



12 March 2020

## NORDS WHARF CONCEPT PLAN MODIFICATION 1 (MP 10\_0088 MOD 1)

### 1. INTRODUCTION

1. On 14 January 2020, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a request to modify the Nords Wharf Concept Plan [MP 10\_0088 MOD 1] (**NWCP**). The Modification Request (**Modification Request**) seeks to increase the number of lots, provide alternative intersection arrangements, reduce the contribution amount applying to the development and remove the requirement for bank guarantees. The Modification Request was lodged with the Department by the Nords Wharf Development Company Pty Ltd (**Proponent**).
2. The Modification Request was lodged pursuant to s75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and is referred to the Commission under delegation, as the Department received more than 25 submissions objecting to the Modification Request.
3. Professor Mary O’Kane AC, the then Chair of the Commission, nominated Chris Wilson (Chair), Wendy Lewin, and Stephen O’Connor to constitute the Commission determining the Modification Request.
4. The subject site is located at No. 2 and 12 Branter Road, Nords Wharf, and is identified as Lot 1 and 2 DP 1180292 (the **Site**).
5. The Department’s Assessment Report (**AR**) dated January 2020 describes the Site and locality of the Nords Wharf Concept Approval Area (**Concept Approval Area**) at Assessment Report Paragraphs (**ARP**) 1.2.1 to 1.2.2.
6. The main components of the Modification Request are set out in ARP 2.2.1, 2.1.2 and 2.2.1 and Table 1 of the AR. The Modification Request (including the amendments made by the Proponent in the RtS and Updated RtS (paragraphs 12 and 13 respectively), sought approval for the following:
  - increase the number of lots from 90 to 96
  - change two intersections, including:
    - upgrade the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection; and
    - upgrade the Nords Wharf Road and Pacific Highway to a signalised seagull intersection
  - reduce the required \$1 million contribution to \$415,000  
*N.B: The Modification Request and the AR refers to a ‘\$1 million’ contribution amount applying to the NWCP. However, the Commission notes the NWCP was approved with an allocation of \$1.185 million in contributions. This discrepancy is discussed further in paragraph 89.*
  - modify the Statement of Commitments (SoC) and Voluntary Planning Agreement (VPA) to remove the requirement for bank guarantees.
7. On 19 February 2020, the Commission received an Amended Modification Request (**Amended Modification**) from the Proponent (detailed in paragraph 22). This information advised the Commission that the Proponent is no longer seeking to reduce the contribution amount, and this component of the NWCP is to remain as approved. Therefore, for the

purpose of this Statement of Reasons, the Amended Modification before the Commission comprises the following:

- increase the number of lots from 90 to 96;
- change two intersections, including:
  - upgrade the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection;
  - upgrade the Nords Wharf Road and Pacific Highway to a signalised seagull intersection; and
- modify the Statement of Commitments (SoC) and Voluntary Planning Agreement (VPA) to remove the requirement for bank guarantees.

8. The Proponent's s75W Planning Report, dated 10 May 2017, set out the Proponent's position on the need for the Modification Request.
9. The AR summarises the strategic context of the Concept Approval Area at ARP 3.1.1, and summarises the statutory consistency of the Modification Request with the applicable environmental planning instruments (**EPI's**) at ARP 4.3.1.

## 2. THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION REQUEST

### 2.1 Key steps in Department's consideration of the Modification Request

10. The Department received the Modification Request in May 2017.
11. The Department's AR sets out the Department's engagement and exhibition process at ARP 5.1.1, 5.1.2, 5.2.1, 5.3.1, 5.3.2 and Table 2. A list of those making a submission, as received by the Department is provided in Table 1 below. The AR identifies the main concerns raised to the Department include traffic impacts on local roads, additional pressure on infrastructure and services, and the removal of the \$1 million contribution.

Table 1 – Submissions received by DPIE

Submitter	Number	Position
<b>Government Agencies &amp; Council</b>	<b>5</b>	<b>Comments</b>
<ul style="list-style-type: none"> <li>• Lake Macquarie Council (<b>Council</b>)</li> <li>• NSW Rural Fire Service (<b>RFS</b>)</li> <li>• Biodiversity Conservation Division (<b>BCD</b>)</li> <li>• Roads and Maritime Services (<b>RMS</b>) <i>Note: RMS has now joined with TfNSW, and is now referred to as TfNSW(Roads &amp; Maritime) (<b>Roads &amp; Maritime</b>)</i></li> <li>• Transport for NSW (<b>TfNSW</b>)</li> </ul>		
<b>Community</b>	<b>152</b>	<b>Objections</b>
<b>TOTAL</b>	<b>157</b>	

12. The AR summarises the Proponent's Response to Submissions report (**RtS**), dated May 2018, at ARP 5.4.2 and 5.4.3, and details the submissions received by the Department in ARP 5.4.5 and Table 4, following the notification of the RtS.
13. In response to the submissions received, the Proponent amended the Modification Request through an Updated Response to Submissions report (**Updated RtS**), dated 19 March 2019.

The AR summarises the Updated RtS in ARP 5.5.1. Details of the submissions received after the Department’s notification of the Updated RtS are summarised in ARP 5.5.3 and Table 5 of the AR.

14. As identified in ARP 6.1.2 the Department considered the key assessment issues associated with the Modification Request to be intersection upgrades, contribution amendments and bushfire hazard.

### 3. THE COMMISSION’S MEETINGS AND SITE INSPECTION

15. As part of its process of determination, the Commission met with relevant stakeholders as set out in Table 2 below. All meeting and Site inspection notes were made available on the Commission’s website. All persons were offered the opportunity to provide written comments to the Commission within seven (7) days after the public meeting.

*Table 2 – Summary of Commission Meetings*

Meeting	Date of meeting	Transcripts/notes available
Department	4 February 2020	12 February 2020
Proponent	11 February 2020	17 February 2020
Council	12 February 2020	17 February 2020
Public Meeting	12 February 2020	17 February 2020
Site Visit	11 February 2020	17 February 2020

#### 3.1 Meeting with the Department

16. At the meeting with the Department, identified in Table 2, the key discussion points included a summary of the Department’s AR and recommendation, specifically the key assessment issues being intersection upgrades, contribution amendments and bushfire hazard. The Department was asked questions on notice, which were published on the Commission’s website on 13 February 2020. The Department’s response to the questions on notice are summarised at paragraph 23.

#### 3.2 Meeting with the Proponent

17. At the meeting with the Proponent, identified in Table 2, the Proponent advised the Commission that it is no longer seeking a reduction in the contribution amount, and is willing to offer to extend the footpath from the Nords Wharf Public School to the development along Government Road as part of the contribution, to the satisfaction of Council. The Proponent also requested the Commission re-consider the proposed intersection upgrades, which were not supported by the Department. Bushfire matters were also discussed. The Proponent was also asked questions on notice, which were published on the Commission’s website on 13 February 2020. The Proponent’s response to the questions on notice was provided on 19 February 2020, and subsequently published on the Commission’s website. The response is summarised at paragraph 22.

#### 3.3 Meetings with Lake Macquarie City Council

18. At the meeting with the Council identified in Table 2, the key discussion points included Council’s response to the Department’s AR and recommendation, developer contributions,

the proposed subdivision layout and the status of the modification to development application DA/640/2013.

### 3.4 Site inspection

19. At the Site visit, identified in Table 2, the Commission conducted an inspection of the Site at the Branter Rd/Government Road intersection, along Branter Road and towards the boat ramp. The Commission also viewed the local road network and inspected the Pacific Highway intersections with Awabakal Drive and Nords Wharf Road.

### 3.5 Public meeting

20. To hear the community's views on the Modification Request, the Commission held a public meeting at Caves Beach, as identified in Table 2. Five speakers registered to speak, and a further four unregistered speakers were provided with the opportunity to make representations to the Commission at the meeting. All persons were offered the opportunity to provide written submissions to the Commission within seven (7) days after the public meeting and all comments received were made available on the Commission's website at the conclusion of the seven (7) day period.
21. A summary of issues raised in written submissions and by speakers is outlined below.
- Traffic impacts – concerns regarding the safety impacts of the proposed intersection upgrades on the local road network, particularly along Government Road in proximity to the primary school and preschool, and at the intersection of Government Road/Nords Wharf Road; and
  - Infrastructure and servicing capacity in Nords Wharf – storm events have resulted in power outages and sewerage issues, which will be exacerbated by additional population.

## 4. ADDITIONAL INFORMATION

22. The Commission received the Amended Modification from the Proponent on 19 February 2020 in response to the Questions on Notice (paragraph 17). This information was published on the Commission's website, and includes:
- Confirmation that the Proponent is no longer seeking to amend the contribution amount;
  - Cost information regarding three different intersection arrangements (summarised in Table 3 below); and
  - Advice from the Proponent's bushfire consultant that the proposed subdivision would be subject to a requirement for an additional Asset Protection Zone (**APZ**) of 4m under the Planning for Bushfire Protection 2019 (**PBP 2019**) guidelines.

*Table 3 – Summary of Intersection Options tabled by the Proponent*

Option	Works	Cost
Option 1	Nords Wharf Road/Pacific Highway upgrade existing seagull intersection to signalised seagull intersection  (Proposed alternative in Modification Request)	\$760,000 (+GST)  Contingency figure 5%
Option 2	Standard signalisation of Awabakal Drive/Pacific Highway  (this arrangement was mentioned by the Proponent during the Commission's meeting on 11 February 2020.	\$1,213,000 (+GST)  Contingency figure 15%

	However, the Commission notes the Proponent did not formally seek to amend the Modification Request to include this option, and there has been no modelling or design information submitted to the Commission, or other agencies including the Department of Roads and Maritime for consideration)	
Option 3	Signalised seagull intersection of Awabakal Drive/Pacific Highway  (Approved arrangement in NWCP)	\$3,060,000 (+GST)  Contingency figure 20%

23. The Commission also received correspondence from the Department on 19 February 2020 responding to the Questions on Notice (paragraph 16). This correspondence was published on the Commission's website, and included:

- An amended Modification Instrument (Appendix F) to address minor drafting errors;
- Further advice from the RFS regarding Planning for Bushfire Protection; and
- Further comments on the Landscape Buffer and contributions.

## 5. THE COMMISSION'S CONSIDERATION

### 5.1 Material considered by the Commission

24. In this determination, the Commission has carefully considered the following material (**material**):

- the Proponent's s75W Planning Report dated 10 May 2017, and prepared by Urbanise Consulting;
- all submissions made to the Department in respect of the Modification Request during the public exhibition, 18 May 2017 and 15 June 2017;
- the Proponent's RtS, dated May 2018, prepared by ADW Johnson Pty Limited, and associated documentation;
- the Proponent's Updated RtS, dated 19 March 2019, prepared by ADW Johnson Pty Limited, and associated documentation;
- the AR, dated January 2020;
- the Department's Draft Modification Instrument (as amended by Appendix F in information provided by the Department on 19 February 2020 – see paragraph 23);
- the Amended Modification provided to the Commission, described in paragraph 22;
- letter from the Department, dated 19 February 2020, described in paragraph 23;
- transcripts for the meetings identified in Table 2; and
- written submissions received by the Commission within seven (7) days after the public meeting.

### 5.2 Mandatory considerations

25. In determining this application, the Commission has taken into consideration the following mandatory considerations for determining s75W requests for modification (**mandatory considerations**):

- the public interest (section 5.2.1); and
- the Modification Request and Amended Modification (section 5.2.2); and
- any SEAR's issued (section 5.2.3).

#### 5.2.1 Mandatory consideration: The Public Interest

##### *Proponent's consideration*

26. The Proponent did not specifically provide a view as to whether the Modification Request is in the public interest.
27. The Proponent's Updated RtS states that the proposed increase in the number of lots and the amended road layout remains within the concept approval footprint and will therefore create minimal additional environmental impact.

#### *Department's consideration*

28. The AR states the Department does not consider the proposed \$1 million contribution reduction to be in the public interest, as noted in ARP 6.3.1 and 7.1.2.
29. ARP 6.2.15 states the Department does not consider the Modification Request to achieve the orderly development of the Site because of the unsatisfactory traffic arrangements proposed. Therefore, the Modification Request is not consistent with object (c) of the EP&A Act, which promotes the orderly and economic use and development of land.

#### *Commission's consideration*

##### **5.2.1.1 Considerations relevant to the public interest**

30. In determining whether the Amended Modification is in the public interest, the Commission deems the following to be relevant considerations:
  - the Objects of the Environmental Planning and Assessment Act (**the Act**);
  - the relevant principles of Ecologically Sustainable Development (**ESD**);
  - response to the impacts identified in the community submissions; and
  - provisions of the following EPIs that apply to the site:
    - State Environmental Planning Policy No. 44 – Koala Habitat Protection (**SEPP 44**);
    - State Environmental Planning Policy No. 55 – Remediation of Land (**SEPP 55**);
    - Lake Macquarie Local Environmental Plan 2014 (**LMLEP**);
    - The Voluntary Planning Agreement (**VPA**) dated March 2012 between the Planning Minister, Environment Minister and the then Landowner (Coal & Allied Operations Pty Ltd); and
    - *Environmental Planning and Assessment Regulations 2000* (**Regulations**).

##### **5.2.1.2 Objects of the Act (including Principles of ESD – Object (b))**

31. The Commission notes the main reason cited by the Department for the Modification Request not being in the public interest is the proposed reduction in contributions, which is no longer being pursued by the Proponent (paragraph 22).
32. The objects of the EP&A Act are outlined in section 1.3 of the EP&A Act.
33. The objects of the EP&A Act relevant to this Amended Modification are objects (a), (b), (c), (e), (f) and (j).
34. The Commission is of the view that proposed increase in lot numbers is consistent with Object (a) of the EP&A Act given that lot layout would remain within the approved Concept Approval Area and would not impact the conservation land dedicated to the State. However, the Commission finds the proposed intersection amendment is inconsistent with Object (a) because the Proponent has not provided sufficient analysis and justification of the potential impacts associated with the alternative intersection arrangement (paragraphs 77 and 78). Consequently, the Commission is not satisfied the proposed alternative intersection arrangement would result in the appropriate management of the State's resources, nor

promote the social and economic welfare of the community.

35. Object (b) of the EP&A Act relates to whether the Amended Modification is consistent with the principles of ESD. The Amended Modification is within the development footprint approved under the NWCP and will not result in any additional land clearing or significant environmental impacts. Therefore, the Commission is satisfied the Amended Modification is consistent with the principles of ESD, including preservation of intergenerational equity, biological diversity and ecological integrity.
36. Object (c) of the EP&A Act relates to the orderly and economic use and development of land. The Commission has considered the potential impacts relevant to the increased number of lots, the revised internal subdivision road layout and the proposed intersection amendments. The Commission is satisfied the proposed increased number of lots and revised road layout contribute to the orderly development of the land. However, the Commission has not been provided with enough information to be satisfied that the proposed intersection arrangement will not adversely impact the local community and promote the orderly development of the land.
37. The Commission is satisfied the Amended Modification will maintain consistency with Object (e) because it does not seek to amend the dedication of conservation lands as approved in the NWCP.
38. The Amended Modification is consistent with Object (f) of the EP&A Act because the lot layout would remain within the footprint of the NWCP, and therefore will not have any additional impacts on built and cultural heritage values.
39. Object (j) of the EP&A Act relates to increased opportunities for community participation in environmental planning and assessment. The Department and the Commission have engaged with the community and provided opportunities for the community to make additional submissions and comments in relation to the Modification Request. Both the Department (ARP 6.2.9; 6.2.10; 6.2.15 and 6.3.8) and the Commission (paragraphs 20 and 21) have considered the community's concerns relevant to the Amended Modification.
40. The Commission accepts the Proponent's position in paragraph 27 and the Department's conclusion in ARP 6.5.1 that the proposed amended layout is unlikely to result in any significant impacts further to those originally assessed and supported under the NWCP.
41. The Commission's consideration of the proposed intersection upgrades is detailed in paragraphs 76 to 78, which concludes that the Proponent has not provided sufficient analysis and justification regarding the potential impacts associated with the alternative intersection arrangement to warrant approval.
42. For the reasons set out in paragraph 34 to 40, the Commission finds that the indicative subdivision layout is consistent with the relevant objects of the EP&A Act. However, the proposed intersection upgrades are not sufficiently justified (paragraphs 77 and 78) to enable the Commission to conclude the intersections will ensure the welfare of the community or result in the orderly development of the land. Therefore, the Commission has formed the view that the intersection upgrades are inconsistent with Objects (a) and (c) of the EP&A Act (paragraphs 34 and 36).

### **5.2.1.3 Impacts Identified in Community Submissions**

43. The matters raised by the community during the exhibition period are summarised in ARP 5.3.2, and are broadly dominated by concerns about traffic impacts. The community reiterated its concerns about traffic impacts at the public meeting held by the Commission (paragraphs 20 and 21). For the reasons set out in paragraphs 77 and 78, the Commission

finds the Amended Modification does not include sufficient information to justify the proposed intersection upgrades, and therefore does not adequately respond to the impacts identified in submissions from the community, Council and Roads and Maritime.

44. Based on the material presented in paragraphs 27, 29, 41 and 42, the Commission finds that the indicative road layout is consistent with the objects of the EP&A Act, but the proposed intersection upgrades are not.

#### 5.2.1.4 Relevant Environmental Planning Instruments

##### *Proponent's consideration*

45. The Proponent's Modification Request, RtS and Updated RtS did not address compliance with the relevant EPIs.

##### *Department's consideration*

46. The Department identifies the relevant EPIs at ARP 4.3.1, and concludes at ARP 4.3.2 that the Modification Request is consistent with these EPIs. However, the Commission notes SEPP 14 and SEPP 71 cited in ARP 4.3.2 have now been repealed, and SEPP (BASIX) only applies to buildings.
47. The Commission sought further information on this matter in its letter dated 30 January 2020 (published on the Commission's website) and at the meeting identified in Table 2. The Department advised a desktop analysis of the relevant EPIs was undertaken for the Modification Request, and this approach is appropriate for modifications of this nature. The Department advised that given there was no additional clearing and no increase in size of the residential area, and a minimal increase in the number of lots, it was satisfied the Modification Request remains consistent with the relevant EPIs.

##### *Commission's consideration*

48. The Commission agrees with the Department's reasoning that the proposed amendments to the subdivision layout are relatively minor and are within the footprint already assessed and approved under the NWCP. Therefore, there are unlikely to be any significant additional environmental, social or land use impacts.
49. The Commission has considered the relevant EPIs in further detail, as summarised below, and finds that the Amended Modification is consistent with the provisions of the relevant EPIs, as follows:
  - SEPP 44 – Koala Habitat Protection: the Concept Approval Area was not found to represent "Core Koala Habitat", and the Amended Modification does not introduce any concerns under SEPP 44;
  - SEPP 55 – Remediation of Land: The Amended Modification remains within the same footprint as the Concept Approval Area and will continue to be used for residential purposes. The Proponent will still be required to undertake preliminary assessment works as conditioned in the NWCP to identify any potential contamination and, if relevant, ensure appropriate mitigation measures are put in place; and
  - Lake Macquarie Local Environmental Plan 2014: the land continues to be zoned R2 Low Density Residential, and therefore the subdivision of this land for residential purposes continues to be permissible. The subdivision layout is indicative only, and the detailed design phase will address compliance with development standards such as lot

size.

#### 5.2.1.5 Relevant Development Control Plans

50. Future development applications for the residential subdivision will be subject to the provisions of the Lake Macquarie Development Control Plan (**LMDCP**).

##### *Council's consideration*

51. In the Material considered by the Commission, the Council did not raise any concerns with LMDCP compliance.
52. At its meeting with the Commission (paragraph 18), Council requested that the Urban Design Guidelines approved with the original Concept plan be used in the design of the subdivision but should not apply to the development of individual lots. Council is of the view that the development of individual lots should be guided by the city wide residential DCP, rather than the Urban Design Guidelines to ensure consistency across the LGA. This is discussed further in paragraph 95.

##### *Department's consideration*

53. ARP 7.1.1 states the proposed modification to the subdivision layout "*generally complies with the requirements of Council's DCP*".

##### *Commission's consideration*

54. Noting the proposed subdivision layout is indicative only, and accepting the Department's comments in paragraph 53, the Commission is satisfied future development applications for the residential subdivision can be designed to comply with the LMDCP in terms of lot size, building envelopes, lot orientation, road construction, landscaping and streetscape improvements.
55. Notwithstanding paragraph 54, the Commission also notes under Clause 3B(2)(f) of Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (**STOP Regs**), the terms of the concept approval preside over the provisions of any EPI or DCP in the event of any inconsistency.
56. In summary, the Commission is satisfied that the Modification Request will not result in any significant issues relating to the LMDCP.

#### 5.2.1.6 Relevant Planning Agreements

57. Coal and Allied Pty Ltd (previous owners of the Site) entered into a Voluntary Planning Agreement (**State VPA**) with the Planning Minister and the Environment Minister. The VPA binds the landowner to certain State contributions in the form of a road contribution (to upgrade the intersection at Awabakal Drive to signalised seagull intersection); the transfer of environmental offset land; land remediation and reserve establishment works; and an emergency services contribution.

##### *Proponent's consideration*

58. The Proponent did not specifically request an amendment to the VPA (as executed) with the State as part of the Modification Request, RtS, Updated RtS or Amended Modification.

### *Department's consideration*

59. The AR did not specifically address the terms of the State VPA.

### *Commission's consideration*

60. It is noted the parties to the VPA include Coal & Allied Pty Ltd as "Landowner". The Commission is satisfied that the current landowners are also bound by the VPA under clause 9.2 of the VPA, which requires the VPA to be registered on the land – thereby binding future owners of the Site to the agreement.
61. The Commission notes the Department's AR and recommendation did not support the proposed amendment to the Awabakal Drive intersection, nor the alternative intersection upgrade at Nords Wharf Road and the Pacific Highway. The Commission further notes that the proposed intersection amendments would require an amendment to the VPA. The Commission does not support the proposed intersection upgrades as proposed in the Amended Modification (paragraphs 77 and 78), which would be inconsistent with the existing VPA.

### **5.2.1.7 Applicable Regulations**

62. Schedule 2, Clause 3BA(5) of the STOP Regs states a concept plan may continue to be modified under s75W, if the Minister (or his delegate) 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).*

### *Department's consideration*

63. ARP 4.1.1 and 4.1.2 addresses why the Department considers the Modification Request to be within the scope of s75W.

### *Commission's consideration*

64. The Commission is satisfied the proposed modification is substantially the same development as that approved given it would retain the same development footprint and the environmental consequences of the modification would be similar to those resulting from the original approval. Consequently, the Commission is satisfied that the modification as amended would satisfy the provisions of Schedule 2, Clause 3BA(5)(c) of the STOP Regs (paragraph 62). For this reason the Commission agrees with the Department's conclusion, set out in paragraph 63.

### **5.2.2 Mandatory consideration: The Modification Request itself**

#### *Proponent's consideration*

65. The Proponent's Modification Request and additional information received on 19 February 2020 are summarised in paragraphs 6 and 22 respectively.

### *Department's consideration*

66. The Department is of the view that the Proponent has not provided sufficient analysis and justification regarding the potential impacts associated with the alternative intersection upgrade to warrant approval (ARP 6.2.15). This view was informed by advice received from Roads and Maritime dated 5 July 2017 and 14 January 2019, which found that the Traffic Impact Assessments supporting the Modification Request do not adequately address the concerns raised by Roads & Maritime regarding the proposed alternative intersection upgrade. Roads & Maritime notes that while both intersection options (options 1 and 2 in Table 3) could achieve acceptable safety and efficiency outcomes for the development, further investigations and consultation is required to “allow full consideration of the environmental impacts of the preferred upgrade”.

### *Commission's consideration*

67. The Commission accepts the advice from the Department and Roads & Maritime, set out in paragraph 66. The Commission finds that the Amended Modification does not include enough detail regarding the proposed alternative intersection upgrades and the resulting impacts, particularly on the local road network. Therefore, the Amended Modification does not satisfy this mandatory consideration under s75W because there is not enough detail in the request to enable the Commission to make an informed decision on the alternative intersection upgrades.

### **5.2.3 Mandatory consideration: SEARs issued**

68. The Commission notes the Secretary did not issue any SEARs to be addressed in preparing the Modification Request.

## **5.3 The Commission's consideration of the proposed Modifications**

### **5.3.1 Intersection Upgrades**

#### *Proponent's consideration*

69. In the Amended Modification, the Proponent proposed an alternative intersection arrangement to that approved in the NWCP, citing primarily cost reasons in the s75W Report, dated 10 May 2017. The proposed changes are described in Section 2 of the AR.
70. As described in paragraph 22 and detailed Table 3, the Proponent provided cost estimates for the approved intersection upgrade. The Proponent also provided a cost estimate for a standard signalised intersection at Awabakal Drive/Pacific Highway and the signalisation of the existing Nords Wharf Road/Pacific Highway seagull intersection.
71. At the Commission's meeting described in Paragraph 17, the Proponent requested the Commission consider an amendment to the Department's recommended condition 1.25A(a). The recommended condition 1.25A(a) would require the developer to complete all road works required under the Works Authorisation Deed (**WAD**) with Roads & Maritime prior to the release of any *Construction Certificate* for the development. The Proponent proposed amended timing for these works to prior to the issue of the Subdivision Certificate, rather than the Construction Certificate.

#### *Council's consideration*

72. In correspondence from dated 23 June 2017, 19 October 2018 and 10 August 2019 (published on the Department's website) and in its meeting with the Commission on 12

February 2020, Council raised concerns that the proposed intersection arrangement in the Modification Request (Option 1 in Table 3) would significantly alter the local road traffic flows. Council argued that the Modification Request does not sufficiently assess the impact on the local community or offer appropriate mitigation measures. These concerns were strongly echoed in the public comments and presentations made to the Commission during notification and at the public meeting.

#### *Department's consideration*

73. The Department does not support the proposed intersection arrangements (Option 1 in Table 3) for the reasons set out in Section 6 of the AR.

#### *Commission's consideration*

74. Regarding the proposed amended timing for the intersection upgrading works as detailed in paragraph 71, the Commission does not object to this timing because it is consistent with the VPA. The Commission is satisfied that the proposed amendment to condition 1.25A(a) will still ensure the required intersection upgrades are complete prior to the sale and development of individual lots.
75. Regarding the proposed intersection upgrades, the Commission has considered:
- the Proponent's Modification Request to restrict the Awabakal Drive/Pacific Highway intersection to left in/left out only and provide a signalised seagull intersection at the Nords Wharf Road/Pacific Highway intersection (Option 1 in Table 3);
  - the views of the Community, Council, Roads & Maritime and the Department, as set out in paragraphs 21, 66, 72 and 73); and
  - the views of the Proponent including the indicative cost estimates provided by the Proponent (Table 3). It is noted that the Proponent's costings include the provision of a standard signalised intersection as an alternative to the approved signalised seagull intersection at Awabakal Dr/Pacific Highway. No formal assessment of this option has been undertaken.
76. The Commission notes the Proponent's argument regarding the cost challenges associated with providing the approved signalised seagull intersection at Awabakal Dr/Pacific Highway and recognises that there may be merit in the Proponent pursuing a standard signalised intersection at Awabakal Dr/Pacific Highway.
77. However, the Commission finds the Proponent has not formally proposed this option as an amendment to the Amended Modification, and the Commission has not been provided with the necessary information to assess such a proposal, including preliminary modelling or designs. The Commission notes if the Proponent were to pursue this option, it would be subject to separate planning processes (including community consultation) and would require the agreement of Roads & Maritime. The Proponent would also need to consider whether a variation to the VPA is required.
78. In conclusion, the Commission has considered the Material, and agrees with the advice from the Department and Roads & Maritime, set out in paragraph 66 and finds that insufficient analysis and justification has been provided to support the alternative intersection arrangements proposed in the Modification Request particularly in relation to the potential impacts on the local road network. Therefore, the Commission determines not to support the proposed intersection upgrades.

### 5.3.2 Subdivision layout

#### *Proponent's consideration*

79. The Proponent's s75W Report, RtS and Updated RtS states the revised layout proposed in the Modification Request is sought to provide for a more rational lot layout and higher lot yield. The Proponent justifies the revised layout on the basis that the subdivision will remain within the footprint approved under NWCP, provides more appropriate methods of access and egress, and can provide building envelopes that comply with the required Bushfire Asset Protection Zones (**APZ**) which are within the Bushfire Attack Level (**BAL**) 29 or lower area.
80. The Amended Modification letter from the Proponent, dated 19 February 2020 described preliminary advice from its bushfire consultant, which stated that there may be additional APZ requirements under the Planning for Bushfire Protection (**PBP**) 2019 in the order of 4m, which can be accommodated within the NWCP footprint.

#### *Council's consideration*

81. The Commission has considered Council's advice to the Department dated 23 June 2017, 19 October 2018 and 10 August 2019 in relation to the revised layout.
82. As described by the Department in ARP 5.2.1, 5.4.5 and 5.5.3, Council initially raised concerns with the amendments to the Branter Road landscape buffer, cut and fill details provided for the site, the provision of APZs and safety concerns regarding the extension of the perimeter road to connect to Government Road.
83. Council acknowledged that its concerns were primarily resolved through the RtS and Updated RtS or could be resolved at the detailed design stage for the subdivision. Council maintained its concerns about the perimeter road linking to Government Road due to the close proximity of the Awabakal Drive/Government Road intersection, and concerns regarding the revised Branter Road landscape buffer.

#### *Department's consideration*

84. The Department addressed Council's concerns about the perimeter road in ARP 6.4.6, and recommended condition 1.24 be amended to require the provision of a perimeter road or alternative solution that is agreed to by the RFS and Council.
85. Regarding the amended layout, ARP 6.4.11 states the Department is satisfied the amended layout can achieve compliance with the PBP 2006. At its meeting with the Department on 4 February 2020 the Commission advised the Department that the PBP guidelines had been updated (2019 Guidelines) and their adoption was imminent. The Commission asked the Department whether the RFS had any further comments regarding the PBP 2019 and its application. The Department sought further advice from the RFS (as described in the Department's letter dated 19 February 2020). The RFS advised:

*"...the provisions of Planning for Bushfire Protection 2019 were not considered in the advice dated 2 July 2019 given the document had not been legislated at the time of assessment. The Bush Fire Threat Assessment submitted in support of the amended concept plan did not propose the use of the provisions of Planning for Bushfire Protection 2019 as part of a performance based solution and therefore an assessment against these requirements was not triggered."*

### *Commission's consideration*

86. Based on the material, the Commission finds that the proposed revised layout does not significantly impact on the suitability of the site as originally assessed in the NWCP in terms of the road layout, landscape buffer and the indicative lot layout.
87. The Commission agrees with the bushfire advice submitted by the Proponent, set out in paragraph 80, that the subdivision can be designed to accommodate the applicable APZ, as required under the applicable PBP document at the time. The Commission notes the Department's recommended *condition 1.24 Bushfire Hazard* refers to PBP 2006. Given the revised guidelines (PBP 2019) was legislatively adopted in the Environmental Planning & Assessment Regulations on 1 March 2020, the Commission amended the wording of condition 1.24 to comply with the version of the *Planning for Bushfire Protection* document in force under section 4.14(1)(a) of the *Environmental Planning and Assessment Act 1979*.

### **5.3.3 Contributions**

88. The Amended Modification submitted by the Proponent on 19 February 2020 (paragraph 22) advised the Proponent is no longer seeking to reduce the contribution amount.
89. While this component of the Modification Request is no longer sought, the Commission notes there is a discrepancy between the \$1 million contribution amount referred to in the AR and the \$1.185 million contribution amount approved in the NWCP. However, given this component has been withdrawn from the Modification Request, this issue does not require further consideration.

### **5.3.4 Proposed removal of bank guarantee requirement**

#### *Proponent's consideration*

90. The Proponent's s75W Report requested that all bank guarantees be removed from the NWCP and VPA on the grounds they are duplicative with other Government authorities which require their own guarantees for the same works.

#### *Council's consideration*

91. The bank guarantee amendment is not relevant to Council, and accordingly Council's submissions did not make any comments.

#### *Department's consideration*

92. ARP 6.5.1 and Table 7 of the AR provides the Department's view on the proposed removal of the bank guarantees. The Department acknowledges the VPA requires bank guarantees but advises there is no reference to bank guarantees or the terms of the State VPA in the NWCP conditions or the SoC. Therefore, the Department concludes the proposed removal of the bank guarantees is outside the scope of this modification.

#### *Commission's consideration*

93. The Commission agrees with the Department's conclusion at, set out in paragraph 92 and does not support the proposed amendment to the bank guarantees.
94. The Commission notes the Proponent did not provide any further commentary or justification for this component of the proposal during the Commission's meetings or consideration of this Modification Request.

## 6. PROPOSED CONDITION AMENDMENTS

### 6.1 Condition 1.10 & 1.10A Urban Design Guidelines

95. In relation to the Urban Design Guidelines, the Commission finds the existing NWCP Condition 1.10 is no longer relevant to the NWCP because Council has already approved the first development application for subdivision at the site. Further to this, Condition 1.10 refers to matters that would apply to the development of individual lots, and as Council requested in paragraph 52, the Commission is satisfied these matters can be appropriately guided by the city wide LMDCP. The Commission finds the Department's recommended condition 1.10A is suitable for the Amended Modification, to ensure the Urban Design Guidelines are revised to be consistent with this Modification Request in consultation with Council. In line with Council's request in paragraph 52, the Commission is satisfied condition 1.10A provides Council with the flexibility to negotiate the removal of any components in the Urban Design Guidelines that maybe duplicated in the LMDCP as it relates to the development of individual residential lots. Accordingly, the Commission imposes the Department's recommended condition 1.10A to replace the existing condition 1.10:

**1.10 The Proponent shall revise the Urban Design Guidelines to be consistent with the approved Amended Concept Plan layout. The final version must be submitted to and approved by Council prior to the determination of any future subdivision application or modification application for the site.**

### 6.2 Amended Modification description (Schedule 1)

96. The Commission is satisfied with the amended road and internal layout of the Modification Request, as summarised in paragraphs 86 and 87. The Commission has imposed amendments to the description in Schedule 1 of the Modification Instrument to remove the descriptive number of lots. This will provide flexibility to the Proponent and Council during the detailed design phase to provide an appropriate number of lots having regard to the approved footprint, the environmental and bushfire constraints, any revised Urban Design Guidelines and Council's minimum lot size and dimension requirements.

### 6.3 Condition 1.25A Timing of Intersection Upgrading Works

97. For the reasons outlined in paragraph 74, the Commission has imposed a condition amending the Department's recommended condition 1.25A(a) to allow the intersection upgrading works to be completed prior to the issue of any Subdivision Certificate.

## 7. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

98. The views of the community were expressed through public submissions and written comments (received during the Department's exhibition and notification processes and the Commission's determination process incorporating public speaker representations and written comments), as outlined in paragraphs 11, 20 and 21. The Commission carefully considered all of these views in making its decision. The manner in which these concerns have been taken into account by the Commission is set out in **Section 5** above.
99. The Commission has carefully considered the Material before it (paragraph 24).
100. For the reasons set out in this Statement of Reasons, the Commission has determined that the amended road design and internal layout of the Amended Modification be approved subject to the conditions recommended by the Department as amended by the Commission (paragraphs 95, 96 and 97). The Commission has not approved the proposed intersection amendments forming part of the Amended Modification (paragraphs 77 and 78).
101. The reasons for the Commission's Decision are given in this Statement of Reasons dated 12 March 2020.



**Chris Wilson (Chair)**  
Member of the Commission



**Wendy Lewin**  
Member of the Commission



**Stephen O'Connor**  
Member of the Commission