



# ***Freeway North Business Park Modification***

*Concept Plan and Project  
Approval Modification  
(MP 06\_0199 MOD 2)*

October 2019

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# Glossary

Abbreviation	Definition
Council	City of Newcastle Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EP&A ST&OP Regulation	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning
Proponent	Heatherbrae Investments
RFS	Rural Fire Service
RMS	Roads and Maritime Services
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



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# 1. Introduction

## 1.1 Background

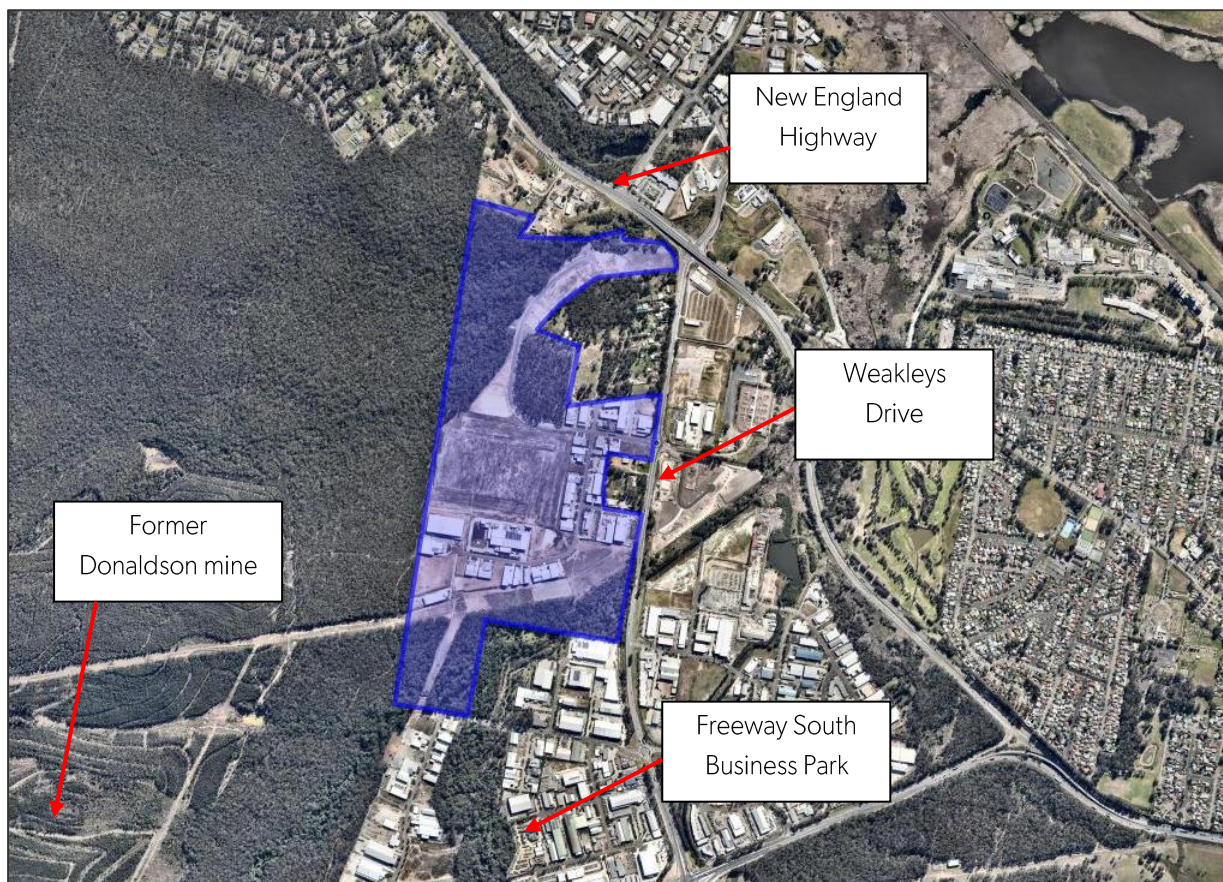
This report provides an assessment of an application to modify the Concept and Project Approval (MP 06\_0199) for an industrial subdivision at Freeway North Business Park, in the Newcastle local government area (LGA).

The request was lodged by Hunter Land Pty Ltd, on behalf of Heatherbrae Investments (the Proponent). The modification to the Concept Plan was lodged pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the modification to the Project Approval was lodged pursuant to section 4.55(1A) of the EP&A Act.

The application seeks approval to subdivide Lot 124 into 29 lots, increasing the number of industrial lots on the site from 56 to 85.

## 1.2 Subject site

The subject site is located in Beresfield, approximately 20 km north west of Newcastle. The site is 85 ha and is bounded by the New England Highway to the north, Weakleys Drive to the east, the Freeway South Business Park to the south and the former Donaldson mine to the west (**Figure 1**).



**Figure 1** | Location Plan (Base source: Nearmap)

### 1.3 Approval History

On 29 September 2008, the then Minister for Planning granted MP 06\_0199:

- Concept Approval for a 90 lot subdivision for an industrial business park, associated services and infrastructure and conservation lands (refer to **Figure 2**).
- Project Approval for the following:
  - 90 lot subdivision and construction of associated works including streets, stormwater management works, utility services and bulk earthworks
  - Public domain improvements, including street trees
  - The use of the land for industrial business park and environmental conservation.

The Concept and Project Approval were modified on 23 February 2011, to consolidate 34 lots to create one 15 ha lot (Lot 124), reducing the total number of lots across the site from 90 to 58 (56 industrial lots and two conservation/drainage lots) (refer to **Figure 3**). The modification was requested on the basis that a 15 ha site was required to allow for an Aldi regional distribution warehouse to be located on the site.

The lots as approved in this modification (MOD 1) have been registered, and construction of the majority of industrial buildings has been completed.



## 2. Proposed Modification

On 15 February 2019, the Proponent lodged a request to modify the Concept and Project Approval to:

- subdivide Lot 124 into 20 lots
- remove the reference to a maximum number of lots in the Concept Approval
- remove the conditions and commitments relating to bushfire protection.

The modification is requested on the basis that the approval for the Aldi distribution centre has lapsed and it is no longer proposed, therefore the 15 ha site is no longer required.

The proposal was amended in response to concerns raised in agency submissions, and the proposal as modified seeks approval to:

- subdivide Lot 124 into 29 lots to create a total of 87 lots across the site (85 industrial lots and two conservation/drainage lots)
- include a stormwater basin to the north east of existing Lot 124.

The original approved subdivision plan, plan approved under MOD 1, and the proposed subdivision plan are shown at **Figures 2 to 4** below.



Figure 2 | Original Approved Plan

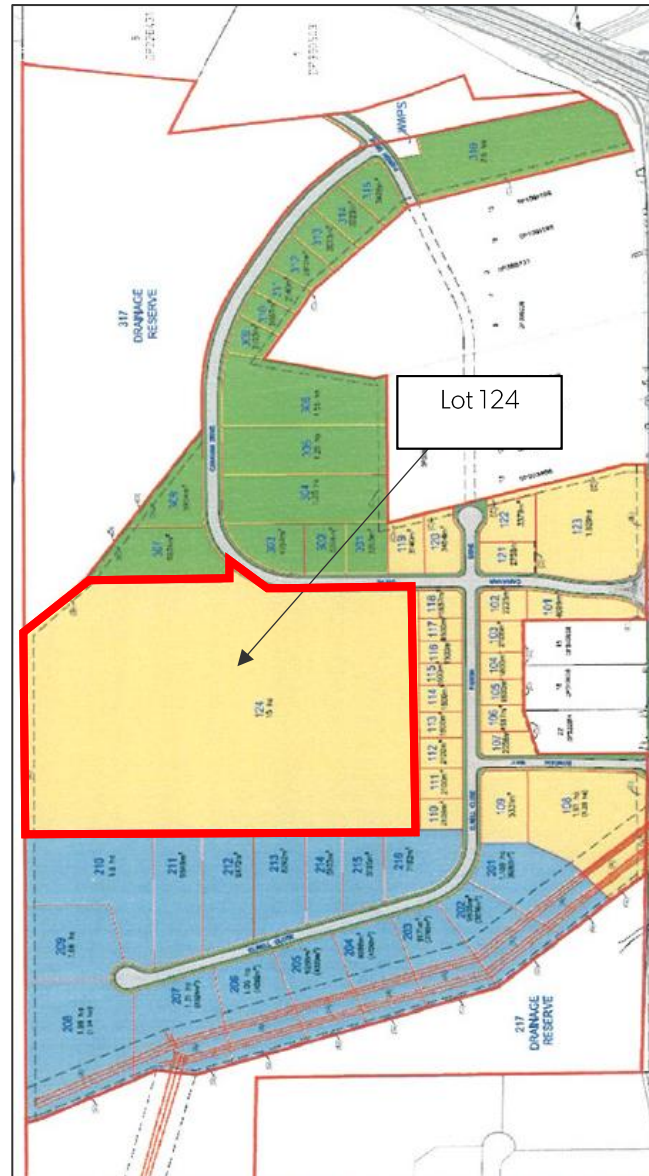


Figure 3 | MOD 1 Approved Plan

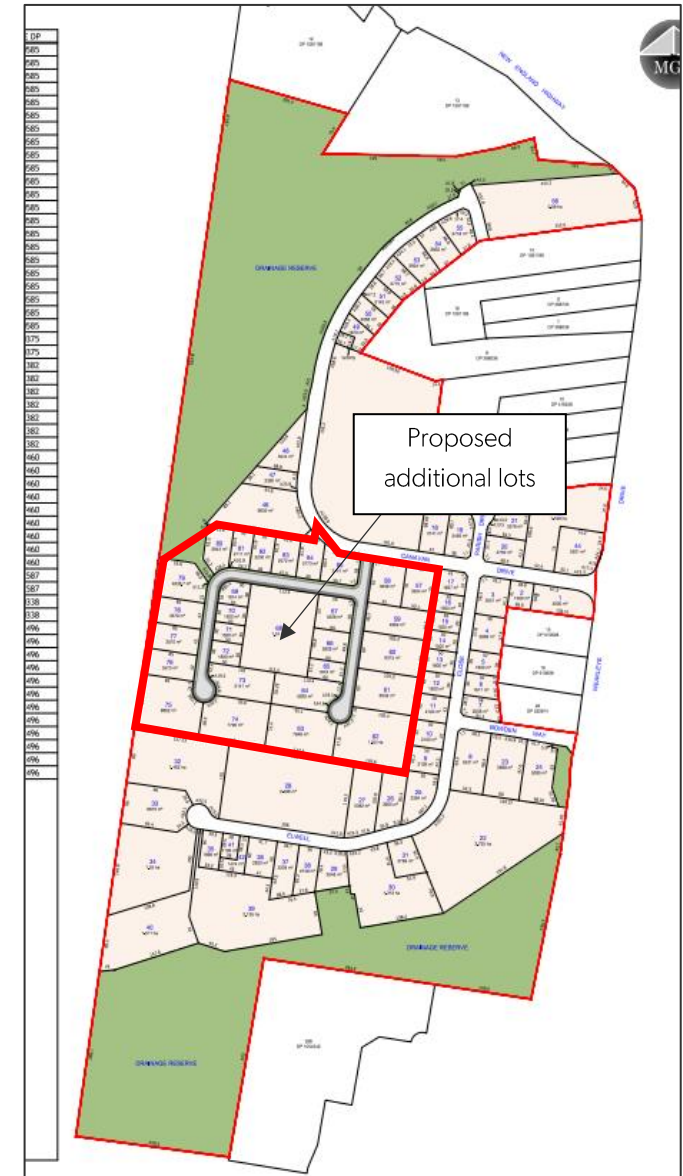


Figure 4 | Proposed Plan



## 3. Statutory Context

### 3.1 Section 75W (Concept Approval)

The project was originally approved under Part 3A of the EP&A Act. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up.

-+Clause 3BA(5) of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation) provides that a Concept Plan may continue to be modified under section 75W in response to a request lodged before or after 1 March 2018 if the Minister is satisfied that:

- a) the proposed modification is to correct a minor error, misdescription or miscalculation, or
- b) the proposed modification is of minimal environmental impact, or
- c) 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).

This proposal seeks to subdivide an existing lot into 29 lots, resulting in a subdivision layout consistent with that originally approved. As such the Department is satisfied that the proposal is within the scope of clause 3BA(5)(b) as it is of minimal environmental impact. **Section 5** of this report provides an assessment of the impacts associated with this proposal.

### 3.2 Part 3A Transition to State Significant Development (Project Approval)

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

On 12 February 2019, the Director, Regional Assessments (as delegate of the Minister for Planning) made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. This order was published in the NSW Government Gazette on 15 February 2019 and took effect from that date.

The effect of this order is that the:

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

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

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

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

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>The application seeks approval to subdivide Lot 124 into 29 lots, increasing the total number of lots on the site from 56 to 87 (including two drainage/conservation lots).</p> <p><b>Section 5</b> of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.</p>
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The Department is satisfied the modification is substantially the same development as originally granted as the total number of lots proposed is less than the original approval.</p>
c) the application has been notified in accordance with the regulations, and	<p>The modification application has been notified in accordance with the regulations. Details of the notification are provided in <b>Section 4</b> of this report.</p>
d) any submission made concerning the proposed modification has been considered.	<p>The Department received 3 submissions from Council and agencies. Details of the submissions and the Department's consideration can be found in <b>Section 4</b> of the Report</p>

### 3.3 Environmental Planning Instruments

The following EPIs are relevant to the applications:

- State Environmental Planning Policy (State Significant Precincts) 2005;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- Newcastle Local Environmental Plan 2012 (Newcastle LEP 2012).

The Department has considered the proposed modifications against these EPIs, and is satisfied that the proposal continues to be consistent with the requirements of the EPIs.

### 3.4 Consent Authority

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

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.



## 4. Engagement

### 4.1 Department's Engagement

The Department notified the modification request for 14 days from 25 March 2019 to 8 April 2019. The request was made publicly available on the Department's website, notified to Newcastle Council (Council), Roads and Maritime Services (RMS), Rural Fire Service (RFS) and surrounding landowners and residents.

No **public** submissions were received.

### 4.2 Agency Submissions

**Council** provided the following comments:

- insufficient details on the subdivision plan have been provided to determine if the proposal would comply with the Newcastle Development Control Plan 2012
- the removal of the reference to a maximum number of lots in the Concept Plan is not supported
- the traffic generated by the additional lots is unlikely to differ from the original approval and is considered satisfactory
- a Traffic Impact Assessment addressing the impacts of the additional traffic on the intersection with Canavan Drive is required
- the Department should ensure appropriate conditions are maintained to ensure bushfire threat is considered, and appropriate mitigating measures are imposed.

**RFS** raised no objection to the proposal subject to compliance with the existing bushfire requirements as outlined in the Instrument and Statement of Commitments.

**RMS** raised no objection to the proposal but did not support the proposed removal of the maximum number of lots, as the impact on Weakleys Drive of any additional lots above 90 has not been analysed.

### 4.3 Response to Submissions

On 8 July 2019, the Proponent provided a Response to Submissions (RtS) to address the issues raised during the notification period (**Appendix A**).

The RtS included the following:

- an updated subdivision plan clearly showing the number of lots proposed, the proposed lot sizes and details of proposed roads
- a Traffic Impact Assessment addressing the impact of the additional lots on the intersection of the proposed roads within Lot 124 and Canavan Drive
- amended stormwater plans showing a stormwater detention basin located on the north western corner of existing Lot 124
- confirmation that the removal of the reference to the maximum number of lots in the Concept Plan is no longer sought
- confirmation that the removal of conditions relating to bushfire protection is no longer sought.

**Council** reviewed the amended proposal and advised:

- The Traffic Impact Assessment does not use the most up to date generation rates, and the adoption of the rates from the latest AECOM Report would increase the number of right turning vehicles exiting the development by approximately 60%
- Notwithstanding this, the modelling provided indicates the intersection would operate at a level of service below 25% of available capacity, and higher traffic volumes using the correct rates is unlikely to cause the intersection to operate at an unacceptable level
- The stormwater plans do not reference Newcastle Council standards and should be updated accordingly.



## 5. Assessment

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

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project (as modified)
- submissions received on the proposal and the Proponent's response to the submissions
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act.

The Department's assessment of key issues is set out at **Table 2** below.

**Table 2** | Assessment of key issues

Issue	Findings	Recommended Condition
Subdivision layout	<ul style="list-style-type: none"><li>• The proposal seeks to amend the approved subdivision layout to accommodate an additional 29 lots.</li><li>• The Department considers the proposed lot layout is acceptable as:<ul style="list-style-type: none"><li>○ the proposed lots are consistent with Newcastle Council's controls, and all meet the minimum lot size requirement of 1,000 m<sup>2</sup></li><li>○ the proposed layout is generally consistent with the original approval, before Lot 124 was consolidated in MOD 1 (see <b>Figures 2 and 4</b>)</li><li>○ the total number of lots would not exceed the originally approved maximum of 90 lots</li><li>○ the proposed cul-de-sacs have a radius of 15m, which exceeds the RMS requirement of 12.5m for B-doubles</li><li>○ Council raised no concerns with the proposed subdivision layout.</li></ul></li></ul>	The Department has recommended modified conditions A1 and A2 of Schedule 2 and 4 to reference the updated subdivision plan and number of lots.

- The Department notes there are variations between the registered lots and the layout shown on the MOD 1 plan, as a result of Condition A5 which permits boundary adjustments (that do not create an additional lot) to occur without further approval.
- Changes to lots other than the proposed Lot 124 have been not been assessed as part of this modification request.
- Overall, the Department considers the proposed subdivision of Lot 124 is consistent with the relevant controls and would enable smaller industrial uses to be developed on the site.

<b>Traffic</b>	<ul style="list-style-type: none"> <li>• The proposed subdivision layout includes two separate cul-de-sac roads connecting to a single intersection with Canavan Drive.</li> <li>• Council advised that the overall traffic impacts as a result of the proposal are unlikely to be greater than the original or MOD 1 proposal and are therefore satisfactory.</li> <li>• However, Council did raise concern about the potential impacts of the traffic generated by the additional lots on the intersection with Canavan Drive.</li> <li>• The Department notes the Traffic Impact Assessment submitted as part of the RTS demonstrates the impacts on the intersection with Canavan Drive would not cause unacceptable levels of operation.</li> <li>• The Department therefore considers the overall traffic impacts associated with the proposal would be consistent with those already assessed and approved.</li> </ul>	No additional conditions or amendments necessary.
<b>Stormwater</b>	<ul style="list-style-type: none"> <li>• The proposal seeks approval to amend the plans to include a stormwater detention basin to the north east of existing Lot 124.</li> <li>• The Proponent provided updated Stormwater Plans to Council, and Council confirmed the updated plans meet the requirements of Council's DCP, Technical Manual and relevant standard drawings.</li> <li>• The Department notes the proposed stormwater detention basin is consistent with the location approved under MOD 1 to service the Aldi development.</li> <li>• The Department considers the proposed stormwater basin is consistent with the approved stormwater strategy and would not result in any additional impacts beyond those assessed and approved.</li> </ul>	No additional conditions or amendments necessary.

## Bushfire

- The proposal initially sought to remove the conditions relating to bushfire protection.
- RFS reviewed the proposal and advised that compliance with the existing conditions regarding bushfire protection is required.
- In response, the Proponent withdrew the request to remove the conditions relating to bushfire protection.
- The Department is therefore satisfied the proposal would maintain compliance with Planning for Bushfire Protection, and the subdivision of Lot 124 would not require any additional conditions relating to bushfire protection.

No additional conditions or amendments necessary.



## 6. Evaluation

The Department has assessed the modification applications 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:

- would enable smaller industrial uses to be developed on the site
- is generally consistent with the original approval and Council's controls
- would not have additional traffic impacts on the surrounding road network, beyond those assessed and approved.

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



## 7. Recommendation

It is recommended that the Acting Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **Determines** that the modification to the Project Approval 06\_0199 MOD 2 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modify** the Concept Approval (MP 06\_0199)
- **signs** the attached modification of Minister's Approval (**Appendix B**)
- **modify** the development consent 06\_0199
- **signs** the attached modification instrument (**Appendix C**).

Recommended by:

**Emma Butcher**

Planning Officer  
Regional Assessments

Recommended by:

**Silvio Falato**

Team Leader  
Regional Assessments



## 8. Determination

The recommendation is: **Adopted by:**

**Brendon Roberts**

Acting Director  
Regional Assessments



# Appendices

## Appendix A – Relevant Supporting Information

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

1. Modification Request  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9891](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9891)
2. Submissions  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9891](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9891)
3. Response to Submissions  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9891](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9891)

## Appendix B – Notice of Modification

The recommended modification of Concept Plan can be found on the Department's website at:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9891](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9891)

## Appendix C – Notice of Modification

The recommended modification of Project Approval can be found on the Department's website at:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9891](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9891)