

Department of Planning and Environment

dpie.nsw.gov.au



Modification 4 of Horizon Lee 5

State Significant Development Modification Assessment Report (SSD 9827 MOD 4)

September 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Modification 4 of Horizon Lee 5 (SSD 9827 MOD 4) Assessment Report

Published: September 2023

Copyright and disclaimer

© State of New South Wales through Department of Planning and Environment 2022. Information contained in this publication is based on knowledge and understanding at the time of writing, September 2023, and is subject to change. For more information, please visit dpie.nsw.gov.au/copyright

Preface

This assessment report provides a record of the Department of Planning and Environment's (the Department) assessment and evaluation of modification 4 of the Horizon Lee 5 State significant development (SSD) located at 45 Honeysuckle Drive, Newcastle lodged by Horizon Newcastle Pty Ltd. The report includes:

- an assessment of the modification against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the modification during the assessment process
- an assessment of the likely environmental, social and economic impacts of the modification
- an evaluation which weighs up the likely impacts and benefits of the modification, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are, on balance, acceptable
- a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the approval should be modified and any conditions that should be imposed.

Executive Summary

This report details the Department's assessment of modification 4 of the development approved under State significant development application SSD 9827.

Modification

Horizon Newcastle Pty Ltd (the Applicant) proposes to modify the consent for SSD 9827 which involves the construction and operation of a mixed use development that, following previous approved modification applications, comprises three 8 to 9 storey buildings containing 101 apartments and four retail & commercial tenancies, 186 basement car parking spaces, and public domain works. The project is located at 45 Honeysuckle Drive in the Newcastle local government area (LGA).

The subject modification seeks to increase the number of car parking spaces for residences from 167 to 192 spaces, reduce bicycle spaces and undertake minor design changes including additional storage and the removal of a window and addition of a door to the rear balcony of apartment 801/45.

Statutory context

Consent for the development proposed by State significant development application SSD 9827 was granted on 18 June 2020 by the Executive Director, Regions, Industry and Key Sites as a delegate for the Minister. The Minister for Planning is the consent authority for development upon the site pursuant to sections 4.5(a) and 4.36 of the EP&A Act. Therefore, the Minister may modify the existing development consent.

The Department is satisfied that the proposed modification is within the scope of section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Engagement

The Department referred the modification application to TfNSW and Newcastle City Council and received:

- a submission from Newcastle City Council commenting on the proposed modifications
- advice from TfNSW providing no objection or comments on the proposed modifications

The Applicant submitted a response to Council's advice on 22 August 2023 to address the issues raised in Council's advice and matters raised by the Department.

The Department referred this response to Council for review on 23 August 2023. Council provided additional advice on 7 September 2023.

Assessment

Parking Modifications

The Department considers the additional parking acceptable as it would provide additional benefits to the residents and would have minimal impact on the road network. Further, the number of parking spaces proposed is considered to be in accordance with the desired parking rates for the Newcastle City Centre as per the Newcastle Development Control Plan 2012 (NDCP 2012), with an additional one space over the requirement, if calculated with balconies included in apartment size. Council noted that balconies are not included in the definition of Gross Floor Area (GFA), however the Department notes that there are inconsistencies in definition of apartment size, and development control plans (DCPs) do not strictly apply to SSD and therefore the increase in parking is at the Department's discretion.

The reduction in GFA was sought by the Applicant as the NDCP 2012 requires parking exceeding rates prescribed in the DCP to be included in GFA calculations and, with the proposed increase in parking equating to only one parking space above the maximum rate per dwelling, the excess parking spaces can be removed from the GFA calculation. The additional storage was accounted for in the amended GFA calculation.

The Department is satisfied that the number of bicycle spaces required can be reduced to 101 to reflect the approved number of dwellings.

The Department considers the reallocation of one visitor space to a service/loading space as acceptable as the space is located in close proximity to the lift, there is no minimum requirement for visitor spaces within the NDCP 2012 and the dedicated space would allow for unhindered access for servicing, reducing potential conflict within the car park.

Council recommended that consideration should be given to Item F – Electric Vehicle Parking of the NDCP 2012 and that the relevant controls for the provision of electric vehicle charging points should be addressed. The Department recognises that the NDCP 2012 requirements for EV charging were not in force at the time of the original approval, however the Applicant has identified that 57 buyers of the development have opted in to the provision of a General Power Outlet (GPO) in the car space.

Design Modifications

The Department is satisfied with the conversion of redundant space to additional storage as it will utilise existing space to provide additional benefit and amenity to residents.

The Department is satisfied that the revised layout, removal of a window and addition of a door in apartment 801/45 is appropriate as it complies with the ADG, will not detract or alter the design qualities of the development and provides additional benefits to the future resident in regard to access and amenity.

Condition Modifications

Condition B2 outlines amendments and details to be submitted to the Planning Secretary for approval and incorporated into the relevant Construction Certificate drawings, including the number of car parking spaces dedicated to each use across the site. The subject modification application

originally sought the deletion of Condition B2. The Department identified that Condition B2(a) relating to fencing, and Condition B2(c) relating to loading for medium rigid vehicles and heavy rigid waste collection vehicles, had not been documented as satisfied, and the Department requested additional information to justify the deletion of the condition. The Applicant responded by outlining that retaining the condition but modifying it to reflect the proposed changes in car parking was acceptable. The Department is satisfied that Condition B2 can be modified to reflect the modified car parking provisions including maximum spaces and residential visitor spaces.

The proposed modification sought the deletion of Condition E11A. This condition requires the shared use commercial/residential visitor car parking spaces to be allocated, marked out on the pavement surface and clearly signposted to state that the spaces are to be used for commercial parking only between 7am and 7pm daily. The Department is not satisfied with the justification provided and maintains that the intent of the condition still applies to the spaces as the spaces were intended for use by visitors of the commercial tenancies, and not exclusively for servicing/delivery purposes, and were provided to mitigate the impacts of removing visitor parking spaces as part of MOD 2.

Conclusion

Overall, the Department's assessment concludes the modified project would provide additional benefits to the residents of the development.

As such, the Department considers the modified project is in the public interest and recommends that the consent be modified subject to conditions.

Contents

Preface	i
Executive Summary	ii
1 Introduction	1
1.1 Project location.....	1
1.2 Related projects and works	2
2 Proposed modification	4
2.1 Modification overview	4
3 Statutory context	6
3.1 Mandatory matters for consideration.....	6
4 Engagement	8
4.1 Department’s engagement	8
4.2 Notification of the modification	8
4.3 Response to submissions.....	9
4.4 Request for further information	9
5 Assessment	10
5.1 Car Parking Modifications.....	10
5.2 Other issues.....	13
6 Evaluation	18
7 Recommendation	19
8 Determination	20
Glossary	21
Appendices	22
Appendix A – List of referenced documents.....	22
Appendix B – Submissions and government agency advice	22
Appendix C – Statutory considerations.....	22
Appendix D – Recommended instrument of modification	28

1 Introduction

On 18 June 2020, Horizon Newcastle Pty Ltd (the Applicant) sought and was granted consent for the construction of a mixed use development comprising three 8 to 9 storey buildings containing 110 apartments and four retail & commercial tenancies, 183 basement car parking spaces across all uses, and public domain works.

The Applicant now proposes to modify the consent to increase residential car parking spaces from 167 to 192 spaces, reduce bicycle spaces and for minor design changes including additional storage and the removal of a window and addition of a door to the rear balcony of apartment 801/45.

1.1 Project location

The subject site is located at 45 Honeysuckle Drive, Newcastle in the Newcastle local government area (LGA) (see **Figure 1** and **Figure 2**). The site is legally described as Lot 4 DP 1265104.

The development site is located west of the Newcastle CBD and has frontage to the Hunter River. The site has an area of 5,711m² and is bound by Honeysuckle Waterfront Promenade to the north, 35 Honeysuckle Drive to the east (mixed-use development), Honeysuckle Drive to the south and vacant land to the west (future mixed-use development).

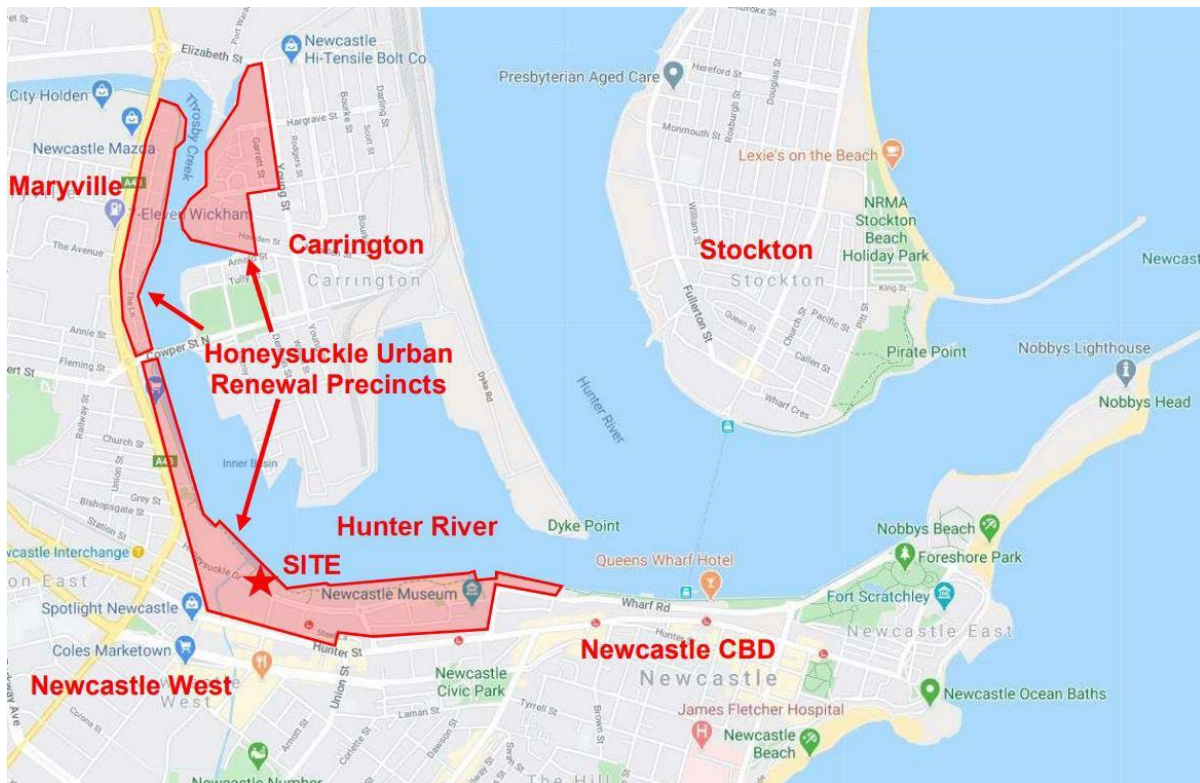


Figure 1 | Regional context map (Base source: Google Maps)



Figure 2 | Local context map (Base source: Nearmap 2023)

1.2 Related projects and works

1.2.1 Approval history

On 18 June 2020, development consent was granted by the Executive Director, Regions, Industry and Key Sites under delegation from the Minister for Planning and Public Spaces for the construction of mixed-use development. The consent permits the following works:

- construction of three 8 to 9 storey buildings containing 110 apartments and four retail and commercial tenancies
- residential gross floor area (GFA) of 13,107m² and commercial premises GFA of 527.5m²
- 183 basement car parking spaces
- public domain including Steel Street Floodway works, waterfront promenade tie in works, Cottage Creek tie in works and Honeysuckle Drive improvements.

The consent has been modified on three occasions (see **Table 1**).

The Department notes that Modification 5 is also currently lodged with the Department but is yet to be determined. The proposed MOD 5 seeks to modify the landscaping plan for the development and is not relevant to subject modification application MOD 4.

Table 1 | Summary of modifications

Modification	Description	Decision-maker	Type	Date
MOD 1	Modification to: <ul style="list-style-type: none"> • change two publicly accessible through-site links to private courtyards for residents • correct an error in calculation of commercial car parking with the two surplus spaces being allocated for residential use • undertake minor internal and external changes to apartments, lift cores and stairs • correct typographical errors and remove a reference in Condition B12 for compliance with Australian Standard AS2499 for Adaptable Housing as no adaptable housing is required. 	Director	4.55(1A)	22 September 2020
MOD 2	Modification to: <ul style="list-style-type: none"> • amend carparking requirements including increasing the overall car parking spaces from 183 to 186 and changes to car parking mix • increase commercial premises gross floor area by 32.5m² (from 527.5m² to 560m²) • amendments to basement floor levels including a minor expansion of the footprint, layout changes and removal of the residential bulky good storage area • amendments to the ground floor level including a new bulky mail room, reduction in the size of the resident common room and replacement of a bike storage area with the residential bulky goods storage area • correct an error in the calculation of apartment mix 	Director	4.55(1A)	24 August 2021
MOD 3	Modification to: <ul style="list-style-type: none"> • make internal apartment changes reducing total number of apartments from 110 to 101 and an increase in gross floor area by 169m² • correct an administrative error relating to residential gross floor area 	Team Leader	4.55(1A)	13 October 2022

2 Proposed modification

2.1 Modification overview

The key aspects of the modification are provided in detail in the 'Description of Modification' chapter of the Modification Report submitted with the application and are outlined below:

1. Increase the residential car parking spaces from 167 to 192 spaces to align with the current NDCP 2012 including the provision of seven private garages for the penthouse apartments and one of the amalgamated apartments (approved under Mod 3). This will result in an overall parking rate of 211 spaces, however there is no proposed modification to the approved floor area of the basement car park.
2. Reallocate one residential visitor space to a service/loading space.
3. Reduce bicycle spaces from 110 to 101 in accordance with the number required for the reduced number of apartments approved by MOD 3.
4. Provide additional storage on Levels 1 to 6 in the eastern building and on Level 7 in the middle building in place of redundant services areas.
5. Remove a window and add a door to the rear balcony of apartment 801/45.

The proposed condition changes include:

1. Modification of Schedule 1 to reflect the increased number of car parking spaces and the revised GFA after the added car parking spaces are taken into account.
2. Modification of Condition A2 to replace the relevant plans.
3. Modification of Condition B2 to reflect the increased number of car parking spaces (noting that the subject modification application initially sought to delete Condition B2, but the Applicant later agreed that the condition can be retained subject to amendments).
4. Modification of Condition B26 to reflect the revised car parking spaces.
5. Deletion of Condition E11A.

The Applicant's justification for the modification includes:

- Since the original approval, the NDCP 2012 has been amended to increase car parking rates for development within the City Centre and, in the subject case, the required area for the additional spaces already exists within the current approved basement car park.
- Reallocating one residential visitor space to a service/loading space ensures service/loading vehicles can access the site during business hours and prevents conflicts with commercial parking spaces.

- The number of apartments were reduced from 100 to 101 in MOD 3 however the bicycle spaces required were not modified to reflect this.
- Providing additional storage has additional residential benefit.
- There will be a reduction in GFA as the NDCP 2012 requires parking exceeding rates prescribed in the DCP to be included in GFA calculations and, with the proposed increase in parking equating to only one parking space above the maximum rate per dwelling, the excess parking spaces can be removed from the GFA calculation.
- The proposed design amendments are minor and will not result in any substantial changes to the external façade of the building and will respond to buyer requirements and market demand.

3 Statutory context

Details of the legal pathway under which modification is sought and are provided in **Table 2** below.

Table 2 | Permissibility and assessment pathway

Consideration	Description
Scope of modification	<p>Modification involving minimal environmental impact</p> <p>The Department has reviewed the scope of the modification and considers that it can be characterised as a modification involving minimal environmental impact as the proposal:</p> <ul style="list-style-type: none"> would not significantly increase the environmental impacts of the project as approved; is substantially the same development as originally approved; and would not involve any further disturbance outside the already approved disturbance areas for the project. <p>The Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.</p>
Consent Authority	<p>Minister for Planning and Public Spaces</p> <p>The Minister for Planning is the consent authority for development upon the site pursuant to sections 4.5(a) and 4.36 of the EP&A Act. The Minister continues to be the consent authority under and has the capacity to modify the consent of the project.</p>
Decision-maker	<p>Team Leader</p> <p>Under the Secretary’s delegation dated 9 March 2022, the Team Leader, Regional Assessments, may determine the application as:</p> <ul style="list-style-type: none"> a political disclosure statement has not been made there are no public submissions in the nature of objections Newcastle City Council has not made a submission by way of objection

3.1 Mandatory matters for consideration

3.1.1 Matters of consideration required by the EP&A Act

In determining the modification, the consent authority must consider relevant matters referred to in section 4.15(1) of the EP&A Act. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The Department’s consideration of these matters is shown in **Table 3** below.

Table 3 | Matters for consideration

Matter for consideration	Department's assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Appendix C
EP&A Regulation	Appendix C
Likely impacts	Section 5 - Assessment
Suitability of the site	Section 1.1 – Project location
Public submissions	Section 4 - Engagement & Section 5 - Assessment
Public interest	Section 4 - Engagement, Section 5 - Assessment and Section 6 - Evaluation

3.1.2 Objects of the EP&A Act

In determining whether or not to modify the consent, the consent authority should consider whether the modified project is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ecologically sustainable development (ESD). Consideration of those factors is described in **Appendix C**.

The Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ESD.

3.1.3 Biodiversity development assessment report

Section 7.17(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSD modifications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the authority or person determining the application is satisfied that the modification will not increase the impact on biodiversity values (as identified in the BC Act and in *the Biodiversity Conservation Regulation 2017*).

The Department is satisfied that the modification will not increase the impact on biodiversity values and consequently a BDAR is not required to accompany the modification application.

4 Engagement

4.1 Department's engagement

Clause 105(4) of the EP&A Regulation 2021 specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications for SSD. In accordance with the EP&A Regulation the Department made the modification application publicly available on the Department's website on 17 July 2023 and also forwarded the application to Newcastle City Council and TfNSW on 17 July 2023 for comment.

4.2 Notification of the modification

4.2.1 Summary of advice received from government agencies

The Department received advice from one government agency on the proposal. A summary of the agency advice is provided in **Table 4**. A link to the full copy of the advice is provided in **Appendix A**.

Table 4 | Summary of agency advice

Agency	Advice summary
TfNSW	TfNSW reviewed the information provided and raised no objection to or requirements for the proposed development as there will be no significant impact on the nearby classified (State) road network.

4.2.2 Summary of council submissions

Newcastle City Council provided comments on the project. A summary of the issues raised by council is provided in **Table 5** below.

Table 5 | Summary of issues raised by council

Issue	Submission summary
Residential Car Parking	<p>Council raised concerns regarding the methodology of the Applicant's calculation of apartment size to categorise apartments as small, medium or large under the NDCP 2012 to inform parking rates.</p> <p>Council requested further information on height of outer walls of balconies and confirmation of how the floor area of each dwelling was measured e.g. from internal face of the external walls.</p> <p>Council also noted that the parking rates within the NDCP 2012 are maximums and any exceedances are unlikely to be supported.</p>
Bicycle Parking	Council raised no objection to the reduction of bicycle spaces.

Issue	Submission summary
Electric Vehicle Parking	Council recommended that consideration should be given to Item F – Electric Vehicle Parking of the NDCP 2012 and that the relevant controls for the provision of electric vehicle charging points should be addressed.
Deletion of Conditions B2 and E11A	Council recommended that both conditions B2 and E11A should be retained as they remain valid.

4.3 Response to submissions

In addition to TfNSW and Council’s submission, the Department requested the Applicant confirm that there were no proposed modifications to the ground floor, provide an assessment of Apartment 801/45 against the requirements of the Apartment Design Guide (ADG), justify for the exclusion of the additional car space from the GFA calculation, and provide further discussion on the proposed deletion of Conditions B2 and E11A. Following the notification period, the Department asked the applicant to respond to the advice received from Council and the advice provided by the Department. The Applicant provided a response to the Department on 22 August 2023 (see **Appendix A**).

The Department published the submissions report on the NSW planning portal and forwarded the submissions report to Council for comment on 23 August 2023.

Council provided additional advice on 7 September 2023 maintaining that the balconies are to be excluded from the calculation of floor area and that the provision of electric vehicles needs to be considered under Section 7.03 of the NDCP 2012.

After a meeting with the Department to discuss the modification, on 7 September 2023 the Applicant provided additional information outlining surrounding developments and their provision of parking. The Department considered this information in **Section 5.1.1**.

4.4 Request for further information

On 8 September 2023 the Department asked the Applicant to provide updated plans with revised GFA and FSR to incorporate the additional car space and remove the irrelevant red clouding on the ground floor plan. Further, the request sought comments on a draft modification instrument.

The Applicant provided the revised plans and comments on the instrument on 13 September 2023.

The Applicant had no comments on the draft modification instrument.

5 Assessment

5.1 Car Parking Modifications

5.1.1 Proposed Number of Spaces

The proposed modification seeks to increase the number of residential car parking spaces from 167 to 192 spaces (an increase of 25 spaces). This would increase the total number of basement parking spaces from 186 to 211 (including the visitor and commercial spaces).

The Applicant has provided information within the Modification Report outlining the recent amendment of Section 7.03 Traffic, Parking and Access of the NDCP 2012 (commenced 1 November 2022). The amendment increased the residential car parking rates for residential accommodation developments within the Newcastle City Centre.

The NDCP 2012 as amended sets the following residential car parking rates for the development, as per the Modification Report (**Table 6**).

Table 6 | Residential Car Parking Rates as per the NDCP 2012

Apartment Size	Maximum average of spaces per dwelling (previous NDCP 2012)	Maximum average of spaces per dwelling (current NDCP 2012)	Apartments within proposed development	Maximum number of spaces (current NDCP 2012)
Small (<75m ² or 1 bedroom)	0.6	1	10	10
Medium (75m ² - 100m ² or 2 bedrooms)	0.9	1	1	1
Large (>100m ² or 3 bedrooms)	1.4	2	90	180
Total			101	191

The proposed modification seeks to increase residential car parking spaces in accordance with the required 191 under the amended NDCP 2012. The Department notes that s7.03 of the DCP includes a Savings provision that: “Any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.”

Therefore, in accordance with the NDCP 2012, the proposed modification seeks an excess of one additional space above what is required under the amended NDCP 2012.

Due to the currently approved oversized area of the basement, the proposed modification does not seek to change the approved floor area of the basement car park.

The Applicant provided a Traffic and Parking Assessment with the modification application that concluded that the proposed increase in residential parking spaces will not adversely impact the operation of the surrounding road network when compared to the approved development of the site.

The Applicant's calculation of apartment size in order to classify each apartment into small, medium or large under the NDCP 2012 has included the balcony area.

5.1.2 Maximum Number of Spaces Permitted

Council raised concerns regarding the Applicant's method of calculation of apartment size, noting that the Applicant has calculated apartment size based on total floor area and not Gross Floor Area (GFA); GFA excludes terraces and balconies with outer walls less than 1.4m high and therefore the balcony areas should be excluded from the Applicant's calculations. Council recommended that the Applicant provide supplementary information regarding the height of outer walls and whether the floor area of each dwelling was measured from the internal face of the external wall and those walls separating the dwelling from other dwellings.

The Applicant provided a response to Council's concerns. The Applicant noted that the NDCP 2012 adopts the formal definition of GFA (as defined in the Newcastle Local Environmental Plan 2012 (NLEP 2012)) in the method of calculation for other controls but that the NDCP 2012 does not appear to adopt GFA for calculating the apartment size of a dwelling for car parking purposes. Further, the Applicant provided justification for the inclusion of balconies explaining that balconies are an important part of the design and use of an apartment and contribute to the ability of an apartment to cater for residents.

Without the inclusion of the balcony, 17 of the apartments the Applicant has classified as large would be classified as medium. These 17 apartments have internal apartment areas of 89.8m² (5 apartments), 83m² (6 apartments) and 97.5m² (6 apartments). The Applicant notes that there are a number of these apartments that, without the inclusion of their balconies, are just short of the required area (100m²) that raises their maximum permitted number of parking spaces.

Additionally, the Applicant provided background information on surrounding developments and their provision of parking. The information included a comparison of the recent developments at 21 Honeysuckle Drive and 35 Honeysuckle Drive with the subject development Horizon Lee 5.

21 Honeysuckle Drive was originally approved under SSD 8019 with 144 residential car parking spaces in accordance with the maximum permitted number of spaces under the DCP, however the development has been subject to an approved modification application to increase residential car parking to 165 spaces, 35 Honeysuckle Drive was originally approved under SSD 8999 with 135 residential car parking spaces in accordance with the maximum permitted number of spaces under the DCP, however the development has been subject to an approved modification application to increase residential car parking to 167 spaces.

Council responded further noting that a definition of GFA has not been included in the NDCP 2012 as it is defined in the glossary of the NLEP 2012. Council maintained their position that the balconies should be excluded from the calculation of apartment size and that the Applicant's justification that the balconies are an important part of the design and use of the balcony conflicts with Figure 4K.3 of the ADG.

Each modification application that increased the number of spaces was subject to the unamended NDCP 2012. Consideration included impacts on traffic generation, significantly larger apartment sizes for 2 and 3 bedroom apartments compared to the minimums stated in the ADG, a maximum of two parking spaces per apartment to discourage private car use and the exceedance of NDCP 2012 rates in surrounding developments. Each application was approved.

5.1.3 Assessment

The Department notes that the NDCP 2012 does not include a methodology for calculation or a definition for the size of a dwelling for the purposes of calculating parking rates. The Department also notes that, under Clause 2.10 of the *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP), DCPs do not apply to SSD developments. However, the Department has considered the relevant provisions of NDCP 2012 including the increase in parking as a guide.

Due to the ambiguity in definition of apartment size, the DCP applying to the development as a guide and the demonstrated additional benefits and minimal impacts of the increase in parking, the Department is satisfied that the additional parking can be provided as per the calculation methodology contained in **Table 6** with the inclusion of balconies in the apartment size.

The Department considers the increase in residential parking spaces is acceptable as:

- TfNSW noted that there would be no impact on the State classified road network as a result of the increase in parking
- there would be no additional traffic impacts
- the number of parking spaces proposed is considered to be generally in accordance with the desired parking rates for the Newcastle City Centre as per the NDCP 2012 as amended, with an additional one space over the requirement
- alternately, if the calculation of apartment size were to have excluded balconies, there are 17 apartments of which are just short (approx. 10m² or less) of requiring the additional space for the apartment and the Department considers this acceptable

Therefore, the following modifications are recommended in the instrument of modification:

- Schedule 1 be modified to reflect 211 basement car parking spaces
- Condition A2 be modified to include the following amended plans to replace the currently approved versions;
 - DA 008 – GFA Calculations Rev J
 - DA 009 – GFA Calculations Rev I
 - DA 010 – Car Parking Generation Summary Rev A
 - DA 101 – Basement Level 02 Rev T
 - DA 102 – Basement Level 01 Rev U
- Condition B26 and B2 be modified to reflect 192 residential car parking spaces

5.2 Other issues

The Department's consideration of other issues is summarised in **Table 7** below.

Table 7 | Assessment of other issues

Issue	Findings and conclusions	Recommended conditions
<p>Gross Floor Area and Floor Space Ratio</p>	<p>The proposed modification sought to reduce the residential GFA of the development from 13,828.1m² to 13,318.5m² and therefore reduce the overall FSR. The reduction in GFA was sought as the NDCP 2012 requires additional parking above the applicable rates to be included in GFA calculations and, with the increase in rate under the amended NDCP 2012 and only one parking space overall exceeding maximum rates, the excess parking spaces can be removed from the GFA calculation. The additional storage was accounted for in the amended GFA calculation.</p> <p>The Department requested additional information regarding the one additional space proposed and its inclusion in the GFA calculation as the proposed modification sought to exclude it due to some spaces being private garages and therefore smaller in size than traditional car parking spaces.</p> <p>The Applicant provided a response agreeing to add the GFA of the one additional space to the total GFA bringing it to 13,331.5m². The Applicant submitted updated plans reflecting the GFA and FSR with the additional space included.</p>	<p>Schedule 1 be modified to reflect the amended residential GFA of 13,331.5m²</p>
<p>Reduction in Bicycle Spaces</p>	<p>The currently approved number of bicycle spaces is 110 and the proposed modification seeks to reduce the number of bicycle spaces to 101.</p> <p>The NDCP 2012 outlines bicycle parking rates in Table 1 of Section 7.03, which requires 1 space per dwelling unless separate storage is provided.</p> <p>Modification 3 reduced the number of dwellings from 110 to 101 but did not amend the number of bicycle spaces to reflect this reduction. Therefore, the approved number of dwellings is 101, and the NDCP 2012 requires 101 bicycle parking spaces for these dwellings.</p> <p>Therefore, the Department is satisfied that the number of bicycle spaces required can be reduced to 101 to reflect the approved number of dwellings.</p>	<p>Condition B28 is recommended to be modified to require 101 resident bicycle spaces.</p>

Issue	Findings and conclusions	Recommended conditions
<p>Reallocation of Visitor Space to Service/Loading Space</p>	<p>The proposed modification seeks to reallocate one residential visitor space to a service/loading vehicle space. The Applicant's justification for this modification is that it will ensure that service/loading vehicles can access the site during business hours and prevent conflict with commercial parking spaces.</p> <p>The NDCP 2012 does not require a minimum or maximum number of visitor parking spaces within the Newcastle City Centre and the proposal would still be providing nine shared use commercial/residential visitor spaces.</p> <p>The Department considers the reallocation of one visitor space to a service/loading space as acceptable as the space is located in close proximity to the lift, there is no minimum requirement for visitor spaces within the NDCP 2012 and the dedicated space would allow for unhindered access for servicing, reducing potential conflict within the car park.</p>	<p>Amended plan DA 102 – Basement Level 1 plan recommended to replace the currently approved plan DA 102 in Condition A2.</p> <p>Condition B26 is recommended to be modified to identify 9 residential visitor spaces and 1 service/loading space.</p>
<p>Additional Storage</p>	<p>Additional storage is proposed on Levels 1 to 6 in the eastern building and on Level 7 in the middle building. The Applicant has outlined that this additional space was identified during the design development phase as redundant services area that provided the opportunity to for extra storage to increase the amenity for owners and tenants.</p> <p>The proposed amended GFA has taken into consideration the additional storage on these levels as outlined above in row 1 of this table.</p> <p>The Department is satisfied with the conversion of redundant space to additional storage as it will utilise existing space to provide additional benefit and amenity to residents.</p>	<p>The following amended and additional plans are recommended to replace previous revisions or be added to the approved plans in Condition A2:</p> <ul style="list-style-type: none"> • DA-008 – GFA Calculations • DA-009 – GFA Calculations • DA-104 to DA-110 – Level 1 to Level 7 • DA 206 – Typical Unit Plan (Unit 801/45) • DA 302 – Elevations/Sections
<p>Alterations to Apartment 801/45</p>	<p>The proposed modification seeks to remove a window and add a door to the rear balcony of apartment 801/45.</p> <p>The proposed modification adds access to the balcony from the study/sitting area and relocates the ensuite slightly east. The Applicant provided an assessment, provided by a suitably qualified architect, against the relevant objectives of the ADG that confirmed that the</p>	<p>Plan DA 206 -Typical Unit Plans (Apartment 801/45) is recommended to be added to the approved plans in Condition A2 and Plan DA 111 – Level 8 is recommended to replace</p>

Issue	Findings and conclusions	Recommended conditions
	<p>revised layout of the apartment meets and exceeds the relevant requirements.</p> <p>The Department is satisfied that the revised layout, removal of a window and addition of a door in apartment 801/45 is appropriate as it complies with the ADG, will not detract or alter the design qualities of the development and provides additional benefits to the future resident in regard to access and amenity.</p>	<p>the existing Plan DA 111 in Condition A2.</p>
<p>Deletion of Condition B2</p>	<p>The proposed modification seeks the deletion of Condition B2.</p> <p>Condition B2 outlines amendments and details to be submitted to the Planning Secretary for approval and incorporated into the relevant Construction Certificate drawings including:</p> <ul style="list-style-type: none"> • fencing and gates at the northern and southern ends of the two through site links • amended basement plans showing: <ul style="list-style-type: none"> ○ number of car parking spaces of each type ○ notation that each car parking space must not accommodate more than one vehicle ○ the location of all residential visitor car parking spaces to adjoin, be opposite from or adjacent to a loft entrance on Basement Level 1 • on site provision for loading by medium rigid vehicles and Council’s heavy rigid vehicle waste collection vehicles • amended Site Analysis Plan removing references to pedestrian through site links <p>The Applicant notes that the condition has been complied with as post approval matters.</p> <p>The Department notes that condition B2(b) and (d) were satisfied on 29 November 2021. However, Condition B2(a) and (c) have not been documented as satisfied. Therefore, the Department requested additional information to justify the deletion of the condition.</p> <p>The Department identified that Condition B2(a) relating to fencing, and Condition B2(c) relating to loading for medium rigid vehicles and heavy rigid waste collection</p>	<p>Condition B2 is recommended to be modified to reflect the reduction in car parking spaces and reallocation of one residential visitor space.</p>

Issue	Findings and conclusions	Recommended conditions
	<p>vehicles, had not been documented as satisfied, and the Department requested additional information to justify the deletion of the condition. The Applicant responded by outlining that retaining the condition but modifying it to reflect the proposed changes in car parking was acceptable.</p> <p>The Department is satisfied that Condition B2 can be modified to reflect the modified car parking provisions including maximum spaces and residential visitor spaces.</p>	
<p>Deletion of Condition E11A</p>	<p>The proposed modification seeks the deletion of Condition E11A. This condition requires the shared use commercial/residential visitor car parking spaces to be allocated, marked out on the pavement surface and clearly signposted to state that the spaces are to be used for commercial parking only between 7am and 7pm daily.</p> <p>The Department notes that this condition was added as part of MOD 2 as a result of reducing the number of dedicated residential visitor spaces and instead utilising the co-use of the commercial spaces for both commercial and residential visitor parking.</p> <p>The Applicant notes that this condition is no longer required due to the provision of one permanent service/loading vehicle space in lieu of one residential visitor car parking space.</p> <p>However, the Department considers that the intent of the condition still applies to the remaining nine shared use commercial/residential visitor spaces as the spaces were intended for use by visitors of the commercial tenancies and not exclusively for servicing/delivery purposes.</p> <p>Therefore, the Applicant was requested to provide further justification for the deletion of the condition. In response, the Applicant described that there is no longer a maximum/minimum rate for visitor parking and the development provides visitor parking already. Further, the Applicant argued that limiting the number of visitor spaces encourages visitors to travel to the development by other means including by foot and public transport and the removal of the dual use parking spaces reduces the management workload for the owners corporation and facilities manager.</p> <p>The Department is not satisfied with the justification provided and maintains that the intent of the condition still applies to the spaces as the spaces were intended</p>	<p>No conditions recommended to be modified.</p>

Issue	Findings and conclusions	Recommended conditions
	<p>for use by visitors of the commercial tenancies, and not exclusively for servicing/delivery purposes, and were provided to mitigate the impacts of removing visitor parking spaces as part of MOD 2.</p>	
Plans	<p>The Department requested confirmation that there are no proposed changes to the ground floor as the modification application included plans with red clouding on the Ground Floor Plan DA-103. The Applicant confirmed no changes are proposed and the red clouding can be ignored. Therefore, the Department has excluded the ground floor plan from being modified.</p>	<p>No conditions recommended to be modified.</p>
Electric Vehicle Provisions	<p>Council recommended that consideration should be given to Item F – Electric Vehicle Parking of the NDCP 2012 and that the relevant controls for the provision of electric vehicle charging points should be addressed.</p> <p>In response, the Applicant noted that, since the commencement of selling the apartments at the development, all purchasers have been offered the option for a general power outlet (GPO) in their car space for the purposes of charging an electric vehicle.</p> <p>The Department notes that DCPs do not apply to SSD developments and, additionally, the NDCP 2012 requirements for EV charging were not in force at the time of the original approval of the development and therefore are not required to be complied with, however the Applicant has identified that 57 buyers of the development have opted in to the provision of a GPO in the car space.</p> <p>The Department is satisfied that the Applicant has provided opportunity for residents to have an EV compliant parking space and that, as the EV provisions were not in force at the time of original approval, the consideration of the provisions is not required.</p>	<p>No conditions recommended to be modified.</p>

6 Evaluation

The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ESD (**Section 3 & Section 5**), advice from government agencies, Council and public submissions (**Section 4**). This includes consideration of the modification report, Council advice and additional information provided by the Applicant.

If approved, the modification would provide increased parking and provide additional storage for residents.

The Department has formed the opinion:

- the modification will provide additional benefits to the residents of the development
- the modification will have no unreasonable impacts on the local area
- the modification should be approved subject to conditions

7 Recommendation

It is recommended that the **Team Leader, Regional Assessments**, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the notice of decision
- **modifies the consent** for the Horizon Lee 5 Project (SSD 9827 MOD 4) as amended, subject to the conditions in the attached instrument of modification.
- signs the attached instrument of modification (**Appendix D**).

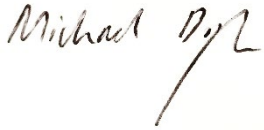
Recommended by:



Tahlia Sexton
Senior Planning Officer
Regional Assessments

8 Determination

The recommendation is **adopted** by:

A handwritten signature in black ink that reads "Michael Doyle". The signature is written in a cursive style with a long, sweeping tail on the letter "l".

Michael Doyle
Acting Team Leader
Regional Assessments

Glossary

Abbreviation	Definition
Council	Newcastle City Council
DCP	Development Control Plan
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPI	Environmental planning instrument
ESD	Ecologically sustainable development
LGA	Local government area
LEP	Local environmental plan
Minister	Minister for Planning and Public Spaces
NDCP 2012	Newcastle Development Control Plan 2012
NLEP 2012	Newcastle Local Environmental Plan 2012
SEPP	State environmental planning policy
SSD	State significant development
TfNSW	Transport for NSW

Appendices

Appendix A – List of referenced documents

All document used in the assessment of this modification can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/horizon-lee-5-modification-4-design-and-car-parking-amendments>

Appendix B – Submissions and government agency advice

All submissions and government agency advice can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/horizon-lee-5-modification-4-design-and-car-parking-amendments>

Appendix C – Statutory considerations

Objects of the EP&A Act

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

Environmental Planning Instruments (EPIs)

Under section 4.15 of the EP&A Act, the consent authority is required to take into consideration any EPI relevant to the development that is the subject of a development application. The EPIs that have been considered as part of the assessment of the modified proposal are:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy No. 65: Design Quality of Residential Design Development
- Newcastle Local Environmental Plan 2012

State Environmental Planning Policy (Planning Systems) 2021

The Planning Systems SEPP aims to identify development that is of State significance due to its size, economic value, or potential impact.

The modified proposal is classified as State significant development (SSD) under section 4.36 of the EP&A Act, as it comprises development on land identified as being within the Honeysuckle Site and has a capital investment value of more than \$10 million under clause 2 of Schedule 2 of the Planning Systems SEPP.

State Environmental Planning Policy No. 65: Design Quality of Residential Design Development

State Environmental Planning Policy 65 – Residential Apartment Development (SEPP 65) seeks to improve the design quality of residential developments and encourage innovative design. The ADG is closely linked to the principles of SEPP 65 and sets out best practice design principles for residential developments.

Clause 30(2) of SEPP 65 outlines that development consent must not be granted if, in the opinion of the consent authority, the development does not demonstrate that adequate regard has been given to the design quality principles and the objectives specified within the Apartment Design Guide for the relevant design criteria. An assessment of how the proposal satisfies Clause 30(2) of SEPP 65 is provided below in **Table 8** and **Table 9**.

Table 8 below provides the Department’s consideration of the Design Quality Principles in relation to the proposed modification.

Table 8 | Consideration of the Design Principles of SEPP 65

SEPP 65 Principle	Department Response
Context and Neighbourhood Character	The modification does not alter the relationship between the proposed development, its site and the surrounding residential context. The Department is satisfied that the modified development is consistent with the Design Quality Principle 1.
Built Form and Scale	The proposed modification application does not alter the built form and scale of the development. The Department is satisfied that the modified development is consistent with the Design Quality Principle 2.
Density	The proposed modification does not alter the density of the development. The Department is satisfied that the modified development is consistent with the Design Quality Principle 3.
Sustainability	The proposed modification does not alter any sustainability outcomes of the development. The Department is satisfied that the modified development is consistent with Design Quality Principle 4.
Landscape	The proposed modification does not seek to alter landscaping of the development. Department considers that the proposal is consistent with Design Quality Principle 5.
Amenity	The proposed modification does not amend the solar access, ventilation or amenity of the proposal, other than positively increasing storage. The Department is satisfied that the development is consistent with Design Quality Principle 6.
Safety	The proposed modification maintains the development’s positive relationship between public and private spaces through clearly defined secure access point, well-lit and visible areas that promote safety. The Department is satisfied that the development is consistent with Design Quality Principle 7.

SEPP 65 Principle	Department Response
Housing Diversity and Social Interaction	The proposed modification does not amend the housing mix or number of housing provided. The Department is satisfied that the development complies with Principle 8.
Aesthetics	The proposed modification does not alter the aesthetics of the development, as the proposed changes are internal only, with the exception of the amendment to apartment 801/45 which is a minor modification to the façade and considered acceptable. The Department is satisfied that the development is consistent with Design Quality Principle 9.

Table 9 below provides the Department’s considerations of the relevant Objectives and Design Criteria contained within the ADG.

Table 9 | Consideration of the relevant objectives of the Apartment Design Guide

Design Criteria	Department’s consideration
<p>3J-1 Bicycle and Car Parking Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	Satisfactory
<p>3J-1 Bicycle and Car Parking – Design Criteria For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area, or on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	<p>Satisfactory</p> <p>Due to the increase in car parking rates within NDCP 2012, the required car parking spaces has increased with this modification. This is discussed in Section 5.1.</p>
<p>3J-2 Bicycle and Car Parking Parking and facilities are provided for other modes of transport.</p>	<p>Satisfactory</p> <p>Due to reduction in apartments approved as part of MOD 3, the amount of bicycle spaces required decreases with this modification. This is discussed in Section 5.2.</p>
<p>3J-3 Bicycle and Car Parking Car park design and access is safe and secure.</p>	Satisfactory

Design Criteria	Department's consideration
3J-4 Bicycle and Car Parking Visual and environmental impacts of underground car parking are minimised.	Satisfactory
4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space Living rooms and private open spaces of at least 70% of apartments receives a minimum 3 hours of direct sunlight between 9am and 3pm in mid-winter	Satisfactory
4A-3 Design incorporates shading and glare control, particularly for warmer months	Satisfactory
4B-1 All habitable rooms are naturally ventilated	Satisfactory
4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents 60% of apartments are to be naturally cross ventilated Overall depths of cross over apartments do not exceed 18m	Satisfactory
4C-1 Ceiling height achieves sufficient natural ventilation and daylight access Habitable rooms have a minimum ceiling height of 2.7m	Satisfactory
4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	Satisfactory
4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building	Satisfactory
4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity 3 bedroom apartments to achieve a minimum internal area of 90m ² All habitable rooms must have a window in an external wall with a total minimum glass area of not less than 10%	Satisfactory
4D-2 Environmental performance of the apartment is maximised Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Satisfactory
4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs Master bedrooms have a minimum area of 10m ² Bedrooms have a minimum dimension of 3m	Satisfactory
4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity 3 bedroom apartments have a minimum balcony area of 12m ² and minimum balcony depth of 2.4m	Satisfactory
4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	Satisfactory
4E-4 Private open space and balcony design maximises safety	Satisfactory

Design Criteria	Department's consideration
4G-1 Adequate, well designed Storage is provided in each apartment Adequate, well designed storage is provided in each apartment.	Satisfactory
4G-1 Adequate, well designed Storage is provided in each apartment In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> • Studio apartments 4m³. • One bedroom apartments 6m³. • Two bedroom apartments 8m³. • Three+ bedroom apartments 10m³. At least 50% of the required storage is to be located within the apartment.	Satisfactory The proposed modification provides additional storage in addition to the storage previously approved.
4G-2 Adequate, well designed Storage is provided in each apartment Additional storage is conveniently located, accessible and nominated for individual apartments.	Satisfactory

Newcastle Local Environmental Plan 2012

The Department's consideration of the relevant sections of the Newcastle LEP 2012 is included in Table 10.

Table 10 Department's consideration of the Newcastle Local Environmental Plan 2012

Relevant section	Department's consideration	Compliance
2.2 Zoning of land to which Plan applies and land use table	No applicable changes with this modification.	No change proposed.
4.3 Height of buildings	No applicable changes with this modification.	No change proposed.
4.4 Floor Space Ratio The maximum floor space ratio for a building is not to exceed to floor space ratio shown for the land on the Floor Space Ratio Map.	The proposed development reduces the FSR to 2.43:1 from 2.52:1. The site has a FSR of part 2.5:1 and Part 2.1:1 with an average site FSR of 2.27:1. The proposed FSR of 2.43:1 exceeds the maximum floor space ratio; however, the Department is satisfied that the exceedance in FSR was adequately assessed as part of MOD 3, and the proposed modification seeks to reduce the overall FSR.	No, considered acceptable.
4.6 Exceptions to development standards	The proposed development exceeds the maximum floor space ratio as shown on the Floor Space Ratio Map.	Refer to above.
5.10 Heritage conservation	No applicable changes with this modification.	No change proposed.
6.1 Acid sulfate soils	No applicable changes with this modification.	No change proposed.

Relevant section	Department's consideration	Compliance
6.2 Earthworks	No applicable changes with this modification.	No change proposed.
7.5 Design excellence	No applicable changes with this modification.	No change proposed.

Appendix D – Recommended instrument of modification