

In This Issue

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Welcome to the JBA Alert!

The JBA ALERT is a regular newsletter from JBA Urban Planning Consultants to our key clients and contacts.

During September, we saw the long awaited progress in the development of new LEPs across NSW – with more councils finalising their comprehensive instruments for review by the Department of Planning, and numerous spot rezonings – now known as planning proposals – approved for exhibition.

JBA congratulates Partner **Gordon Kirkby** on his appointment of as a member of the new Western Region Joint Planning Panel. The panel commenced operations on 1 September 2009.

In this month's JBA profile, we talk to Urban Planner **Michael Rowe**, who has recently worked on major manufacturing projects including the Knauf Insulation Facility at Newcastle and IPMG Printing Facility at Warwick Farm.

As always, do not hesitate to contact any of us here at JBA with feedback on the JBA Alert, or more information on any of the stories we've included.

Kind regards,

Kathryn Werner (editor)

Knauf Insulation Facility

JBA prepared a Part 3A Project Application for the construction of a glass wool manufacturing plant at the Steel River Estate, Newcastle. Once operational, the 22,000m² plant will provide 135 new jobs and produce up to 200 tonnes of insulation per day. The glass wool insulation produced by the facility will have significant environmental benefits, saving approximately 12 times the amount energy it takes to produce the insulation within 12 months of being installed.

Source: Morris Bray Architects

JRPP for Western Region & Wagga Wagga

JBA is pleased to announce that **Gordon Kirkby** is one of the state appointed members of the [Western Region Joint Planning Panel](#) (which will be chaired by **Gabrielle Noble AO**).

Gordon and Gabrielle will be joined on the Western Region JRPP by state appointed member **Ruth Fagan** (Mayor of Gungahlin nominated as chair designate) and three Council appointed members.

The [Wagga Wagga City and Western Region JRPPs](#) commenced operation on 1 September 2009. This means JRPPs now operate in all local government areas in NSW except the City of Sydney.

JRPPs determine development applications for "regional development", which is defined in [State Environmental Planning Policy \(Major Development\) 2005](#), but do not determine project applications or development plans under Part 3A of the [Environmental Planning and Assessment Act 1979](#), or DAs where the consent authority is the Council.

DAs for regional development are lodged with the relevant Council, who exhibits and assesses the application, before forwarding it to the relevant JRPP for determination. Council must nominate a [Panel Secretariat](#) – who is responsible for the administration of all panels – within 14 days of receiving an application for Regional Development.

The Wagga Wagga Interim Joint Planning Panel covers the local government area of Wagga Wagga City Council and comprises **Ms Pam Allan** (Chair), **Mr Stephen Driscoll** and **Ms Terri O'Brien** (all are current members of the [Wagga Wagga City Council Planning Panel](#)). More information about JRPPs is available on the Department of Planning [website](#).

"Oakwood" near Ariah Park western NSW

Uncertainty in Modifying Part 3A Approvals

Section 75W of the EP&A Act confers a power on the Minister for Planning to modify (on application) a Part 3A approval. As an approval option, section 75W has traditionally been seen as a generous modification option as it is not constrained by a 'substantially the same' test that is found in section 96 for the modification of a development consent.

In February 2009, Justice Biscoe of the Land and Environment Court of NSW handed down a decision in [Williams v Minister for Planning \[2009\] NSWLEC 5](#). The decision related to a section 75W modification application that had been made by Barrick Gold Corporation in relation to its gold mine at Lake Cowal in western NSW. Barrick had sought approval to modify its approval by increasing production from 2.7M ounces to 3.5M ounces. The footprint of the mine would increase and there would be an increase in the amount of ore mined to extract the gold.

The Director-General of the Department of Planning in his report to the Minister recommended approval of the modification and had concluded that the modification was essentially the same development as the approved mining operation notwithstanding the increased mine voids, tailings and waste rock footprints.

A third party objector (Williams) commenced legal proceedings in the Court and sought orders that the modifications were beyond what the Minister could approve under section 75W. Justice Biscoe found that the Minister was not empowered to determine the modification application proposed by Barrick. His Honour found that a modification of an approval in section 75W means changing the terms of an existing approval without radical transformation. The extent of Barrick's modification was such that it was considered by the Court to be a radical transformation.

Barrick appealed Justice Biscoe's decision to the Court of Appeal and on 3 September 2009 the Court of Appeal handed its judgment down ([Barrick Australia Ltd v Williams \[2009\] NSWCA 275](#)). The Court of Appeal held that the judge's reasoning in adopting a 'radical transformation' test was legally flawed. Unfortunately the Court of Appeal did not clarify the meaning and limits of the extent of modifications permitted by section 75W. It appears there is now uncertainty and risk associated with section 75W however this could be resolved by an amendment to section 75W. Contact JBA Associate Andrew Duggan for more information.

New Guidelines for DAs

The DoP has prepared draft guidelines to assist in the delivery of better quality applications for "local development" namely development applications (DA) under Part 4 of the *Environmental Planning and Assessment Act 1979*. The draft guidelines, which were released for targeted consultation in June and have not yet come into force, seek to "...facilitate cultural change and a 'can do' attitude...rather than a process driven by stops and starts...". The draft guidelines include a toolkit to assist local authorities in assessing applications.

The draft guidelines note that the EP&A Act requires a Statement of Environmental Effects (SEE) must be submitted with each DA. The SEE is to comprise a written report and relevant supporting documents, drawings or images.

Regulations to formally implement the draft guidelines have not yet been gazetted. We will advise our clients when these guidelines commence and are formally released. In the meantime, contact JBA Partner Clare Brown for more information.

Rose Bay & Point Piper Marinas Approved in Court

On 18 August 2009, Justice Biscoe issued his judgement in [Addenbrooke Pty Ltd v Woollahra Municipal Council \(No 2\)](#), granting consent to build new marinas at Rose Bay and Point Piper.

The new marinas will provide modern boating facilities including casual berthing, and pumpout and fuelling facilities which will be available to the general public. The new marinas will provide a mix of floating berths (83) and swing moorings (94) and will cater for motor boats and yachts up to 30 metres.

Key issues in the case included visual impact, size and height of boats berthed, public benefit and privacy issues. The approval of the two new marinas represents one of the first major commercial marina redevelopments approved in Sydney Harbour since the NSW Government lifted a moratorium on commercial marina development of Sydney Harbour in 2005.

JBA Partner James Harrison provided expert planning evidence on behalf of the applicant Addenbrooke Pty Ltd and worked closely with the legal team at Mallesons Stephen Jaques.



Rose Bay & Point Piper Marinas

EPIs Gazetted

[Newcastle Local Environmental Plan 2003 \(Amendment No 6\)](#) – This Plan rezones certain land in Georgetown, Wallsend and Hamilton.

[Orange Local Environmental Plan 2000 \(Amendment No 6\)](#) – This Plan aims to provide for a "village" development adjacent to the Charles Sturt University's Orange Campus.

[State Environmental Planning Policy \(Major Development\) Amendment \(Wagga Wagga and Western Region Regional Panels\) 2009](#) – This Policy identifies the types of development to be determined by the Wagga Wagga Interim Joint Planning Panel, which commenced on 1 September 2009.

[State Environmental Planning Policy \(Western Sydney Employment Area\) 2009](#) – This Policy provides detailed land use controls for the Former Wonderland, Eastern Creek, Huntingwood, Raceway, Ropes Creek, Erskine Park Employment Lands, South of Sydney Catchment Authority Warragamba Pipelines, Quarantine Station, and Greystanes Northern Employment Lands.

[State Environmental Planning Policy \(Infrastructure\) Amendment \(Associated Public Transport Facilities\) 2009](#) – This Policy inserts the definition of "associated public transport facilities" into the Infrastructure SEPP.

Update on new comprehensive LEPs

As we reported in August, the Department of Planning has issued a [revised timetable](#) for the completion of comprehensive local environmental plans which identifies 67 councils to complete their LEPs by 2011.

Here we provide an update on the progress of several metropolitan councils' efforts to finalise their LEPs:

Warringah – A section 65 Certificate was issued for the [draft Warringah LEP](#) on 9 September 2009. The certificate requires a number of amendments to be made to the draft LEP 2009 prior to it being placed on public exhibition.

Marrickville – At their meeting on 1 September 2009, Marrickville Council resolved to move towards the public exhibition of the [draft Marrickville LEP 2010](#). The report to the council meeting included a copy of the draft instrument and maps.

Willoughby – Willoughby Council received their section 65 certificate to facilitate the exhibition of the [draft Willoughby LEP 2010](#) in July 2009. The exhibition is conditional on council first clarifying a number of issues relating to planning controls across the local government area with the Department of Planning. This means exhibition of the draft LEP is not expected for several months.

Macquarie University Concept Plan Approved

In September 2009, the Minister for Planning gazetted the Macquarie University State Significant Site Listing and at the same time approved the campus-wide Part 3A Concept Plan. The Significant Site Listing and Concept Plan establish the planning framework for the growth of the campus over the next 25-40 years.

The Concept Plan was prepared by JBA and Cox Richardson Architects and provides for 62,000m² of new academic floor space, over 3,400 new University beds and 400,000m² of commercial floor space.

Gazettal of the Macquarie University State Significant Site listing and approval Concept Plan occurred after much liaison and negotiation by the University and JBA with the Department of Planning and other government agencies.

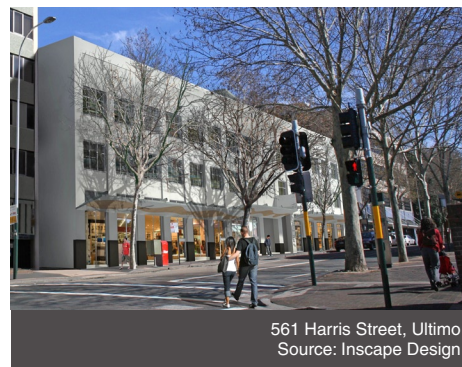
The \$1.7 billion project will capitalise on the recent opening of the Macquarie University railway station which is located on the campus grounds.

In addition to the Concept Plan, JBA has successfully secured planning approval for the soon to be opened Macquarie University Private Hospital, the \$70 million Macquarie University Library and the Cochlear Global Headquarters commercial development. The project is one of the largest urban Concept Plans approved to date by the Minister for Planning under Part 3A of the Environmental Planning and Assessment Act 1979.

Contact JBA Partner **Bernard Gallagher** or Principal Planner **Oliver Klein** for information.



Macquarie University Concept Plan
Source: Cox Richardson Architects



561 Harris Street, Ultimo
Source: Inscape Design

561 Harris Street, Ultimo

In September 2009, the City of Sydney granted approval for establishment of a new campus of the JMC Academy at 561 Harris Street, Ultimo. JMC Academy is private education and training provider specialising in the performance and recording of music, television production and digital media for approximately 140 students. The project involves the adaptive reuse of an underutilised warehouse building in an emerging information technology, communications and media precinct. JBA prepared the Statement of Environmental Effects for JMC.

Running for a Cause

JBA congratulates Principal Planner **Jennie Masson** on successfully completing the 2009 Blackmores Half Marathon on Sunday 20 September in a time of 2:06:06.

Jennie was part of the Can Too team, who raise money for the Cure Cancer Australia Foundation. Jennie is well on the way to meeting her target of \$1,250; however additional donations are always welcome! For further information about Cure Cancer Australia and Can Too please visit www.cure.org.au or www.cantoo.org.au.

Donations received from Can Too are supporting talented scientists working in all areas of cancer for example; cancer genetics, control mechanisms in cancer, melanoma, myeloma, brain tumours, resistance to chemotherapy, breast, bowel, prostate and ovarian cancer and inhibiting cancer cell growth.

JBA Practice Manager **Ian Robertson** also completed the Sydney Running Festival's Half Marathon in 2:14:53 while Principal Planner **Kathryn Werner** completed the Sunday Telegraph body + soul Bridge Run in 1:01:58, which was her first competitive run.



Jennie runs with a "can-too" attitude!

JBA congratulates Associate **Clare Rees** on her recent wedding to Jeremy Swan. Clare has now returned to work after a four week honeymoon in Fiji and Tasmania.



Clare & Jeremy soaking up the sun in Fiji

JBA Profile

Michael Rowe is one of JBA's Urban Planners and has been working at JBA since July 2006. In 2008, he completed his Bachelor of Planning with Honours Class 1 at the University of New South Wales after completing his thesis entitled *Taking Control of Bulky Goods Retail in Sydney*. Some of Michael's recent projects include Part 3A applications for Epping Park, the Knauf Insulation Plant and IPMG Printing Facility, as well as preparing the development control plans for the Marsden Park Industrial and Area 20 North West Growth Centre Precincts. Outside work, Michael has just purchased an apartment in Wollstonecraft, making the brave move to the North Shore from the Eastern Suburbs!



Michael is now a proud home-owner

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For more information and feedback on this newsletter, please contact Kathryn Werner on:
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