

ASSESSMENT REPORT

Fern Bay Seaside Village, Fern Bay 06_0250 MOD 10

1. INTRODUCTION

This report is an assessment of an application seeking to modify an approved residential subdivision at Fern Bay in the Port Stephens local government area. The request has been lodged by Fern Bay No. 1 Pty Ltd (the Proponent) pursuant to section 4.55 (1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to correct an error in Condition A2(18) (c) that references construction of a park in Stage 20, which was removed as part of a previous modification to the Project Approval.

2. SUBJECT SITE

The subject site covers an area of 205 hectares and is located off Nelson Bay Road in Fern Bay, approximately 18 kilometres north of Newcastle (see **Figures 1 and 2**)

The site is located between two key coastal features being the Hunter River to the west and Stockton Bight to the east. The site is surrounded by naturally vegetated land on all sides, including the Worimi Conservation Lands to the south which is a regional conservation park managed by National Parks in conjunction with the Worimi Aboriginal Traditional Owners. The site and surrounding areas form part of the Newcastle Bight dune barrier system and incorporates key wildlife corridors.



Figure 1: Site Location



Figure 2: Subject Site

3. APPROVAL HISTORY

3.1 Development Approval

On 29 September 1997, the Land and Environment Court granted approval for a 208 lot residential subdivision at Fern Bay. The consent has been modified on five occasions. Ultimately, 182 residential lots were completed under the approval, comprising Stages 1 to 3 of the overall Fern Bay subdivision.

3.2 State Environmental Planning Policy No. 71 – Coastal Protection (Master Plan)

On 8 August 2006, the then Minister for Planning adopted a Master Plan (20-4-2005) for the site prepared in accordance with clause 18 of State Environmental Planning Policy No.71 – Coastal Protection. The Master Plan was for a subdivision consisting of 947 residential lots, open space lots, a community nursery, conservation areas, recreational and commercial facilities, new public roads, fire trails, pedestrian trails, and asset protection zones (including the lots approved under the earlier development approval).

3.3 Major Project Approval

On 28 June 2010, the then Deputy Director-General, Development Assessments and Systems Performance, approved MP 06_0250 for a 411 lot residential subdivision to be constructed across 17 stages (stages 4 to 20). The approval included:

- bulk earthworks and vegetation clearing
- subdivision of land for the creation of 411 lots under a Community Title scheme (including 370 residential lots, 38 super lots, two commercial lots and one community lot);
- creation of ecological conservation areas to be managed as Community Conservation Lands (under the community lot)
- creation of a recreational and open space network, including formal parks and an Aboriginal cultural heritage reserve
- creation of two sites for commercial areas and a recreational/community centre area
- construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road
- construction of stormwater management measures

- creation of asset protection zones
- associated landscaping
- works to connect to reticulated services (water, sewerage, power and telecommunications).

The Project Approval has been modified on seven occasions as outlined in **Table 1** below:

Table 1: Assessment of Other Issues

MOD Number	Details	Date
1	Amend the timing for the construction of the cycleway/footpaths, provision of the plan detailing the location of detention basin 6, and provision of landscaping and revegetation plans for individual stages.	1 April 2011
2	Remove the requirement for an Aboriginal Reserve Cultural Heritage Management Plan	Withdrawn
3	Amend the subdivision layout to incorporate stormwater detention basin 6 within the development footprint.	1 May 2012
4	To allow Council to accept a security (e.g. a bond) in lieu of subdivision works.	Not proceeded with
5	Undertake Stage 8 subdivision works within two stages, amend the provision of infrastructure and services; amend the subdivision and road network layout.	1 April 2014
6	Amend the requirement for a shared footpath/cycleway and a Dune Restoration/Stabilisation Management Plan.	2 June 2015
7	Increase lot yield from 473 to 580 lots and reconfigure the subdivision layout in Stages 8B, 10 and 13 to 17.	22 June 2015
8	Subdivide one of the super lots (Lot 56) into 29 residential lots	16 December 2015
9	Modifications to Stages 18, 19 and 20 comprising subdivision of superlots, revised subdivision layouts and relocation of a waste water pump station.	3 November 2017

4. PROPOSED MODIFICATION

On 23 May 2018, the Applicant lodged an application (06_0250 MOD 10) seeking approval to correct an error in Condition A2(18)(c) that references construction of a park in Stage 20 which was removed as part of MOD 9 to the Project Approval. Refer to **Figures 3** and **4** for the MOD 8 and MOD 9 stamped plans.

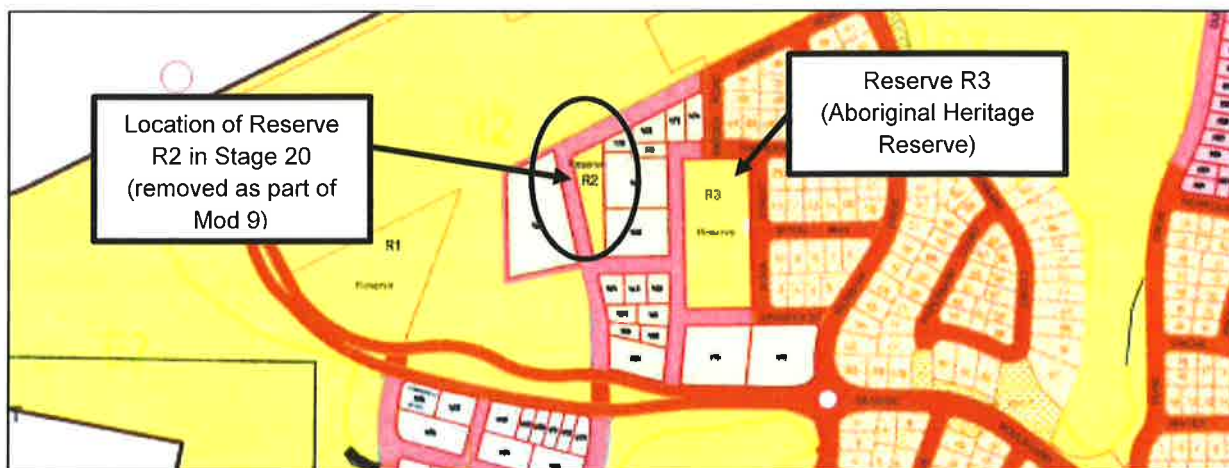


Figure 3: MOD 8 Approved Plan

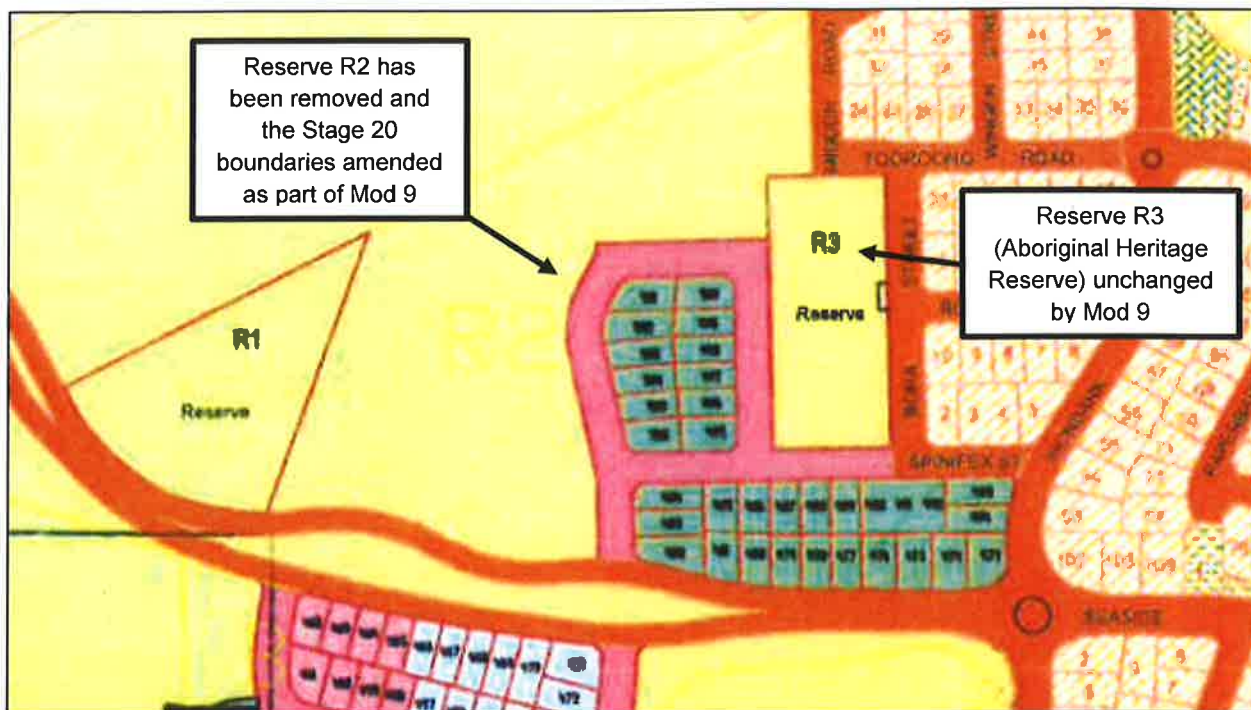


Figure 4 MOD 9 Approved Plan

5. STATUTORY CONSIDERATION

5.1 Part 3A Transition to State Significant Development

The project was originally approved under section 75J of Part 3A of the EP&A Act and was a transitional Part 3A project under Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulations).

Following amendments to the EP&A Act and the associated EP&A (ST&OP) Regulations that commenced on 1 March 2018, the power to modify Part 3A approvals under former section 75W has been wound up for modification applications submitted after 1 March 2018. In order to modify a transitional Part 3A approval, the Minister for Planning can declare the development to be SSD by order under clause 6 of Schedule 2 of EP&A (ST&OP) Regulations. If a declaration is made the approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant test.

On 12 June 2018, the Director, Regional Assessments (as delegate of the Minister for Planning), made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. This order was published in the NSW Government Gazette on 15 June 2018 and took effect from that date.

The effect of this order is that the:

- the project approval is taken to be a development consent under Part 4 for the carrying out of the development
- modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

5.2 Modification of Approval

Section 4.55(1) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2: Matters for consideration

Section 4.55(1) matters for consideration	Comment
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation.	The application simply corrects an error in Condition A2(18)(c) to remove a reference to the construction of a park which was deleted as part of MOD 9 to the Project Approval.
Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.	Noted.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of an objection.

6. CONSULTATION

The Department referred the application to Port Stephens Council (Council) and made the application publicly available on the Department's website. Council did not raise any concerns about the proposal and no public submissions were received.

7. ASSESSMENT

The application seeks approval to correct an error in Condition A2(18) (c) that references construction of a park in Stage 20 which was removed as part of a previous modification to the Project Approval.

The Department is satisfied that the reference in the condition is in error as the park was removed as part of MOD 9, which reduced the overall development footprint of Stage 20 (see **Figure 3 and 4**).

The deletion of the park and the overall reduction of the development footprint was considered to be acceptable as the park was irregular in shape and it had a narrow southern portion, making it less capable of accommodating active recreational uses. The Department also notes the development has five other reserves which are more functional and larger in size.

The Department is therefore satisfied the proposal is acceptable as it would simply amend Condition A2(18) (c) to accurately reflect the MOD 9 approved plans.

8. RECOMMENDATION

It is recommended that the Director, Regional Assessments, as delegate for the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application 06_0250 MOD 10 falls within the scope of section 4.55(1) of the EP&A Act
- **approves** the modification request 06_0250 MOD 10 subject to the modified terms of approval
- **signs** the attached approval of the modification (Appendix A).

Recommended by:



Michelle Niles 26/6/18
Senior Planner
Regional Assessments

DECISION

The recommendation is: Approved by:



Anthony Witherdin
Director
Regional Assessments
as delegate of the Minister for Planning.

APPENDIX A: MODIFICATION CONSENT

A copy of the modified consent can be found on the Departments website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9369

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification application

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9369

2. Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9369