

**APPENDIX B: NOTICE OF MODIFICATION**

---

# Modification of Minister's Approval

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

As delegate of the Minister for Planning under delegation executed on 14 September 2011, we the Planning Assessment Commission of New South Wales (the Commission) approve the modification of the Concept Plan referred to in Schedule 1, subject to the conditions in Schedule 2.

Member of the Commission

Member of the Commission

Sydney

2015

---

### SCHEDULE 1

**Concept Approval:**

06\_0309 granted by the Minister for Planning on 5 September 2009.

**For the following:**

- 188 berth marina and associated maintenance and club facilities;
- 150 accommodation units (75 tourist and 75 residential);
- restaurant, café, function centre, shops and office; and
- parking, landscaping and boardwalk.

**Modification:**

06\_0309 MOD 2 involving amendments to:

- revise the marina staging from two to five stages;
- permit the berthing of two vessels up to 30 m in length;
- revise the marina layout;
- remove the slipway, boat lift, maintenance and associated oily bilge pump out facilities;
- convert the vessel hard stand, boat lift and maintenance facility to a car park;
- reduce the building setback to the unnamed bay from 30 m to 28 m;
- revise Term C12 to provide flexibility in the modelling requirements for Petite Lake; and
- undertake administrative modifications to the terms of approval in parts A to C of Schedule 2 to reflect the revised staging arrangements for the marina component of the development and the revised and marina layout.

## SCHEDULE 2

The above approval is modified as follows:

1. Delete Part A - Table in Schedule 1 and replace with the following:

### PART A - TABLE

<b>Application made by:</b>	Johnson Property Group
<b>Application made to:</b>	Minister for Planning
<b>Project Application:</b>	06_0309
<b>On land comprising:</b>	Lot 31 DP 1117408, Pt Lot 32, DP 1117408, Pt Lot 33 DP1117408, and Pt Crown Land (the lake)
<b>Local Government Area</b>	Lake Macquarie City Council
<b>For the carrying out of:</b>	<ul style="list-style-type: none"> <li>• 188 berth marina and associated club facilities;</li> <li>• 150 accommodation units (75 tourist and 75 residential);</li> <li>• restaurant, café, function centre, shops and office; and</li> <li>• parking, landscaping and boardwalk.</li> </ul>
<b>Type of development:</b>	Major Project
<b>Determination made on:</b>	5 September 2009

2. In Schedules 1 and 2 delete all references to 'Director-General', 'Department of Environment and Climate Change', 'Department of Planning' and 'Roads and Traffic Authority' and replace them with 'Secretary', 'Office of Environment and Heritage', 'Department of Planning and Environment' and 'Roads and Maritime Services' respectively.

4. Insert the following definitions in Schedule 1 in alphabetical order:

<b>EMP</b>	means Environmental Monitoring Program.
<b>Land Based Development</b>	means all development as described in term A1 of this approval, with the exception of the marina and associated facilities, including marina operations (office, chandlery, boat user facilities), and associated access, parking, works and infrastructure.
<b>Marina Development</b>	means the marina and associated facilities, including marina operations (office, chandlery, boat user facilities), and associated access, parking, works and infrastructure.
<b>MSB</b>	means the Mine Subsidence Board, or its successors.
<b>MSIS</b>	means a Mine Subsidence Impact Statement.
<b>NOW</b>	means the NSW Office of Water, or its successors.
<b>OEH</b>	means the Office of Environment and Heritage, or its successors.
<b>RMS</b>	means Roads and Maritime Services, or its successors.
<b>SMP</b>	means Stormwater Management Plan.
<b>VMP</b>	means Vegetation Management Plan.

5. Delete Term A1 in Schedule 2 and replace with the following:

**A1 Development Description**

Concept Plan approval is granted only to carrying out the development solely in accordance with the Concept Plan as described in:

1. the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009, as modified by the following documents:
  - (a) the s75W modification application dated 6 August 2014 (MOD 4) prepared by Johnson Property Group; and
  - (b) the s75W modification dated 15 August 2014 (MOD 2) prepared by Johnson Property Group.

The future buildings/uses on the land will be contained within two areas as follows:

**Village Piazza North of Trinity Point Drive**

2. The elevated piazza level will contain the following buildings:
  - the northern most building consists of parking at ground level under the piazza and a restaurant at piazza level and 2 storeys of accommodation above with a pitched roof form;
  - the buildings on the southern side of the piazza at the entry and adjacent to the lake consist of parking at ground level with retail/business at piazza level and 3 storeys of accommodation and a pitched roof form;
  - the buildings along the southern and western edges framing the piazza comprise parking at ground level with function centre and retail/commercial at piazza level and three storeys of residential above one of which is included in the pitched roof form;
  - the building along the eastern edge of the piazza consists of parking at ground level (under half the building) and a café adjoining the pathway (split level) plus 2 residential levels above one of which is contained in the roof form; and
  - the ground level marina buildings to the north of the piazza will be 2 storeys.

**Outside the Piazza in Southern Part of the Site**

3. The accommodation buildings outside the piazza level will comprise 1-2 storeys with some 3 storey corner elements and partly above a 1.2m protruding basement.

**Additional Works**

The following building/works will be undertaken as shown on the Concept Plan:

- a marina and associated facilities;
- a walkway/cycle path around the eastern edge of the development between the buildings and the lake edge;
- internal vehicular access roads and pedestrian pathways;
- at-grade and basement parking areas;
- stormwater management measures;
- bulk earthworks; and
- landscaping.

6. Delete Term A2 in Schedule 2 and replace with the following:

**A2 Project in Accordance with Plans**

The development must be undertaken in accordance with:

1. The Environmental Assessment, dated November 2008, prepared by AdW Johnson, as amended by the Preferred Project Report, dated 5 June 2009, prepared by AdW Johnson/Johnson Property Group, as modified by the following documents:

- (a) the s75W modification dated 6 August 2014 (MOD 4) prepared by Johnson Property Group;
- (b) the s75w modification dated 15 August 2014 (MOD 2) prepared by Johnson Property Group; and
- (c) the following drawings except as modified by the conditions in Part B and C of approval below:

<b>Preferred Project Report prepared by AdW/Johnson Property Group</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
Principles 1 to 13, 16 -19	N/A	Preferred Project Report Part 3A Concept Plan Principles, Objectives & Urban Design Guidelines Trinity Point Marina and Mixed Use Development, as modified by the s75w modification dated 15 August 2014 (MOD 2) and excluding Principle 14.	5 June 2009
Principle 14	N/A	Principle 14	November 2014
Not provided	N/A	Indicative Outcome – Summary Figure Plan by HBO+EMTB, as modified by marina concept.as listed below	No date – submitted with the PPR dated 5 June 2009
<b>Modified Concept Plan - Marina Layout Prepared by RHDHV</b>			
8A0379-MA_LB031	B	Concept Marina Layout Overall	4 August 2014
8A0379-MA_LB021	B	Concept Marina Layout Stage 1a & 1 b	4 August 2014
8A0379-MA_LB011	C	Concept Marina Layout Stage 1a	15 January 2014

7. Insert the following additional documents after the final bullet point in Term A3 in Schedule 2 as follows:
- Response to Lake Macquarie City Council comments, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 8 October 2014.
  - Response to public and community group submissions, updated modification (MOD 2) to Concept Approval (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 10 October 2014.
  - Response to requested clarifications, section 75W MOD 2 to Concept Plan (MP 06\_0309) Trinity Point Marina and Mixed Use Development, prepared by Johnson Property Group, dated 12 November 2014.
  - Response regarding floating breakwater design, prepared by Royal Haskoning DHV, dated 12 November 2014.
  - Additional response regarding incorporation of boats in excess of 20 m within the marina, prepared by Royal Haskoning DHV, dated 12 November 2014.
  - Supplementary Visual Impact Assessment, prepared by Richard Lamb and Associates, undated.

8. Delete Term B2 in Schedule 2 and replace with the following:

**B2 Marina Staging**

The marina must be constructed in up to five stages (stages 1a, 1b, 2a, 2c and 2b) to include a maximum of 188 berths. Stages 1 and 2 shall include 94 berths each. In seeking approval for Stage 2 (stages 2a, 2b and 2c) the Proponent must demonstrate to the satisfaction of the consent authority, that Stage 1 has had a negligible impact on water quality. The Proponent must provide details of the casual berthing arrangements for Stages 1 and 2 as part of each development application for the marina.

In constructing the marina in stages, the Proponent shall ensure:

1. Stages 1a and 1b together must not exceed a total maximum of 94 berths.
2. Stage 1a of the marina must include temporary sewage pump-out and fuel facilities and temporary casual public berthing for up to two vessels as per drawing 8A0379-MA\_LB011 Rev C dated 15 January 2015.
3. The location of the final fuel wharf/pump-out facility must be provided in Stage 2b as per drawing 8A0379-MA\_LB031.

9. Delete Term B3 'Reduction in the size of the travel boat lift' in Schedule 2 in its entirety.

10. In Term B5 in Schedule 2, amend Principle 8 - Vegetation as follows:

Principle 8 – Vegetation is to be amended as follows:

A landscape plan shall be provided with the first development application for the marina which incorporates an appropriate level of screening along the northern boundary of the marina car park. Screening should be comprised of *Casurina Glauca Open Forest* as a minimum.

11. In Term B5 in Schedule 2, amend Principle 14 as follows:

Principle 14 – Marina shall be amended to delete bullet point 3 of the guidelines and replace with:

The proposed marina will provide for boats predominantly up to a maximum length of 20 m with the option to provide up to two berths for power boats between 20-30 m generally in locations as shown in Figure 10b of Principle 14. No dredging is permitted to facilitate the berthing of any vessels.

**Note:** The berthing of yachts in excess of 20 m in the locations identified in Figure 10b in Principle 14 may be permitted if it can be demonstrated that these vessels can safely pass through the Swansea Channel.

12. In Term C2 in Schedule 2 delete the third table and replace with the following:

<b>Development north of Trinity Point Drive (Village Piazza)</b>	
<b>Building setback to the foreshore reserve (minimum)</b>	
Eastern Buildings	15 m Exceptions: <ul style="list-style-type: none"> <li>• the café is setback 6 m on the north-eastern corner and the northern most mixed-use building; and</li> <li>• marina buildings are setback 8 m with the exception of balconies/terraces, slab/roof overhangs and blade walls.</li> </ul>
<b>Building setback to the unnamed inlet to the west (minimum)</b>	
All Buildings	28 m, with the exception of slab/roof structures

13. Delete Term C3 in Schedule 2 and replace with the following:

**C3 Urban Design**

The proposed development must comply with the Principles, Objectives and Urban Design Guidelines, prepared by AdW/Johnson Property Group, dated 5 June 2009. A revised urban design guideline incorporating changes identified in Term B5 must be submitted with the development application for the first land based development. All future buildings must exhibit design excellence and consider whether:

- (a) a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;
- (b) the form and external appearance of the buildings will improve the quality and amenity of the public domain; and
- (c) the buildings meet sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency.

All future applications must demonstrate the building materials and colours comply with Principle 7 – Building Materials and Colours in the Preferred Project Report, prepared by AdW/ Johnson Property Group, dated 5 June 2009.

The residential buildings (where applicable) must demonstrate compliance or satisfactorily justify any non-compliance, with the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

14. Delete Term C9 in Schedule 2 and replace with the following:

**C9 Vegetation Management Plan – Marina Component**

A Vegetation Management Plan (VMP) shall be prepared for the marina (including the marina car park) and approved by the consent authority as part of the development application for the first stage of the marina development (refer to Principle 8 – Vegetation in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009). The VMP must consider the criteria identified in the *Guidelines for Vegetation Management Plans*, prepared by the NSW Office of Water (NOW) (July 2012). The VMP must be prepared in consultation with the Office of Environment and Heritage (OEH), NOW and Lake Macquarie City Council. The VMP is to be prepared by a suitably qualified person and should address the following as they relate to the marina:

1. Provide details of vegetation to be retained and measures to protect riparian vegetation around the edge of the lake (including the un-named inlet to the west) during the construction and operation phases of the development.
2. Re-instatement of 0.05 ha of Swamp Oak Floodplain Forest within the north-eastern portion of the unnamed inlet situated in the north of the site.
3. Identify areas to be rehabilitated and details of the vegetation species, composition, planting, layout and densities of plants to re-vegetate in these areas.
4. Detail the long term financial commitments to any proposed conservation measures, including any mechanisms to be implemented to achieve this and costings;
5. Provide a gantt chart or similar project schedule which clearly identifies the activity, costing and timing.
6. Provide details of any S88B-E covenant required under the *Conveyancing Act 1919* to ensure the biodiversity off-set is managed for conservation and secured in perpetuity, if deemed necessary.
7. Outline the ongoing management arrangements, including but not limited to responsibilities, funding and long term maintenance. The VMP must specifically

address long term monitoring of the unnamed inlet and its mangrove and saltmarsh habitat to the west, and establish criteria that can inform necessary changes to the VMP over time.

8. Provide details on weed control, access control, rubbish control, planting, monitoring and timing of revegetation works within the retained vegetation and the areas to be revegetated.
  9. Detail the management of specific habitat enhancement measures (e.g. hollow/habitat trees)
  10. Details of the protection and revegetation of the area on the southern and south-eastern part of the site containing River Flat Eucalyptus Forest EEC, including appropriate fencing.
15. Insert new Term C9A in Schedule 2 after Term C9 as follows:

**C9A Vegetation Management – Whole of Site**

A whole of site VMP shall be prepared and submitted with the development application for the first stage of the land based development (refer to Principle 8 - Vegetation in the Preferred Project Report prepared by AdW/Johnson Property Group, dated 5 June 2009). The VMP shall be prepared by a suitably qualified person, be consistent with the VMP required by Term C9 of this approval, and shall address parts 1 to 10 of Term C9, where relevant. An appropriate whole of site VMP must be approved by the consent authority as part of the development application for the first stage of the land based development.

16. Delete Term C10 1. in Schedule 2 and update the numbering accordingly.
17. Delete Term C12 in Schedule 2 and replace with the following:

**C12 Final Marina Design**

1. The marina shall be designed in accordance with the relevant Australian Standards for marina developments.
  2. Once the verified baseline data is accepted by the consent authority, the final design (all stages) must demonstrate negligible impact on the environment and include:
    - (a) 3D modelling, or equivalent, of the current water flow and flushing characteristics in Bardens Bay, the un-named inlet at the southern end of Bardens Bay and Petite Lake. The modelling methodology is to be approved by the consent authority following the verification of the baseline data.
    - (b) Particle tracking modelling for the final design from pollutant discharges within the proposed marina under a range of wind conditions.
    - (c) Seagrass wrack tracking modelling for the final design demonstrating negligible impact on the health and size of the seagrass bed to the south of the marina
    - (d) Identification of the syngnathid population (seahorses, pipe fish etc) in Bardens Bay and measures to mitigate any impact.
    - (e) Best practice management measures that will be used to minimise impacts of the marina on the environment.
18. Delete Term C13 in Schedule 2 and replace with the following:

**C13 Stages 1a and 1b - Marina Environmental Performance Monitoring**

An Environmental Monitoring Program (EMP) must be prepared and submitted as part of the first development application for the marina. The EMP must detail how the environmental performance of Stages 1a and 1b will be monitored during construction, and for one year from commencement of operation. The EMP must include an analysis of the level of contaminants in the sediment within the bed of the lake in the area of the



proposed marina and measures to minimise disturbance during construction and from boat movements, in particular from propeller action.

19. Delete Term C14 in Schedule 2 and replace with the following:

**C14 Stages 2a, 2b and 2c - Marina**

The expansion of the marina to include Stages 2a, 2b and 2c shall only be permitted if it can be demonstrated there is satisfactory environmental performance of Stages 1a and 1b and that the environment is able to satisfactorily co-exist with the introduction of Stages 2a, 2b and 2c. In this regard, any application for Stages 2a, 2b and 2c must demonstrate:

1. At least 75% take up of berths in Stages 1a and 1b.
2. Compliance with Stages 1a and 1b construction and operational management and environmental licence conditions.
3. Satisfactory environmental performance of Stages 1a and 1b for a period of one year after completion which shows a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality.
4. Appropriate modelling and assessment of the environmental performance of the final design of Stages 2a, 2b and 2c and a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality in Bardens Bay.

The information required under sub-clauses 1 to 4 above must be provided to the satisfaction of the consent authority with the development applications for stages 2a, 2b and 2c.

20. Delete Term C15 in Schedule 2 and replace it with the following:

**C15 Responsible Boating Practice Manual**

A responsible boating practice manual shall be submitted with the development application for the Stage 1a marina works. The responsible boating practice manual must address the following matters:

1. Signage.
2. Education and other relevant matters to educate the boating public and marina users on measures to minimise the impacts of boating activities on turtles, foreshore erosion, water quality including the appropriate use, management and disposal of oily bilge pads and other potential conflicts with other boat users.
3. Measures for the use, management and disposal of oily bilge pads including the location of the oily bilge pad disposal facility.

21. Delete Term C16 in Schedule 2 in its entirety.

22. Delete Term C19 in Schedule 2 and replace it with the following:

**C19 Stormwater Management – Marina Development**

The development application for the first stage of the marina development must provide details of the proposed stormwater management system for the marina site, including any associated car parking facilities in accordance with Site Principle 11 – Water Management in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The Stormwater Management Plan (SMP) should include:

1. Best practice water sensitive urban design measures.
2. Measures to ensure no impact from runoff on water quality in Bardens Bay and riparian vegetation around lake's edge in particular the mangroves and saltmarsh community in the un-named bay to the west of the site.
3. Rainwater harvesting, permeable pavements and bio-filtration swales.
4. Details of fuel storage tanks.

5. A water quality monitoring system during the construction phase and for 2 years from completion of the marina.
6. Details of emergency response procedures and a management plan to deal with oil and fuel spills in and around the marina.

An appropriate Stormwater Management Plan must be approved by the consent authority as part of the development application for the first stage of the marina development.

23. Insert new Term C19A in Schedule 2 after Term C19 as follows:

**C19A Stormwater Management – Whole of Site**

A whole of site Stormwater Management Plan (SMP) shall be prepared and submitted as part of the development application for the first stage of the land based development (refer Site Principle 11 – Water Management in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009). The SMP shall include details of the proposed stormwater management system for the entire site and shall be consistent with the SMP required by Term C19 of this approval and include all matters where relevant listed in Term C19. An appropriate whole of site SMP must be approved by the consent authority as part of the development application for the first stage of the land based development.

24. Delete Term C26 in Schedule 2 and replace with the following:

**C26 Public Access**

The future applications must demonstrate compliance with Principle 4 – Public Access & Open Space in the Preferred Project Report, prepared by AdW/Johnson Property Group, dated 5 June 2009. The design should maximise access opportunities through the site and ensure a high level of amenity and safety for pedestrians. Future applications must provide:

1. A publicly accessible village piazza that relates to the lake edge and marina.
2. Appropriate building setbacks to the foreshore reserve.
3. An appropriate setback from south-eastern corner of the site to create a publicly accessible open space at bluff point on the elevated part of the site.
4. A publicly accessible pathway around the southern and eastern edge of the development, either within the development Site, or within the adjoining Council foreshore reserve. Pathways within Council land are subject to agreement from Council.
5. Vistas from the public walkway into the village piazza these vistas must be provided at eye level.
6. Provide a network of east-west publicly accessible pathways from Trinity Point Drive to the lake.
7. Public access along the landward floating boardwalk parallel to the foreshore and its connections to the foreshore, in accordance with drawing number 8A0379-MA\_LB031, revision B dated 4 August 2014.
8. Public access to the northern part of the site, access is not to be impeded by the marina.
9. A publicly accessible pedestrian pathway from Trinity Point Drive along the edge of the western access way, may be provided either within the development site or within the adjoining Council reserve, subject to agreement from Council, to a point south of the marina car park, to allow access across the car park to the eastern foreshore.

25. Delete Term C27 in Schedule 2 and replace with the following:

**C27 Mine Subsidence**

1. Prior to the commencement of detailed design, the Proponent must submit a Mine Subsidence Impact Statement (MSIS) to the satisfaction of the Mine Subsidence Board (MSB), which demonstrates how the impact of mine subsidence will be managed. The MSIS shall identify:
  - (a) mine subsidence design parameters adopted;
  - (b) the main building elements and finishes;
  - (c) the outcomes of a mine subsidence risk assessment of building elements;
  - (d) mine subsidence mitigation measures proposed for each building element; and
  - (e) comment on the sensitivity of the design to greater levels of mine subsidence.
2. The Proponent shall ensure that the final design for any future development applications incorporates the recommendations of the MSIS (referred to in Term C27 above) to the satisfaction of the MSB prior to commencement of construction. This shall include certification by a qualified structural engineer to the effect that the improvements will remain "safe, serviceable and any damage from mine subsidence will be negligible, localised and readily repairable" taking into consideration the mine subsidence parameters approved by the MSB.
3. The Proponent shall ensure that on completion of any structural works, certification by a qualified structural engineer is forwarded to the MSB, that all improvements have been constructed in accordance with plans approved by the MSB under the relevant development application with supporting documentation.
4. Any future applications must ensure development on the Site is designed for the following mine subsidence parameters:
  - (a) Development on land below RL 2.0 AHD:
    - (i) maximum vertical subsidence = 50 mm;
    - (ii) maximum ground strains = +/- 1 mm/m;
    - (iii) maximum tilt = 1 mm/m; and
    - (iv) maximum radius of curvature = 10 km.
  - (b) Development on land above RL 2.0 AHD:
    - (i) maximum vertical subsidence = 150 mm;
    - (ii) maximum ground strains = +/- 2 mm/m;
    - (iii) maximum tilt = 2 mm/m; and
    - (iv) maximum radius of curvature = 5 km.
  - (c) Development over the water including the marina:
    - (i) maximum vertical subsidence = 400 mm;
    - (ii) maximum ground strains = +/- 4mm/m;
    - (iii) maximum tilt = 7 mm/m; and
    - (iv) maximum radius of curvature = 2.5 km.
26. In Term C29 replace 'Stage 1' in the second last paragraph with 'Stages 1a and 1b'.
27. Insert new Term C30 in Schedule 2 after Term 29 as follows:

**C30 Marina Car Park**

The Proponent shall ensure:

1. The marina car park is to be set above the 20 year ARI flood level to 1.23 AHD.
2. Any shortfall in car parking for the marina shall be considered as part of the first development application for the land based component of the development.

28. Insert new Term C31 in Schedule 2 as follows:

**C31 Marina Safety**

The Proponent shall ensure that:

1. Any development application proposing the construction of a marina arm/s, breakwater, or fuel facility must be accompanied by a plan identifying all signage or navigational aids to facilitate the safe passage of boats to and within the marina.
2. Any future development applications relating to the marina must include a contingency plan to address how sinking vessels would be retrieved and removed from the site.

---

**END OF MODIFICATION MP06\_0309 MOD 2**