

Our Ref: 13/0415  
17 December 2018

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

Dear Madam,

**RE: MP 06\_0250 SEASIDE ESTATE, FERN BAY – MODIFICATION NO. 11  
RESPONSE TO SUBMISSIONS**

## **1. INTRODUCTION**

This letter has been prepared by Monteath and Powys Pty Limited (M&P) on behalf of Fern Bay No. 1 Pty Ltd (the Proponent) in response to the submissions and comments received in relation to the Section 75W Modification (Modification No.11) to Major Project 06\_0250 at Seaside Estate, Fern Bay. This letter addresses the issues raised by the submissions and comments provided by the Department of Planning following the exhibition period.

## **2. BACKGROUND**

The Section 75W modification was placed on public exhibition by the Department of Planning and Environment on the 29 October 2018 with the closing date for submissions being the 12 November 2018.

The Department of Planning and Environment also referred the Section 75W Modification to a number of government agencies for comment on the proposed modification. The following agencies were consulted and invited to provide comment on the modification:

- Port Stephens Council (PSC)
- NSW Transport Roads & Maritime Services (RMS)
- NSW Rural Fire Service (RFS)
- Transport for NSW (TfNSW)

This letter responds to both public submissions and those made by government agencies and Council.

### **3. RESPONSE TO PUBLIC SUBMISSIONS**

#### **Overview**

The Department received a total of 28 public submissions to the exhibition of Modification No. 11. It is noted that nine (9) of these provide support to the proposal, while there were eighteen (18) objections. One submission (1) just provided comments only.

Of the government agency and community groups that responded one (1) provide support to the proposal, three (3) provide comments, and two (2) objected to the proposed modification.

Overall, there were 34 submissions made during the exhibition of the modification of which ten (10) provided support to the proposal, four (4) provided comments only, and twenty (20) objections were submitted.

The following issues were noted from the responses submitted:

1. Timing for Completion of the Intersection
2. Liability and Responsibility to Complete the Intersection
3. Increased Risk for Residents – Bushfire and Emergency Services
4. Interference with Bus Services and Traffic Movements
5. Health and Financial Implications of Future Residents in Stage 14

These issues are addressed in the relevant sections below.

Prior to addressing these issues, it should be reiterated that the modification proposes to remove the link between the subdivision certificate for Stage 14 with the construction of a new intersection at Seaside Boulevard/Nelson Bay Road. This is not to say that the new intersection will not be completed, as it is proposed to link the new intersection works to the subdivision certificate for Stage 19.

It should also be noted that the Executive Committee for the Fern Bay Seaside Estate which represents circa 630 land owners of the Community Association has given its endorsement of this modification. The Executive Committee letter of endorsement is provided in Appendix (A)

#### **Timing and Completion of the Intersection**

The public submissions indicated concerns regarding the timing and completion of the intersection of Nelson Bay Road/Seaside Boulevard (the northern access/egress of Seaside Estate). The developer has completed the internal road works to the relevant connection point required (i.e. within the boundaries of the residential estate) for the intersection and is working with RMS to complete the intersection within the Nelson Bay Road reserve. A WAD (Works Authorisation Deed) has been signed by the developer, with detailed designs and a Review of Environmental Factors currently being assessed by RMS.

The Proponent is continuing to work with RMS to obtain approval to commence construction. The construction of the intersection will be completed in approximately 26 weeks following approval to commence. A schedule of timing (Appendix B) has been provided by the civil contractor to show how the works will progress once the relevant approvals from RMS are obtained.

The aim of this modification is to move the requirement to construct the new intersection at Nelson Bay Road/Seaside Boulevard to a later stage (Stage 19) in the development, allowing the release of Stage 14 subdivision certificate prior to the formal WAD process for the intersection being completed.

### **Liability and Responsibility to Complete the Intersection**

The modification of conditions A2 Staging (12)(c), B5 and Statement of Commitments No. 31 of the consent does not remove the requirement / liability / responsibility to construct the intersection, it merely changes the timeframe for the delivery of the intersection and allows the issuing of the subdivision certificate and registration of Stage 14 to proceed prior to the completion of the intersection, preventing further delays to the purchasers of Stage 14 residential lots.

As noted above the Proponent has completed the road works within the estate to the relevant connection point required for the intersection, with the pending approval from RMS required to complete the intersection works within the RMS road reserve. It is proposed to construct the new intersection as part of Stage 19 instead of Stage 14.

The WAD process requires the payment of a bond to RMS for 100% of the estimated costs (\$2.4m) of the road works, which can only be redeemed by the developer once the intersection has been constructed.

### **Increased Risk to Residents – Bushfire and Emergency Services**

The submissions raised concerns regarding the safety of residents and emergency services should the intersection not be completed. Concerns included:

- the state of the temporary road access / fire trail as it is not clearly visible from Nelson Bay Road
- the drain, gravel stockpiles, concrete barriers and locked gate present serious obstacles for emergency vehicles
- along with the potential for bushfires this summer is the increased risk due to environmental factors, and the potential for loss of life increased as the existing road to and from the development has previously been blocked in a storm event
- additional residents and vehicle movements will also create additional risk.

In addressing these matters, it should be noted that the modification does not remove the requirement for the intersection to be constructed and as such construction can be completed once the relevant approvals have been received from the RMS.

In addition, the fire trail which currently exists where the proposed new intersection is to be located has been in place since the initial construction phases of the Fern Bay Seaside Estate.

The Proponent has consulted with the Rural Fire Service (RFS) since the receipt of RFS submission to the Department and has implemented measures as requested by the RFS, including new double locked gates and removal of material stockpiles located adjacent to the access gates (refer to pictures below). During consultation the RFS also requested RMS be consulted in relation to obtaining RMS approval to clear vegetation within the Nelson Bay

Road reserve in order to make the existing road access / fire trail more visible from Nelson Bay Road. The Proponent is currently in consultation with RFS and RMS to progress this matter.



**Photograph 1:** Double gates installed per RFS request



**Photograph 2:** Current Fire Trail looking into the Estate from double gates towards Stage 14

Nonetheless, the fire trail allowing a northern egress point as part of the Seaside Estate has always been and continues to be in place.

### **Interference with Bus and Traffic Movements**

Comments were received in relation to the existing bus service to the development which identified that the service is limited and restricted until the intersection is constructed. Comments noted that a recent storm event saw both the entry and exit lanes of the development blocked for a considerable amount of time, and that an alternative access point is needed to enable evacuation in an emergency and provide better traffic flow and public transport route. These concerns are noted, and the Proponent is working with RMS to progress the intersection. We reiterate that the northern access / egress point for emergency access has always been in place.

### **Health and Financial Implications of Future Residents in Stage 14**

Several letters of support were received, encouraging the modification. A number of future residents / existing purchasers of Stage 14 identified that they were under financial and emotional stress as a result of the new intersection not being completed, and thus their residential lots could not be registered in order for them to commence their new home

construction. As a result of the modification being approved the future residents / existing purchasers of Stage 14 will be able to start construction of their new homes following the issue of a subdivision certificate and registration of the subdivision. Registration of the subdivision would be undertaken immediately after the approval of this modification.

#### **4. RESPONSE TO GOVERNMENT AGENCY AND COUNCIL SUBMISSIONS**

Four (4) government agencies including Council were advised of the modification and responded within the public exhibition period regarding the proposed modification. Two community organisations responded, one supporting the modification the other objecting. The objections raised by one community organisation are similar to matters that were addressed above as part of the public submission response.

The following agency submissions and Council comments were identified:

##### **Port Stephens Council**

- Council noted that the modification relates to the timing of the construction of the northern extension of Seaside Boulevard to Nelson Bay Road.
- Council raised no objection to removing the requirement for the road construction being completed prior to the issue of a subdivision certificate for Stage 14, subject to the required road intersection works being completed at a later stage.

##### **NSW Rural Fire Service**

The RFS raised two matters being:

1. The application has not provided sufficient detail on the commitment and timing of the construction of the required intersection to Nelson Bay Road.
2. Existing access arrangements are not suitable for emergency vehicle access. Detail of a minimum design standard to be used as a temporary emergency access.

In relation to point 1, the trigger for the construction of the new intersection will be Stages 19 of the development.

In relation to point 2, The Proponent has consulted with the Rural Fire Service (RFS) since the receipt of RFS submission to the Department and has implemented measures as requested by the RFS, including new double locked gates and removal of material stockpiles located adjacent to the access gates. The RFS also requested RMS be consulted in relation to obtaining RMS approval to clear vegetation within the Nelson Bay Road reserve in order to make the existing road access / fire trail more visible from Nelson Bay Road. RMS have been consulted as requested by RFS, however, no concurrence to clear additional vegetation has been received from RMS at the time of writing.

A letter from Bushfire Planning Australia is provided in Appendix C as a response to RFS.

## **Transport for NSW**

Transport for NSW (TFNSW) identified two issues:

1. Removal of the second access road would have consequences on future public transport services for the subdivision. The through road is required for the provision of a direct and efficient bus service.
2. The removal of the access will result in additional vehicle kilometres of travel for residents and other road users.
3. The proposed modification will delay future bus routes servicing the new subdivision

In regards to point 1, in accordance with consent condition B5 the new intersection will be left in and left out only. The new intersection will provide for direct access to the estate heading south. Any bus heading north will still have to use the current existing roundabout at Nelson Bay Road/Fullerton Cove Road.

In relation to point 2, TFNSW's comments are noted. Nonetheless, the RMS identified in their submission that the new intersection is not required from a capacity and network operation perspective. The proposed modification is not removing the requirement to complete the new intersection but delaying the intersection to a later stage, neither of which will result in additional vehicle kilometres being travelled.

In relation to point 3, The Proponent has completed the internal road works to the relevant connection point required (i.e. within the boundaries of the residential estate) for the intersection and is working with RMS to complete the intersection within the Nelson Bay Road reserve. The concerns identified by TfNSW will be rectified on completion of the intersection.

## **NSW Transport Roads & Maritime Services (RMS)**

The RMS identified several matters as part of their response:

1. The proposal does not provide any proposed timing for the delivery of the intersection works should the developer not undertake any further development beyond Stage 14.
2. Security under the Roads and Maritime WAD (Works Authorisation Deed) relates to the delivery of works by the developer to cover construction costs. RMS will not be responsible for completing the works should they not be delivered by the developer.
3. The Department should be satisfied that the appropriate security is held to deliver the works on behalf of the development under a WAD with RMS to ensure the construction of the intersection is completed without costs to RMS, Transport for NSW or Council.

As stated previously, it is proposed that the intersection will be linked to the subdivision certificate for Stage 19 in the estate. The Proponent has already invested significantly into the delivery of Stage 19 and therefore has a vested interest to complete all works associated with Stage 19 and hence the northern intersection with Nelson Bay Road.

The Proponent will not gain RMS approval for the intersection works without providing the securities / bonds as required by the WAD to the value of 100% of the construction works of \$2.4m.

The Proponent has completed the internal road works required within the boundaries of the existing estate and is working with RMS to complete the intersection within the Nelson Bay Road reserve. The construction of the intersection will be completed once the relevant approvals have been finalised.

## **5. CONCLUSION**

In summary, there was both support and objection to the proposed modification. The main concern raised in the community submissions implied that the Proponent intends to remove the requirement to complete the intersection, compromising the residents and services to the development. The intention of the modification, however, is to change the timing only for the construction of the new intersection at Nelson Bay Road / Seaside Boulevard. The Proponent has completed the internal road works required within the boundaries of the existing estate and is working with RMS to complete the intersection within Nelson Bay Road reserve. The construction of the intersection will be completed once the relevant approvals have been finalised. The modification will allow existing purchasers within Stage 14 to begin construction of their new homes.

Overall, it is proposed to modify conditions A2 Staging (12)(c), B5 and Statement of Commitments No. 31 of the consent. This does not remove the requirement to construct the intersection it merely changes the timeframe and allows the registration of the Subdivision Certificate for Stage 14 to proceed prior to the completion of the intersection, preventing further delays to the existing purchasers.

The Proponent proposes to link the timing of the intersection to Stage 19 in the development ensuring its completion.

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

Yours faithfully

**MONTEATH & POWYS PTY LIMITED**



**Darren Holloway**

Registered Planner

[d.holloway@monteathpowys.com.au](mailto:d.holloway@monteathpowys.com.au)

## **APPENDIX A: FERN BAY EXECUTIVE COMMITTEE ENDORSEMENT**

BCS STRATA MANAGEMENT PTY LTD  
ABN 86010633351

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Ph. 4927 4600  
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9 November 2018

Rawson Communities  
PO Box 3099  
RHODES NSW 2138

by email: [Michael.radovnikovic@rawson.net.au](mailto:Michael.radovnikovic@rawson.net.au)

Attention: Michael Radovnikovic

Dear Mr Radovnikovic

**RE: MODIFICATION OF CONSENT 11 BY FERN BAY NO.1 PTY LIMITED  
DP 270466 – SEASIDE VILLAGE FERN BAY**

At a meeting of the Executive Committee of DP270466 held today the committee resolved to endorse the Modification of Consent 11 by Fern Bay No.1 Pty Ltd.

A copy of the minutes of this meeting is attached for your attention.

Yours faithfully

**BCS STRATA MANAGEMENT PTY LIMITED**

*Susan McCluskey*


Susan McCluskey  
**ASSOCIATION MANAGER**

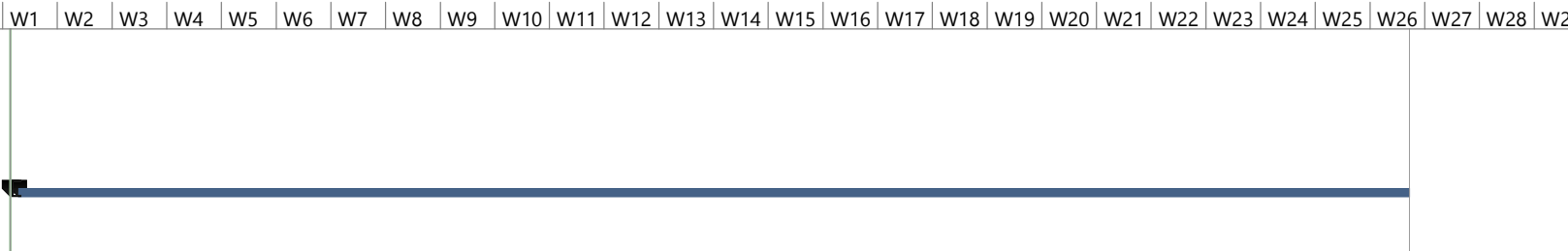
Encl.

*Enhancing Community Living*

## **APPENDIX B: CONSTRUCTION SCHEDULE**

<p>Concept Program</p> <p>Fern Bay WAD intersection</p> <p>Nelson Bay Road and Seaside Boulevard</p>
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ID		Task Name	Duration	Predecessors	Resource Names																													
1																																		
2																																		
3		Fern Bay WAD intersection, Seaside Boulevard and Nelson Bay Road																																
4		Site Establishment	10 days																															
5		Install Traffic Control	5 days	4																														
6		Clearing	15 days	5																														
7		Bulk Earthworks	20 days	6																														
8		Pavement Construction	30 days	7																														
9		Installation of Services, Barriers	15 days	8																														
10		Prime and Asphalt	15 days	9																														
11		Topsoiling, Landscaping	5 days	10																														
12		Linemarking, Signage	5 days	11																														
13		Disestablish	10 days	12																														



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graph TD; W1[W1] --> W2[W2]; W2 --> W3[W3]; W3 --> W4[W4]; W4 --> W5[W5]; W5 --> W6[W6]; W6 --> W7[W7]; W7 --> W8[W8]; W8 --> W9[W9]; W9 --> W10[W10]; W10 --> W11[W11]; W11 --> W12[W12]; W12 --> W13[W13]; W13 --> W14[W14]; W14 --> W15[W15]; W15 --> W16[W16]; W16 --> W17[W17]; W17 --> W18[W18]; W18 --> W19[W19]; W19 --> W20[W20]; W20 --> W21[W21]; W21 --> W22[W22]; W22 --> W23[W23]; W23 --> W24[W24]; W24 --> W25[W25]; W25 --> W26[W26]; W26 --> W27[W27]; W27 --> W28[W28]; W28 --> W29[W29];
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NOTES:

Program is based off scope of works derived from Conceptual Layout dated January 2018 pages 1 and 2

The program is based off being able to work normal hours 7am to 6pm Monday to Friday and 8am to 1pm on Saturdays. No Night work has been allowed for.

This program is based on all approvals being received prior to starting on site.

The program also only details working weeks and therefore excludes public holidays, RDO's and other non working time. These items will need to be added to the program once additional information is available.

Project: Intersection Program Date: Tue 27/11/18	Task		Group By Summary		External Tasks		Manual Task		Finish-only	
	Split		Rolled Up Task		External Milestone		Duration-only		Deadline	
	Milestone		Rolled Up Critical Task		Inactive Task		Manual Summary Rollup		Critical Task	
	Summary		Rolled Up Milestone		Inactive Milestone		Manual Summary		Progress	
	Project Summary		Rolled Up Progress		Inactive Summary		Start-only			

## **APPENDIX C: BUSHFIRE PLANNING AUSTRALIA LETTER**

**Ref:** 1708  
**RFS Ref:** D18/7750  
**Date:** 17<sup>th</sup> December 2018

**Attn:** Alan Bawden  
NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

Via: [a.bawden@nsw.rfs.gov.au](mailto:a.bawden@nsw.rfs.gov.au)

Dear Alan,

**RE: SSD MODIFICATION (NO. 11) SEASIDE VILLAGE, FERN BAY**

In response to your correspondence dated 14<sup>th</sup> November 2018 from the NSW Rural Fire Service the following is provided:

**1. Commitment and Timing to Complete the Intersection**

The Proponent; Fern Bay No.1 Pty Ltd, has completed the internal road works to the relevant connection point required (i.e. within the boundaries of the residential estate) for the permanent intersection and is working with RMS to complete the intersection within the Nelson Bay Road reserve. A WAD (Works Authorisation Deed) has been signed by the Proponent, with detailed designs and a Review of Environmental Factors currently being assessed by RMS.

The Proponent is continuing to work with RMS to obtain approval to commence construction. The construction of the intersection will be completed in approximately 26 weeks following approval to commence.

It is proposed to construct the new intersection as part of Stage 19 instead of Stage 14, and it is understood that the subdivision certificate for Stage 19 will not be issued until the intersection works with Nelson Bay Road have been completed to the satisfaction of RMS.

The WAD process requires the payment of a bond to RMS for 100% of the estimated costs (\$2.4m) of the road works, which can only be redeemed by the Proponent once the intersection has been constructed.

## 2. Emergency Access Arrangements

Following receipt of the RFS correspondence, immediate action was taken to rectify the existing temporary emergency access to Nelson Bay Road from the development. The portion of the existing emergency access track (**Plate 1**) within the development site has been rectified as shown in **Plates 2-3**. This required the removal of stockpiled material and clearing of debris. The existing single lockable gate was replaced with a double swing gate which will enable two-way traffic.

The newly reformed access track between the dual carriageway (Seaside Boulevard) and the estate boundary satisfies the Acceptable Solutions of section 4.1.3 of Planning for Bushfire Protection 2006.

Bushfire Planning Australia; on behalf of the Proponent, approached the NSW Roads and Maritime Services (RMS) requesting landowners' consent to undertake the necessary hazard reduction works within the land between the development site and the sealed road carriageway; specifically clearing of vegetation to improve sightlines and visibility of the emergency access road.

The RMS advised they are assessing our request and identified several issues; namely ecology and width of the of the access.



**Plate 1: Condition of emergency access before rectification works**



**Plate 2: Emergency access after debris and material stockpiles removed and double gates installed**



**Plate 3: Looking south towards Seaside Boulevard within Stage 14**

I trust this information is sufficient for your purposes; however should you require any further details or clarification please do not hesitate to contact myself.

Yours sincerely



Stuart Greville  
Director  
Accredited Bushfire Practitioner  
BPAD-26202

