

## ASSESSMENT REPORT

### Section 75W Modification Fern Bay Seaside Village, Fern Bay MP 06\_0250 MOD 9

#### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval (MP 06\_0250) for a community title residential subdivision at Fern Bay in the Port Stephens local government area. The request has been lodged by Fern Bay No. 1 Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to modify the approved northern access road from a local road to gated emergency only access, delay the provision of the road, revise the subdivision layout and subdivide super lots in Stages 18-20 into 40 residential lots.

#### 2. SUBJECT SITE

The subject site covers an area of 205 hectares and is located off Nelson Bay Road in Fern Bay, approximately 18 kilometres north of Newcastle (see **Figures 1 and 2**).

The site is located between two key coastal features, being the Hunter River to the west and Stockton Bight to the east. The site is surrounded by naturally vegetated land on all sides, including the Worimi Conservation Lands to the south, a regional conservation park managed by National Parks in conjunction with the Worimi Aboriginal Traditional Owners. The site and surrounding areas form part of the Newcastle Bight dune barrier system and incorporate key wildlife corridors.



Figure 1: Site location



**Figure 2:** Subject site (base image source: Nearmap)

Most of the residential subdivision, incorporating 528 lots, has been completed. This application relates to the final four stages of the subdivision, being 14, 18, 19 and 20 (see **Figure 3**).

### **3. APPROVAL HISTORY**

#### **3.1 Development Approval**

On 29 September 1997, the Land and Environment Court granted approval for a 208 lot residential subdivision at Fern Bay. The consent has been modified on five occasions. Ultimately, 182 residential lots were completed under the approval, comprising Stages 1 to 3 of the overall Fern Bay subdivision.

#### **3.2 State Environmental Planning Policy No. 71 – Coastal Protection (Master Plan)**

On 8 August 2006, the then Minister for Planning adopted a Master Plan (20-4-2005) for the site prepared in accordance with clause 18 of State Environmental Planning Policy No.71 - Coastal Protection. 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 (including the lots approved under the earlier development approval).

#### **3.3 Major Project Approval**

On 28 June 2010, the then Deputy Director-General, Development Assessments and Systems Performance, approved MP 06\_0250 for a 411 lot residential subdivision to be constructed across 17 stages (Stages 4 to 20). The approval included:

- bulk earthworks and vegetation clearing
- subdivision of land for the creation of 411 lots under a Community Title scheme (including 370 residential lots, 38 super lots, two commercial lots and one community lot);
- creation of ecological conservation areas to be managed as Community Conservation Lands (under the community lot)

- creation of a recreational and open space network, including formal parks and an Aboriginal cultural heritage reserve
- creation of two sites for commercial areas and a recreational/community centre area
- construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road
- construction of stormwater management measures
- creation of asset protection zones
- associated landscaping
- works to connect to reticulated services (water, sewerage, power and telecommunications).

The Project Approval has been modified on six occasions as outlined in **Table 1** below:

MOD Number	Details	Date
1	Amend the timing for the construction of the cycleway/footpaths, provision of the plan detailing the location of detention basin 6, and provision of landscaping and revegetation plans for individual stages.	1 April 2011
2	Remove the requirement for an Aboriginal Reserve Cultural Heritage Management Plan	Withdrawn
3	Amend the subdivision layout to incorporate stormwater detention basin 6 within the development footprint.	1 May 2012
4	To allow Council to accept a security (e.g. a bond) in lieu of subdivision works.	Not proceeded with
5	Undertake Stage 8 subdivision works within two stages, amend the provision of infrastructure and services; amend the subdivision and road network layout.	1 April 2014
6	Amend the requirement for a shared footpath/cycleway and a Dune Restoration/Stabilisation Management Plan.	2 June 2015
7	Increase lot yield from 473 to 580 lots and reconfigure the subdivision layout in Stages 8B, 10 and 13 to 17.	22 June 2015
8	Subdivide one of the super lots (Lot 56) into 29 residential lots	16 December 2015

The approved development, as modified, currently comprises 590 residential lots, 16 super lots, two commercial lots, one community lot, conservation areas, an open space network and a road network. The only stages that are not registered are Stages 14 and 18, 19 and 20. All other stages have been completed.

### 3.4 Voluntary Planning Agreement

In conjunction with the approval, the Proponent entered into a VPA with the Office of Environment and Heritage (OEH) for rehabilitation and vegetation management works within the Worimi Conservation Lands (WCL) adjoining to the south of the site. The VPA was part of an ecological compensatory package established under the original masterplan to offset the unavoidable loss of vegetation and threatened species habitat on the site as a result of the development. In addition to vegetation management, the VPA includes funding to OEH for track rehabilitation works, maintenance works, and a small boundary adjustment between the site and the WCL.



#### 4. PROPOSED MODIFICATION

The proposed modification request seeks approval to:

- modify the approved access from Seaside Boulevard to Nelson Bay Road through approved Stage 14 from a public road providing access for all residents to a gated emergency only access road, including a cul-de-sac turning circle to the northern end of Seaside Boulevard
- revise the subdivision layout in Stages 18 to 20, by replacing the approved superlots with standard residential lots, resulting in an increase in 40 lots
- relocate a waste water pump station (P3) from the western to the eastern side of Stage 18
- make relevant changes to conditions, and delete a condition relating to the location of a detention basin which has already been satisfied.

The scope of the modification was subsequently revised with a Response to Submissions (RtS) report on 12 April 2017. Further supplementary responses were received on 7 July 2017, 22 August 2017, and 6 September 2017.

The modified proposal now seeks to:

- change the northern road to an emergency only road, and delay its provision until the release of the final 23 lots (currently required to be provided prior to release of Stage 14)
- revise the subdivision layout in Stages 18 – 20, (with a reduced development footprint compared to the original modification request), resulting in an increase of 32 lots overall (reduced from an increase of 40)
- relocate the waste water pump station (P3) in Stage 18 (no change)
- make relevant changes to conditions and delete a condition that has already been satisfied (no change)
- make an administrative correction to the number of lots within Stage 14 (to recognise that a an approved super lot is a large single residential lot).

The Proponent has also requested that should the proposed change to an emergency only road not be supported, then consideration be given to delaying the provision of the local road.

The location of the proposed modifications within the estate are shown in **Figure 3** and a detailed description of the proposed modification is provided below.

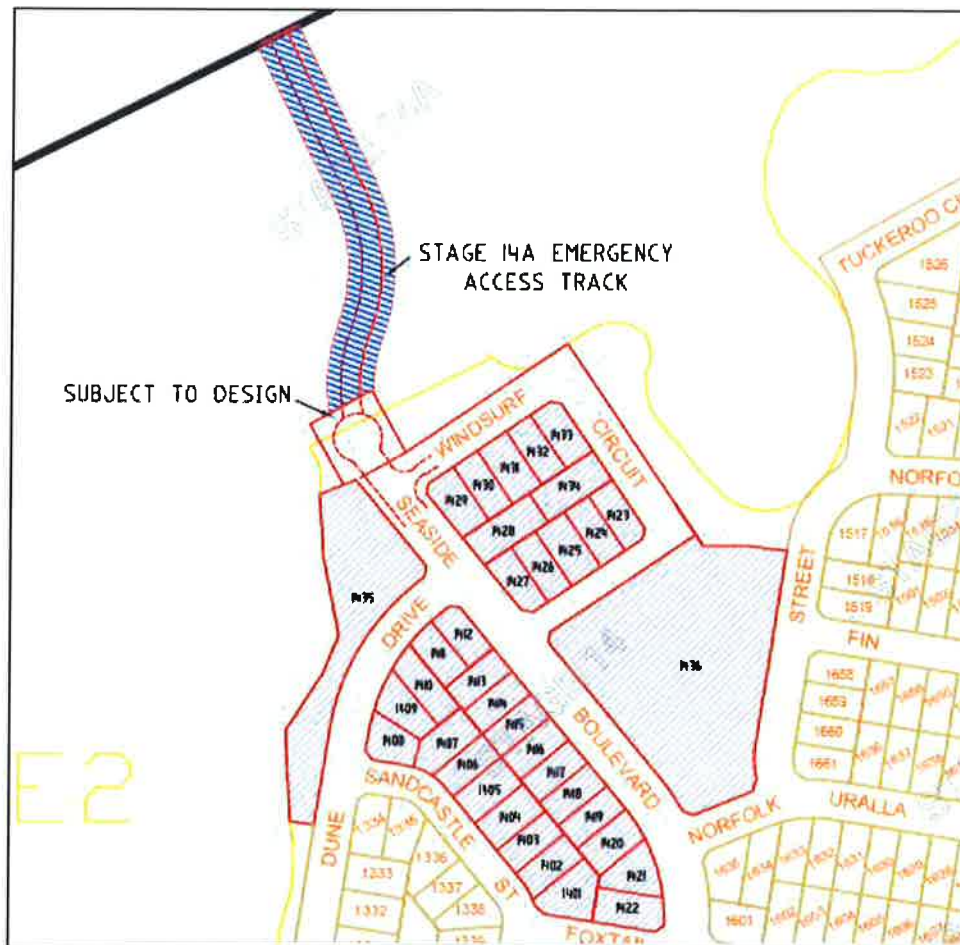


**Figure 3 – Location of proposed modifications (base image source: Nearmap)**

#### 4.1 Northern Road

The proposed modification seeks to change the approved northern access road running through approved Stage 14 of the development, from a public road to an emergency only access road (refer to **Figure 4**) and to delay its provision until prior to the release of a Subdivision Certificate for the 609<sup>th</sup> residential lot.

The proposed emergency access road would involve construction of an eight metre wide all-weather sealed two lane road connecting the northern portion of Seaside Boulevard (Stage 14) to Nelson Bay Road. It would allow the evacuation of residents and access for emergency services during a bushfire. The emergency access road would be dedicated to Council similar to other roads in the estate. Gates would be installed at both ends of the emergency access road to ensure it is used for emergencies only.



**Figure 4** – Proposed northern emergency access road (source: Proponent's supplementary RtS)

The Proponent justifies the use of the road for emergency only access on the basis that the existing intersection of Seaside Boulevard and Nelsons Bay Road would have sufficient capacity to manage traffic from the estate when it is fully developed.

The Proponent requests the proposal be assessed on this basis. However, the Proponent has also advised that, should the change to an emergency only access road not be supported, an alternative solution should be considered, to retain the approved northern access road but delay its delivery until the release of a Subdivision Certificate for the 609<sup>th</sup> residential lot.



## 4.2 Subdivision Layout Stages 18 - 20

Key changes to the subdivision of Stages 18 to 20 are shown in **Figures 5** and **6** and include:

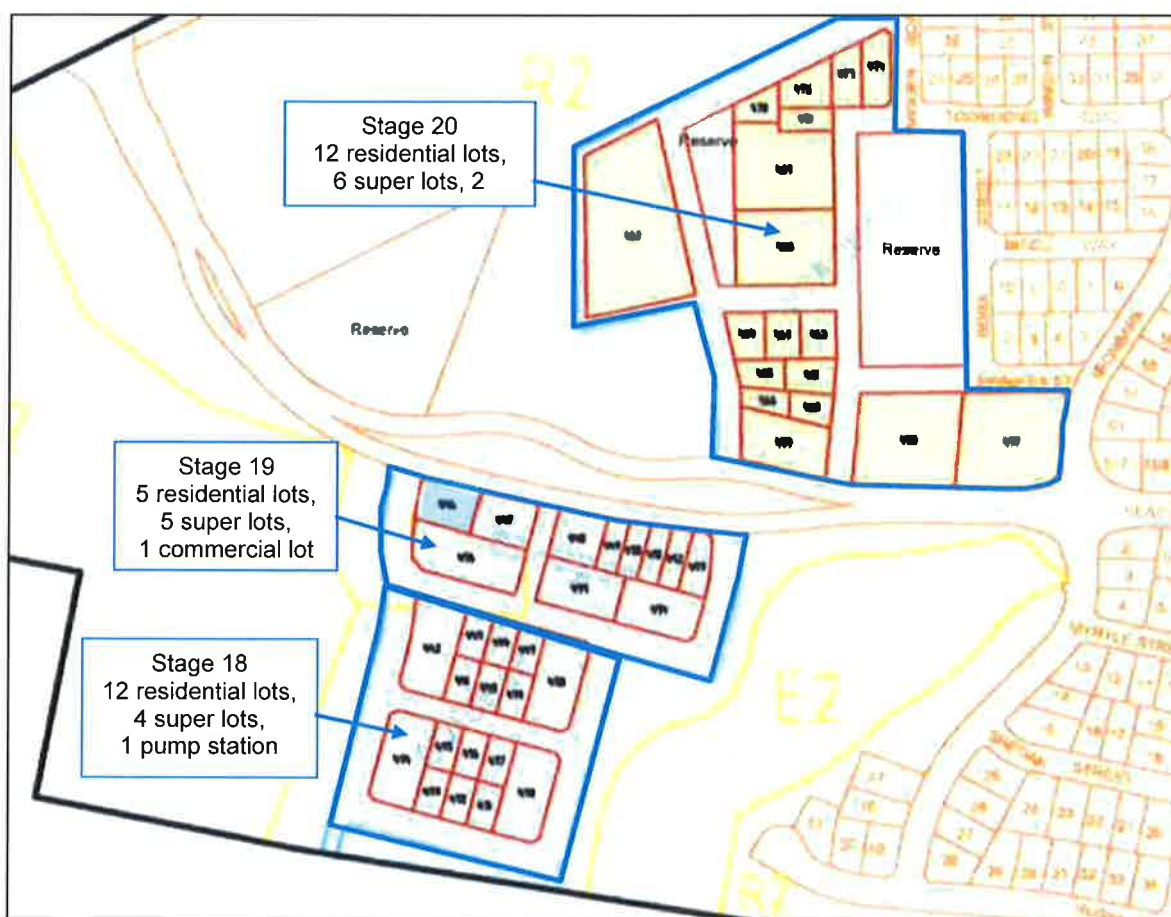
- deletion of 15 super lots
- creation of an additional 40 residential lots
- creation of an additional seven commercial lots
- reduced development footprint in Stage 20
- changes to road layouts
- changes to bulk associated earthworks
- deletion of vehicular access from Stage 18 to the adjoining WCL.

Overall, the changes result in an additional 32 lots on the site. A summary of the proposed change in lot yield is provided in **Table 2** below.

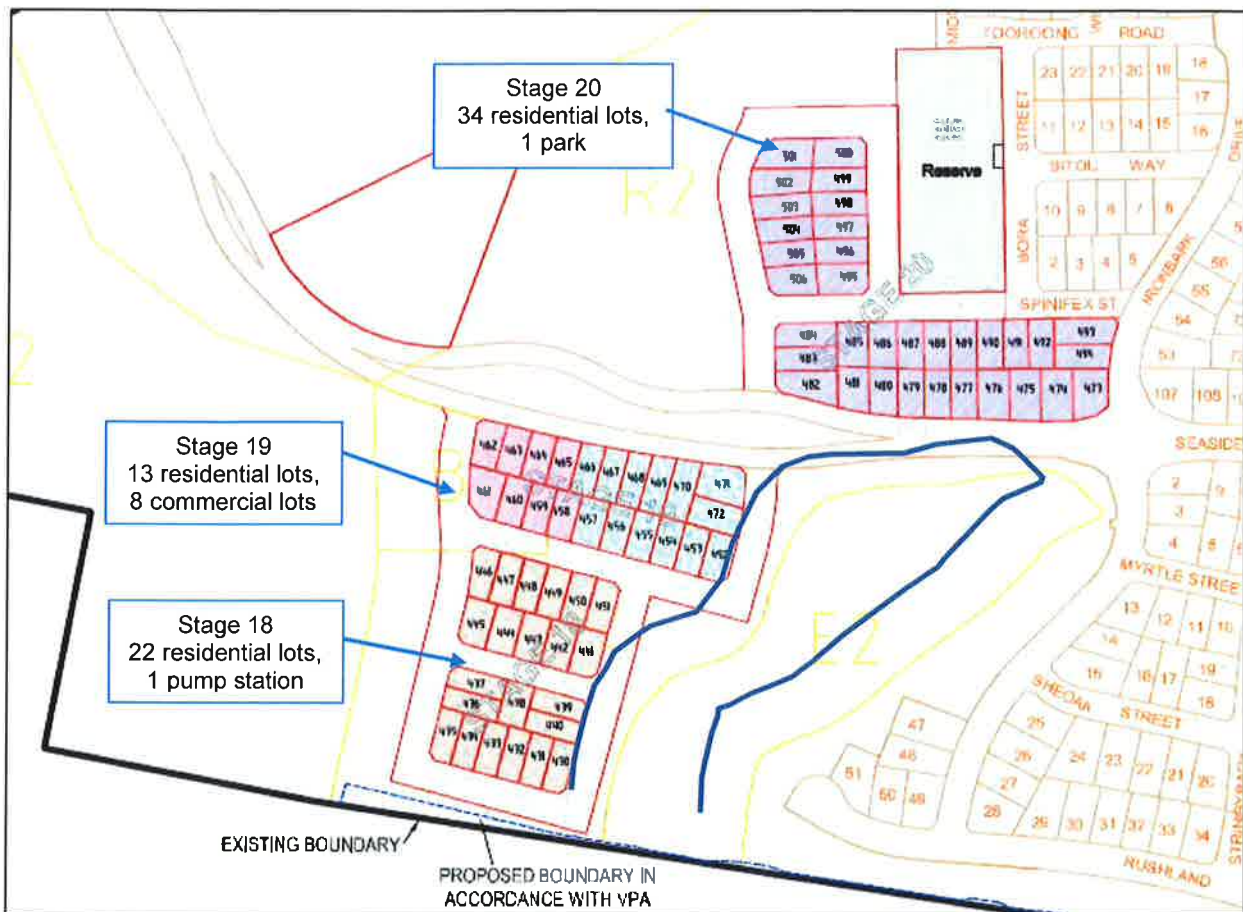
**Table 2:** Overall yield under Major Project Approval

	MOD 8 (approved)	MOD 9 (proposed)
Residential Lots	590	631
Super Lots	16	0
Commercial Lots	2	9
<b>Total</b>	<b>608</b>	<b>640</b>

The proposed changes are sought on the basis they result in a more consistent layout and pattern of subdivision.



**Figure 5** – Approved subdivision layout stages 18 – 20 (source: Mod 8 approved plans)



**Figure 6** – Proposed subdivision layout stages 18 – 20 (source: application documents)

#### 4.3 Waste Water Pump Station P3

It is proposed to relocate the waste water pump station P3 from the western to the eastern side of Stage 18. This is requested on the basis that it would minimise conflict with existing approved infrastructure and would remain inside the residential zone (refer to **Figure 7**).



**Figure 7** – Approved Pump Station location (left) and proposed location (right)

#### **4.4 Deletion of Condition B1**

It is proposed to delete Condition B1 which requires the relocation of a detention basin. The basin was relocated in accordance with plans approved under Modification 3 and as such the condition has been satisfied.

### **5. STATUTORY CONSIDERATION**

#### **5.1 Section 75W**

The project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification must be made under the former section 75W of the Act.

The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

#### **5.2 Approval Authority**

The Minister for Planning is the approval authority for the application. However, the Planning Assessment Commission may determine the application under delegation as there are more than 25 public submissions in the nature of objection.

### **6. CONSULTATION**

#### **6.1 Modification as Lodged**

The modification request was made publicly available on the Department's website, referred to Port Stephens Council (Council), Roads and Maritime Services (RMS), the Office of Environment and Heritage (OEH) including the National Parks and Wildlife Service (NPWS) and the Rural Fire Service (RFS) for comment. In addition, letters were sent to all landowners and occupiers within the Fern Bay estate.

**Council** initially raised concerns about:

- ecological impacts associated with the encroachment of the road and batters into the E2 Conservation zone adjoining Stages 18 and 19, and the need for a biodiversity assessment to assess the impacts
- the need to retain the northern access road to provide adequate public transport through the site
- stormwater issues associated with the increased number of residential lots.

**RMS** raised no objection to the removal of the northern access road, on the basis that its removal would not affect the functioning of Nelson Bay Road. However, RMS advises the Department should confirm if the access is required for other reasons, in accordance with the original urban design requirements of the masterplan.

**RFS** initially advised it did not support removal of the northern access road, noting the estate is surrounded by bush fire prone vegetation, and a singular access and egress point would be contrary to the objectives of the *Planning for Bushfire Protection 2006 (NSW Rural Fire Service)*. RFS raised no objection to subdivision layout changes, subject to conditions in relation to Asset Protection Zones; Water and Utilities; Access; Evacuation and Landscaping.

**OEH** (including **NPWS**) requested additional information and:

- identified concerns with the impacts of cut and fill on the conservation zones and WCL and requested more information to address the potential biodiversity impacts
- identified potential impacts on infrastructure, including the Stage 18 retaining wall and a proposed drainage swale impacting on existing four wheel drive (4WD) tracks



- requested more information regarding stormwater management, noting the stormwater system elsewhere in the estate had previously failed, causing impacts on the WCL and erosion of the 4WD track.

A total of 38 public submissions were received objecting to the proposal, including a submission from the Fern Bay Fullerton Cove Progress Association.

Changing the northern access road from a public road to an emergency only road was a key issue raised in public submissions. Submissions raised particular concern about fire safety, emergency evacuation, traffic congestion, reduced connectivity and circulation for residents, public transport and emergency services. Public submissions also noted homes were purchased in the estate based on the provision of the northern access road. Another key concern related to the progressive increase in development density and the corresponding adverse impacts on amenity and the natural environment.

Other concerns related to changes to create small individual commercial lots, with associated parking issues, the difficulty of accessing the commercial lots, and a lack of detail regarding the change to the pump station.

## 6.2 Response to Submissions

The Proponent submitted an RtS dated 12 April 2017, a supplementary RtS dated 7 July 2017, and a further supplementary RtS on 22 August 2017 and 6 September 2017, to address the issues raised in the submissions.

The RtS and supplementary RtS include the following amendments to the subdivision layout in the Stages 18 and 19:

- a reduction in the residential lot yield from 51 lots to 43 lots
- a reduction in the development footprint and removal of the encroachment on the E2 Conservation Zone.

The further supplementary RtS sought to delay the timing of the emergency access road, and in the event the emergency access road is not supported, sought to delay the timing of the provision of the approved northern access road.

The RtS also provided more information and responses to the matters raised by agencies. The RtS and first supplementary RtS were referred to the agencies for comment. Following the supplementary RtS, the agencies provided the following advice:

**Council** advised it withdraws its earlier objections on the basis that:

- the amended subdivision plans no longer include any roadways encroaching on the E2 zone
- as the RFS support the removal of the northern access road and buses are able to operate through the site, no objection is raised to deletion of the approved road
- no changes are proposed to the approved stormwater drainage system.

**RFS** advise that changing the northern access road to an emergency access road is acceptable, subject to it being constructed as a full road in accordance with *Planning for Bushfire Protection 2006*. However, the RFS strongly prefer the road being provided as a fully open public road, to maximise its function for evacuation and emergency services access.

**TFNSW** recommended the northern access road be retained as its removal would have a negative impact on the capacity to provide public transport services and would increase travel distances for public transport operators and residents.

**OEH** (including **NPWS**) advised it is not satisfied the matters raised in its previous correspondence have been addressed. Key remaining concerns include:

- the earthworks (cut/fill/batter works) associated with the road construction still have impacts

- on the E2 zone.
- there is no clear commitment from the Proponent there would be no disturbance or impact on the WCL.
- previous concerns in relation to stormwater have not been addressed.

Conditions were therefore recommended, including:

- requiring no cut / fill/ batter works or any further clearing of vegetation within the E2 zone
- a boundary adjustment within the WCL all works, including any future maintenance works to be located wholly within the development site, and must not impact on the WCL or 4WD track
- stormwater and landscaping to be designed to ensure no impacts to the access track or 4WD track, including a culvert under the access track
- bollard and cabling to be provided at the access to the 4WD track.

## **7. ASSESSMENT**

The Department considers the key assessment issues associated with the proposal relate to the proposed changes to the approved northern access road and ecological impacts of the revised bulk earthworks in Stages 18 and 19. All other assessment issues are considered in **Table 2** below.

### **7.1 Provision of Northern Access Road**

The Proponent seeks approval to modify the approved northern access road from a normal local road to a gated emergency only access road. The Proponent has also requested that, should this change not be supported, and the road and intersection works be retained as approved, consideration be given to delaying the delivery of the road until the release of a Subdivision Certificate for the 609<sup>th</sup> residential lot.

The Department has assessed the impacts of the proposed changes in terms of traffic and access, bushfire safety, and public transport impacts. The Department has also assessed the proposed changes to the staging of the road. These issues are discussed in detail below.

#### ***Traffic and access***

Without the provision of the northern access road, all access to the site would be provided via the existing single intersection at Seaside Boulevard and Nelsons Bay Road.

Public submissions objected to changing the northern access road to an emergency access only on the grounds that it would result in increased traffic congestion at the intersection at Seaside Boulevard and Nelsons Bay Road, and it would reduce accessibility and connectivity to the site.

The Proponent submitted a traffic analysis of the existing roundabout at the Nelson Bay Road/ Seaside Boulevard to determine if it has the capacity to cater for the fully developed estate without the need for the approved secondary access to Nelson Bay Road.

The traffic analysis indicates the intersection has capacity to cater for the full development of the estate through to 2030. After 2030, and in the absence of any road upgrades the existing intersection and Nelson Bay Road would be approaching unacceptable levels of service. However, this would be due to increased traffic and growth along Nelson Bay Road and not traffic generated by the residential estate.

RMS also confirmed the removal of the northern access road would not affect the functioning of Nelson Bay Road, including the intersection with Seaside Boulevard. However, RMS advised the Department should confirm if the northern access road is required for other reasons, in accordance with the original urban design requirements for the masterplan. RMS and Council both indicated the secondary access was not provided as a result of intersection capacity, but

instead was considered necessary to facilitate internal traffic circulation and connectivity within the estate, viable public transport services and emergency access and evacuation. TfNSW also raised concern about increased travel distances for residents and other road users.

The Department accepts the removal of the northern access road is unlikely to cause any significant congestion or traffic impacts at the existing Seaside Boulevard and Nelsons Bay Road intersection. However, the Department notes the approved Masterplan always envisaged a northern access from Seaside Boulevard to Nelson Bay Road through the approved Stage 14. The Department considers the purpose of the additional road was to improve vehicular access and connectivity to the site.

For residents accessing the site from the north, deleting the second access road would increase the travel distance between Nelson Bay Road and Stage 14, from 280 metres to over three kilometres. The Department notes the majority of residential lots within the estate are located closer to the northern access road than the southern one, and residents have raised concerns about reduced connectivity and access to the site.

While the deletion of the northern access road would not result in unacceptable traffic impacts, the Department considers it would result in increased travel times, reduced accessibility and connectivity to the site. As such, the Department's assessment concludes the approved northern access road should be retained.

### ***Bushfire and safety***

The proposed emergency access would be a gated road providing two-way, sealed access for emergency vehicles and evacuation of residents during a bushfire only.

Concerns were raised in public submissions about increased bushfire hazards for residents from changing the status of the road to an emergency access only. Key concerns included:

- the proposed gates would need to be unlocked before it could be used in an emergency
- most residents would be unfamiliar with the access (being located at the end of a cul-de-sac and located away from most routes of travel) and therefore would be unlikely to use it in an emergency
- the only other road, Seaside Boulevard, is likely to be very congested in an emergency
- Seaside Boulevard has previously been blocked by fallen trees on several occasions, effectively trapping residents within the estate.

The Proponent considers the emergency access would be safer in terms of directing emergency vehicles to the site and traffic away from a fire source when compared to the approved northern access road which would have a restricted left-in/left-out movement and a central median barrier. In addition, as an emergency only route, the road would only be operated under the supervision of emergency services, and therefore would be a safer emergency measure.

While Council initially objected to the conversion of the northern access road to an emergency only route, it subsequently withdrew its objection on the basis that RFS was satisfied with the proposal.

However, RFS subsequently advised that while changing the northern access road to an emergency access road is acceptable, it strongly prefers the road be provided as a fully open public road. RFS advised this would result in a superior outcome for bushfire evacuation because residents would be familiar with the route.

The Department notes the site is surrounded on all sides by remnant vegetation which is identified as bushfire prone land. Given the potential bushfire risk, the Department considers retaining the approved local road would provide the best safety outcome for the development as it would:

- be familiar to residents moving in and out of the estate and would therefore be more likely to be used in an emergency



- service the majority of dwellings in the northern part of the estate
- provide an immediate evacuation route without requiring gates to be unlocked

Therefore, the Department does not support changing the approved northern access road to an emergency only access and considers the best safety outcome for the development and its residents would be achieved by retaining the road as approved.

### ***Public Transport***

Residents raised concern about the impact of removing the northern access road on public transport and movements in to and out of the site.

TfNSW advised it does not support removal of the northern access as it would have a negative impact on the capacity to provide public transport services to the estate and would increase travel distances for public transport operators.

The Proponent's traffic consultant advised that whilst the northern access road may improve opportunities for additional public transport services, the estate could still be serviced by a suitable public transport bus service with only one access road to the site. In coming to this view, the traffic consultant advised it consulted with Hunter Bus Services, which currently provide the public bus service through the site.

The Department contacted Hunter Bus Services, which advised TfNSW set the public transport routes through the site and its advice should be relied upon in terms of the most appropriate outcomes for public transport. Hunter Bus Services also advised it concurs with the advice provided by TfNSW that removal of the northern access road would have a negative impact on the ability to service the site.

The Department considers removal of the northern road would significantly reduce the efficiency of future public bus movements through the site, particularly in a southbound direction, increasing travel distances and times for passengers, and therefore would reduce opportunities for buses to service the site. The Department therefore agrees with the advice provided by TfNSW and does not support removal of the northern access road.

### ***Staging***

Currently, the northern access road is required to be constructed as part of Stage 14. The original approval required stages to be constructed in a sequential order, and therefore would have required the road to be constructed prior to the delivery of the last 152 lots. However, Modification 3 removed the requirement for the stages to be delivered sequentially, and as such, completion of the road is only required prior to Stage 14, which incorporates 35 residential lots.

The Proponent now seeks to change the staging to allow the access road (whether an emergency access road only, or a general use local road, if required) to be constructed prior to the provision of a Subdivision Certificate for the 609<sup>th</sup> residential lot, that is, prior to the delivery of the last 23 lots. The Proponent has advised these are likely to be lots within Stage 20.

The Proponent seeks to delay the provision of the road to enable Stage 14 to be released prior to its completion. The changes are sought as the final design and construction of an emergency access road between Stage 14 and Nelson Bay Road will take some time. Further, if a local road is provided, this may take considerably longer as it will require significant intersection works including acceleration and deceleration lanes (due to Nelson Bay Road having a speed limit of 100km per hour) and a new median. This would first need to be designed to the satisfaction of RMS, a works authorisation deed entered into with RMS, and then the road works carried out and completed. The Department notes Stage 14 has been sold off the plan, while lots within Stages 18 to 20 are for sale.

The Department appreciates the difficulty for the Proponent and purchasers having to wait for delivery of the road before the lots can be released. However, given the importance of the northern access road, both as an emergency access/evacuation route and a local access road, the Department considers the most appropriate outcome is for the northern access road, to be provided before the release of Stage 14.

The Department notes under the existing approval, the Proponent is still able to complete and deliver Stages 18 to 20 located in the southern part of the site (a further 77 lots) without affecting the need for the road. This would result in a total of 596 residential lots able to be completed and sold before the road must be provided. In this context, the requirement to provide the road prior to the delivery of the final 35 lots making up Stage 14 is not considered to be onerous or unreasonable.

### **Conclusion**

The Department does not support the proposal to change the northern road to an emergency access route only on the basis that it would result in a reduced bushfire safety outcome for residents, particularly in the case of an emergency. Further, it would reduce accessibility and connectivity to this part of the site and increased travel times for residents and public transport operators.

In addition, the Department does not support the request to change the timing and staging of the road, as it is considered necessary to provide adequate emergency access and evacuation for this part of the site. Therefore the approved northern access road should be provided prior to the release of lots within Stage 14.

## **7.2 Ecological Impacts**

Council and OEH (including NPWS) raised concern about the potential ecological impacts associated with the revised subdivision layout of Stages 18 and 19, specifically the encroachment of roads and associated batters into the E2 Conservation Zone.

Council noted the adjoining E2 Conservation Zone is mapped as Swamp Sclerophyll Forest, an endangered ecological community and preferred koala habitat. OEH advises that impacts to the E2 Conservation Zone should be avoided, however, where impacts are unavoidable, a biodiversity assessment must be provided to assess the impacts associated with the removal of vegetation and to identify appropriate offset measures.

In response to these issues, the Proponent amended the plans to remove the encroachment of the roads into the E2 Conservation Zone (refer **Figure 9**). However, OEH noted the revised proposal still incorporates significant areas of bulk earthworks (and therefore vegetation removal) within the E2 Conservation Zone.

The Department notes the proposal incorporates significant areas of excavation within the E2 Conservation Zone, with excavation depths exceeding 8 metres (**Figure 9**). This is a significant variation from the approved design, which does not incorporate any bulk earthworks within or in close proximity to the E2 Conservation Zone (**Figure 8**). The Proponent has not provided any justification for the proposed change or any assessment of the biodiversity impacts of the proposed clearing and excavation.

Given the potential ecological and biodiversity impacts associated with the clearing and excavation, the Department does not support the proposed change. Given the approved subdivision layout has a similar development footprint to the proposed layout, and did not require such extensive bulk earthworks, it is considered that the proposed layout should be provided without any earthworks encroaching on the E2 Conservation Zone. A condition is therefore recommended, requiring a revised bulk earthworks design which does not encroach on the E2

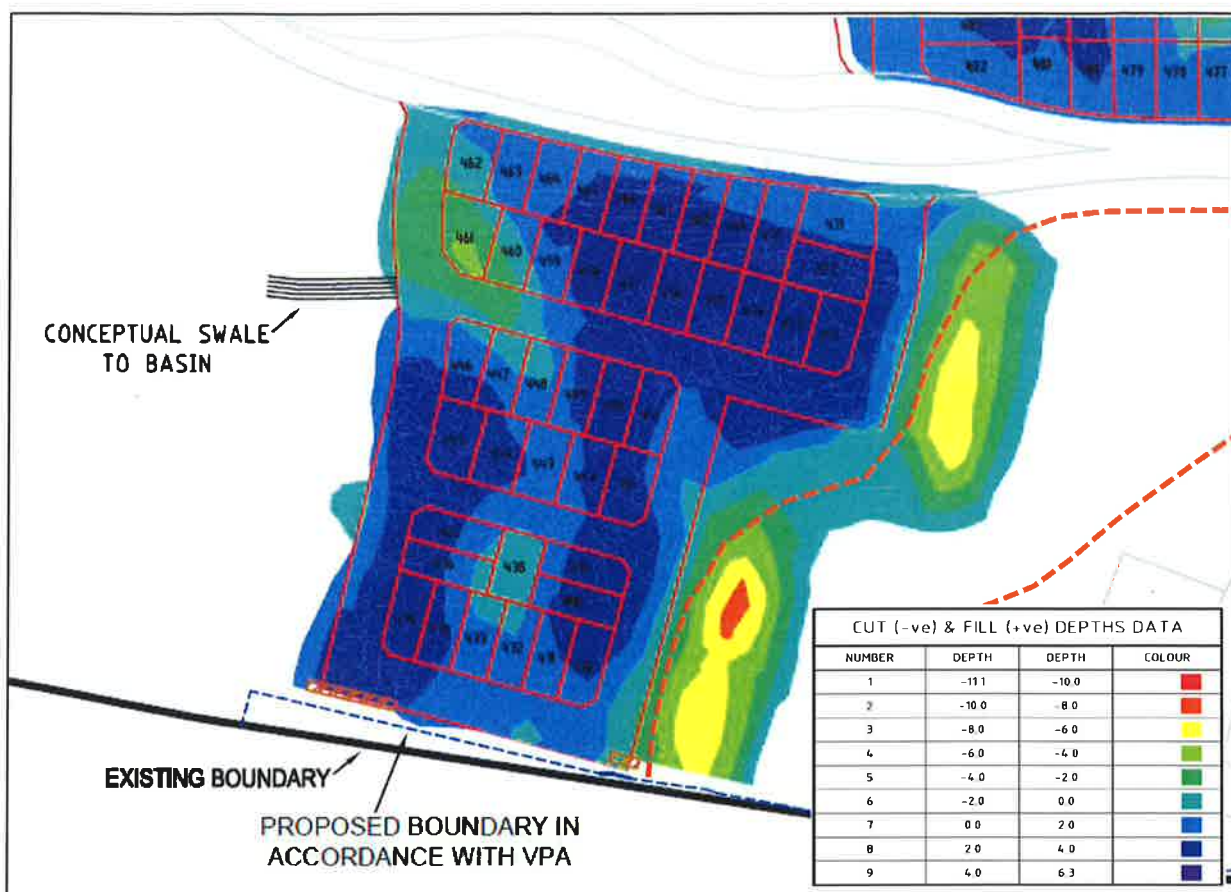
Conservation Zone, to be approved prior to the issue of a Construction Certificate for Stages 18 or 19.

The Department notes other areas of the site include similar or reduced levels of earthworks and clearing compared to the approved design. Therefore, subject to a revised bulk earthworks design for Stages 18 and 19, the Department is satisfied the proposal would not result in unacceptable biodiversity impacts.



**Figure 8:** Extract from approved bulk earthworks diagrams (source: MOD 8 approved plans)





**Figure 9:** Extract from proposed bulk earthworks diagrams, with E2 conservation zone boundary outlined in orange dash (base image source: Proponents supplementary RtS)

### 7.3 Other issues

**Table 3:** Assessment of other issues

Issue	Consideration	Recommendation
Impacts to Worimi Conservation Lands & associated infrastructure	<ul style="list-style-type: none"> <li>NPWS, as part of OEH, raised concerns with potential impacts of the development on the adjoining WCL and access to the WCL. Key concerns included: <ul style="list-style-type: none"> <li>the proximity of Stage 18, including proposed retaining walls, to the boundary with the WCL, and a 4WD track in that location. NPWS advised the retaining wall, and any area necessary for maintenance of the wall, must be located wholly within the site and not encroach on the WCL and construction works must not impact on the 4WD track (including associated bollard and cabling infrastructure)</li> <li>the potential for stormwater from Stages 18 and 19 to impact on the 4WD track connecting the site to the adjoining WCL lands (noting a proposed drainage swale which crosses the track based on previous stormwater damage from the development on the a 4WD track); and</li> <li>the need for a hard barrier (bollard and cabling) to be installed along the 4WD track from Seaside Boulevard to the WCL.</li> </ul> </li> <li>To address these impacts, NPWS suggested a number of conditions to ensure the development does not impact on the WCL, or infrastructure and access to the WCL. These include a requirement that stormwater is managed to account for runoff from the 4WD track, and to convey stormwater in an appropriate culvert under the access track. Conditions were also suggested to maintain ground levels in the WCL and in particular at the 4WD track, to repair any damage to the 4WD track caused during</li> </ul>	Conditions are recommended to ensure the development does not impact on the WCL or associated infrastructure and access.

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
	<p>construction and to provide a hard barrier along the length of the access track.</p> <ul style="list-style-type: none"> <li>• The Department has included these conditions in the recommendation, subject to some revisions in consultation with OEH (NPWS).</li> <li>• With the inclusion of these conditions, the Department considers (and OEH also advises it is satisfied) that the proposal will not result in unacceptable impacts on the adjoining WCL or access to the WCL.</li> </ul>	
<i>Development Density</i>	<ul style="list-style-type: none"> <li>• The proposed modification seeks approval to subdivide the approved superlots in Stages 18-20 into standard residential lots creating an additional 40 residential lots within the estate.</li> <li>• Concerns were raised in public submissions about the progressive increase in the density of the development and the impacts on the natural environment due to the increase in population and the additional demand on the road network, community services and open space.</li> <li>• The Department notes the approved subdivision included superlots which were always intended to be developed to create multiple dwellings and potentially subdivided into smaller residential lots at future stages.</li> <li>• Further, the approved Masterplan contemplated the provision of up to 947 lots on the site. In conjunction with the DA approval for Stages 1-3, the proposal would result in the provision of a total of 812 residential lots within Fern Bay and therefore the proposal is consistent with the density envisaged for the site under the Masterplan.</li> <li>• The Department also notes the amount of land allocated to commercial, community space and parkland to service this number of lots was assessed as part of the Masterplan and is not altered by this modification. All new residential lots would be located within the approved urban areas and the proposal does not seek to expand the footprint of the development.</li> <li>• Further, the new lots all satisfy Council's minimum 500 sq.m lot size requirement under the Port Stephens Local Environmental Plan 2013.</li> <li>• The Department considers the increase in density resulting from the proposed modification is within the scope of the originally approved development and Masterplan and is consistent with planning controls for the site.</li> </ul>	The conditions have been amended to reflect the revised number of lots.
<i>Stormwater impacts</i>	<ul style="list-style-type: none"> <li>• Council initially raised a concern regarding stormwater impacts arising from additional lots. As discussed above, OEH also raised concern about the potential stormwater impacts of the development on an adjoining 4WD track. The Proponent advises there would be no changes to the approved stormwater drainage system.</li> <li>• As discussed above, a condition has been recommended to ensure the proposal does not adversely impact on the 4WD track.</li> <li>• Otherwise, the Department considers there are adequate safeguards in the Project Approval, including the requirement for Council and NPWS to approve a Stormwater Management Plan prior to the issue of a construction certificate for each stage, to ensure the stormwater and drainage design and management is undertaken in accordance with Council's requirements.</li> </ul>	No additional comments or amendments necessary.
<i>Relocation of waste water pump</i>	<ul style="list-style-type: none"> <li>• It is proposed to relocate the waste water pump station P3 from the western side of Stage 18 to its eastern side (<b>Figure 7</b>), on the basis it would minimise conflict with existing approved infrastructure.</li> <li>• The Department considers the proposed pump location would result in no additional impacts beyond those of the approved pump location, given both locations are within the residential zone</li> </ul>	No additional comments or amendments necessary.

<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
	and immediately adjacent to the urban development.	
<i>Bushfire Risk</i>	<ul style="list-style-type: none"> <li>Bushfire impacts in relation to the proposed change to the northern access road have been discussed above in <b>Section 7.1</b>.</li> <li>RFS also advise it has no objection to the proposed changes to the subdivision layouts, subject to conditions in relation to asset protection zones; water and utilities; access; evacuation and landscaping.</li> <li>The Department notes existing conditions of approval ensure the incorporation of appropriate bushfire fire safety measures. In particular, existing condition B8 requires a bushfire management plan incorporating asset protection zones, servicing and access in accordance with <i>Planning for Bushfire Protection 2006</i>, to be approved by Council for each stage.</li> <li>The Department has recommended amendments to this condition to incorporate additional requirements of the RFS, specifically the provision of an asset protection zone around the new pump station, evacuation and landscaping requirements.</li> <li>The Department considers that subject to the recommended condition, and retention of the northern roadway, the proposal would not result in any adverse bushfire impacts.</li> </ul>	Condition B8 is recommended to be modified to incorporate an asset protection zone around the new pump station as well as landscaping requirements and preparation of an evacuation plan.
<i>Commercial Lots</i>	<ul style="list-style-type: none"> <li>The Proponent seeks to replace one approved commercial lot (1166 m<sup>2</sup>) with eight individual commercial lots (each between 505 m<sup>2</sup> and 621 m<sup>2</sup>) resulting in a total area of 4223 m<sup>2</sup> to be used for commercial purposes.</li> <li>The commercial lots would generally be contained within the approved area of the B1 Neighbourhood centre zone (north-west corner) except for two lots in the R2 zone that would rely on the permissibility of neighbourhood shops in the residential R2 zone. Refer to <b>Figure 10</b>.</li> </ul>	A condition is recommended requiring design guidelines for the commercial sites.



**Figure 10:** Proposed commercial lots (outlined blue) relative to zone boundaries



<i>Issue</i>	<i>Consideration</i>	<i>Recommendation</i>
	<ul style="list-style-type: none"> <li>One public submission raised concern with the creation of small individual commercial lots. Key concerns related to the ability to provide viable customer parking under this arrangement, as well as the location of the commercial lots, being difficult to access when coming from Nelson Bay Road.</li> <li>The Department notes the modification does not materially change the location of the commercial lots, and therefore access to the shops is considered acceptable, being unchanged from that previously assessed and approved.</li> <li>The Department considers the increase in the overall size of the commercial area is acceptable and consistent with strategic planning for the site, noting the combined size of the eight commercial lots would be similar to the size of the B1 commercial zone.</li> <li>However, the Department notes the proposed increase in the size of the commercial area would result in increased demand for customer parking, and the conversion from a single lot to multiple smaller lots could result in difficulties in achieving a coherent design outcome for the group of neighbourhood shops, including difficulties in providing on-site customer and staff car parking in accordance with Council requirements.</li> <li>The Department therefore recommends that prior to the issue of a subdivision certificate for Stage 19, design guidelines be developed for the lots in consultation with Council and approved by the Secretary. The guidelines should incorporate indicative building envelopes for the shops, controls to ensure the sites present a coherent and complementary appearance, and a masterplan demonstrating how adequate onsite parking and landscaping is to be provided in accordance with Council requirements. Future DAs to Council would need to comply with the guidelines and the Community Management Statement is to be updated to incorporate the guidelines.</li> <li>Subject to guidelines and a masterplan to steer future development of the commercial sites, the Department considers the proposed modification creating eight individual commercial lots is acceptable.</li> </ul>	
<i>Condition B1</i>	<ul style="list-style-type: none"> <li>It is proposed to delete Condition B1 which requires the relocation of a detention basin. The basin was relocated in accordance with plans approved under modification 3 and as such the condition has been satisfied.</li> <li>The Basin has been constructed in accordance with the modified approved plans.</li> <li>The Department considers the condition has been satisfied and can be deleted.</li> </ul>	Condition B1 is recommended to be deleted

## 8. CONCLUSION

The Department has assessed the modification in accordance with the relevant requirements of the EP&A Act. The Department does not support the Proponent's request to modify the approved access from Stage 14 of the development to Nelson Bay Road from a local road to an emergency only access due to increased bushfire risks and reduced connectivity and access to the site. The Department also does not support changes which would enable the road to be delayed and considers the road should continue to be provided in conjunction with Stage 14 to provide acceptable levels of safety, connectivity, amenity and public transport access for residents in this part of the site. Therefore Condition A2 Staging (as it relates to relating to Stage 14), and Condition B5 requiring the road connection are both recommended to be retained in their current form.

However, the Department's assessment concludes the other changes requested to the subdivision layout are generally appropriate, subject to conditions to:

- remove impacts from bulk earthworks on the adjoining conservation zone
- ensure the development does not adversely impact on the adjoining WCL or access to the WCL
- ensure commercial lots are developed with a coherent appearance and approach to parking.

Subject to these conditions, the Department considers the proposed changes to the subdivision layout would:

- be consistent with the approved Fern Bay Masterplan for the estate
- remain within the scope of the originally approved subdivision
- be consistent with the minimum lots sizes under Council's LEP
- not reduce the open space, community facilities or infrastructure within the estate.

The Department therefore considers that the project is approvable, subject to the recommended conditions. This assessment report is hereby presented to the Planning Assessment Commission for determination.

Prepared by:  
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**Director**  
**Modification Assessments**



Anthea Sargeant  
**Executive Director**  
**Key Sites and Industry Assessments**

## **APPENDIX A: NOTICE OF MODIFICATION**

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A copy of the notice of modification can be found on the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8003](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8003)



## APPENDIX B: SUPPORTING INFORMATION

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8003](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8003)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8003](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8003)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8003](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8003)