



Marrickville Metro

*Modification of
Concept Approval
(MP09_0191
MOD7)*



July 2019

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Cover photo

Perspective view looking west along Edinburgh Road towards the development (Source: MP 09_0191 MOD 6)

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Glossary

Abbreviation	Definition
BSD	Building Security Deposit
Concept approval / concept plan	Approved concept plan for the redevelopment of the site (MP 09_0191)
Council	Inner West Council
Department	Department of Planning, Industry and Environment
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
ST&OP Regulation	<i>Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
ESD	Ecologically Sustainable Development
GFA	Gross floor area
Minister	Minister for Planning and Public Spaces
Secretary	Secretary of the Department of Planning, Industry and Environment
Proponent	AMP Capital
Transport for NSW (RMS)	Transport for NSW (Roads and Maritime Services)
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
TfNSW	Transport for New South Wales



1. Introduction

1.1 Preamble

This report provides an assessment of an application to modify the concept plan for the expansion of the Marrickville Metro Shopping Centre at 34 Victoria Road and 13-55 Edinburgh Road, Marrickville (MP 09_0191), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The modification application seeks to:

- allow the building security deposit (BSD) and public domain works bond to be repaid to the Proponent between development stages (1A, 1B and 2) (Conditions B6 and B7)
- allow Council to approve temporary extensions to the approved construction hours (Condition D1).

The application has been lodged by Marrickville Metro Pty Ltd as trustee of the Marrickville Metro Trust (the Owner) and AMP Capital Investors (AMP Capital) (the Proponent). The site is located within the Inner West local government area (LGA).

1.2 The site

The site is the Marrickville Metro Shopping Centre and comprises two parcels of land being 34 Victoria Road and 13-55 Edinburgh Road. It is located approximately 8 km south-west of the Sydney Central Business District (CBD) and approximately 2.5 km from Marrickville Railway Station, 1.1 km south of St Peters Railway Station and 1.6 km north of Sydenham Railway Station (**Figure 1**).

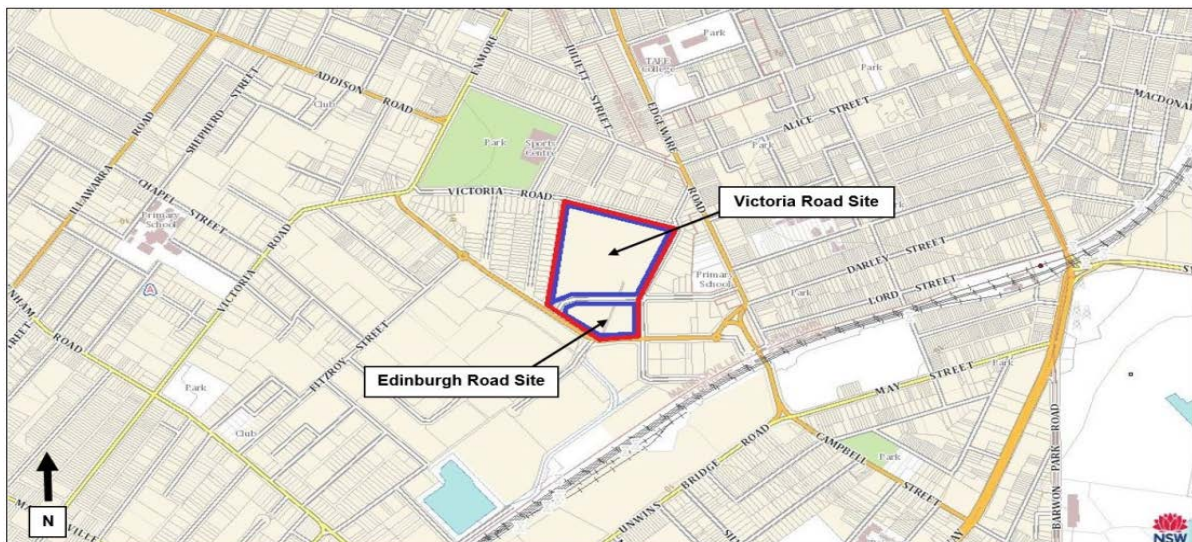


Figure 1 | The concept approval site location (outlined in red) (Base source: Six Maps)

The Victoria Road site is approximately 3.5 hectares in size and fronts Victoria Road to the north, Murray Street to the east, Smidmore Street to the south and is adjacent to residential properties fronting Bourne Street to the west (**Figure 2**). The Marrickville Metro Shopping Centre currently occupies the Victoria Road site and comprises 28,925 m² of retail GFA. Retail floor space is provided at ground level with rooftop car parking above (1,018 spaces). The site is accessed via Smidmore Street with loading facilities located at the south-western and north-western corners of the site.

The Edinburgh Road site is approximately 0.88 hectares, and fronts Edinburgh Road to the south, Murray Street to the east, and Smidmore Street to the north. An industrial warehouse building with ancillary structures and car parking currently occupies the site. Site access is principally via Smidmore Street and loading facilities are located on both the Smidmore Street and Murray Street frontages of the building.

The site is adjoined by low density residential properties to the north and west and industrial properties to the east and south.



Figure 2 | Aerial view of the site showing the two sites of the concept approval area (shaded blue), and the surrounding context (Base source: Nearmap)

1.3 Approval History

1.3.1 Concept plan approval (MP 09_0191)

On 19 March 2012, the former Planning Assessment Commission (the Commission) approved the concept plan (MP 09_0191) for the expansion of the Marrickville Metro Shopping Centre, including:

- demolition of existing warehouse buildings and associated structures on the Edinburgh Road site
- refurbishment and construction of a first-floor addition to the existing shopping centre building on the Victoria Road site and construction of a new building with two levels of retail on the Edinburgh Road site (total additional 21,780 m² GFA)
- 528 additional car parking spaces (total of 1,628 spaces) in two levels of roof top parking over both buildings
- staging of development, with Stage 1 being the Edinburgh Road site and the south-east corner of the Victoria Road site and Stage 2 being the remainder of the Victoria Road site.

The concept approval was approved at project detail, subject to conditions.

1.3.2 Modifications to the concept approval

The concept approval has been previously modified on five occasions and a further modification (MOD 4) was withdrawn (**Table 1**).

Table 1 | Summary of modifications to the concept approval

Mod No.	Summary of Modifications	Approval authority	Approval Date
MOD 1	Internal and external amendments to the Edinburgh Road site and reduction in car parking from 1,628 to 1,606 spaces across both sites.	Director	16 April 2013
MOD 2	Modification to introduce an early works stage (Stage 1A) for works to the northern part of the Victoria Road Site (Figure 3).	Executive Director	23 April 2015
MOD 3	Modification to amend requirements for deliveries to the Victoria Road site.	Director	11 February 2016
MOD 4	This modification did not proceed.	NA	Withdrawn
MOD 5	Modification to defer the execution of the Voluntary Planning Agreement (VPA) with Council until Stage 1B.	Director	27 July 2016
MOD 6	Internal and external amendments including a new pedestrian bridge, realignment of Smidmore Street, public domain landscaping and extension of opening hours for retail tenancies on Smidmore Street.	Executive Director	31 October 2018

This approval requires a minimum of three-years between the occupation of Stages 1 (1A and 1B) and 2. The approved staging plan (as modified) is shown in **Figure 3**.

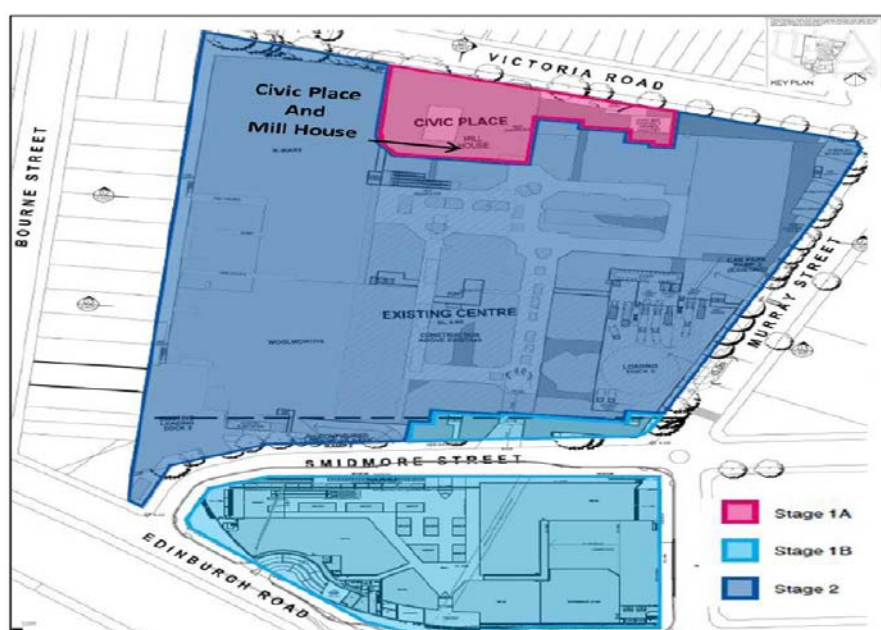


Figure 3 | Approved development stages: 1A (pink- completed) 1B (light blue) and 2 (dark blue) (Base source: MP 09_0191 MOD 6)



2. *Proposed Modification*

2.1 Description of proposed modification

On 27 March 2019, the Proponent lodged a request to modify the current approval under section 75W of the EP&A Act (MP 09_0191 MOD 7).

The modification seeks to:

- allow the building security deposit (BSD) and public domain works bond to be refunded to the Proponent between development Stages 1A, 1B and 2 (Conditions B6 and B7)
- allow Council to approve temporary amendments to the approved construction hours (Condition D1).

A link to the modification application documents is provided in **Appendix A**.

No physical changes to the approved works are proposed.



3. Strategic Context

3.1 Greater Sydney Regional Plan

The Greater Sydney Commission (GSC) has prepared The Greater Sydney Region Plan to provide a 40-year vision for a metropolis of three cities; an Eastern Harbour City, the Western Parkland City and the Central River City, that will rebalance growth and deliver its benefits more equally and equitably to residents across Greater Sydney.

The proposed modification does not involve any physical changes to the approved development. The development therefore remains consistent with the Greater Sydney Region Plan, support jobs growth and retail floor space within the Eastern Harbour City.

3.2 Eastern City District Plan

The GSC's role is to coordinate and align planning to shape the future of Metropolitan Sydney. The GSC has prepared District Plans to implement the Regional Plan through local council planning and influence decisions of state agencies. The aim of the District plans is to connect local planning with the longer-term metropolitan planning for Greater Sydney.

The site is located within the Eastern City District area. The proposed modification does not involve any physical changes to the approved development. The development therefore remains consistent with and contributes to the objectives and priorities in the Eastern City District Plan, including:

- Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities
- Planning Priority E6: Creating and renewing great places and local centres and respecting the district's heritage.



4. Statutory Context

4.1 Scope of Modification

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

Under clause 3BA of Schedule 2 of the ST&OP Regulation a concept approval may continue to be modified under section 75W after March 2018 where the Minister is satisfied that:

- the proposed modification is to correct a minor error, misdirection or miscalculation; or
- the proposed modification is of minimal environmental impact; or
- the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).

The Department concludes that the Minister (or delegate) can reasonably form the view that the modification request is within the scope of section 75W of the EP&A Act and is capable of being determined pursuant to the transitional provisions under clause 3BA of Schedule 2 of the ST&OP regulation. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or delegate) can be satisfied that the concept plan may be modified under section 75W of the EP&A Act.

Section 75W of the EP&A Act provides that a Proponent may request the Minister to modify the Minister's approval for a project.

4.2 Approval Authority

In accordance with the Minister's delegation dated 11 October 2017, the Director, Key Sites Assessments may determine the application under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- no public submissions in the nature of objections were received.

4.3 Environmental Planning Instruments

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

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- Draft State Environmental Planning Policy (Remediation of Land)
- Marrickville Local Environmental Plan 2011.

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 modification does not result in any inconsistency with these EPIs.

4.4 Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.



5. Engagement

5.1 Department's Engagement

In accordance with the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), the modification application was not required to be publicly notified or advertised. However, it was made publicly available on the Department's website on 4 April 2019, and referred to relevant government agencies, including Transport for NSW (TfNSW), Transport for NSW (RMS) (formerly Roads and Maritime Service) and Inner West Council (Council), with a request for comments by 22 April 2019 (18 days).

5.2 Summary of Submissions

The Department received a submission from Council and advice from two government agencies. No public submissions were received. Copies of the submissions may be viewed at **Appendix A**.

5.3 Key Issues – Government Agencies

Table 2 | Summary of government agency submissions

Agency	Comments
TfNSW	Did not object to the application and noted the modifications to be of minimal environmental impact.
Transport for NSW (RMS)	Did not object to the modification and noted that the modifications would not impact the classified road network.

5.4 Key Issues – Council

Council did not object to the proposal and provided the following comments:

- should be no gaps in construction of the project where Council is left without holding adequate security
- return of building security deposit should be subject to Council confirmation that there is no building damage
- provision should be made that Council can draw on the securities to rectify building damage if not repaired within a reasonable time by the Proponent
- do not object to additional flexibility for construction hours for occasional "one-off" project specific matters such as large concrete pours or crane deliveries but raised concern about the proposed condition wording being too flexible and the need to ensure appropriate notification of surrounding properties. Council suggested alternate wording, with a limit on the type of works, their duration and number of extensions per year which may be granted.

5.5 Response to Submissions

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 submissions.

On 17 June 2019, the Proponent provided a Response to Submissions (RtS) (**Appendix A**) which provided revised wording for Conditions B6, B7, and D1 to address Council's concerns. The RtS was made publicly available on the Department's website and referred to Council. Council provided further comments on the RtS and advised that:

- the amendments to Conditions B6 and B7 satisfy concerns previously raised
- amendment of Condition D1 is agreed subject to revised wording to limit the scope of any future requests to specific works only and include details of the application and notification requirements.



6. Assessment

6.1 Key assessment issues

The Department has considered the modification application and the comments from Council and agencies in its assessment. The key considerations associated with the modification application are:

- security deposits/bonds
- out of hours construction work.

6.2 Security deposits/bonds

Condition B6 secures payment of a building security deposit (BSD) against any damage caused to Council infrastructure during construction. The BSD was paid prior to the issue of the construction certificate for Stage 1A which is now complete. As currently worded, the condition allows for this payment to be retained by Council until the completion of all construction works pursuant to the concept approval.

Condition B7 requires payment of a bond to secure the performance of road and drainage works during construction and is required to be paid (or secured via Bank Guarantee) prior to the issue of a construction certificate for Stage 1B. The condition does not specify when the payment must be returned to the Proponent.

The concept approval secures a three-year delay between the commencement of operations of Stage 1 (split into Stages 1A and 1B under MP09_0191 MOD 2) and Stage 2, to give adjacent retailers time to adjust to the commercial impacts of the expanded shopping centre. The Proponent contends that it is unreasonable for the BSD and bond to be held by Council during this three-year period and is seeking to amend Conditions B6 and B7 to allow for the return of payments following completion of each construction stage. Furthermore, the Proponent has advised that following completion of Stage 1A and the appointment of a new contractor to undertake Stage 1B works, the amendments are necessary to enable the return of the BSD and bond to the original contractor.

Council did not object to the proposed changes to Conditions B6 or B7 however sought to confirm wording of the condition that would ensure:

- there would be no gaps in construction of the project where Council is left without holding adequate security
- the return of building security deposit should be subject to Council confirmation that there is no building damage
- provision for Council to draw on the securities to rectify building damage if not repaired within a reasonable time by the Proponent.

The Proponent proposed revised wording of the conditions as follows:

Condition B6

*Payment to Council of \$86,700.00 prior to the issue of the Construction Certificate for Stage 1A as a Building Security Deposit (B.S.D.) to provide security against damage to Council's infrastructure. The B.S.D. may be held by Council until all construction **of Stage 1A** under this approval has been completed and Council may utilise part or all of the B.S.D. to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations. **The Council shall refund the B.S.D. payment to the Proponent following completion of Stage 1A. Payment shall be made again to Council prior to issue of a***

Construction Certificate for the road works for Stage 1B and prior to issue of a Construction Certificate for Stage 2. The B.S.D payment shall be refunded following completion of each of these individual stages. Works shall not commence if a B.S.D has not been paid.

Prior to the refund of the B.S.D, the Council shall confirm that there is no damage to existing Council's infrastructure. In circumstances where there is damage to Council infrastructure, Council shall have the ability to draw on the B.S.D. to rectify any damage, if it is not rectified by the Proponent in a reasonable timeframe to be agreed between the parties.

Condition B7

Payment of a Bond, in the sum of \$380,000.00 for the proper performance of road, drainage, traffic management and public utility adjustment works (public domain works) prior to the issue of the Construction Certificate for Stage 1B **and refunded following completion of Stage 1B. Payment of the same sum is required prior to issue of a Construction Certificate for Stage 2 and refunded following completion of those works. Stage 2 works shall not commence if a Bond has not been paid.**

The security may be provided in one of the following methods:

- (a) in full in the form of a cash bond supported by a legal agreement prepared by Council's Solicitors at the proponent's expense; or
- (b) by provision of a Bank Guarantee by an Australian Bank in the following terms:
 - (i) the bank must unconditionally pay the guaranteed sum to the Council if the Council so demands in writing.
 - (ii) the bank must pay the guaranteed sum within seven (7) days of demand without reference to the proponent or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to consent or the carrying out of development in accordance with the consent;
 - (iii) the bank's obligations are discharged when payment to the Council is made in accordance with this guarantee or when the Council notifies the bank in writing that the guarantee is no longer required.

Prior to the Bond being refunded at the end of Stage 1B and Stage 2, Council shall confirm that there is no damage to existing Council infrastructure. In circumstances where there is damage to existing public infrastructure, Council shall have the ability to draw on the Bond to rectify any damage, if it is not rectified by the Proponent in a reasonable timeframe to be agreed between the parties.

The Department considers that the return and subsequent repayment of the BSD and bond between each development stage is acceptable as it would still achieve the intent of the original conditions, to provide security for Council against the cost of repairs and maintenance for the duration of construction. Furthermore, the Department considers that it would be reasonable for the BSD and bond payments to be refunded to the Proponent during the period between completion of Stage 1B and the commencement of construction of Stage 2, when construction is not permitted.

The proposed condition wording has been agreed by Council.

For these reasons the Department supports the proposed changes to Conditions B6 and B7.

6.3 Out of hours construction work

The Proponent seeks to amend Condition D1 (Hours of work) to allow Council to approve out of hours construction works for specific works including:

- pouring large floor or roof slabs, or other concrete pours

- having heavy equipment such as cranes delivered or removed
- works for infrastructure/ utilities (such as Sydney Water assets and electrical/gas utilities) that run under the road or footpath
- pedestrian bridge construction
- roadwork construction.

The Proponent contends that temporary out of hours construction is likely to be required from time to time and that Council is the most appropriate authority to consider such requests.

Council initially raised concerns that the suggested condition wording is too flexible and the need to ensure appropriate notification of surrounding properties. However, after further discussion with the Proponent, both parties have agreed to revised condition wording which allows Council to consider applications for extended construction hours for specific works and outlines the requirements for the application and notification of surrounding properties. The revised wording is as follows:

Condition D1

All demolition, construction and associated work necessary for the carrying out of the development is restricted to:

- (i) between the hours of 7.00 am to 5.30 pm Mondays to Fridays and 8:00am to 1:00pm, Saturdays for works on the Victoria Road site; and*
- (ii) between the hours of 7.00 am to 5.30 pm Mondays to Saturdays, for works on the Edinburgh Road site.*

Notwithstanding the above, no work is to be carried out on any Sunday, Public Holiday or any Saturday that falls adjacent to a Public Holiday

All trucks and vehicles associated with the construction, including those delivering to or removing material from the site, only having access to the site during the hours referred to in this condition. No waste collection skips, spoil, excavation or demolition material from the site or building materials associated with the construction of the development being deposited on the public road, footpath, public place or Council owned property without Council's approval, having first been obtained. The developer being responsible to ensure that all contractors associated with the development are fully aware of these requirements.

Extended construction hours may be applied for with Council. The requested extended construction hours may only take place Monday to Friday, and excludes any Public Holidays which fall on a week day. The requested extended construction hours must relate to one of the following works:

- **pouring large floor or roof slabs, or other concrete pours**
- **having heavy equipment such as cranes delivered or removed**
- **works for Infrastructure/Utilities (such as Sydney Water assets and electrical/gas utilities) that run under the road or footpath**
- **pedestrian bridge construction**
- **roadwork construction.**

An application for extended construction hours must be made to Council a minimum of 72 hours prior to commencement. Within this application to Council the Applicant must demonstrate, to Council's satisfaction, that affected neighbours including those in the immediate vicinity, adjacent or adjoining the development site have been notified by way of written advice. This written advice must include the following details:

- **date/s the extended hours will be utilised**
- **the purpose of the extended hours – for example pouring a large slab**
- **address of the development works / site**
- **contact name and number of appropriate site officer (supervisor or manager), who will be on-site overseeing the works taking place during the extended hours, for enquiries.**

The Applicant must provide Council with a copy of the letter and a map or list identifying those affected neighbours who have been notified. Residents will not be required to be re-notified again when the -out-of-hours work permit is granted.

The Department considers that Council is well placed to assess and monitor the impacts of out of hours construction in the local area and agrees that allowing Council to consider and approve such hours would be more practical and time efficient than requiring further modifications to the concept approval.

The Department considers the Proponent's request is acceptable for the following reasons:

- carrying out specific works including crane deliveries, infrastructure works, and works on or above roadways may minimise impacts on the road network outside of standard construction hours
- the agreed wording provided by Council limits any request to Monday to Friday only, excluding public holidays, to protect the amenity of the surrounding residential area
- the condition provides for appropriate notification of surrounding properties both before and after approval of out of hours work.

However, the Department considers that an additional safeguard is required to ensure that any impacts or complaints that arise during out of hours work are effectively dealt with and measures taken to minimise impacts to surrounding properties. Subject to an amendment to Condition D1 to require complaint management and response, the Department supports the proposed modification to allow out of hours work applications to be made to Council.



7. Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as it:

- complies with relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- is of minimal environmental impact
- ensures the necessary BSD and bond payments are secured for each construction stage, while providing flexibility for their repayment between stages
- enables Council to consider applications for out of hours work, subject to conditions limiting the extend of works, notification of affected properties and appropriate management of any complaints.

Consequently, the Department concludes the proposal is in the public interest and should be approved, subject to the recommended changes to the conditions of consent (**Appendix B**).



8. Recommendation

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

- **considers** the findings and recommendations of this report;
- **determines** that the modification application (MP09_0191 MOD 7) falls within the scope of section 75W of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for approving the modification application;
- **modifies** the consent MP09_0191; and
- **signs** the attached Modification of Development Consent (**Appendix B**).

Recommended by:

AWatson

Amy Watson

Team Leader

Key Sites Assessments



9. Determination

The recommendation is: **Adopted by:**

David McNamara

Director

Key Sites Assessments



Appendices

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 Application
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9940
2. Submissions
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9940
3. Response to Submissions
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9940

Appendix B – Recommended Instrument of Modification

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9940