

15 July 2020

Secretary  
NSW Department of Planning, Industry and Environment  
GPO Box 39  
SYDNEY NSW 2001

*Attention: Ms Lawren Drummond, Planning Officer Regional Assessments*

Dear Sir/Madam,

**Re: MODIFICATION REPORT**

**8 MOONA CREEK ROAD, VINCENTIA – VINCENTIA MARKETPLACE**

**PROPOSED MODIFICATION OF LANDSCAPE TREATMENT AT CORNER OF MOONA CREEK ROAD AND HALLORAN STREET IN MAJOR PROJECT APPLICATION NO. 06\_0025 – VINCENTIA DISTRICT TOWN CENTRE – “MOD 8”**

## **1.0 INTRODUCTION**

With reference to the Scoping Meeting held with the Department of Planning, Industry and Environment (DPIE) on 10 January 2020, this Planning Report has been prepared on behalf of Woolworths Group Limited (Woolworths) and their development arm Fabcot Pty Ltd as the proponent, requesting DPIE accept this application as Modification 8 (referred to in this Planning Report as “Mod” 8) to Major Project Application No. 06\_0025.

This letter constitutes the proponent’s request under the *Environmental Planning and Assessment Act 1979* (as amended) (EP&A Act) to seek the modification of Major Project Application No. 06\_0025 – Vincentia District Centre (VDC).

This Mod 8 seeks approval to amend the recycled timber screen and substitute with additional landscape planting with retention of location signage details. This report provides details of the site, its history of approvals, the approval pathway, the proponents responses to the Scoping Meeting feedback and assessment of the proposed changes under Section 4.55(1A) of the EP&A Act.

### **1.1 The Site and Locality**

The site is located approximately two kilometres south-west of the existing Vincentia township. The Woolworths Vincentia Marketplace site is bounded by the Jervis Bay National Park to the west, to the north and to the north-east, the Wool Road to the east and Naval College Road to the south. The site of the Woolworths Vincentia Marketplace site is legally described as Lot 1 DP 1182358.

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**Figure 1:** Aerial image of existing Woolworths Vincentia Marketplace shopping centre on Moona Creek Road  
**Source:** Google Earth

**Photos 1 – 4** below demonstrate the existing site development and conditions at the roundabout in Monna Creek Road at the intersection with Halloran Street and the “laneway” to the loading docks.



**Photo 1:** View of existing vegetation and landscaping at boundary of site to the corner of the roundabout in Moona Creek Road. The application will not impact of existing vegetation or the existing palisade fencing.



**Photo 2:** View of existing vegetation and landscaping at boundary of site to the corner of the roundabout in Moona Creek Road. The application will not impact of existing vegetation.





**Photo 3:** “Close-up” view of existing vegetation and landscaping at boundary of site to the corner of the roundabout in Moona Creek Road. The application will not impact of existing vegetation or the existing palisade fencing. It should be noted that there is a “gap” between the site boundary with the road reserve of Moona Creek Road and the existing palisade fencing.



**Photo 4:** “Close-up” view of existing vegetation and landscaping at boundary of site to the corner of the roundabout in Moona Creek Road. The application will not impact of existing vegetation. It should be noted that there is a “gap” between the site boundary with the road reserve of Moona Creek Road and the existing landscaping.

## 1.2 History of Approvals

**Table 1** below a summary of the approvals granted for the site:

**Table 1:** History of planning approvals

Date:	Planning Approval:
<b>25 January 2007</b>	<p>Vincentia Coastal Village (VCV) Concept Plan/Project Approval</p> <p>Concept approval (as modified) MP 06_0060 under Part 3A for:</p> <ul style="list-style-type: none"> <li>• 603 lot residential subdivision;</li> <li>• Residential development for an adaptable housing area;</li> <li>• Commercial development (District Town Centre) identifying: <ul style="list-style-type: none"> <li>- Indicative building footprints;</li> <li>- Total floor area of no more than 32,000 square metres (total for both Stage 1 and Stage 2);</li> <li>- A range of uses, including DDS, supermarket, medical centre, child care centre, etc.;</li> <li>- A site (Stage 3) for future retail development (bulky goods); and</li> <li>- Environment protection measures on the remaining land.</li> </ul> </li> </ul> <p>and</p> <p>Project approval (as modified) MP 06_0058 under Part 3A for 603 lot residential subdivision, 60 hectares of open space area, internal road network and construction and operation of display village for Stage 1 development.</p>

Date:	Planning Approval:
<b>8 October 2007</b>	Modification 1: Concept Plan and Project Approval Modification 1
<b>9 July 2008</b>	Modification 2: To modify the Concept Plan and Project Application approvals to nominate future dwelling houses relating to the approved residential subdivision component of the Concept Plan approval as complying development for the purposes of the Act.
<b>6 February 2009</b>	Modification 3: Proposal to modify the project approval to include 3 additional residential lots within the approved development area.
<b>13 February 2009</b>	Modification 4: To clarify the timing for the payment of section 94 contributions
<b>20 April 2009</b>	Modification 5: To modify the Concept Plan and Project approvals to: increase the area of a number of approved lots within Stage 2 and reduce the total number of lots by 4; and remove item 68 of the approved Statement of Commitments relating to submission of a lot classification geotechnical report for each stage of development prior to release of the subdivision certificate.
<b>11 December 2009</b>	Modification 6: Modification to the Concept Plan and Project Approval for Vincentia Coastal Village to: make changes to Design Essentials - a guide to building your home at Bayswood; and to amend references to the Design Essentials document in the Instrument of Approval.
<b>14 November 2008</b>	Site of Coastal Village and District Centre inserted into Schedule 3 to the State Environmental Planning Policy (Major Projects) 2005 as a State Significant Site.  The planning regime for the site is now Part 29 of Schedule 3 to State Environmental Planning Policy (Major Projects) 2005.
<b>7 January 2009</b>	Vincentia District Centre (VDC) Stage 1 Project Approval  Project Approval MP 06_0025 under Part 3A for development of Stage 1 of the Vincentia District Town Centre, is described as follows:  <i>(a) site preparation works (including earthworks and vegetation clearing) with the Stage 1,</i> <i>(b) subdivision to create a 12.24 ha Lot upon which the District Centre will be constructed,</i> <i>(c) approximately 14,000m<sup>2</sup> of floor area, comprising 10,000m<sup>2</sup> of retail space (including two supermarkets, specialty retail outlets, kiosks and mini/major retail outlets) and 4,000m<sup>2</sup> of commercial/community space (including a library, centre management, amenities and commercial/community tenancies),</i>  <i>(d) fit out and occupation of the Woolworths, Big W and Aldi supermarkets,</i>

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Date:	Planning Approval:
	<p><i>(e) roads and access/public domain works within the District Centre (including Moona Creek Road, external road works, footpaths and open space areas),</i></p> <p><i>(f) 683 car parking spaces, two loading docks and trolley storage,</i></p> <p><i>(g) provision of infrastructure for water, sewerage, electricity and telecommunications,</i></p> <p><i>(h) water sensitive urban design, and</i></p> <p><i>(i) associated works.</i></p>
<b>10 April 2009</b>	<p>Modification 1</p> <p>Vincentia District Town Centre – deletion of conditions 2.17 and 2.18</p>
<b>2009, 2010 and 2011</b>	Various Modifications to the VCV.
<b>15 March 2011</b>	<p>Modification 2</p> <p>Vincentia District Town Centre</p>
<b>3 August 2011</b>	Order made by Planning Assessment Commission – amended Schedule 3 Part 19, Clause 6 of SEPP to allow maximum gross floor area of 37,000 square metres for the VDC.
<b>8 August 2011</b>	Modification 3 approved by Planning Assessment Commission for VDC with gross floor area of 36,988 square metres.
<b>17 April 2012</b>	Modification 4 approved by Department of Planning and Infrastructure to amend the mall width and other minor built form design changes.
<b>18 November 2013</b>	PAC grants approval to Modification 5 which amended project staging and minor design changes to the VDC to Fabcot.
<b>16 May 2014</b>	Department of Planning and Environment grants approval to Modification 14 for the VCV to Stockland.
<b>15 December 2014</b>	Modification 6 which involved minor amendments and design changes to the VDC by Fabcot.
<b>18 January 2019</b>	<p>Modification 7 which involved minor amendments to the VDC by Fabcot, including:</p> <ul style="list-style-type: none"> <li><i>revisions to plantings along the Moona Creek Road frontage</i></li> <li><i>revisions to plantings to part of the overland flow corridor</i></li> <li><i>details of a recycled timber screen along the frontages adjacent to the loading area</i></li> <li><i>incorporation of a substation and sprinkler tank into Stage 1A.</i></li> </ul>
<b>Various dates with approval associated the</b>	There have been various Modifications submitted and approved associated with the Vincentia Coastal Village residential land subdivision assets which have not been prepared on behalf of Woolworths and therefore these have not been detailed in this table.

**Date:** **Planning Approval:**

**residential  
component**

Shoalhaven City Council granted approval to DA 18/2277 on 12 September 2019 for “*widening and extension of existing access road to provide a second entrance and exit to the existing carpark*”, subject to conditions.

Shoalhaven City Council also granted approval to DA 19/1460 on 28 November 2019 for “*Construction of staff car park (96 spaces), associated works and landscaping associated with the Vincentia Marketplace*”, subject to conditions.

### **1.3 Background and Statutory Context**

Records held by DPIE refer to the site as the Vincentia Coastal Village (VCV) and the shopping centre as the Vincentia District Centre with its acronym VDC.

Now that the land has been developed by Fabcot and is now operational by Woolworths Group, it is commonly known in the community as Woolworths Vincentia Marketplace shopping centre.

The subject site was originally included at Part 29 of Schedule 3 of the former *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP). The project approval (MP06\_0025 was originally granted under Part 3A of the EP&A Act, this means the original project and its subsequent Modifications 1 to 7, satisfied the definition of a “transitional Part 3A project” under Clause 2(1) of Schedule 2 to the Environmental Planning and 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) and clause (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 8 February 2019, an Order (copy included at **Appendix A**) was gazetted under Clause 6 of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 transitioned MP06\_0025 to SSD which enables this modification to be submitted, assessed and determined.

The effect of this Order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development and may be modified under Section 4.55 of the EP&A Act.

The nature of the proposed minor changes to the landscape treatment at the south-eastern corner of the site of the intersection of Moona Creek Road with Halloran Street roundabout is lodged under Section 4.55(1A) of the EP&A Act and has been assessed in this “Modification Report” as detailed in Sections 2 and 3 below.

#### 1.4 Scoping Meeting

The proponent Fabcot has evaluated the ability to source the base products for the “recycled timber screen along the frontages adjacent to the loading dock area” and the suitability to implement the design of this in the location approved in Modification 7 in consultation with the appointed landscapers who implemented the revised plantings along the Moon Creek Road frontage and the banks of the overflow corridor approved in Modification 7. Based on the feedback from the landscaper, it was identified that the “recycled timber screen” was not capable of being sourced and the proposed height and location of the “recycled timber screen” would require the removal of the existing landscaping and palisade fencing in order to support footings for the structures of the size and height approved. If this information was known to Fabcot at the time of Modification 7 was being considered the design would have been amended to avoid the issues now arising out of this approval now.

It should be noted that all of the revised plantings along Moona Creek Road frontage and the banks of the overland flow corridor have been completed. This has been confirmed in the “Installation Certificate” issued by Craig’s Coastal Landscaping Services dated 16 June 2020 included at **Appendix B**.

On 10 January 2020, the proponent met with DPIE staff to discuss the proposal to seek minor design changes to the landscape screening at the corner of the site’s Moona Creek Road frontage with the roundabout at the intersection with Halloran Street with the substitution of the approved timber structures with an alternate design.

Following this meeting DPIE issued letter dated 10 January 2020 which stated:

*The Department has reviewed the documentation that was provided and requests the following matters be addressed in the Modification Report:*

- *justification for the removal of the timber screening, including an options analysis demonstrating the reasons for selecting the proposed option*
- *photomontages or photos from various angles and locations showing how the proposed landscaping would screen the loading dock and tank*
- *assessment of the proposed removal of the timber screening as a marker to identify the corner of the site, and the provision of alternative measures for this purpose*
- *a breakdown of the approved and proposed landscaping in the area and documentation clearly showing the proposed changes and how the landscaping will be adequately maintained*
- *an assessment of proposed changes to signage against SEPP 64.*

Section 2 as follows addresses the matters raised above.



## 2. DESCRIPTION OF THE PROPOSED MODIFICATION

### 2.1 JUSTIFICATIONS

Following the approval of Modification 7 on 18 January 2019, Fabcot on behalf of Woolworths commenced the process to seek tenders from landscapers to implement the landscape changes and the recycled timber screen. It should be noted that the substation and sprinkler tank were already completed.

Upon appointing a landscaper to implement Modification 7 changes, it was determined by the landscaper that there was no suitable base products for the “recycled timber screen along the frontages adjacent to the loading dock area” approved in Modification 7. In addition, it was determined that the location and overall height of the approved recycled timber screening columns are each around 15m high and would require the removal of the existing landscaping and palisade fencing in order to support footings for the structures of the size and height approved and as a result there would be limited area remaining within the boundary to provide new supplementary plantings. The removal of existing plantings as a result of the footing required to support the approved recycled timber screening defeats the purpose of the approval in the first place which is to create an outcome which does not impact of the screening which is currently afforded by the existing vegetation.

The DPIE letter dated 10 January 2020 also requested Fabcot undertake an options analysis.

Existing Approval: Fabcot has the option to implement the existing approval, however for the reasons detailed above this is not considered possible because sourcing the recycled timbers are not available in the market. In addition, the approved design cannot be implemented without the removal of the existing mature vegetation.

Option 1: This option proposes the inclusion of two sets of signs with 4 support columns which are 2.55m high and associated footings at the base of each set of columns, and inclusion of the name “Vincentia” in signs 1.0m high x 10.5m long, to each frontage of the site at its south-east corner with the intersection of Moona Creek Road and Halloran Street. The size of each concrete base for the support columns has been minimised so as there is minimal impact on the existing landscaping. Please refer to the amended drawing “Option 1 – Vincentia District Town Centre Mod 8 Design Response” drawing numbers 361 Rev 13, 362 Rev 9, 363 Rev 4 prepared by i2C included at **Appendix C**.

In addition, this option includes the provision of supplementary landscaping between support columns. Please refer to the amended landscape drawing numbers L\_103 Rev C and L104\_C prepared by Elke included at **Appendix D**.

Option 2: This option involves two sets of signs with 12 support columns which are 2.55m high and associated footings at the base of each set of columns, and inclusion of the name “Vincentia” to each frontage of the site at its south-east corner of the intersection of Moona Creek Road with Halloran Street. The size of each concrete base for the support columns has been minimised but the number of columns in a row requires a longer excavation zone for each support base which will displace more of the existing landscaping and leave less area available for replacement and supplementary landscape plantings. No area is available for supplementary landscaping.



Please refer to the amended drawing “Option 1 – Vincentia District Town Centre Mod 8 Design Response” drawing numbers 370 Rev 4, 371 Rev 4, 372 Rev 4 prepared by i2C included at **Appendix E**.

Therefore, Option 1 is preferred by the proponent because:

- the materials for the support columns are available;
- the amended design does not rely on recycled timber which was not available;
- the overall size and number of the columns can be supported by concrete bases which has minimal disturbance of the existing site vegetation; and
- sufficient “area” remains between the boundary of the site and the existing palisade fencing and landscaping to afford the inclusion of additional plantings to be provided and grow to a sufficient height to supplement the existing screen plantings.

Option 1 has been demonstrated in the 3D montage included in **Appendix C**. For the reasons detailed above minor design amendments in **Appendix C** are now sought for approval by the proponent in this Modification 8. As demonstrated in the 3D montage, the existing landscaping and overall screening can be maintained and adequately supplemented by the design shown in option 1 design, as was intended in the last modification (Modification 7).

As a result of the justifications and reasons for the changes, the associated justifications and options analysis above, this modification (Mod 8) seeks minor changes to the approved drawing information in condition 1.2 in Schedule 2 Part 1 and amend condition 2.54 in Schedule 2 Part 2 within the Instrument of Approval MP 06\_0025 dated 18 January 2019 under Section 4.55(1A) of the EP&A Act.

## 2.2 AMEND CONDITION 1.2

It is requested that condition 1.2 be amended. Condition 1.2 currently states:

*Development in accordance with Plans and Documentation*

*1.2 The development shall be in accordance with the following plans and documentation (including any recommendations and Statement of Commitments made therein):*

- a) *Environmental Assessment Report – Proposed Vincentia District Town – Stage 1 – prepared by Don Fox Planning and dated 22 April 2008;*
- b) *Response to Agency and Public Submissions including Revised Statement of Commitments prepared by Don Fox Planning and dated 10 October 2008;*
- c) *As amended by Environmental Assessment Report – Modification of Project Application Vincentia District Centre dated September 2010 prepared by The Planning Group;*
- d) *As amended by the Preferred Project Report and Response to Submissions Report and Statement of Commitments dated July 2011 prepared by the Planning Group and associated drawings;*
- e) *As amended by the Environmental Assessment dated March 2011 and the Submissions Report and Statement of Commitments dated July 2011 prepared by The Planning and associated drawings’*
- f) *As amended by the Environmental Assessment dated 18 November 2011 prepared by The Planning Group and associated drawings;*
- g) *As amended by the Environmental Assessment for Major Project Application No. 06\_0025 – Vincentia District Centre – Modification 5 dated November 2012 prepared by The Planning Group and associated revised modification documentation, including the ‘Vincentia District Centre Design Summary Mod 5 Submission 17<sup>th</sup> June 2013’, Statement of Commitments dated 30 August 2013 and the following drawings*

- h) *The Environmental Assessment for Major Project Application No. 06\_0025 – Vincentia District Centre – Modification 6 dated July 2014, prepared by The Planning Group, and as amended by the Response to Submissions and Preferred Project Report dated 21 October 2014, prepared by The Planning Group, and the following drawings*
- i) *As amended by the Environmental Assessment for Major Project Application No. 06 0025 Vincentia District Centre - Modification 7 titled 'Amended Information in Response to Request for Information' dated 13 May 2018, prepared by Higgins Planning, including appendices and associated drawings;*
- j) *The following drawings:*

<b>Architectural Drawings prepared by Scott Carver</b>			
<b>Drawing No</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
DA 0103	BB	Phasing Plan	20/10/2014
DA 0104	F	Stage 1 Plan	20/10/2014
DA 1202	Z	Stage 1A Plan - North West	20/10/2014
DA1203	B	Stage 1B Plan	11/07/2014
DA 1501	M	Elevations and Finishes – Stage 1A (Sheet 1)	20/10/2014
DA 1502	M	Elevations and Finishes – Stage 1A (Sheet 2)	20/10/2014
DA 1900	G	GFA Calculation Sheet	20/10/2014
SCH 02	B	Schedule of Exterior Finishes	7/7/2014
<b>Landscape Plan prepared by Scott Carver</b>			
<b>Drawing No</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
000	D	Landscape Title Page	20/10/2014
DA001	D	Stage 1A-Landscape Design Summary	20/10/2014
DA002	D	Landscape Planting Pallet	20/10/2014
DA003	D	Typical Section – Moona Road - Development	20/10/2014
DA004	D	Typical Section – Pond - Carpark	20/10/2014
DA005	D	Typical Swale Section	20/10/2014
DA006	D	Typical Bridge – Pedestrian/Cycle Section	20/10/2014
<b>Civil Drawings prepared by Cardno Forbes Rigby</b>			
82014088-01-C1005	B	Carpark Layout and Drainage Layout Sheet 4 of 4	14/7/2014

*As amended by the following drawings:*

<b>Architectural Drawings prepared by TRG Brisbane</b>			
<b>Drawing No</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
360	5	Site Plan – Vincentia District Town Centre MOD 7 Design Response	27.03.2018

<b>Architectural Drawings prepared by TRG Brisbane</b>			
361	4	Vincentia District Town Centre MOD 7 Design Response	26.03.2018
362	5	Vincentia District Town Centre MOD 7 Design Response	26.03.2018
<b>Landscape Plans Prepared by Elke Landscaping</b>			
<b>Drawing No</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
L 101	CB	Landscape Architectural Additional Planting Plan, Zone C	13.06.2018
L101	B	Landscape Architectural Additional Planting Plan, Zone C	01.03.2018

except for:

- any modifications which are 'Exempt and Complying Development' as identified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA; and
- as otherwise provided by the conditions of this approval.

It is requested this condition be amended so as the following drawings are included in condition 1.2:

- amended drawings "Option 1 – Vincentia District Town Centre Mod 8 Design Response" drawing numbers 361 Rev 13, 362 Rev 9, 363 Rev 4 prepared by i2C included at **Appendix C**; and
- amended landscape drawings L\_103 Rev C and L104\_C prepared by Elke included at **Appendix D**.

The reasons for these changes have been detailed previously in this report.

## **2.3 AMEND CONDITION 2.54**

It is requested that condition 2.54 be amended. Condition 2.54 currently states:

### *2.54 Completion Date of Works*

*All works approved and required by Modification 7, including the additional landscape plantings, timber screen, and revised fence required by condition 2.52 are to be constructed and completed within 12 months of approval of Modification 7.*

It is requested condition 2.54 be amended to reference "Modification 8" (this application) in lieu of "Modification 7".

The reason for the change is to make clear, this Modification 8 is to be implemented within 12 months of approval.

### 3. MODIFICATION UNDER SECTION 4.55(1A) OF THE EP&A ACT

For the purposes of this assessment, it is considered that the nature of the changes proposed to Instrument of Approval MP06\_0025 and Mod 7 dated 18 January 2019, would ordinarily be considered by DPIE (as the consent authority) under Section 4.55(1A) of the EP&A Act, which states:

#### **4.55 Modification of consents—generally (cf previous s 96)**

##### **4.55(1A) Modifications involving minimal environmental impact**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied 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*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

And, this application has considered Clause 115 of the EP&A Regulation in the follow sections of this report, where Clause 115 of the EP&A Regulation states:

#### **115 Application for modification of development consent**

*(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:*

- (a) the name and address of the applicant,*
- (b) a description of the development to be carried out under the consent (as previously modified),*
- (c) the address, and formal particulars of title, of the land on which the development is to be carried out,*
- (d) a description of the proposed modification to the development consent,*
- (e) a statement that indicates either:*
  - (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*
  - (ii) that the modification is intended to have some other effect, as specified in the statement,*
- (f) a description of the expected impacts of the modification,*



*(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*

*(g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the [Biodiversity Conservation Act 2016](#),*

*(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

*(i) a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56),*

*and, if the consent authority so requires, must be in the form approved by that authority.*

*(2) The notification requirements of clause 49 apply in respect of an application if the consent of the owner of the land would not be required were the application an application for development consent rather than an application for the modification of such consent.*

*(3) In addition, if an application for the modification of a development consent under section 4.55 (2) or section 4.56 (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.*

*(3A) The statement by the qualified designer must:*

*(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and*

*(b) provide an explanation of how:*

*(i) the design quality principles are addressed in the development, and*

*(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and*

*(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

*(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.*

*(4) If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:*

*(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or*

*(b) to improve the thermal performance of the building.*

*(5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.*

*(6) An application for the modification of a development consent under section 4.55 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates.*

*(7) The appropriate BASIX certificate for the purposes of subclause (6) is:*

*(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and*

*(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.*

*(8) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.*

*(9) The application must be accompanied by the relevant fee prescribed under Part 15.*

*(10) A development consent may not be modified by the Land and Environment Court under section 4.55 of the Act if an application for modification of the consent has been made to the consent authority under section 4.56 of the Act and has not been withdrawn.*

Further, an assessment of the proposed changes in relation to Section 4.15(1) has been completed in **Section 4.1.5** of this Modification Report so as to address the provisions of Section 4.55(3) of the EP&A Act which also state:

*(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. 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 following sections provide an assessment under Section 4.55(1A) of the EP&A Act and Clause 115 of the EP&A Regulation.

### 3.1 ASSESSMENT UNDER SECTION 4.55(1A)

An assessment of the proposed changes under Section 4.55(1A) has been completed in this Modification report to assist DPIE in the consideration of this application.

#### 3.1.1 Are the changes of minimal environmental impact?

*(a) it is satisfied that the proposed modification is of minimal environmental impact, and*

The proposed modifications are considered minor as they do not change the principle design intent of the approval in the operation of conditions of the original instrument of approval and its subsequent modifications. Hence, it is considered that the proposed changes are individually minor and will result in substantially the same development as that originally approved.

The changes are of minimal environmental impact as the approved use of the land will be unchanged, the intensity of the approved use of the buildings will not be altered given the floor space and height of the building was previously assessed in terms of its impacts with the original project and are unchanged with this modification application. The nature of the changes enables the landscape screening to be implemented as per the intents of Modifications 5, 6 and 7.

As such, DPIE can be satisfied that the proposed changes will result in a development which is substantially the same and therefore is consistent with Section 4.55(1A) of the EP&A Act, and the proposed modifications will have minimal or no environmental impacts.

#### 3.1.2 Substantially the same development – Section 4.55(1A)(b)

The provisions of Section 4.55(1A) require consideration of the “substantially the same test”, which requires a consent authority to determine whether the proposed changes individually and subsequently as a whole are “substantially the same”, based on:

*(b) it is satisfied 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 changes are minor in comparison to the development consent that was originally granted. The proposed changes will not alter the original intent of the proposed development which is to ensure DPIE’s requirements are met with the relevant construction certificate and associated landscaping.

In May 2017 in the matter of Innerwest 888 Pty Ltd v Canterbury Bankstown Council [2017] NSWLEC 1241 Commissioner Morris restated the ‘substantially the same test’ as follows:

- *Guidance on this assessment is found in Moto Projects (No. 2) Pty Limited v North Sydney Council [1999] NSWLEC 280 where, at paras 55 and 56, Bignold J described the process for consideration of proposed modification of development as follows:*
  - *The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.*
  - *The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).*

- *It is clear from Moto that there are two elements to be determined, they are a qualitative and a quantitative assessment of whether the modified development would be one that is substantially the same development as that originally approved.*
- *A quantitative assessment, based on the evidence requires consideration of the changes that are proposed without regard to the changes that have been made through subsequent modifications and the grant of construction certificates. The comparison is of the original application against the matters that are the subject of the application being:*
  - *an increase in the number of apartments (Original 60 apartments now 73, modification adds an additional 10 units);*
  - *increase in the size of and the number of carparking spaces provided in the basements and change to layout (Original 102 spaces now 134, modification adds an additional 13 spaces);*
  - *deletion of the 2.5m setback to third level balcony that was required by condition;*
  - *9.3 of the original consent (now erected to the boundary);*
  - *construction of an additional storey and associated increase in the number of storeys from 6 to 7 due to the height of the basement above what was existing ground level at the time the original consent was granted; increase in size of some of the rear facing balconies as this was not carried out in accordance with the requirements of condition 9.1 that required the building to be reduced in height to five storeys;*
  - *deletion of any bicycle parking spaces within the development (20 spaces required under condition 9.5) i.e. the building would be a six-storey building as constructed taking into account the basement protruding above ground level;*
  - *changes to windows and columns;*
  - *change to front balcony screens from louvres to laser cut aluminium patterned screens.*

The proposed changes to condition 1 is minor in comparison to the approved development that was originally granted because:

- The proposed changes do not alter the original intended outcome of the existing shopping centre as intended in the originally submitted project;
- The proposed changes to the conditions are very minor and do not change the overall approved building envelope, height, bulk, size and configuration of the already approved, installed and grown landscaping;
- The proposed changes individually and in combination will not result in the radical alteration of the approved development;
- The proposed changes will enable the construction of the screening without adversely impacting existing vegetation; and
- as such the proposed changes will enabled the approved development to remain substantially the same.

On 19 December 2008, *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333, the Court considered an appeal by Scrap Realty under s96(6) of the EP&A Act, against a refusal by Botany Bay City Council to modify a development consent under s96(2) by extending an area for waste storage. The power under s96(2) is to 'modify' a consent, but the modification must result in '**substantially the same development**': In effect, it is a power to '**alter without radical transformation**'.



In this regard, the changes to the conditions is consistent with this case law and does not result in the radical alteration of the approved development.

And, this application has considered Clause 115 of the EP&A Regulation as follows:

**115 Application for modification of development consent**

*(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:*

*(a) the name and address of the applicant,*

The name and address of the applicant is Fabcot Pty Ltd of 1 Woolworths Way, Bella Vista NSW 2153.

*(b) a description of the development to be carried out under the consent (as previously modified),*

Please refer to the information detailed in Sections 1 and 3 of this report.

*(c) the address, and formal particulars of title, of the land on which the development is to be carried out,*

Please refer to the information in Section 2 of this report.

*(d) a description of the proposed modification to the development consent,*

Please refer to the information in Section 1 of this report.

*(e) a statement that indicates either:*

*(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*

*(ii) that the modification is intended to have some other effect, as specified in the statement,*

Please refer to Section 3 of this report.

*(f) a description of the expected impacts of the modification,*

Please refer to Section 3 of this report.

*(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*

Please refer to Section 3 of this report.

*(g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the [Biodiversity Conservation Act 2016](#),*

Please refer to Section 3 of this report.

*(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),*

Please see attached landowners consent letter.

*(i) a statement as to whether the application is being made to the Court (under section 4.56) or to the consent authority (under section 4.55),*

*and, if the consent authority so requires, must be in the form approved by that authority.*

This application is being made to DPIE under Section 4.55(1A) of the EP&A Act.

*(2) The notification requirements of clause 49 apply in respect of an application if the consent of the owner of the land would not be required were the application an application for development consent rather than an application for the modification of such consent.*

Noted.

*(3) In addition, if an application for the modification of a development consent under section 4.55 (2) or section 4.56 (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.*

Not applicable.

*(3A) The statement by the qualified designer must:*

*(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and*

Not applicable.

*(b) provide an explanation of how:*

*(i) the design quality principles are addressed in the development, and*

*(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and*

Not applicable.

*(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

Not applicable.

*(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.*

Not applicable.

*(4) If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:*

*(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or*

*(b) to improve the thermal performance of the building.*

Not applicable.

*(5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.*

Noted. Not applicable.

*(6) An application for the modification of a development consent under section 4.55 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates.*

Not applicable.

*(7) The appropriate BASIX certificate for the purposes of subclause (6) is:*

*(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and*

*(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.*

Not applicable.

*(8) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.*

Not applicable.

*(9) The application must be accompanied by the relevant fee prescribed under Part 15.*

Noted.

*(10) A development consent may not be modified by the Land and Environment Court under section 4.55 of the Act if an application for modification of the consent has been made to the consent authority under section 4.56 of the Act and has not been withdrawn.*

Noted.

### **3.1.3 Notification Section 4.55(1A)(c)**

The provisions of Section 4.55(1A)(c) requires the consent authority to also consider the following:

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The nature of the proposed changes is not considered to trigger the need for notification or advertising this application under Council's DCP or Community Engagement Plan.

### **3.1.4 Consideration of submissions – Section 4.55(1A)(d)**

DPIE at the conclusion of a notification period is required to consider any submissions received in accordance with Section 4.55(1A)(d) which states:

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*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

The nature of the proposed changes is not considered to trigger the need for notification or advertising this application under Council's DCP or Community Engagement Plan because the substance of the changes do not alter the intention to create an outcome consistent with Modification 7.

### **3.1.5 Section 4.15 of the EP&A Act - Evaluation**

This section of the Modification report provides an assessment of the relevant environmental planning issues associated with the proposed development in accordance with Section 4.15 of the EP&A Act, which states:

#### **4.15 Evaluation** *(cf previous s 79C)*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

*(ii) any proposed instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii) any development control plan, and*

*(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*(v) (Repealed)*

*that apply to the land to which the development application relates,*

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

*(c) the suitability of the site for the development,*

*(d) any submissions made in accordance with this Act or the regulations,*

*(e) the public interest.*

### **3.2 Section 4.15(1)(a)(i) – Environmental Planning Instruments**

Those primary matters under Section 4.15(1)(a)(i) of the EP&A Act include *Local Environmental Plans* (LEPs), *Regional Environmental Plans* (REPs) (now deemed SEPPs) and *State Environmental Planning Policies* (SEPPs).

#### **3.2.1 State Environmental Planning Policies (SEPPs)**

The application is not considered to trigger any new assessable consideration under any SEPP which was considered acceptable in the original assessment and issuing of the Instrument of Approval and its modifications.



- *Shoalhaven Local Environmental Plan 2014 (SHLEP);*
- *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP);*
- *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);*
- *State Environmental Planning Policy No. 64 – Advertising and Signage;*
- *State Environmental Planning Policy (State and Regional Development) 2011; and*
- *State Environmental Planning Policy (Coastal Management) 2018.*

### 3.2.2 Commonwealth Matters

There are no new assessable considerations under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act).

### 3.2.3 State and Local Matters

The approvals granted by the Minister included consideration of the Gross Floor Area (GFA) limitation. The total floor area of the proposed development will be within the Mod 3 approval of up to 37,000 square metres GFA, and the approved Stage 1a of some 11,372 square metres is unchanged from Mods 5, 6 and 7, in this application known as Modification 8.

### 3.2.4 State Environmental Planning Policies (SEPPs)

This Modification application seeks the inclusion of name location identification signage which is not dissimilar to the currently approved signage at this corner, as requested in the DPIE letter issued following the Scoping Meeting, this Modification Report includes and assessed of the proposal against the provisions of *State Environmental Planning Policy No. 64 – Advertising and Signage*.

### 3.2.5 State Environmental Planning Policy No. 64 – Advertising and Signage

*State Environmental Planning Policy No. 64 – Advertising and Signage* (SEPP 64) aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish. SEPP 64 was amended in August 2007 to permit and regulate advertisements on road and railway corridors and provide appropriate design and safety controls for these advertisements.

The proposal includes building location name, given the site is in the geographical area of Vincentia. As such, the proposed signage is considered to be best defined as a “building identification signs” under SEPP 64 in clause 4 “definitions”:

***building identification sign*** has the same meaning as in the Standard Instrument.

As such, the Standard Instrument – Principal Local Environmental Plan has been consulted which advises the definition is as follows:

***building identification sign*** means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.

**Note.**

*Building identification signs are a type of **signage**—see the definition of that term in this Dictionary.*

Each of the proposed signs are considered to be consistent with the above definitions. As such the provisions of Part 3 of SEPP 64 do not apply to the proposed signage by virtue of Clause 9 which states:

## 9 Advertisements to which this Part applies

This Part applies to all signage to which this Policy applies, other than the following:

- (a) business identification signs,
- (b) building identification signs,
- (c) signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it,
- (d) signage on vehicles.

(our emphasis as underlined)

Therefore, this Modification does not require concurrence from the RMS for any signage proposed under Part 3 of SEPP 64.

The proposed signage is of a high-quality design and finish that incorporates elements of the existing building name on the site thus making it compatible with the amenity and visual character of the locality and effectively communicates the name of the businesses on site.

Therefore, the proposed business identification signage is consistent with the aims of the SEPP as set out in Clause (3)(1)(a).

The proposed development is consistent with the assessment criteria included in Schedule 1 of SEPP 64. An assessment of the proposal against these criteria is provided in the following table.

**Table 2: Assessment of proposed signage against Schedule 1 of SEPP 64**

Assessment Criteria	Proposed Signage
<ul style="list-style-type: none"> <li>Character of the area</li> </ul>	<p>The proposed signs are compatible with the existing and desired future character of the area as the subject site is located along a road, in an area which is characterised by retail uses. The proposed signage seeks to provide for the display of building identification signage on the subject site for drivers approaching the loading dock area and staff and customers. The proposed signage will provide visual interest and is consistent with the bulk and scale of other signs used for similar purposes in nearby locations.</p>
<ul style="list-style-type: none"> <li>Special areas</li> </ul>	<p>It is considered that the proposed signs will not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.</p> <p>The subject site is located in an established retail/commercial area, and as such does not contain any environmentally sensitive areas.</p>
<ul style="list-style-type: none"> <li>Views and Vistas</li> </ul>	<p>The proposed signs will not obscure or compromise any important views or vistas from or to the site given their locations and is compatible with the existing and approved site development.</p> <p>The location and scale of the proposed signs is such that it will respect the viewing rights of other advertisers by not blocking the line of sight of any existing advertising and will not be visually dominant.</p>
<ul style="list-style-type: none"> <li>Streetscape, setting or landscape</li> </ul>	<p>The scale, proportion and form of the proposed signs are appropriate for each frontage and reduced in size and scale compared to the approved signs, as the subject site is located within an established retail/commercial area which contains examples of other pylon / plinth signs and awning signs. As such, the character of the proposed signage is consistent with the nature of the area.</p>

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	<p>The proposed signs will contribute to the visual interest of each frontage and provide information for users approaching the site for way-finding purposes, as the signage is of a high quality design and appearance and will complement existing signage located within the surrounding area.</p> <p>The proposed signs are consistent with the signage on the existing building, structures and are similar in height to the vegetation onsite, therefore the existing tree canopies in the area and are located so as not to require vegetation removal.</p>
<ul style="list-style-type: none"> <li>• <i>Site and building</i></li> </ul>	The proposed signage is complementary in scale and proportion with the existing building. The proposed signage demonstrates innovation in design thought, by optimising the location with view corridors and traffic movements along Moona Creek Road.
<ul style="list-style-type: none"> <li>• <i>Associated devices and logos with advertisements and advertising structures</i></li> </ul>	The proposed signage contains locational information of the building which occupies the site. The proposed signs are not for general advertising purposes.
<ul style="list-style-type: none"> <li>• <i>Illumination</i></li> </ul>	None of the proposed signs will be illuminated.
<ul style="list-style-type: none"> <li>• <i>Safety</i></li> </ul>	The proposed signs are located to be visible to site users, so as not reduce the safety of motorists and pedestrians along Moona Creek Road, being a similar location as Modification 7 in that the contents and siting are unchanged As such, traffic movements to and from the site and surrounding the site will not be affected by the proposed signage compared to the approved signage.

The application is not considered to trigger any new assessable consideration under any SEPP which was considered acceptable in the original assessment and issuing of approval to previous Modifications.

While the provisions of State Environmental Planning Policy No.71 - Coastal Protection (SEPP 71) have now been repealed by State Environmental Planning Policy (Coastal Management) 2018 (The Coastal SEPP) (indeed, The Coastal SEPP updated and consolidated into one integrated policy SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection)), the proposal seeks the inclusion of plantings which are more tolerant to the high levels of acidity (low pH) of the soils, which will enable the plantings to become more established and as a consequence mitigate against soil erosion and sedimentation entering the swale system.

### 3.2.6 Regional Environmental Plans (REPs)

The application is not considered to trigger any new assessable consideration under any REP which was considered acceptable in the original assessment and issuing of the original Concept Plan and Project Application approval and subsequent Modifications.

### 3.2.7 Local Environmental Plans (LEPs)

The main environmental planning instrument which affects the proposed development is the *Shoalhaven Local Environmental Plan 2014* (SLEP).

The site of the VDC (now referred to as Woolworths Vincentia Marketplace shopping centre) is zoned B2 Local Centre under the *Shoalhaven Local Environmental Plan 2014*.

The landscape works and modified timber screen and signage are ancillary to the approved centre which is a permissible form of development in the zone being “commercial premises”. The nature of the changes is considered to be consistent with the B2 Local Centre zone objectives.

The changes detailed in this application is not considered to trigger any new assessable consideration which was considered acceptable in the original assessment and issuing of the original Development Consent.

### **3.2.8 Section 4.15 (1)(a)(ii) – draft environmental planning instruments**

The application is not considered to trigger any new assessable consideration under any draft environmental planning instruments which were considered acceptable in the original assessment or subsequent Modifications.

### **3.2.9 Section 4.15(1)(a)(iii) – development control plans**

The application seeks to ensure DPIE’s assessment of the last modification is consistent with the Shoalhaven Development Control Plan as detailed previously in this report.

### **3.2.10 Section 4.15(1)(a)(iiia) – planning agreements**

There is a no VPA in relation to the subject site.

### **3.2.11 Section 4.15 (1)(a)(iv) – any matter prescribed by the regulations**

The application is not considered to trigger any new assessable consideration under the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs.) which was considered acceptable in the original assessment and subsequent Modifications.

### **3.2.12 Section 4.15 (1)(a)(v) – Coastal zone**

Refer to the information included above under the heading 3.2.5 SEPPs.

### **3.2.13 Section 4.15 (1)(b) impact on the environment**

Pursuant to Section 4.15(1)(b) of the EP&A Act, ‘the likely impacts of that development’ have been considered under headings as follows:

## **4.0 ENVIRONMENTAL PLANNING INSTRUMENTS AND CONTROLS**

This section of the Modification Report considers the relevant statutory and non-statutory provisions and the identification of any non-compliance with such provisions as a result of the proposed modification.

Those primary matters under Section 4.15(1)(a)(i) of the EP&A Act include *Local Environmental Plans* (LEPs), *Regional Environmental Plans* (REPs) (now deemed SEPPs) and *State Environmental Planning Policies* (SEPPs).

### **Concept Plan**

The modified design is consistent with the original approved Concept Plan and Project Application staging.

### **Traffic Impacts**

No impacts will occur as a result of the proposed changes in Modification 8 when compared to the approved design in Modification 7 in relation to traffic impacts.

### ***Social Impacts***

No changes are proposed in Modification 8 when compared to the approved design in Modification 7 in relation to social impacts.

### ***Noise and Light Impacts***

No changes are proposed in Modification 8 when compared to the approved design in Modification 7 in relation to noise and lighting impacts.

### ***Water Quality and Waste Management***

No changes are proposed in Modification 8 when compared to the approved design in Modification 7 in relation to water quality and waste management impacts.

### ***Adjoining Land***

Potential impacts on adjoining land were investigated with the original Project Application and Modifications 2, 3, 4, 5, 6 and 7.

The changes proposed in Modification 8 will improve the visual presentation of the site when viewed from Moona Creek Road with the inclusion of the amended timber screen feature and amended landscaping. As such, the changes proposed in Modification 8 do not alter the matters which were assessed as acceptable in the previous applications.

### ***Visual Impact Considerations***

The proposed change to include a timber screen feature treatment in addition to the existing palisade fencing adjacent to the Moona Creek Road loading dock area, will have a similar presentation to that in Modification 7.

The visual presentation of the alternate timber screen feature is considered to be an improvement when compared to the approved drawing information in Modification 7 as existing vegetation can be maintained and supplemented.

### ***Utilities and infrastructure***

As part of the Project Application for the VDC, Cardno Forbes Rigby prepared a detailed Utility Services and Infrastructure Report. The proposed modification does seek changes to the timing of road infrastructure in line with the size and growth of the centre.

### ***Flora and Fauna***

The proponent has not undertaken any further ecological investigations on the site, this is due to the site having already been the subject of extensive investigations and the subject of numerous approval processes. The changes sought to the approved Project Application will not result in intrusions into the sensitive portions of the site, nor will they alter the approved details adjacent to the sensitive portions of the site such as the Environmental Zone. No portion of the proposed modification encroaches beyond the boundary into the Environmental Zone.

The habitat fence has been implemented along the boundary with the Environmental Zone and the VDC fence has been installed to function as a barrier to people gaining access to the Environmental Zone whilst also being permeable to flora and fauna. No changes are proposed to this portion of the site in this Mod 8 application.



***Natural Hazards***

The original Concept Plan and Project Application (including its various amendments) has been the subject of numerous investigations which indicated that a VDC in the location proposed would not be impacted by any natural hazards. The previous reporting on the natural hazards, including bushfire, acid sulfate soils and flooding have been considered in the previous Environmental Assessments and are not proposed to be reinvestigated as the modification to the Project Application is consistent with the original Concept Plan for the VDC.

***Heritage***

The portion of the site on which the VDC is to be located does not contain any known European Heritage items or European archaeological heritage.

While the site is highly disturbed, it is understood that investigations concerning Indigenous heritage have been undertaken as part of the previous Environmental Assessments and further investigations are not proposed at this time.

***ESD***

No changes are proposed in Modification 8 when compared to the approved design in Modification 7 in relation to ESD considerations.

***Cumulative Impact Considerations***

It is considered that the provisions of Section 4.55(1A) of the EP&A Act could be exercised in this instance to modify the approved Project Application via this Mod 8, based on the following:

1. If approved, the modification will not radically alter the development from its approved form;
2. there are no new assessable considerations under the EP&A Act and any SEPPs, REPs, LEPs, DCPs or Policies, and the proposal
3. The nature of the changes are not dissimilar to the previous approvals; and
4. The nature of the proposed changes relate to adjustments in the details to ensure the landscaping can be adequately implemented on site. More specifically, the nature of the changes sought seeks to modify Condition 2.1 of the Instrument of Approval are to replace previous information.

It is considered this application meets the criteria associated with the test of adequacy and is substantially the same as the original instrument of approval and previous approved Modifications.

#### **4.0 CONCLUSION**

This Modification Report details the changes sought and has assessed the changes as satisfactory under Section .55(1A) of the EP& A Act (as amended).

Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on (02) 9929 4044.

Yours sincerely,



**Marian Higgins  
Planning Manager  
Higgins Planning Pty Ltd**

**APPENDIX A – ORDER FROM GOVERNMENT GAZETTE**

**Higgins Planning Pty Ltd** ABN 75 607 855 336

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**APPENDIX B – INSTALLATION CERTIFICATE**

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**APPENDIX C – PREFERRED OPTION 1 AMENDED DRAWINGS**

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## APPENDIX D – AMENDED LANDSCAPE DRAWINGS

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## APPENDIX E – OPTION 2 AMENDED DRAWINGS

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