



**MP 06\_0250, FERN BAY SEASIDE VILLAGE, MODIFICATION NUMBER 12**

**Response to Submissions**

**28 November 2019**

<b>Fern Bay Seaside Village – Modification 12</b>			
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<b>Agency/Authority/Individual</b>	<b>Agency/Authority Comment</b>	<b>Monteath and Powys response dated 10 September 2019</b>	<b>Proposed Change to Mod</b>
<b>RMS 5/11/2019</b>	Roads and Maritime have reviewed the Mod 12 request by Monteath & Powys dated 17 September 2019, and do not object to any of the proposed amendments.	Noted.	Nil.
<b>Port Stephens Council 18/11/2019</b>	Council reviewed the proposed changes to the Project Approval and have not identified any significant issues.	Noted.	Nil.
<b>Transport for NSW 18/11/2019</b>	The aspects of condition B5 which the Proponent seeks to amend through MOD 12 were specifically inserted in MOD 11 as assurance to ensure the timely delivery of the northern intersection.	The Proponent is committed to delivering the intersection as soon as practicable and has endeavoured to do all things reasonably necessary to complete the works by the due date. Works are substantially progressed on the Northern Intersection in accordance with the relevant approvals and conditions.  Work on the intersection has continued since the Modification was lodged and it is noted that the works are now approximately 85% complete.	Nil.
<b>Transport for NSW (continued)</b>	The delayed completion of the northern intersection and release of subdivision certificates for Stages 18 and 19 would not impact the bus route 136, which currently services the development.	Noted.	Nil.
<b>Transport for NSW (continued)</b>	If the completion of the northern intersection is compromised and the intersection is not completed, the ability to extend the bus route further into the development or introduce additional routes, subject to demand and funding, is restricted.	As required by the WAD, the Proponent has provided RMS financial security in the amount of \$2.4 million, being equivalent to 100% of the estimated cost of works. Additionally, the Proponent has provided DPIE financial security in the amount of \$3.6 million, being	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
	<p>On this note, an objection is raised in regards to releasing the subdivision certificates for Stages 18 and 19, prior to the completion of the northern intersection. Accordingly, it is recommended that condition B5 should be upheld as currently written.</p>	<p>equivalent to 150% of the estimated cost of works. Therefore, the total amount of financial security the Proponent has issued to the required authorities is \$6.0 million, being 250% of the estimated cost of works. From an economic perspective, it would not be financially viable for the Proponent to fail on delivering the Northern Intersection especially considering the road works are substantially progressed.</p> <p>Until such a time that the Northern Intersection is completed to the satisfaction of RMS and a Notice of Practical Completion has been issued by RMS for the approved roadworks, it is proposed under this modification that all security totalling 250% of the cost of construction works remain in place.</p> <p>Work on the intersection has continued since the Modification was lodged and it is noted that the works are now approximately 85% complete.</p>	
<p><b>Submission 1 a</b> <b>Terry Bellamy</b> <b>23/10/2019</b></p>	<p>The applicant (Fern Bay no-1 P/L) has not offered a completion date nor have they offered security of payment for the intersection let alone realise the work needs to be inspected, approved and passed as adequate in it structure.</p>	<p>Under the Mod, the northern extension of Seaside Boulevard and upgrade intersection with Nelson Bay Road (as identified on 'Staging and Lot Layout, Sheet 1 of 21, Drawing 29850J, prepared by North Point Surveys (NSW Pty Ltd) dated 27/10/2015) <b>must be fully constructed prior to 31 March 2020.</b></p>	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
Submission 1 a Terry Bellamy (continued)	<p>The work is in progress and within the next 6-8 weeks should be complete IF Daracon (Rawsons contractor) do the right thing and keep on with the job.</p> <p>So why ask for this modification 12?</p>	<p>Work on the intersection has continued since the Modification was lodged and it is noted that the works are now approximately 85% complete.</p> <p>Physical construction works are currently programmed to be completed before the end of December 2019.</p> <p>Significantly, it typically takes approximately one to three months following completion of construction works to complete the RMS verification and certification process.</p> <p>This modification will not have any adverse effect on the amenity of the development for either existing residents or the public, as there would be no additional residents living in Stages 18 and 19 prior to in the Northern Intersection being completed and open to the public.</p> <p>It is considered to be both unnecessary and unreasonable on the families that have bought land in this stage, for the issue of the subdivision certificates to be tied to the completion and certification of the new Northern Intersection.</p> <p>Importantly, this modification would remove the uncertainty that these families currently face and</p>	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
		<p>provide them with the opportunity to progress the design and approval of their new home.</p> <p>The modification would benefit the purchasers by removing the burden of having to incur additional holding costs and reducing the likelihood of them being faced with increased building costs.</p>	
<p><b>Submission 1 a</b> <b>Terry Bellamy</b> <b>(continued)</b></p>	<p>The stages 18 &amp; 19 are also in progress and look like being ready for release and titling come early next year. So what is their problem?</p>	<p>Subdivision works for Stages 18 and 19 are programmed to be completed before the end of December 2019.</p> <p>Significantly, it typically takes approximately one to three months following completion of construction works to complete the RMS verification and certification process.</p> <p>It is considered that this modification would not have any adverse effect on the amenity of the development for either existing residents or the public, as there would be no additional residents living in Stages 18 and 19 prior to in the Northern Intersection being completed and open to the public.</p> <p>It is considered to be both unnecessary, and unreasonable on the families that have bought land in</p>	<p>Noted.</p>

<b>Fern Bay Seaside Village – Modification 12</b>			
<b>Response to Submissions</b>			
<b>28 November 2019</b>			
<b>Agency/Authority/Individual</b>	<b>Agency/Authority Comment</b>	<b>Monteath and Powys response dated 10 September 2019</b>	<b>Proposed Change to Mod</b>
		<p>this stage, for the issue of the subdivision certificates to be tied to the completion and certification of the new Northern Intersection.</p> <p>Importantly, this modification would remove the uncertainty that these families currently face and provide them with the opportunity to progress the design and approval of their new home.</p> <p>The modification would benefit the purchasers by removing the burden of having to incur additional holding costs and reducing the likelihood of them being faced with increased building costs.</p>	
<b>Submission 1 a Terry Bellamy (continued)</b>	In final I cannot see any sensible, logical or fair reason to approve this application.	Refer above responses.	Nil.
<b>Submission 1 b Terry Bellamy 23/10/2019</b>	It helped a lot to learn that Rawsons have put a timeline in for the completion of the intersection. Let's hope they stick to their word and finish their job by end of March 2020.	Noted. Rawson remain committed to achieving practical completion on or before 31 March 2020.	Nil.
<b>Submission 2 Anonymous 23/10/2019</b>	I support changing the completion date from the 31st December 2019 to the 31st March 2020. I would not want time-completion pressure to have an adverse impact upon the	Noted.	Nil.

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
	safety of the construction workers or the quality of the work completed and an additional 3 months is not too long.		
<b>Submission 2 Anonymous (continued)</b>	I object to the remaining modifications. The applicant has shown repeatedly an unwillingness or inability to deliver work as promised unless there have been stringent conditions or financial penalties involved. It is imperative that the delivery of the northern extension happens prior to the release of the remaining subdivision certificates.	<p>Fern Bay Seaside Stages 18 and 19, including all associated infrastructure is currently programmed for completion in November 2019. This modification application seeks DPIE approval for Stages 18 and 19 subdivision certificates to be released prior to the completion of the Northern Intersection so that the stages can be registered with NSW Land Registry Services during December 2019. It is considered that this modification would not have any adverse effect on the amenity of the development for either existing residents or the public, as there would be no additional residents living in Stages 18 and 19 prior to in the Northern Intersection being completed and open to the public. Dwelling approval and construction timeframes following registration of Stages 18 and 19 would ensure this does not occur.</p> <p>Further, given the advanced state of the intersection works and the significant financial securities held by DPIE and RMS, it is considered to be both unnecessary, and unreasonable on the families that have bought land in this stage, for the issue of the subdivision certificates to be tied to the completion and certification of the new Northern Intersection.</p>	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
		<p>Importantly, this modification would remove the uncertainty that these families currently face and provide them with the opportunity to progress the design and approval of their new home.</p> <p>The modification would benefit the purchasers by removing the burden of having to incur additional holding costs and reducing the likelihood of them being faced with increased building costs.</p>	
<b>Submission 2 Anonymous (continued)</b>	<p>Delaying the release of stages 18 and 19 should only incur an additional 3 month delay which is not onerous for potential buyers of these stages, when compared with the many years of delay existing residents have faced waiting for the construction of this road.</p> <p>These stages are still under construction with no formed roads installed, footpaths not complete etc. It is not as though they are finished, ready to go.</p>	<p>This modification would remove the uncertainty that these families currently face and provide them with the opportunity to progress the design and approval of their new home.</p> <p>The modification would benefit the purchasers by removing the burden of having to incur additional holding costs and reducing the likelihood of them being faced with increased building costs.</p> <p>Subdivision works for Stages 18 and 19 are programmed to be completed before the end of December 2019.</p>	Noted.

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
<b>Submission 2 Anonymous (continued)</b>	The original approval documents for this Estate would have seen the northern extension of Seaside Boulevard delivered when the Estate was two-thirds completed. Mod 3 (which does not appear to have been widely publicised) had the unintended consequence of allowing the Developer to construct the stages out of sequence. As a result, this road has repeatedly been pushed to the end of the construction schedule, with the Developer additionally trying to remove it altogether.	It is considered that this modification would not have any adverse effect on the amenity of the development for either existing residents or the public, as there would be no additional residents living in Stages 18 and 19 prior to in the Northern Intersection being completed and open to the public.	
<b>Submission 2 Anonymous (continued)</b>	<p>The applicant Rawson has also repeatedly shown a failure to deliver required items or behave in accordance with the regulations unless there has been a threat of fines or other financial impacts.</p> <ul style="list-style-type: none"> <li>- Newspaper articles indicate that they were fined \$18000 in 2017 for water pollution at Seaside Estate.</li> <li>- They did not deliver any recreational facilities in un-named park R6 despite this being a condition of approval from the NSW Dept Planning</li> <li>- Their marketing material from 2017 indicated a basketball/netball court and skate park were to be constructed in the future but these have not eventuated (and Council have not denied approval for any proposed additional facilities).</li> </ul>	<p>The R6 park is currently under construction and due to be complete on the 13<sup>th</sup> December 2019.</p> <p>Not applicable to MOD 12 - the Developer has been working with Port Stephens Council and the Fern Bay Community regarding these additional facilities.</p>	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
	- They wanted to move the main bus stop from Seaside Boulevard from west of Ironbark Dr to east of Ironbark Dr to make it 'safer', yet the construction of homes in Stage 20 has commenced prior to the bus stop moving. Now the bus stop is surrounded on either side by construction vehicles most days making visibility poor and increasing the risk of an adverse interaction between child and vehicle. This is an example of Rawson being fully aware of when Stage 20 was to be released, and when construction would start of Stage 20 homes, as they are also the builders, yet failing to deliver on an infrastructure item within an appropriate time-frame.	Not applicable to MOD 12	
<b>Submission 2 Anonymous (continued)</b>	- Construction rubbish was been blowing out of the Stage 20 construction sites for many weeks. Council Rangers have been seen inspecting these sites and this seems to have coincided with dumpsters being delivered to the sites to properly contain the waste.	Stage 20 is registered and there have not been any subdivision works on that Stage since May 2019.	
<b>Submission 2 Anonymous (continued)</b>	The Mod 9 application documentation indicated that the RMS is not willing to take on the construction of the northern extension of Seaside Boulevard should the developer fail to complete it as required.	Work on the intersection has continued since the Modification was lodged and it is noted that the works are now approximately 85% complete.  Physical construction works are currently programmed to be completed before the end of December 2019.	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
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Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
		The Proponent has provided RMS financial security in the amount of \$2.4 million, being equivalent to 100% of the estimated cost of works. Additionally, the Proponent has provided DPIE financial security in the amount of \$3.6 million, being equivalent to 150% of the estimated cost of works. Therefore, the total amount of financial security the Proponent has issued to the required authorities is \$6.0 million, being 250% of the estimated cost of works. From an economic perspective, it would not be financially viable for the Proponent to fail on delivering the Northern Intersection especially considering the road works are substantially progressed.	
<b>Submission 2 Anonymous (continued)</b>	The only way to ensure that this road is completed to the required RMS standard, within a suitable time-frame, is for its delivery to occur, prior to the release of the subdivision certificates for stages 18 and 19.	The Proponent has provided RMS financial security in the amount of \$2.4 million, being equivalent to 100% of the estimated cost of works. Additionally, the Proponent has provided DPIE financial security in the amount of \$3.6 million, being equivalent to 150% of the estimated cost of works. Therefore, the total amount of financial security the Proponent has issued to the required authorities is \$6.0 million, being 250% of the estimated cost of works. From an economic perspective, it would not be financially viable for the Proponent to fail on delivering the Northern Intersection especially considering the road works are substantially progressed.	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
		Until such a time that the Northern Intersection is completed to the satisfaction of RMS and a Notice of Practical Completion has been issued by RMS for the approved roadworks, it is proposed under this modification that all security totalling 250% of the cost of construction works remain in place.	
<b>Submission 3 Peter and Frances Johnson Redacted</b>	This is the 2 <sup>nd</sup> objection we have issued based on the request to delay the completion of the northern intersection. Once again the developer fails to understand the importance of the intersection to the residents and users of Nelson Bay Road. It is easy for a developer to say we can delay as it is not a necessary infrastructure to be completed as soon as possible.	The Proponent is committed to delivering the intersection as soon as practicable and has endeavoured to do all things reasonably necessary to complete the works by the due date.  Work on the intersection has continued since the Modification was lodged and it is noted that the works are now approximately 85% complete.  Physical construction works are currently programmed to be completed before the end of December 2019.	Noted.
<b>Submission 3 Peter and Frances Johnson (continued)</b>	As a community we are facing a potentially catastrophic fire season as the early start to the season has indicated. The RFS has indicated the road	It should be noted that the Modification No. 11 determination introduced Condition E24 to ensure a temporary emergency road be provided and comply	

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Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
	should be completed to allow residents to flow out of the estate should we need to in an emergency.	with Section 4.1.3(3) Fire Trails of Planning for Bushfire Protection 2006, and that the temporary emergency road remain operational at all times until the Northern Intersection has been opened to the public. This temporary emergency access was completed prior to the release of the Stage 14 subdivision certificate and will remain operational at all times during the construction of the Northern Intersection.  As noted in the Bushfire Planning Advice accompanying the Modification application, RFS advised that they were ‘satisfied the extended use of the temporary emergency road will not result in any additional risks to the public or firefighters; including risk to property.’”	
<b>Submission 3 Peter and Frances Johnson (continued)</b>	Public transport providers indicate the road is a necessary infrastructure to allow the free flowing of residents.	Refer response to Transport for NSW submission.	Nil.
<b>Submission 3 Peter and Frances Johnson (continued)</b>	I am aware the RMS does not feel the congestion on Nelson Bay Road near the current roundabout is an issue; obviously they do not traverse this roundabout on a daily basis as the residents do.	Noted.	Nil.
<b>Submission 3 Peter and Frances Johnson (continued)</b>	Below is my previous objection to the delay as nothing has changed. The estate continues to be sold as having the road completed as this allows better access and connectivity; something the promoter is eager to provide as a selling point. Six	The intersection is left-in and left-out only and as such will not impact on journey times from the estate to the airport.	

Fern Bay Seaside Village – Modification 12			
Response to Submissions			
28 November 2019			
Agency/Authority/Individual	Agency/Authority Comment	Monteath and Powys response dated 10 September 2019	Proposed Change to Mod
	minutes to the airport, not if you use the Seaside roundabout. I have lived here for over 10 years and have never been able to do this in 6 minutes. Surely accuracy in advertising means they should provide the road with no delays or excuses. Just get on with it. I have not changed my objection reasons as per below as nothing has changed since I last wrote to you except that we have more residents and continue to grow.		
<b>Submission 4 Tim Dixon 28/10/2019</b>	Please accept this an objection. Please consider the comments on the denial of these same request at the last modification request and for those same reasons consider the matter should be rejected. Further, that due to the circumstances, it strongly indicates a profiteering builder wanting to exclude liability for future obligations which is very worrying.	The comments were considered as part of the assessment of the previous modification. No new comments have been raised.	
<b>Submission 5 Lea and Ken Harris 29/10/2019</b>	We would request you agree to the modification especially with regard to removing the requirement that the northern intersection be fully constructed prior to release of the subdivision certificates for Stages 18 and 19. This will allow the owners of lots in Stages 18 and 19 to proceed with their build approximately 3 months earlier. This will relieve them of the stress of paying extra costs towards	Noted.	Nil.

<b>Fern Bay Seaside Village – Modification 12</b>			
<b>Response to Submissions</b>			
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	their home builds and extra rent while waiting for their home builds.		
<b>Submission 5 Lea and Ken Harris 29/10/2019</b>	As Rawson have put up considerable financial guarantees so the road will be completed, there is no reason to have the registration of Stages 18 and 19 tied to the completion of the road.	Noted.	Nil.
<b>Submission 6 Tuppence Krause 30/10/2019</b>	I wish to support the proposal for the modification.  I currently have a deposit down on land in Stages 18 and 19 and would like the opportunity to get our land registered to start the building process. The works on the northern intersection are well underway so we should be allowed to move forward with the settlement of our land, particularly as this was not a condition to stages 18 and 19 when we put our deposit down back in July last year.	Noted.	Nil.