



***MODIFICATION REQUEST:  
Residential and Child Care Centre  
Development  
14-18 Boondah Road, Warriewood***

MP10\_0177 MOD 6

Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

May 2012

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## 1. BACKGROUND

### 1.1 The Site

The subject site, 14-18 Boondah Road, Warriewood, is located in the Warriewood Valley Release Area within the Pittwater Local Government Area (LGA). The site is irregular in shape, has an area of 8.118 hectares and frontages of 293 metres to Boondah Road and 273 metres to Macpherson Street. Vehicular access is available from both road frontages. The land slopes approximately 2.5 metres to the rear (south) towards the wetlands.

The site is currently being developed in accordance with the approved Stage 1 Project Approval (MP 10\_0177).

The site locality and site boundary are illustrated in **Figure 1**.

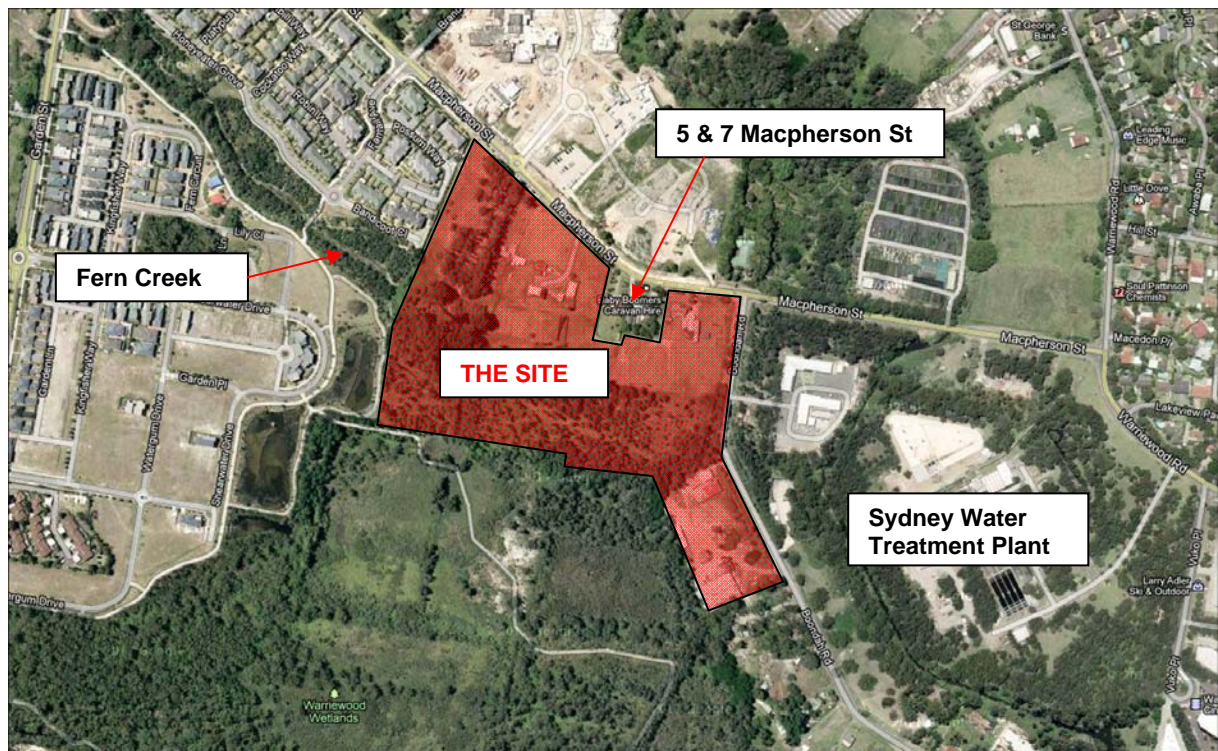


Figure 1: The Site (Base Image Source: Google Maps, 2012)

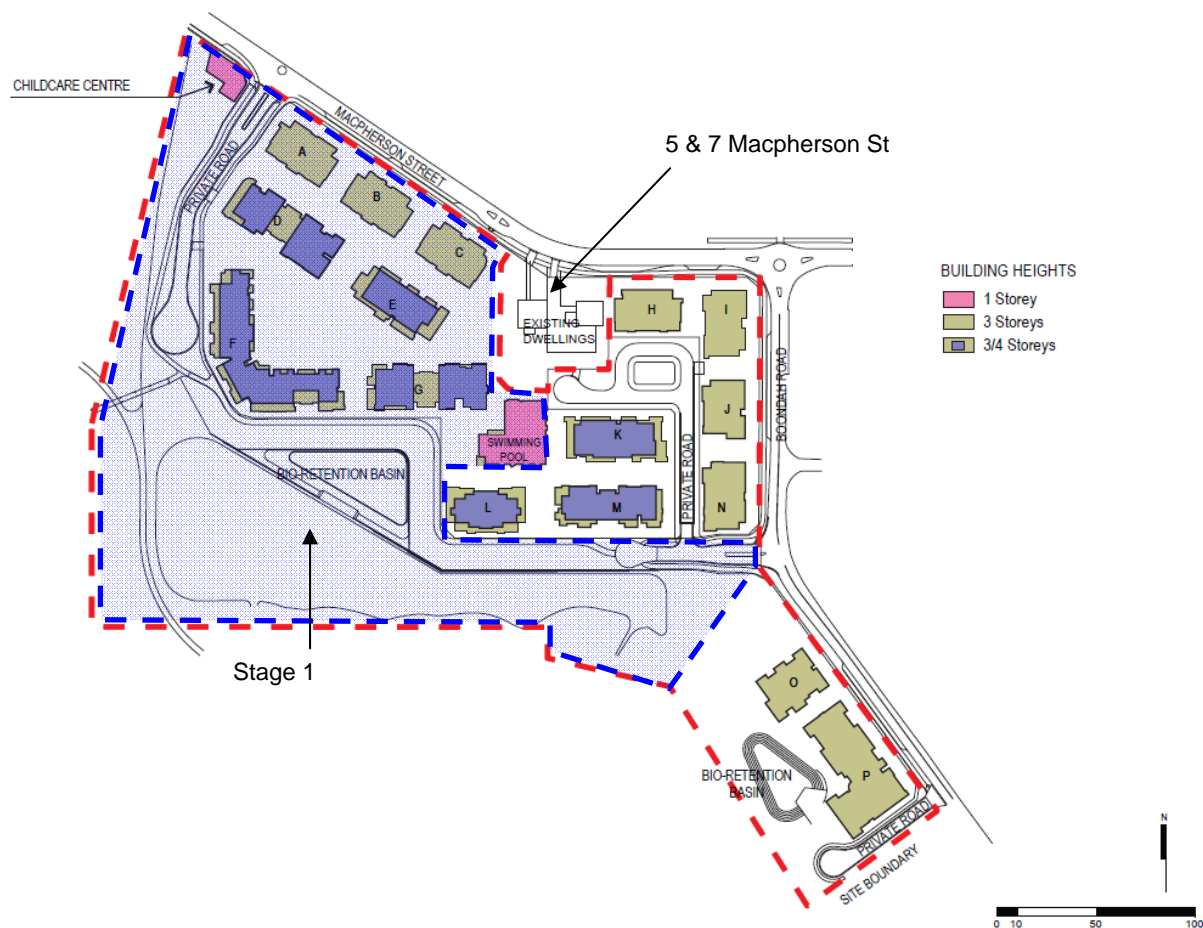
### 1.2 Previous Approvals

On 18 January 2011, the Planning Assessment Commission (PAC) approved a Concept Plan (MP 09\_0162) for a multi-unit housing development and childcare centre, private and public open space, parking, road works, pedestrian and cycle pathway, landscaping and ecological rehabilitation works.

The PAC also issued Stage 1 Project Approval (MP 10\_0177) for a development comprising:

- demolition of the existing buildings and structures on site and tree removal;
- excavation, earthworks and flood mitigation works;
- construction of 7 residential buildings with associated pools and gymnasium;
- childcare centre;
- external road works, internal public access roads, pedestrian and cycle way; and
- ecological rehabilitation and landscaping works.

The approved project layout is provided in **Figure 2**.



**Figure 2 The Approved Concept Plan Layout (as modified) (Base Image Source: Meriton Apartments, 2011)**

### 1.3 Previous Modifications

A number of modification applications have been pursued by the proponent which have been assessed by the department and determined by the PAC or the Department. The modification applications are summarised in **Table 1** below.

**Table 1: Previous Modifications**

Concept Plan Modifications		
Modification No.	Application details	Determination
MP09_0162 MOD 1	The deletion of the internal road, re-alignment of the pedestrian/bicycle path routes, amendment to the requirements of accessible units and car parking provision.	Approved by PAC on 15 December 2011
Project Modifications		
Modification No.	Application details	Determination
MP10_0177 MOD 1	The deletion of the second basement level and provision of a total of 474 spaces within a single level basement. Amendment to Condition B13 to provide for a car parking rate of 2 resident car parking spaces per 2 bedroom unit and 1 visitor car parking space per 5 units.	Approved by PAC on 15 July 2011
MP10_0177 MOD 2	Modification of Condition C19 – Ground water to allow for the installation of a permanent pumping	Approved by the Director General on 12 October

	system to ensure the basement is free of stormwater.	2011
MP10_0177 MOD 3	Amendment to the basement car park plan including the deletion of a vehicular entry/exit point.	Approved by PAC on 15 November 2011
MP10_0177 MOD 5	Amendment to Condition C21 relating to CPTED measures within the basement car park for the painting of the soffit.	Approved by PAC on 12 January 2012
MP10_0177 MOD 7	Staged strata subdivision of Buildings A, B, C, D, E, F, G and Pool Building.	Approved by the Deputy Director General on 18 April 2012
MP10_0177 MOD 4	Staging of road works within Boondah Road and Macpherson Street, staging of landscaping and deletion of requirement for cost sharing of the roundabout at the entry to the Anglican Retirement Village.	Approved by PAC on 10 May 2012

#### 1.4 Other Modifications Currently Proposed

The Department is currently assessing the following modification applications:

**Table 2 Current Modifications**

<b>Modification No.</b>	<b>Application details</b>
MP10_0177 MOD 8	Amendment of Conditions C2(c), C2(d), C12(d), C12(e), F4, F12, F13, F14(a), F16 and F17 to require that works be completed prior to issue of a final Occupation Certificate.
MP10_0177 MOD 9	Modifications to Buildings E and G including provision of studies, revisions to storage cupboards and laundries, extension of the roof slab, reconfiguration of windows and provision of pop up roofs.

## 2. PROPOSED MODIFICATION

Modification 1 to the Concept Plan provided for the deletion of the internal road and replacement with two private roads and realignment of the pedestrian/cycle path route.

The proposed modification seeks to modify the Stage 1 Project Application to be consistent with the approved Concept Plan modifications. The proposal involves the following amendments within the Stage 1 site boundaries:

- replace the internal road with a private road terminating in a cul-de-sac adjacent to Building F;
- realign the pedestrian/cycle path to the northern side of the detention basin and allow shared emergency vehicle access in lieu of providing public road access; and
- associated revisions to landscaping.

In addition, the proponent requests that existing conditions of approval be deleted or modified to remove references to the internal road as outlined in **Table 3**.

**Table 3: Conditions to be modified**

Condition	Existing Condition	Proposed Modification
B12	<p>The internal road system is to be designed and constructed in accordance with the requirements of the Warriewood Valley Roads Master Plan 2006 Update, AustRoads and Auspec with sufficient width to accommodate emergency vehicles and parallel parking where appropriate to accommodate the balance of the carparking for the site not provided in the underground parking areas.</p> <p>There is to be a three (3) metre boundary setback from the existing road reserve boundary where the internal road connects to a public road network to accommodate kerb returns with the public road reserve.</p>	Condition to be deleted
C2(a)(ii)	<p>Street Trees/Garden Areas to Road Verges (Boondah/Macpherson Street and Internal Access Roadways)</p> <ul style="list-style-type: none"> <li>400 litre street trees (as indicated on plan).</li> <li>No turf to road verge areas, garden areas planted in accordance with Warriewood Valley Landscape Masterplan in relation to species @ 4-6 plants per m<sup>2</sup>.</li> </ul>	<p>Street Trees/Garden Areas to Road Verges (Boondah/Macpherson Street and Internal Access Roadways)</p> <ul style="list-style-type: none"> <li>400 litre street trees (as indicated on plan).</li> <li>No turf to road verge areas, garden areas planted in accordance with Warriewood Valley Landscape Masterplan in relation to species @ 4-6 plants per m<sup>2</sup>.</li> </ul>
C6(m)(i)	The entry treatment for the internal through-road linking Macpherson Street and Boondah Road is to include kerb returns and pedestrian/cycle refuge at the intersection of the roadway with Macpherson Street and Boondah Road.	<del>The entry treatment for the internal through-road linking Macpherson Street and Boondah Road is to include kerb returns and pedestrian/cycle refuge at the intersection of the roadway with Macpherson Street and Boondah Road.</del>
C7(a)(vi)	The entry treatment for the internal through-road linking Macpherson Street and Boondah Road, to include kerb returns and pedestrian/cycle refuge at the intersection of the roadway with Macpherson Street and Boondah Road.	<del>The entry treatment for the internal through-road linking Macpherson Street and Boondah Road, to include kerb returns and pedestrian/cycle refuge at the intersection of the roadway with Macpherson Street and Boondah Road.</del>

### 3. STATUTORY CONTEXT

#### 3.1 Continuation of Part 3A

Under clause 3C of Schedule 6A to the Environmental Planning & Assessment Act 1979 (the Act), Section 75W of the Act (as in force immediately before its repeal on 1 October 2011) continues to apply for the purpose of the modification of a project application approved before or after the repeal of Part 3A.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the PAC may approve or disapprove of the modification to the project under Section 75W of the Act.



### 3.2 Modification of the Minister's Approval

The modification application has been lodged with the Director-General pursuant to Section 75W of the Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify conditions imposed on the Project Application approval and therefore, approval to modify the application is required.

### 3.3 Environmental Assessment Requirements

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the Department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGRs.

### 3.4 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the Planning Assessment Commission (PAC) where an application has been made by persons other than by or on behalf of a public authority.

The application is being referred to the PAC for determination as Pittwater Council has lodged a submission objecting to the proposal.

## 4. CONSULTATION AND SUBMISSIONS

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Under Section 75W of the Act, a request to modify an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is required to make publicly available requests for modifications of approvals given by the Minister.

In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the application to modify the approval was made publicly available on the Department's website and was referred to Pittwater Council and the NSW Rural Fire Service (RFS).

Submissions were received from Council and RFS. No public submissions were received.

A summary of the issues raised in submissions is provided below.

### 4.1 Pittwater Council

Council objects to the proposal on the following basis:

- The 3 metre wide path is insufficient for emergency access;
- The location and proposed use of the path will result in adverse amenity impacts for Buildings F and G in Stage 1 and two buildings in Stage 2;
- Council will not accept responsibility for maintenance of the path; and
- the offset to Section 94 Contributions for the pedestrian/cycle path through the site should be reduced given that the pedestrian/cycle path is required for emergency access.

Council also requested that the application be referred to the Rural Fire Service.

### 4.2 Rural Fire Service

RFS did not raise any concerns in relation to the proposed modification.



## 5. ASSESSMENT

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The Department considers that the key issues for the proposed modification are:

- consistency with the Concept Approval;
- amenity and safety;
- Section 94 contributions; and
- traffic impacts.

### 5.1 Consistency with the Concept Approval

As discussed previously in this report, Modification 1 to the Concept Plan provided for the deletion of the internal road and replacement with two private roads and realignment of the pedestrian/cycle path route, including use as a shareway for emergency vehicle access as required.

The proposed road layout and pedestrian/cycle path route is consistent with the approved Concept Plan layout.

In approving Modification 1, the PAC imposed two additional future assessment requirements 10 and 11:

10. *The emergency access shall meet the requirements for emergency vehicles and may be constructed as a shared way with the cycle path; and*
11. *The location of the Stage 2 pedestrian/cycle paths may vary from the alignment shown on the approved Concept Plan (18 January 2011) if future applications demonstrate that it is unreasonable in physical, environmental and economic terms to provide the pedestrian/cycle paths along the approved alignment.*

The PAC imposed requirement 10 as it considered that an emergency access should be provided along the alignment of the internal road to ensure maximum accessibility to the development in case of an emergency. In particular, the PAC considered that future applications must demonstrate that emergency access meets the requirements for emergency vehicles.

#### *Proponent's justification*

The proponent notes that requirement 10 states that emergency access may be constructed as a shared way, however it does not make it mandatory that emergency vehicles are able to use the pedestrian/cycle path.

Further, the proponent advises that the development will be provided with emergency access and facilities in accordance with the provisions of the Building Code of Australia, which requires Fire Brigade approval in relation to the location of hydrant services and associated access.

The proponent also provided a report prepared by a Hydraulic and Fire Protection consultant which outlined that access to the site via the two private roads was adequate for fire fighting within the development. The proponent therefore considers that fire brigade vehicles do not need to access the pedestrian/cycle path and that the proposed 3 metre wide path is acceptable.

#### *Council's comments*

Council remains concerned that the pedestrian/cycle path is too narrow for access by emergency vehicles given that the site is bushfire prone. Council's submission included advice from Fire and Rescue NSW (FRNSW) which states that a minimum of 4 metres should be provided for access by fire brigade vehicles, with wider access of 5 metres necessary on curved sections of the access.

Council also advised that the pavement construction also needs to be able to accommodate heavy loadings associated with emergency vehicles.

*Department's consideration*

The Department previously considered emergency access to the site as part of the assessment of Modification 1 to the Concept Plan. The site is bushfire prone. Therefore, as part of this assessment, the Department referred the proposed modification to the RFS. The RFS did not raise any concerns in relation to the deletion of the public road.

The Department referred the current modification to the Stage 1 project to RFS and requested specific advice on the width of the pedestrian/cycle path and requirements for emergency vehicles. In response, the RFS advised that access to the site is acceptable in relation to bushfire.

Based on the advice provided by the RFS and the proponent's Hydraulic and Fire Protection Consultant, the Department is satisfied that both Fire Brigade and RFS vehicle access to the site is acceptable.

It is considered that a 3 metre wide path is acceptable for access by other types of emergency vehicles, if required.

On this basis, the Department is satisfied that the proposed modification is consistent with the Concept Plan and satisfies future assessment requirement 10.

The Department notes that future assessment requirement 11 relates to Stage 2, which will be subject to a separate development application to be assessed by Pittwater Council.

## **5.2 Amenity and Safety**

The approved modification to the Concept Plan provided for the realignment of the pedestrian/cycle path adjacent to the approved Stage 1 buildings and Stage 2 building envelopes. The PAC previously considered that the proponent's justification for this alignment was acceptable on the basis that the construction of the bio retention basin and final landform impact on the ability to provide the pedestrian/cycleway in the original location closer to the creekline.

*Proponent's justification*

The proponent considers that issues of amenity and safety have been considered in the approval of the modification to the Concept Plan and notes that the proposed modification is consistent with the modification approved by the PAC.

In addition, the proponent advised that a fence will be installed between the pedestrian/cycle path and the detention basin to ensure public safety.

*Council's comments*

Council is concerned that the location of the pedestrian/cycle path so close to the buildings will impact on the amenity of future residents within buildings that directly adjoin the path (by noise and privacy). Council further considers that the public enjoyment of the space will be compromised by the limited separation and reduced opportunities for deep soil planting between the path and buildings.

Council is also concerned that the location of the path on the northern edge of the bio retention basin may result in public safety issues as there is no shoulder to the top of the batter slope edge and any erosion or instability may undermine the construction.

### Department's consideration

The Department considers that the proposed landscaping along the pedestrian/cycle path, as shown in **Figure 3**, will provide a good level of amenity for residents and the general public. The Department previously considered the appropriateness of the proposed path alignment in its consideration of the modification to the Concept Plan. The PAC agreed with the Department's recommendation and considered that the proposed alignment was appropriate for Stage 1.



**Figure 3: Proposed revised landscaping plan**

The proposed alignment will alter the previously envisaged character of the path from a natural creekline path to an urban path. However, the Department considers that the function of the path and the level of permeability through the site remains consistent with the Concept Approval.

The Department recommends an additional condition that the alignment of the path in the south-west portion of the site be agreed with Council to ensure that the path will provide an appropriate connection over the creek to the adjoining property to the west, consistent with Council's wider pedestrian and cycle network in the Warriewood Valley.

The Department also notes that the bio retention basin includes dense vegetation as part of the stormwater treatment process, and therefore the batter will be vegetated to prevent erosion and instability. On this basis, the Department considers that the proposed fence provides an appropriate physical barrier subject to the fencing being durable open style fencing to ensure a high level of visual amenity. An appropriate condition is recommended.

### **5.3 Section 94 Contributions**

The Section 94 Contributions payable for the Stage 1 development include an offset of \$403,317 for direct provision of a pedestrian/cycle network through the site including a bridge over the creekline corridor.

Council considers that the offset should be now reduced given that the pedestrian and cycle path is now shared with emergency vehicle access, which is otherwise required by the development (due to the internal road being deleted). Council has further advised that it will not accept responsibility for maintenance of the shareway, and considers that this should remain the responsibility of the landowner (strata body) to manage, provide and fund.

The proposed realignment of the pedestrian/cycle path continues to provide a network through the site and a bridge over the creekline corridor. The main function of the path will be for pedestrian and cycle movements with emergency access provided only when needed. At all other times, vehicular access to the path will be prohibited by removable bollards or the like.

The Department therefore considers that the offset for Section 94 Contributions remains applicable as the provision of infrastructure through the site is consistent with the pedestrian and cycle network identified within the Section 94 Contributions Plan.

It is recommended that an additional condition be imposed which requires an easement for any emergency access that may be required over the shared pedestrian/cycle path. This is consistent with future assessment requirement 10 of the Concept Plan approval.

### **5.4 Traffic impacts**

The Department previously considered the traffic impact of the removal of the internal through road as part of its assessment of Modification 1 to the Concept Plan. It was demonstrated that the deletion of the internal through road will involve a minor redistribution of traffic movement. However this would not significantly affect the current good operation (Levels of Service A) of the intersection of proposed private roads with Macpherson Street and Boondah Road.

## 6. CONCLUSION AND RECOMMENDATIONS

The Department is satisfied that this modification application falls within the scope of section 75W of the Act. The proposed modification does not change the original assessment as to the site's suitability for this development.

The Department previously considered that the proposed deletion of the internal road and the realigned pedestrian/cycle path/shared emergency access was acceptable as the road is not necessary for access within the site or for local traffic and public access through the site.

The key issues of amenity, safety and emergency access have been addressed in this report and the Department considers that the proposed modification is acceptable subject to conditions.

The proposed modification is generally consistent with the terms of the Concept Approval and is considered to be acceptable subject to conditions in relation to the creation of an easement for emergency access, connectivity with the wider pedestrian/cycle path network and fencing to ensure public safety and visual amenity.

It is recommended that the Planning Assessment Commission:

- (A) **Consider** the recommendations of this report;
- (B) **Approve** the modification, subject to conditions; under Section 75W of the *Environmental Planning and Assessment Act. 1979*, and
- (C) **Sign** the attached Instrument of Modification (**Appendix C**).



A/Director  
Metropolitan & Regional Projects South



20.5.12  
Executive Director  
Major Projects Assessment



22/5/12  
Deputy Director-General  
Development Assessment &  
Systems Performance

## **APPENDIX A    MODIFICATION REQUEST**

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## **APPENDIX B SUBMISSIONS**

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## **APPENDIX C    RESPONSE TO SUBMISSIONS**

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## **APPENDIX D    RECOMMENDED MODIFYING INSTRUMENT**

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