



ESR Horsley Logistics Park Modification 6

Amendment to Condition B40 relating to bushfire construction standards

State Significant Development Modification Assessment

(SSD-10436-MOD- 6)

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Cover image: Aerial view of the proposed ESR Horsley Logistics Park (Source: ESR Developments (Australia) Pty Ltd)

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Glossary

Abbreviation	Definition
Council	Fairfield City Council
Department	Department of Planning and Environment (DPE)
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i> (NSW)
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
GFA	Gross Floor Area
HLP	Horsley Logistics Park
LEC	NSW Land and Environment Court
LGA	Local Government Area
Minister	Minister for Planning
Planning Secretary	Secretary of the Department
RtS	Response to Submissions
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1. Introduction

This report provides the Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the ESR Horsley Logistics Park (HLP) (SSD-10436). The modification application seeks approval to amend Condition B40 which relates to bushfire construction standards and requires warehouse buildings to be constructed from non-combustible materials.

The application was lodged on 9 February 2022 by ESR Developments (Australia) (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1. Background

The Applicant seeks to modify an approved warehouse at 6 Johnston Crescent, in the Fairfield City local government area. The site is located approximately 35 kilometres (km) west of the Sydney central business district (CBD), 18 km west of the Parramatta CBD and is within the Western Sydney Employment Area (WSEA). The site location is shown in **Figure 1**.

The approved development involves the construction, fit-out and operation of eight warehouse and distribution tenancies in four buildings with a total GFA of 112,719 square metres (m²) including offices, loading docks, hardstand areas, truck and car parking areas, landscaping, associated infrastructure and signage.

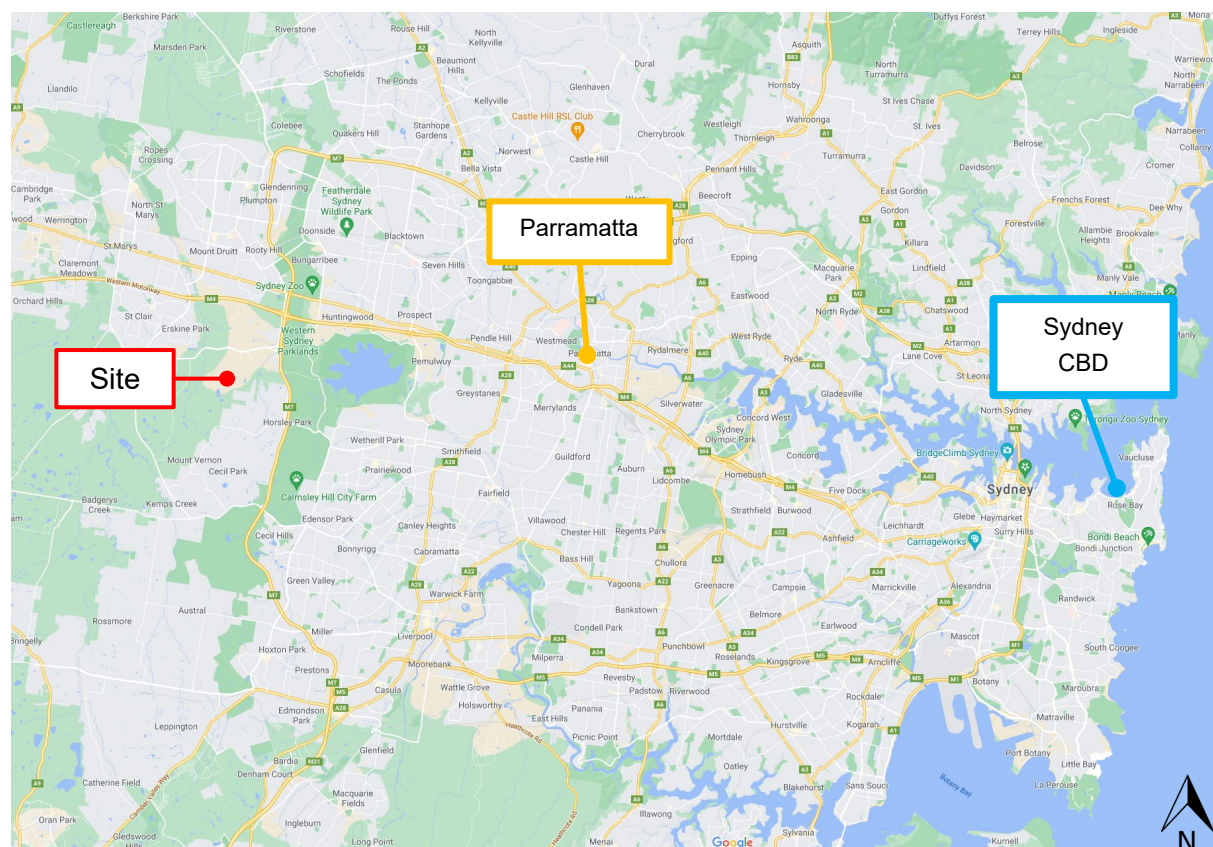


Figure 1 | Regional Context Map

1.2. Site Description

On 16 October 2015, the NSW Land and Environment Court approved a staged 14-lot industrial subdivision called the CSR Estate (DA 893.1/2013). The HLP covers approximately 20.8 hectares (ha) of the CSR Estate and is located within Stage 2 and at the southern extent of the CSR Estate. Site preparation works including remediation, bulk earthworks, building pads, road infrastructure and services are being delivered as part of DA 893.1/2013 for the site. Construction work has commenced within the HLP.

The site is located to the north of existing rural residences on Greenway Place separated by a bund, retaining walls and a landscaped buffer constructed as part of the CSR Estate. An 11-lot rural residential subdivision located adjacent to a portion of the southern boundary of the site has been approved but not constructed to date.

To the east of the site is an environmental conservation area established to protect approximately 10 ha of Endangered Ecological Community being Cumberland Plain Woodland. To the west and south of the site is the Jacfin Horsley Park development, which is under early stages of construction as part of project approval 10_0130. To the north of the site are the other stages of the CSR Estate, which are under construction. Warehousing complexes including Oakdale Central Estate and Oakdale East Estate are located further to the north.

The local context is shown in **Figure 2**.

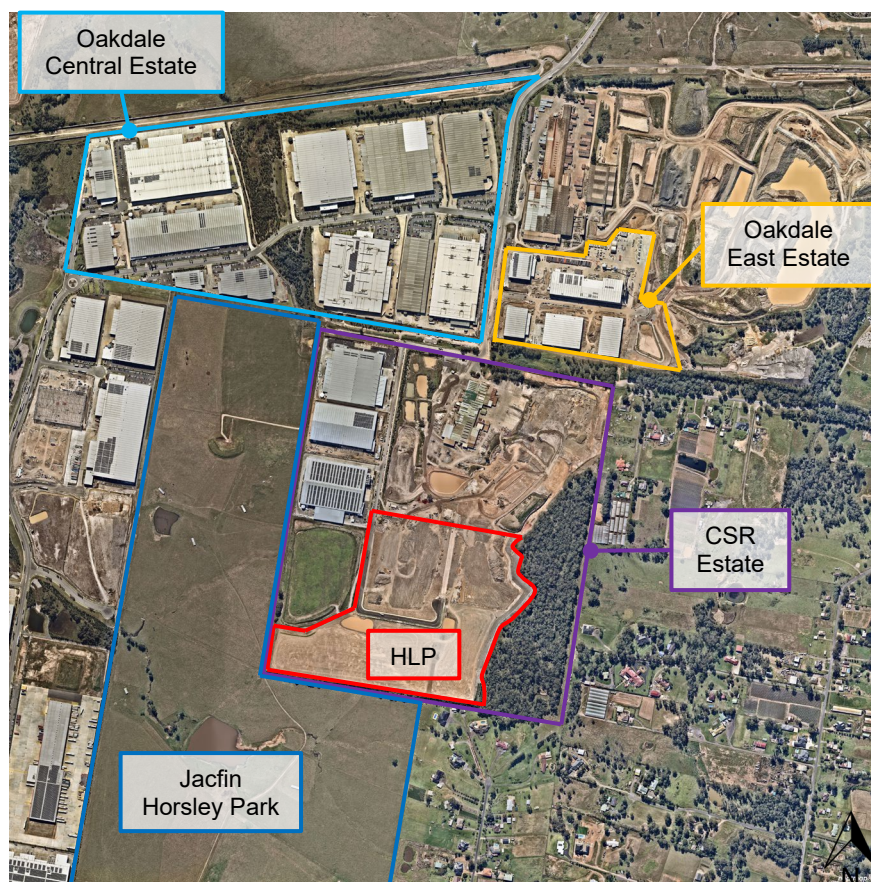


Figure 2 | Local Context Map

1.3. Approval History

On 31 March 2021, the then Executive Director, Energy, Industry and Compliance as delegate of the then Minister of Planning and Public Spaces (the Minister) granted development consent for the HLP (SSD-10436) at 6 Johnston Crescent, Horsley Park.

The development consent has been modified on 4 occasions and 1 modification is currently under assessment (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Amendments to the layout of Lots 201 and 204	Department	s.4.55(1A)	4 August 2021
MOD 2	Design amendments to Lot 204; renumbering of lots; amendment to development consent condition relating to development contributions	Department	s.4.55(1A)	16 December 2021
MOD 3	Installation of rooftop cooling units on Lot 201	Department	s.4.55(2)	Withdrawn
MOD 4	Design amendments to Lot 204 (formerly Lot 203)	Department	s.4.55(1A)	10 May 2022
Mod 5	Amendment to Lot 201 warehouse, including installation of plant equipment, amalgamation of tenancies and fit out works	Department	s.4.55(1A)	21 February 2022
Mod 6	Amendment to Condition B40 (This modification application)	Department	s.4.55(1A)	Under assessment

1.4. Bushfire Requirements - Condition B40

The consent for SSD-10436 incorporates bushfire protection conditions including construction requirements for the warehouse buildings. Condition B40 is the subject of this modification which requires compliance with Sections 3 and 5 (BAL 12.5) of the Australian Standard 3959-2018 *Construction of buildings in bushfire-prone areas* (AS 3959) or the NASH standard – *Steel Framed Construction in Bushfire Areas* 2014 (NASH Standard) and Planning for Bushfire Protection 2019 (PBP). The condition also requires warehouse buildings to be constructed of non-combustible materials.

PBP is a performance-based guideline which applies to all development on bushfire prone land in NSW. PBP identifies objectives and detailed performance criteria to satisfy desired outcomes as a means to achieve the PBP's aims and objectives. The PBP states that any performance-based approach must

demonstrate that bush fire protection afforded to a development is commensurate with the assessed level of bush fire risk.

AS3959 specifies the construction requirements of buildings to ensure they can withstand bushfires. Section 3 of AS3959 specifies general construction requirements and Section 5 details construction requirements for sites identified as BAL 12.5. BAL 12.5 is primarily concerned with protection from ember attack and radiant heat up to and including 12.5 kW/m² where the site is less than 100 m from the source of bushfire attack.

The NASH standard is based on non-combustible construction using steel framing, steel roof cladding and non-combustible wall systems. The NASH standard provides two construction solutions, one covering lower BAL's (BAL-12.5, BAL-19, BAL-29 and BAL-40) and a separate solution for flame zone (BAL-FZ), based on AS 3959 BAL definitions.

The Department's assessment of SSD-10436 identified the site as bushfire prone land. Advice provided by the NSW RFS at the time of assessment stated that the intent of the relevant construction standard recommendation was to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities. Condition B40 originated from the RFS recommendations.

The Applicant has commenced detailed design of the warehouses and identified that Condition B40 is unworkable as it is considering the use translucent roof sheeting (which is a combustible material) for natural lighting and to reduce energy consumption. While the Applicant acknowledged that combustible materials are not permitted for use under Condition B40, the Applicant obtained advice from a bushfire consultant which stated that AS3959 and the NASH Standard (as referenced in Condition B40) would not apply to Building Classes 5 to 8 inclusive, including factories and warehouses.

The Applicant is of the view that these types of developments, including the approved warehouses on-site, must be considered on a case-by-case basis (or performance-based approach) when considering consistency with the aims and objectives PBP 2019. The Applicant further states strict compliance with AS3959 and the requirement for non-combustible building materials, is beyond the scope and application of AS3959 and PBP.

As such, the Applicant has lodged a modification application to amend Condition B40 to incorporate a performance-based approach into Condition B40.

2. Proposed Modification

2.1. Proposed Modification

The Applicant lodged a modification application under Section 4.55(1A) of the EP&A Act seeking to amend Condition B40:

B40. The Applicant must ensure warehouse buildings on Lots 201, 204 and 202 are constructed of non-combustible building materials and comply with Section 3 and 5 (BAL 12.5) of the Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas or National Standard – Steel Framed Construction in Bushfire Areas (NASH, 2014) as appropriate, and Section 7.5 of the PBP.

As detailed in Section 1.4, Condition B40 prohibits the use of combustible materials in the construction of warehouse buildings. The Applicant argues that Condition B40 requires strict compliance with AS3959 and the NASH standard and does not enable the Applicant to use the PBP case-by-case basis assessment option.

The modification application therefore seeks to introduce a mechanism to consider performance-based outcomes when determining whether the warehouse buildings meet the aims and objectives of PBP and the general fire safety construction provisions of the National Construction Code (NCC), rather than demonstrating strict compliance.

The modification would involve the following amendments to Condition B40:

- remove the phrase ‘non-combustible’ to enable other types of construction materials such as translucent sheeting to be considered
- remove the requirement to comply with Sections 3 and 5 of the AS3959
- include a mechanism to comply with Section 7.5 of the PBP, on a prescriptive (deemed to satisfy and/or acceptable solution) basis and/or performance basis.

The modification is described in full in the Environmental Assessment (EA) included in **Appendix A**.

3. Statutory Context

3.1. Scope of Modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as:

- the primary function and purpose of the approved development would not change as a result of the modification
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act
- the modified development is substantially the same development as originally approved

Therefore, the Department is satisfied the modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. 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.

3.2. Consent Authority

The Minister is the consent authority for the application under section 4.5(a) of the EP&A Act. Under the Minister's delegation dated 9 March 2022, the Acting Team Leader, Industry Assessments, may determine the application under delegation as:

- the Applicant has not disclosed a reportable political disclosure in connection with the application
- there are no public submissions in the nature of objections, and
- Fairfield City Council (Council) has not made a submission by way of objection.

3.3. Mandatory Matters for Consideration

The Department undertook a comprehensive assessment of the application against the mandatory matters for consideration as part of the original assessment of SSD-10436.

Since lodgement of the modification application, all NSW State Environmental Planning Policies (SEPPs) have been consolidated into 11 policies. The consolidated SEPPs commenced on 1 March 2022, with the exception of State Environmental Planning Policy (Housing) 2021, which commenced on 26 November 2021.

The SEPP consolidation does not change the legal effect of the repealed SEPPs, as the provisions of these SEPPs have simply been transferred into the new SEPPs. Further, any reference to an old SEPP is taken to mean the same as the new SEPP.

This modification application would not result in significant changes that would alter the Department's consideration of the mandatory matters for consideration under section 4.15(1) of the EP&A Act and conclusions made as part of the original assessment.

3.4. Biodiversity Conservation Act 2016

Section 7.17 of the *Biodiversity Conservation Act 2016* (BC Act) specifies that if the determining authority is satisfied a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (BDAR) is not required.

A BDAR waiver request for the original SSD was approved on 6 August 2020 on the basis that the development would not involve the removal of any vegetation and is consistent with EPBC Act Approval (2017/7744) and DA 893.1/2013.

As the modification remains within the approved development footprint and no vegetation removal is proposed, it is not considered there is an increase in impacts on biodiversity values and the Department concludes a BDAR is not required.

4. Engagement

4.1. Department's Engagement

Clause 117(4) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires a section 4.55(1A) modification application to be notified or advertised if specified by a community participation plan. The Department's Community Participation Plan notes the exhibition requirements for such modifications are discretionary, and based on the urgency, scale and nature of the proposal.

Given the proposed changes would result in minimal environmental impacts (see **Section 3**), the application was not notified or advertised. However, it was made publicly available on the Department's website on 9 February 2022 and was referred to Council and the NSW Rural Fire Service (NSW RFS) for comment.

4.2. Government Advice

Council did not raise any concerns with the proposed modification subject to the roof materials complying with the relevant standards or guidelines for bushfire protection, and the requirements set out by the NSW RFS.

NSW RFS provided comments on the proposed modification including recommended conditions relating to asset protection zones, construction standards, access requirements and water and utility services. RFS raised concerns with the proposal and did not recommend amending Condition B40 as proposed by the Applicant. The advice also included general advice noting that on 2 April 2020 the NSW RFS resolved to require ember protection and non-combustible construction for Class 5 to 8 building without potential flame contact in a bushfire prone area as a means to satisfy section 8.3.1 and the aim and objectives of PBP 2019.

4.3. Response to Submissions

On 28 February 2022 the Department requested further information from the Applicant including an updated Bushfire report to include all appendices referenced within the report, updated references to the conditions proposed to be amended and a response to comments made by the RFS. On 12 May 2022, the Applicant responded to the Department's request. The Applicant's response included an additional assessment prepared by BlackAsh Bushfire Consultants to support the performance-based approach as a means to comply with Condition B40. The additional assessment found that:

- warehouses on Lots 201 and 206, the approved warehouses were sufficiently separated from the bushfire hazard, the E2 Conservation bushland to the east of the site, to be of little to no concern from bushfire attack.
- warehouse on Lot 204, sited 32m from the E2 zoned land, it would be of a sufficient distance so that the radiant heat of a fire would not affect the roof or the translucent roof sheeting on the roof.
- warehouse on Lot 202, sited 31m from the E2 zoned land, the radiant heat would not affect the roof as any bushfire embers that land on the roof would be likely blown off. Further given the nature of the development, being for industrial purposes, the proposal would be acceptable to the NSW RFS.

- the proposed materials achieve the aims and objectives of the PBP under low bushfire attack probability.

The Applicant also consulted closely with the RFS policy branch. The Applicant's performance-based approach was supported by the NSW RFS Development Planning and Policy Section and was subsequently adopted by the NSW RFS Planning and Environment Section. The revised Modification Report was made publicly available on the Department's website and referred to the NSW RFS Planning and Environment Section for comment. The RFS raised no further issues with the proposed modification. The RFS agreed that there are no specific construction requirements for Class 5 to 8 buildings in PBP 2019, AS 3959:2018 or NASH Standard. The RFS advised that the intent is for the buildings on Lots 201, 202 and 204 is to meet the aims and objectives of PBP 2019 and the general fire safety construction provisions of the NCC and as such, a performance-based approach was appropriate.

5. Assessment

The Department has assessed the merits of the modification. During this assessment, the Department has considered the:

- the Modification Report and Revised Modification Report provided to support the modification
- the documentation and Department's assessment report for the original development application
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issue is bushfire impacts.

There are no other impacts to be considered in conjunction with the Department's assessment.

5.1. Bushfire Impacts

As discussed in Section 1.4, the Applicant is considering the use of alternative roof materials for the development including translucent roof sheeting to allow for natural lighting and reduce ongoing power consumption. However, the use of this material is inconsistent with Condition B40 as it is a combustible material.

The Applicant states that bushfire protection measures can be maintained on-site while permitting other types of construction materials for industrial and warehouse buildings, including translucent rooftop sheeting, and be consistent with PBP 2019. The Applicant notes that the proposal does not create any additional impacts associated with bushfire risk.

As discussed in Section 1.4, the additional assessment prepared by BlackAsh Bushfire Consultants argued that Clause 8.3.1 of PBP 2019 allows RFS to consider developments on a case-by-case basis. The general fire safety construction provisions of the NCC are taken as acceptable solutions, however construction requirements for bush fire protection need to be considered on a case-by-case basis.

As detailed in Section 4.3, the RFS considered the Applicant's Modification Report and the additional assessment which provided a performance-based approach as a means of satisfying PBP. The performance-based approach found that the building roof material-achieved the aims and objectives of PBP under low bushfire attack probability.

The RFS noted that it has since made a change to its policy position in this instance and as such has made the following recommendations:

- remove references to non-combustible materials and Sections 3 and 5 of AS3959 in Condition B40
- include a new phrase in Condition B40 specifying that compliance with the NCC, AS3959, NASH standard and PBP 2019 can be achieved via a prescriptive (deemed to satisfy and/or acceptable solution) basis and/or performance basis.

Council did not raise any bushfire impact related concerns.

The Department's Assessment and Conclusion

The Department reviewed the Applicant's Modification Report, the Revised Modification Report and the advice provided by the NSW RFS.

The Department accepts the revised policy position of the NSW RFS that the intent is for the warehouse buildings on Lots 201, 202 and 204 is to meet the aims and objectives of PBP and the general fire safety construction provisions of the NCC. The Department notes that the Applicant's performance-based approach is consistent with PBP and has the support of the NSW RFS.

The Department notes that its assessment of the proposed modification to Condition B40 does not consider whether the proposed materials are suitable or are consistent with the amended Condition B40. Rather the amendment provides the Applicant with the option to provide a performance-based solution as a means to satisfy the condition. The Department notes that certification of the amended Condition B40 would be undertaken separately to the current application.

The Department is therefore satisfied the proposed modification can be supported in this instance, for the following reasons:

- NCC does not provide bush fire specific construction requirements for building classes 5 to 8
- PBP 2019 states the construction requirements for bush fire protection for Building Classes 5 to 8 are to be considered on a case-by-case basis
- RFS advised its current policy position on this matter is to enable performance-based compliance as an accepted solution
- RFS provided revised recommendations to support the proposed amendment to Condition B40
- the additional information provided found that the proposed materials achieve the aims and objectives of the PBP under low bushfire attack probability
- potential bushfire risks would be adequately managed via the conditions of consent including the proposed amendment to Condition B40.

The Department's assessment concludes the amendment to Condition B40 would not result in adverse environmental impacts or additional bushfire impacts. The amended condition B40 would still require the Applicant to comply with the PBP and existing conditions of consent would manage any bushfire risks associated with the development.

6. Evaluation

The Department has assessed the modification application and considered the objectives and the relevant considerations under section 4.55 of the EP&A Act.

The Department's assessment of the modification concludes the amendment to Condition B40 would not present a risk of harm to the community or the environment.

The Department considers the modification is appropriate on the basis that:

- the bushfire protection conditions are retained within the conditions of consent
- the development could be appropriately managed through the existing and modified condition of consent.

The Department finds that its assessment of the proposed modification to Condition B40 does not consider whether the proposed materials are suitable or are consistent with the amended Condition B40. The amendment provides the Applicant with the option to provide a performance-based solution as a means to satisfy the condition. The Department notes that certification of the amended Condition B40 would be undertaken separately to the current application.

Overall, the Department is satisfied bushfire impacts could be appropriately managed through the existing conditions of consent and the Department's recommended modified condition. It is therefore recommended the modification should be approved.

7. Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application SSD-10436 MOD-6 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the development consent SSD-10436
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



9 June 2022

Rebecka Groth

Senior Environmental Assessment Officer
Industry Assessments

8. Determination

The recommendation is **Adopted** by:



9 June 2022

Pamela Morales

A/Team Leader

Industry Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of Documents

The Department has considered the following key documents during its assessment of the modification:

- ESR Horsley Logistics Park SSD-10436 MOD 6 – Amendment to Condition B40, prepared by ESR, dated 17 January 2022
- response to Submissions, prepared by ESR, dated 9 May 2022
- advice received from Fairfield City Council and NSW Rural Fire Service

These documents may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/ssd-10436-mod-6-amendment-condition-b40>

The Department has also considered the:

- existing conditions of consent
- documents supporting the original development
- relevant environmental planning instruments, policies and guidelines
- relevant requirements of the *Environmental Planning and Assessment Act 1979*.

Appendix B – Notice of Modification

The Notice of Modification may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/ssd-10436-mod-6-amendment-condition-b40>

Appendix C – Consolidated Consent

The consolidated consent may be viewed on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/ssd-10436-mod-6-amendment-condition-b40>