

Our Ref: 80215013
Contact: Jenny Smithson

10 November 2015

Ms Kate MacDonald
Senior Planner, Industry Assessments
Department of Planning & Environment
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Dear Ms MacDonald,

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**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**

Further to your recent advice to Mr Michael Radovnikovic of Rawson Communities, we hereby submit an Application and Environmental Assessment lodged pursuant to section 75W of the Environmental Planning and Assessment Act, 1979 (the Act). The Application is to modify the above Part 3A Consent on behalf of Rawson Communities, the owners of the subject land referred to as the Fern Bay estate or *Seaside Village, Fern Bay* and is referred to by Cardno as proposed Modification 8 (MOD8).

1. INTRODUCTION

The requested modifications relate only to a subdivision of a superlot (proposed Lot 56) currently forming part of Stage 13 of the development. The proposed subdivision is entirely within the existing development footprint. The redesign proposes to subdivide the single superlot into 29 smaller lots or a size similar to those elsewhere in the estate.

On the basis that the proposed modifications will result in no change in the development footprint, have no impact on any conservation land, not impact on existing stages and have limited impact on adjacent residents (who may have purchased) given it is within a stage yet to be developed, we consider the proposed modifications to be minor. Accordingly, we believe there is no requirement to notify the proposal with the exception of the relevant referral agencies including the Council.

In addition to the required completed s75W Form and Political Donations Declaration Form (attached), the application comprises this letter and attached plans which outline:

- A revised layout for the superlot as part of Stage 13 (attached as drawing reference number 29850 J and titled '*Stages 13 & 14 Detail Plan Rev-J*');
- A description of the proposed changes in lot configurations and an Environmental Assessment covering the specific outcomes of the proposed modifications; and
- Recommendations for amendments to relevant conditions – included in the body of this letter.

A complete set up updated drawings for the entire estate can be provided upon request and/or upon approval of this application.

2. DESIGN DEVELOPMENT OF PROPOSED SUBDIVISION

As detailed on the attached plan, an approved superlot in Stage 13 bounded by Dune Drive, Norfolk Street, and Sandcastle Street, is proposed to be subdivided.

The subdivision will create 29 residential lots: 26 of the lots will be placed around the outside of the block with street frontages to existing approved roads. The remaining 3 lots are proposed to be battle-axe lots located in the centre of the block also accessed from these roads.

3. ENVIRONMENTAL ASSESSMENT

This Environmental Assessment addresses the following key issues of the proposed modification:

- Impact of the revised design on Port Stephens local planning controls and subsequent DA processes (including NSW Housing Code requirements);
- Lot sizes;
- Implications for s.94 development contributions;
- Consequences for the completed VPA for the site;
- Specific conditions of approval that require modification and new proposed wordings; and
- Consideration of any responses to submissions to the original Application that may be of relevance to this proposed modification.

These issues are addressed in the Assessment that follows.

3.1 DEPARTURES FROM THE APPROVED PROJECT PLAN AND LOCAL PLANNING CONTROLS

The Modification request is a minor departure from the approved Project Plan and seeks only one minor departure from Port Stephens planning controls, being a DCP control. The applicant seeks this departure in order to finalise the development of the Fern Bay Village.

A recent approved Modification for the South East Precinct of the estate proposed a design with lot areas equal to or greater than 500m². Similarly, in this application, no lots less than 500m² are proposed. Therefore, no variation to the LEP requirements is sought or required and consequently these matters do not need to be addressed in this application.

Approved Project Plan

Lot sizes

The currently approved Project Plan shows 19 lots as part of Stage 13 in the North East Precinct – one block containing 18 lots and one superlot.

The proposed subdivision would result in the development of the superlot in Stage 13 into 29 lots, with lot sizes ranging from 500m² to 1000m².

Port Stephens Local Planning Controls

We are aware that the Department is obliged to take local planning controls into consideration in assessment of proposals lodged under the former Part 3A of the EPA Act, but is not required to enforce these provisions. Cardno and Rawson Communities have been cognisant of the intent to meet the local controls wherever possible and have therefore decided not to pursue any design providing the creation of lots less than 500m², which would require a departure from Council's LEP provisions.

Furthermore, the design comprising this application requires only one departure from the Port Stephens DCP controls as outlined overleaf:

Port Stephens Development Control Plan 2014

Objectives											
C1.D	Lot Size & Dimensions	To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements.									
Requirements											
C1.12	Battle-axe Lots	<p>All lots provide direct street frontage</p> <ul style="list-style-type: none">Battle-axe lots are only considered when there is no practical way to provide direct street frontageRight of carriageway is constructed prior to the issuing of a subdivision certificate and is provided in accordance with Figure CB. <p>Figure CB Excerpt</p> <table><tr><th></th><th>Entry Width</th><th>Max Length</th><th>Misc</th></tr><tr><td>Dwelling House</td><td>3.6 m</td><td>30 m</td><td>Max 2 dwellings</td></tr></table>			Entry Width	Max Length	Misc	Dwelling House	3.6 m	30 m	Max 2 dwellings
	Entry Width	Max Length	Misc								
Dwelling House	3.6 m	30 m	Max 2 dwellings								

Response:

It is considered that the creation of 3 battle-axe lots provides the most efficient utilisation of land in this circumstance given the irregular shape of the superlot. This prevents an arrangement of lots across it in the usual manner without the creation of additional roads which are considered unnecessary additional infrastructure given the low density nature of Fern Bay.

The control requires that battle-axe carriageways are a minimum of 3.6 m in width and 30 m in length. Each of the 3 proposed carriageways complies with the width regulation and with the minimum length requirement.

No carriageway provides access to more than 2 lots and the rights of carriageway will be constructed as part of the subdivision as required by the DCP.

It is considered that the departure from the DCP guidelines resulting from the design which requires 3 battle-axe lots is minor and justified.

3.2 IMPACTS ON S.94 CONTRIBUTIONS & VOLUNTARY PLANNING AGREEMENT

Section 94 Contributions

Condition E20 of the approval requires the payment of section 94 contributions on a per lot basis and is not affected by the revised design. There are 28 more lots proposed in the revised plan than exist under the approved plan thus generating additional S.94 income for the Council than would otherwise be payable.

Voluntary Planning Agreement

The signed Planning Agreement will not be affected by the proposed modification. It applies only to contributions to be paid for works in the Worimi Regional Park and WSCA and these contributions are fixed annual payments, irrespective of the number of lots or design of the estate. The proposed redesign does not impinge on either the Regional Park or the WSCA.

3.3 RESPONSES TO SUBMISSIONS THAT ARE OF RELEVANCE TO MODIFICATION

Agency Submissions to the original application that are of relevance to this proposed modification are discussed below.

Transport for NSW (stamped 26 May 2009)

Transport for NSW raised various matters pertaining to sustainable transport practices. Those of relevance to the proposed amendment include:

- The proposed density of 7.5 dwellings per hectare would be inconsistent with the Lower Hunter Regional Strategy (12 dwellings per hectare) and would further limit the subdivision's ability to support a viable public transport service.

Response

The proposed amendment would partially address this issue in that the additional 28 lots proposed by this modification would assist in meeting the targets set within the Lower Hunter Regional Strategy, thus improving the viability for a public bus system.

Hunter New England Area Health Service (3 June 2009)

Inter alia, the submission by the Area Health Service raised a number of issues that would fall under the general heading of health promotion through urban design. Those that are relevant to this modification application include:

- Bus stops should be within 400 metres of all residential lots.

Response

The revised proposal is consistent with both of these requirements. All of the proposed residential lots would be within 400 metres of a bus stop.

4. RECOMMENDED AMENDMENTS TO RELEVANT CONDITIONS

The conditions sought to be modified are:

- Condition A1 – updating project description to reflect the changes;
- Condition A2 – reflecting the proposed staging and lot table information;
- Condition A3 – reflecting updated subdivision drawing plans;
- Condition A4 – referencing supporting documentation for this modification.
- Conditions B1, B14, B15, B16 & B23 – referencing the updated drawing plan/s.

The following provides the requested modifications to the current conditions of consent:

Condition A1 – Project Description

Proposed Change:

Change Part 2) only as follows:

2) Subdivision of land for the creation of 608 lots under a community title scheme (including 606 residential lots – inclusive of 16 superlots, triplexes and duplexes, and 2 commercial lots);

Reason for Change:

To reflect the amended number and type of lots for the approved plan (i.e. Stage 13).

Condition A2 – Staging

Proposed Change:

Change the wording of Stage 13 as follows (note balance of condition not in italics not altered):

(11) Stage 13 comprises:

- (a) Clearing, earthworks, roadwork, stormwater, and landscaping as well as servicing provisions for sewer, water supply, power and communications;
- (b) 47 lots;
- (c) Construction of swale to infiltration area 4;

Reason for Change:

To reflect the revisions associated with the proposed subdivision affecting Stage 13.

Condition A3 Project in Accordance with Plans

Proposed Change:

It is requested that the tables in Condition A3 be modified to reflect the latest revisions in the plans to accommodate the minor design changes in Stage 13. In this regard, it is proposed that all of the plans be updated and new plans and reference details for condition A3 be prepared and provided to the Department upon advice that the Department will approve this application. However, updated tables and plans can be provided prior to approval if required.

Reason for Change:

To reflect the revisions associated with the proposed subdivision redesign in Stage 13 once it is approved.

Condition A4 – Project in Accordance with Documents

Proposed Change:

Insert new clause within Condition A4 as follows:

- (5) *Section 75W Request to Modify the Minister's Approval of Project Application 06_0250 (28 June 2010) – Stage 13 – Seaside Boulevard, Fern Bay prepared by Cardno on behalf of Winten Fern Bay No. 2 Pty Ltd, dated 9 November, 2015.*

Reason for Change:

To reflect the revisions to the staging that have occurred post approval and those associated with the redesign of Stage 13.

Existing Conditions B5, B14, B15, B16 and B23

Reason and extent of Changes:

To reflect the revisions to the staging that have occurred post approval and those associated with the subdivision affecting Stage 13. These conditions require minor modifications to reference the most recent plan/s.

CONCLUSION

This letter summarises the extent of the modifications now sought to the existing project approval. Given the simplicity of the modification sought, the justification provided for seeking the modifications, and the fact that they only affect works internal to the estate, timely issuing of a modified approval is sought accordingly.

Thank you for your attention to this matter. If you have any queries or require additional information, please do not hesitate to contact me at your convenience.

Yours faithfully



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Enc: Subdivision Layout

cc:
Mr Michael Radovnikovic, Rawson Communities