

Our Ref: 2013/0415

23 May 2018

The Secretary
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Madam,

RE: MP 06_0250, SEASIDE ESTATE, FERN BAY, MODIFICATION

INTRODUCTION

This letter report has been prepared on behalf of Fern Bay No 1 Pty Ltd in relation to a modification proposed for Major Project 06_0250 at Seaside Village, Fern Bay. This modification is lodged pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification relates to a community title residential subdivision, referred to as 'Fern Bay Seaside Village', located off Nelson Bay Road, Fern Bay in the Port Stephens local government area.

Project approval for MP 06_0250 was granted by the then Deputy Director-General, as delegate of the then Minister for Planning on 28 June 2010 under Part 3A of the EP&A Act. Approval was granted generally for:

- 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, 2 commercial lots and 1 community lot);
- creation of ecological conservation areas to be managed as Community Conservation Lands (under the community title scheme);
- creation of recreational and open space network including formal parks and an Aboriginal cultural heritage reserve;
- creation of two sites for commercial areas and 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; and
- works to connect to reticulated services (water, sewerage, power and telecommunications).

Since the major project approval in 2010 there have been nine (9) modifications. The current consent MP 06_250 (Mod 9) is presented in **Appendix A**.

BACKGROUND

The subject site is part of a large Community Title subdivision known as Fern Bay Seaside Village Fern Bay, a residential subdivision approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

The Project Approval, (Application Number 06_0250), includes the residential subdivision into community title lots, commercial/retail, open space and associated landscaping.

During the environmental assessment of the project, consideration was given to the environmental, social and economic impacts of the proposal. Accordingly, approval was granted by the Deputy Director-General (under delegation) to carry out the project subject to the conditions of consent.

It should be noted that the first three stages of the residential estate were created by a precinct plan, which was created under Council's development consent (7-1996-1299-1, in October 2005). Stages 4 onwards were approved under Part 3A of the EP&A Act when it came into force.

Some nine (9) modifications have been lodged, however, two were withdrawn. The project approval has thus been in practice modified on seven different occasions previously:

- MOD 1 – 1 April 2011: 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;
- MOD 2 – Not proceeded with: Remove the requirement to comply with Condition B23 for an Aboriginal Reserve Cultural Heritage Management Plan for the Deferred Approval Condition B;
- MOD 3 – 1 May 2012: Amend the subdivision layout to incorporate stormwater detention basin 6 within the development footprint;
- MOD 4 – Not proceeded with: To allow Council to accept a security in lieu of subdivision works;
- MOD 5 – 1 April 2014: Undertake Stage 8 subdivision works within two stages, amend the provision of infrastructure and services, amend the subdivision and road network layout;
- MOD 6 – 2 June 2015: Amend the requirement for a shared footpath/cycleway and a Dune Restoration/ Stabilisation Management Plan;
- Mod 7 – 22 June 2015: Increase lot yield from 473 to 580 lots and reconfigure the subdivision layout in Stages 8B, 10 and 13 to 17;
- MOD 8 – 16 December 2015: Subdivision of one of the super lots (Lot 56) into 29 residential lots; and
- MOD 9 – 3 November 2017: Remove the need for the northern access road, provision of the plan detailing consistent layout and pattern across final stages (18-20) and relocation of pump station.

PROPOSED MODIFICATION

This modification application requests that the relevant authority, the NSW Department of Planning and Environment, remove item *A2 Staging (18)(c)* in the Modification of Project Approval MP 06_0250 MOD 9.

As part of the original approval, two reserves proposed as part of Stage 20 (see Mod 8 stamped plan attached – **Appendix B**).

As part of modification 9 to the project approval, the reserve identified as “R2” was removed as well as some of the residential land (see Mod 9 stamped plan attached – **Appendix C**). The reason the reserve was removed was because of stormwater servicing constraints. Although the stamped plan for Mod 9 does not show this reserve (identified as “R2”), Condition A2 (18)(c) of the consent was not modified and still remains in place.

We believe that this has been done in error, and Condition A2 (18)(c) should have been deleted to be consistent with the stamped plan.

As such, this application seeks to remove this minor error and requests for the removal of Condition A2 (18)(c) to reflect the stamped plans (**Appendix C**) respectively, pursuant to Section 4.55(1) of the EP&A Act.

PLANNING CONSIDERATIONS

As it was an error to not remove Condition A2 (18)(c) from the conditions of consent of Project Approval MP 06_0250 (MOD 9) to reflect the stamped plans, this modification falls under the category of a Section 4.55(1) – Modification involving minor error, misdescription or miscalculation.

Despite the original approval being granted by the then Deputy Director-General under Part 3A of the EP&A Act – the repeal of the transitional provisions for Part 3A and the consequent removal of access to the modification power of section 75W, means new modification requests for former Part 3A projects which have development consent have to be approved under section 4.55 of the EP&A Act 1979.

Under Section 4.55(1) 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. As such, subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

ENVIRONMENTAL IMPACTS

There are no known environmental impacts that would occur because of this modification. As the proposed modification will result in the consent being consistent with the stamped plans (**Appendix C**) – no direct impacts can be anticipated from this proposed modification. Further, the proposed modification will not result in any physical works, but only the removal of a worded Condition (A2 (18)(c)), to reflect a paper plan.

No further environmental assessment on the potential impacts of the proposed modification is required under Section 4.55(1).

NOTIFICATION

Modifications under Section 4.55(1) are not required to be notified as Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification – which would otherwise require notification or advertising.

CONCLUSION

It has been proposed to remove item A2 (18)(c) of Project Approval MP 06_0250 (MOD 9). Under *Section 4.55(1)* of the EP&A Act 1979 the consent authority (Department of Planning & Environment), can modify a development consent granted by it to correct a minor error (the error of not removing Condition A2 (18)(c) to reflect the stamped plans of **Appendix C**) so to ensure consistency with the stamped plans and the written conditions of consent.

Should you require any further information regarding this application, please do not hesitate to contact the undersigned.

Yours faithfully,
MONTEATH & POWYS PTY LIMITED

A handwritten signature in black ink, appearing to read 'S. Fatches', with a long horizontal stroke extending to the right.

Scott Fatches
Planner
s.fatches@monteathpowys.com.au

Appendix A

Existing Consent

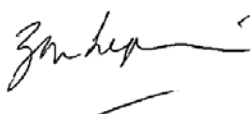
Modification of Project Approval

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

As delegate of the Minister for Planning, the Planning Assessment Commission modifies the Project Approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Alan Coutts
Member of the Commission



Zada Lipman
Member of the Commission



Peter Duncan AM
Member of the Commission

Sydney

3 November 2017

SCHEDULE 1

Project Approval:	MP 06_0250 granted by the Deputy Director-General as delegate of the then Minister for Planning on 28 June 2010
For the following:	A residential subdivision comprising subdivision for 411 lots under a community title scheme, creation of conservation, recreational, commercial and community areas and a road network
Proponent:	Fern Bay No. 1 Pty Ltd
Consent Authority:	Minister for Planning
The Land:	Lot 46 in DP 28008 and Lots 1, 4 and 7 in DP 270466 Seaside Boulevard, Fern Bay in the Port Stephens local government area
Modification:	MP 06_0250 MOD 9: The modification includes changes to Stages 18, 19 and 20, including subdivision of superlots, revised subdivision layout and relocation of a waste water pump station.

SCHEDULE 2

The approval (MP 06_0250) is modified as follows:

- (a) Schedule 2 Part A – Administrative Conditions, Condition A1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

A1. Project Description

Project approval is granted only to carrying out the project described in detail below:

- 1) Bulk earthworks and vegetation clearing;
- 2) Subdivision of land for the creation of ~~608~~ **640** lots under a community title scheme (including ~~590~~ **631** residential lots, ~~46 super-lots~~, and ~~2~~ **9** commercial lots;
- 3) Creation of ecological conservation areas to be managed as Community Conservation Lands (under the community lot);
- 4) Creation of recreational and open space network including formal parks and an Aboriginal cultural heritage reserve;
- 5) Creation of two sites for commercial areas and recreational/community centre area;
- 6) Construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road;
- 7) Construction of stormwater management measures;
- 8) Creation of asset protection zones;
- 9) Associated landscaping; and
- 10) Works to connect to reticulated services (water, sewerage, power and telecommunications).

- (b) Schedule 2 Part A – Administrative Conditions, Condition A2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

A2 Staging

Stages 1 to 3 are the subject of separate approvals issued by other authorities. The project is to be constructed in 18 stages, generally as follows:

- (1) Stage 4 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) 51 lots;
 - (c) Construction of sewer pump station P4; and
 - (d) Establishment of Aboriginal Heritage Reserve (R3).
- (2) Stage 5 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 51 lots.
- (3) Stage 6 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) 37 lots, including 1 commercial lot;
 - (c) Construction of a sewer pump station P5;
 - (d) Construction of infiltration basin 6; and

- (e) Construction of unnamed park (R6), including recreation facilities.
- (4) Stage 7 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 31 lots.
- (5) Stage 8A comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) 47 lots; and
 - (c) Construction of Banksia Park (R4), including recreational facilities.
- (6) Stage 8B comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 35 lots
 - (c) construction of conveyance swale to infiltration Area 4;
 - (d) construction of conveyance swale to infiltration Area 5; and
 - (e) construction of sewer pump station P7.
- (7) Stage 9 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 34 lots.
- (8) Stage 10 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 36 lots;
- (9) Stage 11 comprises:
 - (c) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (d) 20 lots;
- (10) Stage 12 comprises:
 - (e) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (f) 30 lots;
- (11) Stage 13 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 47 lots;
- (12) Stage 14 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) 35 lots, ~~including 1 superlot~~;
 - (c) Northern extension of Seaside Boulevard, including an intersection with Nelson Bay Road (northern intersection); and
 - (d) Construction of Corymbia Park (R5), including recreation facilities.
- (13) Stage 15 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 31 lots;

- (14) Stage 16 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 61 lots.
- (15) Stage 17 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications; and
 - (b) 17 lots.
- (16) Stage 18 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) ~~16~~ **22** lots, ~~including 4 superlots~~; and
 - (c) Construction of a sewer pump station P3.
- (17) Stage 19 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) ~~44~~ **21** lots, ~~including 5 superlots and 1~~ **8** commercial lots ~~(lot 446)~~;
 - (c) Construction of drainage swale to infiltration area 1.
- (18) Stage 20 comprises:
 - (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
 - (b) ~~18~~ **34** lots, ~~including 6 superlots~~;
 - (c) Construction of unnamed park (R2), including recreation facilities.

The scope and extent of works within each stage of this project as outlined above may be varied due to market conditions and servicing constraints as agreed to by Council.

- (c) Schedule 2 Part A – Administrative Conditions, Condition A3 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

A3 Project in Accordance with Plans

The project will be undertaken in accordance with the Environmental Assessment, The Preferred Project Report and the following drawings:

Subdivision Drawings prepared by North Point Surveys (NSW) Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
29850 – Sheet 0 of 21	↓	Sheet List	27/10/2015
29850 – Sheet 1 of 21	↓ M	Staging and Lot Layout	27/10/2015 06/07/2017
29850 – Sheet 2 of 21	↓ M	Staging Plan	27/10/2015 06/07/2017
29850 – Sheet 3 of 21	J	Stage 4 – 6 Detail Plan	27/10/2015
29850 – Sheet 4 of 21	J	Stage 7 & 8A Detail Plan	27/10/2015
29850 – Sheet 5 of 21	J	Stages 8B – 10 Detail Plan	27/10/2015
29850 – Sheet 6 of 21	J	Stages 13 & 14 Detail Plan	27/10/2015
29850 – Sheet 7 of 21	J	Stages 15 – 17 Detail Plan	27/10/2015
29850 – Sheet 8 of 21	↓ N	Stages 18 & 19 Detail Plan	27/10/2015 21/08/2017
29850 – Sheet 9 of 21	↓ N	Stage 20 Detail Plan	27/10/2015 21/08/2017
29850 – Sheet 10 of 21	↓ N	Indicative Sewer Layout	27/10/2015 21/08/2017
29850 – Sheet 11 of 21	↓ N	Indicative Water Main Layout	27/10/2015 21/08/2017
29850 – Sheet 12 of 21	↓ N	Land Tenure Plan	27/10/2015 21/08/2017
29850 – Sheet 13 of 21	J	Subject and Adjoining Title Details	27/10/2015
29850 – Sheet 14 of 21	↓ N	Concept Site Drainage Plan – Proposed Swales and Basins	27/10/2015 21/08/2017
29850 – Sheet 15 of 21	↓ N	Flood Prone and Low Lying Areas	27/10/2015 21/08/2017
29850 – Sheet 16 of 21	J	Typical Drainage Treatments Detail 1	27/10/2015
29850 – Sheet 17 of 21	J	Typical Drainage Treatments Detail 2	27/10/2015
29850 – Sheet 18 of 21	J	Footpath and Cycleway	27/10/2015
29850 – Sheet 19 of 21	J	Typical Road Detail	27/10/2015
29850 – Sheet 20 of 21	↓ N	Aerial View	27/10/2015 05/07/2017
29850 – Sheet 21 of 21	↓ N	Bulk Earthworks (Cut-Fill) Plan	27/10/2015 21/08/2017
Engineering Drawings prepared by Martens & Associates and Cardno			
Drawing No's.	Revision	Name of Plan	Date
Martens Plan			
P090247JD01_V5	5	Concept Site Drainage Plan – Proposed Swale and Basins (Sheet 1 of 4) as modified by Cardno Plan (see below)	24/12/2009 Submitted with Supplementary Water Cycle management information prepared by Martens & Associates Pty Ltd dated April 2010 provided in Annexure C of Further Response for Submission Report , prepared by ERM and dated April 2010
Cardno Plan			
89023935-CSK2	1	Concept Site Drainage Plan Proposed Swales and Basins (South East Precinct)	24/01/2012

Landscape Drawings Prepared by North Point Surveys (NSW) Pty Ltd and Terras Landscape Architects			
Drawing No.	Revision	Name of Plan	Date
29850 Landscape Plan – Sheet 1 of 1	↓ N	29850 Landscape Plan Rev G	27/10/2015 21/08/2017

The proposed boundary adjustment between Stage 18 and the Worimi Conservation Lands as shown on Sheet 8, must be shown on all relevant plans, including all relevant construction certificate drawings and subdivision certificate plans.

- (d) Schedule 2 Part A – Administrative Conditions, Condition A4 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

A4 Project in Accordance with Documents

The project will be undertaken in accordance with the following documents:

- a) *Environmental Assessment Report* (Volumes 1, 2 3 and 4) prepared by ERM on behalf of Aspen Group Pty Ltd, dated February 2009;
- b) *Fern Bay Seaside Village Project Application - Submission Report* prepared by ERM on behalf of Aspen Group, dated December 2009 (ref:0063154 Final); and,
- c) *Fern Bay Seaside Village Project Application – Further Response to Submissions* prepared by ERM on behalf of Aspen Group, dated April 2010 (ref: 0063154).; and
- d) *Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Stages 5 to 8, South Eastern Precinct – Seaside Boulevard, Fern Bay* prepared by Cardno on behalf of Winten Fern Bay No. 2 Pty Ltd, dated 22 January 2014.;
- e) *Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Seaside Boulevard, Fern Bay* prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 04 March 2015; and
- f) *Section 75W Modification to Application 06_0250 (28 June 2010) – Seaside Boulevard, Fern Bay (MOD_6)* prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 04 March 2015.;
- g) *Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Seaside Boulevard, Fern Bay. Modification sought realigns roads and allotments within existing footprints for Stages 8B – 10 and Stages 13 – 17* prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 23 December 2014.
- h) *Updated Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) - Seaside Boulevard, Fern Bay: Modification 8 - Design Change in Stage 13 to Subdivide Superlot (Proposed Lot 56) into 29 Residential Lots* prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 10 November 2015.
- i) **Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Nelson Bay Road, Fern Bay. Prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 16 November 2016, as amended by Response to Submissions prepared by Cardno dated 12 April 2017, and Supplementary Response to Submissions prepared by Cardno dated 7 July 2017 and further information prepared by Monteath and Powys dated 21 August 2017 and 6 September 2017.**

Note: Items (2) and (3) above will otherwise be referred to as the 'Preferred Project Report' (PPR) in the remaining conditions

- (e) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

B1 Design Modifications

To ensure a vegetative link is retained within the Stockton Regional Corridor, between the Worimi Regional Park and the Worimi Conservation Area, proposed detention basin no. 6 (as identified on 'Concept Site Drainage Plan – Proposed Swales and Basins Rev J', Sheet 14 of 21, prepared by North Point Surveys (NSW) Pty Ltd, dated 27/10/2015) shall be relocated from the Community Conservation Lands into the development footprint. Details shall be submitted to and approved by the Department of Planning prior to the issue of any Construction Certificate for any stage that falls within the catchment area of detention Basin no. 6.

The road layout for Stage 14 shown on the plans approved with Modification 9 which creates a cul-de-sac at the end of Seaside Boulevard and an emergency only access track is not approved. Amended plans, reverting to the approved layout under MOD 8, incorporating the extension of Seaside Boulevard as a local road to connect with Nelson Bay Road, are to be submitted to and approved by the Certifier, and a copy sent to the Department prior to the issue of a Construction Certificate for Stage 14.

- (f) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B8 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

B8 Bushfire Management Plan

A Bushfire Management Plan must be prepared for each stage of the subdivision and approved by Council prior to the release of a Construction Certificate for that stage. The Plan must be prepared in accordance with Bushfire Hazard Assessment (prepared by ERM, dated February 2009, Annex I of the EA) and as detailed in Figure 2 – Preferred Project Plan (dated 30/11/2009, in the PPR dated December 2009) and provide the following details:

- Asset Protection Zones must be managed as outlined within section 4.1.3 and Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service document Standards for Asset Protection Zones. APZs must not impinge on Community Conservation Lands;
- **A 10 metre Asset Protection Zone around all structures associated with the proposed pumping station within Stage 18, and managed in perpetuity as an inner protection area (IPA) as outlined in section 4.1.3 and Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service document Standards for Asset Protection Zones;**
- Water, electricity and gas must comply with section 4.1.3 of Planning for Bushfire protection 2006; and
- Public road access **and property access roads** and shall comply with section 4.1.3 (1) of Planning for Bushfire Protection 2006;
- **Landscaping of the site is to comply with principles in Appendix 5 of Planning for Bushfire Protection 2006**

- **Evacuation Plan for the site in accordance with NSW Rural Fire Services Document Guide for Developing a Bush Fire Emergency Evacuation Plan**

- (g) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B9 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

B9 Stormwater and Drainage Works Design

Final design plans for the stormwater drainage systems (including stormwater drains, swales and infiltration basins/areas), prepared by a qualified practising Civil Engineer and in accordance with the requirements of Council and the recommendations of the *Amended Water Cycle Management Strategy* (prepared by Martens Consulting Engineers, dated December 2009) ('Martens (2009) Report') and the *Supplementary Water Cycle Management Information, Fern Bay* (prepared by Martens Consulting Engineers, dated April 2010) ('Martens (2010) Report'), shall be approved by Council prior to the issue of any Construction Certificate.

Final design plans for stormwater and drainage works within Stages 18 and 19 which are to be approved by Council prior to the issue of a Construction Certificate for Stages 18 or 19 must demonstrate stormwater and drainage design:

- **incorporates and accounts for stormwater runoff from the adjoining 4WD track that flows on to the development site;**
- **does not result in any stormwater runoff on to the adjoining Worimi Conservation Lands; and**
- **conveys any stormwater across the 4WD access track to the west of Stages 18 and 19 in a culvert under the access track. The culvert is to be designed to the satisfaction of National Parks and Wildlife Service and of a capacity exceeding that required for the stormwater system as designed.**

Discharge of stormwater flows from the development to the adjoining Worimi Regional Park (along the Southern Boundary) is not allowed without approval from the Department of Environment, Climate Change and Water.

'Dispersion areas' or 'detention basins' are not permitted within the site and only 'infiltration areas/basins', as per the Martens (2009) Report as amended by Martens (2010) Report, are to be incorporated into the development.

The final design plans of the stormwater drainage system should address any amendments to the subdivision layout as a result of design modifications required by Condition **B1**.

- (h) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B14 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

B14 Landscaping and Revegetation Plan

A detailed Landscaping and Revegetation Plan for each stage is to be approved by Council prior to the issue of any Construction Certificate for that stage. The plan shall update the Landscape Master Plan (Drawing L2, prepared by Verge Landscape architects, dated 18/05/2007, provided in Annex G of the EA) and 29850 Landscape Plan, Sheet 1 of 1, prepared by North Point Surveys (NSW) Pty Ltd and dated ~~27/10/2015~~ **06/07/2017** to reflect the final subdivision layout (as required by Condition **B2**).

The plan/s shall include, but not be limited to the following:

- Existing features, including north point, and location of trees to be retained or removed on site, to scale and identified by botanical and common names. Identification and mapping of all other native vegetation, to be retained or removed on site, including abundance codes;
- The location of all proposed planting. Note: In accordance with the Port Stephens DCP 2007, the equivalent of one street tree for each 12m of residential street frontage with locations adjusted for driveway access, sightlines, utilities and the like is required;
- Existing and proposed ground levels (shown as spot heights and/or contours over the site and direction and degree of slope) indicating the site boundaries, and the base of the trees proposed to be planted or that are to be retained;
- The location of the approved access road, development envelopes, asset protection zones, and other site services/infrastructure, such as electricity, pumping stations and stormwater infiltration areas. Note: Details of the proposed infiltration areas as outlined in the updated stormwater plan (refer to Condition **B9**) should be included on the landscape plan;
- A detailed planting schedule including:
 - species being local native/indigenous species, listed by botanical and common names, in accordance with the Fern Bay Master Plan (prepared by Verge Landscape Architects, dated May 2007, provided in Annex G of the EA).
 - Specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
 - Landscaping and revegetation shall exclude the identified inner protection zones of asset protection zones on each of the lots.
 - Maintenance, monitoring and reporting schedule to be implemented after completion of landscaping and revegetation on site. This shall include a watering program and mulching or groundcovers to reduce bare soils areas.
 - Identification and mapping of all noxious and environmental weeds as listed on Council's web site, including abundance codes and outline of the methodology of removal and ongoing management of all such listed weeds, including Initial and Follow Up Maintenance works required.
 - Details of any fencing.
 - Details of stabilisation measures including top soiling, seeding and planting for disturbed areas resulting from any site earthworks, cutting and filling.
 - Provision of compensatory planting and revegetation of embankment areas in accordance with any relevant Council requirements, including areas where infiltration basins are proposed (refer to Condition B8).

The plan shall be prepared by person/s with professional qualifications and/or knowledge and experience in bush regeneration practices and who are members of the Australian Association of Bush Regenerators (AABR).

Note 1: Landscaping and revegetation is to be completed for each of stage in accordance with the approved plan prior to the issue of Subdivision Certificates for the stage (refer to condition E3).

- (i) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B16 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck out~~ words/numbers as follows:

B16 Location of Sewage Pumping Stations

A total of 5 sewage pumping stations are to be provided in the development (P3-P7) as depicted on Indicative Sewer Layout, Sheet 10 of 21, drawing 29850 J **N** prepared by North Point Surveys (NSW) Pty Ltd dated 27/10/2015 **21/08/2017**. The location of each station is to be approved by Hunter Water, prior to the issue of a Construction Certificate for the applicable stage.

The final pumping station locations shall be selected to minimise the vegetation clearing on the Community Conservation Lands.

The pumping station is to be provided on a separate parcel of land, which is to be dedicated to Hunter Water and easements as necessary for access are to be created (refer to Condition **E11**)

- (j) Schedule 2 Part B – Prior to Issue of a Construction Certificate - Condition B24 is added by the insertion of the **bold and underlined** words / numbers as follows:

B24 Earthworks in Stages 18 and 19

Prior to the issue of a Construction Certificate for Stages 18 or 19, amended bulk earthworks plans are to be submitted to the satisfaction of the Secretary demonstrating no cut or fill will be carried out in association with Stage 18 or 19 within the adjoining area mapped as Community Conservation Lands under the CLEMP, within the adjoining E2 conservation zone, or within any part of the Worimi Conservation Lands.

In addition, plans and a section (through the retaining wall at its closest point to the boundary) are to be provided demonstrating any retaining walls associated with Stage 18 would be located wholly within the development site, and adequately setback from the future boundary with the Worimi Conservation Lands to enable future maintenance of the retaining wall to be carried out wholly within the site.

- (k) Schedule 2 Part E – Prior to Issue of Subdivision Certificate for Each Stage - Condition E23 is by amended the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

E13 Community Management Statement

- 1) A final Community Management Statement setting out the by-laws which control the operation and management of the subdivision must be prepared in accordance with the *Community Land Development Act 1989*, to facilitate the registration of the community subdivision to the satisfaction of the Certifying Authority. The Statement must deal with the management of all community property.
- 2) The draft Community Management Statement (provided in Annex I of the PPR, dated December 2009) is to be amended to include the following:
 - a) Material dealing with the management of all Community property.
 - b) Material dealing with additional items which allow for the effective development, staging and management of the community scheme.
 - c) Necessary documentation for the creation of the road as an Open Access way and any necessary Statutory Service Easements.
 - d) A by-law that establishes that landscaping and revegetation shall be maintained in accordance with the approved Landscaping and Revegetation Plan (refer to Condition B14).

e) A by-law that is to impose the following duties on the Community Association to comply with the CLEMP:

- i) To comply with the CLEMP, to keep a copy, to make sure it is updated, and to make it available to all lot owners and subsidiary bodies.
- ii) To retain a suitably qualified person to ensure compliance with the CLEMP.
- iii) To carry out such conservation related tasks and programs as are necessary or appropriate.
- iv) To carry out annual reviews of the CLEMP for the first three years following release of the subdivision certificate for the Stage 4 of the development.

3) The final Community Management Statement (CMS) is to include the following plans:

- a) Design Guidelines (as required by Condition **E10 and E22**);
- b) Community Lands Environmental Management Plan (as required by Condition **E11**);
- c) An Aboriginal Reserve Cultural Heritage Management Plan (as required by Condition **B23**);
- d) A Bushfire Management Plan (as required by Condition **B8**). The plan should identify that the Community Association is responsible for the cost of works associated with the community lot;
- e) A Stormwater and Groundwater Management Plan (as required by Condition **B11**) prepared by a suitably qualified civil engineer, in accordance with the recommendations of section 6 of the *Amended Water Cycle Management Strategy* (prepared by Martens Consulting Engineers, dated December 2009, provided in Annex D of the Submissions Report); and,
- f) A flood evacuation plan (as required by Condition **B12**).

Note: Ultimately all recreation amenities and the community centre will become the property and responsibility of the Community Association. The management of all areas of open space, any recreation facilities and the community centre will remain the responsibility of the Aspen to manage until all civil construction activities have been completed and the title is registered.

- (l) Schedule 2 Part E – Prior to Issue of Subdivision Certificate for Each Stage - Condition E21 is added by the insertion of the **bold and underlined** words / numbers as follows:

E21 Management of adjoining infrastructure

Prior to the issue of a Subdivision Certificate for Stage 18 or 19, confirmation or certification from an appropriately qualified engineer is to be provided to the satisfaction of National Parks and Wildlife Service that the following matters have been satisfied in relation to the 4WD track constructed under the Fern Bay Voluntary Planning agreement:

- a) **that any retaining walls in Stage 18 have been constructed in accordance with the plans approved by the Department under Condition B24 and are contained wholly within the development site;**
- b) **that construction works have not impacted on the 4WD track, or if there have been some impacts, repairs to return the infrastructure to its original condition have been carried out;**
- c) **the ground level within the existing Worimi Conservation Lands (prior to adjustment by the proposed boundary adjustment) has not been altered;**
- d) **the ground level within the site (including the land to be transferred to the Worimi Conservation Lands) next to the 4WD track bollard line (within 0.6m of the bollard line and greater where possible) has not been altered, and the ground level beyond 0.6m from the bollard line has a batter slope not greater**

than 1 metre height change for every 6 metres in distance, up to the point of the retaining wall;

- e) stormwater infrastructure associated with Stages 18 and 19 has been constructed in accordance with the plans required to be approved under Condition B9; and
 - f) bollard and cabling (to a design and standard agreed within National Parks and Wildlife Service) has been installed along the eastern side of the access track between Seaside Boulevard and the 4WD track.
- (m) Schedule 2 Part E – Prior to Issue of Subdivision Certificate for Each Stage - Condition E22 is added by the insertion of the **bold and underlined** words / numbers as follows:

E22 Design Guidelines for Commercial Development

Prior to the issue of a Subdivision Certificate for Stage 19, design guidelines for the development of the commercial lots are to be submitted to and approved by the Secretary. The guidelines are to be developed in consultation with Council and should incorporate a masterplan with indicative building envelopes demonstrating how the lots would be developed coherently, with appropriate onsite parking and landscaping in accordance with Council requirements.

The approved guidelines are to be incorporated into the Community Management Statement required by Condition E13 prior to the issue of a Subdivision Certificate for Stage 19.

End of Modifications to MP 06_0250 MOD 9

Appendix B

Modification No 8 Stamped Plans

STAGING & LOT TABLE			
STAGE	LOTS	TOTAL	SUPER LOTS
1	DP 280005	COMPLETED - 105	
2	DP 280008	COMPLETED - 44	
3	DP 280021	COMPLETED - 33	
4	DP 280033	COMPLETED - 51	
5	53-103	COMPLETED - 51	
6	104-140	COMPLETED - 37	1 Commercial LOT (2299m²) LOT 140 - COMPLETED
7	141-171	COMPLETED - 31	
8A	172-218	COMPLETED - 47	
8B	801-835	35	
9	901-934	34	
10	1001-1036	36	
11			
12	DP 280037	COMPLETED - 50	
13	1301-1347	47	
14	1401-1435	35	
15	1501-1531	31	
16	1601-1661	61	
17	1701-1718	17	
18	430-445	16	4 LOTS (7687m²) LOTS 430, 434, 438 & 442
19	446-456	11	5 LOTS (7852m²) LOTS 447, 448, 454, 455 & 456, 1 Commercial (1166m²) LOT 446
20	457-474	18	6 LOTS (24477m²) LOTS 457, 458, 459, 467, 468 & 469
TOTAL (STAGES 8B,9,10, 13-20)		341	



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SCALE
 1: 5000
 REVISION DATE
 27/10/2015
 PLOT DATE
 27/10/2015
 DA NUMBER

DRAWN/CHKD BY
 IMc / AED
 CC NUMBER

DRAWING TITLE
 STAGING & LOT LAYOUT REV-J
 DEVELOPMENT
 PROJECT PLAN J
 FERN BAY SEASIDE VILLAGE
 NELSON BAY ROAD, FERN BAY
 CLIENT
 RAWSON COMMUNITIES PTY LIMITED

NORTH POINT SURVEYS (NSW) PTY LTD
 ATF NORTH POINT SURVEYS TRUST AEN 52 041 468 075
 SURVEYING AND LAND DEVELOPMENT CONSULTANTS
 Level 1 | 19 Stockton Street | Nelson Bay NSW 2315
 PO Box 378 | Nelson Bay NSW 2315
 Phone: 02 4984 2606
 Email: admin@northpointsurveys.com.au

29850 J

Appendix C

Modification No 9 Stamped Plans

