



***Stevenson  
Library  
Building –  
The Scots  
College***

State Significant  
Development Modification  
Assessment  
(SSD 8922 MOD 1)  
July 2020

July 2020

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# Glossary

Abbreviation	Definition
Applicant	The Presbyterian Church (New South Wales) Property Trust
CBD	Central Business District
CBP Lawyers	Colin Biggers & Paisley Lawyers
CIV	Capital Investment Value
Consent	Development Consent
Council	Woollahra Municipal Council
DCP 2011	Woollahra Section 94A Development Contributions Plan 2011
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LGA	Local Government Area
LEC	Land and Environment Court New South Wales
Woollahra LEP 2014	Woollahra Local Environmental Plan 2014
Minister	Minister for Planning and Public Spaces
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
The Commission	Independent Planning Commissions
VPA	Voluntary Planning Agreement



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# 1. Introduction

This report provides an assessment of an application to modify the State significant development (SSD) consent for the Stevenson Library Building (to be renamed the John Cunningham Student Centre) at The Scots College in Woollahra, NSW.

The modification application seeks to delete condition C32 which requires the payment of a section 7.12 contribution of \$288,630.68 to Woollahra Municipal Council (Council).

The modification application has been lodged by The Presbyterian Church (New South Wales) Property Trust (the Applicant) pursuant to section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act)

## 1.1 Background

The application site is The Scots College, located at 29 - 53 Victoria Road, Bellevue Hill (the site) in the Woollahra Local Government Area (LGA) which is around four kilometres (km) from the Sydney CBD (see **Figure 1**). The Scots College campus has an area of approximately 6.15 hectares (ha) and spans Victoria Road at the intersection with Ginahgulla Road (see **Figure 2**).

The campus is comprised of an eastern and western precinct. To the east of Victoria Road (eastern precinct) consists of the middle school building, oval, Aspinall House, gymnasium, business studies centre, music centre, maths and science centre, accommodation buildings for boarders and the Stevenson Library building. West of Victoria Road ('western precinct) consists of the Ginahgulla building and secondary sports fields, with Fairfax House (used by boarders) occupying the western portion of this precinct. At the intersection, and across the street from both precincts, is the Principal's residence, Tintern House.

Surrounding development is mainly residential in nature with some waterfront uses in close proximity including marinas, Council owned pools and beaches. Cranbrook College is located around 150 metres (m) to the north-west of the site. The Scots College also consists of other facilities in Bellevue Hill located in close proximity to the site including the preparatory school campus at 6 -10 Mansion Road, the early learning centre at 2 - 7 Mansion Road and the Royle House which accommodates boarders on the eastern side of Cranbrook Lane.



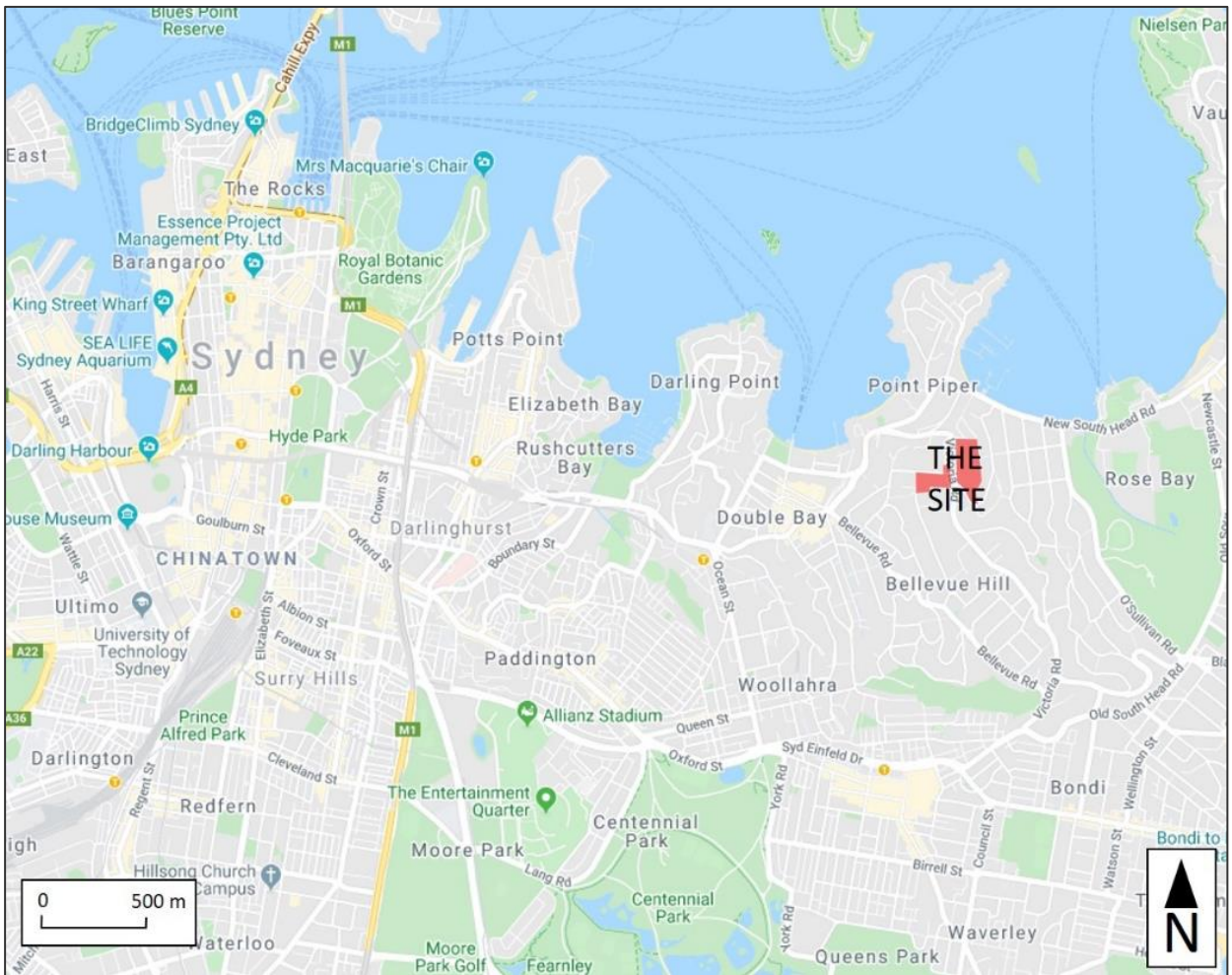
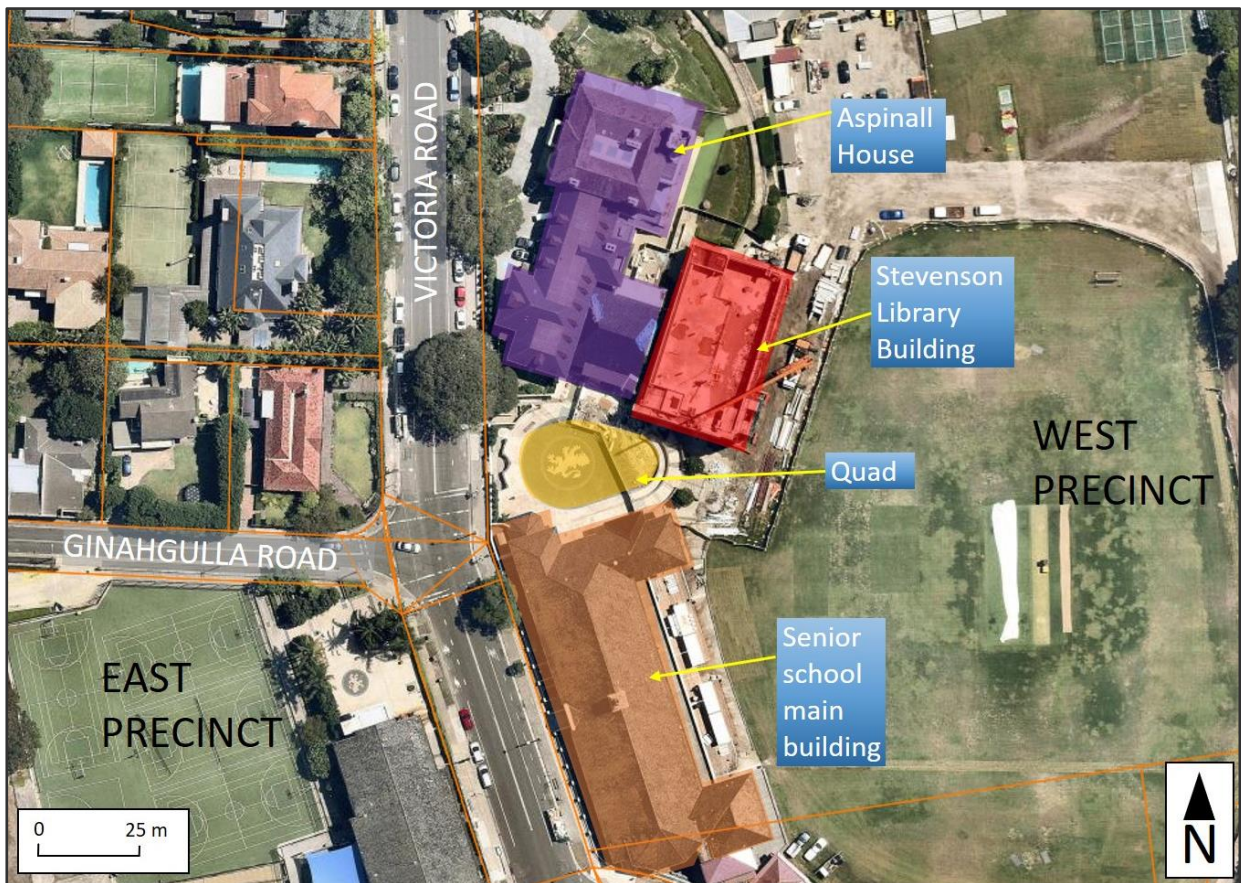


Figure 1: Site Location (Source: Nearmap 2020).



Figure 2: Site and Locality (Source: Nearmap 2020).





**Figure 3:** The Site (Source: Nearmap 2020).

## 1.2 Approval History

On 27 August 2019, development consent was granted by the Independent Planning Commission (the Commission) for major alterations and additions to the Stevenson Library Building at The Scots College (SSD 8922). The development consent permits the following works:

- partial demolition of the existing library, quadrangle, stairs to the College oval and stairs on the northern side of the building.
- extensions to existing floor slabs.
- addition of a sixth storey.
- complete interior refitting.
- recladding of the exterior in Scottish Baronial architectural style.
- a new pitched roof with multiple integrated architectural features.
- creation of new entrances from the existing quadrangle.

The building, which is to be renamed the John Cunningham Student Centre, would have the primary function of providing a learning and digital resource centre for the College's senior school. The ground floor is to contain a café and dining area. The first floor is to include the main entrance, a reception area and service desk, group work room, counselling suite, consulting room and amenities. A grand hall, theatrette, presentation space and amenities are to be constructed on the second floor. The third floor is to include a senior study space, debating room and amenities. A board room, group and

activity-based learning spaces and amenities is to be provided on the fourth floor. The fifth floor is to include a Founder's room, meeting and conference spaces and amenities.



Figure 4: Approved Site Layout (Source: SSD 8922 plans 2019).



Figure 5: Artist Impression of John Cunningham Student Centre (Source: SSD 8922 plans 2019).

The development consent has not been previously modified. Works associated with the development have commenced.





## 2. Proposed Modification

The proposed modification seeks to amend consent SSD 8922 under section 4.55 (1A) of the EP&A Act, through the deletion of condition C32 (Development Contribution) that requires the payment of development contributions totalling \$288,630.68. The condition is worded as follows:

### **Development Contribution**

*C32. Prior to commencement of works (not including demolition), a Section 7.12 levy totalling \$288,630.68 is to be paid to Council in accordance with Section 7.12 of the EP&A Act and Schedule 1 of Woollahra Section 94A Development Contributions Plan 2011. Prior to payment Council can provide the value of the indexed levy.*

The modification application relies on legal advice provided by Collins Biggers Paisley Lawyers (CBP Lawyers) on behalf of the Applicant in the form of a letter dated 18 December 2019 (see **Appendix A**). The Applicant's justification for the deletion of condition C32 is based the reasons set out in this legal advice which suggests the condition is unreasonable for the following reasons:

- condition C32 is inconsistent with other consents granted for other independent school redevelopments which were not levied section 7.12 contributions when there was no increase in student numbers
- the condition does not satisfy the Newbury Test:
  - condition C32 does not fairly and reasonably relate to the SSD, as there is no sufficient nexus between the SSD and an increased demand for public services or facilities as there would be no increase in student numbers.
  - the imposition of condition C32 is inconsistent with consents granted for other independent school redevelopments which did not increase student numbers, and it is therefore unreasonable to impose it upon this development where the nexus test is not satisfied.

The Applicant's legal advice lists several SSD applications outside the Woollahra Local Government Area, which the Minister or his delegate did not impose conditions of consent requiring the payment of development contributions and where no increases to student numbers above existing levels were proposed.



## 3. Strategic Context

The Department does not consider the proposed modification would create any inconsistencies with the strategic context described in the original assessment report for the SSD 8922, as the proposal would continue:

- to be consistent with A Metropolis of Three Cities – The Greater Sydney Plan, as it provides improved school facilities to meet the growing needs of Sydney.
- to be consistent with the NSW Future Transport Strategy 2056, as it provides an improved educational facility in an accessible location.
- to be consistent with the vision outlined in the Greater Sydney Commission’s Eastern City District Plan, as it would support the provision of services and social infrastructure to meet the changing needs of the school.
- to be consistent with the State Infrastructure Strategy 2018-2038 Building the Momentum
- provide direct investment in the region of approximately \$28.8 million which would support up to 418 construction jobs.

However, the proposed modification is not considered to be consistent with the Woollahra Section 94A Development Contributions Plan 2011 (DCP 2011) as it requests the deletion of condition C32 which requires the levying of a contribution in accordance with the plan.



## 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 increase the environmental impacts of the project as approved;
- is substantially the same development as originally approved; and
- would not involve any new works outside the already approved areas for the project.

The Department's matters for consideration are shown in **Table 1** below.

**Table 1** | Matters for consideration

Section 4.55(1A) matters for consideration	Comment
(a) That the proposed modification is of minimal environmental impact	The proposed modification does not seek to modify the consent in a manner that would create additional 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).	The proposed modification would not result in significant external changes to the approved built form or use. The proposed modification seeks to delete condition C32 and the requirement to pay development contributions. On this basis, the proposed modification is substantially the same development as was originally approved.
(c) The application has been notified in accordance with the regulations.	Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not

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apply to SSD. Accordingly, the application was not advertised.

However, in this instance the modification application was referred to Council and it was made publicly available on the Department's website. Details of the notification are provided in **Section 5**.

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(d) Any submission made concerning the proposed modification has been considered.

Council was afforded an opportunity to comment on the proposal within 14 days and subsequently provided comments objecting to the proposal (as detailed in **Section 5**).

The Department is satisfied the proposed modification is within the scope of the modification power in section 4.55(1A) of the EP&A Act and does not require its own separate development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act.

## 4.2 Mandatory Matters for Consideration

The following Environmental Planning Instruments (EPIs) are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011.
- State Environmental Planning Policy (Educational Establishments & Child Care Centres) 2017.
- State Environmental Planning Policy No.55 – Remediation of Land.
- Draft State Environmental Planning Policy (Environment).
- Woollahra Local Environmental Plan 2014.

The Department undertook a comprehensive assessment of the proposed development against the relevant EPIs in its original assessment. The Department notes that the proposed modification application would not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act. However, the proposed modification would detrimentally alter the conclusions made as part of the original assessment as to why the development was appropriate subject to payment of contributions and which were adopted by the Minister's delegate in their reasons for granting consent (as discussed in **Section 6**).

## 4.3 Consent Authority

In accordance with clause 8A of the State Environmental Planning Policy (State & Regional Development) 2011 and section 4.5 of the EP&A Act, the Minister for Planning and Public Spaces is the consent authority.





## 5. Engagement

### 5.1 Department's Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (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, in this instance the modification application was referred to Council and it was made publicly available on the Department's website on 10 January 2020.

### 5.2 Summary of Submissions

The Department received one submission from Council in the form of a letter and legal advice which objected to the modification application (see **Appendix B**).

#### Key Issues – Council

In a letter dated 29 January 2020, Council objected to the modification application on the following grounds, which responded to the Applicant's justification for the modification (refer to **Section 2.1**):

- section 7.12 contributions have been imposed on other school redevelopments (approved by Council, the Regional Planning Panel, the Land and Environment Court (LEC) and the NSW Minister for Planning and Public Spaces (through their delegate)) within the Woollahra Municipality and the examples of other independent school redevelopments referenced in the CBP Lawyers advice, where contributions were not imposed, are outside the Woollahra Municipality.
- the imposition of condition C32 is reasonable.

Attached to Council's letter was legal advice prepared by Lindsay Taylor Lawyers commenting on the Minister's power to impose contribution levies on SSD consents. Council's legal advice responds to the Applicant's modification justification and contends that just because other independent school redevelopments outside of the relevant Council's area were not required to pay a levy is not a proper basis for deciding that all such developments should no longer be required to pay 7.12 contributions. This was forwarded to the Applicant for comment. On 12 February 2020, Council confirmed that its submission should be considered as an objection to the modification.

### 5.3 Response to Submissions (RtS)

The Applicant submitted a response to Council's submission to the Department on 11 February 2020. This included a further letter from CBP Lawyers prepared on behalf of the Applicant and responding to Council's legal advice (see **Appendix C**) suggested that the Minister (and his delegate) has discretion in relation to the imposition of requirements for the payment of contributions and that in this instance

that discretion should be exercised by removing the requirement to impose a contribution. The Applicant's primary justification for not imposing a levy in this instance as noted by CBP Lawyers is:

- no increase to student or staff numbers were proposed or approved and generates no long-term impact on public facilities.
- the proposal is in the public interest, will provide several public benefits by delivering better education, operational and design outcomes for the College to cater for increased need in the Woollahra LGA.
- the imposition of the levy ignores the inherent educational benefit provided by the College.
- Council has justified the imposition of condition C32 by referring to other local developments within the Woollahra LGA where development contributions were imposed, instead of considering other state significant development by independent schools both within and outside Council's boundaries.
- Council's position does not address the issue raised by the School, namely that the College is being treated differently to other State significant school redevelopments outside of Woollahra where the consent authority is the Minister.
- Council's requested approach seeking the Minister consider the plan in force within Woollahra LGA lacks conformity, promotes unfairness across independent school developments within the State and increases the cost of development without any tangible benefits.
- there is no rational basis for the Minister to impose a levy on schools in one local government area in NSW while exempting others in other LGAs, as this unfairly impacts independent schools in the LGA where Councils' contributions plans impose a levy.
- the contribution should be deleted to create parity across independent schools throughout the State.

The Applicant's legal advice also provided an updated list of SSD applications outside the Woollahra Local Government Area, which the Minister (or his delegate) did not impose conditions of consent requiring the payment of development contributions and where no increases to student numbers above existing levels were proposed. These ten SSD applications include projects in:

- Burwood LGA.
- Ku-ring-gai LGA.
- North Sydney LGA.
- Hunters Hill LGA.
- Lane Cove LGA.



## 6. Assessment

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

- the modification application, including the Applicants legal advice from CBP Lawyers and the RtS provided to support the modification (see **Appendix A** and **C**).
- the assessment report for the original development application (SSD 8922).
- Council's submission (see **Appendix B**).
- relevant EPIs, policies and guidelines.
- requirements of the EP&A Act.

### 6.1 Department's Assessment

Section 7.12 EP&A Act provides a consent authority the means to impose, as a condition of consent, a requirement that an applicant pay a levy (calculated as a percentage of the cost of development) to be used for the provision, extension or augmentation of public facilities authorised within the framework of a contributions plan.

The payment of development contributions and levies within the Woollahra LGA is covered by the 94A (7.12) Development Contributions Plan (DCP 2011). DCP 2011 requires payment of a 1% levy on the cost of carrying out any development in the LGA. Developments which have a cost of development of less than \$100,000 or developments listed in a Ministerial direction under section 7.17 EP&A Act are exempted from paying section 7.12 contributions in the LGA. Any contributions levied under DCP 2011 must be used to fund projects listed in the Works Schedule. Section 4.2 of DCP 2011 specifically states that development on lands occupied by large private schools in Special Use Zones is expected to be levied contributions.

As the cost of development exceeds \$100,000 and there are no Ministerial directions relating to the development under section 7.17 EP&A Act, the Department imposed a condition of consent requiring the payment of development contributions totalling \$288,630.68.

The modification application seeks to delete condition C32 in its entirety as the Applicant considers the payment of a section 7.12 contribution to be unreasonable. The justification for this assertion was laid out in the modification application as detailed in **Section 2.1** of this report. Council's submission refuted the assertion by the Applicant that the levying of contributions is unreasonable and unjustified (as detailed in **Section 5.3**) and objected to the deletion of condition C32.

The Applicant's RtS expands upon the justification for the deletion of condition C32 in relation consistency, fairness and reasonableness.

### *Consistency, Fairness and Reasonableness*

The modification application argues that the imposition of condition C32 is inconsistent with other SSD determinations for independent schools in other LGAs. The Applicant also argues that the development would deliver an improved educational facility to the benefit of the public which does not generate a long-term impact on public facilities.

A consent authority must consider each development application on its merits and impose conditions of consent in accordance with section 4.17(h) EP&A Act, which specifically lists the imposition of section 7.12 contributions as a valid condition to be imposed on a development consent. In accordance with section 4.17(h) EP&A Act, the Commission imposed condition C32 on the development consent, requiring the Applicant to pay a contribution to Council.

The Department considers the consistent application of legislation, policies and plans within an LGA to be in the public interest. DCP 2011 has consistently been applied on a multitude of development applications and complying development certificates in the LGA, including several independent schools (listed in Council's submission in **Appendix C**) which have been levied a 1% contribution.

### *Conclusion*

The Department considers that the proposed modification should not be approved on the basis that the:

- the condition was imposed in accordance with the EP&A Act and DCP 2011 to assist Council in funding projects in Schedule 2 of its contributions plan, which includes public projects in close proximity to the site.
- the facts relating to the development have not substantially changed since the original consent was granted.
- the Department does not consider the redevelopment of the school associated with SSD 8922 to directly benefit the public in a manner which would warrant the waiving of section 7.12 contributions.

Accordingly, the Department recommends that the modification should be refused.





## ***7. Evaluation***

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department has considered the modification application on its merits taking into consideration the submission made by Council and the Applicant's RtS.

The Department does not consider there is merit in deleting condition C32, which requires the payment of a levy in accordance with DCP 2011. For this reason, the Department considers the modification application should be refused.



## 8. *Recommendation*

It is recommended that the Group Deputy Secretary, Planning and Assessment, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to refuse the modification application;
- **agrees** with the key reasons for refusal;
- **refuses** the modification; and
- **signs** the attached instrument of modification refusal.

Recommended by:

**Karen Harragon**

Director

Social and Infrastructure Assessments

Recommended by:

**David Gainsford**

Executive Director

Infrastructure Assessments



## 9. *Determination*

The recommendation is: **Adopted by:**

02/07/2020

**Marcus Ray**

Group Deputy Secretary

Planning and Assessment



# *Appendices*

The following supporting documents and supporting information to this assessment report can be found out the Department of Planning, Industry and Environment's website as follows.

## **Appendix A – Modification Application**

<https://www.planningportal.nsw.gov.au/major-projects/project/26731>

## **Appendix B – Council's Submission**

<https://www.planningportal.nsw.gov.au/major-projects/project/26731>

## **Appendix C – Applicant's Response to Submissions and additional information**

<https://www.planningportal.nsw.gov.au/major-projects/project/26731>