



Kellyville South Public School

*State Significant
Development
Modification Assessment
(SSD 7787 MOD 1)*

November 2018

November 2018

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1. Introduction

This report provides an assessment of an application to modify the State significant development approval (SSD 7787) for Kellyville South Public School in The Hills Local Government Area (LGA). The application seeks to modify the approved hours of construction.

The application has been lodged by the Department of Education (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The Applicant is constructing the new Kellyville South Public School at 21 and 23 Fairway Drive, Kellyville. The site is located approximately 4.5km west of Castle Hill town centre and approximately 28km north-west of the Sydney central business district (CBD) in The Hills Shire LGA (**Figure 1**). The site comprises two irregularly shaped allotments described as Lot 11 DP 247442 and Lot 501 DP 1130020. The site has a total area of 35,004m² and was formerly rural residential land.

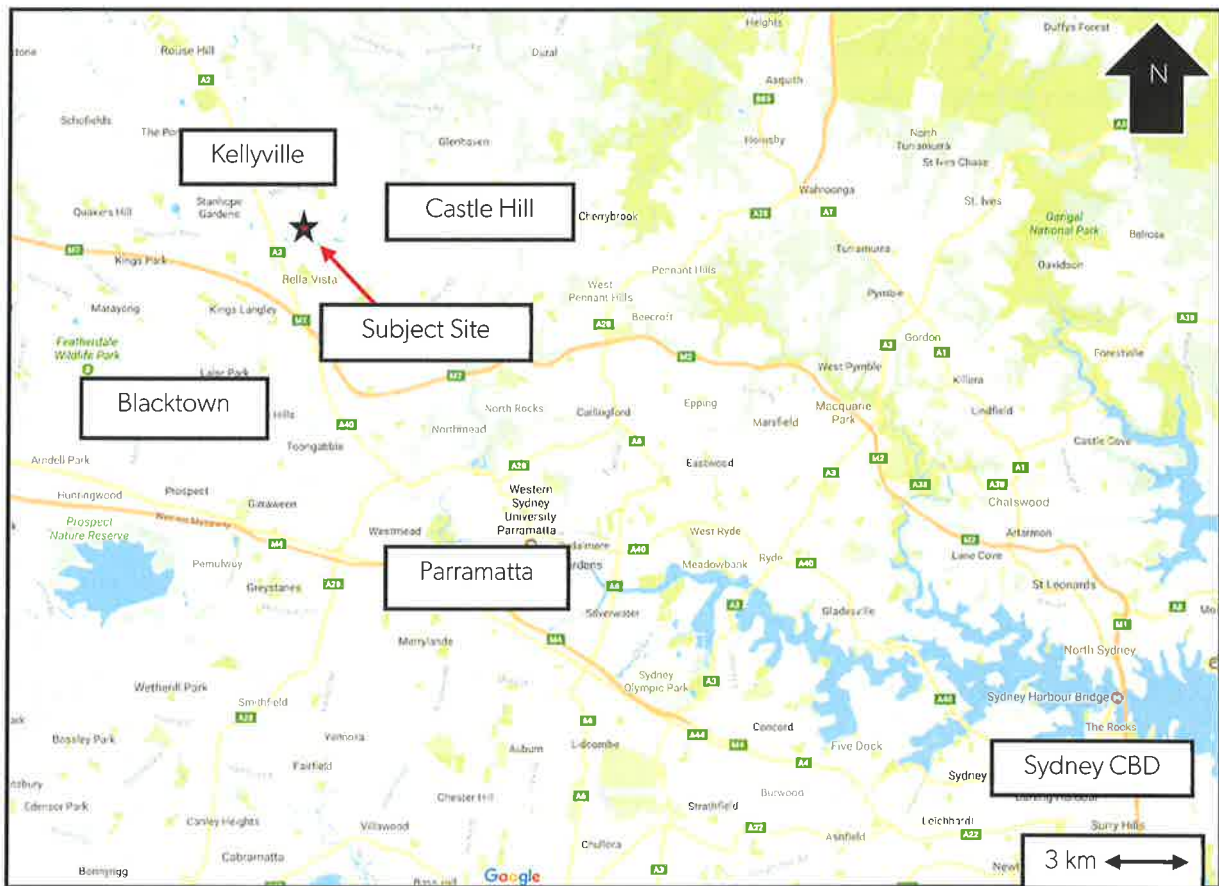


Figure 1 | Site Context (Source: Nearmap 2018)

The site is bounded by the future Free Settlers Drive to the north, Fairway Drive to the east, the future Ernesta Place to the south and residential development to the west. The site has a 180m frontage to Fairway Drive and the new school is currently under construction (**Figure 2**).



Figure 2 | Existing and future development surrounding the site (Source: Nearmap 2018)

The site is located within Council's Balmoral Road Release Area (BRRA) and the Department's Bella Vista Priority Growth Area. The area is experiencing changes in land use from primarily large lot rural residential development to higher density residential and commercial land uses.

A section of the site along the northern site boundary, is to be dedicated to Council for the extension of Free Settlers Drive connecting to Fairway Drive (**Figure 2**). Works associated with this road construction are to be undertaken by Council, funded by the Applicant and delivered prior to the school opening in 2019. The Applicant has advised that dedication of this portion of the site would be undertaken as part of a separate process.

The land opposite the site, north of Free Settlers Drive, would form part of the future Balmoral Road Reserve (Reserve) and land at the corner of Free Settlers Drive and Fairway Drive would be low density residential dwellings. Land east and west of the site has been partially developed for low density residential development with the remainder of this area expected to be future low density residential development (**Figure 2**).

A development application (DA) has been lodged with Council (421/2017/ZB) for the land south of the site for subdivision into 33 Torrens Title lots and two super lots. Works associated with this DA include construction of local roads including the future Ernesta Place which would directly adjoin the southern boundary of the School (**Figure 2**). The Applicant has advised that Ernesta Place would be constructed during Stage 1 of the development referred to above and the road would be delivered prior to the school opening in 2019.

1.2 Approval History

On 24 November 2017, development approval was granted by the Executive Director, Priority Projects Assessments for the development of the Kellyville South Public School (SSD 7787). The development approval permits the following works:

- construction of a new primary school up to two storeys in height, for 1000 students, consisting of two multi-purpose school buildings, a sports hall, external sports field and court
- construction and augmentation of associated infrastructure services including a stormwater management, electricity substation and telecommunications
- landscaping works including construction of formal and informal learning areas, playgrounds, amphitheatre, sensory gardens and the planting of new vegetation
- use of the sports hall and sports field as facilities for community hire.

The development approval includes the following condition relevant to the application:

Hours of Work

C1. The hours of construction, including the delivery of materials to and from the Subject Site, must be restricted as follows:

- a) between 7am and 6pm, Mondays to Fridays inclusive;*
- b) between 8am and 1pm, Saturdays; and*
- c) no work on Sundays and public holidays.*

Works may be undertaken outside these hours where:

- i) the delivery of materials is required outside these hours by the Police or other authorities; or*
- ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; or*
- iii) variation is approved in advance in writing by the Secretary or her nominee.*



2. Proposed Modification

On 24 July 2018, the Applicant lodged a modification application under section 4.55(1A) of the EP&A Act (SSD 7787 MOD 1) seeking approval to amend condition C1 of Schedule 2 of SSD 7787, to allow for an increase in construction hours for Kellyville South Public School. This request was subsequently revised on 12 September 2018.

The proposed changes to construction hours are listed in **Table 1** below:

Table 1 | Proposed change to construction hours

Construction hours	Monday-Friday	Saturday	Sunday	Public Holidays
Approved	7:00am – 6:00pm	8:00am – 1:00pm	No work	No work
Modification as originally proposed 24/7/18	7:00am – 10:00pm	7:30am – 5:00pm	8:00am – 5:00pm	No work
Modification as revised on 12/9/18	7:00am – 8:30pm	7:30am – 5:00pm	No work	No work

The proposed extended work hours would continue until the completion of the project. Construction works that would be undertaken during the proposed extended hours are listed in **Table 2** below:

Table 2 | Proposed construction works during extended hours

Day	Extended hours	Proposed Works
Monday to Friday	6:00pm to 8:30pm	Internal works only in accordance with mitigation measures. This includes internal installation of gyprock, carpet, joinery, doors, frames, miscellaneous hardware, carpentry works, painting and cleaning.
		- Battery powered tools would only be used during these extended hours. - No external works are to be undertaken during these hours.
Saturday	7:30am to 8:00am	Normal construction works, including external construction works in accordance with mitigation measures.
	1:00pm to 5:00pm	Normal construction works, including external construction works in accordance with mitigation measures.

The Applicant has stated that an increase in construction hours is necessary as the extended hours would reduce the overall construction time and reduce the duration of impacts on neighbouring properties and all sensitive receivers, and enable a more complete school to be operational by Day 1 Term 1 2019.



3. Strategic Context

3.1 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011
- State Environmental Planning Policy (Educational Establishments & Child Care Facilities) 2017
- State Environmental Planning Policy No.55 - Remediation of Land
- Draft State Environmental Planning Policy (Remediation of Land)
- Draft State Environmental Planning Policy (Environment)
- The Hills Local Environmental Plan 2012.

The Department undertook a comprehensive assessment of the application against the abovementioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification is generally consistent.



4. Statutory Context

4.1 Scope of Modifications

Section 4.55(1A) of the EP&A Act provides that a consent authority may, on an application being made by the applicant, modify a development consent granted by it, involving minimal environmental impact. Any application must be made in accordance with Clause 115 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts, as the proposal:

- would not significantly increase the environmental impacts of the project as approved
- is substantially the same development as originally approved.

Therefore, the Department is satisfied 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. Accordingly, the Department considers that the application can be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent Authority

The Minister for Planning is the consent authority under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 11 October 2017, the Executive Director, Priority Projects, may determine the application.



5. Engagement

5.1 Department's Engagement

Clause 117(3B) of the EP&A Regulation specifies that the notification requirements of the EP&A Regulation do not apply to State significant development. Accordingly, the application was not advertised. However, it was made publicly available on the Department's website on 8 August 2018 and was referred to Council and surrounding landowners for comment, due to the potential amenity impacts.

5.2 Summary of Submissions

During the exhibition period, the Department received 16 submissions on the proposed modification. One from Council and 15 from the public. A summary of the submissions is provided in **Table 3**, and a full copy of the submissions is provided in Appendix C.

Table 3 | Summary of Council and Community Submissions

Submitters	Number	Position
The Hills Council	1	Comment
Community	15	
	13	Object
	2	Comment
TOTAL	16	

5.3 Key Issues – Council/Community

Council key issues

Council advised in their submission that they consider the proposed change to the approved construction hours are not appropriate as the site is located within a low density residential zone and is located adjacent to existing dwellings.

Community Issues

A summary of the concerns raised in community submissions is listed below:

- the construction and movement of workers on and off site would create additional noise
- the development currently generates excessive dust and noise, and this would be exacerbated by increased construction hours
- increased construction hours would further reduce the availability of on-street parking
- machines and vehicles used on site would generate additional noise, fumes and emissions in the evening and on the weekends
- additional lighting required to work in the evening would create amenity impacts and light pollution
- pedestrian safety surrounding the site would be affected by the increase in workers vehicles entering/exiting the site.

5.4 Response to Submissions

On 12 September 2018, the Applicant proposed a revision to the original modification request in response to the submissions received. The Applicant proposed to reduce construction hours by 90 minutes per day from Monday to Friday and proposed no work on Sunday. Overall the revised proposal requests an increase of 12 hours of construction work over the week between Monday to Saturday. There are no changes proposed to construction hours on Sundays or public holidays and at present no work is permitted (**Table 4**).

Table 4 | Changes to proposed construction hours following Response to Submissions

Construction hours	Monday-Friday	Saturday	Sunday	Public Holidays
Original Modification	7:00am – 10:00pm	7:30am – 5:00pm	8:00am – 5:00pm	No work
Revised on 12/9/18	7:00am – 8:30pm	7:30am – 5:00pm	No work	No work



6. Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original project
- all submissions received on the proposal and the Applicant's response to submissions
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

6.1 Noise

The key issue for consideration relates to potential noise impacts associated with the extended construction hours and the effect this would have on nearby sensitive receivers. The modification, as revised, seeks to amend condition C1 to extend the construction hours as shown in **Table 5**.

Table 5 | Proposed change to construction hours

Construction hours	Previously approved	Proposal as revised	Difference
Monday to Friday	7:00am – 6:00pm	7:00am – 8:30pm	+2.5 hours / day
Saturday	8:00am – 1:00pm	7:30am – 5:00pm	+4.5 hours / day
Sunday	No work	No work	No change
Public Holidays	No work	No work	No change

During the extended construction hours, the following restrictions would apply:

- deliveries of materials to / from the site may not take place during the extended construction hours.

Usual construction activity (other than deliveries) would be permitted on Saturday afternoons.

In support of the application, the Applicant submitted a Construction Noise Impact Assessment (CNIA) to assess the potential noise impacts associated with the extended construction hours on nearby sensitive receivers.

The CNIA identified the nearest sensitive receivers (**Figure 3**) including:

- two storey residential dwellings situated along the western boundary of the school site, located at 14 to 28 Charlemont Terrace, Kellyville
- residential dwellings situated along the northern boundary of the school, located at 12 to 14 Brown Place and 93 to 95 Fairway Drive, Kellyville
- residential dwellings to the east across Fairway Drive located at 48 to 66 Fairway Drive, Kellyville.

The Department is satisfied the CNIA has appropriately identified the key sensitive and nearby receivers potentially impacted by the proposal. Impacts to the affected receivers are considered below.



Figure 3 | Nearest sensitive receivers (Source: CNIA)

The relevant guideline governing construction noise is the EPA's Interim Construction Noise Guideline (ICNG). The applicable noise criteria for noise at residences for works outside standard construction hours is background + 5dB(A) L_{eq} .

The CNIA confirms appropriate monitoring was undertaken to determine the background noise levels applicable to nearby residential receivers. The background noise level was established to be between 36 and 39dB(A). The applicable noise criteria are therefore 41 to 44dB(A) (Background + 5dB(A) L_{eq}). The ICNG states when the noises are above 75dB(A) it represents a point where receivers are likely to be 'highly noise affected'.

The CNIA predicted noise levels at the nearest residential receiver using a worst-case scenario to determine whether the proposal would comply with the applicable ICNG noise management levels criteria of 41-44dB(A). The results are presented in **Table 6**.

Table 6 | Predicted construction noise levels during extended hours

Source of noise	Background noise range dB(A)+5	Receiver location	Predicted noise range of internal works dB(A) L_{eq}	Predicted noise range of external works dB(A) L_{eq}
Impact Drill 110dB(A)	41 - 44	Receiver 1	28 - 40	48 - 60
		Receiver 2	41 - 54	61 - 74
		Receiver 3	43 - 54	63 - 74
Power tools 94dB(A)	41 - 44	Receiver 1	12 - 22	32 - 44
		Receiver 2	25 - 38	45 - 58
		Receiver 3	27 - 32	47 - 52
	41 - 44	Receiver 1	n/a	43 - 55

Cement truck 105dB(A)		Receiver 2	n/a	56 – 59
		Receiver 3	n/a	58 – 63
Mobile crane 98dB(A)	41 - 44	Receiver 1	n/a	36 – 48
		Receiver 2	n/a	49 – 62
		Receiver 3	n/a	51 – 56

As indicated above, the CNIA predicts noise from internal works (behind the closed façade) of general hand-held power tools (except the impact drill) meets the recommended noise emission levels within the ICNG.

However, most external construction activities would exceed ICNG guidelines for the extended construction hours. Noting the Applicant has advised that due to progression of construction it is anticipated that all structural works would be complete, noisy activities would predominantly be related to internal fit-out and finishing works. Any external works would potentially exceed the background noise levels by up to 33dB(A), but would not result in noise levels exceeding the ICNG 'highly noise affected' threshold of 75dB(A).

Department's consideration

The Department notes the extended construction hours proposed would result in potential noise exceedances to residential sensitive receivers, with the greatest potential exceedances occurring from external works. The Department has considered the submissions received from Council and the community in conjunction with the Applicant's need to increase construction hours to finish the project while minimising impacts on the neighbouring residents.

The Department has therefore recommended only a limited increase to the existing construction hours and a suite of measures to ensure construction activities are appropriately managed (**Table 7**).

Table 7 | Recommended change to construction hours

Day	Approved hours	Proposed hours	Recommended hours
Monday to Friday	7:00am – 6:00pm	7:00am – 8:30pm	No change to approved hours
Saturday	8:00am – 1:00pm	7:30am – 5:00pm	8:00am – 3:30pm (+2.5 hours)
Sunday	No work	No work	No change to approved hours
Public Holidays	No work	No work	No change to approved hours

The Department recommends that only a limited increase in construction hours would be acceptable due to the potential adverse impacts on nearby residential dwellings. The Department recommends no change to the existing approved hours Monday to Friday, Saturday morning, Sunday and Public Holidays. An increase of two and a half hours is recommended on Saturday afternoon between 1:00pm and 3:30pm for general construction works.

The Department recommends the requirements of condition C1 be strengthened to further protect noise sensitive receivers during extended construction hours. The Department recommends condition C1 be amended to ensure the:

- carrying out of internal works be undertaken within a fully enclosed building with all windows and doors to be shut at all times and limited to internal fit-out works

- construction staff working on the site during the extended construction hours adhere to appropriate noise reduction practices
- development complies with the requirements of the Construction Noise and Vibration Management Plan (CNVMP) required under condition B22
- development is carried out in accordance with the recommendations of the CNIA
- no deliveries of materials to/from the site are permitted during the extended construction hours
- works may be permitted outside these hours if the works are inaudible at the boundary/boundaries of the nearest residential property. Such out of hours works shall be restricted to fit-out works including painting, the installation of floor coverings, and other minor internal works.
- Notification of such out of hours works must be given to neighbouring residents at least 48 hours prior to such works being undertaken. Contact details for addressing concerns/complaints with respect to any such out of hours works shall be provided to residents in any such notification correspondence.

The Department also recommends that the Applicant should not be permitted to deliver materials to/from the site outside of the previously approved hours.

The Department also recommends a new condition enabling the Department to require the Applicant to restrict construction hours or revert to the standard construction hours where complaints from the community demonstrate the extended construction hours are causing offensive noise or are not being carried out in accordance with the conditions of approval.

The Department's updated condition is stated below:

- (a) Schedule 2 Part C – Hours of Work, condition C1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the **~~bold-and-struckout~~** words / numbers as follows:

Hours of Work

C1. The hours of construction, including the delivery of materials to and from the Subject Site, must be restricted as follows:

- between 7 am and 6 pm, Mondays to Fridays inclusive;
- between 8 am and 1 pm, Saturdays; and
- no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- the delivery of materials is required outside these hours by the Police or other authorities; or
- it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; or
- variation is approved in advance in writing by the Secretary or her nominee; **or**
- where the works are inaudible at the nearest sensitive receivers; or**
- works are carried out during the following hours ('the extended construction hours') between 1:00pm and 3:30pm Saturdays.**

- (b) Schedule 2 Part C – is amended by the insertion of the following new condition C1A

Extended Construction Hours

C1A. During the extended construction hours outlined in condition C1(iv), the following requirements must be met:

- No deliveries of materials to the site or collection of materials from the site are to be made; and**
- All workers during the extended hours are to be informed of the following requirements and the builder is to ensure the following practices are adhered to:**

- i) access to the site during the extended hours is restricted to site personnel only;**
- ii) workers are not to loiter or take breaks in any external areas of the site during the extended construction hours; and**
- iii) workers entering or exiting the site or within any external areas are to take care not to speak in raised voices, talk on mobile phones, use any radio including car radio, cause noise disturbance through the transportation of tools or any other activity.**
- c) All construction works shall be carried out in accordance with the requirements of condition B22 and the recommendations of the Extended Hours Construction Noise Impact Assessment prepared by Acoustic Logic and dated 12 July 2018 (as amended by this condition).**

(c) Schedule 2 Part C – is amended by the insertion of the following new condition C1B

C1B. If investigation of complaint(s), through appropriate noise testing, establishes that offensive noise has occurred or works have been carried out during the extended construction hours outlined in condition C1(iv) in breach of conditions of approval, and the complaint is justified, then the Department may require by notice to the applicant, owner and developer, that the construction hours be restricted or revert to the approved hours in the original consent.

On-balance the Department considers that, subject to the above recommended conditions, a limited increase to the existing construction hours would be acceptable for the following reasons:

- the extended hours would reduce the overall construction time and reduce the duration of impacts on neighbouring properties and all sensitive receivers, and would allow the new school to be operational in a shorter timeframe
- existing conditions of consent, that require the preparation of a CNVMP with requirements for monitoring and minimising noise impacts during construction, would assist with mitigating and managing noise impacts
- no additional construction hours would be permitted on Saturday mornings to prevent noise impacts on nearby sensitive residential receivers
- the CNIA demonstrates proposed internal works would not have an adverse impact on nearby sensitive residential receivers between 1:00pm and 3:30pm on Saturdays
- external noise impacts on residential properties would be appropriately managed as noisy works would be limited to no later than 3:30pm Saturdays and would be below the ICNG 'highly noise affected' criteria of 75dB(A).

The Department's assessment therefore concludes the limited extension of construction hours is in the public interest, and subject to the recommended conditions, the potential construction noise impacts can be appropriately managed.

6.2 Other Issues

The Department's assessment of other issues associated with the proposed modification are in **Table 8**.

Table 8 | Consideration of other issues

Issue	Consideration	Recommendation
Dust/Fumes/Emissions	- The majority of works to be conducted on the site during the extended construction hours would be internal works. - No deliveries would be permitted during the extended construction hours. - Condition B20 of the original approval includes the requirement of a Construction Environmental Management Plan (CEMP) that addresses management of dust, construction noise, and emissions from the site. - The minimal increase in construction hours is not expected to lead to a major increase in dust, fumes or emissions from the site.	No additional conditions or amendments are necessary
Pedestrian safety/Traffic/Parking	- The extended construction hours would consist of a three hour increase on Saturdays. - No deliveries would be permitted during the extended construction hours therefore limiting any increase in vehicles moving to and from the site. - Condition B14 from the original approval includes the requirement of a traffic management plan to ensure road safety and traffic efficiency is not comprised on the surrounding road network. - The minimal increase in construction hours is not expected to have a major impact on pedestrian safety, parking or traffic in the local area.	No additional conditions or amendments are necessary
Light pollution	The recommended extended construction hours are between sunrise and sunset and no additional lighting would be required on the site.	No additional conditions or amendments are necessary



7. Evaluation

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

- the extended construction hours be reduced from the original modification proposal and comprise of only a 2.5 hour increase in construction works on Saturdays
- the proposed modification would allow for the accelerated delivery of much needed community infrastructure
- the modification would result in a reduction to the overall length of time the construction impacts would affect the amenity of the surrounding area.

Consequently, it is recommended that the modification be approved.



8. Recommendation

It is recommended that the Executive Director, Priority Projects Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application Kellyville South Public School MOD 1 (SSD 7787 MOD 1) 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 consent to the application
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **approve** the modification
- **signs** the attached instrument of approval (Attachment D).

Prepared by:

Scott Hay

Planner, School Infrastructure Assessments

Recommended by:



Andrew Beattie

Team Leader

School Infrastructure Assessments

Recommended by:



Karen Harragon

Director

Social and Other Infrastructure Assessments



9. Determination

The recommendation is: **Adopted / Not adopted by:**



David Gainsford

Executive Director

Priority Projects Assessments

12/11/18



Appendices

Appendix A – Notice of Modification

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9502

Appendix B – Supporting Information

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9502

Appendix C – Submissions

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Appendix D – Consolidated Consent

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