

Our Ref: 80215013
Contact: Nancy Sample (02) 9495 8199

Date: 12 April 2017

Ms Rebecca Sommer,
Acting Team Leader,
Industry Assessments,
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Rebecca Sommer, Acting Team Leader

Dear Ms Sommer,

**SECTION 75W REQUEST TO MODIFY THE MINISTER'S APPROVAL OF
PROJECT APPLICATION 06_0250 (28 JUNE 2010) – NELSON BAY ROAD,
FERN BAY.**

MODIFICATION 9 (MP06_250 MOD9) – RESPONSE TO SUBMISSIONS.

On 16 November 2016, Cardno submitted this Modification Application on behalf of Rawson Communities to:

- Make various changes to Stages 18,19 & 20 of the approved development;
- Relocate a proposed pumping station within Stage 18; and
- Change a proposed secondary public road access to Nelson Bay Road to an emergency only access road.

On 29th November 2016, Department of Planning and Environment (DPE) formally requested submissions on the proposed Modification from:

- Roads and Maritime Services (RMS);
- Office of Environment and Heritage (OEH);
- Rural Fire Service (RFS); and
- Port Stephens Council.

Individual submissions on the Modification Application were received from each of these Agencies.

The purpose of this correspondence is to provide responses to the matters raised by each of the Agencies in their submissions in order to assist DPE in its assessment of the Mod Application. Following are responses under the heading of each Agency.

1. Roads and Maritime Services (RMS)

In a letter of 8 February 2017, RMS made commentary on the matter of provision of an additional access road from Nelsons Bay Road to the Fern Bay site. RMS acknowledged that the additional access to the site was not a

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requirement of the original approved masterplan, that the existing intersection of Seaside Boulevard and Nelsons Ridge Road has sufficient capacity to manage traffic from the fully developed site and that the reconfiguration of Stages 18, 19 & 20 proposed in this Modification application would have no additional impact on traffic volumes around the internal network.

On this basis, RMS stated that it raised no objections to the Modification application.

2. Rural Fire Service (RFS)

In a letter dated 12 December 2016, RFS advised that it had no objections to the proposed changes to Stages 18, 19 & 20 subject to inclusion of recommended conditions pertaining to Asset Protection Zones and general compliance with *Planning for Bushfire Protection, 2006*. Proposed Mod 9 does not change the nature of the Project Approval. The RFS recommended conditions currently exist under the Project Approval (refer to condition B8 Bushfire Management Plan). These are considered satisfactory and additional RFS conditions are not considered to be applicable for this modification nor should they be included as additional conditions of the Project Approval.

RFS has indicated that it is unable to support the Modification proposal to change the currently approved secondary access road to Nelsons Bay Road from a general access to an emergency access public road. Its opposition to the change to the status of this road is based on its consideration that removal of public access via this road would result in a development that is not consistent with the objectives of *Planning for Bushfire Protection, 2006*.

RPS has reviewed the proposal to change the status of the access road to emergency only and has provided a letter in response to RFS (dated 7 March 2017 and included with this letter).

The inclusions of this letter are summarised below:

- The proposed modification satisfies the performance criteria of section 4.1.3 (2) of *Planning for Bushfire Protection 2006 (PBP 2006)* as the secondary access will provide safe operational access during a bushfire for firefighters and for evacuating residents.
- The proposal satisfies the requirement in PBP 2006 to provide safe access to / from a public road system during a bushfire.

The proposed emergency access road satisfies the performance criteria in PBP 2006 (for Public Roads) as follows:

- It is to be a two-wheel drive all weather road, providing fire fighters with safe access to structures;
- It will be 8m wide for the entire length and designed in accordance with the local council (Port Stephens) engineering specifications for local roads;
- It is less than 200m in length long (measured from the end of Stage 14 – Seaside Boulevard to the Nelson Bay Road reserve);
- It is two-way and compliant with the PBP 2006 acceptable solution construction requirements;
- The capacity of the proposed road surface is sufficient to carry fully loaded firefighting vehicles alongside retreating residents;

- The road will be clearly signposted. Emergency service personnel (e.g. NSW Rural Fire Service, NSW Fire and Rescue or NSW Police) will manage any emergency evacuation traffic control of retreating residents exiting the residential area in accordance with the Bushfire Emergency Management Plan (BEMP) that accompanies this letter;
- Access to the reticulated water supply (minimum 2 hydrants along access road) will be clear and unobstructed;
- The threat of obstruction is minimised as the proposed road is to be gated with no parking permitted at any time;
- All vegetation up to 20m on either side of the access road within Seaside Village has been cleared and will be maintained in perpetuity as an inner protection area.

RPS further concludes that the access road will be a safer emergency measure if it is operated only under the provision of emergency services, as would be the case with the proposed modification. Their reasoning is that the approved road would not provide a comprehensive emergency exit as it is to be restricted to left in / left out traffic movements subject to the current approval. This would be inconsistent with the need to direct evacuating traffic away from a fire source. The facility to control access to and operation of the road will allow for controlled evacuation onto Nelson Bay Road in a safe direction away from a fire source.

In summary, RPS support the modification and are of the opinion that during emergency situations, the access road will provide safe operational access for emergency service personnel and a concurrent safe evacuation route for residents.

RPS have also prepared a Bushfire Emergency Management Plan which accompanies this application and was also attached to its letter to RFS of 7 March 2017. RPS are currently consulting with RFS to get their response to this package. Any further commentary coming out of these consultations will be forwarded to DPE on receipt.

3. Office of Environment and Heritage (OEH)

In a letter dated 14 December 2016, OEH raised a number of matters. Each of these is summarised with responses below.

3.1 Adjustment of the boundary to the Worimi Conservation Lands (WCL)

Proposed adjusted boundary, consistent with the VPA commitment, has been shown on one plan to demonstrate adjusted boundary and existing track. Noted, and all relevant future plans will show adjusted boundary.

3.2 Proximity of proposed retaining walling to the adjusted boundary to the WCL.

Concern raised that the proposed retaining walling at the southern edge of the Development may encroach onto the WCL and may impact on the 4WD track.

Response: To address any potential impacts of the retaining walling on the integrity of the WCL or the 4WD track, the Proponent agrees to comply with a condition applied to the determination of the Modification Application to that effect. The retaining wall will be constructed within the boundary of the development with no disturbance of land to occur on the WCL, either during or after the construction process. Any land required for maintenance of the retaining wall will also be contained within the development site.

3.3 Access to the 4WD track

NPWS has requested that the access from Stage 18 to the 4WD track, either as agreed in the VPA or as later proposed by Rawson Communities, should be upgraded to the specifications agreed in

the VPA. The access road is to be widened, gravelled to specification or fenced with bollard and cabling.

Response: Rawson Communities refers the NPWS to the *Licence for Access between Fern Bay No.1 Pty Ltd and the Minister Administering the National Parks and Wildlife Act, 1974*. Under Clause 5(a) of the Licence, rights to access the 4WD track, walking paths and carpark are granted to NPWS. Clause 5(b) of the Licence reads as follows:

“NPWS acknowledges that they are solely responsible for the maintenance, repair and signage of the Access 4WD Track, walking paths and carpark and accepts the Access 4WD Track, walking paths, and carpark in their present state of repair.”

The licence for access provides an agreed alternative access via the power easement and the existing track as provided for under the VPA. On this basis Rawson Communities are not obliged to make further alterations or to carry out further works with regard to the extension and/or upkeep of the 4WD track.

The proposed modification does not interfere or impact on the existing tracks or their operation, therefore notwithstanding the above, it is not considered that additional works to the track or an alternative track is warranted.

3.4 Stormwater conveyance impacts on the existing 4WD track.

Concern was raised that the proposed drainage / conveyance swale to the west from Stage 18 & 19 extends across the existing 4WD track with the risk that stormwater may cause scouring of the track.

Response: Rawson Communities have agreed to convey stormwater in a culvert below the 4WD track to avoid stormwater damage. This requirement can be conditioned to be satisfied prior to issue of a subdivision certificate for Stage 18.

3.5 VPA commitment to ensure ongoing access from Seaside Boulevard to the WCL.

Concern that the stormwater system has failed in the past in heavy rain events resulting in discharge into the WCL and erosion of the 4WD track, and that there is potential for this situation to reoccur. OEH expresses reservations about the level of information provided with the Modification Application and is concerned that the information is insufficient to determine the effect of the development on the VPA commitments for 4WD access to the WCL.

Response: Stormwater for the whole development is to be managed in accordance with the approved Water Cycle Management Strategy prepared by Marten's for Major Project 06_250.

The Marten's Report modelled the Top Water Level adjacent to Stage 18 and 19 (refer to project plans Rev L accompanying Modification 9 on Sheet 14) and determined as 1.82m AHD. It is noted the existing level of the access track on the western side of Stages 18&19 at its lowest point adjacent to the proposed swale is 2.6m AHD. Given the top water level is well below the existing 4WD track access level, the track for access to WCL will not be subjected to stormwater flows as a result of the proposed modification. Stormwater flows from the subdivision on the southern boundary of Stages 18&19 are to be captured and conveyed to the approved existing Basin 1, in accordance with the approved Water Cycle Management Strategy. As outlined in Section 3.4, a culvert will be designed and constructed to ensure flows do not impact on the existing 4WD access track or access to the WCL. In addition the proposed modification does not impact on any commitments of the VPA.

3.6 Walking track from previous stages

Requires plan by Terra to be amended to show walking track connecting to the road network in Stage 18 and not WCL.

Response: Noted, refer to amended plan.

4. Port Stephens Council

Council made comments on the Modification Application in an undated memo. The comments are summarised below and responses provided.

4.1 Ecological

Justification and ecological assessment requested regarding encroachment onto the E2 Environmental Conservation zone.

Response: As noted in the original Modification Application, the proposal results in a minor encroachment into the E2 zoned land adjoining Stages 18 & 19 by the road to the edge of this Stage. Construction of roads is a permissible use within the E2 zone. Similar minor encroachments into the E2 zone for the purposes of local roads have been previously approved as part of the overall scheme. Given this precedent within greater development, coupled with the fact that the Office of Environment and Heritage has raised no concerns with regard to ecological impacts of the Modification Application, our opinion is that there is no need for additional ecological assessment of this Application.

4.2 Public transport

Concern that deletion of the second access to Nelson Bay Road would discourage public bus operators from servicing the eastern portions of Fern Bay due to inconvenient access.

Response: An alternative bus route is included with this submission. This alternate route includes a cul-de-sac designed to allow bus turning and for buses to return to Nelson Bay Road/Seaside Boulevard roundabout via Seaside Boulevard instead of Nelson Bay Road. No additional bus stops are required and the existing route which included stops remains unchanged. The alternate bus route will allow both public bus and school bus services which can both start and finish at the Nelson Bay Road roundabout. This outcome remains the same as the existing approved bus route and requires no additional infrastructure. Refer attached plan showing proposed bus service route.

4.3 Stormwater drainage

Requested responses with regard to:

- adequacy of the stormwater system to address run-off levels generated by the proposed modification
- changes to surface water hydrology
- water quality
- redirection of post development stormwater towards Nelson Bay Road
- storage capacity of low lying land near Nelson Bay Road

Response: The proposed modification is in accordance with the recommendations of the approved Water Cycle Management Strategy for Fern Bay prepared by Martens. This proposal seeks only a minor amendment to the location of Stages 18&19 and a reduction to the development footprint of Stage 20 by approximately 2.3Ha. With respect to stormwater drainage, although there are additional residential lots, stormwater runoff will not be exacerbated. In accordance with Port Stephens Council Drainage Specification the percentage of impervious surface for normal residential lots (per PSC Design Spec 60% impervious) is less than that of the super lots (per PSC Design Spec 75% impervious) and commercial lots (per PSC Design Spec 100% impervious).

With regard to Stage 20, the proposed development footprint is reduced by approximately 2.3Ha and has less impervious road area. With regard to Stages 18&19 the percentage impervious of lots remains the same and there is less road area due to deletion of a road. Stormwater flows will not be exacerbated by the proposed modification.

Council's concerns with potential impact to groundwater, infiltration facilities, infiltration basins proposed, changes to surface water hydrology and insufficient storm water drainage and water quality measures have already been addressed by the Martens Report and approved under Major Project Approval MP06_250.

Concerns with redirection of post development stormwater to Nelson Bay Road are unfounded and flows towards Nelson Bay Road are unaffected by the proposed modification and are to be managed in accordance with Martens Water Cycle Management Report 2010.

CONCLUSION

We trust that this letter and the attachments address the matters raised in submissions to DPE to this Modification Application. If clarification of the content of the letter is required by the Department on behalf of the Agencies that have made submissions would you please contact the undersigned. If no further information is required, we now look forward to a timely approval of the Application.

Yours faithfully,



Nancy Sample
Senior Urban Planner
for Cardno

Enc:
RMS Response to Modification Request for DP&E
Bushfire Report Letter
Bushfire Emergency Management Plan
Landscape Plan

Cc:

Mr Michael Radovnikovic (Development Manager, Communities), Rawson Communities.