

ITEM NO:
PROPERTY: S96 DA 2009/263 - LOT 2 DP 850217, 28 HAYWARD STREET,
PORT MACQUARIE
APPLICANT: KING & CAMPBELL PTY LTD
OWNER: PORT MACQUARIE-HASTINGS COUNCIL
PROPOSAL: MODIFICATION TO CONSENT CONDITION RELATING TO
STAGING OF A PREVIOUS APPROVED RETAIL COMPLEX
APPLICATION DATE: 23/12/09
DATE FORMAL: 23/12/09
ESTIMATED COST: N/A
LOCATION: PORT MACQUARIE
REPORT BY: PGR
FILE NO: DA 2009/263
PARCEL NO: 28081

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Mobile:

PRECIS

This report considers an application to modify a consent condition relating to staging of a previous approved retail complex at the above site.

This matter is being reported to the Joint Regional Planning Panel (JRPP) as the original approved DA was determined by the JRPP on 9 December 2009 and the State Environmental Planning Policy (Major development) 2005 requires applications other than s96(1) under the Environmental Planning and Assessment Act 1979 to be determined by the JRPP.

RECOMMENDATION

That S96 DA 2009/263 for a modification to consent condition relating to staging of a previous approved retail complex at Lot 2, DP 850217, No. 28 Hayward Street, Port Macquarie, be determined by granting a modification consent subject to the following:

- 1. Delete condition E (22).**
- 2. Add condition in section A: "This consent permits a subdivision certificate to be issued for the 2 lot torrens commercial subdivision without the need for any necessary extension of required water, sewer and stormwater utility services".**

DISCUSSION

1. DESCRIPTION OF DEVELOPMENT

The application proposes to modify a previous development consent issued for a staged construction of a retail complex comprising supermarket, shops and public carparking, replacement bus terminal and 1 into 2 lot torrens commercial subdivision to delete the following condition:

E (22) (DE197) Prior to issue of a subdivision certificate for the 2 lot subdivision, the construction of the replacement bus terminal shall be completed and an occupation certificate issued.

The changes sort will essentially enable the approved subdivision to be released prior to construction of the bus terminal with necessary extensions to services to be carried out with the development of each allotment.

The applicant has provided the following as relevant justifications for seeking changes to the staging:

- There is no particular reason for the subdivision to be delayed until such time as the replacement bus terminal is built as it could just as easily be completed prior to the construction of the bus terminal.
- The consent also requires the extension of services, including sewer and water to the two(2) lots to be created by the subdivision.
- As the development of each of the lots will entail the completion of civil construction, it will be easier to carry out the extension of any services in conjunction with this work. It will also allow for the services to be tailored to each of the proposed developments, which will be critical to their future functionality

The applicant has also noted that the consent conditions are silent as to the timing of the extension of services, including sewer and water to the two lots to be created by the subdivision. More specifically, the applicant has advised that as the development of each of the lots will entail the completion of civil construction, it will be easier to carry out the extension of any services in conjunction with this work. It will also allow for the services to be tailored to each of the proposed developments, which will be critical to their future functionality. The applicant has requested that this matter be acknowledged in the review of the consent.

Attachments - site plans and elevations

Refer to attachments at the end of this report.

Application Chronology

9 December 2009 - Original DA approved
23 December 2009 - Application received

2. STATUTORY ASSESSMENT

Section 96 Modification of consents (1A) Modifications involving minimal environmental impact

The applicant hasn't provided any details to advise as to what type of section 96 modification they are seeking approval for, however it given the nature of the proposal it should be considered as under this section of the Act.

The consent is able to be modified subject to the following matters being satisfied:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed change to staging is of minimal environmental impact as the proposed changes only relate to changes to the timing of the carrying out of the development.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Justice Stein considered this test in *Vacik Pty Ltd v Penrith City Council*.

"Is the proposed modified development substantially the same development as that in the development consent? In my opinion "substantially" when used in the Section means essentially or materially or having the same essence. The applicant for modification bears the onus of showing that the modified development is substantially the same, see Seaforth Services Pty Ltd v Byron Shire Council (1991) and CSR v Wingecarribee Shire Council (1991)."

The applicant has not provided any details or comments showing that the modified development will be substantially the same. Whilst no comments have been provided the proposed changes only relate to changes to the timing of the carrying out of the development. The development is still considered to be substantially the same and have the same 'essence'. It is considered reasonable to assess the application pursuant to Section 96 of the Act.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Given the nature of the changes proposed and in accordance with Council's Development Control Plan No. 40 - Advertising of Development (as part of Port Macquarie-Hastings DCP 2006) the application is not required to be publicly exhibited. No issues relating to staging were also raised during the assessment of the original application.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

No submissions received.

(3) Section 79C Matters for Consideration

Section 96(2) of the Environmental Planning and Assessment Act 1979 provides as follows:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Clearly, section 96 of the Act does not contemplate that Council should revisit all the issues of the original application but rather those matters where there is a variance to the original

application (additional information can be sourced from original and previous modification assessments).

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

Utilities

No concerns are raised with the proposed changes to the timing of provision of services as identified by the applicant. It is recommended that an additional consent condition be entered into the general matters section A that permits release of the subdivision without extension of services.

Construction

No adverse impacts can be identified with the proposed changes to the staging of the development.

4. CONCLUSION

The application has been assessed in accordance with Section 96 of the Environmental Planning and Assessment Act 1979.

It is recommended that the application be approved, subject to the recommended conditions of consent provided earlier in this report.

ATTACHMENTS

Letter from applicant

Refer to attachment to this report