



Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

23 March 2018

Dear Ms McNally

**Determination of Modification Request
Woollooware Bay Town Centre (MP 10_0229 MOD 5)**

Thank you for your Department's letter received on 9 March 2018 referring the above modification application to the Independent Planning Commission (the Commission) for determination under Ministerial delegation of 14 September 2011. I constituted the Commission to determine the request. The request is referred to the Commission as it seeks to make changes to a condition specifically imposed by the Commission.

The modification request was lodged by JBA Urban Planning (now Ethos Urban) on behalf of Bluestone Property Solutions Pty Ltd (the proponent). The modification seeks to:

- amend Condition B2 Riparian Setback of the Concept Plan approval:
 - to exclude 'Family Hill', an existing recreational area associated with Cronulla Sharks stadium, from the riparian corridor;
 - to specify that the riparian corridor be provided generally in accordance with the NSW Office of Water (NOW) guidelines and the approved landscape plans; and
- modify the approved landscape plans to include a 35 metre (m) to 40m wide riparian corridor as required by Condition B2, to include non-riparian uses, within the riparian corridor, including:
 - a children's playground with accessible equipment;
 - barbeque, picnic and seating areas;
 - an open turf area in the western part of the foreshore park;
 - a shared pedestrian/bicycle path (shared pathway) along the foreshore (including two viewing platforms on Family Hill);
 - pedestrian pathways;
 - boardwalk/platform and other landscaping adjacent to the retail entry;
 - access road and emergency vehicle turning area
 - crane pads and access to service the electrical power lines.

The Commission considered carefully the Department of Planning and Environment's (the Department) environmental assessment report, all of the information provided by the proponent, recommendations from government agencies, submissions from the public and the provisions of section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Commission notes the proposed modification does not fundamentally change the essential nature of the development and considers that the proposed changes are within the scope of section 75W.

On 1 March 2018, the EP&A Act was amended. The project is a transitional Part 3A project under Schedule 2 of the EP&A (Savings, Transitional and Other provisions) Regulation 2017. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued, however as the request for this modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.

As part of the Commission's assessment of the proposal, the Commission met with the Department and the proponent. Notes of these meetings are attached in **Appendix 1**.

The Department considered that the key matters for this modification request include:

- impacts on riparian and aquatic environment; and
- design details, including, planting, landform, access ways; and stormwater infrastructure.

The Commission has reviewed the Department's assessment of these matters and provides the following comments in relation to the proposed modification.

Riparian and aquatic environment

The Woollooware Bay Town Centre (WBTC) site is located on the Woollooware Bay frontage. The riparian corridor provides a buffer between the site and the Towra Point Nature Reserve (TPNR) and Towra Point Aquatic Reserve (TPAR), which immediately adjoins the northern boundary of the site and the riparian corridor. The TPNR is a 603 hectare (ha) nature reserve protected under the Convention on Wetlands of International Importance (the Ramsar Convention). The TPAR is located in surrounding waterways and is the largest aquatic reserve in NSW, covering 1,400 ha. The TPAR is identified as a priority site in the NSW Government's marine biodiversity program.

The proponent proposes an amendment to Condition B2 Riparian Setback to exclude Family Hill from the provision of the riparian corridor and to state that the riparian corridor be provided generally in accordance with the NSW Office of Water 'Guidelines for riparian corridors'. Condition B2 currently states:

The vegetated riparian buffer corridor, to be provided along the foreshore, must be a minimum of 40 metres wide, except for the 70 metres stretch adjacent to the retail loading dock, where the vegetated riparian buffer corridor must be a minimum of 35 metres wide.

The Department assessed the proposed modification against key policies that provide guidance for the protection of riparian corridors, including:

- *DPI Fisheries Policy and Guidelines for Fish Habitat Conservation and Management 2013* (DPI Fisheries Policy); and
- *DPI Water's Guidelines for Controlled Activities on Waterfront land* (NOW Guidelines).

The Department's assessment states that the DPI Fisheries Policy relates to development within aquatic reserves, which includes activities such as dredging, aquaculture or removal of marine vegetation and therefore has limited applicability to the proposed project.

The NOW Guidelines apply to all controlled activity approvals required under the *Water Management Act 2000*, including development on waterfront land. The Department therefore considers that the NOW Guidelines provide the most relevant policy guidance for development on the site and the provision of riparian zones. The NOW Guidelines recommend a 40m vegetated riparian zone on sites fronting wetlands, including offsetting requirements. The Commission finds that the NOW Guidelines are relevant to the project given that they have been considered by both the Department and the proponent in its assessment of the proposed modification and that they provide the most relevant standard for the assessment of riparian corridors and waterfront development.

The Department considers that some non-riparian land uses could be supported in the riparian zone, but not all those proposed by the proponent. The applicant considers that the revised design, the subject of the modification, is generally in accordance with the NOW Guidelines, which permit some non-riparian functions, within the riparian corridor, subject to offsetting.

Family Hill

Family Hill is an existing tiered grassed area, located in the northern section of the stadium. The modification request includes a shared pathway (connecting with the foreshore path) traversing Family Hill and the provision of two viewing platforms. The proponent states that it was always intended for Family Hill to be retained in its current form.

The Department notes that Family Hill should remain within the riparian corridor, and be retained in its current form. Notwithstanding, it considers that Family Hill should be included in the vegetated riparian zone (VRZ) for the purpose of calculating offsets, a position supported by OEH and DPI.

The Commission agrees that Family Hill should be retained due to its historical importance to the operations of the leagues club. The Commission does not accept the provision of the shared pathway and viewing platforms within the inner VRZ, and these uses should be provided in the outer VRZ and offset in accordance with the NOW Guidelines. The Commission has amended the condition to reflect this requirement. Due to its historical occupation of the site, Commission finds that Family Hill itself should not require offsetting.

Access pathways and utility infrastructure

The proposed modification includes a number of access paths and an emergency vehicle access in conjunction with the pathways as well as the provision of crane pads within the inner and outer VRZ to facilitate maintenance of Ausgrid infrastructure.

The Department considers that the shared pathway provides an important link to the existing shared foreshore path along Woolooware Bay foreshore and supports the provision of emergency vehicle access. It also supports the inclusion of crane pads, subject to confirmation from Ausgrid that crane pads are required to facilitate maintenance activities and provided these are offset in accordance with the NOW Guidelines.

The Commission supports the provision of shared pathways, emergency vehicle access and crane pads within the outer VRZ, subject to these uses being adequately offset in accordance with the NOW Guidelines. No pathways or crane pads are to be constructed within the inner VRZ.

Playground

The proposed location of the accessible playground is within the outer VRZ, beneath Ausgrid high voltage (HV) power lines. In its briefing to the Commission, the proponent highlighted the benefits of the proposed location, including direct access to toilet and other amenities, level ground, ramp access and connectivity to the shared pathway. The proponent noted that the playground is outside of Ausgrid's HV electrical protection zones.

The Department raised concern with the proposed location of the playground due to it being within the riparian corridor and beneath HV power lines. It considered the proposed location to be a relatively isolated part of the site, which may deter future users, particularly regarding the potential for increased electromagnetic field (EMF) exposure. Ausgrid also raised concern in relation to its location within the Ausgrid easement. The Department subsequently requested that the proponent investigate alternative sites for the playground and recommended a draft condition of consent to that effect.

In its briefing to the Commission, the proponent confirmed that the proposal meets the necessary EMF clearance. In response to the Department's recommended draft condition, the proponent presented a high-level options analysis which considered six potential alternative locations for the playground. The analysis considered several other locations within and partially within the riparian corridor and two locations outside of it. The options analysis concluded that the current proposed location was the most suitable, as it addresses the necessary physical/locational, accessibility and amenity factors required for such a facility. The proponent emphasised its commitment to the delivery of the playground and the community expectation regarding its delivery.

The Commission acknowledges the importance of the playground and the positive public benefit the facility would have on the WBTC development as well as the wider community benefit. The Commission however does not support the proposed location of the playground within the riparian corridor, or beneath the HV power lines, irrespective of EMF clearance. The Commission considers that there would be more suitable sites within the broader development site which have yet to commence development, such as the eastern precinct, or possibly on land outside of the site which would provide a better public outcome than the current proposed location.

Turf areas

The proposed modification includes several turfed areas within the riparian corridor, including an area to the west of the proposed playground and a grassed mound embankment with turf in the eastern precinct.

The Department notes that the site is surrounded by playing fields and considers the development site would have good access to recreational open space facilities. The proposed turf area in the western precinct is also constrained by Ausgrid HV power lines. The Department considers that the design of the turf area is not consistent with the NOW Guidelines regarding non-riparian uses.

In relation to the proposed grassed mound in the eastern precinct, the Department notes that the main purpose of this work is to denote the retail entrance and activate the frontage. The approved landscape plans for this part of the site includes a single pathway connecting to the shared pathway and two areas of native turf planting. The Department considers that the non-riparian landscaping in this part of the site should be restricted to the single connecting pathway. The Commission agrees with this position, and considers that this would allow riparian planting to be maximised and increase opportunity for connectivity of the riparian landscape.

The Commission finds that the turf areas are not appropriate uses within the riparian corridor and considers that in both the eastern and western precinct areas, the design intent is not consistent with the NOW Guidelines. The Commission considers that the proponent has not demonstrated an acceptable level of activation to the retail frontage to justify the turfed areas in this location.

The Commission acknowledges that the success of this riparian planting is in part contingent on effective management and maintenance once the development is operational, however this detail would be provided as part of future development applications. Accordingly, the Commission does not support the proposed turf areas as part of this modification request and recommends that further details be provided for how the riparian plantings across the site will be managed and maintained once the development is fully operational.

Design details and planting

The proposed modification includes future landscaping details. Sutherland Council and agencies raised concerns, in relation to planting, landform changes, pathway design and stormwater infrastructure. The Department notes that these matters would be dealt with as part of future development applications, and given that the landscape plans are concept level only it is appropriate that these matters be dealt with at the development application stage.

The Commission agrees with this approach and considers there will be a number of amendments required to the landscape plans based on the outcomes of this determination. Notwithstanding, the Department considered the key concerns raised by agencies and where appropriate has recommended future requirements for development applications to address.

The Commission accepts the Department's recommended requirements in relation to the timing of the delivery of the pedestrian bridge and other requirements for future development applications and has incorporated some additional requirements, including that:

- saltmarsh planting be maximised and provided in accordance with/in consultation with DPI requirements;
- the existing mean high-water mark should be retained and sediment shall not be removed; and
- the vegetation management plan for the site shall be updated to incorporate the revised landscape scheme.

For the reasons set out above, the Commission does not accept the proponent's proposed amendments to Condition B2. The Commission has considered all components of this modification, including the environmental values of the adjoining wetlands, the NOW Guidelines and associated offsetting requirements and finds:

- there should be no non-riparian uses within the inner VRZ;
- shared pathways, viewing platforms are supported within the outer VRZ subject to offsetting;
- the accessible playground is not supported in the proposed location within the riparian corridor and underneath HV Ausgrid power lines. The proponent shall consider alternative sites outside of the riparian corridor and Ausgrid easement; and
- turf areas proposed are not supported in the riparian corridor.

The Commission has determined to grant conditional consent to the modification request subject to the conditions set out in the modified instrument of approval.



Mr. David Johnson
Member of the Commission

cc. The Hon. Anthony Roberts, MP
Minister for Planning
GPO Box 5341
SYDNEY NSW 2001

APPENDIX 1

Notes of Briefing from the Proponent

This meeting is part of the Determination process.		
Meeting note taken by Alana Jelfs	Date: 19 March 2018	Time: 8am
Project: Woollooware Bay Town Centre (MP 10_0229 MOD 5)		
Meeting place: 461 Captain Cook Drive, Woollooware, 2230		
<p>Attendees: Commission Members: David Johnson (Chair) Commission Secretariat: Alana Jelfs (Senior Planning Officer), David Koppers (Team Leader) Proponent: Matt Crews (Capital Bluestone), Matt Loader (Capital Bluestone), Michael Oliver (Ethos Urban), Frances Mehrtens (Ethos Urban), David Vago (Habit8 Landscape Architects), Beth Medway (EcoLogical), Con Vink (Calibre Consulting).</p>		
The purpose of the meeting: For the proponent to brief the Commission on the project		
<p>The briefing commenced with a site walk, including: inspection of the western precinct, area of the proposed playground, Captain Cook Drive, eastern precinct riparian corridor and Family Hill.</p> <p>The proponent then briefed the Commission in the Woollooware Bay Display Suite. The following matters were discussed:</p> <ul style="list-style-type: none"> • Riparian corridor. <ul style="list-style-type: none"> - The NSW Office of Water (NOW) Guidelines provide the relevant offsetting regime for development proposed within the riparian corridor. - Based on consideration of the coal resource to be recovered, use of existing infrastructure, mine design alternatives considered, rehabilitation, economics and employment. - The total riparian setback is 40m. - Proposed land uses within the riparian corridor have been offset. - According to the proponent's calculations, it has approximately 2,300m² more offset area than required under the NOW Guidelines. However, this total excludes Family Hill. The proponent noted to the Commission that as the project is a Part 3A transitional project, the NOW Guidelines do not strictly apply. - The proponent considers that including Family Hill in the calculation of offsets is unreasonable as it is an existing public facility. The shared pathway is the only physical works proposed. The proponent also proposes riparian planting through this area. • Accessible playground. <ul style="list-style-type: none"> - The playground is designed to comply with disability access requirements and will be located near existing toilet and shower facilities, accessible ramp, car parking and bus access. - The proponent has committed to provide majority funding for the playground and is committed to its delivery. - The Ausgrid clearance requirements restrict the height of equipment and shade structures. - In response to the Department Planning and Environment concerns, the proponent identified alternative locations for the playground within the site. The option analysis concluded that the current location for the playground in the outer riparian zone is the most suitable based on a number of physical, accessibility and amenity factors. - The Department of Primary Industries (DPI) and the Office of Environment and Heritage (OEH) both raise concerns with the location of the playground within the riparian zone due to the ecological significance of the corridor. 		
Outcomes/Agreed Actions: Applicant to provide responses to questions raised by the Commission		
Meeting closed at 10.20am		

Notes of Briefing from the Department

This meeting is part of the Determination process.		
Meeting note taken by Alana Jelfs	Date: 19 March 2018	Time: 11.45am
Project: Woollooware Bay Town Centre (MP 10_0229 MOD 5)		
Meeting place: Independent Planning Commission NSW (IPCN)		
Attendees: Commission Members: David Johnson (Chair) Commission Secretariat: Alana Jelfs (Senior Planning Officer), David Koppers (Team Leader) The Department of Planning and Environment: Anthony Witherdin (Director Regional Assessments, Modification Approvals)		
The purpose of the meeting: For the Department to brief the Commission on the project		
The following matters were discussed: <ul style="list-style-type: none"> • Family Hill. <ul style="list-style-type: none"> - Formed part of the original landscape plan submitted as part of the Concept Plan. - The Department considers Family Hill should be retained, but included in the sites overall offset requirements. The proponent has not provided sufficient evidence for excluding Family Hill from the overall offset requirements. • Accessible playground. <ul style="list-style-type: none"> - The Department considers that the proposed accessible playground in the location shown on the landscape plans, is not a compatible land use given its location within the riparian corridor and underneath high voltage power lines. - Alternative playground locations exist within the site and within the vicinity of the site. - The Office of Environment and Heritage (OEH) and DPI do not support the proposed location of the playground based on it being within the riparian corridor. - Ausgrid raised concern with the proposed playground location within its easement. • Offsets. <ul style="list-style-type: none"> - The proponent has an offset shortfall based on its current proposal under the NOW Guidelines. - Exclusion of turf areas and the playground would require recalculation of offsets. 		
Outcomes/Agreed Actions: <ul style="list-style-type: none"> • Department to provide correspondence from Ausgrid regarding easement requirements. • Department to confirm whether the NOW Guidelines apply to Part 3A transitional projects. 		
Meeting closed at 12.15pm		