



## ASSESSMENT REPORT

### Section 75W

#### Fern Bay Seaside Village, Fern Bay, Port Stephens Local Government Area MP 06\_0250 MOD 8

#### 1. BACKGROUND

This report is an assessment of a modification request seeking approval to modify the Project Approval for the Fern Bay Seaside Village (MP 06\_0250 MOD 8). The request has been lodged by Cardno on behalf of Fern Bay No. 1 Pty Ltd, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to subdivide one of the superlots (Lot 56) into 29 residential lots.

#### 2. SUBJECT SITE

The subject site is located approximately 18 kilometres (km) north of Newcastle and 6 km north of Stockton (see **Figure 1** and **Figure 2**). The site is located between two key coastal features, being the Hunter River to the west and Stockton Bight to the east.

The subject site covers an area of approximately 205 hectares (ha) and is largely vegetated. It is legally described as Lot 46 in DP 28008 and lots 1, 4 and 7 in DP 270466 and is located off Nelson Bay Road in Fern Bay.



Figure 1: Site Location



Figure 2: Subject Site

### 3. APPROVAL HISTORY

On 29 September 1997, the Land and Environment Court granted approval to a 208 lot residential subdivision. This consent has been modified on five occasions with the most significant modification being the relocation of 33 lots from the area adjacent to Nelson Bay Road to create a vegetated buffer.

#### SEPP 71 Master Plan

On 8 August 2006, the then Minister for Planning adopted a Master Plan (20-4-2005) prepared in accordance with clause 18 of *State Environmental Planning Policy No. 71 – Coastal Protection* over the site. The Master Plan was for a subdivision consisting of 947 residential lots, open space lots, a community nursery, conservation areas, recreational and commercial facilities, new public roads, fire trails, pedestrian trails and asset protection zones.

#### Major Project Approval

On 28 June 2010, the then Deputy Director-General, Development Assessments and Systems Performance approved MP 06\_0250 under Part 3A of the EP&A Act, for residential subdivision comprised of 370 residential lots, 38 superlots, two commercial lots and one community lot.

The Project Approval has been modified on seven occasions to:

- permit the subdivision of 21 superlots into 191 additional residential lots;
- amend the timing for the construction of the cycleway/footpaths, the provision of the plan detailing the location of detention basin 6, and the provision of the landscaping and revegetation plans for individual stages;
- amend the subdivision layout to incorporate stormwater detention basin 6 within the development footprint;
- undertake the Stage 8 subdivision works within two stages;
- amend the provision of infrastructure and services;
- amend the requirement for a shared footpath/cycleway and a Dune Restoration/Stabilisation Management Plan; and
- redesign the subdivision layout in the North East Precinct.

The development, as modified, currently comprises 561 residential lots, 17 super lots, two commercial lots, conservation areas, an open space network and a road network. To date, stages 4, 11 and 12 have been completed. Stages 5 to 7 and 8A are currently under construction.

### 4. PROPOSED MODIFICATION

On 12 November 2015, the Proponent lodged a section 75W modification (MP 06\_0250 MOD 8) seeking approval to subdivide one of the superlots (Lot 56) into 28 residential lots.

The Proponent has advised that the changes are required to finalise the development of the Fern Bay village and that the proposed subdivision layout is the most efficient use of the irregularly shaped superlot. In addition, the Proponent has advised that the proposed modification is appropriate on the basis that it will facilitate the subdivision of the superlots into residential lots in a similar fashion to the previous modification approvals.

### 5. STATUTORY CONSIDERATION

#### 5.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to section 75W modification requests to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the

original approval. As the modification request seeks to modify the conditions of the approval, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or his delegate) has the ability to determine the modification application.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or his delegate) may approve or disapprove of the modification of the project under section 75W of the EP&A Act.

## 5.2 Approval Authority

On 16 February 2015, the then Minister for Planning delegated responsibility for the determination of section 75W modification requests to managers and directors who report to the Executive Director, Key Sites and Industry Assessments where:

- the relevant local Council has not made an objection;
- a political donation disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The modification request complies with the terms of the delegation as Port Stephens Council has not made an objection, a political donation disclosure has not been made, and no public submissions by way of objection were received. Therefore, the Director, Industry Assessments may determine the modification request under the terms of the Instrument of Delegation.

## 6. CONSULTATION

The modification request was made publicly available on the Department's website on 12 November 2015. The Department also referred the request to Port Stephens Council (Council), Newcastle City Council (NCC), Office of Environment and Heritage (OEH), Rural Fire Service (RFS) and Roads and Maritime Services (RMS) for comment. Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

The Department received submissions from Port Stephens Council (Council), NCC, RMS, OEH and RFS. These submissions are summarised below.

**Council** raised no objection to the request, however, it requested the imposition of a new condition to ensure each battle-axe lot is provided with a concrete driveway.

The Department has recommended an additional condition of approval to ensure that the driveways for the battle-axe lots are constructed prior to release of the Subdivision Certificate.

**NCC** raised no objection to the application and advised that it had no comments.

**RFS** raised no objection to the request, however, it requested a condition to ensure all access roads comply with the requirements of *Planning for Bushfire Protection 2006*.

The Department has recommended a modification to Condition B8 to include this requirement.

**RMS** raised no objection to the application and advised the proposed modification would not result in any impacts on the State road network.

**OEH** raised no objection to the request, and advised that it would not have any adverse environmental impacts as the proposed lots are located within the approved development footprint.

As previously outlined, no public submissions were received.

## 7. ASSESSMENT

In its assessment of the modification application the Department has considered the following:

- the planning report provided to support the proposed modification (see **Appendix A**); and
- the Secretary's assessment report for the original Project Approval and subsequent modification requests.

Based on the above, the Department considers the key issues for assessment are changes to the lot yield and subdivision design, development contributions and consistency with the current conditions of approval. These issues are discussed in detail below.

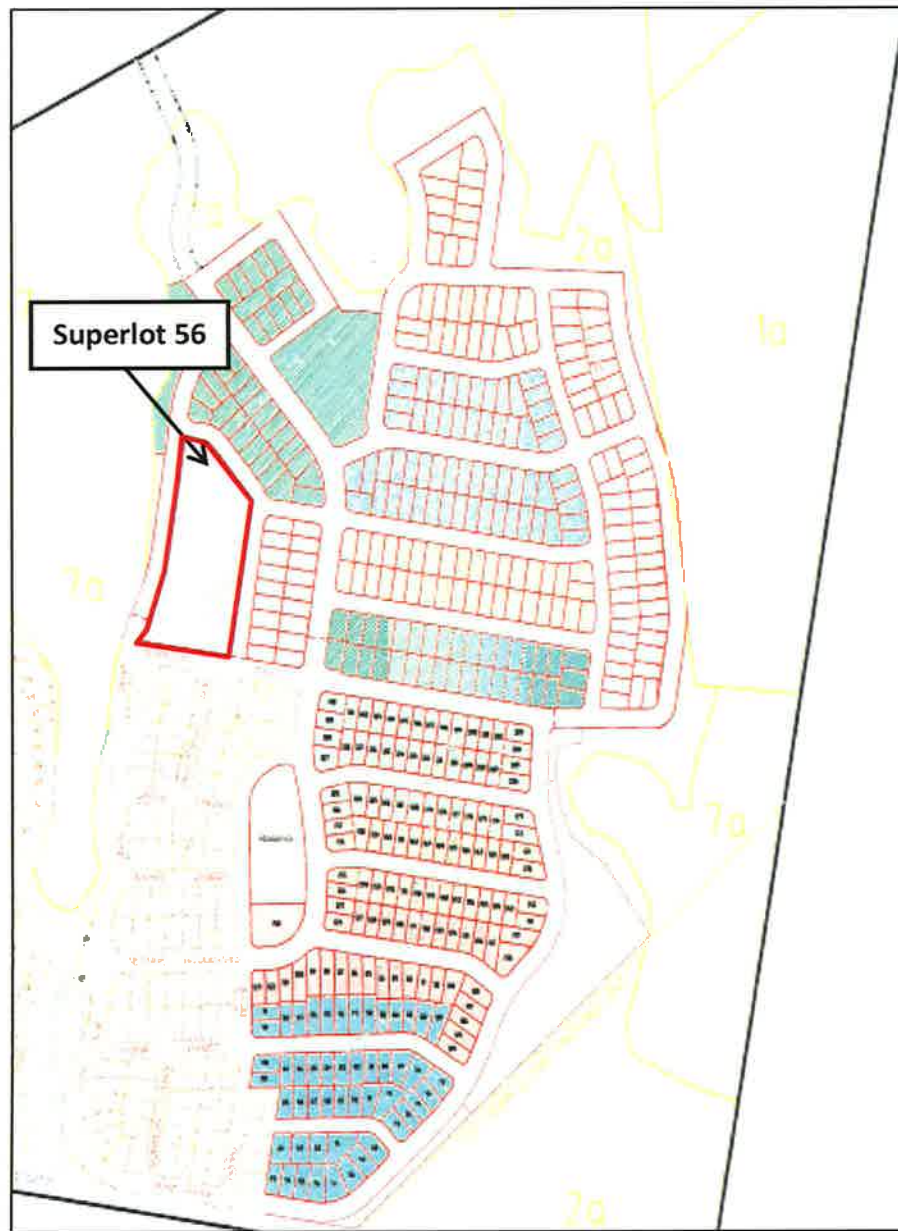
### 7.1 Increased Lot Yield and Subdivision Design

The modification request seeks approval to subdivide one of the superlots (Lot 56) into 29 residential lots. The proposed subdivision will result in an increase in the number of residential lots within Stage 13 from 19 to 47 lots and reduce the number of superlots from 17 to 16. The total number of lots will also increase from 580 to 608 (comprised of 590 residential lots, 16 superlots, and two commercial lots). A comparison of the approved and proposed Plan of Subdivision is provided at **Figures 3 and 4** overleaf.

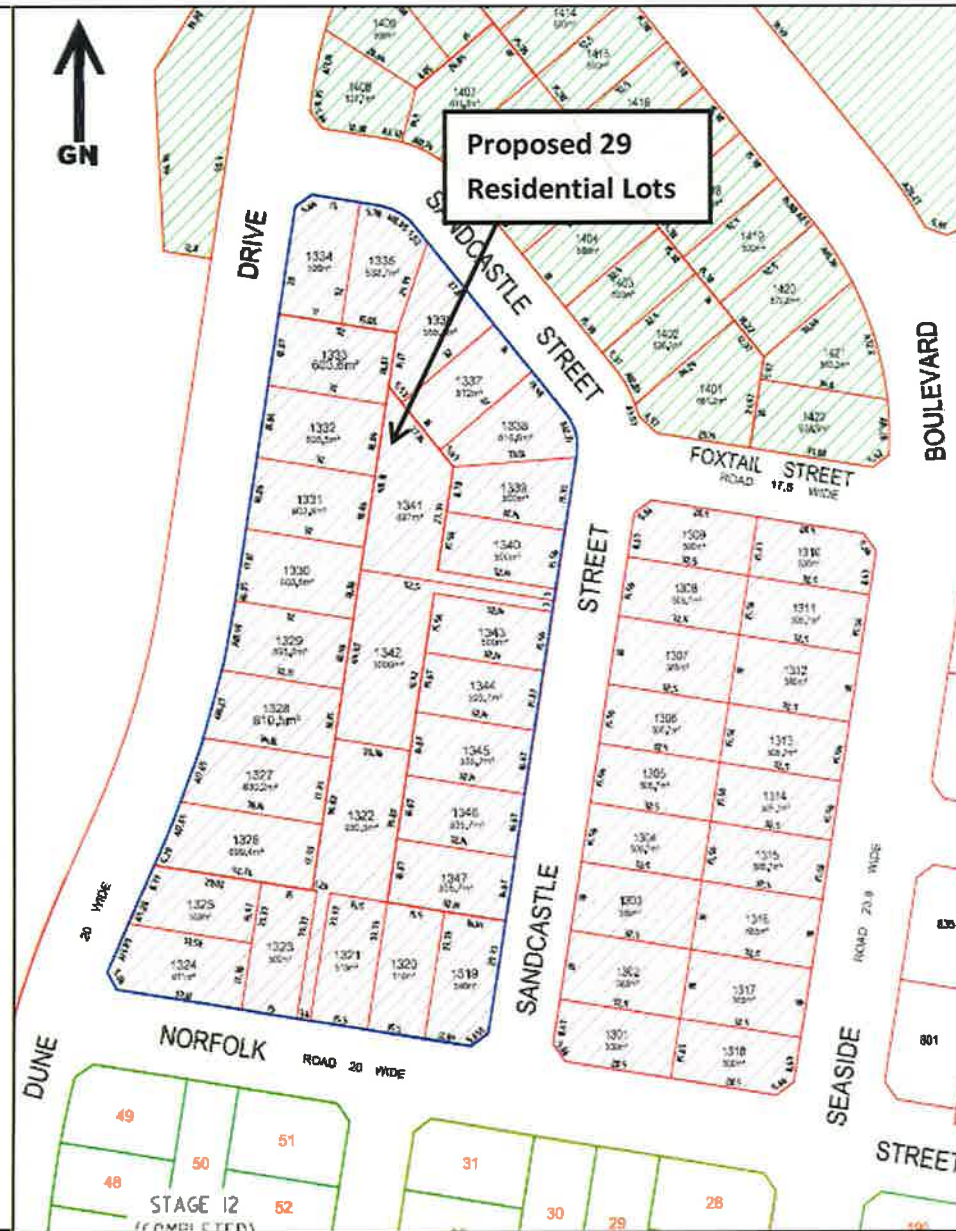
The Department notes that when the original Project Application was assessed the Proponent amended its application to create 38 superlots for future subdivision, on the basis that Council advised that its Local Environmental Plan (LEP) prohibited the construction of dwellings on lots less than 500 m<sup>2</sup> unless dwellings are approved concurrent to the determination of a subdivision application.

The proposed lots are in excess of 500 m<sup>2</sup> and are therefore consistent with the requirements of Council's LEP. In addition, the Department notes that the lots have been designed to integrate with the pattern of subdivision immediately north and east of Lot 56. Furthermore, as the traffic impacts associated with the future subdivision of the superlots was considered as part of the Department's assessment of the original project, the Department and RMS are satisfied that the proposed development will not result in any additional traffic impacts.

Given the above, the Department has concluded that the proposed modifications to the lot yield and layout are acceptable.



**Figure 3: Approved Layout**



**Figure 4: Proposed Subdivision**

## 7.2 Development Contributions

Condition E20 requires the Proponent to pay a section 94 contribution prior to the issue of each Subdivision Certificate to account for the proportional increase in lots associated with each stage of the development. As such no changes are required to Condition E20 to address the additional section 94 contributions required as a result of the proposed increase to the lot yield.

In addition, as the Voluntary Planning Agreement (VPA) is not linked to the number of lots created on-site, no changes are required to the VPA as a result of the proposed modification.

## 7.3 Consistency with the Existing Conditions of Approval

Condition B2 requires the Proponent to ensure all lots are located within 400 m of a bus stop. All of the proposed lots are within 400 m of the bus stop on Seaside Boulevard. As such, the Department is satisfied that the modification request is consistent with the requirements of Condition B2.

## 8. CONCLUSION

The Department considers the proposed modification is appropriate on the basis that: the changes meet the requirements of the existing Project Approval (as modified);

- the development footprint will remain unchanged; and
- it will not result in any additional environmental impacts beyond those assessed under the original development application.

Consequently, the Department has concluded that the modification application should be approved subject to the conditions recommended in the Instrument of Modification at Appendix B.

## 9. RECOMMENDATION

It is recommended that the Director, Industry Assessments, as delegate of the Minister for Planning, approve MP 06\_0250 MOD 8, subject to the conditions recommended in the Instrument of Modification at **Appendix B**.



Kate MacDonald

**Team Leader**

**Industry Assessments**

16/12/15



Chris Ritchie

**Director**

**Industry Assessments**

16/12/15

## **APPENDIX A: MODIFICATION REQUEST SSD 5169 MOD 3**

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Refer to the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7379](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7379)

## **APPENDIX B: INSTRUMENT OF MODIFICATION**

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