



Strategic Sites and Urban Renewal, Strategic Assessments

Planning Assessment Report

Application to Modify the Minister's Project Approval for the residential subdivision at the Dan Land

Major Project 06_0031 MOD 2

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.

On 24 July 2007 the Director General of the Department of Planning (as delegate for the Minister for Planning) approved a modification (MOD 1) to the Concept Plan and Project approval. The modifications comprised:

- (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;
- (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; and
- (D) 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.

2 THE PROPOSED MODIFICATIONS

On 11 September 2007, Planning Workshop Australia (the Proponent) submitted to the Department a further request for modification to the Dan Land Project Approval seeking approval for the following modification:

- Amendment to condition B7 of the Project Approval to enable the dedication of roads in the subdivision as public roads, following the issuing of a Compliance Certificate that confirms the roads and drainage have been constructed to the Council's public roads standards and in accordance with the Construction Certificate requirements for the works.

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

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 modification (as listed above) seeks to change the terms of the Minister's determination through amendment of the Project Approval conditions and the Minister's approval is required.

Section 75W(3) of the Act provides the 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 its minor nature.

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 Executive Director, Strategic Sites and Urban Renewals Division 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 Executive Director, Strategic Sites and Urban Renewals.

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 13 September 2007.

Initially, Council's General Manager has confirmed in an e-mail to the Proponent that the proposed modified condition was acceptable to Council (**Tag C**). However on 27 September 2007 a response was sent by Council's General Manager objecting to the proposed amendment of condition B7 (refer **Tag D**).

5 CONSIDERATION OF PROPOSED MODIFICATIONS

Proposed Modification

Condition B7 of the Project Approval currently reads as follows:

"B7. Dedication of Roads

Prior to issue of the Subdivision Certificate the applicant is to approach Council with regards to the dedication of the roadways. If at that time Council will accept the roads, they shall be dedicated in accordance with any Council requirements."

The Proponent is seeking amendment of condition B7 of the Project Approval to enable the dedication of roads in the subdivision as public roads, following the issuing of a Compliance Certificate that confirms the roads and drainage have been constructed to the Council's public roads standards and in accordance with the Construction Certificate requirements for the works. This modification has been proposed in an attempt to appease Council, who have resisted accepting the dedication of the roads in the Dan Land subdivision, for which a private certifier will be issuing the subdivision certificate.

Consideration

Construction has begun on the initial stages of the Dan Land residential subdivision and it is anticipated the construction will finish in early 2008, at which time the subdivision certificate and registration of the linen plan will be sought through the registration of appropriate plans at the Land and Property Information of the Department of Lands (LPI).

Terry Gibson has been appointed as an accredited certifier and Principal Certifying Authority (PCA) for the Dan Land subdivision works. It is the intention that Mr Gibson will issue the subdivision

certificate for the site. This will be one of the first subdivision certificates issued by a private certifier in New South Wales and will be done so under the recent amendments to the Major Project SEPP, in particular clause 11 of the SEPP which permits subdivision certificates the subject of a Part 3A approval to be issued by private certifiers.

Newcastle Council has expressed significant reservations to a private certifier issuing a subdivision certificate and in particular the fact that the roads will be subsequently dedicated to Council. In the past Councils issued all subdivision certificates and this was the 'check method' for Councils to ensure that roads met their specifications before they were dedicated to the Council on registration of the linen plan.

Currently condition B7 of the Part 3A approval states the following:

'Prior to issue of the subdivision certificate the applicant is to approach Council with regards to the dedication of the roadway. If at that time Council will accept the roads, they shall be dedicated in accordance with any Council requirement.'

There is some ambiguity in this condition and it has been suggested by Planning Workshop that the condition be amended to read as follows:

'Prior to the issue of the subdivision certificate, the principal certifying authority is to issue a compliance certificate that the roads and drainage have been constructed to the Council's public road standard and in accordance with the construction certificate requirements.'

Initially the General Manager of Newcastle City Council agreed with the amendment of condition B7 but on 27 September 2007 sent a letter to the D-G of the Department of Planning strongly resisting the fact that a PCA can issue a subdivision certificate and that Council should have the opportunity to accept or reject infrastructure asset such as roads, drains and open space in accordance with its common law rights.

Until the amendment of clause 11 to the Major Project SEPP, Councils were generally the only bodies that could issue a subdivision certificate. Accordingly if someone was to dedicate open space or roads to a Council it was through the subdivision certificate process that Councils could regulate this.

Newcastle Council objects to the fact that on registration of the linen plan and accompanying subdivision certificate the roads will be automatically dedicated to them under the provisions of the Roads Act.

The LPI advised the Proponent and their private certifier that they have not encountered the situation before as all linen plans have previously been endorsed by a Council by way of a subdivision certificate. The Proponent subsequently sought guidance from the Department of Planning in an attempt to resolve this matter. The Legal Services Branch of the Department subsequently spoke to the LPI and it was agreed that "provided the plan of subdivision is signed by the accredited certifier and in registrable form they (LPI) would have no objections to registering the plan of subdivision" (refer **Tag E** for letter of advice).

Advice was also sought from the Crown Solicitor's Office, who concluded that "neither the consent or signature of the Council would be required for the plan of subdivision and, assuming the plan was otherwise in registrable form, the Register-General would register the plan of subdivision without the consent or signature of the Council". Refer **Tag F** for a summary of the Crown Solicitor's advice.

The Department raises no objection to the request to modify condition B7, however any modified condition should require the roads to be constructed to a specified standard that is acceptable to Council.

Recommendation

The following replacement condition B7 is recommended:

"B7. Dedication of Roads

Prior to the issue of the Subdivision Certificate, the Principal Certifying Authority is to issue a Compliance Certificate that the roads and drainage have been designed and constructed to

relevant Council and AUSTROADS standards, as outlined in the Statement of Commitments which form part of this approval, and in accordance with the Construction Certificate requirements.

Final road design plans shall be prepared by a qualified practising Civil Engineer and submitted to Council for their records upon approval of the relevant Construction Certificate.

Council is to be notified of the intended construction timetable and kept up to date as work progresses. The subdivision works will be inspected during construction by the Principal Certifying Authority, or other suitably qualified person(s) at the discretion of the Principal Certifying Authority, and documentary evidence of compliance with the terms of this consent and relevant Construction Certificate(s) will be obtained and forwarded to Council prior to proceeding to the subsequent stages of construction."

6 CONCLUSION

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.

7 RECOMMENDATION

It is recommended that the Executive Director, Strategic Sites and Urban Renewal (as delegate of the Minister for Planning), under Section 75W of the Act, approve the modification as detailed in Section 5 of this Report and in doing so sign the attached Modification Approval identifying the revised condition B7 (**Tag A**).

Endorsed:

Michael File
Director
Strategic Assessments

Approved:

Jason Perica
Executive Director
Strategic Sites and Urban Renewal