



# Glades Estate Residential Subdivision

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State Significant Development Modification Assessment  
(MP06\_0143 MOD 4)

November 2020



Published by the NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Glades Estate Residential Subdivision – MP06\_0143 MOD 4

Subtitle: Glades Estate Residential Subdivision

*Cover image: Near Map*

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# Glossary

Abbreviation	Definition
<b>AHD</b>	Australian Height Datum
<b>BCA</b>	Building Code of Australia
<b>CIV</b>	Capital Investment Value
<b>CPP</b>	Community Participation Plan
<b>Council</b>	Coffs Harbour City Council
<b>Crown Lands</b>	Crown Lands, DPIE
<b>Department</b>	Department of Planning, Industry and Environment
<b>DPI</b>	Department of Primary Industries, DPIE
<b>EESG</b>	Environment, Energy and Science Group, DPIE
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environmental Planning Instrument
<b>EPL</b>	Environment Protection Licence
<b>ESD</b>	Ecologically Sustainable Development
<b>Heritage</b>	Heritage NSW, Department of Premier and Cabinet
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>RMS</b>	Roads and Maritime Services, TfNSW
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>SEPP</b>	State Environmental Planning Policy

**SRD SEPP** State Environmental Planning Policy (State and Regional Development) 2011

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**SSD** State Significant Development

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**TfNSW** Transport for NSW

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# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the Concept Approval for MP 06\_0143 for a residential subdivision of land comprising 524 lots known as 'Glades Estate' (Lots 1 and 2 DP 725785), Moonee Beach in the Coffs Harbour Local Government Area (LGA).

The modification application seeks approval for the following:

- Removal of vegetated central corridor within the precinct and reconfiguration of the subdivision pattern to accommodate an additional 31 lots
- Amendment to approved site levels
- Amendment to approved noise mitigation measures.

The application was lodged by Rothwell Boys Pty Ltd (the Proponent on behalf of land owner) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.1 Subject Site

The "Glades Estate" Residential Subdivision is located approximately 13 kilometres (km) north of Coffs Harbour and approximately 1km north of the existing Moonee Beach village. The site itself is bounded by the Pacific Highway to the west, Moonee Creek to the east, Skinners Creek to the north and other recent residential land subdivisions to the south.



**Figure 1 |** Regional Context Map (Source: Near Map)



**Figure 2 |** Local Context Map (Source: Near Map)

## 1.2 Approval history

On 5 May 2009, project approval was granted by the then Minister for Planning for MP 06\_0143, a residential subdivision permitting the creation of 524 lots, site earthworks, provision of roads and infrastructure, open space, recreation facilities and playing fields and a pedestrian/cycleway network.

The development consent has been modified on three (3) occasions (see **Table 1**).

**Table 1 | Summary of Modifications**

<b>Mod No.</b>	<b>Summary of Modifications</b>	<b>Approval Authority</b>	<b>Type</b>	<b>Approval Date</b>
<b>MOD 1</b>	Permit bulk earthworks on-site in advance of the creation of any easements or instruments of title to begin constructing the northern collector road, permit flexibility in the timing of nominated stages and provide temporary fencing during bulk earthworks.	Department	S75W	1 February 2010
<b>MOD 2</b>	Allow the issue of a construction certificate for the installation of a sewer rising main across the Pacific Highway in the immediate future, and in advance of any other approvals or certifications required for the development.	Department	S75W	15 July 2011
<b>MOD 3</b>	Update the monetary contribution rates to reflect the <i>Moonee Release Area – Development Contributions Plan 2014</i> .	Department	S75W	2 February 2015

## 2 Proposed modification

The modification seeks approval for the following:

- Removal of vegetated central corridor within the precinct and reconfiguration of the subdivision pattern to accommodate an additional 31 lots (the additional lots were subsequently deleted and the corridor reinstated)
- Amendment of approved site levels
- Amendment of approved noise mitigation measures
- Modify Asset Protection Zones (APZs).

### Removal of Vegetated Central Corridor

The original modification requested the removal of 1.7 hectares of existing vegetation (comprising 1.35 hectares of native vegetation) located within an identified vegetated central corridor (corridor) approved pursuant to the original consent. The removal of this corridor was sought to accommodate an additional 31 residential allotments (see discussion below).

To mitigate the impacts of the loss of this corridor, the Proponent indicated additional habitat enhancement would be undertaken on the periphery of the subject land, over and above habitat enhancement works required by the original project approval.

As a result of public consultation, the proposal to remove the vegetated central corridor was subsequently amended in documentation submitted as part of the Response to Submissions (RtS). This is discussed in greater detail throughout the body of this report.

### Site Levels

The modification to site levels are requested as a result of a flood assessment, completed by Martens & Associates (in August 2015) on adjoining land to the south described as Lot 1 DP1097743.

The assessment prepared for the adjoining land was peer reviewed and approved by Coffs Harbour City Council. As a result, a flood assessment (inclusive of hydrologic and hydraulic modelling) was undertaken and completed on the subject site. The flood assessment concluded that all proposed dwellings are to have a finished floor level at 4.03-4.68m AHD. As a result, site levels within the subject land, applying to the development footprint of land comprising proposed residential lots and roads, has been adjusted in accordance with the mapped flood extent.

The proponent outlined that a change in levels on the site would require amendment to two components of the proposal, the approved bulk earthworks plan, and conditions D6(1), D6(2) and E16 of the consent.

The modified earthworks plan, as submitted, would increase the bulk cut and fill on the land as demonstrated in **Table 2**:

**Table 2 | Proposed modification to site levels**

	<b>As Approved</b>	<b>As Modified</b>
<b>Cut</b>	274,000m <sup>3</sup>	500,000m <sup>3</sup>
<b>Fill</b>	274,000m <sup>3</sup>	300,000m <sup>3</sup>
<b>Surplus</b>	0m <sup>3</sup>	200,000m <sup>3</sup>

The Proponent outlines that the cut & fill extents, combined with the quantities that are shown on the proposed bulk earthworks plan are sought in order to provide flexibility at the development design stage allowing for the delivery of a suitable design surface for subdivision development at or above the minimum fill level established by D6(1).

The proposed changes to conditions D6(1), D6(2) and E16 are explained in further detail below.

### **Noise Mitigation Measures**

During the original assessment of the project approval, a supporting noise impact assessment was submitted that proposed the inclusion of noise barriers to ameliorate the impact of road traffic noise on the proposed residential lots that may be impacted by the proximity of the Pacific Highway.

Further, condition B3 (1) required an acoustic assessment to be undertaken, prior to the issue of a construction certificate for Stages 1, 2, 3 and 9 (Lots 1-20,84-96 and 474-479) demonstrating compliance with the assigned external noise criteria. Building covenants or section 88B instruments are permitted to apply to any lots that were unable to achieve the assigned external noise criteria.

Since the original project approval, upgrade works have been undertaken to the Pacific Highway. According to the Proponent, the upgrade from a two lane to a four lane carriageway altered the position of the road as well as road pavement levels for the full frontage of the site, with road levels in the northern and southern parts of the site elevated by more than four metres above the subject land.

The Proponent sought an amended noise assessment prepared by Wilkinson Murray on the basis of these works. The report outlined that noise emanating from the upgraded highway can be mitigated by requiring improved architectural treatments. The Proponent proposed a restriction as to user under Section 88B of the *Conveyancing Act 1919* as an appropriate mitigation measure to demonstrate compliance in relation to noise. It was also proposed that the noise barriers required under the project approval be removed as a result of the amended consent and plans.

## 3 Statutory context

### 3.1 Scope of modifications

The project was originally approved under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, the power to modify transitional Part 3A projects under section 75W of the Act, as in force immediately before its repeal on 1 October 2011 is being wound up. However, as the request for this modification was made before the 'cut-off date' of 1 March 2018, the Part 3A provisions and specifically the power under section 75W to modify the approval continue to apply to and in respect of the project (clause 3 and 3BA of Schedule 2 to the ST&OP Regulation).

Consequently, the assessment of this request is required to be prepared in accordance with the requirements of Part 3A and associated regulations. The Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

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

### 3.2 Consent authority

The Minister will be the consent authority under section 4.5(a) of the EP&A Act.

#### **Minister's delegate as consent authority**

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments, may determine the application.

### 3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of MP06\_0143. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

## 4 Engagement

### 4.1 Department's engagement

The Department notified the modification request for 14 days from Friday 17 May 2019 to Friday 31 May 2019. The request was made publicly available on the Department's website, notified to Department of Primary Industries (DPI), Roads and Maritime Services (RMS) (now Transport for NSW (TfNSW)), Biodiversity Conservation Division (BCD) of the Environmental, Energy and Science Group, (formerly Office of Environment and Heritage), Rural Fire Service, Coffs Harbour City Council and surrounding landowners and residents.

### 4.2 Summary of submissions

During the exhibition period, a total of ten submissions were received. Of the ten submissions received, four were from NSW Government agencies, one from Coffs Harbour Council and five from members of the community.

A summary of the submissions is provided at **Table 3**, and a link to the submissions is provided in **Appendix B**.

**Table 3** | Summary of public authority submissions

#### Coffs Harbour City Council

Council **did not object** to the proposal, however, it provided the following advice:

- The only adequate offset for the loss of the central corridor would be to significantly increase the width of the eastern corridor adjoining Skinners and Moonee Creek.
- The Central Wildlife Corridor provides a valuable amenity and open space for the surrounding subdivision.
- An area that is equal to or greater in size to the central wildlife corridor area (shown as 1.75ha) should be protected and managed for conservation purposes in the eastern part of the Glades Estate site.
- The additional conservation area should maximise the width of the eastern riparian corridor, achieving at least a 100m width to Moonee Creek and at least a 50m width for Skinners Creek in accordance with riparian zone requirements of the Coffs Harbour City Council Development Control Plan (DCP).
- Condition B15 should be amended to include measures to manage the additional conservation area.
- Condition B15 should be amended to refer to Coffs Harbour City Council DCP Appendix 2, rather than the former Department of Natural Resources document.
- Requested that stormwater arrangements remain closer to those originally approved, for maintenance reasons.
- The proposed modification to conventional sewer with pump stations is Council's preferred arrangement and there is capacity in the system for the additional lots that are proposed as part of this modification.

- The proposed arrangement relating to water supply is consistent with Council's requirements and there is capacity in the system to support the additional 31 allotments.
- No contours have been shown as part of the modification for the site to ascertain if the fill/cut footprint is proposed to be larger than that approved.
- Submitted plans show a surplus of fill on the site.
- The proposed earthworks appear to not impact surrounding areas (though it should be noted that the Water Sensitive Urban Design infrastructure is proposed to be located within the reserves surrounding the development).
- Proposed wording of condition D6(1) is not supported and suggested an amendment.
- Proposed wording of condition D6(2) is not supported. Council has no objection to the current Condition D6(2) being removed.
- No objection to the removal of the second sentence of condition E16.
- Council does not support the removal of the acoustic wall unless it can be demonstrated that appropriate LAeq levels within future dwellings (as stipulated in State Environmental Planning Policy (Infrastructure) 2007) will not be exceeded within a typical residential dwelling.
- A condition should be imposed on the title of any of the lots affected by the 1% AEP, restricting the use of this portion of the lot for any habitable building or structure.

## RFS

RFS **did not object** to the proposal and provided the following advice:

- The proposed amended conditions A3 Project, in Accordance with Plans, and B16 Asset Protection Zones (APZ), that reflect the amended site layout and APZ plans, are accepted on the basis that the proposed APZ within the proposed public reserves will be managed in perpetuity to NSW RFS document Standards for Asset Protection Zones requirements.

## Department of Industry

DoI **did not object** to the proposal and provided no comments on the proposal.

## RMS

RMS **did not object** to the proposal and provided the following advice:

- Council need to be satisfied that the safety and efficiency of the network is not adversely affected by the proposed development.
- Council to be satisfied that appropriate noise attenuation measures will be accommodated as a result of the proposal as modified.
- Any required mitigation measures as a result of noise are the responsibility of the developer and will be at no cost to RMS.

## BCD (formerly OEH)

BCD **did not object** to the proposal and provided the following advice:

- The proposal does not provide adequate offsets to support the loss of the central corridor.

- An area equal to or greater than the central corridor area should be provided in the eastern part of The Glades Estate site. The width of the eastern riparian corridor should be maximised, achieving at least a 100m width to Moonee Creek and at least 50m width for Skinners Creek, in accordance with riparian zone requirements in Coffs Harbour City Council DCP.
- Management measures for the additional conservation area should be included in the Vegetation Management Plan (required under Condition B15).
- Condition B15 (2) should be updated to refer to the Coffs Harbour City Council DCP Appendix 2 Guideline for preparing Vegetation Management Plans, rather than the former Department of Natural Resources document.
- Consultation should be undertaken with Coffs Harbour & District Local Aboriginal Land Council and Jagun to determine what the Aboriginal Cultural Heritage (ACH) values are.
- The Aboriginal Cultural Heritage Assessment Report (ACHAR) should be amended to rectify errors that affect the ability to interpret the information presented and resubmitted, prior to final determination.
- Proposed draft condition D6(1) filling of the site should require “All parts of residential lots suitable for dwellings and all residential roads to be located above the ‘1% AEP Catchment +5% AEP Ocean + climate change’ flood level.
- The proposed draft condition D6(2) is not supported. Any significant changes to development footprint or design levels could result in impacts that affect adjoining properties and as such need to be assessed prior to the construction certificate stage.
- There is no objection to the removal of the second sentence of E16.

Public submissions raised the following issues:

- Loss of open space
- Noise impacts as a result of the removal of noise barriers
- Traffic impacts of the development
- Access to the site should be provided directly from the Pacific Highway
- Impacts on, and loss of, biodiversity
- Controls should be imposed regarding the importation and exportation of fill.

### **4.3 Response to submissions**

On 5 November 2019, the Proponent provided further information that included an updated ACHAR. BCD indicated an amendment to recommendations as a result of the amended ACHAR. These amended recommendations included:

- that Jagun Aged and Community Care be included in condition D13(1) of the project approval
- the Construction Management Plan be referred to BCD for review prior to its approval.

It should be noted that additional matters raised by BCD and Council, outlined above, relating to biodiversity and flooding remained outstanding as a result of the 5 November 2019 correspondence.

On 25 May 2020, the Proponent provided a final Response to Submissions (RtS) (**Appendix C**), which provided additional information in relation to the submissions. Notably, the RtS outlined that the Proponent would not be pursuing two components of the original application, these being:

- reconfiguration of the subdivision pattern and removal of the vegetated central corridor
- amendment to noise attenuation measures.

As such, the proposal would be simplified to apply to the bulk earthworks only and all additional components of the original request would not be pursued at this stage. This meant that under the amended the proposal, the vegetated central corridor would be retained and not further subdivided into an additional 31 lots. It also meant that there would be no change to the noise attenuation measures approved as part of the original consent. Further, the proposed bulk earthworks on the site were reduced as demonstrated in **Table 4**:

**Table 4 | Proposed modification to site levels as a result of RtS**

	<b>As Modified</b>		
	<b>As Approved</b>	<b>Modification Report – April 2019</b>	<b>RtS 25 May 2020</b>
<b>Cut</b>	274,000m <sup>3</sup>	500,000m <sup>3</sup>	470,000m <sup>3</sup>
<b>Fill</b>	274,000m <sup>3</sup>	300,000m <sup>3</sup>	290,000m <sup>3</sup>
<b>Surplus</b>	0m <sup>3</sup>	200,000m <sup>3</sup>	180,000m <sup>3</sup>

Therefore, the proposed modification and assessment contained in section 5 of this report relates to the proposed changes to the bulk earthworks as a result of the amended flood study and pursuant to the RtS submission, will result in the following proposed changes:

- amendment to the bulk earthworks plan
- amendment to condition D6(1), D6(2) and E16.

The proposed amendments were not considered to warrant additional exhibition, due to the reduction in impact of the application and overall favourable outcome in regard to retaining the central corridor.

Notwithstanding, the RtS was made publicly available on the Department's website. The RtS was referred to Council and EESG, due to key matters raised in relation to conditions relating to the bulk earthworks plan, for further comment. Additional responses were received from both EESG and Council (**Table 4**).

**Table 4 | Summary of public authority submissions following receipt of RtS**

#### **Coffs Harbour City Council**

Council provided the following advice in relation to the RtS:

- Council has no objection to the proposed amended condition D6.1 (a) and (b), as stated in the response to submissions
- In terms of flooding the original Condition D6.2 is acceptable to be removed, however, it is noted that the condition may require other measures to protect the stormwater/WSUD infrastructure such as bioretention basins and swales. Condition 6.2 recommended by OEH ("All stormwater treatment infrastructure such as swales and basin are to be located above the 5% AEP flood level") was considered acceptable for flooding.
- From a flooding perspective, no objection was raised to changing condition E16.
- Council requested a condition requiring a copy of the flood model result files be provided to council prior to the issuing of subdivision certificate (for the purposes of applying flood planning levels to individual lots in the future).
- Council requested a condition be imposed requiring a restriction be created on the title of the lots affected by the 1% AEP, restricting the use of this portion of the lot for any habitable building or structure.

- The location of a number of the sewer pump stations appeared to be located in flood impacted land and below the 1% AEP flood event. Sewer pump stations be required to be located above the 1% AEP level. Council recommended the Department require the bulk earthworks plan be amended to reflect this and any associated impacts of increased fill extents.
- Designated sewer pump station and bio-retention areas appeared to be conflicting.
- Applicant provide information that demonstrates the proposed bulk earthworks will not affect the feasibility for compliant design of the sewer reticulation system and stormwater network, with levels and grades of critical lines to be provided to demonstrate this.
- The proposed levels around the vegetated centre corridor, are different to the original bulk earthworks, however, appear to align with the existing topography on the site with the exception of the southern corridor boundary. Clarification requested in relation to the landform in this area and associated management impacts (e.g. stormwater, batters adjacent road, etc).
- Requested information on how the modified development achieves the intention of conditions D6(2) and E16 as Council's previous response considered flooding implications of the removal of the condition, not the potential impact on the groundwater table.
- The current application, relating only to the earthworks footprint, will mean that the area potentially required for compensatory works for any future removal of the central wildlife corridor will be significantly disturbed to the point where the ability to undertake any meaningful rehabilitation work is very unlikely.

## BCD

BCD provided the following advice in relation to the RtS:

- The potential impacts of earthworks on the central wildlife corridor should be assessed and works designed to mitigate impacts.
- Original conditions of consent should be reviewed to ensure the proposal will not impact on the ability of the conditions to be fully met.
- The proposal should demonstrate how the approval would be consistent with current Statement of Commitments relating to areas of remnant vegetation, or describe how these would need to be modified.
- All registered Aboriginal Parties (including Coffs Harbour & District Local Aboriginal Land Council (LALC) and the Jagun Aged & Community Care group) should be fully consulted on the modification proposal including being provided with all relevant and detailed plans, such as the proposed Earthworks Plan.
- Jagun Aged & Community Care should be included in the listed contacts required under condition D13(1) of the project approval.

Following the receipt of the responses to the RtS dated 25 May 2020, the Department wrote to the Proponent on 17 July 2020, seeking clarification on the following matters:

- further justification to support the deletion of condition D6.2 and the second sentence of condition E16 in light of water sensitive urban design requirements
- integration of the corridor into the surrounding landscape

- an indication of the potential impacts on the structural root zones of existing vegetation identified for retention within the corridor
- proposed management of stormwater runoff in the corridor
- consultation with relevant RAPs on the bulk earthworks plan.

The Proponent provided a further response to the issues raised, providing plans demonstrating longitudinal sections through the site, which provided further indication of the impact of the earthworks on the vegetated corridor and are assessed in further detail below.

The Proponent's additional information was provide to BCD for further comment. BCD's advice is discussed in **Section 5** below.

## 5 Assessment

The Department has considered the modification report, the accompanying documents, issues raised in submissions and the Applicant's RTS in its assessment of the application. The Department considers the key issues associated with the proposal are:

- Biodiversity
- Cut and fill
- Aboriginal Cultural Heritage
- Groundwater Protection
- Flooding

Other issues considered in the assessment of the application are discussed at **Section 6.6**.

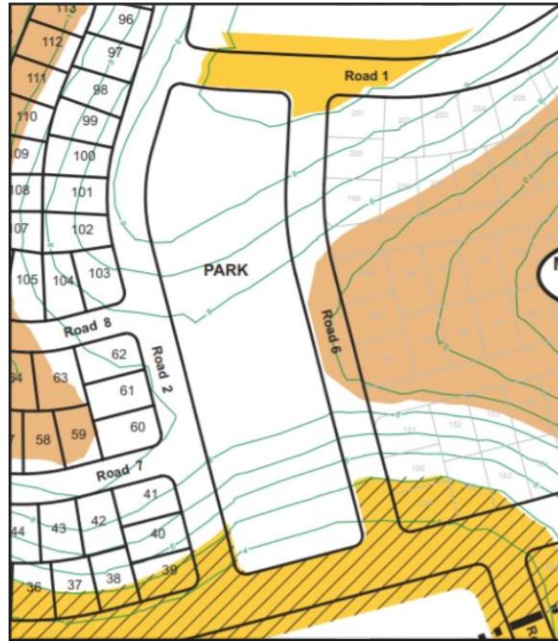
### 5.1 Biodiversity

A key consideration of the Department's Assessment was the impact on biodiversity as a result of the proposed modifications. Of specific note was the impact of the increased cut and fill extents on the retained vegetated central corridor. The impact is considered in further detail below.

The location of the corridor was established pursuant to the original approval. **Figure 3** shows an extract of the approved project plan, which demonstrates the location of the vegetated central corridor and the surrounding road network. Road reserves adjoin the northern, southern, eastern and western boundaries of the vegetated central corridor. The approved bulk earthworks surrounding the corridor are shown in **Figure 4**.

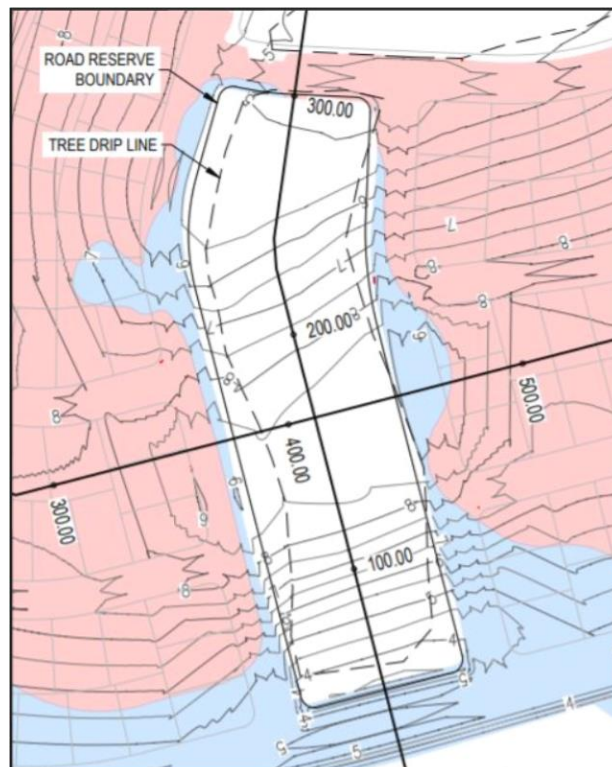


**Figure 3** | Approved Project Plan (Source: Determination Documents)



**Figure 4 |** Approved Bulk Earthworks Plan - Central Corridor (Source: Proponent’s Environmental Assessment – November 2007)

The amended bulk earthworks plan results in no changes to approved location of the vegetated central corridor, nor the approved location of the road reserves (**Figure 5**). A key change relates to the increased extent of earthworks in the surrounding road reserves, adjacent to the approved corridor.



**Figure 5 |** Proposed Bulk Earthworks Plan (Source: Proponent’s RtS – 13 August 2020)

Despite the increased extent of cut and fill on land adjacent to the vegetated central corridor, it is not considered that the proposal as modified will result in unacceptable impacts on vegetation within the corridor, over those already approved under the original consent. **Figure 4** demonstrates approved earthworks along the southern, northern and eastern boundaries.

**Figure 5** demonstrates the existing tree drip line within the area of the vegetated central corridor. The existing tree drip lines are:

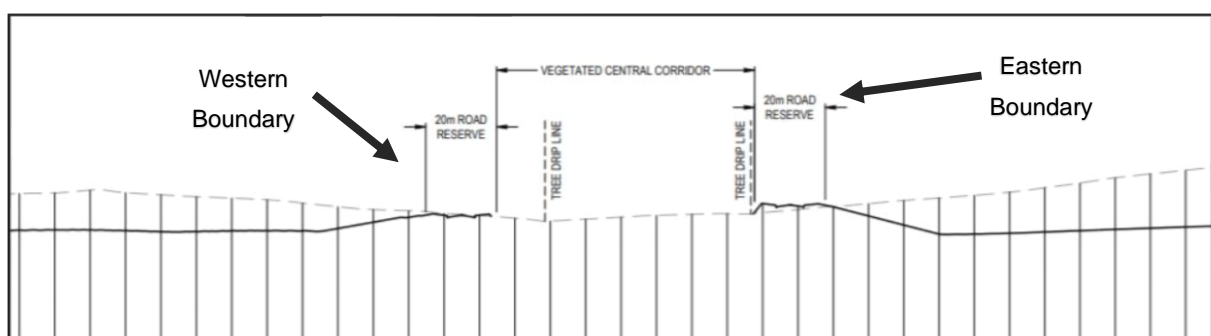
- setback on the western corridor from the road reserve boundary
- encroach into areas approved for the road reserves on both the northern and eastern boundaries
- setback from the proposed batter on the southern boundary.

The location of the adjoining road reserves were approved under the original consent. As demonstrated in **Figure 4**, earthworks approved on the northern and eastern boundaries under the original approval are situated in close proximity to the location of the tree drip lines on the northern and eastern boundaries, demonstrated in **Figure 5**.

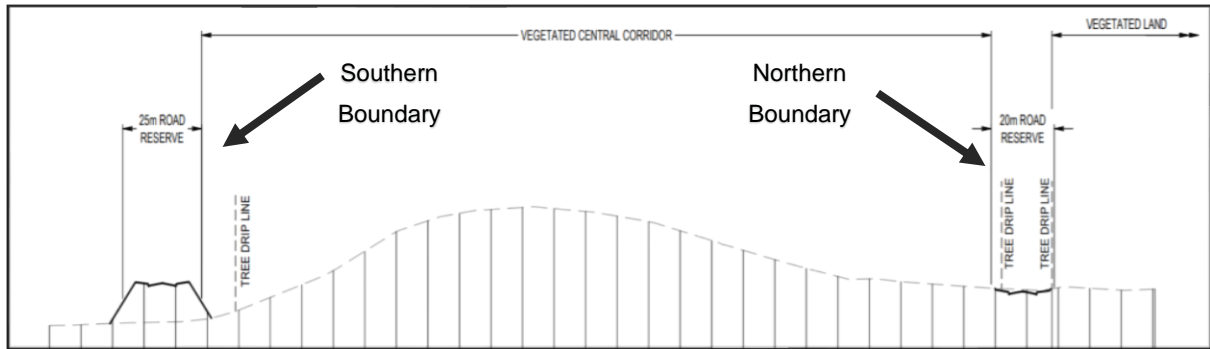
As a result of this modification, works in the location of the tree drip lines on the northern and eastern boundaries relate specifically to kerb and gutter requirements for the approved roadway (**Figures 6 & 7**). These minor impacts to vegetation however, can be suitably offset through revegetation in accordance with the Vegetation Management Plan (VMP) along the setback area of the western boundary of the corridor.

In regard to the Southern Boundary, the sections show that a batter would be situated on the southern boundary and slightly encroach into the central corridor. However as demonstrated in **Figure 3**, this batter would not encroach on the tree drip line. Revegetation of the batter would also be required as part of the VMP (condition B15 of the consent).

The Department has formed the view that the impact of the amended bulk earthworks on the central corridor is acceptable given condition B15 applies pursuant to the original project approval. However, in keeping with the advice provided by BCD and Council, with recommendations that condition B15 be updated to reflect Coffs Harbour City Council DCP Appendix 2, rather than the former Department of Natural Resources document, to ensure consistent and appropriate revegetation of the southern and western boundaries.



**Figure 6 | Central Corridor Section (West to East) (Source: Proponent's RtS – 13 August 2020)**



**Figure 7 | Central Corridor Section (South to North) (Source: Proponent’s RtS – 13 August 2020)**

## 5.2 Cut and Fill

As approved, the development requires 274,000m<sup>3</sup> of cut and 274,000m<sup>3</sup> of fill, meaning under the existing approval there is no resulting importation or exportation of fill from the site. As a result of the revised flood modelling, cut on site will increase to 470,000m<sup>3</sup> and proposed fill to 290,000m<sup>3</sup>. The changes would result in surplus fill of 180,000m<sup>3</sup>.

In its RtS, the Proponent outlined that the proposed earthworks would result in an approximate 5m cut from the existing ridgelines, with 2m of fill in the lower lying areas of the site. This differs from the approved bulk earthworks plan, which resulted in a 4m cut from the existing ridgelines, and 2m of fill to be placed in the lower lying areas.

The Proponent outlined that visually, the landform would be largely in keeping with that existing and this would be achieved by sloping the site from a central spine to the boundaries of the development footprint and the open space corridors adjoining the creeks, maintaining the visual character of the area when viewed from the peripheries. The Proponent provided cross-sections, demonstrating the level of change in relation to the natural ground level and proposed ground level, to further demonstrate this point. Further, cross-boundary drainage conditions would remain unchanged to previously approved plans and there were not proposed changes as a result of the amended bulk earthworks.

In relation to this point, Council raised the following:

- proposed earthworks on the site would result in a changing grade, resulting in a gentler slope and a longer run in the eastern portion of the site for sewer and stormwater, which are reliant on gravity. Council requested that information be provided to demonstrate that the proposed earthworks could deliver a compliant design for sewer reticulation system and stormwater network
- amendment to the bulk earthworks plan to ensure sewer pump stations are located above the 1% AEP level.

In regard to sewer pump stations, these were approved as part of the original consent and are not proposed to change as part of this modification. Issues relating to the grading of earthworks can also be more suitably addressed as part of the future construction certificate.

The Department recognises that changes to the overall landform caused by bulk earthworks is the result of the amended flood study, to ensure fill platforms comply with proposed condition D6(1),

discussed below. The Proponent has indicated that the quantity of cut exceeds the proposed fill volume to allow flexibility in design and account for landscaping and stormwater detention that may result from the subdivision. In addition, the Proponent has indicated that the surplus fill can be used on a nearby site owned by the Proponent that has development consent.

Despite the increase in cut and fill within the earthworks footprint, the proposal is accepted on the basis that visually, the landform will represent the existing character. Further, as previously discussed, the earthworks are maintained within the previously approved footprint and will not extend into areas of biodiversity and open space value.

On this basis, the Department considers the proposed bulk earthworks plan is acceptable. Notwithstanding, it is recommended, given the surplus fill and indication that fill will be removed from the site, that condition B4 Traffic and Pedestrian Management Plan be amended to outline specific procedures for the removal of excess construction material from the site. Additionally, condition D14 has been included in the consent, managing the exportation of fill from the site.

### **5.3 Aboriginal Cultural Heritage**

Initial consultation with Registered Aboriginal Parties was undertaken during the preparation of the Aboriginal Cultural Heritage Assessment Report. During stage 1 of the Aboriginal Cultural Heritage Report Consultation, 17 Aboriginal parties or organisations were identified as having a potential interest in the project. Of the 17 Aboriginal parties, six groups registered their interest in the project.

During the stage 2 consultation, Registered Aboriginal Parties (RAPs) were informed about the scope of the project and the proposed cultural heritage assessment process. Following this, three RAPs provided comments in relation to the proposed project as part of the stage 3 consultation process.

It should be noted that Coffs Harbour & District LALC registered its interest during stage 1 of consultation and were provided a presentation of the scope of the proposed project and the proposed cultural heritage assessment process at stage 2. However, the LALC did not provide a further response on the project methodology as part of stage 3.

Notwithstanding, three RAPs provided comments during stage 3. Of these, two outlined that they had read and understood the methodology and endorsed ERM's recommendations, these being the following:

- Management of lands within the Project Area during development in accordance with Conditions of Approval D12 and D13 of the existing project approval
- All works to be undertaken in accordance with the established unexpected finds procedure (outlined in condition D12)
- Management protocol for Aboriginal and non-Aboriginal objects should be included in the Construction Management Plan to be prepared for the development, with a minimum requirement that the unexpected finds procedure is reproduced in this document.

As recommended, the management protocol for Aboriginal and non-Aboriginal objects to be reproduced in the CMP has been included as a condition of consent. Additionally, the unexpected finds procedure has been recommended for reproduction in the CMP.

The third response received from Jagun Aged and Community Care, outlined a more formal response identifying a list of concerns. Of specific note was the request to review the bulk earthworks plan. The ACHAR outlined that this level of detail was unknown at the time of consultation for the report and as such, a bulk earthworks plan had not been provided to Jagun Aged and Community Care.

The Proponent was requested by the Department to address this matter in the RtS documents. The response outlined that, as the subdivision of the central corridor had now been removed from the proposal, the matters raised had been addressed.

The Department considered that, despite the removal of the proposal relating to the reconfiguration of the central corridor, the bulk earthworks across the wider site were proposed to change, Jagun Aged and Community Care should be further consulted. Jagun Aged and Community Care were subsequently consulted in August 2020 and their response is outlined below (**Table 5**).

**Table 5 | Jagun Aged and Community Care Response**

Jagun Aged and Community Care Comment	DPIE Comment
Supportive of the retention of wildlife corridor.	Noted
Bulk earthwork plans to be made available for review.	Bulk earthworks plan provided on 24/08/2020. Comments provided by Jagun Aged and Community Care outline that, provided the below requests are undertaken, there are no concerns with the proposed amendment to the bulk earthworks.
Two (2) skeletal remains had been found recently within the area of the collection road bridge area adjoining Moonee Creek Drive.	Noted – conditions D12 and D13 contained in the consent cover procedure in relation to unexpected finds. The proposed amendment to condition B12 (1) (as outlined above) requires that the the management protocol for Aboriginal and non-Aboriginal objects and the unexpected finds procedure has been recommended for reproduction in the CMP.
Aboriginal Site Officers to be present during soil removal for proposed roadways, water, electricity, sewage, telecommunication, stormwater lines.	Not adopted – the Department believes there are already adequate mechanisms in place to address potential finds during earthworks.
Repatriation location for artefacts objects or associated cultural finds – Local Aboriginal Groups shall be contacted for any repatriation of artefacts.	Noted – condition D13 outlines the process in the event of an unexpected find and Jagun Aged and Community Care have been included in the condition for notification. Additionally, the

<p>The report also indicates fill to raise low land areas. The origin of the fill is required, in the event artefacts are imported from alternative locations to the site.</p>	<p>unexpected finds procedure is to be reproduced in the CMP.</p> <p>The proposed cut on the site exceeds the proposed fill (bulk cut area of 470,000m<sup>3</sup> compared to a proposed fill area of 290,000m<sup>3</sup>). As such, fill is not required to be imported to the site. This was confirmed by the Proponent in correspondence dated 26 August 2020. Further, condition C3 outlines controls in the event fill is sourced from elsewhere.</p>
<p>Aboriginal history should be retained through archaeological collection and repatriation for future generations cultural education.</p>	<p>Conditions to address this point have been included in the consent to allow for appropriate collection and repatriation of artefacts, where relevant/required.</p>

Further, Jagun Aged and Community Care have been recommended for inclusion in condition D13, relating to consultation with relevant Aboriginal groups in the event of an unexpected find.

In addition, the Construction Management Plan is to be referred to the BCD for review prior to its approval. Condition B12 has been amended accordingly to ensure this request is undertaken.

## 5.4 Flooding

Condition D6(1) requires residential allotments to be filled to a minimum of the design flood level, plus minimum 600mm freeboard, with minimum fill levels of RL 4.75mAHD, as a result of previous studies submitted to support the original application.

Council indicated in its submission that the proposed amendments to condition D6(1) were not supported as it was not an appropriate condition for the subdivision of land, recommending that the Condition be amended to the following:

*“all residential lots and roads must be finished to be above the scenario 5 extents (1% AEP Catchment + 5% AEP Ocean + climate change flood levels) plus 500mm freeboard (between 4.03 and 4.68mAHD).”*

Council indicated that it would be appropriate for the Proponent’s initial proposed condition to be included as an advisory note to support the condition.

In their RtS, the Proponent updated their request to amend condition D6(1) as follows:

*1(a) All parts of residential lots suitable for dwellings must be finished to be above the scenario 5 extents (1% AEP Catchment + 5% AEP Ocean + climate change flood levels) plus 500mm freeboard (between 4.03 and 4.68m AHD).*

*1(b) All residential roads must be finished to be above the scenario 5 extents (1% AEP Catchment +5% AEP Ocean + climate change flood levels)*

*Note: Reference to the “scenario 5 extents (1% AEP Catchment + 5% AEP ocean + climate change’ flood levels is made in accordance with drawing PS01-K210 (REV. B) as per the Flood Assessment: The Glades Development, Lot 1 and 2 DP 725785, Pacific Highway, Moonee Beach NSW, prepared by Martens Consulting Engineers.*

This proposed condition was supported by Council (as outlined in its submission dated 14 July 2020) and is accepted on this basis as appropriate, by the Department. As such, condition D6(1) is recommended for amendment, pursuant to the instrument of modification.

Further, Council requested that conditions be imposed:

- restricting the use of any of the lots affected by the 1% AEP portion of the lot for any habitable building or structure; and
- requiring that a copy of the flood model result files be provided to Council prior to the issuing of subdivision certificate (for the purposes of applying the flood planning level to individual lots in the future).

Both conditions have been deemed appropriate and included in the consent, as requested.

## **5.5 Groundwater Protection**

Condition D6(2) and E16 were proposed to be amended as part of the original request provided in April 2019. The Proponent requested amendment to both conditions, pursuant to the 2019 Modification Assessment Report, as outlined in Table 6.:

**Table 6 | Proposed Amended Conditions D6(2) and E16**

No.	Existing Condition	Proposed Amendment (April 2019)
D6(2)	<p><i>“Fill platforms must be set at a minimum of 2 metres above the 1 in 100 year flood level or the water table (whichever is the higher) in the southern open space areas that contain stormwater infrastructure, in accordance with AusPacific Engineers advice dated 4 April 2008. Finished levels must be to the satisfaction of Council.”</i></p>	<p><i>“Should the proposed development footprint change, or significant changes to the proposed design levels and/or culvert design occur (as shown on Drawing PS01-A050), an updated flood model with detailed earthworks should be prepared at Construction Certificate stage”.</i></p>
E16	<p><i>Prior to the release of a Subdivision Certificate for the first stage of the project to be released, a final contour plan shall be submitted to Council showing the location, depth and type of fill located on the site. This shall include fill platforms of 2 metres above the 1 in 100 year flood level or the water table (whichever is the higher) in the southern open space areas that contain stormwater infrastructure, in accordance with AusPacific Engineers advice dated 4 April 2008.</i></p>	<p><i>Prior to the release of a Subdivision Certificate for the first stage of the project to be released a final contour plan shall be submitted to Council showing the location, depth and type of fill located on the site.</i></p>

The amendment to D6(2), as initially outlined by the Proponent, was not supported by EESG or Council. Council outlined that on the basis of flooding, condition D6(2) could be deleted. EESG requested that an alternate condition was included in the consent, requiring the following:

*“All stormwater treatment infrastructure such as swales and basin are to be located above the 5% AEP flood level.*

In relation to condition E16, Council outlined no objection to the amendments as outlined by the Proponent. EESG did not specifically comment on the proposed amendments to condition E16 in its initial submission.

On 25 May 2020, the Proponent submitted an RtS, amending the request for the modification to the conditions, requesting the deletion of condition D6(2) and the second sentence of E16.

Given the variation between different recommendations, particularly in relation to proposed condition D6(2), both agencies were requested to review their original submissions and provide further advice to assist the Department in its assessment, following receipt of the RtS on 25 May 2020.

EESG indicated that for flood risk management, there was no concern in deleting condition D6(2), as the condition relating to Water Sensitive Urban Design (WSUD) is a water quality issue, not a flood risk issue. EESG indicated they had no concerns in relation to the amendment to condition E16, as proposed.

Council outlined that in terms of flooding, the original condition D6(2) and E16 were acceptable to be removed. However, specifically in regard to condition D6(2), Council outlined that it was not in a position to provide advice regarding the potential impact on the groundwater table in terms of water sensitive urban design and protecting stormwater on the basis of the information submitted to support the proposal, should the condition be deleted.

The Proponent was requested to provide further justification in relation to this point, responding on 13 August 2020 that the justification for the removal of the condition was based on Council's original submission, dated 20 June 2019, which was superseded by the later correspondence detailed above (dated 14 July 2020).

It is the Department's opinion that the condition was placed on the consent to protect sensitive environs and prevent groundwater disturbance. According to the documents that supported the original application, the site was characterised as having a high water table, with potential acid sulfate soils and considered flood affected. The original assessment gave careful consideration to these matters, resulting in conditions D6(2) and E16.

A review of the original documentation indicated that the requirement for the condition was a result of the Proponent's own engineer, AusPacific Engineers, recommending the fill platforms and conditions D6(2) and E16.

Whilst the earlier discussion in relation to the deletion of both conditions D6(2) and E16 is noted, the Department considers it important to maintain the ongoing protection of groundwater and surrounding environs, particularly given the proximity of multiple waterways adjoining the site.

Notwithstanding, the original assessment concluded that the stormwater infrastructure in the southern open space areas was appropriate, providing adequate arrangements are made on site to construct so as not to be flood affected and above the water table. In regard to the existing conditions, given the infrastructure will be designed in accordance with Council's requirement, as required by condition B10 of the consent, it is deemed appropriate that the final arrangements be designed and approved to Council's satisfaction. As such, the deletion of condition D6(2) and amendment to E16 has been accepted, on the basis of a new condition requiring that final design plans shall be generally in accordance with Coffs Harbour City Council Water Sensitive Urban Design Guideline.

## **5.6 Other Issues**

Other matters considered relevant to the proposal and raised in submissions have been addressed in Table 7.

**Table 7 | Other Matters**

Issue	Findings	Recommendations
<p><b>Importation of Fill</b></p>	<p>A number of submissions outlined concerns in relation to the importation of fill on the site. As previously mentioned, the proposed cut exceeds the proposed fill (bulk cut area of 470,000m<sup>3</sup> compared to a proposed fill area of 290,000m<sup>3</sup>). As such, fill is not required to be imported to the site. This was confirmed by the Proponent in correspondence dated 26 August 2020. Notwithstanding, condition C3 outlines controls in relation to the importation of fill in the unlikely event this is to occur. As such it is considered there are adequate controls stipulated by the consent to manage this process. Additionally, as previously discussed, conditions have been recommended to manage the exportation of fill from the site.</p>	<p>No further action/recommendation required.</p>
<p><b>Loss of Open Space</b></p>	<p>A number of submissions outlined preference in retaining the central corridor as open space. The removal of the request to reconfigure the central wildlife corridor has satisfactorily resolved this issue and all open space will be retained as per the original approval.</p>	<p>No further action/recommendation required.</p>
<p><b>Noise Attenuation</b></p>	<p>A number of submissions outlined concerns regarding the proposed amendments to noise attenuation measures approved for the site. The Response to Submissions removed the request to amend noise attenuation measures on site. As such, noise attenuation measures will remain as approved.</p>	<p>No further action/recommendation required.</p>
<p><b>Asset Protection Zones</b></p>	<p>RFS outlined that proposed amendments to conditions that reflect the previous amended site layout and APZ plans, were accepted on the provision that the proposed APZ within the proposed public reserves were managed in perpetuity to NSW RFS document Standards for Asset Protection Zones requirements. Notwithstanding, the removal of the request to reconfigure the central wildlife corridor means that there are no amendments sought to the site layout and APZ plans. As such, APZs will remain as approved.</p>	<p>No further action/recommendation required.</p>

**Table 7 | Other Matters**

<b>Issue</b>	<b>Findings</b>	<b>Recommendations</b>
<b>Traffic and Access</b>	<p>Public submissions raised concerns regarding increased traffic as a result of the additional 31 allotments. This component of the proposal has been removed from the modification request and there is no increase in lots proposed, over those already approved by the existing consent. Therefore, traffic impacts as a result of the development are not considered to arise. Additionally, concerns in relation to access were raised, with submissions indicating that additional access should be provided directly from the Pacific Highway, to assist during evacuations in the event of a fire. The access arrangements were approved pursuant to the original consent, with NSW RFS and the Department reviewing and assessing the arrangements at this time. There is no change proposed to approved access, nor fire safety requirements pursuant to this modification. As such, no further action/comment is considered necessary in relation to this matter.</p>	No further action/recommendation required.

## 6 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as it:

- complies with the relevant statutory provisions
- is substantially the same development as originally approved, and does not result in adverse environmental impacts
- is minor in nature, does not result in any unacceptable impacts in relation to biodiversity
- would not materially change the nature or appearance of the approved development.

Consequently, the Department recommends the modification request should be approved, subject to conditions.

## 7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP06\_0143 MOD 4 falls within the scope of Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulation
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent MP06\_0143 MOD 4
- **signs** the attached approval of the modification (**Appendix D**).

**Recommended by:**



**Ella Wilkinson**  
Planning Officer  
Regional Assessments

## 8 Determination

The recommendation is **Adopted** by:

**Keiran Thomas**

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

# Appendices

## **Appendix A – Modification report**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8928](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8928)

## **Appendix B – Submissions**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8928](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8928)

## **Appendix C – Response to Submissions**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8928](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8928)

## **Appendix D – Notice of modification**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8928](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8928)