

Our Ref: 2013/0415

28 September 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 NUMBER 11

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(1A) 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).

BACKGROUND

The subject site is part of a large Community Title subdivision known as Fern Bay Seaside Village, 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 (Stages 1,2 and 3) of the residential estate were approved by the Land and Environment Court under DA 7-1996-1299-1, in October 2005. Stages 4 onwards were approved under Part 3A of the EP&A Act.

Some ten (10) modifications have been lodged, however, two were withdrawn. The project approval has thus been, in practice, modified on eight 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 increase lot yield and 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 (not approved). Provision of the plan detailing consistent layout and pattern across final stages (18-20), increase and lot yield and relocation of pump station (approved).
- MOD 10 – 26 June 2018: To correct an error in Condition A2(18)(c) to reflect the MOD 9 approved plans.

PROPOSED MODIFICATION

This modification application requests that the relevant authority, the NSW Department of Planning and Environment, amend condition A2 *Staging (12)(c)* in the Project Approval MP 06_0250; amend condition B5 Construction of connection to Nelson Bay Road (at Stage 14); and amend condition E6.

Specifically, the requested amendments are as follows:

- Amend condition *A2 Staging* (12)(c) in its entirety to remove the requirement for the completion of the northern intersection and access road with Nelson Bay Road prior to the release of Stage 14.
- Amend condition *B5* and remove reference to “must be constructed as part of Stage 14”.
- Amend condition *E6* to reflect the required roadworks not be linked to the subdivision certificate for Stage 14, to reflect amendments to conditions A2 and B5.

It is therefore proposed that the above mentioned conditions be amended to reflect and be worded as followed:

- *A2 Staging*
(12) Staging 14 comprises:
(a) *Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;*
(b) 35 lots;
(c) ~~Northern extension of Seaside Boulevard, including an intersection with Nelson Bay Road (northern intersection); and~~
(d) Construction of Corymbia Park¹ (R5), including recreation facilities
- *B5*
The northern extension of Seaside Boulevard and upgrade intersection with Nelson Bay Road (as identified on ‘Staging & Lot Layout, Sheet 1 of 21, drawing 29850J, prepared by North Point Surveys (NSW Pty Ltd) dated 27/10/2015 must be constructed ~~as part of Stage 14.~~ The works (including the new intersection) must be designed and constructed at the cost of the proponent.

The rest of Condition B5 to remain.
- *E6*
All roadworks (including restoration of disturbed areas) and/or traffic control facilities which affect a State road (including the shared footway/cycleway² and new intersection with Nelson Bay Road) shall be completed to the satisfaction of Council/RTA, ~~prior to issue of a subdivision certificate for the stage of which they are a part.~~

The subject modification does not propose to remove the condition relating to the construction of the intersection onto Nelson Bay Road. It does however propose to allow the registration of Stage 14 prior to the construction and completion of the intersection that will be provided at the northern most point of the residential estate.

As such, this application seeks to apply for the modification of the above mentioned items respectively, pursuant to *Section 4.55(1A)* of the EP&A Act 1979.

PLANNING CONSIDERATIONS

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

¹ Please note that Corymbia Park is now referred to as Waratah Park, but Condition A2 identifies the park in Stage 14 as Corymbia Park.

² The shared footway/cycleway is already complete.

Part 3A projects which have development consent have to be approved under section 4.55 of the *EP&A Act 1979*.

This modification falls under the category of a *Section 4.55(1A)* – Modification involving minimal environmental impact.

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 the consent if:

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

ADDITIONAL WORKS UNDERTAKEN SINCE MODIFICATION NUMBER 9 (2017)

Modification No 9 to the project approval proposed the removal of the secondary access (northern access point) at Seaside Village. At that time, the northern extent of Seaside Boulevard was to be provided with a cul-de-sac and then a hard-surfaced emergency egress lane was proposed from the cul-de-sac head to Nelson Bay Road. This was to cater for emergency access from the northern end of Seaside Village. Traffic and bushfire issues were addressed. Consultations were also undertaken with Port Stephens Council, the community and relevant state agencies (e.g. RMS, RFS).

Modification No 9 was determined by the then Planning Assessment Commission (PAC) who determined that the proposed northern emergency access/egress should not be constructed and a new intersection (as originally proposed in the Part 3A approval) should be provided.

Since this time construction works are complete on Stage 14 under the approval (although Stage 14 is not subdivided). This has seen Seaside Boulevard extend some 400m to the north (refer to Figures 1 and 2). Seaside Boulevard is now at the northern boundary of the estate. Thus, where an emergency egress lane was proposed under modification no 9 it is now covered by a dual lane divided road with asphalt pavement designed in accordance with Port Stephens Council Infrastructure Specification for a collector road.

The proponent of Seaside Village has also worked with Roads and Maritime Services (RMS) since January 2018 regarding the construction of the northern intersection with Nelson Bay Road. Since this time:

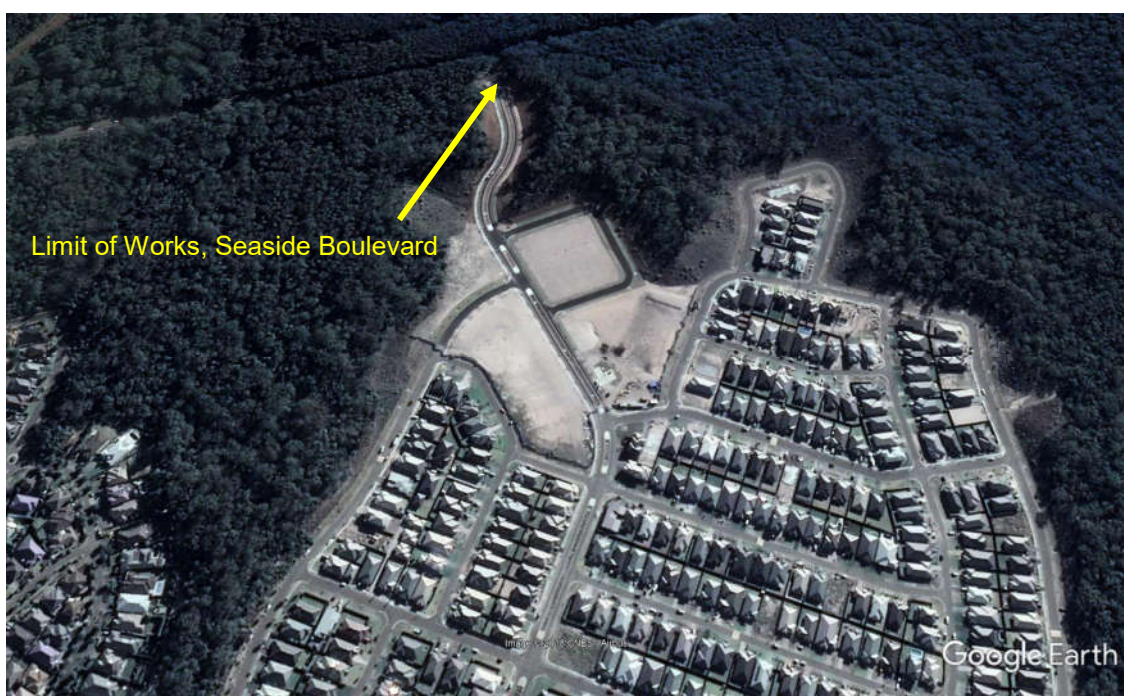
- RMS has approved the Nelson Bay Road intersection concept design;
- A W.A.D has been signed;
- Detailed design is at 95%;
- The Review of Environmental Factors (REF) has been submitted and assessed by RMS.

The intent of the modification is not to delay the intersection but to remove the requirement for it to be completed with Stage 14. Further discussions will occur with RMS and the W.A.D has been signed. The proponent will deliver a bank guarantee to the RMS for \$2.4 million (100% of construction works) prior to construction commencement due to commence early 2019. This is to be held as security that guarantees the works are completed.

Figure 1: Limits of Seaside Boulevard, at Determination of Mod 9, Nov 2017



Figure 2: Limits of Seaside Boulevard, after Determination of Mod 9, Aug 2018



ENVIRONMENTAL IMPACTS

The overall purpose of this modification is to release the subdivision certificate and registration of Stage 14 without the condition to deliver the northern intersection and access road onto Nelson Bay Road.

There are no known environmental impacts that would occur because of this modification to allow the registration of Stage 14 without first constructing the proposed intersection onto Nelson Bay Road from the northern most point of the residential estate.

Traffic Impacts

In considering the previously proposed modification to the access arrangement the applicant carried out an intersection analysis of the Nelson Bay Road / Fullerton Cove Road / Seaside Boulevard roundabout at Fern Bay to determine if the existing intersection has the capacity to cater for the full proposed modified development without the need of a second access to Nelson Bay Road.

This analysis utilised the Sidra 6.1 intersection modelling microsimulation model and in line with NSW Roads and Maritime Services (RMS) preliminary advice. The following conclusions were identified (refer attached *Intersect Traffic Intersection Analysis – Appendix A*):

- 1. The Fern Bay residential estate is currently generating less traffic than the average regional residential subdivision. This may indicate a higher than normal proportion of retirees living in the estate.*
- 2. The AM peak is the critical peak for analysis of the capacity and operation of the roundabout.*
- 3. The roundabout has sufficient capacity to cater for background traffic growth and full development of the Fern Bay residential estate through to 2030.*
- 4. Given existing traffic generation from the completed sections of the subdivision is less than the average regional values provided within the RMS Technical Direction TDT2013/04 which have been used in this assessment it is likely this assessment is conservative and the roundabout is likely to operate satisfactorily beyond 2030.*
- 5. In 2030 the mid-block traffic volumes on Nelson Bay Road will be of the order of 2,600 vtp/h (AM and PM). This indicates Nelson Bay Road is close to its mid-block capacity (LoS D) and widening to four lanes (two lanes in each direction) will be required. This work would be likely to require additional left turn slip lanes into both Seaside Boulevard and Fullerton Cove Road that would improve the intersection performance and provide additional capacity in the intersection or even conversion of the intersection to traffic signals. Importantly it is considered that it is the traffic volumes on Nelson Bay Road that would drive the intersection upgrade and not traffic volumes out of or into Seaside Boulevard.*

In summary, the operational efficiency of the existing Seaside Boulevard roundabout and the intersection with Nelson Bay Road assuming full development and a northern emergency access only, will maintain an 'A' level of service. As such potential delays, congestion and conflict would be within expected thresholds and do not warrant additional consideration.

Notwithstanding, this modification does not mean that the delivery of the northern access road and intersection onto Nelson Bay Road will not go ahead. Further reference is directed to the attached images (Appendix B) of the northern access road that will connect onto Nelson Bay Road. The images show that the road is currently well into its construction/ completion. The

northern access road will be completed in conjunction with the delivery of the intersection onto Nelson Bay Road following RMS approval of the design.

Bushfire

When modification no. 9 was submitted to the Department of Planning and Environment the modification was sent to the Rural Fire Service (RFS). It is our understanding that the RFS approved the emergency egress lane from Seaside Boulevard to Nelson Bay Road, in that, it could meet the requirements of the RFS guideline Planning for Bushfire Protection without constructing the intersection onto Nelson Bay Road. General Terms of Approval (GTAs) were issued by RFS for modification no. 9.

Since modification no. 9, civil works and the extension of Seaside Boulevard for Stage 14 have been undertaken. The only works left to undertake are the works within the RMS road reserve (i.e. Nelson Bay Road).

It is also identified that RFS were involved in the original Part 3A approval which identified the secondary (northern) access point. Although RFS, may be consulted as part of this modification it is considered that RFS have provided sufficient commentary and input in the past and that the proposed modification (removal of the link for delivery of the intersection onto Nelson Bay Road with Stage 14) would not have any impact on bushfire.

There are no physical works as part of this modification, only changes to the conditions of consent. Subsequent to the PAC approval of Mod 9, the emergency access has been upgraded by the extension of Seaside Boulevard to a dual lane divided road with asphalt pavement designed in accordance with Port Stephens Council Infrastructure Specification for a collector road.

A review of the new extension to Seaside Boulevard by a bushfire consultant is presented in Appendix C. The report concludes that the access road recently completed that connects Stage 14 (Seaside Boulevard) with Nelson Bay Road is able to comply with the Acceptable solutions for public roads as detailed in section 4.1.3 (1) of Planning for Bushfire Protection (PBP) 2006. Accordingly, the conditions of the RFS General Terms of Agreement (1st May 2017) have been complied with. In this regard, the partially completed road can be used as emergency access until the intersection on Nelson Bay Road is completed, and is not required for general use.

SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modification is requesting to register Stage 14 of Seaside Village prior to the construction and completion of the northern access road and intersection onto Nelson Bay Road. The proposed modification will not change the existing/ future use, lot yield, lot layout or overall subdivision envelope of Seaside Village.

The proposed development will still meet the objectives of the R2 – Low Density Residential Land Zone of the *Port Stephens Local Environmental Plan 2013* and will still contribute to the expansion and delivery of 35 lots as per the approved lot delivery of Stage 14.

Stage 14 will continue to meet the required works and conditions of the consent. The proposed modification will not prevent the delivery of the access road and intersection onto Nelson Bay Road. The delivery of the access way will occur once all relevant approvals are obtained from RMS and the construction of the intersection is finalised. It is anticipated that construction will commence early 2019.

ADDITIONAL INFORMATION

It is noted that condition A2 of the consent also allows variations to the extent and scope of works within each stage subject to market conditions. In this regard the dual process of obtaining consent under the EP&A Act (i.e. subdivision certificate for Stage 14) and an approval under the Roads Act from RMS do not align. The proponent is requesting the construction of the new intersection of Seaside Boulevard and Nelson Bay Road not be linked to Stage 14. The process to construct the intersection has been actioned by the proponent and RMS, however, it is requested that a subdivision certificate of Stage 14 be allowed to be released while the Roads Act approval is still in train. The proponent and the RMS is nearing completion on the final design approval, and a W.A.D has been signed. We note the proponent will place a \$2.4 million bond for 100% of the constructed works as part of the contract with the RMS.

CONSULTATIONS

This modification has not yet been placed on public exhibition and as such no public submissions have been made on this proposed modification. As noted previously, consultations have been undertaken in 2018 with RMS on the new intersection of Seaside Boulevard/Nelson Bay Road and will continue to occur. Purchasers of residential lots have also been consulted about the proposal to remove the intersection's link to Stage 14.

Overwhelmingly, the purchasers of Stage 14 wish to register the land as a matter of urgency. Many are experiencing financial hardship and cannot afford any further delays to registration. Stage 14 purchasers have provided letters of support for this modification along with the local State member, Tim Crakanthorp (Appendix D).

CONCLUSION

It has been proposed to remove reference to the completion and delivery of the future northern access road and intersection onto Nelson Bay Road prior to the release of Stage 14 of Seaside Village, Fern Bay. Under *Section 4.55(1A)* of the *EP&A Act 1979* the consent authority (Department of Planning & Environment), can modify a development consent granted by it should it be satisfied that the proposed modification is of minimal environmental impact and is satisfied that the development to which the consent as modified is substantially the same development to which the consent was originally granted for.

Both traffic and bushfire impacts have substantially improved and certainty and security of the northern access way delivery can now be achieved.

It is for the above reasons that the proposed modification meets the requirements to be granted consent for the modification as requested.

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 blue ink, appearing to read 'D Holloway'.

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