

## Notice of Modification

### Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate, under delegation executed on 16 February 2015, I approve the section 75W modification of the project approval referred to in Schedule 1, subject to the modified conditions of approval outlined in Schedule 2.



Chris Ritchie  
**Manager**  
**Industry Assessments**

Sydney

2 JUNE

2015

#### SCHEDULE 1

**Development Consent:**

**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.

**On land comprising:**

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 6:

- Amend Condition B4 (construction of a shared footpath/cycleway along Nelson Bay Road) and Condition B13 (Dune Restoration/Stabilisation Management Plan).

## SCHEDULE 2

- (1) In Schedule 1, Part C – Definitions, delete all references to 'Director-General', 'Department of Planning', and 'Minister for Planning' and replace them with 'Secretary', 'Department of Planning and Environment' and 'Minister for Planning', respectively.
- (2) In Schedule 2, Condition A2, delete the current point (1)(d) in its entirety and replace it with the following:
  - (d) construction of a shared footpath/cycleway on Nelson Bay Road along the full frontage of Lot 11 in Community Plan 270488 and Lot 1 in DP 881206.
- (3) In Schedule 2, Condition A4, delete the word "and" at the end of point (3) and replace the period at the end of point (4) with a semi colon and insert the following immediately after point (4):
  - (5) *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 10 November 2014; and
  - (6) *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.
- (4) In Schedule 2, delete Condition B4 in its entirety and replace it with new Condition B4 as follows:

### **B4 Construction of Shared Footpath/Cycleway along Nelson Bay Road**

The shared footpath/cycleway along Nelson Bay Rd must be constructed prior to the issue of the Subdivision Certificate that creates the 380<sup>th</sup> residential lot, or within 12 months of the date of approval of Modification 6, whichever occurs first.

The footpath/cycleway shall extend along the full frontage of Lot 11 in Community Plan 270488 and Lot 1 in DP 881206, or as far as practical without the acquisition of additional property. The footpath/cycleway must be designed to tie into the existing shoulder of Nelson Bay Road. An acceptable road shoulder treatment for cyclists shall be provided where it is not practical to provide a path separated from Nelson Bay Road, without acquisition of property. The shared footpath/cycleway shall be designed and constructed at the cost of the Proponent, in accordance with the requirements of Council.

The RMS must be consulted where there is a potential interface between the road pavement and the shared footpath/cycleway.

Detailed plans for the footpath/cycleway shall be approved by Council, prior to the issue of the Construction Certificate for the civil works that create the 380<sup>th</sup> lot, or within 12 months of the date of approval of Modification 6, whichever occurs first.

**Note:** clearing and/or Bulk Earthworks Construction Certificates may be issued prior to the approval of a Construction Certificate for the civil works.

- (5) In Schedule 2, delete Condition B13 in its entirety and replace it with new Condition B13 as follows:

**B13 Dune Management**

The Proponent shall prepare a Dune Management Report in consultation with the Board of Management of the Worimi Conservation Lands and to the satisfaction of the Secretary prior to the issue of the final Subdivision Certificate. The Dune Management Report shall identify measures to reduce adverse impacts on the development in the event that the transgressive dunes encroach on the development prior to 2095.

The Proponent will be responsible for dune management until the Community Conservation Lands are transferred to the Community Association. Following the transfer of the Community Conservation Lands to the Community Association, the Community Association will be responsible for dune management in-perpetuity. The Dune Management Report must provide separate management measures for the two management timeframes as follows:

- (1) Dune Management Prior to the Issue of the final Subdivision Certificate:
- (a) the Proponent shall be responsible for preparation of the Dune Management Report, which must include:
    - (i) an analysis of up to date data regarding dune transgression rates (all data collected up until the completion of the subdivision works);
    - (ii) details of any management measures required to be undertaken to manage dune transgression on-site prior to the completion of the subdivision works;
    - (iii) an Adaptive Management Plan to be implemented by the Community Association that provides details of the monitoring of dune transgression rates and trigger levels at which point management actions will be implemented once the Community Conservation Lands to the Community Association are transferred to the Community Association; and
    - (iv) details of potential management measures to be implemented if trigger levels are reached and timing for review of the plan.
  - (b) should the Dune Management Report indicate that dune transgression management measures are required to be undertaken prior to the completion of the project (i.e. at the completion of the subdivision works), the Proponent shall undertake these management measures prior to issue of the final Subdivision Certificate.
- (2) Dune Management following the transfer of the Community Conservation Lands to the Community Association:
- (a) The dune management measures provided in the Adaptive Management Plan are to be incorporated into the Community Lands Environmental Management Plan.
  - (b) The Community Association shall be responsible for dune management in perpetuity, in accordance with the Adaptive Management Plan.
- (6) In Schedule 2, delete Condition E4 in its entirety and insert new Condition E4 as follows:

**E4 Dune Management Works**

In the event that the Proponent is required to complete dune management works in accordance with Condition B13(1)(a)(ii), the Proponent shall provide evidence to the satisfaction of the Secretary these works have been completed prior to the issue of the final Subdivision Certificate.

- (7) In Schedule 2, Part E, Condition E17, delete the words “two hundred and fiftieth” and replace them with the words “380<sup>th</sup> residential lot”.

**END OF MP 06\_0250 MOD 6**

---