



Our ref: 1020906  
Your ref: 06\_0133

1<sup>st</sup> May April 2014

THE DIRECTOR GENERAL  
DEPARTMENT OF PLANNING AND ENVIRONMENT  
GPO BOX 39  
SYDNEY NSW 2001

Dear Sir,

**RE: APPLICATION PURSUANT TO S75W TO EXTEND CURRENT LAPSE DATE  
BLUE DOLPHIN REDEVELOPMENT - 06\_0133  
LOT 1 & LOT 2 DP 706628, YAMBA ROAD, YAMBA**

JW Planning Pty Ltd act for the proponent of the abovementioned Part 3A approval, Blue Dolphin Development Joint Venture (**Proponent**).

Concept plan approval for the entire \$180M '**Blue Dolphin**' project and project approval for Stage 1 of the project was granted by the (then) Minister for Planning on 6 July, 2007. Due to global economic circumstances, a modification to the original lapse date of 6 July 2012 was granted under s75W of the Act on 27 June 2011, taking the lapse date to 6 July 2014.

The approvals enable:

- 2 x 4 storey residential flat buildings comprising 55 apartments and basement car parks
- strata subdivision of the buildings
- ancillary infrastructure and services; and
- community title subdivision of the entire Blue Dolphin site into 3 lots

The economic environment in the regional areas of NSW has not recovered sufficiently from the GFC downturn to enable significant investment in new Tourism developments. The Department's very recent approval to Johnson Property Group's request to extend the lapse date for the Part 3A approved Trinity Point Marina in Lake Macquarie LGA is evidence of this situation.

In terms of the options available to keep the consent for the *Blue Dolphin* from lapsing, the cost to physically commence works to a level required is both cost prohibitive and disruptive. Such works would impact upon the viability and amenity of the existing caravan park development.

It is significantly more logical and practical to request a further extension to the lapse date under Section 75W of the Environmental Planning and Assessment Act 1979, for an additional period of say 24 to 36 months to provide a reasonable period of time for the regional economy to recover.

This option is a viable way to protect the **\$8.5m invested by the Fund to date** (to obtain the Part 3A concept and project approvals, land tenure and legal agreements, financial arrangements, and works ancillary and ordinarily incidental to the carrying out of the project) as there is no limit under the provisions of the Act in terms of extending the lapse date.

## 1. RATIONALE FOR REQUEST

The Proponent is a joint venture entity whose partners are Knights Coastal Land Fund (**The Fund**) – an unlisted fixed term registered managed investment scheme (55%) – and members of the Mitchell family of Yamba (45%).

The Fund – with over **650 unit holders** (many of which reside outside of and are investing in NSW) was established in 2005 with the principal aim to acquire an interest in and develop the Blue Dolphin Redevelopment.

The poor economic conditions ensuing from the Global Financial Crisis of 2008 are still plaguing regional investment in NSW and preventing The Fund from commencing the project, most notably because:

- Banks and lending institutions are still very reluctant to fund mixed use tourist and residential development, resulting in very low levels of development in North and Far North Coast regions of NSW.
- Investor uncertainty and the depressed levels of the regional real estate market have made residential pre sales almost impossible over the last 6 years.
- The approved resort redevelopment is as valuable to Yamba and to the Clarence Valley Local Government Area now as it was 7 years ago.

It is these fundamental investment factors that are preventing The Fund from commencing Stage 1.

## 2. BLUE DOLPHIN REDEVELOPMENT – TRANSITIONAL PART 3A PROJECT UNDER SCHEDULE 6A OF THE ACT

On 1 October 2011, Part 3A of the EP&A Act 1979 was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011*. Despite this, Part 3A continues to apply to the approved concept plan and project plan as they are defined as “*transitional Part 3A projects*” based on Clauses 2 and 3 of Schedule 6A as follows:

### **Schedule 6A**

#### **Clause 2 Transitional Part 3A projects**

(1) The following are, subject to this Schedule, **transitional Part 3A projects**:

(b) a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),

(5) A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A.”

#### **Clause 3 Continuation of Part 3A—transitional Part 3A projects**

(1) 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.

Clause 3C of Schedule 6A of the EP&A Act 1979 confirms that Section 75W continues to apply for the purpose of the modification of an approved concept plan as follows:

#### **“3C Modification of concept plans**

(1) Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.

*(2) This clause applies despite anything to the contrary in this Schedule (other than provisions to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan)."*

Based on the above legislation, it is clear that the proposed modifications to the approved concept plan and project plan can be assessed as a Section 75W application. It is also noted that neither Schedule 6A or Section 75W contain limitations to the consideration of extension of lapse dates.

### **3. CONCLUSION**

In terms of the public benefit derived from this Project, I respectfully request that the Department take into account the significant investment to date and the benefits to the NSW North Coast communities in the form of employment and investment that this modification application is seeking to enable.

While I believe the above information should be sufficient for the Department to consider this application, please do not hesitate to contact the undersigned on 4948 4322 during normal business hours.

Yours faithfully

**JW PLANNING PTY LTD**

A handwritten signature in black ink, appearing to be 'JW', with a long horizontal line extending to the right.

**Jason Wasiak**  
**DIRECTOR – PRINCIPAL URBAN PLANNER**  
**Bach. Urban & Regional Planning (UNE),**  
**Assoc. Dip. Eng. (LESD) (HIT)**