

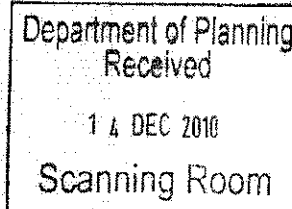
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14 December, 2010

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**SECOND SECTION 75W REQUEST TO MODIFY MAJOR PROJECT
APPROVAL 06_0250 – CLEARING CONSTRUCTION CERTIFICATE REQUEST
STAGE 4 – FERN BAY SEASIDE VILLAGE – ASPEN GROUP**

Further to my letter dated 8 December, 2010, and my subsequent discussions with Mark Schofield of the Department, please find attached a second application lodged pursuant to section 75W of the EP+A Act for a simple modification to the above development consent, by way of changes to **Condition B of the approval to remove reference to compliance with Condition B23 only and to enable the issue of a Construction Certificate for Stage 4 clearing only.**

The application is lodged on behalf of the project developers, the Aspen Group. The required form is attached along with the advised fee, being \$750.

It is lodged as a separate request to the s75W application lodged on December 8 in order that an expedited decision can be provided on the single issue precluding any work from commencing on Stage 4, namely the need to comply with condition B23 before any works can commence. Compliance with this condition is likely to take several months which is contrary to the intent of the approval which was that Stage 4 could proceed as a matter of urgency and ahead of the need to comply with all of the conditions set for the balance of the estate.

Condition B requires prior approval of an Aboriginal Reserve Cultural Heritage Plan (ARCHP) in accordance with **condition B23** prior to the Construction Certificate being issued for any works in Stage 4. In order to gain this approval, agreement is required to the location of a second Aboriginal reserve to be provided in the Conservation Lands adjoining the estate. It has been agreed that there are two possible sites as shown in Figure 7.5 of the ARCHP submitted with the approved Project Application. Ongoing negotiations are required with the Aboriginal stakeholders and, as outlined in the email from ERM lodged with our first s75W application, the location of the second reserve, and the subsequent agreement on reserve management, cannot be finalised expeditiously. The two possible reserve options are located adjoining Stages 7 and 8 (option 1) or Stages 14 and 15 (option 2). As neither reserve option adjoins Stage 4 it is unreasonable to require resolution of this issue now and subsequent signoff to the management plan before Stage 4 works commence. ***This issue needs to be resolved urgently as it is delaying commencement of any works in Stage 4 including clearing.***

In our first S75W application, we have asked for adjustment to the wording of B23 to require approval to the ARCHP prior to commencement of Stage 7. However, this is a matter that can be resolved post Stage 4 works and which does not need to be resolved at this point in time.

What does need to be resolved is removal of Condition 23 from Condition B of the approval. Commencement of works for Stage 4 is now becoming critical. It has been over 5 months since the approval was issued which allowed expedited works for Stage 4 but these have yet to commence. Condition Part B allows clearing and earthworks to get underway for Stage 4 subject to complying with only a few conditions but B23 can't be met in the timely manner. Aspen will comply with the balance.

We also request approval to split the Construction Certificate for Stage 4 into at least 2 certificates: one for the clearing and one or more for the earthworks and the subdivision works. This way resolution of the surplus fill/stockpile issue associated with the earthworks (and all other requested modifications) can be negotiated ahead of the earthworks commencing but will not delay the clearing from commencing. What will however delay clearing, is the requirement to comply with condition B23.

As discussed with Mark Schofield, I am unaware why condition B23 was imposed as one of a handful of conditions which needed to be resolved prior to Stage 4 works commencing. The Aboriginal reserves are in Conservation Lands, not in the development area, and they are remote from Stage 4. It is beyond Aspen's control to require or secure timely approval by Aboriginal parties. Therefore, if the condition is not removed, there is no point in having condition B as it is not facilitating an expedited commencement of Stage 4. The Department is unable to advise why the requirement was part of the Part B/Stage 4 condition to start with. As we can see no logical reason why it needs to be resolved before clearing can commence for Stage 4 we request its immediate removal from the Part B condition.

Mark indicated that a favourable decision on this one issue may not be able to be made this year, and the Department does not then reopen until January 10. If this matter is not resolved prior to Christmas then Aspen cannot commence Stage 4 clearing in early January as they have programmed to do. This will mean the development timeframe for Stage 4 lots will be delayed beyond this financial year which will have significant adverse financial implications for Aspen, without any sound basis.

In summary, we therefore request urgent approval to remove reference to condition B23 from condition B of the approval and to allow a Construction Certificate to be issued, for clearing only, given all other requirements of condition B (for clearing of Stage 4), can be met.

Following clearing, we would then propose to seek a Construction Certificate for the earthworks, assuming we have by then resolved the stockpile/surplus fill issue and can proceed. If all issues have been resolved the Construction Certificate for subdivision works can then also be issued. If not they can be the subject of a third Construction Certificate application. These are matters however, that can be deferred until 2011 when the Department has had time to assess the first (broader) s75W request lodged last week. By lodging separate applications, works can be progressing as issues are resolved unrelated to the works underway. Proceeding this way would greatly assist Aspen with getting Stage 4 works to commence and will relieve pressure on all parties to resolve all issues raised in the first s75W application before the one Construction Certificate for all the works could be issued.

Thankyou for your attention to this matter. Damien Carpenter from Aspen and myself remain available to meet this week if it would assist resolution of the condition B/23 issue.

Yours faithfully



Jenny Smithson
Senior Principal – Planning
for Cardno