

***MODIFICATION REQUEST:***

***Discovery Point Project Application Stage 1  
Modification 3***

***(MP 10\_0030 MOD 3)***

***1 Princes Highway, Wolli Creek***



Secretary's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

June 2014

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## 1. BACKGROUND

The purpose of this report is to determine a modification request to the Discovery Point site Stage 1 project approval for a mixed use residential development in accordance with Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application seeks to make changes to the approved stratum subdivision plans, landscaping, requirements for a positive covenant for the water treatment facility and location of the temporary waste enclosure structure.

### 1.1 The Site in Context

The site is known as Stage 1 of Discovery Point which is located at 1 Princes Highway, Wolli Creek, approximately twelve kilometres south-west of Sydney CBD. Discovery Point is bounded by the Princes Highway, Cooks River, the Illawarra and East Hills railway lines and Magdalene Terrace (see **Figures 1 and 2**). Discovery Point is within the Rockdale Local Government Area, and is located approximately one kilometre west of the Sydney international Airport.

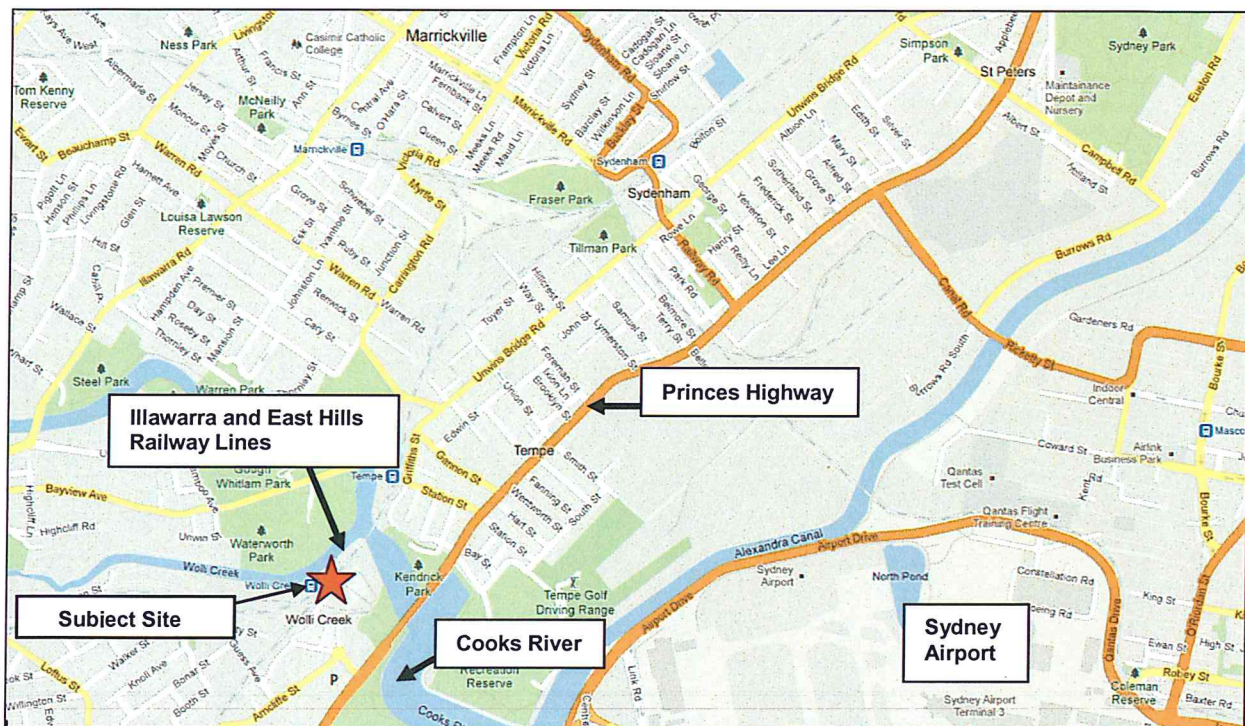


Figure 1: Regional context plan of Discovery Point, Wolli Creek





Figure 2: Location and approved layout of the Discovery Point site (Stage 1 outlined in red)

## 1.2 Development History

On 11 April 2001, Rockdale City Council approved a Master Plan development application for the Discovery Point site, comprising of 9 development sites. Three building stages were subsequently approved being 'Greenbank', 'Vine', and 'Verge' buildings (see Figure 2).

### Discovery Point Concept Plan 2011 (MP10\_0003)

On 5 May 2011, the then Director-General as delegate for the Minister for Planning granted Concept Approval (MP 10\_0003), for a mixed-use development with associated public open space, indicative building envelopes for 14 buildings, road works and landscaping (Figure 2). The Concept Approval includes development design guidelines to inform the detailed design of each building at the project application stage. The Concept Approval was subsequently amended on 15 June 2012, 13 March 2013 and 21 January 2014.

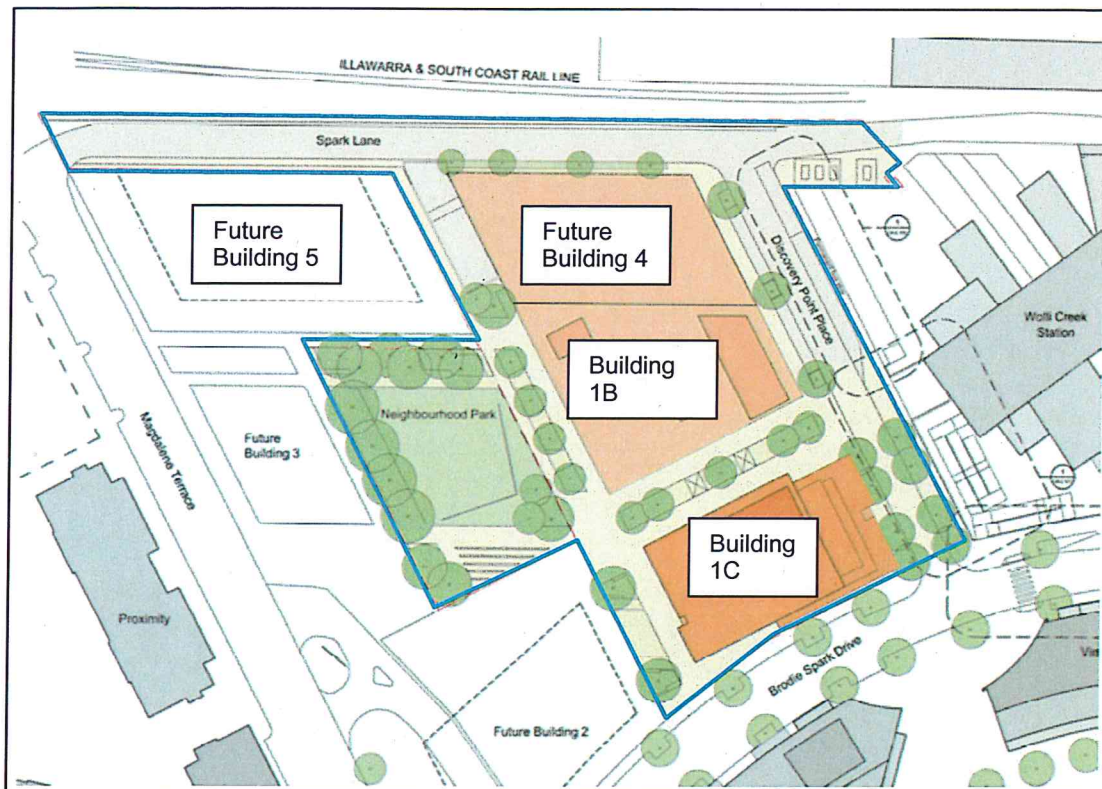
### Project Approvals

On 19 March 2012, the department granted project approval for Stage 1 (MP 10\_0030), for a mixed use development comprising:

- the construction of 2 mixed use buildings (1B and 1C) incorporating 126 apartments;
- 2,531m<sup>2</sup> of retail space and basement car parking;
- associated landscaping, site and bulk earthworks for a range of other stages including Stage 6; and
- stratum subdivision of the site to create 8 lots including:
  - roads and the neighbourhood park;
  - residential buildings 1B and 1C;
  - retail and associated basement parking within building 1C;
  - rooftop open space and plant within building 1C; and
  - future building lots/residue lots.



The Stage 1 Project Approval has been subsequently amended on 13 March 2013 (MOD 1), and 6 February 2013 (MOD 2). The approved Stage 1 layout is shown in **Figure 3**.



**Figure 3:** Layout of development within the Stage 1 boundary.

On 18 July 2012, the department granted project approval for Stage 6 (MP 10\_0031), for a 13 storey building comprising 88 residential apartments.

## 2. PROPOSED MODIFICATION

The proposed modification was submitted to the department on 2 December 2013, and amended on 4 occasions on 25 February 2014, 11 March 2014, 16 April 2014 and 11 June 2014.

In summary, the proposed modification seeks to modify the project approval to include:

- amended stratum subdivision plans to reflect lot boundary adjustments and change in ownership of the communal podium on Level 2 of Building 1B;
- amend the landscaping scheme including the stage 1B podium, Stage 1C rooftop and minor adjustment between Stage 1 and Stages 3 and 5;
- deletion of condition E12 (which requires a positive covenant for the maintenance of the water recycling facility) and replacement with a new Statement of Commitment providing for ongoing maintenance of the water recycling facility; and
- relocation of the temporary waste collection enclosure required as part of condition E17.

The application previously sought approval for infrastructure works to allow for recycled water reticulation connections from the approved water recycling facility, located in building 1C to future buildings within the Discovery Point Concept Plan, however the proponent has confirmed that this aspect is no longer proposed.

Further details of the proposed modification are provided in **Appendix A**.



### 3. STATUTORY CONTEXT

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#### 3.1 Continuing Operation of Part 3A

In accordance with Clause 3 of Schedule 6A to the *Environmental Planning & Assessment Act 1979* (the EP&A Act) Section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations. The Minister for Planning, or her delegate, may approve or disapprove of the modification request pursuant to Section 75W of the EP&A Act.

#### 3.2 Modification of the Minister's Approval

The modification application has been lodged with the department pursuant to Section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including 'revoking or varying a condition of the approval or imposing an additional condition of the approval'.

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. In this instance, the proposal seeks to modify aspects of the project approval, which require further assessment and therefore approval to modify the application is required.

#### 3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the department may notify the proponent of the Secretary's Environmental Assessment Requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

No additional environmental assessment requirements were issued with respect to the proposed modification, as sufficient information has been provided to the department in order to consider the application.

#### 3.4 Delegated Authority

On 14 September 2011, the then Minister for Planning delegated the function to determine Section 75W modification applications to senior staff within the department in cases where:

- the relevant local council has not made an objection;
- a political donations disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections to the proposal.

Rockdale City Council does not object to the proposed modification changes, a political donations disclosure statement has not been made and no public submissions were received. Accordingly, the application is able to be determined by the Director of Industry, Key Sites and Social Projects, under delegation.

### 4. CONSULTATION AND SUBMISSIONS

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#### 4.1 Exhibition

In accordance with Section 75X of the EP&A Act and Clause 8G of the EP&A Regulation, the department is required to make the modification request publicly available. The modification request was made available on the department's website. Due to the nature of the proposal, the modification request was not exhibited by any other means.

The request for modification was referred to Rockdale City Council, NSW Office of Water (NOW) and Office of Environment and Heritage (OEH) for comment. No public submissions were received in relation to the proposal.

## 4.2 Public Authority Submissions

### Rockdale City Council

Council provided 4 submissions to the modification request (**Appendix B**). In summary, Council did not object to the proposal and provided the following comments:

- details should be provided on how each stage will connect to the water recycling facility (it is noted that this aspect is no longer proposed);
- an easement should be established to ensure that Discovery Point residents have access to the podium (of Building 1B) and the Neighbourhood Park;
- the nominated street lights as referenced in the Wolli Creek and Bonar Street Public Domain Plan (PDP) are no longer acceptable and the proponent is to liaise with Council's Tech Services regarding alternative light fitting that meets Ausgrid and Council's satisfaction;
- final planting plans showing location and arrangement of species will need to be issued at future detailed design stages; and
- no objection is raised to the location or management of the temporary waste collection during construction.

### NSW Office of Water (NOW)

NOW's submission requested further clarification on the source of the water for the on-site water recycling facility. The proponent responded to these comments, which is explained in **Section 5.2**

### Office of Environment & Heritage (OEH)

OEH reviewed the application and made no comments on the proposal.

## 5. ASSESSMENT

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The department's assessment of the modification to the project approval is provided below:

### 5.1 Stratum Subdivision

The original approval included stratum subdivision of the site into 8 lots.

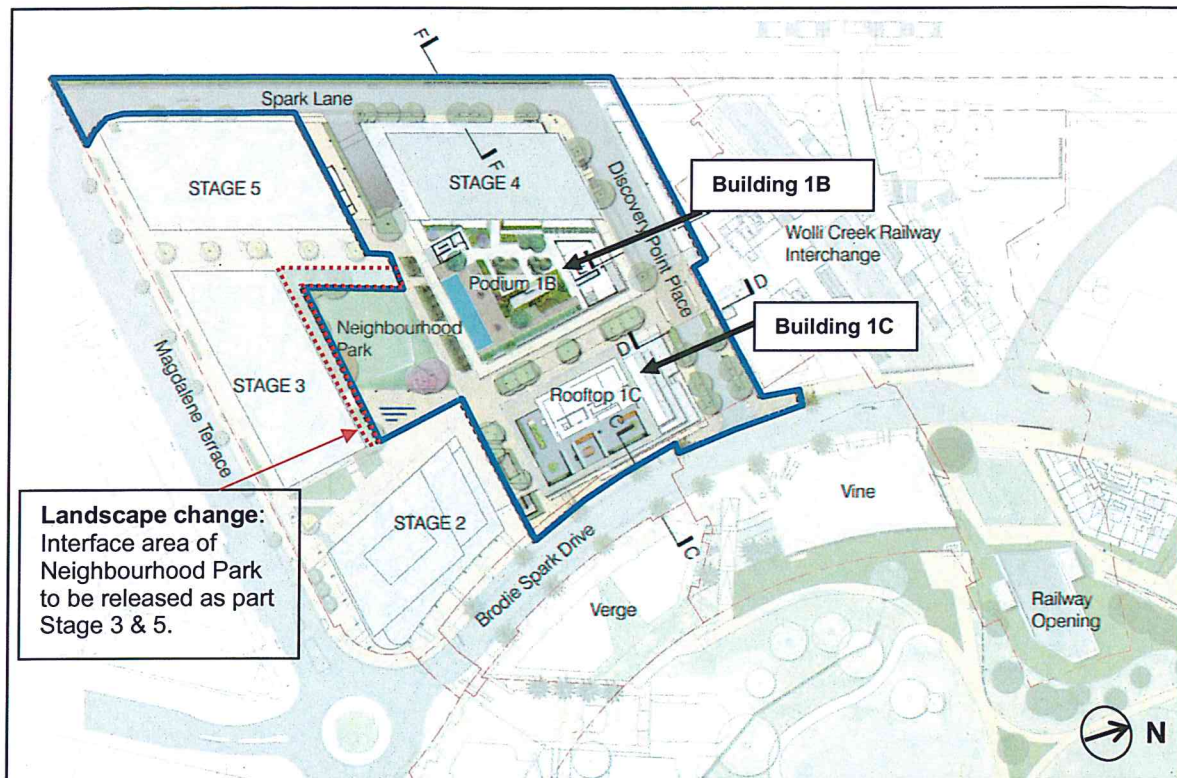
The proposal seeks to amend the stratum subdivision plans to reflect:

- revised boundary between Stage 1 and Stage 3 and 5 at the neighbourhood park;
- minor adjustments across the basement, ground and above ground levels; and
- change in ownership regime of the communal podium on Level 2 in Building 1B.

Council has not raised any concerns with the proposed amendments to the stratum subdivision plans subject to an easement being registered to ensure that Discovery Point residents have access to all facilities in Stage 1, being the Neighbourhood Park and the landscape podium on Level 2 of Building 1B.

The communal landscaped podium on Level 2 of Building 1B comprises a gym, pool and community room (as shown in **Figure 4**). The approved subdivision plans recognised the ownership and management of this space to be the Discovery Point Co-Operative. The proposal now seeks for the future strata body of buildings 1B and 1C to take ownership of this area.





**Figure 4:** Stage 1 landscape boundary (outlined in blue), layout of communal podium Level 2 in building 1B, the green rooftop in building 1C and the Neighbourhood park.

The department notes that Condition F6 and the proponent's statement of commitments outline the requirements for easements for access to public domain areas. It is noted that the stratum subdivision plans seek to change the ownership regime of the communal podium on Level 2 of Building 1B so that it will be managed by future residents of Stage 1. The department recommends that Condition F6 be amended to include specific reference to the Neighbourhood Park and communal landscape podium in Building 1B to provide certainty that the facilities will be accessible by all residents of Discovery Point.

The amendment to the boundary between Stage 1 and Stage 3 and 5 will result in a slightly smaller portion of the neighbourhood park to be delivered during Stage 1. The department does not have any objections to this aspect of the modification, noting that the remainder of the park will be delivered in Stages 3 and 5 (**Figure 4**).

The other minor adjustments to the stratum subdivision plans are as a result of detailed design refinements and are considered generally consistent with the approved stratum subdivision.

## 5.2 Landscaping

A revised landscaping scheme is proposed which proposes minor amendments including:

- the communal landscaped podium Level 2 of Building 1B;
- the green rooftop of Building 1C; and
- adjustment to the boundary of the neighbourhood park within the Stage 1 landscaping scheme between the boundary of Stages 3 and 5 (refer to **Figure 4** above).

The proponent contends that the proposed changes maximise the usability and functionality of the communal spaces to meet the needs of future residents. As discussed in Section 5.1, the proposed adjustment to the landscape boundary of Stage 1 will result in a reduction to the area of the neighbourhood park to be released as part of Stage 1. The proponent has advised this change is due to construction and timing issues.



The department has reviewed the revised landscaping scheme and considers that the proposed changes are generally minor and consistent with the intent of the approved landscaping scheme. The department notes the adjustment to the interface of the south-west boundary of the neighbourhood park (as shown in **Figure 4**) is minor and will still deliver a sufficiently sized and useable open space as part of Stage 1. The remainder of the park will be provided in Stage 3 and 5. On this basis the amendments are supported.

Council has requested that final planting plans showing the location and arrangement of species be provided in future detailed design stages. The department notes that existing condition of approval B3 requires that fully documented Landscape Plans are to be approved prior to issues of a construction certificate. It is considered that the existing condition adequately addresses Council's request.

### 5.3 Conditions of Approval

#### E12 - Positive Covenant

Condition E12 of the project approval requires:

***E12.** A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the water treatment facility to provide for the maintenance of the facility.*

The proposal seeks to remove this condition and provide in its place a new commitment in Schedule 3 of the approval that requires ongoing maintenance of the water treatment facility in accordance with the approved Network Operators Licence.

The proponent states that under the *Conveyancing Act 1919*, a positive covenant can only be established by a 'prescribed authority', which in this case would be Rockdale City Council or Sydney Water. The proponent considers that this condition is unable to be achieved as neither of these authorities were intended to undertake the maintenance of the facility.

The department notes that a positive covenant can legally be created without burdening these public authorities therefore the reasoning provided by the proponent is not accepted. However the proponent's statement of commitment will achieve the same outcome as intended by Condition E12.

The proponent has submitted a copy of the Network Operator's Licence under the *Water Industry Competition Act 2006* (WICA) granted to Discovery Point Water Factory Pty Ltd. Under this licence Discovery Point Water Factory Pty Ltd is required to appropriately maintain and operate the water treatment facility throughout the life of the development.

The department notes Rockdale City Council and Sydney Water will not be responsible for the maintenance or repair of the water recycling facility. The proposed modification to delete condition E12 is therefore reasonable and the department considers that the additional commitment made by the proponent will ensure that the ongoing operation and maintenance of the water treatment facility is undertaken in accordance with the Network Operators Licence. An additional condition is recommended to ensure that the on-going operation and maintenance is undertaken in accordance with the Network Operators Licence.

#### Condition E17 – Waste Collection Enclosure

Condition E17 of the project approval requires that plans of a waste enclosure structure on Site 5 be submitted to the department for approval prior to issue of an occupation certificate. The modification seeks to remove reference to 'Site 5', to allow flexibility for the location of this enclosure (which may possibly be provided elsewhere on the site). The condition is proposed to read as follows:



- E17.** Prior to occupation of Stage 1, plans of a waste collection enclosure ~~on site 5~~ are to be submitted for the approval of the Director-General. The plan shall indicate the location, dimensions and details of the material and finishes of the enclosure.

The proponent is to provide written confirmation from a suitable qualified waste management consultant that the waste collection enclosure as shown provides adequate capacity and is of an appropriate design to fulfil the requirements for the collection of waste from Stages 1B and 1C, 2 and 4.

The condition requires a plan of the waste collection enclosure indicating the location, dimensions, details of materials and finishes to be submitted to the department prior to occupation of Stage 1. It is noted that the specific location of the waste collection facility will therefore be further considered by the department at this time.

Council did not raise any concerns in relation to this minor amendment as the waste collection enclosure is a temporary facility whilst the development is under construction. The department has no concern in removing reference to Site 5 in condition E17 of the approval as the intent of the condition is still maintained.

### **Street Lighting**

Council's submission advised that the nominated street lights as referenced in the Wolli Creek and Bonar Street Public Domain Plan (PDP) are no longer acceptable and the proponent is to liaise with Council's Tech Services regarding alternative light fitting that meets Ausgrid and Council's satisfaction.

The department notes that condition B2 of the project approval requires that lighting, amongst other public domain elements, be generally consistent with the Wolli Creek and Bonar Street Precinct Public Domain Plan, unless varied in agreement with Council. The condition also requires public domain plans to be approved by Council prior to issues of a construction certificate. It is considered that the existing conditions of approval adequately address Council's comments in this regard as Council will have further opportunity to consider and approve the lighting design.

## **6. CONCLUSION**

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The department has assessed the proposed modification and is satisfied that the proposal is reasonable and generally consistent with the existing approval. It is recognised that the proposal will provide an acceptable landscape design and layout to Stage 1 for all residents across the Discovery Point site.

## 7. RECOMMENDATION

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It is therefore recommended that the Director of Industry, Key Sites and Social Projects as delegate for the Minister for Planning:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification request, subject to conditions; and
- (c) **sign** the attached modifying instrument (**Appendix C**).

**Endorsed by:**

AWachen 11/6/14

Amy Watson  
**Team Leader**  
**Key Sites & Social Projects**

**Endorsed by:**



Ben Lusher  
**Manager**  
**Key Sites & Social Projects**

**Approved by:**



Dan Keary  
**Director**  
**Industry, Key Sites & Social Projects**

Y 13/6/14



## **APPENDIX A      MODIFICATION REQUEST**

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See the department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6311](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6311)

## **APPENDIX B SUBMISSIONS**

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See the department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6311](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6311)



## **APPENDIX C    RECOMMENDED INSTRUMENT OF APPROVAL**

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