certifier.*

*All road, drainage and pavement works shall be designed in accordance with the relevant requirements of Council and in accordance with section A.3 of the approved Statement of Commitments. Final road design plans shall be prepared by a qualified practising Civil Engineer and submitted to the relevant Certifying Authority prior to the issue of a Construction Certificate for the relevant stage.”*

#### **5.5 Eastern Link Road connection & access to Minmi Road**

A road linkage between the Dan Land and the adjoining approved Blue Gum Vista Estate residential subdivision to the east was envisaged as part of the Concept Plan for the Dan Land, but not formalised in the Project approval plans due to potential time delays in negotiating appropriate arrangements with the adjoining land owner to formalise the alignment of the link road.

Both the Council and the Proponent however have expressed a desire to realise this linkage between the two sites and Council has asked that an additional condition be attached to the Project approval to facilitate the future road connection (refer **Tag H** for potential location of linkage).

In order to ensure a better road connection with urban development on the southern side of Minmi Road, Council has also requested that the eastern most intersection with Minmi Road be deleted, with the eastern perimeter road within Stage 10 redesigned to terminate with a cul-de-sac and a pathway constructed linking the cul-de-sac with the proposed Minmi Road footpath. In order to provide vehicular access to Stage 10 the proposed cul-de-sac opposite Highland Way should be deleted and the western perimeter road within Stage 10 be extended to an intersection with Minmi

Road at Highland Way. The Proponent has raised no objection to this amendment to the road design and the Department is in agreement with this request.

### Recommendation

The following additional Project approval condition is recommended:

#### ***“B10. Stage 10 Road Layout & Design***

*A Construction Certificate for Stage 10 is not to be issued unless an amended Plan of Proposed Lots, Staging Plan, Landscape Master Plan and Vegetation Management Plan incorporating amendments to the road layout and design in Stage 10 has been submitted to the satisfaction of the Director General.*

*The amendments are to comprise the following:*

- (a) In order to ensure consistency with the approved Concept Plan, provision is to be made for an appropriate road and pathway connection to the residential subdivision approved on Lot 2 in DP 1009255 by Council under DA 97/0555, provided the Director General is satisfied that a corresponding road connection within this subdivision is able to be achieved to the common boundary with the Dan Land.*
- (b) The eastern most intersection with Minmi Road is to be deleted, with the eastern perimeter road within Stage 10 to be redesigned to terminate with a cul-de-sac not closer than 5m from the alignment of Minmi Road. A pedestrian pathway is to be constructed linking the cul-de-sac with the proposed Minmi Road footpath.*
- (c) The proposed cul-de-sac opposite Highland Way is to be deleted and the western perimeter road within Stage 10 to be extended to an intersection with Minmi Road at Highland Way.”*

An additional modification to the Concept Approval is also recommended incorporating points (b) and (c) above.

## **6 CONCLUSION**

The Department has assessed the impacts of the above proposed modifications against the approved Dan Land Concept Plan and the Project Approval for the site. Amendment to the staging plan does not require any modifications to be made to the approved Dan Land Concept Plan. The proposed community facilities do require amendment to the approved Concept Plan.

It is considered that the proposal, as modified, still achieves the same objectives as the originally approved Major Project 06\_0031 and does not alter the overall nature, need or justification of the approved project or Concept Plan.

## **7 RECOMMENDATION**

It is recommended that the Director-General (as delegate of the Minister for Planning), under Section 75W of the Act, approve the modifications as detailed in Section 5 of this Report and in doing so sign the attached Modification Approval identifying the revised plans and modifications/conditions.