



MODIFICATION REQUEST:

***S75W Modification - Blue Dolphin
Redevelopment - Extension to Approvals***

Yamba Road, Yamba

***Proposed by Blue Dolphin Development
Joint Venture***

(06_0133)

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

June 2011

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EXECUTIVE SUMMARY

The redevelopment of the Blue Dolphin Resort, Yamba Road, Yamba in the Clarence Valley local government area was approved by the then Minister for Planning on 6 July 2007 and comprised a 3 stage mixed use tourist and residential development. This is a report on a request seeking to modify the concept plan and project approvals for this proposal.

On 16 May 2011 Blue Dolphin Development Joint Venture submitted an application to modify the Part 3A approvals pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proponent is seeking to extend the lapse period of the approvals for a further 2 years.

The modification is considered to be minor and will not result in any changes to the development that was originally approved but will merely provide for an extension of time for the redevelopment.

It is recommended that this modification request be approved.

1. BACKGROUND

On 6 July 2007 the then Minister for Planning granted concept plan and part project approval for the redevelopment of the Blue Dolphin Resort (06_0133).

The concept plan approval comprised the following:

- (1) A staged mixed use tourist and residential development comprising a maximum total gross floor area (GFA) of 59,700m², being an overall FSR of 1.03:1 comprised of:
 - (a) A maximum of 48,160m² residential GFA;
 - (b) A maximum of 11,540m² tourist facility GFA.
- (2) The distribution of uses, including residential flat buildings, residential dwellings, tourist facilities including accommodation, shops, refreshment rooms and a hotel (licensed premises);
- (3) Residential flat buildings 3 – 8, 10 and 13 - 15 and residential villas (12 villas in total);
- (4) Tourist facility buildings 9, 11 and 12, including tourist accommodation, serviced apartments, hotel (pub), shop, recreation facilities, commercial premises (spa) and refreshment room uses;
- (5) Building footprints and maximum building heights for each building;
- (6) Road layout and basement car parking;
- (7) Landscaping; and,
- (8) Indicative services and infrastructure.

In giving concept plan approval, the then Minister determined that no further assessment requirements were required in respect of part of the concept plan and proceeded to give project approval to the following components:

- 1) Stage 1 of the development being the construction of 2 residential flat buildings (Buildings 1 and 2) comprising 55 apartments of height of 4 storeys:
 - a. 4 one bedroom units,
 - b. 33 two bedrooms units, and
 - c. 18 three bedroom units;
- 2) Strata subdivision of Stage 1 residential flat buildings;
- 3) Internal road servicing Stage 1;
- 4) Infrastructure and services ancillary to Stage 1;
- 5) Single level basement car park including storage areas for individual strata units;
- 6) Landscaping; and,
- 7) Community title subdivision of the entire Blue Dolphin site into 1 Community Property Lot and 3 Community Development Lots under the provisions of the *Community Land Development Act 1989* to create a Community Scheme

Both approvals were determined on 6 July 2007 and are liable to lapse 5 years from this date.

A previous modification was approved to both the project approval and the concept plan approval on 4 December 2007.

The project approval was modified as follows:

- Amend Condition A2 to take account of changes to Gross Floor Area and Floor Space Ratio due to amended plans.
- Amend Condition A3 to substitute approved plans, elevations/sections for Stage 1 with amended plans
- Amend Condition A4 to substitute details for an amended BASIX certificate.

The concept plan approval was modified as follows:

- Amend Condition A1 to take account of changes to Gross Floor Area and Floor Space Ratio due to amended plans.
- Amend Condition A4 to substitute approved plans, elevations/sections for Stage 1 with amended plans.

The project location is shown in Figure 1.

Figure 1: Project Location



2. PROPOSED MODIFICATION

On 16 May 2011, the proponent Blue Dolphin Development Joint Venture submitted a request to modify the Part 3A concept plan approval and project approval pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proponent seeks to extend the current lapse date of both the concept plan and project approvals for a further 2 years. At present, approval of the concept plan is liable to lapse after 5 years (6 July 2012) unless Stage 1 is physically commenced or unless an application is submitted to carry out a project or development for which concept approval has been given. The project approval is liable to lapse on this date unless specified action has been taken in accordance with Section 75Y of the Act.

This request, if approved, would extend the lapse date to 6 July 2014. No other modifications are proposed.

3. STATUTORY CONTEXT

Section 75W of the EP&A Act provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project as modified will be consistent with the original approval. In this instance the proposed modification seeks to change the terms of the Minister's determination through amending the conditions of approval, the modification requires formal application and approval.

Section 75W (3) of the EP&A Act provides the Director General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. As the modification relates to the date of the lapsing of the approval only, it was considered unnecessary to notify the proponent of any further environmental assessment requirements.

On 28 May 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to the Planning Assessment Commission (PAC). Applications under section 75W are to be referred to the PAC where there are more than 25 public submissions by way of objection, if the relevant council objects to the application or if there is a reportable political donation in relation to the original application.

On 25 January 2010, the Minister delegated his powers and functions under section 75W of the EP&A Act to the Director-General in cases where there are less than 25 public submissions (not including submissions from public authorities) in the nature of objections in respect of the modification request.

As there were no public submissions, the Clarence Valley Shire Council did not object to the modification application and there were no reportable political donations in relation to the original application the Director-General may determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

While section 75W of the EP&A Act does not require a modification request to be publicly exhibited, the proposed modification was forwarded to Clarence Valley Council for comment. A copy of the request was also placed on the Department's website.

Clarence Valley Council responded and a summary of the comments provided are as follows:

- No new strategic matters have been identified which would affect the requested extension of time and the planning context is the same as when the initial proposal was approved;
- As far as Council is aware there is no other development waiting to take up use of the land;
- There is an acceptance of the proponent's contention that the global financial crisis has impacted on the timing of the development. They understand that there is continued intent to complete the redevelopment over time; and
- Council provided advice with respect to the initial application and nothing has changed to alter that advice.

The Department has considered the issues raised in this submission in its assessment of the proposed modification.

5. ASSESSMENT

The proponent is seeking to extend the lapse date of the approvals for a further 2 years from the currently approved date. This would result in the approvals lapsing on 6 July 2014.

In support of the application the proponent has advised that they have made significant initial progress with the redevelopment however the timing of the global financial crisis has delayed the project. There is concern that despite there being an improvement in business conditions, the limited time remaining before the approvals lapse may impede financiers and investors funding in the project.

The proponent has advised also that the following actions have been undertaken for the project to date:

- Over \$7.5 million in planning, financial, legal and ancillary work.
- Over \$1 million of work has been carried out on the site to facilitate the carrying out of the project including relocation of an existing villa, installation of a display suite module, soil testing of adjoining properties, survey work, foreshore remediation works, installation of a new jetty, modification of an entry way, installation of recreational facilities, rebuilding of an existing pool and marketing and promotional activities.

The proponent also states that the project will provide significant benefits to the North Coast communities in terms of employment and investment over the next 5 years.

There are no changes to the actual proposal and approval of this modification would merely allow an extension of time for the development of this site.

As noted above, Council has advised that there have been no changes in the planning context of the area and have no objections to the proposal.

The Department has considered the proponent's request and Council's submission and notes that the request for a 2 year extension is reasonable given recent economic issues and that the proposal remains current for the area.

Therefore the Department recommends the concept plan and project approvals be modified to state that *"Approval shall lapse seven (7) years after the determination date of 6 July 2007 unless Stage 1 is physically commenced on or before that lapse date"* in place of the current limits on the approvals.

6. CONCLUSION AND RECOMMENDATIONS

The Department has reviewed the proposed modification in the context of the original application. The Department is satisfied that the modifications are acceptable and will allow for redevelopment of an important part of Yamba in a reasonable period. Therefore the Department recommends the modification be approved, subject to conditions.


Endorsed by:



Heather Warton
Director
Metropolitan and Regional
Projects North

17/6/11

Endorsed by:



24/6/11

Richard Pearson
Deputy Director-General
Development Assessment and Systems Performance

Endorsed by:



22-6-11

Chris Wilson
Executive Director
Major Projects
Assessment

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4733

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 25 January 2010, I approve the modification of the concept plan approval referred to in Schedule 1, subject to the conditions in Schedule 2.

Director-General
Department of Planning & Infrastructure

Sydney

27th June

2011

SCHEDULE 1

Concept Plan Approval:	06_0133 granted by the then Minister for Planning on 6 July 2007
For the following:	Approval of concept plan for Blue Dolphin Redevelopment comprising a staged mixed use tourist and residential development at Yamba Road, Yamba.
Modification:	Extension to lapse date by a further 2 years.

SCHEDULE 2

The concept plan approval is modified as follows:

- 1) deleting row 11 "Date approval is liable to lapse" in PART A – TABLE of Schedule 1.
- 2) deleting Term A5 and replacing with the new term A5 as follows:

A5 *Lapsing of Approval*

This concept plan approval shall lapse seven (7) years after the determination date of 6 July 2007, unless Stage 1 is physically commenced on or before that lapse date.

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 25 January 2010, I approve the modification of the project approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Director-General
Department of Planning & Infrastructure

Sydney 27th June 2011

SCHEDULE 1

Project Approval: 06_0133 granted by the Minister for Planning on 6 July 2007

For the following: Approval of project application for Blue Dolphin Redevelopment for Stage 1 of the project comprising the construction of 55 residential apartments, internal basement car parking, internal road servicing, ancillary infrastructure and landscaping, community title subdivision and strata subdivision at Yamba Road, Yamba

Modification: Extension to lapse date by a further 2 years.

SCHEDULE 2

The project approval is modified as follows:

- 1) deleting row 11 "Date approval is liable to lapse" in PART A – TABLE of Schedule 1.
- 2) inserting new condition A8 immediately after condition A7 as follows:

A8 *Lapsing of Approval*

This project approval shall lapse seven (7) years after the determination date of 6 July 2007, unless Stage 1 is physically commenced on or before that lapse date.
