

Modification of Approval

Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, I modify the consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Anthea Sargeant
Executive Director
Key Sites and Industry Assessments

Sydney 30 April, 2019

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
Applicant:	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:	06_0250 MOD 11: amend the timing of provision of the northern intersection with Nelson Bay Road.

SCHEDULE 2

The consent is modified as follows:

- (a) Schedule 1 – is amended by the insertion of the **bold and underlined** words / numbers as follows:

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 <u>including a new intersection with Nelson Bay Road</u>
Applicant:	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 11: amend the timing of provision of the northern intersection with Nelson Bay Road.

- (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;
 - (c) Northern extension of Seaside Boulevard, including an intersection with Nelson Bay Road (northern intersection) **(as modified by B5)**; 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) 22 lots; 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) 21 lots, including 8 commercial lots; and
 - (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) 34 lots

~~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.~~

- (b) 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);
- 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 Boulevarde, Fern Bay prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 04 March 2015;*
- f) *Section 75W Modification to Application 06_0250 (28 June 2010) – Seaside Boulevarde, Fern Bay (MOD_6) prepared by Cardno on behalf of Fern Bay No. 1 Pty Ltd, dated 04 March 2015; and*
- g) *Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Seaside Boulevarde, 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 Boulevarde, 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;*
- j) **MP 06 0250, Seaside Estate, Fern Bay, Modification prepared by Monteath & Powys Pty Ltd dated 23 May 2018; and**
- k) **MP 06 0250, Seaside Estate, Fern Bay, Modification Number 11 prepared by Monteath & Powys Pty Ltd dated 28 September 2018, Response to Submissions prepared by Monteath & Powys Pty Ltd dated 17 December 2018 and further information submitted by Rawson Communities dated 4 March 2019 and 5 March 2019.**

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

- (c) Schedule 2 Part B – Prior to issue of Construction Certificate, Condition B5 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

B5 Construction of connection to Nelson Bay Road (at Stage 14)

The northern extension of Seaside Boulevard and upgraded intersection with Nelson Bay Road (as identified on the 'Staging and Lot Layout', Sheet 1 of 21, drawing 29850J, prepared by North Point Surveys (NSW Pty Ltd) dated 27/10/2015) **must be fully constructed prior to 31 December 2019 or prior to the release of any subdivision certificate for Stages 18 and 19, whichever occurs first** ~~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 following requirements of the Roads and Traffic Authority (RTA) must be met prior to issue of a construction certificate for these works:

- The proposed new vehicular access to/from Nelson Bay Road shall be designed/constructed with left turn deceleration and acceleration lanes in accordance with the RTA's Road Design Guide, including a provision for on road cyclists and a central median to prevent right turn in and out movements. Intersection lighting shall be provided to Australian Standards;
- Geometric road design shall be in accordance with the RTA Road Design Guide.

Pavement design shall be in accordance with the AUSTROADS Pavement Design Guide;

- The proponent shall enter into a Works Authorisation Deed with the RTA for any works within the Nelson Bay Road reservation. In this regard, the developer is required to submit detailed design plans and all relevant additional information, as may be required by the RTA's Works Authorisation Deed documentation, for each specific change to the State road network for the RTA's assessment and final decision concerning the work;
- The applicant shall obtain a Road Occupancy Licence from the RTA; and,
- Section 138 concurrence under the Roads Act 1993 shall be obtained from the RTA.

Note 1: This condition amends Statement of Commitment no. 31.

Note 2: The conditions of approval do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other structures works on the classified road network. The RTA must provide a final consent for each specific change to the state road network prior to the commencement of any work. Further changes to the intersection design may be required during the detailed design phases, as part of the Works Authorisation Deed (WAD) process. The RTA will not undertake further design reviews until the WAD is executed and RTA fees and charges are paid.

- (d) Schedule 2 Part E – Prior to issue of Subdivision Certificate for Each Stage is amended by the insertion of Condition E23 as follows:

E23 Financial Security for Works (as required by Condition B5)

1. Prior to the issue of any subdivision certificate following the approval of MOD 11 a bank guarantee must be lodged with the Minister for Planning or their delegate for the completion of the approved roadworks to provide a second (northern) connection for the development to/from Nelson Bay Road (as required by Condition B5).
The bank guarantee will:
 - a) be for a minimum amount of 150% of the value of the works contained in the executed Works Authorisation Deed (WAD) issued by the RMS;
 - b) name the Minister for Planning and the Department of Planning and Environment (ABN No. 38 755 709 681) as the relevant beneficiaries; and
 - c) have no expiry date.
2. Bank Guarantee reduction option:
 - a) once a minimum of 50% of the value of the roadworks (as required by Condition B5) have been completed to the satisfaction of RMS and correspondence from the appointed Independent Verifier and a Quantity Surveyor has been submitted to the Department to verify the value of roadworks, the bank guarantee may be changed (subject to the Department's approval) from 150% to 75% of the value of the works contained in the executed WAD issued by RMS; and
 - b) upon completion of the roadworks (as required by Condition B5), the bank guarantee will be released by the Minister or their delegate within 28 days upon receiving the Notice of Practical Completion issued by RMS for the approved roadworks.
3. If the Proponent fails to obtain a Notice of Practical Completion from the RMS for the approved roadworks (as required by Condition B5), the Minister for Planning or their delegate may call upon the bank guarantee at any time.
4. The bank guarantee will be issued by a financial institution under the supervision of the Australian Prudential Regulatory Authority.

Note 1: All charges for the establishment and operation of the bank guarantee shall be borne by the Proponent.

Note 2: For clarity, in addition to the bank guarantee referred above, the Proponent will provide to the RMS additional security in the amount equivalent to 100% of the estimated cost of works as required by the WAD, which will remain with the RMS for a period of 12 months (defects liability period) after the date RMS issue the Notice of Practical Completion.

Note 3: A Bank Guarantee means an irrevocable and unconditional undertaking:

- a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014, as amended, supplemented or substituted from time to time; and
 - b) on terms acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such amount as is required under this condition) on demand.
- (e) Schedule 2 Part E – Prior to issue of Subdivision Certificate for Each Stage is amended by the insertion of Condition E24 as follows:

E24 Temporary Emergency Access During Construction of the Northern Intersection

A temporary emergency road must be provided from Seaside Boulevard to Nelson Bay Road prior to release of a subdivision certificate for Stage 14. The temporary emergency road must comply, as a minimum, with section 4.1.3(3) Fire trails of Planning For Bushfire Protection 2006 and remain operational at all times until the northern intersection has been opened to the public.

End of modification

(MP 06_0250 MOD 11)