

SECTION 75W MODIFICATION REQUEST

**Concept Plan at Shepherds Bay Foreshore,
Meadowbank and Ryde**

MP 09_0216 MOD 3



Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

July 2018

Cover Photograph: Artist impression of the Concept Approval looking north across Paramatta River
(Source: Concept Approval)

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*NSW Government
Department of Planning & Environment*

EXECUTIVE SUMMARY

Rothesay Avenue Developments Pty Ltd (the Proponent) seeks approval to modify the Concept Approval (MP 09_0216) for mixed residential and retail development at Shepherds Bay, Meadowbank, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

On 6 March 2013, the then Planning Assessment Commission (the Commission) approved a Concept Plan for the staged development of a mixed-use residential and retail development including building envelopes, car parking and associated infrastructure. The Concept Approval allows for 11 building envelopes up to 10 storeys across the 6.2 hectare main portion of the site and a single 10 storey building envelope on a separate site known as Stage A. City of Ryde Council (Council) has approved several residential and mixed use developments pursuant to the Concept Approval, which are under various stages of construction within the main portion of the site.

The current application, which originally sought to increase the height of the Stage A building envelope from 10 to 15 storeys, increase the gross floor area (GFA) by 3,000 square metres (m²) and introduce serviced apartment use to the site, was publicly exhibited between 7 February 2018 and 8 March 2018. During public exhibition, the Department of Planning and Environment (the Department) received 217 submissions including five submissions from public authorities and 212 public submissions. Of the public submissions 197 object and 15 support the proposal.

The key issues raised in the submissions include traffic impacts, built form, serviced apartment, social infrastructure and amenity impacts and public benefits and the planning process. The Department has considered these issues in its assessment.

Following the exhibition of the original proposal the Department raised concern about the increase in height of the Stage A building envelope from 10 to 15 storeys noting the absence of new information to support a change from the Commission's previous determinations. This view has also been expressed by Council and the community. In response to these concerns the Proponent amended the proposal substantially and now only proposes to modify Stage A to:

- increase GFA by 1,300 m² (from 3,000 m²)
- introduce 42 serviced apartments to the site (from 82 serviced apartments).

The Proponent no longer proposes to increase the height of the building envelope.

There are no amendments to the number of residential dwellings or car parking spaces.

The Department supports changes proposed by the Proponent as it ensures the development would not have adverse impacts on the character or amenity of the surrounding area.

The Department supports the introduction of serviced apartment use to the site, noting it is a permissible use within the B4 Mixed Use zone and will provide accommodation for tourists/visitors to the area.

The modification results in a reduction in traffic generation when compared to the original approval and intersections and the local road network would continue to operate at acceptable levels. Car parking would be provided in accordance with the site-wide car parking limit.

The Department considers the increase of 1,300 m² GFA, which exceeds the non-residential GFA cap, is acceptable as the GFA would be wholly contained within the approved Stage A building envelope and would allow the volume within the envelope to be utilised to the extent envisaged by the Concept Approval. The increase in GFA would not result in adverse traffic or amenity impacts. In addition, the Department notes the stages within the main portion of the site can accommodate more floorspace within the building envelopes consistent with development applications approved by Council without adverse impacts. The Department concludes the increase is minor in nature and acceptable.

The Department therefore concludes the modification application is approvable, subject to conditions.

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1. BACKGROUND

1.1 Introduction

This report provides an assessment of proposed modifications to the Concept Approval for a mixed-use development at Shepherds Bay, Meadowbank (MP 09_0216 MOD 3), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

This modification originally sought to modify Stage A to increase the height of the building envelope from 10 to 15 storeys, increase gross floor area (GFA) by 3,000 square metres (m²) and introduce serviced apartment use to the site.

In response to concerns raised by City of Ryde Council (Council), the community and the Department the proposal has been substantially amended and now only proposes to modify Stage A to:

- increase GFA by 1,300 m²
- introduce serviced apartment use to the site.

The application has been lodged by Rothesay Avenue Developments Pty Ltd (the Proponent). The site is located within the City of Ryde local government area (LGA).

1.2 The site and surroundings

The site is located on the Shepherds Bay foreshore in the suburbs of Meadowbank and Ryde. It is located approximately 10 kilometres east of the Parramatta Central Business District (CBD) and 14 kilometres (km) north-west of the Sydney CBD. The site comprises two separate parcels of land which historically accommodated industrial and warehouse buildings.

The main portion of the site (referred to as the 'main site') has frontages to Bowden Street, Belmore Street, Nancarrow Avenue, Rothesay Avenue, Constitution Road and Hamilton Crescent. The smaller part of the site (referred to as the 'Stage A') has frontages to Church Street, Wells Street, Waterview Street and The Loop Road. The total area of the combined sites is approximately 6.7 hectares (ha). The project location is shown in **Figures 1 and 2**.

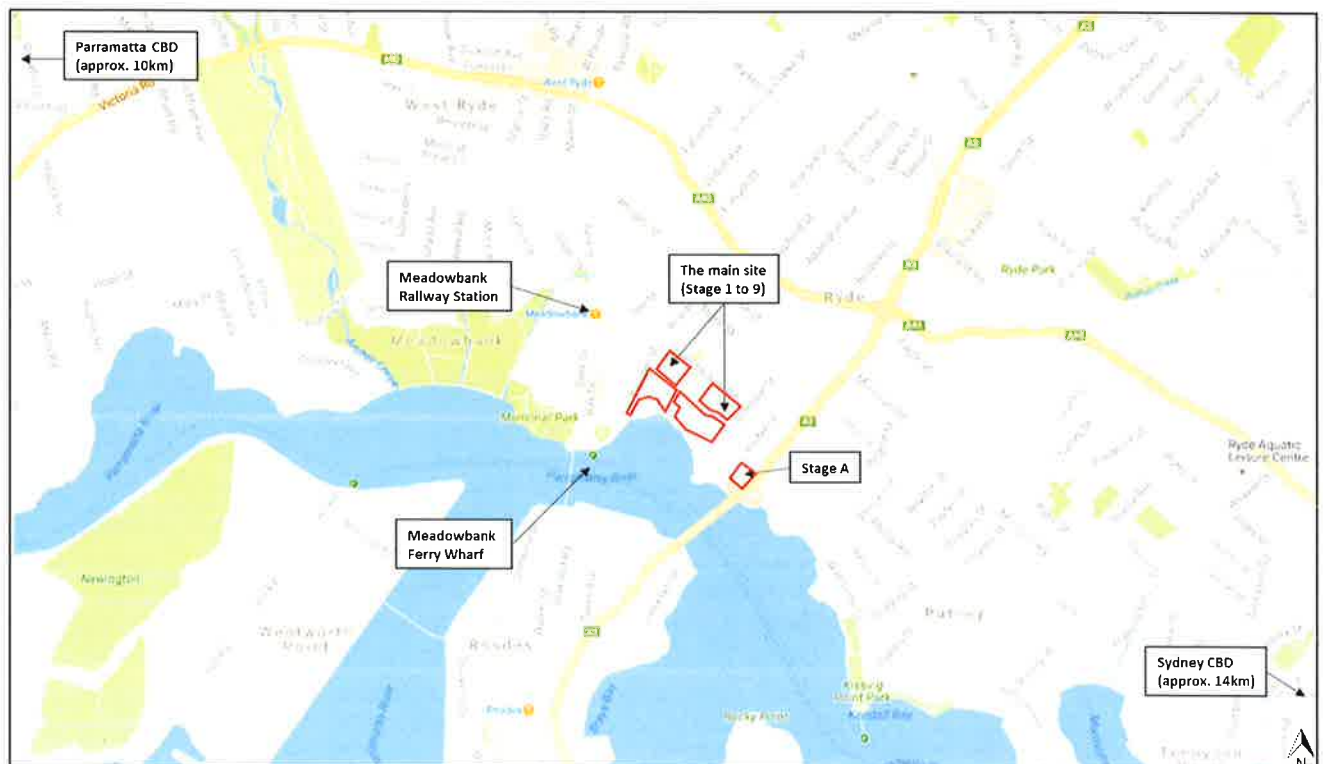


Figure 1: Site location (Base source: Nearmap)



Figure 2: Aerial view of the site (Base source: Neamap)



Figure 3: Aerial view of the Stage A site (Base source: Neamap)

The main site has an uneven topography with a significant fall of up to 18 m from north to south towards the Shepherds Bay foreshore. The Stage A site is relatively level.

The site is located within the Shepherds Bay area (also known as the Meadowbank Employment Area), which has undergone a process of transitioning from traditional manufacturing and industrial uses to a higher density mixed use neighbourhood. The surrounding area features a mixed character of industrial/warehouse buildings, high density residential flat buildings and low density residential housing.

Various parts of the main site are situated between 350 m to 1 km walking distance from the Meadowbank Railway Station and the Village Plaza Shopping Centre and 250 m to 1 km from the Meadowbank Ferry Wharf. Stage A is within 200 m of bus services on Church Street, and approximately 1 km from the railway station and ferry wharf.

As summarised at **Section 1.3** the site has approval for a mixed-use residential led development split into 10 development stages. The proposal relates to Stage A only, which is the final stage of the redevelopment (refer to **Figures 3** and **4**).

1.3 Previous approvals

1.3.1 Concept plan approved (MP 06_0216)

On 6 March 2013, the then Planning Assessment Commission (the Commission), as delegate of the Minister for Planning, approved a Concept Plan (MP09_0216) for the development of Shepherds Bay (the Concept Approval) comprising a mixed use residential, retail and community use development.

The Concept Approval has been previously modified on two occasions (both approved by the Commission), as summarised in **Table 1**.

Table 1: Summary of modifications to the Concept Approval

MOD no.	Summary of Modifications	Approval Date
MOD 1	Increase the number of storeys within Stage 1, 2, 3 and 6 building envelopes, expansion of basement building envelopes, revise the staging of construction and timing of the delivery of the open space and revised solar access requirements.	16 Oct 2014
MOD 2	Increase the site-wide maximum dwelling development cap to 2,033 dwellings, increase the number of storeys within Stages 2 and 3 building envelopes and the overall height of Stage 2, delete the exception allowing additional storeys on steeply sloping land.	16 Jan 2017

The Concept Approval as modified allows for:

- 12 building envelopes incorporating basement car parking
- a maximum of 2,033 dwellings
- a maximum of 10,000 m² retail, commercial or community uses
- infrastructure works to support the development
- publicly accessible open space and through site links
- pedestrian and cycle pathways.

The height of Stage A was a key matter for consideration by the Commission both in the original Concept Approval and MOD 2. In both cases the Proponent sought to provide a Stage A building envelope height greater than 10 storeys (15 storeys and 24 storeys respectively). In approving the Concept Plan, the Commission concluded a 10-storey maximum height limit should apply across the entire site, including Stage A.

The Concept Approval staging, layout and maximum storey height is shown at **Figures 4** to **6**.

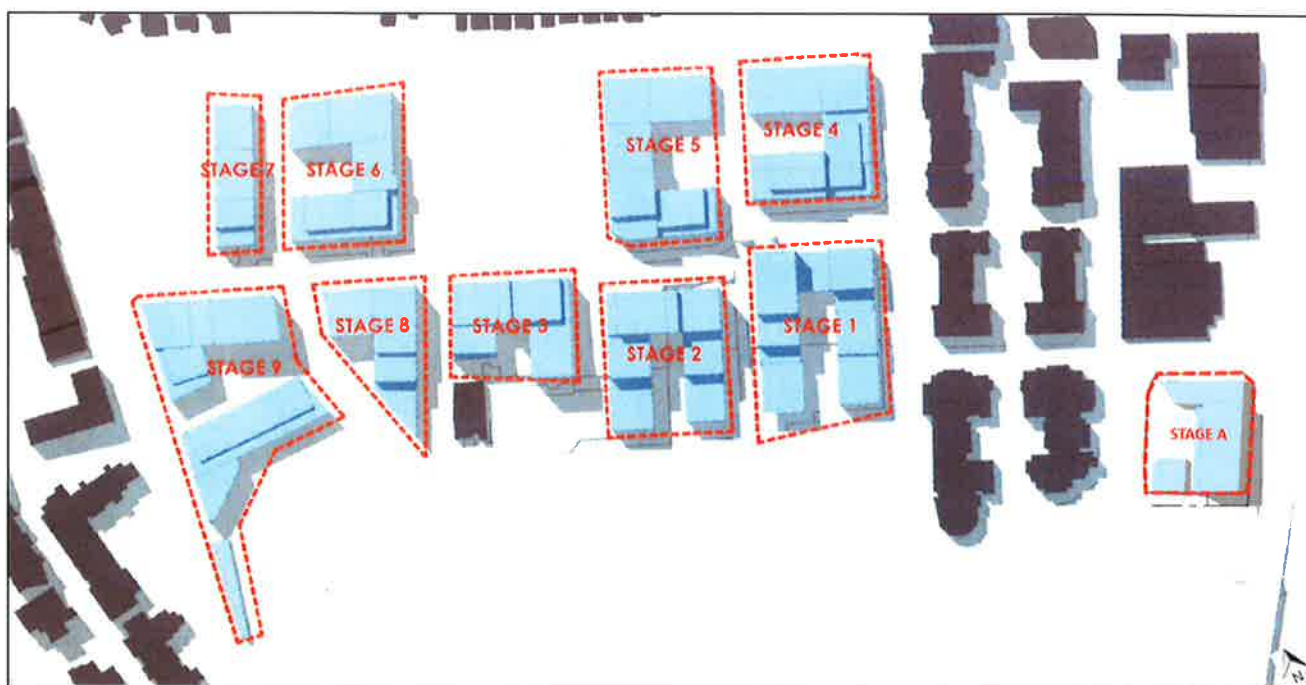


Figure 4: Building envelope layout and Stage numbering (Base source: MOD 2 application)

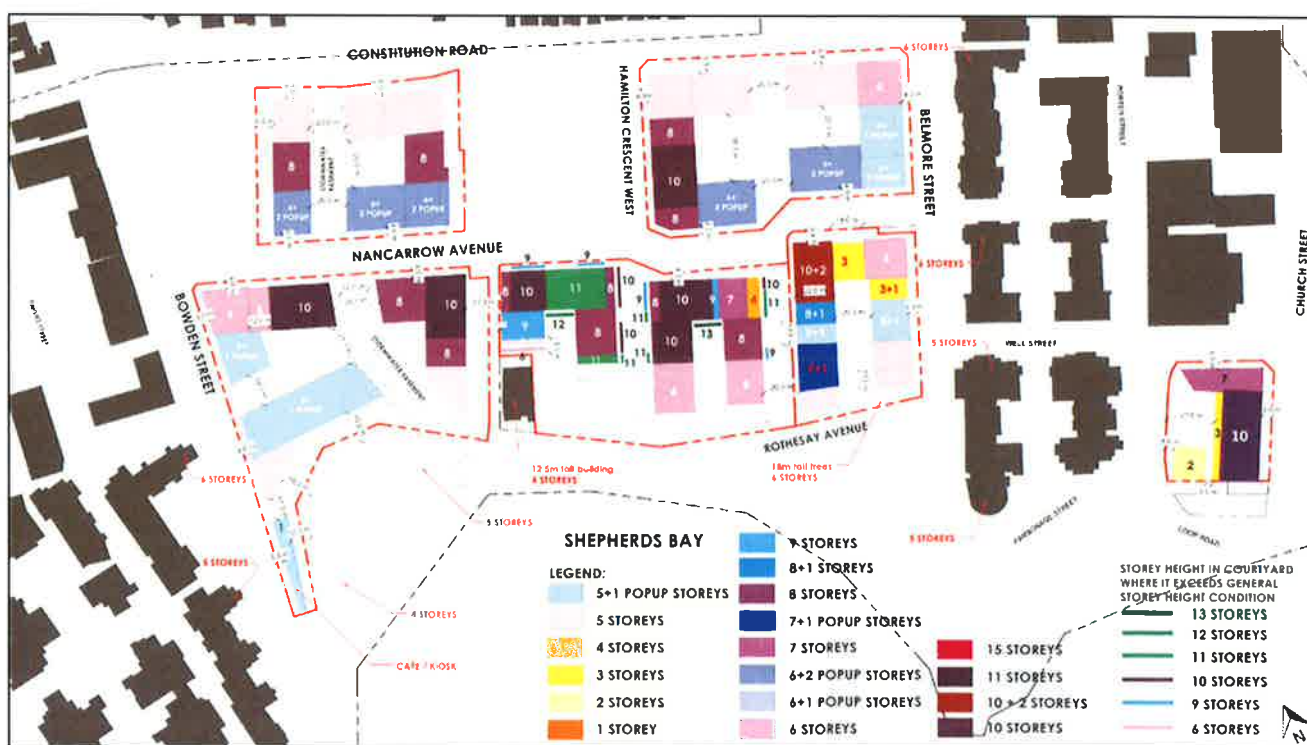


Figure 5: Maximum building storey height plan (Base source: Proponent's PPR)

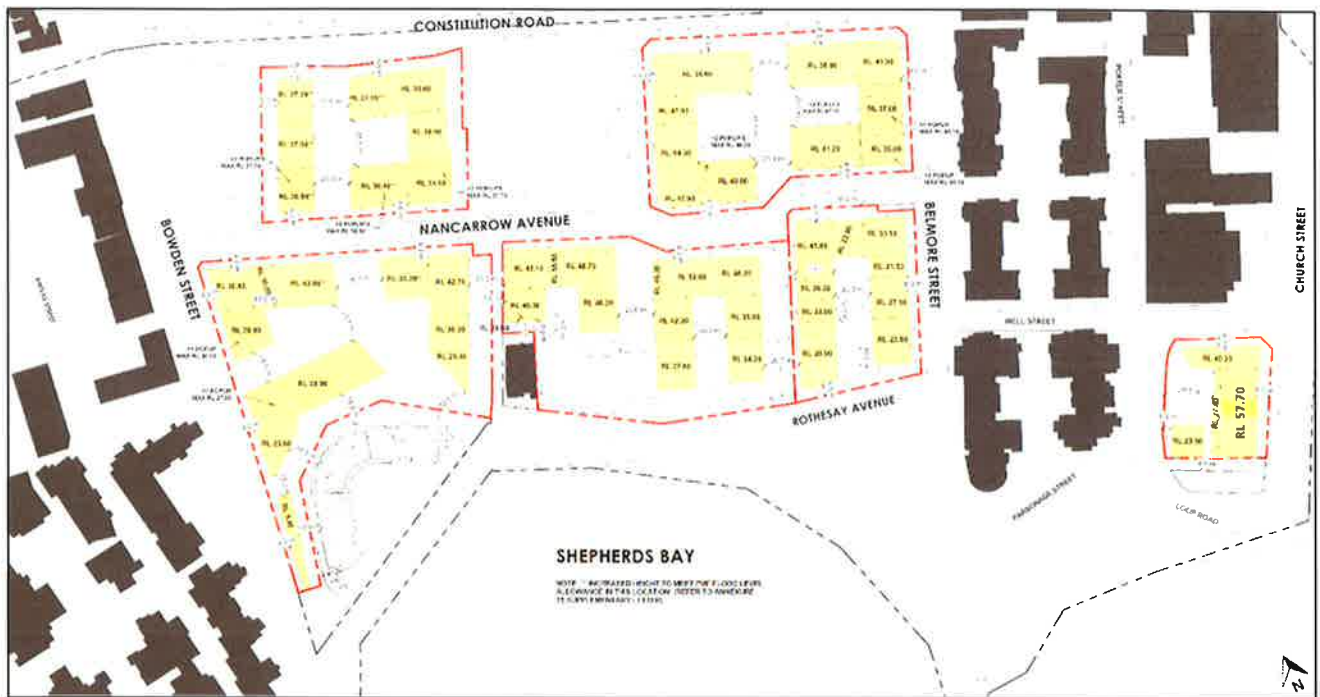


Figure 6: Maximum building height plan (Base source: Proponent's PPR)

1.3.2 Stage 1 – 9 approvals

At the same time as determining the Concept Approval, the Commission also approved a Project Application for Stage 1 of the development (MP 09_0219), which included the construction of a 10-storey building in the south-east corner of the main site (Project Approval). The Project Approval is not considered relevant to this modification request.

The Joint Regional Planning Panel (JRPP) has approved development applications for Stages 2 to 9 within the main portion of the site.

Stages 1, 4 and 5 have been constructed and building works are underway for stages 2, 3, 6 to 9, as shown at **Figure 2**.

No approval has been granted for the redevelopment of Stage A and no works has commenced on-site.

2. PROPOSED MODIFICATION

2.1 Description of the modification

On 8 December 2017, the Proponent lodged a modification request under section 75W of the EP&A Act to modify the Concept Approval (MP 06_0216 MOD 3).

As originally exhibited the proposal sought to increase the height of the Stage A building envelope by 5 storeys (to 15 storeys), increase GFA by 3,000 m² and introduce 'serviced apartment' use to the site. However, in response to concerns raised in public submissions, by Council and the Department the Applicant amended the proposal by reducing the:

- height of the building envelope by 5 storeys (from 15 to 10 storeys, as approved)
- GFA by 1,700 m² from (3,000 m² to 1,300 m²).

The key components of the modification (as amended by the Preferred Project Report) include:

- introduce 'serviced apartment' as a new use within the Concept Plan site
- increase of 1,300 m² commercial GFA.

A comparison between the key components of the Concept Approval, originally submitted and currently proposed modification and the difference between the Concept Approval and current modification is summarised at **Table 2**.

Table 2: Comparison between the components Concept Approval, original and current modification

	Concept Approval	Original Modification (As Exhibited)	Current Modification (PPR)	Difference to Concept Approval
Height	10 Storeys	15 Storeys	10 Storeys	No change
GFA	10,000 m ²	13,000 m ²	11,300 m ²	+1,300 m ²
Uses	Residential, retail, commercial, community	Residential, retail, commercial, community, serviced apartment	Residential, retail, commercial, community, serviced apartment	+ serviced apartment use

The modification does not propose any amendments to the maximum dwelling or car parking caps for the site and the proposed changes summarised in **Table 2** above would be contained wholly within the Stage A building envelope.

3. STATUTORY CONTEXT

3.1. Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the ‘cut-off date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

Section 75W provides for the modification of the Minister’s approval including revoking or varying a condition of the approval or imposing an additional condition on the approval. The Minister’s approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance the proposal seeks to introduce a new use on the site, increase non-residential GFA and modify specific requirements of the approval and therefore requires further assessment and approval.

The Department is satisfied the proposed modifications are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

3.2. Consent Authority

On 14 September 2011, the then Minister for Planning and Infrastructure delegated powers and functions under section 75W of the EP&A Act to the Independent Planning Commission in cases where:

- a political donation disclosure statement has been declared
- the relevant council has objected to the proposal, or
- there are 25 or more public submissions objecting to the proposal.

The Proponent has not disclosed a political donation in relation to the application. However, as Council has objected to the proposal and more than 25 submissions were received objecting to the proposal, the application is therefore referred to the Independent Planning Commission for determination.

3.3. Environmental Planning Instruments

The Department assessed the modification request against the following relevant environmental planning instruments (EPIs):

- State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy 55 – Remediation of Land
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development & accompanying Residential Flat Design Code / Apartment Design Guide
- Ryde Local Environmental Plan 2014 (RLEP 2014).

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 the proposal remains consistent with these EPIs.

The State Environmental Planning Policy (Coastal Management) 2016 (Coastal SEPP) came into force on 3 April 2018. The Coastal SEPP establishes a new coastal management framework, which responds to existing and emerging coastal challenges and opportunities, with the aim of having thriving and resilient communities living and working on a healthy coast now and into the future.

The Department has considered the modification against the requirements of the Coastal SEPP at **Appendix B**. In summary the Department is satisfied the proposal is consistent with the requirements of the draft Coastal SEPP.

3.4. Secretary's Environmental Assessment Requirements

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

In this instance, following an assessment of the modification request, it was not considered necessary to notify the proponent of SEARs as suitable information was provided to the Department to consider the application.

4. CONSULTATION AND SUBMISSIONS

4.1. Consultation

Section 75X(2)(f) of the EP&A Act, the Department publicly exhibited the request from 7 February 2018 until 8 March 2018 (30 days). The application was exhibited on the Department's website, at the NSW Service Centre and at Ryde City Council's office.

The Department placed a public exhibition notice in the Northern District Times on 7 February 2018, and notified adjoining landholders, previous submitters and relevant State and local government authorities in writing.

The Department received a total of 217 submissions, including five from public authorities and 212 from the public in response to the exhibition of the application. A summary of the issues raised in submissions is provided in **Tables 2** and **3**. Copies of the submissions can be viewed at **Appendix A**.

4.1.1. Public authority submissions

A total of five public authority submissions were received in response to the exhibition of the modification request. The key issues raised in submissions are summarised in **Table 3**.

Table 3: Summary of public authority submissions to the exhibition

City of Ryde Council (Council)
Council objects to the modification proposal on the following grounds: <ul style="list-style-type: none">• there are insufficient grounds to overturn the Commission's previous determination• inappropriate height out of context in this location

<ul style="list-style-type: none"> financial viability is not a valid planning consideration serviced apartments should form part of the dwelling and commercial floorspace cap traffic impacts of the modification.
Transport for NSW (TfNSW)
TfNSW confirmed it has no comments on the proposal
NSW Heritage Council
The Heritage Council did not object to the proposal and stated the proposal has minimised visual impacts on nearby heritage items.
Sydney Water
Sydney Water did not object to the proposal and stated detailed requirements for water, wastewater and any amplifications will be assessed as part of the Proponent's separate future Section 73 Application to Sydney Water.
Roads and Maritime Services
RMS did not object to the proposal and stated the proposal would not increase dwelling and parking density.

4.1.2. Public submissions

A total of 212 public submissions were received in response to the exhibition of the modification request, comprised of 197 objections and 15 supporting the proposal. The key issues raised in submissions are summarised in **Table 4**.

Table 4: Summary of the public submissions of objection to the to the proposal

Issue	Proportion of submissions of objection
Objections	
Adverse traffic and parking impact	70%
Inappropriate height and scale / out of character	45%
The Commission's decision is still valid and should be final	38%
Adverse impact on social infrastructure	36%
Overdevelopment / adverse increase in density	31%
Serviced apartments are residential accommodation and therefore exceed the dwelling cap	25%
Insufficient open space	24%
Sets a development precedent	23%
Insufficient public benefit	16%
Overshadowing of surrounding dwellings and Parramatta foreshore	11%
Adverse environmental impact	10%

Other issues raised in public submissions to the exhibition (5% or less) include objections relating to view loss, development quality of the Proponent's other projects, noise impact, the planning process, inadequate/out of date traffic report, ADG compliance and detailed design concerns.

Concern was raised by Viva Energy about the potential impact of the modification on the the Gore Bay pipeline.

The 15 submissions in support of the proposal expressed general support and support for the provision of retail within the area.

4.2. Response to Submissions and Preferred Project Report

Following the exhibition of the application the Department placed copies of all submissions received on its website and requested the Proponent provide a response to the issues raised in the submissions. The Department also met with the Proponent and expressed concern about the increase in height of the Stage A building envelope from 10 to 15 storeys noting the absence of new information to support a change to the Commission's previous determinations on height.

On 21 May 2018, the Proponent provided a Preferred Project Report (PPR) (**Appendix A**) on the issues raised by the Department and during the exhibition of the proposal. In response to the submissions made the Proponent has amended the proposal (Stage A) by reducing the:

- height of the building envelope by 5 storeys (from 15 to 10 storeys as approved)
- GFA by 1,700 m² (from 3,000 m² to 1,300 m²)
- indicative number of serviced apartments by 40 (from 82 to 42 serviced apartments).

The PPR was made publicly available on the Department website and referred to public authorities. An additional two submissions were received from public authorities, including the Heritage Council and TfNSW, which are summarised below. No submissions were received from Council or the public.

Council considered the PPR and confirmed it supports the reduction of the height of the Stage A building envelope. Council reiterated its comments on financial viability, serviced apartments and traffic generation.

Heritage Council considered the PPR and confirmed it supports the reduction of the height of Stage A.

TfNSW considered the PPR and confirmed it has no further comments on the proposal.

The Department has considered the proposal as outlined in **Section 2.1** and all of the comments raised in the public authority and public submissions during the assessment of the application (**Section 5**) and/or by way of recommended Terms of Approval (ToAs), Modifications and Future Environmental Assessment Requirements (FEARs) in the recommended instrument of modification at **Appendix B**.

5. ASSESSMENT

5.1 Key assessment issues

The proposal has been significantly amended since its lodgement, as discussed at **Section 2.1**. As a result of these amendments the proposal no longer seeks an increase in height of the Stage A building envelope. The detailed design of the building would be guided by the required design excellence process.

The Department therefore considers the key assessment issues are:

- traffic and car parking impacts
- introduction of serviced apartments and increase in non-residential GFA.

Each of these issues is discussed in the following sections of this report. Other issues were taken into consideration during the assessment of the application and are discussed at **Section 5.4**.

5.2 Traffic and car parking impacts

Traffic and car parking impacts were key considerations of the Concept Approval. The Department acknowledges car parking supply has a direct link to the amount of traffic generated by the development and its impact on surrounding local roads.

The Department engaged ARUP to undertake an independent assessment of traffic impacts to inform its assessment of the original application. The Department considered the impact of 2,976 (indicative) car parking spaces and concluded the proposal would have acceptable traffic impacts on the local and regional road network, subject to the following road network improvements:

- Nancarrow Avenue extension
- Nancarrow Avenue Area Local Area Traffic Management (LATM) measures and all road reserve upgrades including associated pedestrian footpaths and cycleways

- signalisation of Belmore/Constitution Street intersection and Railway Road pedestrian crossing (when studies indicate this is necessary)
- implementation of left-in/left-out arrangement at Belmore Street/Hamilton Crescent intersection
- installation of a temporary east/west pedestrian link between the foreshore link and Nancarrow Avenue
- Underdale Lane LATM measures
- installation of a pedestrian crossing facility at Bowden Street / Nancarrow Avenue
- installation of roundabout at Belmore Street / Rothesay Avenue
- left-in/left-out arrangement at Belmore Street/Yerong Street intersection.

The Commission concurred with this conclusion.

The current proposal is supported by a Traffic Impact Assessment (TIA), which considers the potential traffic and car parking impacts of the modified proposal on the surrounding area.

The Department considers the key assessment issues to be:

- car parking
- traffic generation.

5.2.1 Car parking

Concerns were raised in public submissions about the adequacy of car parking provision and impact on existing car parking spaces around the site. Council recommended the serviced apartment be subject to the existing car parking cap within the Concept Approval (2,796 spaces).

The Department notes, since the determination of the Concept Approval a total of 2,623 have been approved in Stage 1 to 9 and therefore there are 353 spaces remaining for Stage A before the car parking cap (2,976) is reached.

The modification does not propose to amend the site-wide car parking cap and the Department notes the indicative development includes 296 car parking spaces, which is 57 spaces less than the maximum for the site.

The Department considers the site can be provided with sufficient car parking and notes the proposal is unlikely to have adverse impacts on the availability of on-street parking as:

- Council has the ability through future DA(s) to determine the appropriate number of car parking spaces for the final land uses taking into consideration likely demands for parking within the parking cap
- Modification B2 and FEAR 29 of the Concept Approval requires the preparation of a Sustainable Travel Plan (STP), which would foster the use of alternative modes of transport to private vehicles.

5.2.2 Traffic generation

Concerns were raised in public submissions that the modification would result in addition adverse traffic impacts. Council raised concern about the traffic impact resulting from the modification. TfNSW did not raise any objection to the proposed modification.

The Proponent has stated the proposal would not adversely impact on the local road network, and the intersection and road improvements committed to as part of the Concept Approval remain appropriate and further road infrastructure augmentation is not necessary.

The *RMS Guide to Traffic Generating Development 2001* provides guidance on traffic generation and parking impacts of new developments (2001 Rates). In August 2013, the RMS published updated traffic generation rates for high density developments (2013 Rates). The 2013 Rates are based on surveys undertaken in 2010 across the Sydney Metropolitan area (and regional NSW) and indicate a reduction in traffic generation over the previous 10 years.

The updated traffic generation rates within the 2013 Rates relate to residential uses, no change was made to the 2001 Rates applied to non-residential uses.

The Department notes the Concept Approval was assessed against the higher traffic generating rates in the 2001 guide, whereas the proposed modification relevantly applies the 2013 guide. A summary of the approved and proposed traffic generation for the site is provided at **Table 5**.

Table 5: Comparison between the Concept Approval and modified traffic generation

Concept Approval Predicted Traffic Generation	Modification Predicted Traffic Generation			
2001 Rates	2001 Rates		2013 Rates	
1,277 vph	1,148 vph	- 129 vph (- 10%)	1,148 vph	- 129 vph (- 10%)

The Department notes, as the modification does not propose an increase in residential dwellings, there is no difference when applying the 2001 and 2013 Rates to the modification proposal.

The Department acknowledges the proposal increases the non-residential GFA and that this would result in additional traffic movements. However, as shown in **Table 5**, the traffic generated by the proposal (based on the 2013 Rates) is less than the traffic generation predicted for by the Concept Approval (2001 Rates) in the worst case weekday peak. The Department therefore concludes, despite the increase in GFA, the proposal would not result in additional traffic movements beyond what was originally assessed and considered acceptable for the site. Further, as discussed at **Section 5.2.1**, the modification does not propose to increase the car parking cap for the site.

The road improvements outlined in **Section 5.2** have been demonstrated to mitigate the impact of an additional 1,277 vph in the weekday peak and the Department therefore remains satisfied the overall reduced traffic generated by the proposal (1,147 vph) can be accommodated on the local road network.

5.3 Introduction of serviced apartments and increase in non-residential GFA

The proposal seeks approval for the introduction of serviced apartment use to the site and to increase the non-residential GFA cap by 1,300 m² GFA from 10,000 m² to 11,300 m².

Concerns were raised in public submissions about the increase of density on the Stage A site and the provision of serviced apartments would exceed the dwelling cap. Council did not object to the introduction of serviced apartment use to the site. However, it recommended the serviced apartments should be subject to both the existing non-residential GFA and dwelling caps to limit amenity impacts.

The Proponent has stated serviced apartments are a 'commercial use' and therefore should be subject to the non-residential GFA cap rather than the dwelling cap. The Proponent contends the increase of non-residential GFA is minor, would not have any adverse amenity impacts and would be contained within the approved Stage A building envelope.

The Proponent also notes existing DAs approved or currently under assessment by Council for Stages 1 – 9 of the Concept Approval site provide for 1,989 dwellings and therefore there are 42 residential dwellings remaining for Stage A before the dwelling cap (2,033) is reached.

The Proponent therefore seeks to provide a future building within the Stage A building envelope accommodating an indicative:

- retail and supermarket (approximately 4,159 m²)
- 42 serviced apartments (approximately 4,609 m²)
- the remaining 42 residential dwellings within the dwelling cap.

Table 6 summarises the existing and proposed non-residential GFA and compares this with the non-residential GFA cap.

Table 6: Existing and proposed non-residential GFA

Non-Residential GFA Description	GFA
Non-residential GFA cap	10,000 m ²
Council DA approved / under assessment	2,521 m ²
Proposed under this modification	8,765 m ²
Total existing / proposed	11,286 m ²
Additional GFA Proposed	+ 1,300 m²

The Department notes the additional 1,300 m² non-residential GFA would accommodate approximately 12 of the 42 indicative serviced apartments.

The Department accepts the Proponent's categorisation of the serviced apartments as non-residential floor space for tourists or visitors and in this context the Department does not consider it reasonable that they should be subject to the dwelling cap.

The Department supports the introduction of serviced apartment use to the site, noting:

- serviced apartments are permissible with consent within the B4 Mixed Use zone, as discussed in **Section 3.4**
- the indicative drawings show the inclusion of serviced apartments within Stage A would not adversely impact on other uses within the building or the surrounding area
- the indicative drawings show a future building is capable of including serviced apartments which achieve an appropriate standard of amenity.

The Department considers the 1,300 m² increase in non-residential GFA is minor in nature and acceptable as:

- it would be wholly contained within the approved Stage A building envelope and therefore would not have any additional amenity impacts in terms of overlooking, overshadowing or loss of views
- it would not result in any adverse traffic or car parking impacts, as discussed at **Section 5.2**
- additional contributions will be made in accordance with Council's Section 94 requirements
- the future building within the Stage A building envelope is required to achieve design excellence in accordance with FEAR 1.

The Department recommends ToA A5 be amended to increase the maximum non-residential GFA cap from 10,000 m² to 11,300 m² to take account of the proposed 1,300 m² increase in GFA.

5.4 Other issues

The Department's consideration of other issues is provided at **Table 7**.

Table 7: Department's assessment of other issues

Issue	Consideration	Recommendation
Built form impacts	<ul style="list-style-type: none"> • Concerns were raised in public submissions about the height and scale of the Stage A building envelope, potential for development precedent, environmental impacts, view loss and overshadowing. • The Department notes the modification no longer proposes to increase the height of the Stage A building envelope and retains the approved 10 storey envelope height. • The Department is therefore satisfied the modification would not result in any adverse built form impacts beyond what has already been approved. 	No additional conditions or amendments are necessary.
Social infrastructure	<ul style="list-style-type: none"> • Concerns were raised in public submissions about the impact of the future residential and serviced apartments on social infrastructure, and schools in particular. 	No additional conditions or

	<ul style="list-style-type: none"> The Department considers the proposal would not have an adverse impact on social infrastructure, beyond what was approved as: <ul style="list-style-type: none"> the modification would not exceed the dwelling cap for the site serviced apartments are used by tourists and visitors and are therefore unlikely to place additional pressure on nearby schools. 	amendments are necessary.
Open space	<ul style="list-style-type: none"> Concern was raised in public submissions about the potential additional demand the modified Stage A development will place on existing public open space. The Department notes the approved Stage A building envelope includes the provision of a new 27 m wide open space within the western half of the site, and the indicative drawings show this space as being a landscaped and publicly accessible plaza. The Department is satisfied on this basis future occupants of the Stage A development will have access to sufficient open space. 	The Department has recommended a new FEAR 15C requiring the future Stage A DA include the provision of a publicly accessible open space / plaza.
Public benefit	<ul style="list-style-type: none"> Concern was raised in public submissions that the proposal provided insufficient public benefits. The Department notes the PPR proposes an increase of 1,300 m² non-residential GFA and, based on the indicative plans, this could accommodate approximately 12 serviced apartments. The Department notes the Concept Approval included the following key public benefits: <ul style="list-style-type: none"> provision of a 3,000 m² contiguous open space provision of a 1,000 m² community centre/space stormwater infrastructure upgrades road infrastructure and intersection upgrades site-wide public domain and landscaping the Stage A site will include a publicly accessible plaza / open space The Department considers, when considered in the context of the overall Concept Approval (10,000 m² and 2,033 dwellings), an increase of 1,300 m² non-residential GFA is minor in nature and the existing public benefits remain sufficient. In addition, the additional GFA will result in a commensurate increase in section 94 contributions towards improvements within the locality. 	No additional conditions or amendments are necessary.
Detailed design and noise impacts	<ul style="list-style-type: none"> Concern was raised in public submissions about the detailed design of the future building within the envelope and potential operational and construction noise impacts. The Department notes the proposal relates to a Concept Plan only and future DA(s) will be submitted to Council for the detailed design and use of buildings within the building envelopes. Future DAs would be also required to include an assessment of noise impacts and propose mitigation measures where necessary. The Department is therefore satisfied noise impacts can be managed and mitigated. 	No additional conditions or amendments are necessary.
Future residential amenity	<ul style="list-style-type: none"> Concern was raised in public submissions about the quality of future residential accommodation. The modification includes an assessment of the proposal and indicative floor plan layouts against the aims and objectives of SEPP 65 and the relevant amenity criteria within the ADG and concludes future developments would achieve an appropriate standard of residential amenity. FEAR 21 requires the residential components of future DAs within each stage comply with the recommended ADG space 	No additional conditions or amendments are necessary.

	<p>and amenity standards.</p> <ul style="list-style-type: none"> The Department considers future DAs would be capable of providing for a building which achieve an acceptable standard of residential amenity for future residents in accordance with the ADG. 	
Gore Bay pipeline	<ul style="list-style-type: none"> Viva Energy raised concerns about the proximity of the development to the Gore Bay pipeline, which is a high-pressure liquid fuel pipeline. The Department notes the Gore Bay pipeline runs east-west and is located along the southern boundary of the Concept Approval site, approximately 7 m to the south of the Stage A building envelope. The Department is satisfied the modification would not have any impacts on the Gore Bay pipeline as: <ul style="list-style-type: none"> the modification does not propose any amendments to the location, footprint or dimensions of the approved building envelopes within the Concept Approval Main Site or Stage A the detailed design of any future building within the building envelope would be a matter for consideration under future DA(s) submitted to Council. To ensure the future development within Stage A is appropriately designed the Department recommends a new FEAR requiring the Applicant to consult with Viva Energy and any future development within Stage A addresses <i>Australian Standard 2885.0-2008 Pipelines-Gas and Liquid Petroleum</i>. 	The Department has recommended a new FEAR requiring the Applicant consult with Viva Energy and adhere to AS 2885.0-2008.
Commission's original decision should be final	<ul style="list-style-type: none"> Concern was raised in public submissions the Commission's original decision on the Concept Approval should be final. The Department notes the planning process allows the Proponent to submit a modification application, and the Department has assessed the proposed modification on its merits, having regard to the impacts of the proposal and issues raised in submissions. The Department also notes, in response to public submissions about the initial proposal to increase the height of Stage A, the modification has been amended and no longer proposes this amendment. As noted at Section 3.2, the Independent Planning Commission will determine this modification application. 	No additional conditions or amendments are necessary.
Modification B1B	<ul style="list-style-type: none"> Modification B1B of the Concept Approval requires the Concept Plan drawings be amended to apply a 10 storey maximum to the Stage A building envelope. The proposal includes updated drawings showing a maximum 10 storey height limit to the Stage A building envelope. The Department considers the requirement of Modification B1B has been addressed and recommends it be deleted. 	The Department has recommended ToA A2 be amended to include reference to the revised drawings and Modification B1B be deleted.

5.5 Consideration of key issues raised in public submissions

Table 8 presents the key issues raised in the public submissions (as summarised in **Section 4.1**), and how the Department has considered each issue.

Table 8: Summary of the consideration of key issues raised in public submissions

Concern Raised	Department's comments
Traffic impacts	<ul style="list-style-type: none"> As discussed at Section 5.2, after applying the updated RMS traffic generation rates, the TIA has demonstrated there would be an overall decrease in traffic generation when compared to what was considered acceptable and approved under the Concept Approval.

Car parking	<ul style="list-style-type: none"> • Section 5.2 confirms the modification would not exceed the approved site-wide car parking cap and would therefore not result in car parking impacts beyond what has already been approved by the Concept Approval. • The exact amount of parking will be appropriately determined by Council through future DA(s) and a Sustainable Transport Plan will foster the use of alternative modes of transport to private vehicles.
Serviced apartments	<ul style="list-style-type: none"> • As discussed at Section 5.3, serviced apartments are not defined as a form of residential accommodation and are not subject to the dwelling cap. The introduction of the use to the site is acceptable and permissible within the B4 Mixed Use zone. The additional GFA would be contained within the approved building envelope and would not have adverse traffic or amenity impacts.
Built form impacts	<ul style="list-style-type: none"> • In response to concerns raised in public submissions, by Council and the Department the Proponent amended its proposal and no longer seeks additional height for the Stage A building. • Due to the above amendment of the proposal the modification would not have adverse impacts relating to height and scale of the Stage A building envelope, potential for development precedent, environmental impacts, view loss and overshadowing.
Social Infrastructure	<ul style="list-style-type: none"> • As discussed at Section 5.4, the proposal would not have an adverse impact on social infrastructure, beyond what was approved.
Public benefits	<ul style="list-style-type: none"> • The Concept Approval includes public benefits relating to open space, community use and infrastructure upgrades. The proposed 1,300 m² increase in GFA is considered minor in nature and the existing approved public benefits remain acceptable.
Commission's decision	<ul style="list-style-type: none"> • The Department notes the planning process allows the Proponent to submit a modification application should it wish to do so. • The Commission will determine this modification application.

6. CONCLUSION

The Department has assessed the merits of the proposal taking into consideration the issues raised in all submissions, the Proponent's response to these submissions and its PPR, and is satisfied the impacts have been satisfactorily addressed by the proposal and through the Department's recommended conditions.

The Department agreed with concerns raised by Council and in public submissions about the scale of the initial proposal, which included the increase in height of the Stage A building envelope (from 10 to 15 storeys), and recommended the building be retained at 10 storeys. In response, the Proponent amended its proposal and no longer seeks additional height for the Stage A building. The Department supports this amendment and notes it ensure the development would not have adverse impacts on the character or amenity of the surrounding area.

The Department supports the introduction of serviced apartment use to the site and the associated increase of 1,300 m² GFA is minor in nature and would not have adverse amenity impacts.

The modification results in a reduction in traffic generation when compared to the original approval. Car parking would be provided in accordance with the site-wide car parking limit.

The Department is also satisfied the proposal would not have an adverse impact on social infrastructure, provides for sufficient open space and the approved public benefits remain appropriate and proportionate.

The Department considers the project is approvable, subject to conditions (outlined in **Appendix C**). This assessment report is hereby presented to the Commission for determination.

Endorsed by:



Ben Lusher
Director
Key Sites Assessments

Endorsed by:



Anthea Sargeant 12/7/18
Executive Director
Key Sites and Industry Assessments

APPENDIX A RELEVANT SUPPORTING INFORMATION

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

1. Modification Request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8973

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8973

3. Proponent's Preferred Project Report

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8973

APPENDIX B STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2016

The State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP) came into force on 3 April 2018. The Coastal SEPP consolidated and replaces SEPP 14, (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal SEPP gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective. It defines four coastal management areas and specifies assessment criteria that are tailored for each coastal management area. The consent authority must apply these criteria when assessing proposals for development that fall within one or more of the mapped areas.

The Coastal SEPP identifies the site is located partly within both the Coastal Environment and Coastal Use Areas and therefore clauses 14 and 15 apply to the site. Clauses 14 and 15 require the consent authority to be satisfied the following matters in **Table 9** are addressed in respect of all applications.

Table 9: Draft Coastal SEPP, Clauses 14 and 15 matters for consideration

Draft Coastal SEPP matters for consideration	Comment
Clause 14 – Coastal Environmental Area	
(a) is not likely to cause adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment, and	The modification does not propose to change the footprint of the development and would not have any additional environmental impacts.
(b) is not likely to significantly impact on geological and geomorphological coastal processes and features or be significantly impacted by those processes and features, and	Refer to (a) above.
(c) is not likely to have an adverse impact on the water quality of the marine estate, and	Refer to (a) above.
(e) will not adversely impact Aboriginal cultural heritage and places, and	The modification does not propose to change the footprint of the development and would not have any archaeological impacts.
(f) incorporates water sensitive design, including consideration of effluent and stormwater management, and	The modification does not propose to change the footprint of the development and will continue to use existing effluent and stormwater infrastructure. WSUD and the detailed design of the building would be subject to future DA(s) and FEAR 36 requires the preparation of Stormwater Management Plan for each stage of development.
(g) will not adversely impact on the use of the surf zone.	The modification does not propose to change the footprint of the development and would not impact on the surf zone.
Clause 15 – Coastal Use Area	
(i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and	The modification retains public pedestrian access to the foreshore.
(ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and	The modification would not result in adverse overshadowing, wind or view impacts from public places to the foreshore.
(iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and	Due to the retention of the 10 storey maximum height of Stage A, the proposed modification would not have an adverse visual impact.
(iv) will not adversely impact on Aboriginal cultural heritage and places, and	Refer to (e) above.
(v) will not adversely impact on use of the surf zone, and	Refer to (g) above.

(b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.	Refer to (iii) above.
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APPENDIX C RECOMMENDED INSTRUMENT OF MODIFICATION

The recommended conditions of consent can be found on the Department's website:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8973