

3 November 2017

**NSW Planning Assessment Commission Determination Report
Fern Bay Seaside Village, Fern Bay, MP 06_0250 MOD 9**

1. INTRODUCTION

On 26 September 2017, the Planning Assessment Commission received from the Department of Planning and Environment a request from Fern Bay No. 1 Pty Ltd (the proponent) to modify the Fern Bay project approval MP 06_0250.

The Department has referred the modification request to the Commission for determination in accordance with the Minister for Planning's delegation because the Department received more than 25 submissions from the public in the nature of objections.

Ms Lynelle Briggs AO, Chair of the Commission, nominated Alan Coutts (chair), Prof. Zada Lipman and Peter Duncan AM to constitute the Commission to determine the modification request.

1.1 Summary of Development Application

The modification request proposes changes to the Project Approval of a community title residential subdivision at Fern Bay. The request proposes to modify the provision of a normal local road to a gated emergency access road only, delay the provision of the road, revise the subdivision layout, subdivide commercial lots and subdivide super lots in Stages 18-20 into 40 residential lots.

The key components of the modification proposal include:

- modify the northern road from a normal local road to an emergency access 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) likely to be lots within Stage 20;
- revise the subdivision layout of Stages 18-20 (with a reduced development footprint compared to the original request), resulting in an increase of 32 lots;
- relocate the waste water pump station (P3) from the western to the eastern side of Stage 18;
- make amendments to conditions and delete a condition regarding the detention basin that has already been satisfied; and
- make an administrative correction to the number of lots within Stage 14 (to recognise that an approved super lot is a large single residential lot).

1.2 Need for modification

The proponent states that the modification will:

- remove the need for the northern road to be retained as a normal local road as sufficient access and safety can be maintained through a single intersection to the subdivision at Seaside Boulevard and Nelson Bay Road;
- result in a more consistent layout and pattern of development across the final stages (18-20) of the development; and
- minimise conflict with existing approved infrastructure by relocating the pump station, with minimal localised environmental impacts.

1.3 Background

The project approval has been modified on six occasions previously:

- MOD 1 – 1 April 2011: 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;

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

2. DEPARTMENT'S ASSESSMENT REPORT

The Department's assessment report for the current modification request identified traffic and access, bushfire and safety, public transport, staging and ecological impacts, as the key impacts associated with the proposal. The Department's assessment report concluded that the modification of the approved access road from Stage 14 of the development to Nelson Bay Road from a local road to an emergency only access should not be supported. The Department recommended that 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 of the site.

The Department concluded that the other changes requested to the subdivision layout, including the business zone amendments and subdivision of super lots, were generally appropriate.

3. COMMISSION'S MEETINGS AND SITE VISIT

As part of its assessment of the proposal, the Commission met with the Department, the proponent, Port Stephens Council and visited the site. Notes from these meetings are provided in **Appendix 1**. The Commission also conducted a public meeting. Notes from the public meeting are provided in **Appendices 2 and 3**.

3.1 Briefing from the Department

On 16 October 2017, the Department briefed the Commission on the modification. The Department briefed the Commission on the approval history, justification for not supporting the proposed amendments to the northern access road and why it did not support the proponent's proposed changes to the staged delivery of the road.

3.2 Briefing from the proponent and site visit

On 16 October 2017, the Commission met with the proponent. The proponent briefed the Commission on the main components of the proposal, including the project history, ecology, road connections, traffic, staging and commercial zoning.

On 26 October 2017, the Commission visited the site, accompanied by representatives of the proponent. The Commission viewed the alignment of the northern access road and its intersection with Nelson Bay road. The Commission also viewed the site of the proposed earthworks within the E2 conservation zone.

3.3 Meeting with Port Stephens Council

On 26 October 2017, the Commission met with Port Stephens Council to discuss Council's position on the proposed modification. Council held initial concerns regarding the proposal, however revised its

position after a series of discussions with the proponent. Council identified that if the key government agencies were satisfied with the proposal, Council would not object.

3.4 Public Meeting

The Commission held a public meeting at the Stockton RSL Club on 26 October 2017 to hear the public's views on the proposal. A list of the four speakers that presented to the Commission is provided in **Appendix 2**. A summary of the issues raised by the speakers and provided in written submissions is provided in **Appendix 3**. In summary, the main issues of concern include delivery of the northern access road, and the delivery of community facilities and commercial premises.

During the public meeting, a member of the community presented the Commission with a petition containing approximately 275 signatures requesting the Commission adopt the Department's recommendations.

4. COMMISSION'S CONSIDERATION

In this determination, the Commission has considered carefully:

- all information provided by the proponent;
- the Department's assessment report;
- all oral and written submissions from the public and special interest groups;
- advice and recommendations from government agencies; and
- relevant matters for consideration under s75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The key matters considered by the Commission include provision of the northern access road, staging, ecological impacts, relocation of a waste water pump station, deletion of a condition relating to the location of a detention basin that has already been satisfied, commercial land and community facilities.

The Commission considered the proposed modification of Fern Bay Seaside Village does not fundamentally change the essential intent of the existing approved development. The proposed changes are within the broad scope of Section 75W of the EP&A Act as it applies to the development, and therefore the request to modify may be considered under that Section.

5.1 Provision of the northern access road

The proponent seeks to modify the consent and change the northern access road from a normal local road to a gated emergency access road. The proponent has stated that the provision of a normal local road is not warranted as the Seaside Village subdivision can sufficiently accommodate traffic, safety and access impacts. Furthermore, the proponent points out that delivery of the road would require significant clearing of vegetation along Nelson Bay road to accommodate the entry and exit turning lanes. The proponent states that no agencies objected to the modification proposal to change the road from a normal local road to an emergency access road.

The Department's assessment report evaluated the traffic and access, bushfire and safety, and public transport impacts associated with changing the road from a normal local road to a gated emergency access road. The Department found that removal of the normal local road would result in:

- Increased travel times; reduced accessibility and connectivity to the site;
- Reduced bushfire safety outcomes for residents; and
- a significant reduction to the efficiency of future public bus movements through the site, particularly in a southbound direction, increasing travel distances and times for passengers.

The Department's assessment report did not support the change to the normal local road to an emergency access road.

The Commission heard from several speakers at the public meeting indicating that they had bought property within Seaside Village under the presumption that a normal local road would be provided. The speakers indicated their support to retain the road as a normal local road to provide the community with adequate access to and from the Seaside Village subdivision, additional transport routes and evacuation options during emergencies. Speakers raised concerns that in the case of an emergency, a gated road could cause confusion and poses significant safety concerns. The speakers opposed the proponent's intent to change the access road to be emergency access only.

The Commission has evaluated the various positions put forward by each of the stakeholders and given the matter significant consideration. The Commission finds that there is insufficient evidence to justify the reduced access and safety aspects that come with the change from a normal local road to an emergency access road. The Commission finds that retention of the road as a normal local road will be important in providing transport access and connectivity within the Seaside Village subdivision. The provision of two normal local roads in and out of the subdivision will help familiarise residents with an alternative access point in the case of one road being blocked. The Commission also finds that provision of a local road would mitigate any concerns about the locked gate not being opened during an emergency. The Commission therefore agrees with the Department's recommendation and does not support the proposed change from a normal access road to a gated emergency only access road.

The Commission notes that the design of the normal local road's intersection with Nelson Bay road will be the subject of future approval by the Road and Maritime Services agency.

5.2 Staging

At present, the delivery of the normal access road is required to be constructed as part of Stage 14. The proponent seeks to modify delivery of the road until prior to the provision of a Subdivision Certificate for the 609th residential lot, which is likely to be lots within Stage 20. These changes were sought by the proponent because the final design and construction of an access road between Stage 14 and Nelson Bay Road will take some time. The proponent sought to amend the plans to only deliver an emergency access road and the potential design and delivery of the normal access road will take considerably longer. Furthermore, design of intersection works, including acceleration and deceleration lanes, would potentially delay delivery of housing within Stage 14.

The Department's assessment report acknowledged that due to the importance of the normal access road as an emergency access, evacuation route and access road, the most appropriate outcome is for the northern access road to be retained in its current delivery schedule, before the release of Stage 14.

From the comments made at the public meeting and submissions received by the Department, the Commission heard of the community's frustration from the delay in delivering the second access road to Seaside Village. Residents were concerned that the access road was expected to be delivered much earlier but has been subsequently delayed through previous modifications to the project. Residents stated that delaying the delivery of the road would reduce bushfire safety outcomes and reduce emergency access to Seaside Village subdivision.

The Commission agrees with the Department's position and finds that for the access and safety of Seaside Village residents, the northern access road should be provided prior to the release of lots within Stage 14.

5.3 Ecological impacts

The proponent seeks to encroach and clear land within E2 zoned land (6,140m² in total) along the Eastern edge of proposed stage 18 and 19 in response to their revised subdivision layout. The

proponent is seeking to undertake bulk earthworks within the E2 zoned land and batter the existing landform.

The Department reviewed the proponent's request and found that there was insufficient justification for the proposed changes and insufficient information to establish the extent of the biodiversity impacts that would occur as a result of the proposed clearing and excavation. Due to the lack of justification and evidence, the Department recommended a condition requiring a revised bulk earthworks design which does not encroach on the E2 Conservation Zone be submitted and approved by the Department prior to the issue of a Construction Certificate for Stages 18 or 19.

The Commission agrees with the Department's recommendation and finds that there has been insufficient assessment of the environmental impacts resulting from the proposed land clearing and supports the Department's recommendation to require the proponent to undertake a detailed bulk earthworks design assessment prior to issue of a Construction Certificate for Stages 18 or 19.

5.4 Relocation of waste water pump and detention basin

The proponent seeks to relocate the waste water pump station from the western side of Stage 18 to its eastern side to minimise conflict with existing infrastructure. The Department considered the relocation acceptable as it would result in no additional impacts beyond those of the approved pump location. There was no objection from agencies or the community to the relocation of the waste water pump. The Commission therefore supports the Department's recommendation.

The proponent also requested the deletion of Condition B1 Design Modifications that required the relocation of detention basin no.6, as the condition has been satisfied. The Commission acknowledges that the proponent's removal of the condition is primarily of an administrative matter. However, the Commission recognises that it is not common practice to remove completed conditions from the instrument of consent and for the purposes of transparency for any potential future modification, the Commission retains this condition.

5.5 Commercial Land

The proponent seeks to replace one approved commercial lot (1,166m²) with eight individual commercial lots (4,223m²) to be used for commercial purposes.

The Department considered that the overall increase in size of the commercial area is acceptable and consistent with strategic planning for the site. Concerns were raised from the community regarding the adequacy of parking and landscaping given the smaller nature of the lot sizes. The Department therefore recommended the inclusion of a condition stating that the proponent, prior to the issue of a subdivision certificate for Stage 19, must prepare a set of design guidelines to the approval of the Secretary. The guidelines should incorporate indicative building envelopes for 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's requirements.

The Commission agrees with the Department's recommended condition and finds that preparation of a comprehensive set of design guidelines will ensure future commercial uses will adequately consider parking and landscaping requirements.

5.6 Development Density

The proponent seeks to subdivide approved superlots in Stages 18-20 into standard residential lots within the Seaside Village subdivision. The Department considers the increase in density resulting from the proposed modification is within the scope of the originally approved development and is consistent with planning controls for the site. The Commission agrees with the Department's recommendation and supports the amended condition reflecting the revised number of lots.

5.7 Community Facilities

During the public meeting, the Commission heard concerns from community members regarding the delivery of community facilities within Seaside Village. Community members were concerned that the number of facilities initially promised by the proponent had diminished as multiple modifications to the initial development consent had occurred. The Commission understands the community's position, however the Commission is only able to assess the current modification before it. This modification does not intend to alter the delivery of community facilities, consequently the Commission is unable to take this request by the community into consideration.

5. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has considered carefully the proponent's proposal, the Department's assessment report and the relevant matters for consideration in the EP&A Act. The Commission has noted the advice and recommendations from Port Stephens Council, and government agencies including Rural Fire Service, Transport for NSW and Office of Environment and Heritage. Finally, the Commission has considered written submissions from the public and heard from members of the community about their concerns for the proposal during the public meeting in Stockton.

The Commission has responded to concerns expressed by the public, both in written submissions and at the public meeting, while noting that a number of those issues relate to substantive aspects of the proposal or its potential impacts, that have already been approved and were not the subject of this modification request.

For the reasons set out above, the Commission has determined to grant consent to the modification request subject to the conditions set out in the instrument of approval.

Alan Coutts (Chair)
Member of the Commission

Prof. Zada Lipman
Member of the Commission

Peter Duncan AM
Member of the Commission