



# **Berry and Walker Streets – North Sydney**

Section 4.55(1A)  
Modification Assessment  
(08\_0238 MOD 12)



April 2019

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# Glossary

Abbreviation	Definition
Council	North Sydney Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
Applicant	Multiplex Construction Pty Ltd
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy



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# 1. Introduction

## 1.1 Background

This report is an assessment of a request to modify the Project Approval (08\_0238) for the construction of a commercial tower at No. 77-81 Berry Street, North Sydney, in the North Sydney local government area.

The request has been lodged by Ethos Urban on behalf of Winten Property Group (the Applicant), pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal seeks approval for minor building reconfigurations to accommodate building service requirements, modification to the external stair access from Denison Street and modifications to the terrace on Level 2. It also seeks to allow for the flexible use of four car spaces at Level B5 for either storage or vehicle parking.

## 1.2 Subject site

The subject site is located at the centre of the North Sydney Central Business District (CBD) and comprises two parcels of land, as shown at **Figure 1**.

The southern part of the site comprises 77-81 Berry Street (also known as 1 Denison Street), which is bound by Spring Street to the south, Denison Street to the west, Little Spring Street to the east and a residential building at 77 Berry Street (known as 'Beau Monde') to the north. This part of the site previously contained the Berry Street Shopping Centre. The centre has been demolished and construction works have commenced on the site. The northern portion of the site comprises Berry Square which is located to the north of the Beau Monde building. Surrounding buildings comprise a mixture of residential, commercial, retail and office uses. Those adjacent developments range in height from one storey to approximately 40 storeys.

The site is located 500 metres north of North Sydney Railway Station. The approved Victoria Cross Sydney Metro Station is located directly to the west of the site. Construction works for the station have commenced.

**Figure 1** | Location of the Berry and Walker Streets Site (Base source: Nearmap)



### 1.3 Approval History

On 25 February 2010, the then Minister for Planning approved Major Project (MP 08\_0238) for a mixed- use commercial / hotel development comprising:

- demolition of existing buildings on both sites, including the pedestrian bridge
- excavation of four basement levels at 77-81 Berry Street, and two basement levels at No. 88 Walker Street
- construction of a part 28, part 37 storey commercial and retail building on the southern portion of No. 77-81 Berry Street with vehicular access via Little Spring Street
- construction of a 33 storey x 200 room hotel at No. 88 Walker Street, including a connecting service tunnel below Little Spring Street
- provision of 42 public car parking spaces and 10 motorcycle spaces
- reconstruction of the Tower Square pedestrian bridge
- off-site works, including public domain and landscaping, a new pedestrian plaza on Denison Street, public forecourt to Spring Street, through-site road between Denison and Little Spring Streets, road re-alignments/ partial public road closures, tree planting, paving, street furniture and lighting, and public art.

The Project Approval has previously been modified on 11 occasions as outlined in **Table 1**.

**Table 1** – Summary of Modifications

Reference	Description of Modification	Approved
MOD 1	Amend the building envelope, reduce building heights, change building design, external facades, internal layout, public domain and reinstatement of an underground service tunnel.	11.03.2011
MOD 2	Staging of construction, changes to development contributions and deletion of off-site car parking works.	18.01.2012
MOD 3	Extension of construction hours for internal fit outs.	10.04.2012
MOD 4	Amendments to staging of construction and initial works.	29.10.2014
MOD 5	Deletion of hotel component (No. 88 Walker Street), retention of existing storm water infrastructure, reconfiguration of basement levels, internal alterations including reduction of 2,537 square meters (m <sup>2</sup> ) GFA and realignment of Denison Street pedestrian bridge.	16.03.2015
MOD 6	Expansion and redesign of the lower ground and basement levels, increased car, motorcycle and bicycle parking spaces, changes to public car parking arrangements, and amendments to storm water infrastructure.	25.05.2017
MOD 7	Provision of an additional seven storeys (to RL 210.65), 11,824 m <sup>2</sup> GFA and a retail unit fronting Denison Street, internal and external alterations, reconfiguration of site access and amendments to public domain and landscaping.	24.05.2017

MOD 8	Increase building height by 2.2 metres, internal layout and increase substation size.	08.09.2017
MOD 9	Amendments to the retail floorplate, building entrance, commercial lobby, public domain and basement layout, while updating the Landscape Plan, the Public Domain Plan and amending the conditions to facilitate construction staging.	24.04.2018
MOD 10	Amendments to external façade, the addition of a recessed lighting element within the roof profile, minor integral reconfigurations including a minor increase in commercial GFA, and an updated landscape design for Berry Square	02.10.18
MOD 11	Amendment to Condition D1 and D1A to extend the approved construction hours.	21.12.18



## 2. Proposed Modification

The Applicant lodged a modification request (08\_0238 MOD 12) seeking approval for the following:

- Minor reconfigurations within the basement and Levels B1 to 2, to align building services requirements
- Modification to the ground level external stair access from Denison Street to mezzanine retail
- Minor modifications to external access and terrace design to accommodate the design development of the external space at Level 2
- Modification of Condition G12 to allow for the flexible use of four car spaces at Level B5 for either storage or vehicle parking.

The proposed modifications would result in an increase in GFA of 37 m<sup>2</sup>

The modification is requested on the basis that building services are required to be relocated to align with and to meet the energy provider's requirements.

The modification to allow the use of four car spaces as either storage or for regular car parking is requested to provide flexibility according to the changing needs of the commercial tenant.



## 3. Statutory Context

### 3.1 Section 75W and Modification of a Minister's Approval

The project was originally approved under section 75J of Part 3A of the EP&A Act and was a transitional Part 3A project under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulations).

Following amendments to the EP&A Act and the associated EP&A (ST&OP) Regulations that commenced on 1 March 2018, the power to modify Part 3A approvals under former section 75W was wound up for modification applications submitted after 1 March 2018. In order to modify a transitional Part 3A approval, the Minister for Planning can declare the development to be SSD by order under clause 6 of Schedule 2 of EP&A (ST&OP) Regulations. If a declaration is made the approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant test.

On 3 July 2018, the Director, Regional Assessments (as delegate of the Minister for Planning) made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. This order was published in the NSW Government Gazette on 6 July 2018 and took effect from that date.

The effect of this order is that the:

- the project approval is taken to be a development consent under Part 4 for the carrying out of the development
- the modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

### 3.2 Scope of Modification

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

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in **Table 3**.

**Table 3** – Section 4.55(1A) Matters for Consideration

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>The application seeks approval for minor internal and external building reconfigurations, and the conversion of four car parking spaces to potential storage.</p> <p><b>Section 5</b> of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.</p>
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	<p>The Department is satisfied the modification is substantially the same development as originally granted as it only seeks approval for minor building reconfigurations.</p>

was modified (if at all), and

- c) the application has been notified in accordance with the regulations, and

The modification application has been notified in accordance with the regulations. Details of the notification are provided in **Section 4** of this report.

- d) any submission made concerning the proposed modification has been considered.

The Department received a submission from North Sydney Council. Details of the submission and the Department's consideration can be found in **Section 4** of the Report

### 3.3 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

- Council has not made an objection;
- a political donation disclosure statement has not been made; and
- less than 25 public submissions were received objecting to the proposed modification

### 3.4 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55- Remediation of Land; and
- North Sydney Local Environmental Plan 2013.

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



## 4. Engagement

### 4.1 Department's Engagement

The request was made publicly available on the Department's website and referred to North Sydney Council (Council).

The Department received one submission from Council.

### 4.2 Government agency Submissions

**Council** raised no concern about the proposed building changes or the change to the car parking spaces. It noted that the increase in GFA would trigger updated contributions calculations for Conditions B4, B6 and E25, and provided the updated figures to be included in these conditions.

### 4.3 Public Submissions

No **public** submissions were received.



## 5. Assessment

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

- previous Environmental Assessments for the project and associated modifications;
- modification application and existing conditions of approval;
- submissions from the public and Council; and
- requirements of the EP&A Act.

The Department considers the key issue associated with the proposal is the public domain and visual impacts. All other issues are discussed at **Table 2** below.

### 5.1 Public Domain and Visual Impact

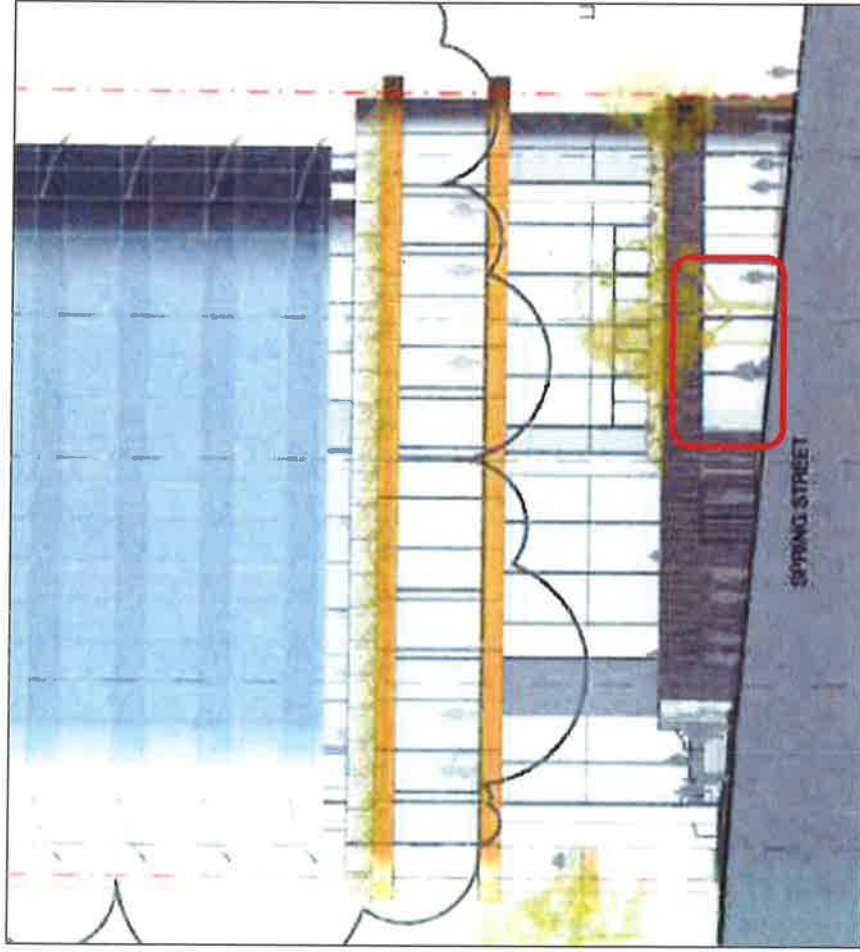
The modification seeks approval to amend the alignment of building services and relocate a gas meter room from the Little Spring Street elevation to the Spring Street elevation.

The Department notes the proposal would result in a minor loss of glazing along the Spring Street frontage, as outlined in **Figures 2** and **3** below.

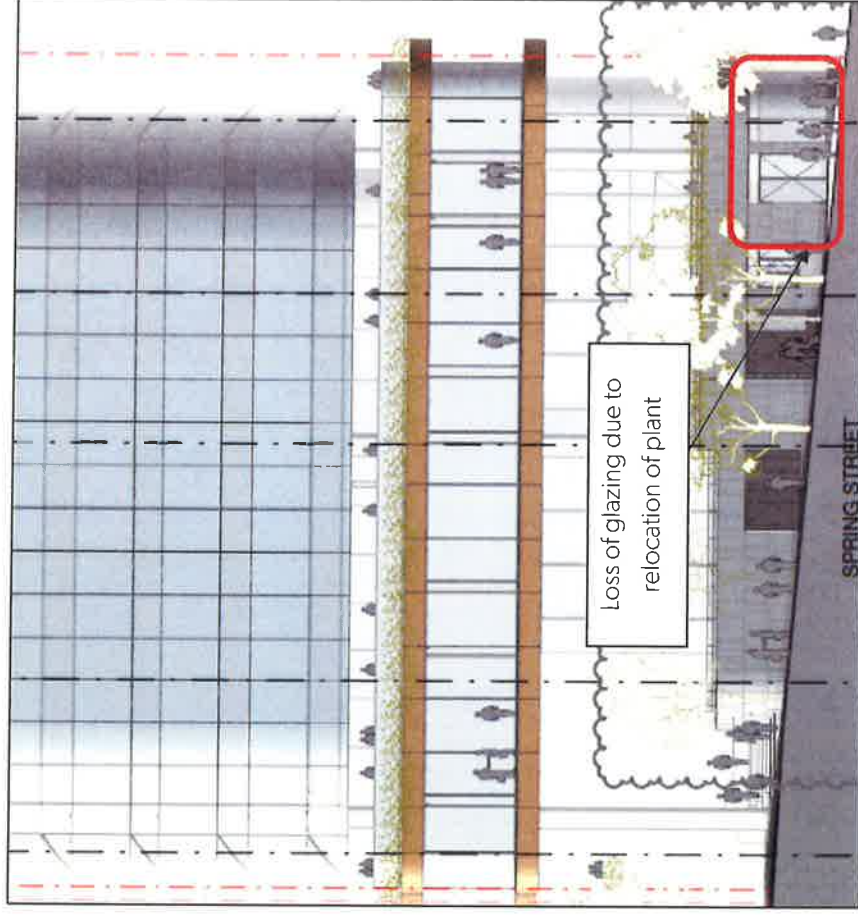
The Department considers the proposed modification to the elevations are acceptable as:

- the minor loss of activation along Spring Street would be offset by additional activation along Little Spring Street due to the relocation of plant (see **Figures 2** to **5**)
- the portion of glazing lost along Spring Street is minor and would not affect the overall level of street activation along this frontage
- the Proponent has advised the relocation of the gas meter room is required to meet the requirements of the energy provider. The gas line is provided in Spring Street and therefore the gas meter room must be provided on the Spring Street frontage
- Council raised no objection to the proposed relocation of the gas meter room, and associated façade changes along Spring Street.

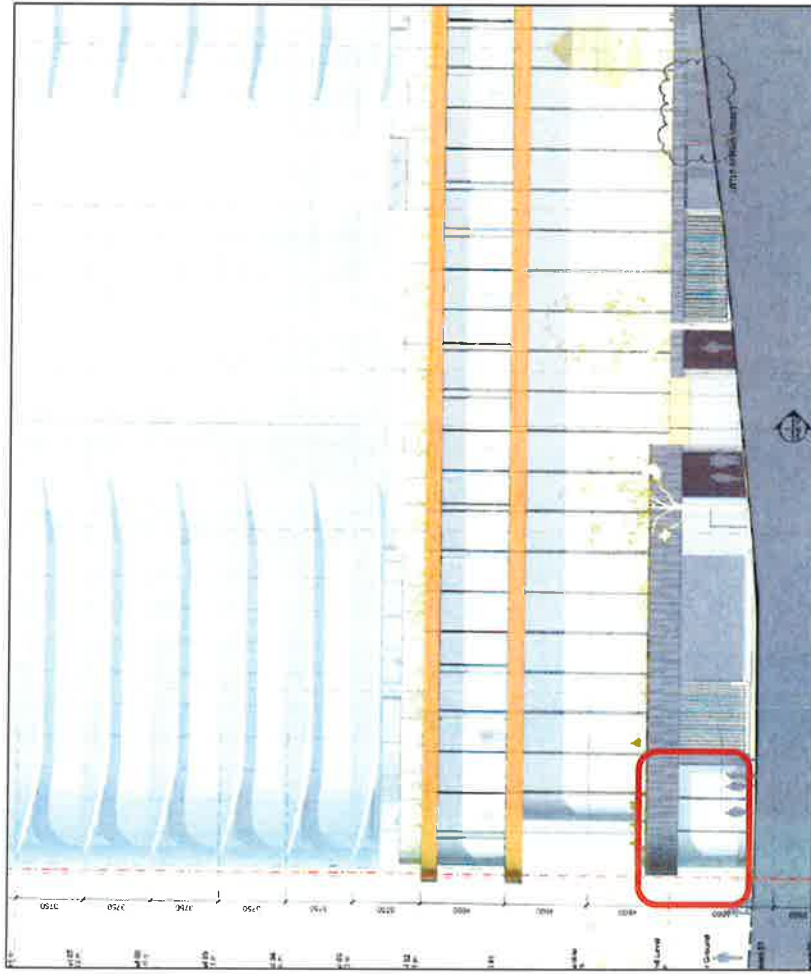
The Department is therefore satisfied the proposal is acceptable, and would not impact the overall ground level activation.



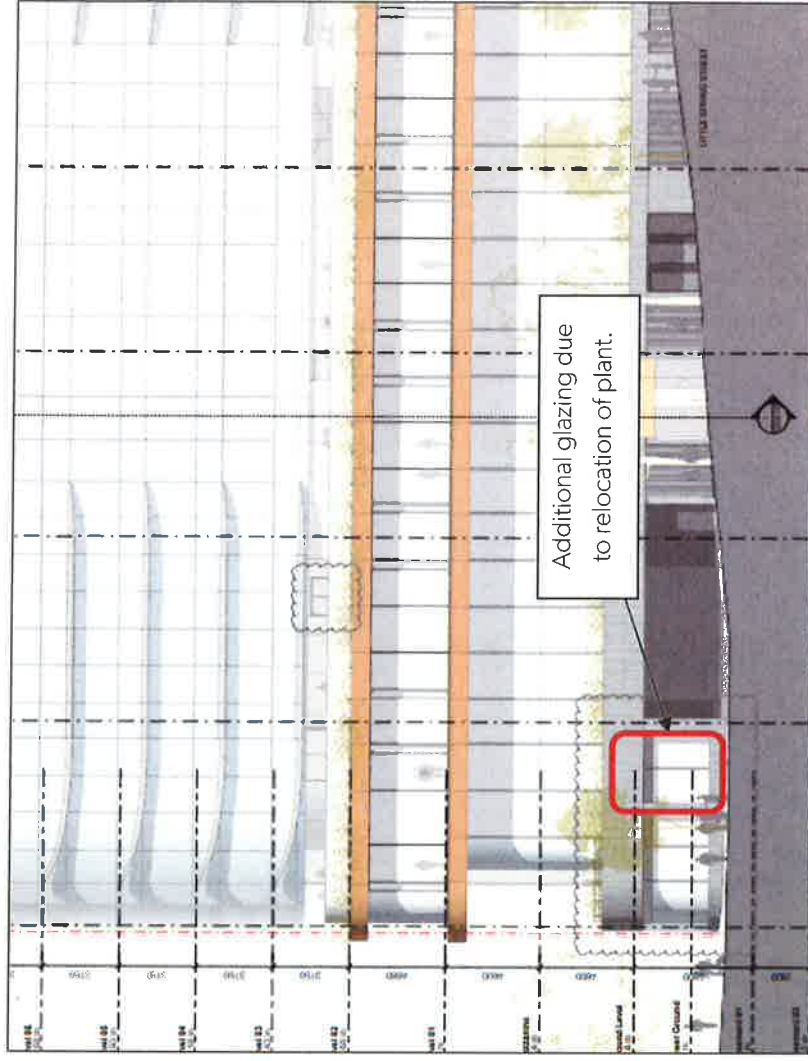
**Figure 2** | Approved Spring Street Elevation



**Figure 3** | Proposed Spring Street Elevation



**Figure 4** | Approved Little Spring Street Elevation



**Figure 5** | Proposed Little Spring Street Elevation

## 5.2 Other Issues

The Department has assessed all other issues associated with the proposal in **Table 2** below.

**Table 2** | Summary of other issues raised

Issue	Findings	Recommended Condition
Increase in GFA	<ul style="list-style-type: none"> <li>The proposed building reconfigurations would result in an increase of 37 m<sup>2</sup> GFA (from 65,506m<sup>2</sup> to 65,543 m<sup>2</sup>). The additional GFA results from the realignment of building services on levels B01 to mezzanine, which has provided additional space for retail and commercial uses.</li> <li>Council raised no objection to the increase in GFA, but recommended the relevant contributions be updated accordingly.</li> <li>The additional GFA is considered acceptable as it is minor and would not result in any change to the approved building footprint or envelope.</li> <li>The Department has recommended Conditions B4, B6 and E25 relating to contributions be updated as recommended by Council.</li> </ul>	The Department has recommended Conditions B4, B6 and E25 be updated requiring payment of additional contributions.
Car Parking	<ul style="list-style-type: none"> <li>The proposal seeks approval to modify Condition B5 to allow four car parking spaces on level B5 to be used as either car parking or storage.</li> <li>The modification is sought to provide flexibility for future tenants, depending on their operational needs.</li> <li>The Department notes that the North Sydney DCP 2013 outlines maximum car parking rates for the site, and if all four spaces were converted to storage this would result in a total loss of 2% of car parking.</li> <li>The Department considers the potential loss of four car parking spaces would be acceptable in this instance given Council's controls set a maximum car parking rate, and the site is in a highly accessible location close to public transport.</li> <li>The Department also notes the detailed assessment and use of these spaces would be the subject of a separate DA to North Sydney Council, and would depend on the future commercial tenant.</li> <li>Overall, the Department is satisfied the proposal would not result in unacceptable parking impacts, and would provide flexibility for future tenants. The Department has</li> </ul>	The Department has recommended Condition G12 be updated to allow four spaces to be used as either storage or car parking.

therefore recommended Condition G12 be updated.

**External  
modifications**

- The proposal seeks to modify the design of the external access stairs from Denison Street to the mezzanine retail. It also seeks approval for minor modifications to the design of the terrace on Level 2.
- Council raised no concerns about the proposed changes.
- The Department has considered the proposed modifications, and is satisfied they would not result in any adverse visual or amenity impacts.

No additional conditions or amendments are considered necessary.



## **6. Evaluation**

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department's assessment of the proposed modification concludes the following:

- the proposed relocation of plant would not impact on the overall activation of the building as the portion of frontage affected is minor, and the loss of glazing along Spring Street would be offset by additional glazing along Little Spring Street.
- the increase in GFA is a result of realignment of building services, and it would not increase the building envelope or footprint.
- the modification of Condition G12 to allow car spaces to be used as either storage or car parking would provide flexibility for future tenants and would not significantly affect car parking provision for the site.
- the external design changes are minor and would not result in any adverse amenity or visual impacts.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.



## 7. Recommendation

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

- **Considers** the findings and recommendations of this report;
- **Determines** that the application (08\_0238 MOD 12) falls within the scope of Section 4.55(1A) of the EP&A Act;
- **Accepts** and adopts the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **Modifies** the approval (08\_0238); and
- **Signs** the attached modification of approval (**Appendix B**)

Recommended by:

Emma Butcher  
**Planning Officer**  
**Regional Assessments**

Recommended by:

Silvio Falato  
**Team Leader**  
**Regional Assessments**



## 8. Determination

The recommendation is: **Approved by:**

Anthony Witherdin  
**Director**  
**Regional Assessments**



# ***Appendices***

Appendix A – Relevant Supporting Information

Appendix B – Notice of Modification

## Appendix A – Relevant Supporting Information

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

1. Modification request  
<https://www.planningportal.nsw.gov.au/major-projects/project/10166>
2. Submissions  
<https://www.planningportal.nsw.gov.au/major-projects/project/10166>
3. Response to Submissions  
<https://www.planningportal.nsw.gov.au/major-projects/project/10166>

## Appendix B – Notice of Modification

A copy of the notice of modification can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/10166>