



# Epiq Lennox Head Concept Approval Modification 8

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Amendment to Community Hall Statement of Commitment  
Part 3A Modification Assessment  
(MP 07\_0026 MOD 8)

June 2020



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# Glossary

Abbreviation	Definition
<b>Council</b>	Ballina Shire Council
<b>DA</b>	Development Application
<b>Department</b>	Department of Planning, Industry and Environment
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EPI</b>	Environmental Planning Instrument
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>Proponent</b>	Clarence Property Corporation Limited
<b>SEPP</b>	State Environmental Planning Policy
<b>SoC</b>	Statement of Commitment
<b>VPA</b>	Voluntary Planning Agreement

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# 1 Introduction

## 1.1 Background

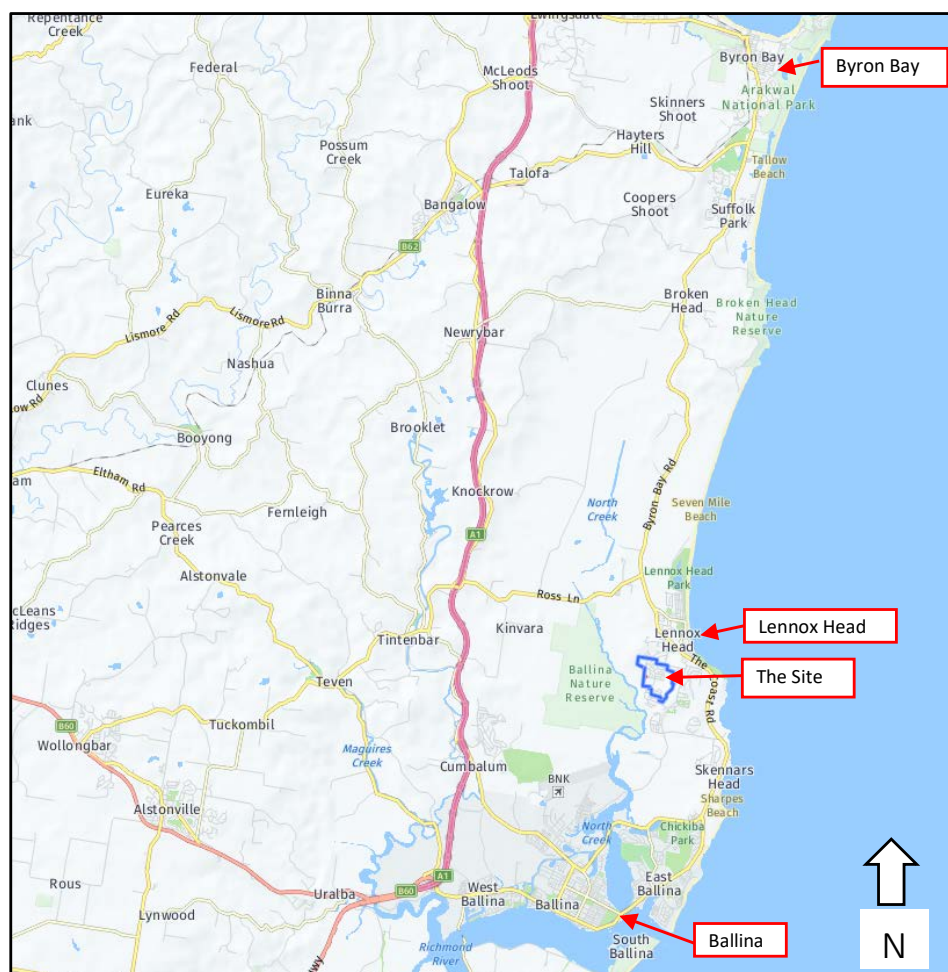
This report provides the NSW Department of Planning, Industry and Environment's (Department) assessment of a request to modify the concept approval (MP 07\_0026) for a residential subdivision known as Epiq Lennox (formerly Pacific Pines Estate) at Lennox Head.

The request seeks to amend a Statement of Commitment (SoC) requiring the provision of a community hall of 300m<sup>2</sup> within the Epiq site, to instead provide an integrated community and sports amenities building on the adjacent Epiq sports fields.

The application was lodged by Clarence Property Corporation Limited (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.2 Subject site

The Epiq site is located at Lennox Head, approximately five kilometres (km) north-west of Ballina and 18km south of Byron Bay, in the Ballina local government area. The site is also located approximately 2km south-west of the Lennox Head Village Centre (**Figures 1 and 2**).



**Figure 1 | Regional Context Map (Source: Nearmap 2020)**



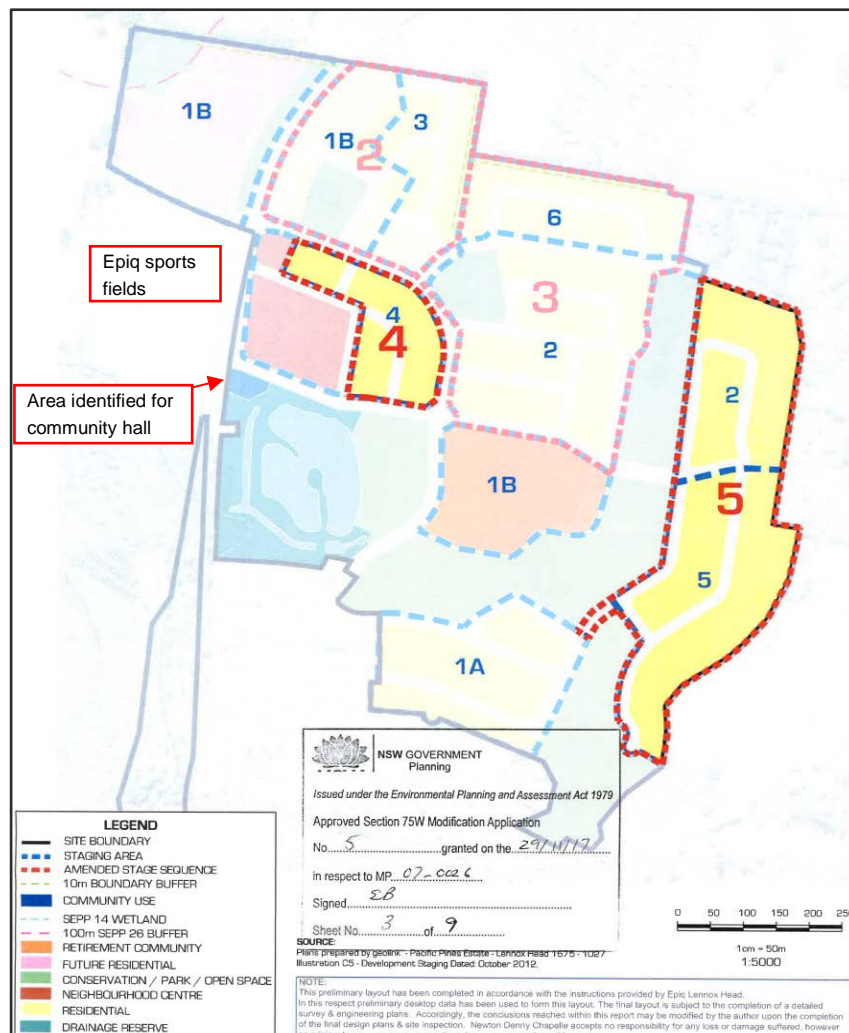


**Figure 2 | Local Context Map (Source: Nearmap 2020)**

The site has an area of approximately 80 hectares (ha) and is irregular in shape. Works relating to the approved subdivision have largely been completed within Stages 1A, 1B, 2 and 3 and construction of Stages 4 and 5 is now in progress (**Figures 2 and 3**).

The modification application relates to an area within the site identified for community use in the concept approval (and project approval) (**Figure 2**). This area has been subdivided (Lot 4 DP 1239938) and dedicated to Ballina Shire Council (Council) as per the terms of the approval. This modification request also relates to the Epiq sports fields, which are adjacent to the site to the west (Lot 216 DP 1017615) and owned by Council.

Low density residential areas are located to the north and south of the site, a mixture of residential and pasture areas are located to the east and west, and to the south-west is the Ballina Nature Reserve.



**Figure 3 | Epiq Development Staging Plan (Source: Approved Plans, MP 07\_0026 MOD 5)**

### 1.3 Approval history

On 12 November 2008, the then Minister for Planning granted concept approval for a mixed-use subdivision (then called Pacific Pines Estate) at Lennox Head (MP 07\_0026), comprising:

- residential subdivision of approximately 505 lots
- a neighbourhood centre comprising up to 3,000m<sup>2</sup> of retail floor space, 800m<sup>2</sup> of commercial space, approximately 20-25 'shop-top' dwellings and approximately 280 parking spaces
- a community hall
- a retirement community, including approximately 113 retirement units with a mixture of assisted and independent living and approximately 124 retirement lots, on-site leisure, open space and recreational facilities
- medium density housing of up to 10 dwellings (density of around 1 dwelling per 250m<sup>2</sup>)
- 25.1 ha of green space incorporating areas for conservation, revegetation and rehabilitation
- a road network connected to various existing roads.

The then Minister for Planning also granted project approval for Stage 1 (MP 07\_0026), which included subdivision of 63 lots in the first three sub-stages.

In addition to this modification, the concept and project approvals have been modified on five occasions and two modifications are currently under assessment, as summarised in **Table 1**.

**Table 1 | Summary of Modifications**

Mod No.	Summary of Modifications	Approval Authority	Type	Status
<b>MOD 1</b>	Administrative changes. ( <i>Project Approval</i> )	Department	75W	Approved on 22 December 2008
<b>MOD 2</b>	Creation of two additional superlots in Stage 1, increase retail space by 1,000m <sup>2</sup> , realign roads, increase the ecological conservation area and other environmental works, and consolidate staging. ( <i>Project Approval and Concept Plan</i> )	Department	75W	Approved on 8 August 2011
<b>MOD 3</b>	Administrative changes. ( <i>Project Approval and Concept Plan</i> )	Department	75W	Approved on 8 September 2011
<b>MOD 4</b>	Delete 18 residential lots, reduce the retirement village lot size, delete the tavern lot, relocate the community hall lot, associated amendment to staging, increase the size of the conservation zone, exclude the Pacific Pines Estate Design Guidelines, and amendment to the Concept Approval lapsing date. ( <i>Project Approval and Concept Plan</i> )	Department	75W	Approved on 13 March 2013
<b>MOD 5</b>	Increase retail floor space by 1,500m <sup>2</sup> , increase the size of the neighbourhood centre lot by 6,660m <sup>2</sup> , redesign the subdivision layout including amend road layouts, lot typologies and lot sizes, relocate Super Lot 3 and delete Super Lot 6, and associated environmental works. ( <i>Project Approval and Concept Plan</i> )	Department	75W	Approved on 20 April 2017
<b>MOD 6</b>	Increase the number of residential lots in Super Lot 7 from 47 to 60, amend the lot mix, provide two new neighbourhood commercial lots and amend the lot layout and road network. ( <i>Project Approval and Concept Plan</i> )	Department	75W	Under assessment
<b>MOD 7</b>	Amend Super Lot 5, including changes to the retirement community to small	Department	75W	Under assessment



integrated housing, establish new detailed design guidelines for the proposed subdivision and development of Super Lot 5 and amend the lot layout and road network.  
(Project Approval and Concept Plan)

Relevant to this modification request, the concept approval includes a SoC that requires the Proponent to subdivide a lot for a community hall with a floor space of 300m<sup>2</sup> in the site, lodge a development application (DA) for the hall, build the hall, and dedicate the land and hall to Council.

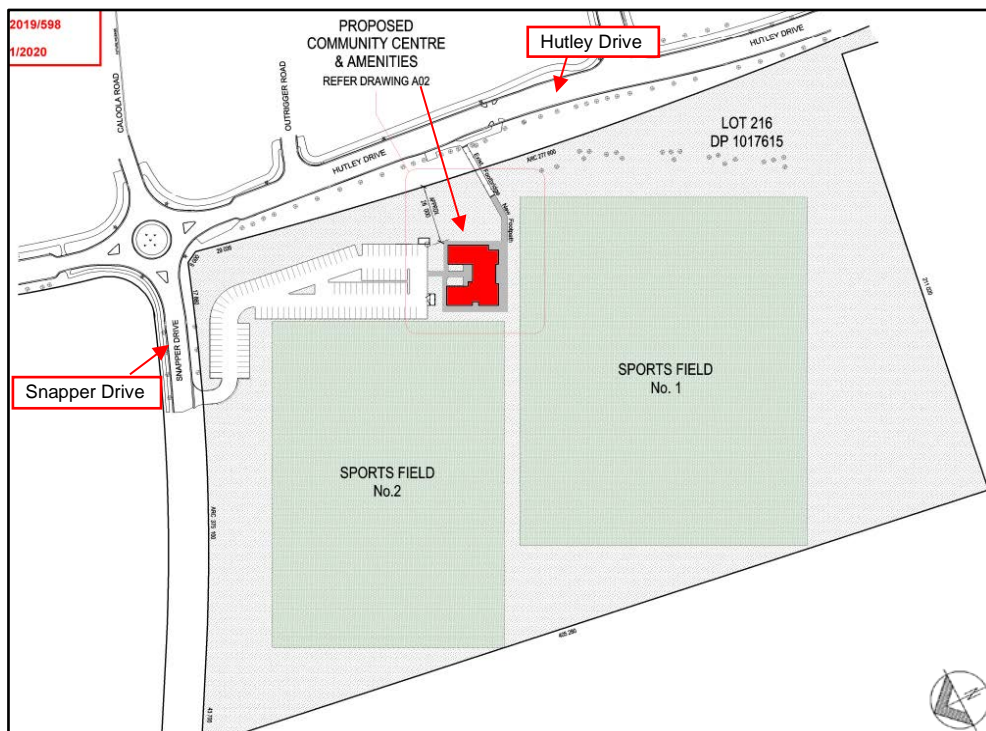
### Other relevant development consents (issued by Council)

#### *Playing Fields (DA 2004/113)*

Development consent DA 2004/113 was issued by Council for the extension of Hutley Drive, construction of the playing fields (on Lot 216 DP 1017615) and associated works. The consent required a sports amenities block, including toilets, small storage areas and an awning area, to be the subject of a separate development application. This DA is referenced in the project approval (Condition I8) which requires that prior to the release of the subdivision certificate for Stage 1B, the Proponent must complete all the works approved by development consent DA 2004/113 (as modified).

#### *Sports Amenities and Community Building (DA 2019/598)*

During the assessment of the proposed modification, Council advised that it had granted development consent DA 2019/598 to the Proponent for an enhanced sports amenities and community building at the Epiq playing fields (**Figure 4**).



**Figure 4 |** Location of the amenities and community building on the Epiq playing fields (Base source: Approved Plans, DA2019/598)

## 2 Proposed modification

### 2.1 Modification

The modification request (MP 07\_0026 MOD 8) seeks approval to amend the SoC requiring the provision of a community hall of 300m<sup>2</sup> within the Epiq site, to instead provide an integrated community and sports amenities building on the adjacent Epiq sports fields, as shown below.

Issue	Commitment	Actions and Timing
Community Facilities	The proponent will provide a multi-purpose community <b>and sports amenities building</b> hall. <b>The design is to be endorsed by Ballina Shire Council, with a floor space of approximately 300 m<sup>2</sup>, and shall be located within the Epiq Sports Field (Lot 216 DP 1017615) neighbourhood centre.</b>	<p>A 'super lot' <b>(Lot 4 DP 1239938) has been will</b> <del>be</del> created in Stage 1 (see Project Approval), with an area of approximately 1,990m<sup>2</sup> <b>and the proponent has dedicated this lot to Council.</b></p> <p><b>Approval has also been granted by Ballina Shire Council under DA 2019/598 for a Community and Sports Amenities Building.</b> <del>the Community Hall.</del> The proponent will build the <b>Community and Sports Amenities Building</b> hall and associated car parking following approval and dedicate the land and <b>supply the</b> completed <b>building</b> hall to Council at a date to be agreed.</p>

### 2.2 Proponent's Justification

The Proponent states that the modification is requested as consultation with Council identified that a second community facility is not required in Lennox Head, and has therefore committed to Council to deliver the multi purpose community and sports amenities building at the Epiq sports field instead. This was supported by a Council resolution on 27 June 2019.

## 3 Statutory context

### 3.1 Section 75W

The concept approval (MP 07\_0026) 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.

However, Clause 3BA(5) of Schedule to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* provides that a concept approval may continue to be modified under section 75W in response to a request lodged 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).

The proposal seeks to amend an existing SoC relating to the provision of community infrastructure in the concept approval. The Department is satisfied that the proposal is within the scope of clause 3BA(5)(b) as it is of minimal environmental impact and the proposal as modified would remain substantially the same. **Section 5** of this report provides an assessment of the impacts associated with this proposal.

### 3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, the Director, Regional Assessments, may determine the application under delegation, dated 9 March 2020, as

- a political disclosure statement has not been made
- there are no public submissions objecting to the proposal

### 3.3 Environmental Planning Instruments

The original concept approval (MP 07\_0026) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Projects) 2005 (now known as the State Environmental Planning Policy (State Significant Precincts) 2005)
- State Environmental Planning Policy No. 11 – Traffic Generating Developments (replaced by State Environmental Planning Policy (Infrastructure) 2007)
- State Environmental Planning Policy No. 14 (Coastal Wetlands) (replaced by the Coastal SEPP)

- State Environmental Planning Policy No. 26 (Littoral Rainforests) (replaced by the Coastal SEPP)
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 71 (Coastal Protection) (replaced by the Coastal SEPP)
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- Ballina Local Environmental Plan 1987 (partly replaced by Ballina Local Environmental Plan 2012).

The Department is satisfied the proposed modification remains consistent with these EPIs, and any recent updates. The Department has also considered the proposal against the requirements of the Coastal SEPP which commenced on 3 April 2018.

*State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)*

The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal SEPP identifies the site of the proposed sports amenities and community building as being located within the Coastal Environment Area and the Coastal Use Area, and therefore clauses 13 and 14 apply. While the proposed modification does not seek approval for the community and sports centre, the Department has generally considered the proposal against these clauses and is satisfied that the proposal is capable of being consistent with the Coastal SEPP.

This is because the community building is to be located on land that has already been approved through the DA for the construction of the playing fields (DA2004/113), is not near the foreshore and the sports and community building in this location has already been approved (DA 2019/598).



## 4 Engagement

### 4.1 Department's engagement

The Department notified the modification request for 14 days between 24 January 2020 and 7 February 2020. The request was made publicly available on the Department's website, notified to Council and surrounding landowners and residents within the Epiq site.

### 4.2 Submissions

The Department received a submission from Council which is summarised below. A link to the submission is provided in **Appendix A**. No public submissions were received.

**Council** provided the following comments:

- the modification represents Council's preferred infrastructure outcome
- the development application (DA 2019/598) for the construction of an amenities and community facility, associated civil works and landscaping on the Epiq playing fields has been approved
- broad terms of a Voluntary Planning Agreement (VPA) have been agreed between Council and the Proponent to set a method of determining the difference in the cost of works currently required and the works proposed in the modification
- the VPA would provide for the direction of payments, either to Council towards provision of playing field lighting or a refund to the Proponent for works incurred in excess of the original commitment
- minor legal drafting matters for the VPA are still underway and it is requested that approval wait until the end of the negotiations to achieve a fair apportionment of costs for the works.

## 5 Assessment

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

- modification request and associated documents (**Appendix A**)
- original Environmental Assessment (EA) and terms of approval, as modified
- submissions received on the proposal
- relevant EPIs, policies and guidelines
- requirements of the EP&A Act.

The proposal seeks to amend the SoC requiring the provision of a community hall of 300m<sup>2</sup> within the Epiq site, to instead provide an integrated community and sports amenities building on the adjacent Epiq sports fields.

The Proponent contends that the modification improves community infrastructure outcomes associated with the Epiq development, as it provides an enhanced purpose built facility that responds to contemporary community infrastructure needs. The Proponent contends that the SoC dates back over 10 years and no longer reflects current Council requirements for the provision of community infrastructure.

Council did not object to the proposal and confirmed that the modification represents its preferred infrastructure outcome. Council have also advised that the broad terms of a VPA have been agreed. This establishes the method for determining the value of any changes to community infrastructure as a result of the proposed modification, provides for the direction of payments and sets out timing for delivery.

Following enquiries by the Department, Council confirmed that the Proponent has submitted a signed VPA, which was on public exhibition until 5 June 2020 and is being recommended to Council for execution later in June 2020. While the VPA is not a requirement of the concept approval, it provides an appropriate mechanism to guarantee the delivery of the community space in accordance with Council's requirements and the SoC.

The proposed change to the SoC states that the design of the building is to be endorsed by Council, which is appropriate given the modification relates to a concept approval. However, as Council have already approved a DA for the community and sports amenities building on the Epiq playing fields (DA 2019/598) (**Section 1.4**), the Department recommends the SoC be amended to reflect the approved DA.

The Proponent has agreed to this recommendation and provided a revised SoC document. The Department also notes that the original SoC required a community building of 300m<sup>2</sup>, whereas the approved building provides 90m<sup>2</sup> of community space, covered patio areas and additional sports amenities, such as change rooms and a canteen.

The Department has reviewed the proposed modification, having regard to the advice from Council, and considers it acceptable as:

- it reflects Council's preference for a smaller community facility co-located with sporting amenities

- a VPA has been prepared and exhibited to guarantee delivery in terms agreeable to Council
- it will continue to provide a public benefit by providing space for community use and additional amenity to the sporting facilities easily accessible to the Epiq site
- it will continue to provide the same amount of funds to be spent on community infrastructure
- the Proponent has already created and dedicated the required community hall lot (Lot 4 DP 1239938) to Council as per the existing SoC, for Council to provide alternate community infrastructure in the future (and this requirement in the SoC is not proposed to change)
- it continues to be consistent with the concept approval and does not seek to change the lot yield or land use designations.

Overall, the Department concludes that the proposal is reasonable and recommends that the modification be approved.

## 6 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 the relevant statutory provisions and remains consistent with relevant EPIs
- is substantially the same development as originally approved, and does not result in adverse environmental impacts
- reflects Council's preference for a smaller community facility co-located with sporting amenities, the delivery of which will be guaranteed through a VPA with Council
- continues to ensure the delivery of community infrastructure and social benefits to residents within the Epiq site and the wider community.

Consequently, the Department is satisfied that the modification request is in the public interest and should be approved.



## 7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces

- **considers** the findings and recommendations of this report
- **determines** that the application MP 07\_0026 MOD 8 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 making the decision to approve the modification
- **modify** the consent MP 07\_0026
- **signs** the attached approval of the modification (**Appendix B**).

**Recommended by:**



**Lawren Drummond**  
Planning Officer  
Regional Assessments

**Recommended by:**



**Silvio Falato**  
Team Leader  
Regional Assessments

## 8 Determination

The recommendation is **Adopted by:**

A handwritten signature in black ink, appearing to read 'B. Roberts', with a long horizontal stroke extending to the right.

23 June 2020

**Brendon Roberts**

Acting Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

# Appendices

## Appendix A – Relevant Supporting Information

1. Modification request

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10095](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10095)

2. Council submissions

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10095](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10095)

3. Additional information

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10095](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10095)

## Appendix B – Modification of Concept Plan Approval

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10095](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10095)