



Residential Subdivision- Gwandalan

*Section 4.55(1A)
Modification Assessment
(MP10_0205 MOD 4)*

August 2019

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Glossary

Abbreviation	Definition
Applicant	Lakeside Living Pty Ltd
CIV	Capital Investment Value
Consent	Development Consent
Council	Central Coast Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group of the Department of Planning, Industry and Environment (former NSW Office of Environment and Heritage)
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EP&A (ST&OP) Regulation	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions Regulation 2017)</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
OEH	Office of Environment and Heritage
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SSD	State Significant Development



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1. Introduction

1.1 Background

This report provides an assessment of an application to modify an approved residential subdivision at Gwandalan, in the Central Coast local government area (LGA).

The application seeks approval to modify Condition B11 regarding the requirement for nest boxes and salvaged hollow installation.

The application was lodged by ADW Johnson Pty Limited on behalf of Lakeside Living Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.2 Subject Site

The subject site is located approximately 100 kilometres (km) north of Sydney and 26 km south of Newcastle. The site has an area of approximately 26 hectares. The site adjoins the eastern side of Kanangra Drive, with the Point Wolstoncroft section of Lake Macquarie State Conservation Area adjoining the northern boundary. The southern boundary adjoins Gwandalan Public School and the rear of residential properties in the existing township of Gwandalan. The eastern-most boundary adjoins Lake Macquarie (see **Figures 1 and 2**).

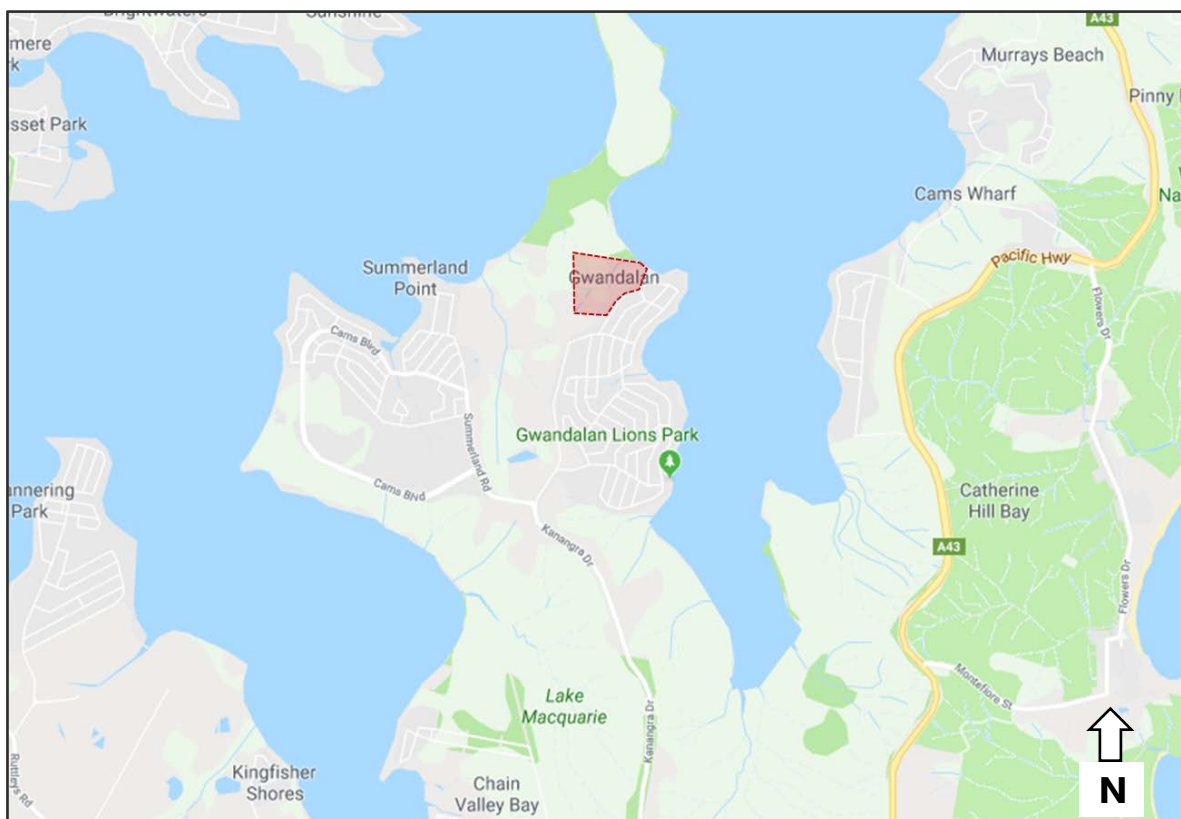


Figure 1 | Site Location (Base Source: Google Maps)



Figure 2 | Subject Site outlined in red (Base Source: Nearmap)

1.3 Approval History

On 3 May 2011, the then Planning Assessment Commission (the Commission) granted Project Approval 10_0205 for a residential subdivision at Gwandalan. The approval, as modified includes:

- 187 new residential lots;
- 1 residential lot to retain an existing dwelling;
- 1 public open space lot;
- associated bulk earthworks;
- infrastructure including drainage and utility services; and
- landscaping works.

This subdivision was approved over 7 stages, with Stages 1 to 6 having now been completed.

The development consent includes Condition B11 which requires compensatory nest boxes to be provided for any natural hollows removed as part of the development on a one for one basis. Alternatively, natural hollows salvaged from removed trees may be installed on retained trees at a ratio of one salvaged hollow for three removed hollows.

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

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	This modification varied the approved subdivision staging, deleted two conditions relating to road upgrades and varied a commitment relating to community consultation.	Planning Assessment Commission	Part 3A MOD	3 May 2011
MOD 2	This modification reconfigured the approved subdivision layout, modified a condition relating to a T intersection, removed a requirement for a raised pedestrian crossing and expanded options for a wildlife management strategy.	Department	Part 3A MOD	22 September 2015
MOD 3	This modification updated the staging plan and reconfigured part of the approved subdivision layout.	Department	4.55(1A)	6 September 2018



2. Proposed Modification

2.1 Modification as exhibited

On 15 August 2018, the Applicant lodged a Section 4.55(1A) modification request (MP10_0205 MOD 4) seeking approval to modify Condition B11 to allow the nest boxes and salvaged hollows installed within Stage 7 to be removed and instead fund a research project on hollow-dependent fauna in the Central Coast region to an equivalent value of the works required under the existing condition.

2.2 Final scope of modification

The scope of the modification was revised in the Applicant's Supplementary Response to Submissions (SRtS) (see **Section 5**). Approval is now sought to modify Condition B11 to allow the nest boxes and salvaged hollows installed within Stage 7 to be removed and the Applicant to secure and retire ecosystem credits of one or more Plant Community Types impacted by the development. As originally proposed, the value of these credits must be to an equivalent value of the works required under the existing condition.



3. Statutory Context

3.1 Scope of Modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EPA&A Act that apply to the modification of the project approval have been considered in **Table 2**.

Table 2 | Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the modification is of minimal environmental impact.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modification seeks approval for minor changes and does not result in any additional impacts on the surrounding area. The modification will not involve any further disturbance outside the approved development footprint. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification have been considered.	The Department received two submissions on the proposal, and six on the supplementary response to submissions. The issues raised in the submissions have been considered in Section 5 of this report.

3.2 Part 3A Transition to State Significant Development

The Project Approval (MP 10_0205) was approved under Part 3A of the EP&A Act. On 1 March 2018, the transitional arrangements for Part 3A approvals ended. In order to modify a Part 3A approval, it must be declared SSD by the Minister for Planning and modified under section 4.55 of the EP&A Act.

Under clause 6 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the Project Application was transitioned to SSD by an Order, which took effect by publication in the NSW Government Gazette on 6 July 2018.

The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

3.3 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy No. 55- Remediation of Land;
- State Environmental Planning Policy (Coastal Management) 2018; and
- Wyong Local Environmental Plan 2013.

The Department has considered the proposed modification against these above-mentioned EPIs in its original assessment and previous modification assessments. The Department considers the modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

3.4 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, the Executive Director, Compliance, Industry and Key Sites, may determine the application under delegation as:

- Council has not made an objection;
- a political disclosure statement has not been made; and
- a total of six public submissions were received objecting to the proposed modification.



4. Engagement

The application was notified to the Environment, Energy and Science Group of the Department of Planning, Industry and Environment (EESG) (as the former NSW Office of Environment and Heritage) and Central Coast Council (Council) from 31 August 2018 to 14 September 2018 and was made publicly available on the Department's website during this time.

4.1 Key Issues – Government Agencies

Council did not object to the proposed modification, however it provided the following comments:

- further clarification is requested on the method of calculation used to arrive at \$62,000 (ex GST) and whether the 32 hollow-bearing trees are included in the calculation
- the condition of consent should require the Applicant to engage a suitably qualified and experienced organisation to undertake the research project prior to the issue of the subdivision certificate for Stage 7
- the final report should be extended from 18 months to 3.5 years to allow the Applicant to consider funding a PhD program which may provide long-term data on hollow-dependent fauna in the region.

EESG did not object to the proposed modification, however it made recommendations including:

- a revised condition of consent should require consultation with EESG on the allocation of funding and establishing the research project;
- the research project should be targeted at the threatened species impacted by the removal of hollow-bearing trees associated with the development.

4.2 Response to Submissions

On 6 November 2018, the Applicant provided a Response to Submissions (RtS) on the issues raised during the notification of the proposed modification (see **Appendix A**).

The RtS was made publicly available on the Department's website and provided to Council and EESG.

Council advised that the cost of \$62,000 was agreed to in negotiations between the consulting Ecologist and Council's Ecologist. Council considers that the \$62,000 is appropriate. Council recommends the condition should include 'no less than \$62,000.'

EESG advised that it is satisfied that the comments raised in its submission have been addressed by the RtS and raises no further comments.

4.3 Supplementary Response to Submissions

The Applicant submitted a Supplementary Response to Submissions (SRtS) to outline the final scope of the proposal: to modify Condition B11 to allow the nest boxes and salvaged hollows installed within Stage 7 to be removed and the Applicant to secure and retire ecosystem credits of one or more Plant Community Types impacted by the development.

The SRtS was notified to surrounding landowners from 12 July 2019 to 26 July 2019 and was made publicly available on the Department's website.

Council were consulted on the final proposal and provided the following recommendations:

- the Applicant should be able to purchase and retire species credits in addition to ecosystem credits
- any natural hollows deemed suitable for reuse within Stage 7 should be provided to Council for reuse.

Public Submissions

The Department received six public objections in response. A summary of the submissions is provided below, and a full copy of the submissions is provided in **Appendix A**.

Key concerns raised in the public submissions included:

- it is environmentally unwise to remove the nest boxes and hollows
- the mass removal of trees has a devastating effect on wildlife and plants
- the developer is not investing in necessary environment and infrastructure programs to lessen impact
- the nest boxes are not used the whole year and will be used more throughout summer
- the installed nest boxes and hollows have not been in place for a lengthy period.



5. Assessment

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

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project (as modified)
- submissions received on the proposal and the Applicant's response to these (**Appendix A**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act

5.1 Amendments to Condition B11

The Applicant seeks to modify Condition B11, which requires compensatory nest boxes and/or salvaged natural hollows be installed as part of the Wildlife Management Strategy (WMS). To accommodate the development, 447 hollow bearing trees supporting 669 hollows required removal. To compensate for this, Condition B11 requires the installation of nest boxes on a 1:1 basis, and salvaged hollows on a 1:3 basis.

The Applicant advises that 470 nest boxes and 67 salvaged hollows have been installed within the South East Park and neighbouring lakeside property. To allow Stage 6 to commence, some of these nest boxes and hollows were temporarily installed within the Stage 7 development area (**Figure 3**, next page). However, for Stage 7 to commence, the Applicant has advised that the nest boxes and hollows will need to be removed from land within that stage (as outlined in **Table 3** below).

Table 3 | Nest boxes and salvaged hollow requirements

	Number currently installed	Number proposed to be removed by this modification	Total of hollows compensated for (out of 669 required)
Nest boxes	470	181	289
Salvaged hollows	67 compensating at 1:3 = 201	17 compensating at 1:3 = 51	150
TOTAL	671	198	439

The Applicant provided ecological advice confirming that the 470 installed nest boxes have a utilisation rate of 25% and an occupancy rate of 2%. This advice concludes that the installation of additional nest boxes is unlikely to result in improved outcomes for the management of wildlife in the locality.

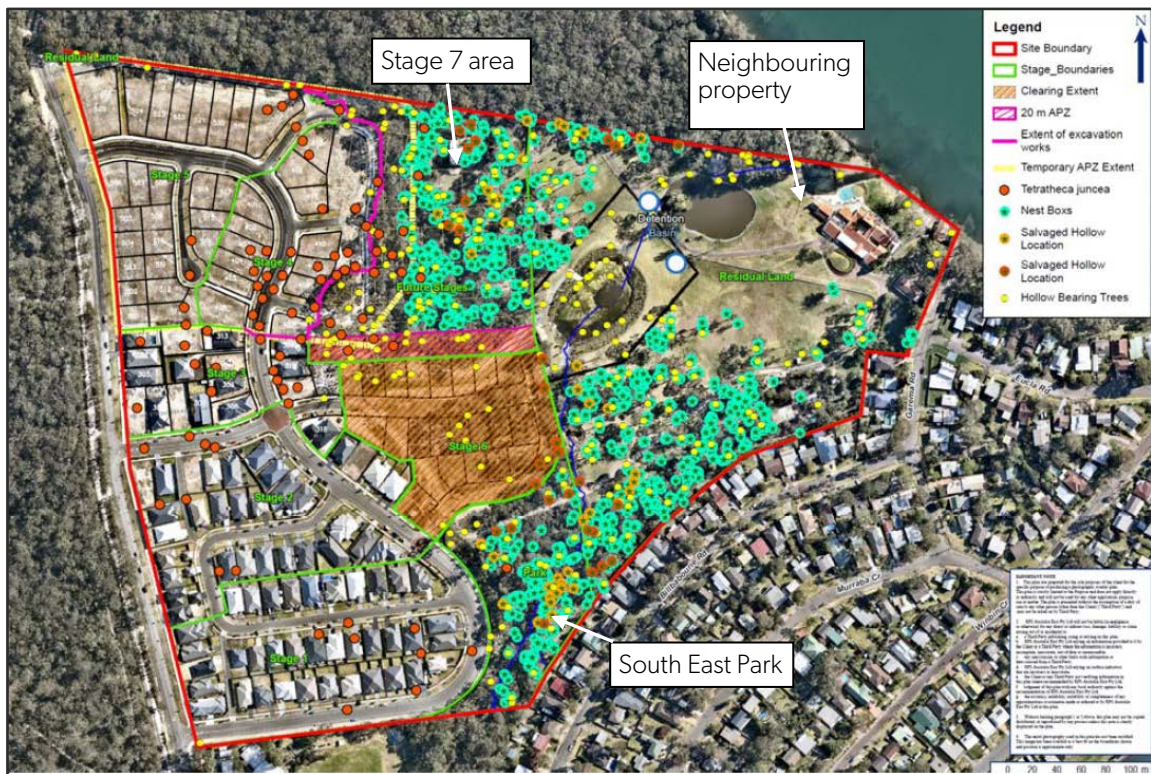


Figure 3 | Location of Hollow Bearing Trees, Salvaged Hollows and Nest Boxes
(Source: Applicant's modification application)

Public submissions raised concern about the short period of time the nest boxes have been installed for and that the nest boxes would be used more frequently in the summer.

The modification application states that 260 nest boxes were installed in February and March 2014, and a further 210 were installed in May and July 2014. As such, the nest boxes have been installed for at least five years. Also, the Department notes that Condition B11(2)(g), requires nest boxes to be monitored to determine their usage every six months for a minimum period of three years following installation. The monitoring is done bi-annually so the usage levels can be observed across different seasons, in this case winter and summer. As such, the Department is satisfied that the nest boxes have been installed and monitored over a suitable period and the low utilisation rate found by the Applicant's ecologist is considered an acceptable representation of usage.

Public submissions also raised concern about the mass removal of trees. The Department notes that clearing was approved under the Project Approval (MP 10_0205) and the majority of clearing has already been undertaken to complete Stages 1 to 6.

The Department notes Council's previous comments for an earlier modification (MOD 2), stating that nest boxes should be installed in retained vegetation on the development site or in the immediate locality, as this is where the need for compensatory habitat occurs due to the loss of hollow bearing trees. However, land available for nest box installation is constrained as:

- the site where the nest boxes and salvaged hollows are currently installed are the only available locations in the vicinity of the development which are owned and controlled by the Applicant
- Council lands are not in the immediate vicinity of the site, except for a narrow strip near Lake Macquarie which is not suitable as it sits between urban areas and the lake
- NSW National Parks and Wildlife Service (NPWS) did not provide permission to install nest boxes on offset lands that were dedicated as part of the Project Approval as these lands are not considered to be a suitable location.

The Department is therefore satisfied that the existing nest boxes are under-utilised and there are no other suitable sites available for the nest boxes. Based on this conclusion, the Department is satisfied the provision of replacement boxes is unlikely to result in an improved ecological outcome.

Hollow-Dependent Fauna Research Project

As an alternative to the provision of nest boxes, the Applicant originally proposed to fund a research project on hollow-dependent fauna in the Central Coast region to the value equal to the cost of purchase, installation and three years of monitoring for the 181 nest boxes, proposed to be removed. The Applicant advised that this solution was reached with Council in order to allow Stage 7 to commence while continuing to recognise the ecological importance of hollow bearing trees for local fauna.

The Applicant identifies the value of the research project as no more than \$62,000, with EESG and Council recommending that the value should be “no less than \$62,000”. The Applicant set out the method for calculation of the cost of the research in its RtS (**Appendix A**). EESG also recommended that the research project be targeted at the threatened species impacted by the removal of hollow-bearing trees associated with the development.

However, during the assessment process, the Department raised concern that the proposed research project may not address the direct impacts of the development on habitat for threatened species. The Department also raised concerns about whether the research project could achieve a meaningful outcome as there were already numerous studies on the use of nest boxes and \$62,000 is not a considerable amount of funds for a study. The Department discussed this concern with the Applicant and EESG and all parties agreed that an alternative method for compensation should be explored to provide a better ecological outcome.

Ecosystem and species credits

Following consultation with the Department and EESG, the Applicant amended the proposal to secure and retire ecosystem credits of one or more Plant Community Types impacted by the development to the value of no less than \$62,000 (ex GST) within the Central Coast LGA. The credits retired must contain hollow-bearing trees.

The Department considers the amended condition is acceptable as it would offset the loss of hollow bearing trees and provide an improved ecological outcome in the area. It is recommended that the condition clearly set out that the retired credits must contain hollow-bearing trees and are located within the Central Coast LGA and/or the Lake Macquarie LGA.

Council were consulted on the condition and recommended that it include the option for the Applicant to purchase and retire species credits in addition to ecosystem credits. The Department agrees with this suggestion, as it would permit greater flexibility while maintaining the nexus between the ecological impacts and the development. EESG were consulted and did not have any issues with including this option, provided the species credits are for hollow dependent fauna impacted by the development.

Council also suggested that any natural hollows deemed suitable for reuse within Stage 7 should be provided to Council for reuse. The Department supports this as it provides the opportunity for a superior ecological outcome by allowing the hollows to be reused to create habitat within the Central Coast LGA. As such the Department has recommended Condition B11(2)(i) to provide for this.

The Department considers that the purchase and retirement of ecosystem or species credits will provide a direct ecological benefit within the area and appropriately compensate for the loss of hollow bearing trees. The Department is satisfied that the proposed condition is an appropriate alternative to replacing the under-utilised nest boxes in this instance.

The Department therefore recommends that Condition B11 is amended to require the Applicant to secure and retire ecosystem credits of one or more Plant Community Types impacted by the development or species credits for hollow dependent fauna impacted by the development, to the value of no less than \$62,000 (ex GST). The retired credits must be located within the Central Coast LGA and/or Lake Macquarie LGA and if ecosystem credits are retired, these must contain hollow-bearing trees.



6. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate as:

- the existing nest boxes are under-utilised and are not achieving strong ecological outcomes.
- there are no suitable sites available in the nearby area as Council land in the immediate vicinity is not suitable and NPWS did not provide permission to install nest boxes on offset lands.
- the purchasing and retiring of ecosystem or species credits is a suitable alternative to the provision of nest boxes as it will appropriately compensate for the loss of hollow bearing trees from the site and provide a direct ecological benefit within the Central Coast LGA and/or Lake Macquarie LGA.
- any natural hollows deemed suitable for reuse must be provided to Council which will ensure a superior ecological outcome by allowing hollows to be reused that would otherwise go to waste.

The Department is satisfied that the modification should be approved, subject to conditions.



7. Recommendation

It is recommended that the Executive Director, Compliance, Industry and Key Sites, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **determines** that the application (MP 10_0205 MOD 4) 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 grant approval to the application;
- **modify** the consent MP 10_0205; and
- **signs** the attached approval of the modification (Appendix B).

Recommended by:

Recommended by:

Lawren Drummond

Planning Officer

Social and Infrastructure Assessments

Anthony Witherdin

Director

Regional Assessments



8. *Determination*

The recommendation is: **Adopted by:**

Anthea Sargeant

Executive Director

Compliance, Industry and Key Sites



Appendices

Appendix A – Relevant Supporting Information

The following documents and supporting information to this assessment report can be found on the Department's website, at the following link:

1. Modification Request
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9542
2. Submissions
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9542
3. Response to Submissions
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9542
4. Supplementary Response to Submissions
http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9542

Appendix B – Modification of Project Approval

The recommended modification of project approval can be found on the Department’s website, at the following link:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9542