

Catherine Hill Bay Residential Subdivision

Section 4.55(1A)
Modification Assessment
(MP 10_0204-MOD-7)



March 2020

© Crown Copyright, State of NSW through its Department of Planning, Industry and Environment 2020

Cover photo

Aerial of Subject Site (source: Near Map)

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in Catherine Hill Bay Residential Subdivision Mod 7 Modification Assessment Report. This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
BCD	Biodiversity Conservation Division, DPIE
CIV	Capital Investment Value
Consent	Development Consent
Council	Lake Macquarie City Council
Department	Department of Planning, Industry and Environment (DPIE)
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
STOP Regulation	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
EPI	Environmental Planning Instrument
Heritage NSW	Heritage Division of Department of Premier and Cabinet
IPC	Independent Planning Commission
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
NPWS	National Parks & Wildlife Service, DPIE
RFS	NSW Rural Fire Service
RTS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State significant development



Contents

Glossary	iii
1. Introduction	1
1.1 Preamble	1
1.2 Subject site	1
1.3 Approval History	2
2. Proposed Modification.....	3
2.1 Modification.....	3
2.2 Proponent's Justification.....	3
3. Statutory Context	5
3.1 Part 3A Transition to State Significant Development	5
3.2 Scope of Modification	5
3.3 Consent Authority	5
3.4 Mandatory matters for consideration	6
4. Engagement.....	7
4.1 Department's Engagement.....	7
4.2 Public Authority Submissions	7
4.3 Public Submissions	7
4.4 Response to Submissions	8
5. Assessment	9
5.1 Assessment of Modification.....	9
5.2 Assessment of Key Issues	9
6. Evaluation	12
7. Recommendation	13
8. Determination	14
Appendices	15
Appendix A – Relevant Supporting Information	15
Appendix B – Submissions	15
Appendix C – Response to Submissions.....	15
Appendix D – Modification of Development Consent	15



1. Introduction

1.1 Preamble

This report provides an assessment of a request to modify the approval for the Catherine Hill Bay residential subdivision (MP10_0204).

The modification request seeks to:

- modify Stage 3 into two sub-stages (3A & 3B) to provide access to Lot 1112 DP1219395 (proposed Lot 3000 on the approved plans, as modified) and deliver the lot for neighbourhood shops
- modify the Stage 6 & 7 boundaries to relocate six lots from Stage 6 to Stage 7
- delete Crawley Lane
- realign Outrum Lane and modify lot 6059 to provide additional verge width.

The modification request was lodged by The Trustee for Catherine Hill Bay Unit Trust (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The site is located approximately 100 kilometres north of Sydney and 30 kilometres south of Newcastle in the Lake Macquarie local government area (LGA) (**Figure 1**).

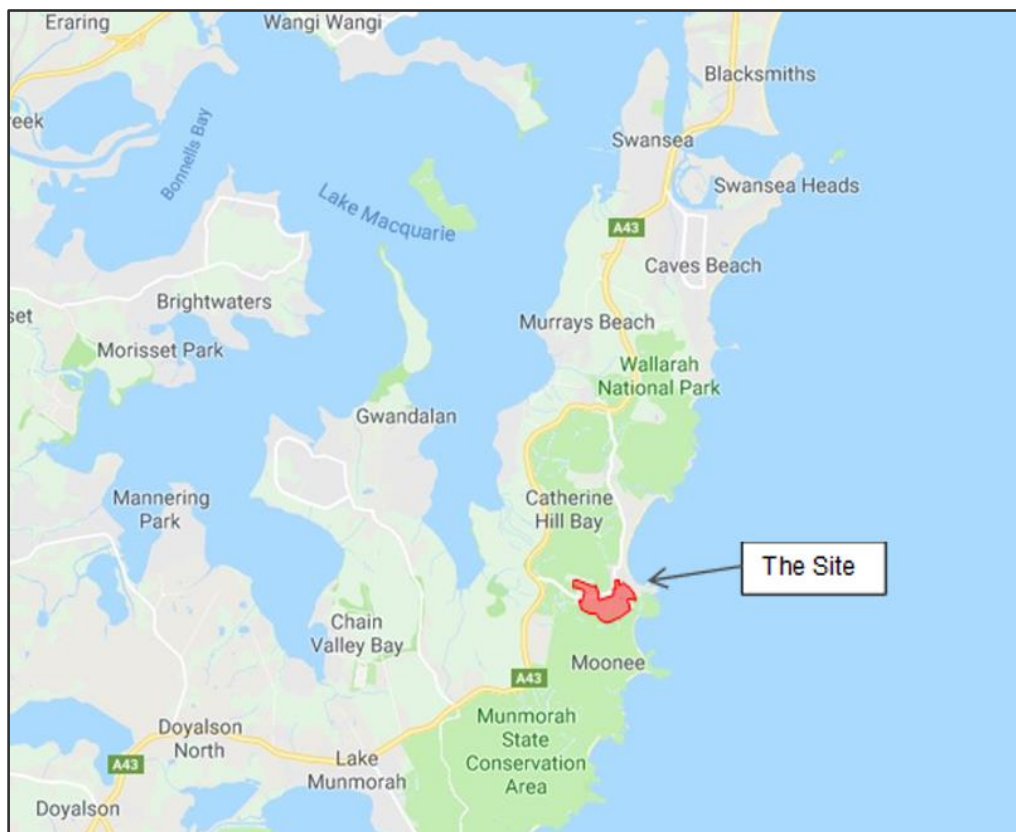


Figure 1 | Regional Context Map (Source: Google Maps)

The site comprises 72 hectares of land immediately south of the existing Catherine Hill Bay village on the South Wallarah Peninsula. The site adjoins Catherine Hill Bay Cultural Precinct, listed on the State Heritage Register (SHR 01828), and the Munmorah State Conservation Area.

Historically, the site was a coal mine known as the Moonee Colliery, and parts of the site comprised mining lands, coal storage areas, maintenance areas, mine and road infrastructure and a dwelling house.

Today, the site is known as the Catherine Hill Bay 'Beaches' estate, an approved 540 lot residential subdivision comprising seven development stages. Subdivision stages 1, 2, 4 and 5 are largely complete, with residential dwellings constructed or under construction. Subdivision Stages 3, 6 and 7 are yet to be developed and residential lots in stages 6 and 7 are currently on the market.

1.3 Approval History

On 13 May 2011, the then Planning Assessment Commission (PAC), as the delegate for the then Minister for Planning and Infrastructure, granted project approval (MP10_0204) for a residential subdivision comprising 540 residential lots, 1 retail lot and associated open space at Catherine Hill Bay.

The project approval (MP 10_0204) has been modified on five occasions (**Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Minor changes to the subdivision layout and administrative amendments to conditions	PAC	s75W	Approved on 27 May 2013
MOD 2	Minor changes to the number and configuration of lots, road access and administrative amendments to conditions	PAC	s75W	Approved on 25 September 2014
MOD 3	Changes to further subdivide the heritage precinct	-	s75W	Withdrawn
MOD 4	Changes to the stormwater management strategy, configuration of lots in stages 4 to 7, public works and administrative amendments to conditions	Department	s75W	Approved on 24 April 2015
MOD 5	Changes to a condition to reduce the landscape maintenance period	Department	s75W	Approved on 10 August 2015
MOD 6	Changes to the road and subdivision layout of stage 7	Department	s75W	Approved on 6 April 2018

The project approval, as modified, now allows 548 residential lots, 1 retail lot, 1 Infrastructure lot, 9 public reserves, 2 heritage lots and bulk earth works and infrastructure. The approved subdivision layout and staging plan is provided at **Figure 2**.



2. Proposed Modification

2.1 Modification

This application seeks to modify the consent for the Catherine Hill Bay residential subdivision (MP10_0204) to:

- modify Stage 3 to create two sub-stages (3A & 3B) to provide access to Lot 1112 DP1219395 (proposed Lot 3000 on the approved plans, as modified) and deliver the lot for neighbourhood shops
- modify the boundaries of Stage 6 and 7 to relocate six lots from Stage 6 to Stage 7
- delete Crawley Lane
- realign Outrum Lane and modify lot 6059 to provide additional verge width.

A summary of the proposed changes is provided at **Figure 3** and a revised subdivision layout and staging plan at **Figure 4**.

2.2 Proponent's Justification

The Proponent's justification for each item of the modification is summarised in **Table 2** below.

Table 2 | Proponent's Justification for the Modification

Request	Proponents Justification
Modify Stage 3 into two sub-stages (3A & 3B)	<ul style="list-style-type: none">• To provide access to Lot 1112 DP1219395 (proposed Lot 3000 on the approved plans, as modified) and deliver the lot for neighbourhood shops prior to the remainder of stage 3.• Currently, there are no such facilities for residents in Catherine Hill Bay.
Modify Stage 6 & 7 boundaries	<ul style="list-style-type: none">• To relocate six lots from Stage 6 to Stage 7 to provide a more logical staging boundary between the two stages.• While located north west of the drainage reserve, Lot 6069 is to be retained in Stage 6 as it will accommodate an electrical substation.
Delete Crawley Lane	<ul style="list-style-type: none">• To reduce the extent of engineering required to design and construct the lane, due to the steep gradient of the land.• Crawley Lane does not meet sightline requirements for vehicles.• The proposal maintains adequate ingress/egress arrangements.• The proposal satisfies the six key Bushfire Protection Measures underpinning Planning for Bushfire Protection 2006.• Similar amendments have previously been approved (Modification 2).
Realign Outrum Lane and modify lot 6059	<ul style="list-style-type: none">• The current alignment presents engineering constraints which result in the need for extensive retaining walls.• Reducing lot 6059 and realigning the lane to provide additional verge width will reduce the extent of retaining walls required.



Figure 2 | Approved subdivision layout and staging plan, with stages shown in blue (Source: Proponent's MOD 6 Report)



Figure 3 | Summary of Proposed Modification (Source: Proponent's MOD 7 Report)

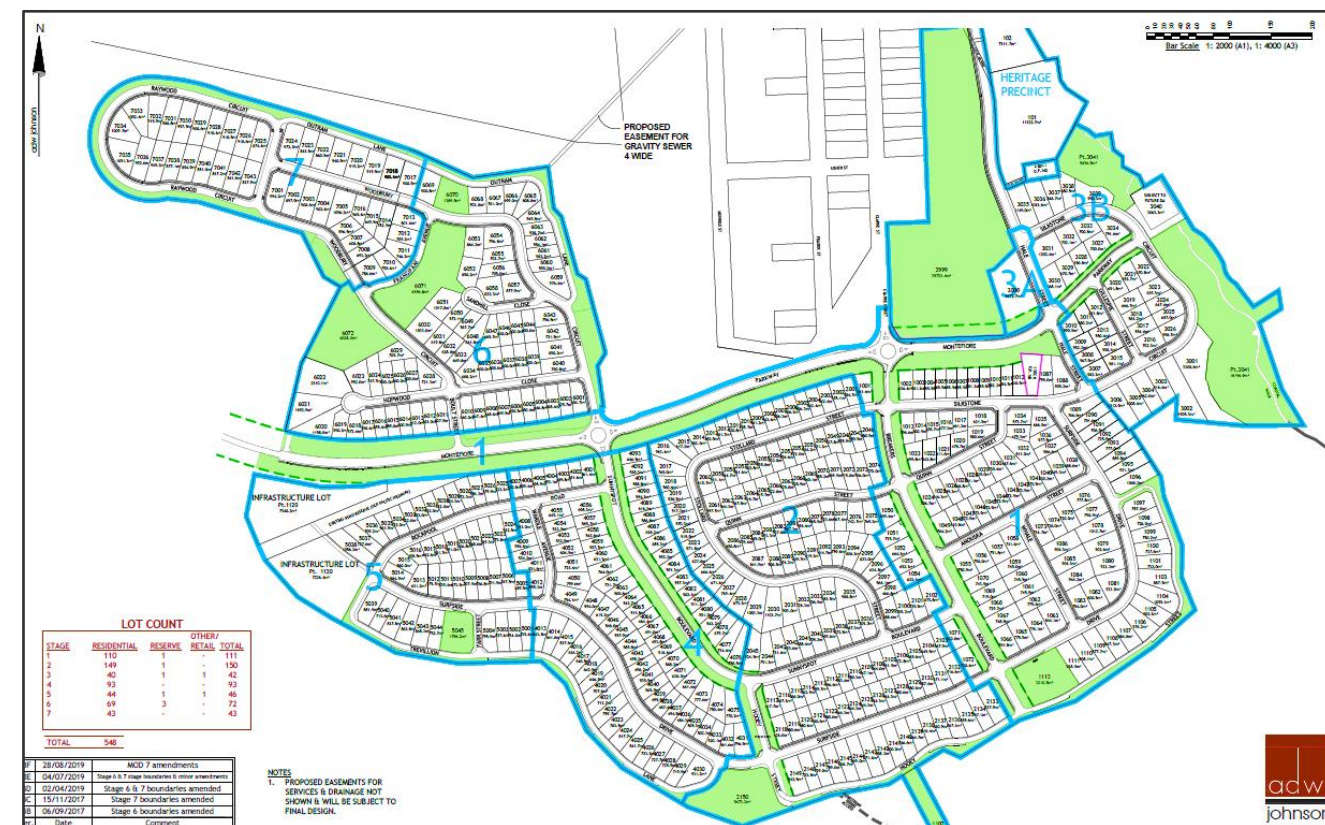


Figure 4 | Proposed subdivision layout and staging plan, with stages shown in blue (Source: Proponent's MOD 7 Report)



3. Statutory Context

3.1 Part 3A Transition to State Significant Development

This project (MP10_0204) 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 & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 11 April 2019, the Director, Regional Assessments (as delegate of the Minister for Planning and Public Spaces), made an order under clause 6 of Schedule 2 to the STOP Regulation declaring the development the subject of the project approval to be SSD. The order was then published in the NSW Government Gazette on 12 April 2019 and took effect from that date.

The effect of the order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act and the modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

3.2 Scope of Modification

The Department has reviewed the scope of the modification and considers that it:

- results in minimal environmental impact as it does not result in additional lots, further land clearing or roads
- would not significantly increase the environmental impacts of the project as approved
- is substantially the same development as originally approved
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Accordingly, the Department is satisfied that the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application.

3.3 Consent Authority

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

- a political donation disclosure has not been made
- less than 10 public submissions objecting to the modification have been received.

3.4 Mandatory matters for consideration

Section 4.55(3) of the EP&A Act provides that in determining a modification application, the consent authority must take into consideration any relevant matters in section 4.15(1) of the EP&A Act. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The relevant consideration under Section 4.15(1) of the EP&A Act in relation to the proposal is whether the impacts of the proposed changes are acceptable. As assessed in detailed in **Section 5**, the Department supports the proposal as it will not result in additional adverse impacts on the existing environment when compared to the approved development.

Under section 4.15 of the EP&A Act, the consent authority must also take into account the relevant provisions of any Environmental Planning Instrument (EPI) or Development Control Plan (DCP) that applies to the carrying out of the proposal.

The original project approval (MP10_0204) was assessed against the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Development) 2005 (replaced by State Environmental Planning Policy (State Significant Precincts) 2005)
- NSW Threatened Species Conservation Act (1995) (replaced by Biodiversity Conservation Act 2016) and Environmental Protection and Biodiversity Conservation Act 1999
- State Environmental Planning Policy No. 14 – Coastal Wetlands (replaced by State Environmental Planning Policy (Coastal Management) 2018)
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 71 – Coastal Protection (replaced by State Environmental Planning Policy (Coastal Management) 2018)
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- Hunter Regional Environmental Plan (Heritage) 1989 (now repealed).

The Department is satisfied the modification does not result in significant changes that would alter the conclusions made as part of the original assessment, including the proposals consistency with the above instruments and the relevant development control plan.



4. Engagement

4.1 Department's Engagement

The Department notified the modification for 14 days from 22 October 2019 until 5 November 2019. It was made publicly available on the Department's website, and notified to adjoining landowners and the Biodiversity Conservation Division (BCD) of the Department of Planning, Industry and Environment, the Heritage Division of Department of Premier and Cabinet (Heritage NSW), NSW Rural Fire Services (RFS) and Lake Macquarie City Council (Council).

4.2 Public Authority Submissions

The Department received submissions from BCD, Heritage NSW, RFS and Council. A link to the full copy of the submissions is provided in **Appendix B**.

Heritage NSW, RFS and Council advised that it does not object to the proposed changes.

BCD raised concerns (on behalf of National Parks and Wildlife Services) in relation to the proposed deletion of Crawley Lane, due to bushfire protection, firefighting access, APZ management and potential impacts on the National Park estate.

4.3 Public Submissions

The Department received five public submissions to the modification, three of which object to the proposal including the Catherine Hill Bay Progress Association. A summary of the issues raised in the public submissions is provided in **Table 3** below. A link to a full copy of the submissions is also provided at **Appendix B**.

Table 3 | Issues raised in Public Submissions

Issue	Submissions Raised	Details
Timing of the Village Park	1	Concerns that the village park has not been delivered and this should be a priority.
Subdivision staging	3	Support for the sub-staging of stage 3 into two substages to bring forward delivery of the neighbourhood shops to residents.
Development of neighbourhood shop	2	Concerns that future development of Lot 1112 DP1219395 (proposed lot 3000 on the approved plans, as modified) will be for a single neighbourhood shop, which will not be in keeping with the heritage character of the area.
Contaminated land	1	Using potentially contaminated land from old mine workings to fill a community open space should not be allowed.

4.4 Response to Submissions

On 8 November 2019, the Department wrote to the Applicant requesting a Response to Submissions (RTS) and additional information and justification in the relation to the delivery of the park and deletion of Crawley lane.

On 20 January 2020, the Applicant lodged its RTS (**Appendix C**), which provided the following further information and justification:

- the proposal to delete Crawley Lane satisfies the six key Bushfire Protection Measures underpinning Planning for Bushfire Protection 2006 and is consistent with approved APZ arrangements and the Bushfire Management Plan for the site
- the village park is delayed because the mining company is yet complete its obligations contained within the mine closure plan. In addition, the village park cannot be included in proposed substage 3A, as it is tied to earthworks within proposed substage 3B
- this proposal relates to the subdivision and staging of land and does not deal with the development of Lot 1112 DP1219395 (proposed lot 3000 on the approved plans, as modified) for neighbourhood shop(s). Future development of the lot will be the subject of a separate development application to Council
- this proposal relates to the subdivision layout and staging and does not deal with the movement of fill from mine sites.

Following review of the Proponent's RTS, BCD advised that its previous concerns had been adequately addressed and resolved.



5. Assessment

5.1 Assessment of Modification

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment for the original project and relevant conditions
- submissions received on the proposal and the Applicant's RTS (**Appendix B and C**)
- relevant EPIs, policies and guidelines
- requirements of the EP&A Act.

The Department considers the key issues associated with the proposal are the deletion of Crawley Lane, realignment of Outrum Lane, subdivision staging, timing of the village park, heritage impacts, development of neighbourhood shops and contaminated land.

5.2 Assessment of Key Issues

The Departments assessment of the key issues is set out below.

Table 7 | Assessment of Key issues

Issue	Findings	Recommended Condition
Deletion of Crawley Lane	The proposal seeks to delete Crawley lane because it is located on a steep slope that would require considerable engineering work to ensure stability and to meet Council's design standards, and the current road design does not provide suitable vehicular sightlines for traffic safety purposes.	Condition A7(c) is recommended to be modified to exempt Lots 6020, 6021 and 6022 within Stage 6 from the requirement to provide a perimeter road.
	Crawley lane is a perimeter road to a potential bushfire hazard for three lots within Stage 6 (Figures 2 & 3). The then PAC required a perimeter road for Stage 6 and 7 under Condition A7(c) of the project approval, following a recommendation made by the Department. The recommendation sought to address the interface with adjacent conservation lands and the subsequent bushfire hazard, as perimeter roads are the preferred interface for urban development and bushland.	
	The Proponent states that the perimeter road did not have the benefit of engineering due diligence at the time, and recent engineering advice indicates that the slope of the land poses difficulties in the design and construction of Crawley Lane, requiring extensive engineering, the installation of retaining walls and the need to construct the lane from concrete. Given the engineering advice, the Proponent has sought to delete Crawley Lane.	Condition D11 is recommended to be modified to require a restrictive covenant securing a 25m APZ for the lots affected.
	The Proponent sought advice from a bushfire consultant whom advised that the proposal maintains adequate ingress/egress arrangements, satisfies the six key Bushfire Protection Measures	

underpinning Planning for Bushfire Protection 2006 and is consistent with approved APZs and the Bushfire Management Plan.

Council does not object to the deletion of Crawley Lane.

RFS does not object to the proposal, given the site-specific circumstances and low number of lots affected. RFS has also stated that provision of a perimeter fire trail in lieu of Crawley Lane, is not warranted in this instance.

While BCD initially raised concerns and recommended Crawley Lane be retained, it has now advised that its concerns have been addressed in the Proponent's RTS.

Noting the advice from RFS, the Department agrees that the deletion of Crawley lane would not result in adverse bushfire risks, due to the low number of lots affected and as the proposal satisfies the six key Bushfire Protection Measures underpinning Planning for Bushfire Protection 2006. However, to ensure appropriate management of the bushfire hazard, it is recommended that the bushfire protection provided by the perimeter road be replaced with a 25m APZ to the affected lots.

Realignment of Outrum Lane	<p>The proposal seeks to realign Outrum Lane to improve internal road design and reduce the extent of engineering and retaining walls required.</p> <p>Heritage NSW, RFS and Council advised that it does not object to the proposed changes.</p> <p>The Department supports the proposal as it improves vehicular sightlines and reduces the extent of engineering required, while maintaining adequate ingress/egress arrangements.</p>	Condition A2 is recommended to be modified to refer the revised subdivision layout and staging plans.
Subdivision staging	<p>The proposal seeks to split Stage 3 into two sub-stages (3A & 3B) to bring forward delivery of neighbourhood shops. Three public submissions were supportive of the changes to Stage 3.</p> <p>The proposal also seeks to modify the stage 6 & 7 boundaries to provide a more logical staging boundary between the two stages. While located north west of the drainage reserve, Lot 6069 is to be retained in Stage 6 as it will accommodate an electrical substation.</p> <p>Heritage NSW, RFS and Council advised that it does not object to the proposed changes.</p> <p>The Department supports the proposal as it results in more logical, timely and efficient development staging and will bring forward future neighbourhood shopping facilities for residents.</p>	Condition A2 is recommended to be modified to refer the revised subdivision layout and staging plans.
Timing of the village park	<p>The approved staging plans identify land for a village park within Stage 3 of the subdivision. The village park is positioned directly adjacent to the lot for neighbourhood shops. The proposed staging plan places the village park within proposed sub-stage 3B, whilst the neighbourhood shops are proposed in sub-stage 3A.</p> <p>One public submission raised concerns that delivery of the park should be a priority, as no such amenities exist for residents of the estate.</p>	No conditions or amendments to existing conditions necessary.

Following notification, the Department requested the Proponent provide further justification for the timing of the village park, with a preference that it be delivered in substage 3A at the same time as the neighbourhood shops.

The Proponent's RTS stated that delivery of the village park is tied to earthworks within proposed substage 3B and therefore cannot be delivered in substage 3A. In addition, the Proponent has advised that there is a risk that the timeline for the delivery of this park does not align with the mining company's obligations in the mine closure plan.

The Department is satisfied that the Proponent's RTS has adequately addressed the concerns raised. The Department supports the change so that delivery of neighbourhood shopping facilities to residents are not delayed by the remainder of Stage 3 works, including the timing of the village park.

Heritage impacts	<p>The site adjoins Catherine Hill Bay Cultural Precinct, listed on the State Heritage Register (SHR 01828), and the Munmorah State Conservation Area.</p> <p>The Department notes that Heritage NSW raised no objection to the proposal, given the nature of the changes proposed.</p> <p>The Department is satisfied that the proposed changes will not adversely impact on heritage as they do not involve physical works but predominantly boundary changes in keeping with the prevailing subdivision pattern.</p>	No conditions or amendments to existing conditions necessary.
Development of neighbourhood shops	<p>Lot 1112 DP1219395 (proposed lot 3000 on the approved plans) within proposed substage 3A is identified for future retail development. The approved Catherine Hill Bay (South) Development Control Plan 2012 provides specific controls for future development of this lot as neighbourhood shops.</p> <p>Two public submissions raised concerns about the development of the lot for a single neighbourhood shop. One submission also raised concern that a single neighbourhood shop may not be in keeping with the heritage character of the area or the approved Development Control Plan.</p> <p>The Department notes that the proposed modification does not contemplate the development of the lot, but only its subdivision and the staging. Future development of the lot will be subject of a separate development application to Council, to be considered against the relevant DCP for the site.</p>	No conditions or amendments to existing conditions necessary.
Contaminated Land	<p>One public submission raised concerns about the use of potentially contaminated land from the old mine workings to fill community land.</p> <p>The Department notes that the proposed modification relates to the subdivision and staging of land and does not deal with the movement of fill from mine sites.</p>	No conditions or amendments to existing conditions necessary.



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 on the basis that:

- the proposal results in an improved subdivision layout, road design and more efficient development staging that will bring forward future neighbourhood shopping facilities for residents
- the proposal continues to comply with Planning for Bushfire Protection 2006 and would not pose any unacceptable bushfire risk
- the proposal would not result in any significant impact on the State Heritage Listed Cultural Precinct
- the proposed modification does not result in any additional environmental impacts.

The Department is of the view that the proposed modification is in the public interest and recommends the modification request be approved in accordance with the modification instrument at **Appendix D**.



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 modification request MP 10_0204-MOD-7 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification subject to conditions
- **modify** consent MP 10_0204
- **signs** the attached Modification of Development Consent (**Appendix D**)

Recommended by:

Louise Starkey
Senior Planning Officer
Regional Assessments

Recommended by:

Silvio Falato
Team Leader
Regional Assessments4



8. *Determination*

The recommendation is **Adopted** by:

8 April 2020

Brendon Roberts

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces



Appendices

Appendix A – Relevant Supporting Information

The following supporting information to this assessment report can be found on the Department of Planning website at:

1. Modification Request

<https://www.planningportal.nsw.gov.au/major-projects/project/25501>

Appendix B – Submissions

The Submissions can be found on the Department's website at the following address:

<https://www.planningportal.nsw.gov.au/major-projects/project/25501>

Appendix C – Response to Submissions

The Proponent's Response to Submissions can be found on the Department's website at the following address:

<https://www.planningportal.nsw.gov.au/major-projects/project/25501>

Appendix D – Modification of Development Consent

The Modification of Development Consent can be found on the Department's website at the following address:

<https://www.planningportal.nsw.gov.au/major-projects/project/25501>