

State Significant Development 7664

Horsley Drive Business Park Stage 2

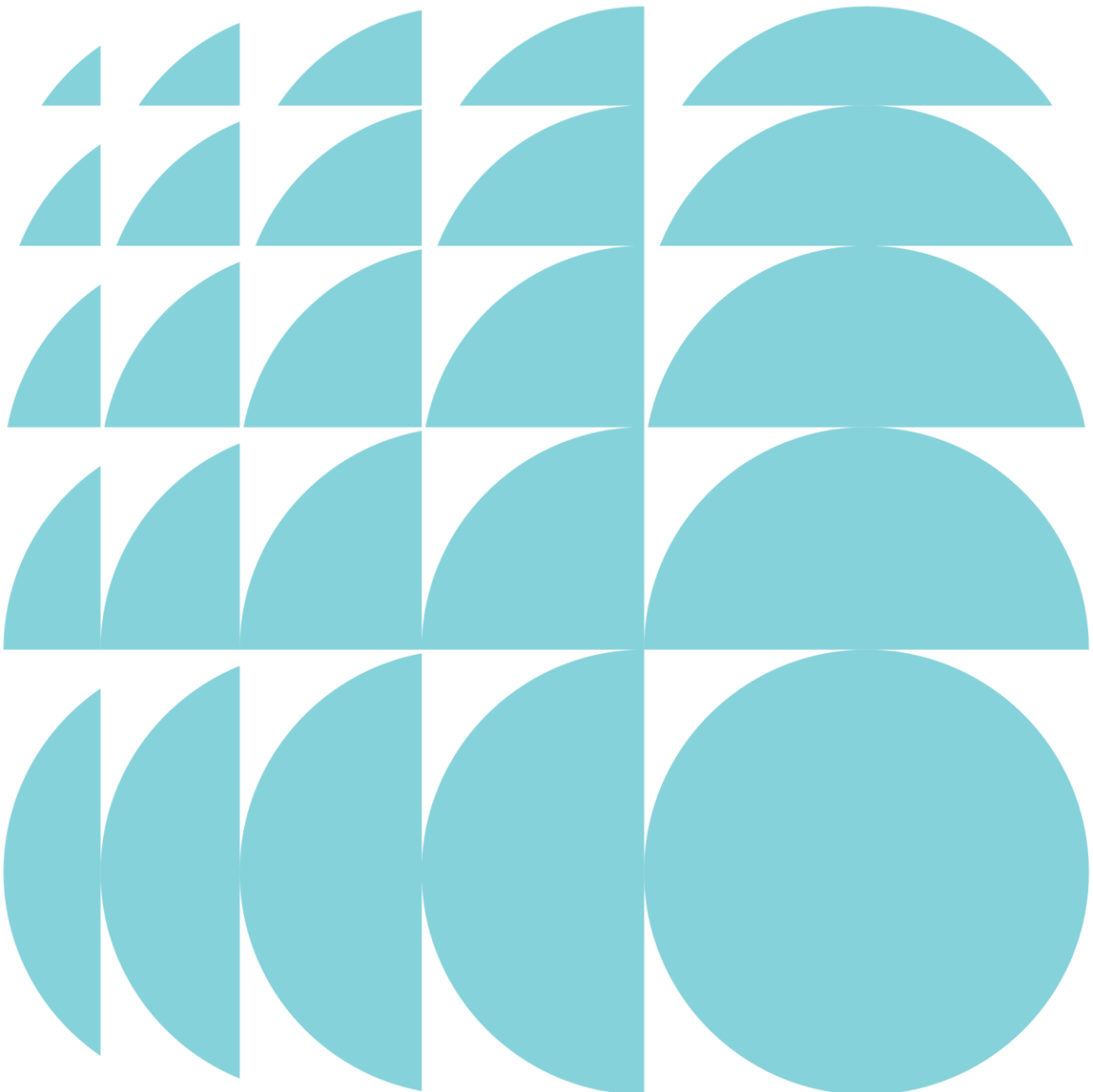
Section 4.55 (1A) Modification Application
(Mod No. 2)

5, 15 and 25 Trivet Street, Wetherill Park and 130,
132-142, 144-154 and 156 Cowpasture Road,
Wetherill Park, NSW 2164 (Lots 17-22 DP 13961
and Lot 2 DP 1212087)

Submitted to Department of Planning and
Environment

On behalf of Charter Hall

16 December 2020 | 7190880



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1.0 Introduction

This report has been prepared by Ethos Urban on behalf of the Applicant (Charter Hall), and is submitted to the Department of Planning, Industry and Environment (DPIE) in support of a modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to State Significant Development (SSD) approval SSD7664 issued on 9 November 2017 in respect of the Horsley Drive Business Park Stage 2.

A section 4.55(2) Modification Application was approved by DPIE on 10 August 2020 (SSD-7664-Mod-1) for modifications to the location and configuration of vehicle access, consolidation of Warehouses 1 and 2, reductions to the development footprint for warehouses 3 and 4 and revisions to the finished ground levels.

This application is the second modification to the Concept Approval.

SSD 7664 sought approval for Concept Proposal and Stage 1 works for the establishment of a warehouse, distribution and industrial facility at the Horsley Drive Business Park Stage 2 within the Western Sydney Parklands (WSP).

Specifically, SSD 7664 involved a Concept Plan for a range of uses such as general and light industrial, warehouse, distribution and ancillary office land uses, as well as Stage 1 earthworks for subdivision (7 lots), an internal access road, demolition, bulk earthworks, infrastructure and landscaping.

A section 4.55(2) modification was lodged on 27 March 2020 and sought approval for:

- A revised location and configuration for vehicular access to the site;
- Revised lot configurations to support the consolidation of Warehouses 1 and 2 into one Customer Fulfilment Centre of approximately 30,000m²;
- Minor reductions in size and development footprint of Warehouses 3 and 4; and
- Associated changes to the finished development levels of the site.

The development site is located on the corner of Cowpasture Road and Trivet Street, Wetherill Park, more formally described as Lots 17-23 DP 13961 and Lot 2 DP 1212087.

This current section 4.55(1A) modification application seeks approval for changes to the concept development approval to facilitate an increase to the maximum building height of Building 1 to allow for the placement of rooftop plant and equipment which is necessary for the customer fulfillment centre to operate.

This modification seeks to amend Schedule 2, Condition A10 to allow the maximum building height to increase where plant equipment is required to be located on the roof of the building.

This modification application has been prepared based on information in the plans of development and other supporting technical information appended in this report.

The proposal is consistent with the relevant legislative and policy framework including the Environmental Planning and Assessment Act 1979 and State Environmental Planning Policy (Western Sydney Parklands) 2009.

This report describes the proposed modifications to the approved design, sets out the proposed amendments to the development consent conditions, and provides an assessment of the environmental impacts of the proposed changes. It should be read in conjunction with the documentation that accompanied SSD 7664.

The majority of environmental site constraints and impact management were addressed in the EIS for the approved Concept Proposal and Stage 1 works for the Horsley Drive Business Park Stage 2.

This report addresses the key modifications with respect to the relevant likely impacts. All other impacts have been reviewed and updated to conclude that there are no material changes in impact arising from the proposed modification that were considered as part of the original SSDA assessment.

The relevant impacts include:

- Visual impacts

Having regard to the above, the assessment of the proposal has not identified any significant environmental, social or economic impacts.

A section 4.55(1A) modification application has been lodged concurrently with this application to seek approval for other detailed design changes for Horsley Drive Business Park Stage 2 – Building 1 (Customer Fulfilment Centre) (SSD-10404).

1.1 Consultation

Consultation was undertaken with a range of State authorities, service providers and members of the community during the preparation and assessment of the EIS for the Concept Approval and Stage 1 works SSDA.

Preliminary consultation with DPIE has been undertaken to confirm the approvals pathway and the proposed changes are suitable to progress via a section 4.55(1A) modification.

Given the nature and scale of the proposed change, no additional environmental impacts or changes to existing known impacts are proposed. As such, the proposed modifications do not require amended SEARs and this Section 4.55(1A) is prepared in accordance with the original SEARs as per SSD 7664.

The findings of this Section 4.55(1A) report identify the modifications can be accommodated without generating impacts over and above that which was previously approved under SSD 7664 and is considered appropriate by relevant legislation.

2.0 Background

The *Western Sydney Parklands Act 2006* (WSP Act) gives heads of power to the Western Sydney Parklands Trust (WSPT), a self-funded government agency responsible for the development, management and improvement of the WSP.

In December 2018 the WSPT adopted the *Western Sydney Parklands Plan of Management 2030* (POM) which established a framework to guide the long-term operation and management of the Parklands. The POM identifies nine business hubs over which leases will be granted with the aim of generating income to help fund the management and future development of the entire Parklands.

The development is located within the Horsley Park Precinct, and will be anchored by a business hub and become an extension of the Smithfield / Wetherill Park Industrial Estate. The Horsley Drive Business Park Stages 1 and 2 were approved by SSD 5169 and SSD 7664 on 8 January 2013 and 9 November 2019 respectively.

Specifically, the SSD 7764 consent granted approval for the Horsley Drive Business Park Stage 2 concept development application, comprising:

Concept Proposal for:

- establishment of up to 88,700m² of general and light industrial, warehouse and distribution centre land uses;
- concept development levels, footprints and building envelopes;
- road layout and site access arrangements; and
- landscape designs.

Stage 1 works for:

- subdivision of the site into seven lots (lots 1-4 to be developed and lots 5-7 to be residual lots);
- construction of an access road off Cowpasture road;

- demolition of existing structures on-site;
- bulk earthworks;
- site infrastructure, including stormwater infrastructure; and
- estate landscaping.

The approved modification to the SSD 7764 Concept Approval (SSD 7664-Mod 1) facilitated the following changes to the approved Concept Plan:

- A revised location and configuration for vehicular access to the site, including provision of an access roundabout intersection with Cowpasture Road and Trivett Street;
- Reduction in number of lots from 7 to 4;
- Consolidation of Warehouses 1 and 2 resulting in a reduction in total Gross Floor Area (GFA) from 47,190m² (approved) to 30,190m² (proposed);
- Minor reductions in size and development footprint of Warehouse 3 from 18,280m² (approved) to 16,640m² (proposed) and Warehouse 4 from 23,090m² (approved) to 14,940m² (proposed);
- An increase in the total number of carparks provided from 397 (approved) to 672 (proposed);
- Provision of a Customer Fulfilment Centre (CFC) on southern lot to replace Warehouse 1 and 2. The CFC will be a specialist warehouse facility used for the distribution of goods. The northern lots would accommodate traditional warehouse development;
- Alterations to the finished development levels on the site; and
- Alterations to the landscaping to align with the revised lot and built form configuration.

The Concept Plan Overall Site Plan approved as part of SSD 7664-Mod 1 is shown in **Figure 1** below.

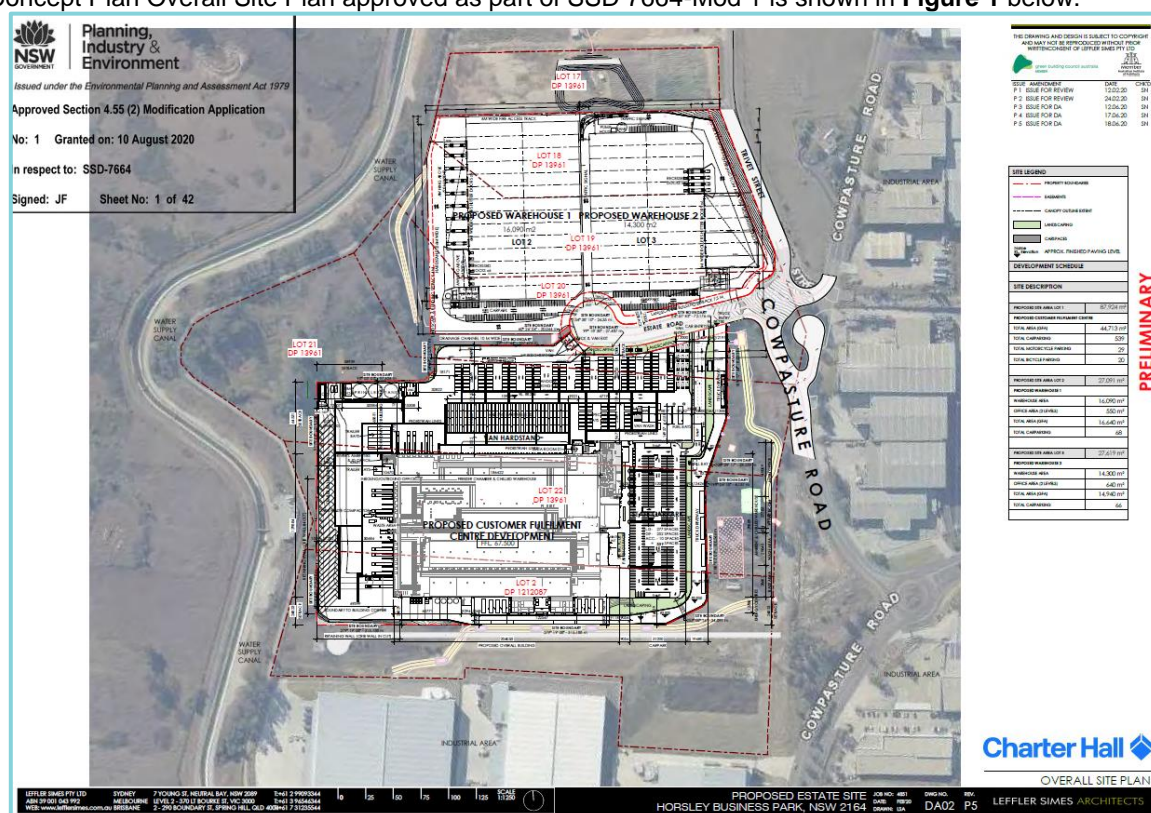


Figure 1 Approved Horsley Drive Business Park Stage 2 – Overall Site Plan

Source: Leffler Simes Architects

2.1 Reason for the Proposed Modification

Since SSD 7664-Mod 1 was approved, further detailed design changes have been made to improve the way in which the customer fulfillment centre operates and to respond to operational design and construction requirements.

The approved architectural drawings for the development approval involving Building 1 (SSD-10404) only showed indicative roof plant locations. The exact location and size of rooftop plant and equipment associated with the building was unknown when the development application was approved.

Since the consent was granted for this approval on 10 August 2020, detailed design, mechanical, civil and structural drawings have been prepared by specialist consultants for construction documentation. This has confirmed that due to the nature of the proposed use and size of the building, very large air conditioning condensers are required to cool the building. The equipment must be located on the roof of the building to operate most effectively. This results in the overall height of the building exceeding the maximum building height of 16 metres, as conditioned by the existing Concept Approval.

As such, in order for this rooftop plant equipment to be placed on the building, an increase to the maximum allowable building height is requested.

This Section 4.55(1A) application seeks to modify the Concept Development Approval (SSD 7664) to reflect the proposed changes to the Stage 2 (Building 1) Customer Fulfilment Centre. No changes are proposed to warehouse 1 and 2 or the subdivision lot layout.

The proposed development is generally consistent with the approved Overall Site Plan (DA02-P5) in terms of proposed land use and scale of the development. However, the proposed development requires changes to the conditions of consent to allow a proposed increase in building height for rooftop plant and equipment. The proposed modification does not seek a blanket increase to the building height for all buildings and structures. The roof pitch for all buildings must not exceed 16 metres.

A section 4.55(1A) modification has been lodged concurrently with this application to amend the detailed design approval for the Horsley Drive Business Park Stage 2 – Building 1 (SSD-10404) to reflect the proposed building height increase along with other minor detailed design amendments that are proposed.

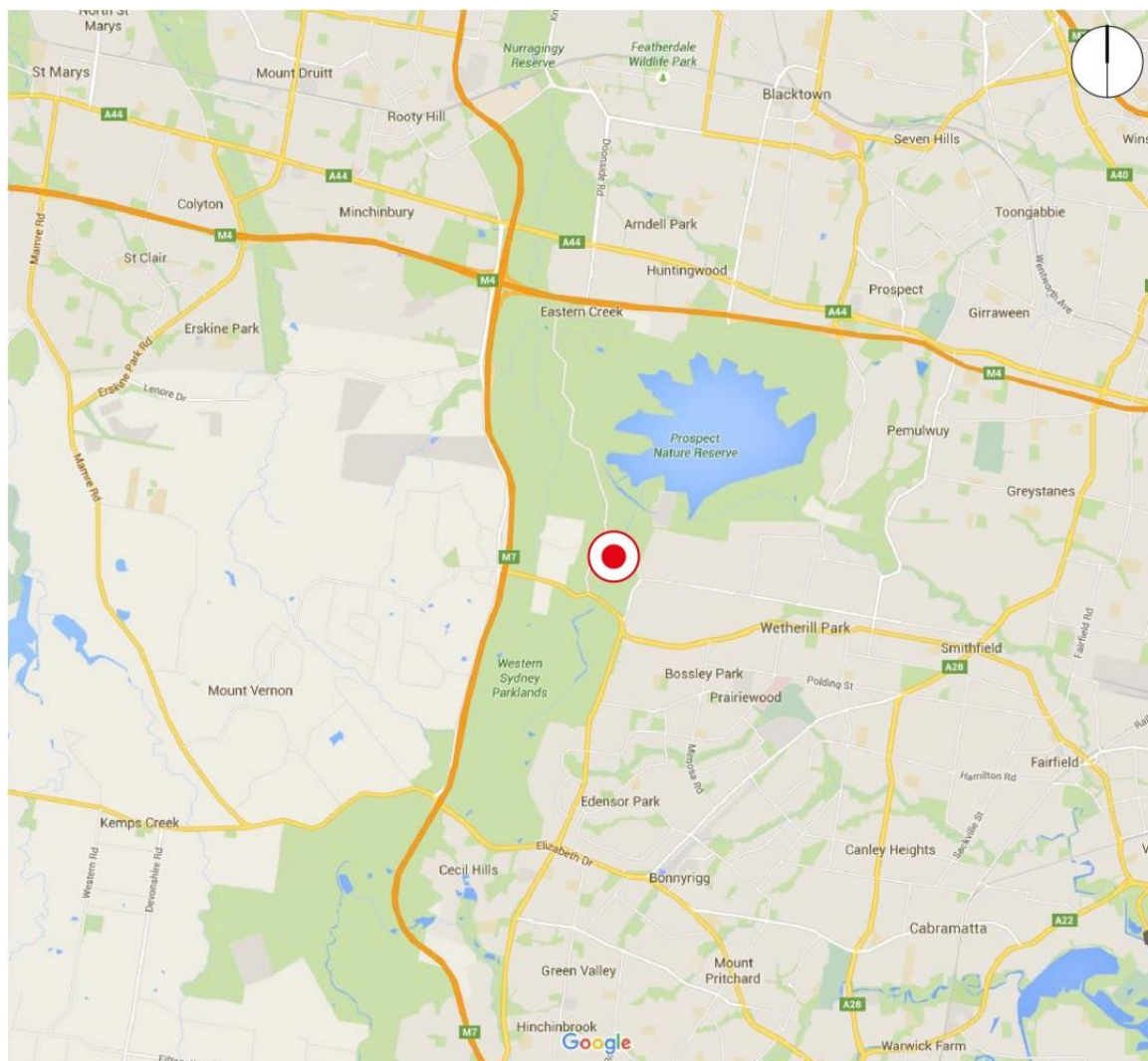
3.0 Site Description

3.1 Site Location and Context

The subject site ('the site') is located within Western Sydney Parklands (WSP) and is approximately 30km west of the Sydney Central Business District (CBD). In total, it covers approximately 16.5ha of WSP land (**Figure 2**) and is irregularly shaped.

The site has frontages of approximately 160m along Cowpasture Road to the east and 185m along Trivet Street to the north-east. It is immediately bound by the Wetherill Park Industrial Precinct to the east, the Upper Canal system to the west, the Horsley Drive Business Park Stage 1 development under construction to the south and Prospect Reservoir and Prospect Nature Reserve to the north.

Via Cowpasture Road and The Horsley Drive, the site is also connected to the Westlink M7 corridor and is located approximately 5km south-east of the Westlink M7 and Western Motorway M4 interchange. This provides good connectivity to the key centres of Penrith in the west and to Parramatta and Sydney CBD in the east.



● The Site

Figure 2 Site location

Source: Ethos Urban

3.2 Site Description

The site is located on the corner of Cowpasture Road and Trivet Street, Wetherill Park within the Fairfield City Council Local Government Area (LGA). The site has an address at 5, 15 and 25 Trivet Street, Wetherill Park and 130, 132-142, 144-154 and 156 Cowpasture Road, Wetherill Park, NSW 2164. The land is legally described as Lots 17-22 on DP 13961 and Lot 2 on DP 1212087. The land is under the management of WSPT.

The Upper Canal Corridor forms the western boundary of the site and is a critical component of Sydney's bulk water supply infrastructure, while Cowpasture Road and Trivet Street border the site to the east. **Figure 3** locates the site with respect to these features. The southern portion of the site is bound by an Endeavour Energy electricity easement containing overhead power lines, although this is not within the site boundary.



Figure 3 Subject site

Source: Nearmap and Ethos Urban

Key site characteristics are summarised in **Table 1**

Table 1 Key site characteristics

Characteristics	Description
Existing use	Large lot residential dwellings and associated outbuildings.
Improvements	The site is currently improved by four residential dwellings, five small dams and access tracks to the residential properties.
Existing approvals	<p>A previous State Significant Development Approval (SSD 7664) was granted over the site on 9 November 2017 for a Concept Plan and Stage 1 earthworks establishing the Horsley Drive Business Park Stage 2. The development consent approved an indicative master plan for the Stage 2 business park, including specific development controls and gross floor area maximums.</p> <p>Approved land uses in the business park included general industrial, light industrial, warehouse, distribution and ancillary office activities, totalling 88,700m² gross floor area. Stage 1 works included a 1 into 7 lot staged subdivision, an internal access road off Cowpasture Road, demolition, bulk earthworks and associated servicing infrastructure and landscaping.</p>

	<p>A Section 4.55(a) modification was granted on 10 August 2020 to modify the Concept Approval (SSD-7664-Mod1). The modification involved a number of amendments to the location and configuration of vehicular access to the site, consolidation of warehouses 1 and 2 (creation of Building 1), reductions to the lot size and development footprint for warehouses 3 and 4 and consolidation of subdivided lots from seven lots to four lots.</p> <p>A State Significant Development Approval (SSD 10404) was granted over the site on 10 August 2020 for Horsley Drive Stage 2 – Building 1. This development involves the construction and operation of a warehouse and distribution facility to operate as a customer fulfillment centre and includes ambient and chilled warehouse space, freezer chamber, bakery, plant, data centre, energy areas and ancillary office space.</p>
Related approvals	Development consent was given for the Horsley Drive Business Park Stage 1 (SSD 5169) on 8 January 2013. This related to subdivision and infrastructure works to facilitate the future redevelopment of the site.
Vegetation	The land is relatively cleared of vegetation; however, includes some sparse stands of trees in the north-east, south-east and south-west. No significant vegetation is identified over the site and the site is located outside environmental conservation areas in an area of least ecological impact.
Topography	The topography of the site slopes marginally from west to east, with gradients ranging from two to ten degrees. The site undulates although is most likely the result of previous earthworks.
Tenure	Western Sydney Parklands Trust (under the <i>Western Sydney Parklands Act 2006</i>)
Heritage	The site is not located in an area containing State, Aboriginal, Archaeological, Landscape or Heritage Conservation areas. However, the Upper Canal System (Pheasants Nest West to Prospect Reservoir) is identified on the State Heritage Register Curtilage.
Easements	No easements or other encumbrances exist over the site
Access	Access to the site is provided directly from Cowpasture Road and Trivet Street.
Infrastructure	The site is connected to reticulated water and sewerage networks. Two water mains service the site along the western side of Cowpasture Road and Trivet Street and were extended to lots within the stage 2 business park via the internal access road. An existing sewerage main services the Stage 1 business park to the south of the site and will provide a connection to future development. Existing telecommunications infrastructure is provided along Cowpasture Road and Trivet Street to service development from the fibre optic network.

3.3 Surrounding Development

The site is surrounded by the following land uses. These are depicted in **Figure 4–Figure 7** below.

- **North** – predominately used for agricultural purposes. The broader Horsley Park precinct to the north forms part of an urban farming precinct, which the POM intends for market gardens, community and research gardens, agri-tourism, farm-gate sales, education programs and the like with surrounding farming landowners. Further north is the Prospect Reservoir, an important potable water supply and storage reservoir to the Prospect Dam.
- **South** – The Horsley Drive Business Park Stage 1 redevelopment is to the south of the site. The residential suburb of Bossley Park is also located just over 1 kilometre (km) to the south of the site. Balance WSP land and recreational facilities (e.g. Lizard Log, nature playgrounds) are further south.
- **East** – of the site is the Smithfield–Wetherill Park Industrial Estate, which contains a mixture of light industrial, warehouse and storage uses. The Bossley Park residential suburb is approximately 1.2km south-east on the opposite side of The Horsley Drive. The nearest residential dwellings at 28 Trivet Street and 52 Trivet Street are also situated approximately 70m east and 170m north-east respectively.

- **West** – The Upper Canal System is located west of the site. This corridor is strategically important to channel water from dams in the upper Nepean Catchment to the Prospect Reservoir. Agricultural land, commercial farms, a driving range and motorcycle training facilities are located further west. The Westlink M7 corridor lies approximately 1.75km west.



Figure 4 View to agricultural land to the north, looking north-west along Trivet Street

Source: Google Maps



Figure 5 View to Horsley Drive Business Park Stage 1 development, looking south-west from Cowpasture Road / Burilda Close intersection

Source: Google Maps



Figure 6 Street view of industrial estate to the east (looking east at Cowpasture Road / Sleigh Place intersection)

Source: Google Maps



Figure 7 Looking east at Upper Canal System that forms the western boundary of the site (from Ferrers Road)

Source: Google Maps

4.0 Proposed Modifications to the Concept Approval

The proposed modification to the SSD 7764 Concept Approval seeks to change the standard definition for building height so that rooftop plant and lift overruns are excluded from the maximum approved building height conditioned in Schedule 2, Condition A10, Table 1. The maximum building height is currently 16 meters. However, following approval of the Development Application for Building 1 (SSD-10404) in August 2020, detailed design amendments have been made to Building 1 to ensure the building is able to efficiently operate.

Part of these detailed design amendments include the placement of large air conditioning condensers on the roof of the building to ensure the building can be cooled and so freezer rooms can operate. The size of the building necessitates quite large condensers and other plant equipment which comprises heights up to 6m.

Mechanical engineers have advised that the plant equipment and condensers cannot be located within the building or at ground level and must be placed on the roof for optimal operation and maintenance. As such, flexibility in the way building height is calculated is requested, so that rooftop plant and lift overruns are excluded from the maximum 16m building height conditioned by SSD 7764. The increase in building height is not intended to be a blanket increase for all buildings within the Horsley Drive Business Park Stage 2. All buildings will still need to ensure the highest point of the building (excluding plant and lift overruns) does not exceed 16 metres about natural ground level.

The approved elevation for Building 1 (SSD-10404) is shown in **Figure 8** and the proposed modification to the Building 1 elevation to incorporate rooftop plant equipment (subject to a concurrent modification - SSD-10404-Mod-1) is shown in **Figure 9** below. A complete set of amended Architecture Plans are attached in **Appendix A** to illustrate the scope of proposed changes to the built form which will be facilitated via a concurrent section 4.55(1A) modification to SSD-10404.

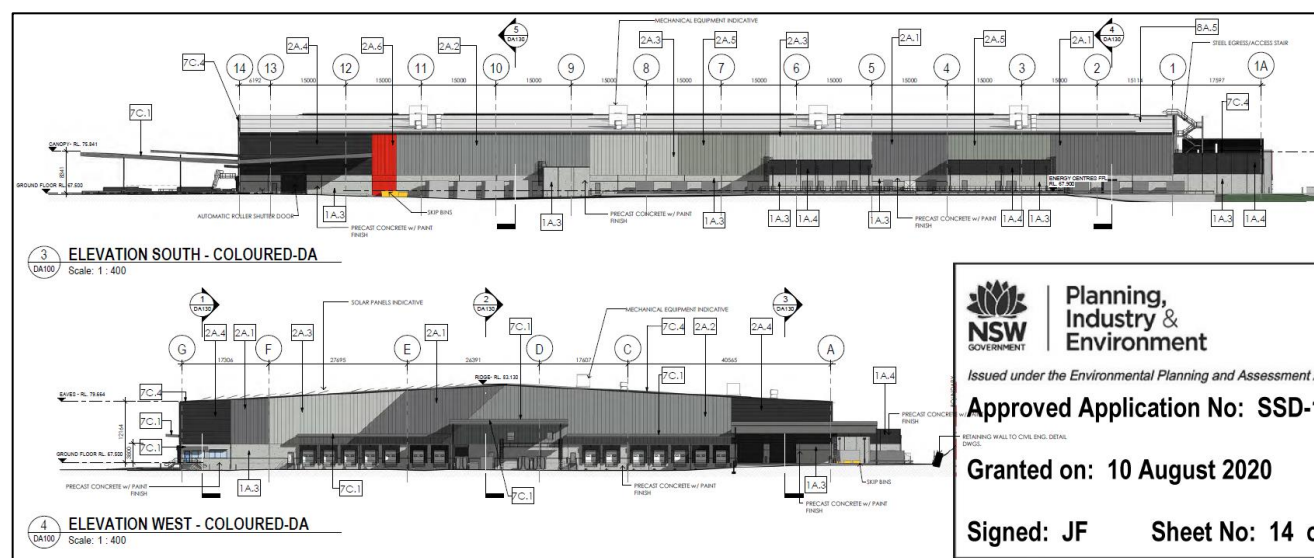


Figure 8 Approved Elevations (South and West) – SSD-10404

Source: Leffler Simes Architects

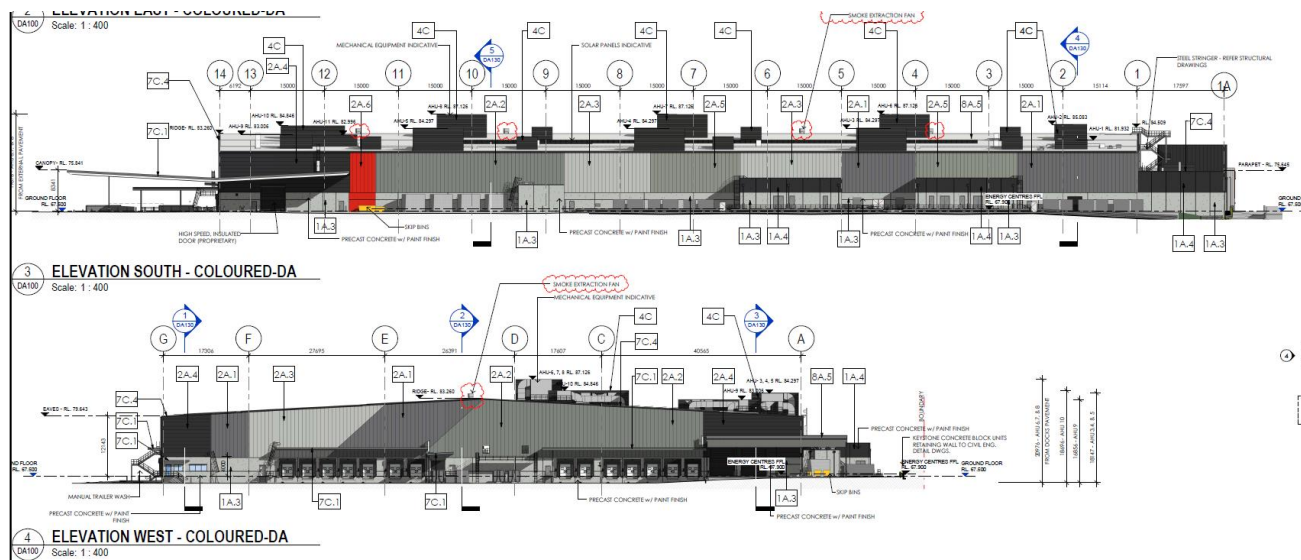


Figure 9 Proposed Elevations (South and West) – SSD-10404-Mod-1

Source: Leffler Simes Architects

4.1 Modifications to Conditions

The proposed modifications described above necessitate amendments to the term of consent for the concept development which are identified below. Words proposed to be deleted are shown in **~~bold strike-through~~** and words to be inserted are shown in ***bold italics***.

4.1.1 Schedule 2 (Concept Development): Condition A10 – Limits of Consent

The applicant shall ensure the future development of the site is consistent with the development controls in Table 1 below:

Development Aspect	Control
Setback to Cowpasture Road	10 metres
Internal estate road setback	7.5 metres
Western boundary and canal setback to lot	4 metres
Maximum Building Height	16 metres
<i>Note: Building height is defined as the vertical distance from ground level (existing) to the highest point of the building, and excludes rooftop plant, lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like</i>	
Maximum Floor Space Ratio	1:1
Site Coverage	Maximum of 65 per cent
Minimum lot size for industrial lots	10,000m ²

NOTE: The Applicant suggests the amendment to the definition of building height to exclude rooftop plant as the appropriate mechanism to facilitate additional height above the nominated 16 metre control however we are open to some other recommendation/alternative mechanism from the Department of Planning, Industry and Environment to achieve the intended outcome for Building 1 (Customer Fulfilment Centre).

Justification

The amendment to Condition A10, Table 1 is to reflect the changes proposed as part of this modification application. To ensure there is no ambiguity for other buildings within the Horsley Drive Business Park Stage 2, it is proposed to amend Condition A10, Table 1 as shown above. The proposed amendments to this condition will ensure that building height is not exceeded unless required to accommodate rooftop plant and equipment. As such, the amendments do not allow buildings to increase their roof height beyond the approved 16m height limit.

5.0 Assessment of proposed modifications

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the proposed modification is of minimal environmental impact and is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted”.

Sections 5.1 and 5.2 provide an assessment against the section 4.55(1A) criteria for modifications involving minimal environmental impact.

5.1 Minimal Environmental Impact

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “*it is satisfied that the proposed modification is of minimal environmental impact*”. Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

5.1.1 Statutory and Strategic Context

The Environmental Impact Statement submitted with the original State Significant Development application (SSD 7664) addressed the proposed development’s level of compliance against the relevant strategic plans, policies, guidelines and statutory planning instruments, including:

- *Environmental Planning and Assessment Act 1979*;
- *Environmental Planning and Assessment Regulation 2009*;
- *State Environmental Planning Policy (Western Sydney Parklands) 2009*
- *State Environmental Planning Policy (State and Regional Development) 2011*;
- *State Environmental Planning Policy 55 (Remediation of Land)*;
- *Western Sydney Parklands Plan of Management 2030*;
- *Western City District Plan 2018*;
- *NSW 2021 State Plan*;
- *A Plan for Growing Sydney 2041*;
- *Fairfield Local Environmental Plan 2013*; and
- *Fairfield Development Control Plan 2008*.

The proposed modifications do not affect the development’s level of compliance with the majority of the relevant planning instruments and strategic documents.

5.1.2 Reasons given for granting Consent

In the preparation of the Environmental Impact Statement (EIS) in support of the Concept Approval and Stage 1 Earthworks Approval SSD 7664, the DPE considered a number of key issues including:

- Conceptual Proposal Built Form and Urban Design;
- Traffic and Transport;
- Soils and Water;
- Infrastructure Requirements;
- Noise and Vibration;
- Air Quality;
- Waste;
- Biodiversity;
- Heritage;
- Greenhouse Gas and Energy Efficiency; and
- Ecologically Sustainable Development and Energy Efficiency.

The DPE approved SSD 7664 subject to conditions outlining the matters to be addressed as part of the future development applications. The proposed modification is limited to changes to the approved built form of the development. As such, the only aspects of the original assessment which require consideration as part of this modification are in relation to the *Conceptual Proposal Built Form and Urban Design*.

5.1.2.1 Consistency with Concept Plan and Stage 1 Earthworks Approval

The purpose of the SSD 7664 aimed to establish the vision and planning framework to assess the detailed design of the future development on the site. It included details of the proposed land uses, building footprints, road layout and site access arrangements and landscape designs. In accordance with Section 4.24(2) of the EP&A Act, while the concept plan and stage 1 earthwork approval remains in force development on the site cannot be inconsistent with the approval.

The development proposed as part of the modification application remains consistent with the Terms of Approval as set out in the concept plan and stage 1 earthworks approval. The modifications as part of this s4.55 application do not change the overall development's consistency with the approval. The SSD 7764 approval was broad and therefore, the modification aims to provide more details around intended development form.

5.1.2.2 Built Form and Urban Design

The proposed modifications to the Horsley Drive Business Park Stage 2 retains the key parameters of the approved building footprint and layout as the concept plan and stage 1 earthworks approval (SSD 7664). The main change in development design relates to the building height of Building 1 (Lot 1).

The principles behind the Trust's vision to develop a business hub within the WSP were to:

- Achieve the Government's goals for the WSP, by continuing to grow private business investment that creates a sustainable ongoing funding base for the WSP for the future;
- Work with Fairfield City Council to identify suitable locations and land use opportunities for business hubs;
- Consider the impact on existing land uses and commercial centres in each Council's LGA and deliver additional employment and training opportunities for regional communities;
- Undertake development in a manner that minimises negative environmental impacts.

The layout and design of the development was reflective of the site topography and market requirements whilst ensuring appropriate amenity, visual impact and sustainability objectives were satisfied.

The key design principles aimed to strike a balance between the competing objectives and informed the end outcome for the Horsley Drive Business Park Stage 2 through development which:

- Responds to the natural terrain as far as practicable to minimise earthworks, constrain infrastructure requirements and maintain pre-development environmental quality;
- Complements the adjoining industrial context of the adjoining Horsley Drive Business Park Stage 1 and the Smithfield-Wetherill Park Industrial Precinct;
- Presents a high quality urban streetscape to Cowpasture Road;
- Maintains the integrity of existing nearby infrastructure including the Sydney Water Supply Channel, regional cycleways, electricity easements and road corridors;
- Provides opportunity for flexibility in future development on individual allotments within the estate through a large subdivision arrangement.

In addition, the detailed design objectives for height and floor space ratios seek to:

- encourage buildings that are of an appropriate scale and density; and
- encourage a built form that contributes to the visual amenity of the site.

These design principles and objectives have informed the proposed modification, which still remains generally consistent with the previously approved concept plans.

The proposed building height increase is only necessary to improve the way in which the customer fulfillment centre operates and to respond to operational design and construction requirements. This includes the placement of large air conditioning condensers on the roof of the building to ensure the building can be cooled and so freezer rooms can operate.

The size of the building necessitates quite large condensers and other plant equipment which comprises heights up to 6 metres. Mechanical engineers have advised that the plant equipment and condensers cannot be located within the building or at ground level and must be placed on the roof for optimal operation and maintenance.

As such, flexibility in the way building height is calculated is requested, so that rooftop plant and lift overruns are excluded from the maximum 16m building height conditioned by SSD 7764. The increase in building height is not intended to be a blanket increase for all buildings within the Horsley Drive Business Park Stage 2. All buildings will still need to ensure the highest point of the building (excluding plant and lift overruns) does not exceed 16 metres about natural ground level.

The amended Visual Impact Assessment (**Appendix B**) demonstrates that the visual appearance, scale and bulk of the warehouse will be compatible with industrial development in the direct vicinity and the proposed increase in building height does not materially impact on the scale, bulk or appearance of the development.

Overall, the proposed modification results in an improved outcome for Stage 2 of the Horsley Drive Business Park by maintaining its intended purpose to provide industrial and warehouse uses whilst ensuring the approved Customer Fulfillment Centre can operate as intended.

5.1.2.3 Visual Impacts

A key consideration of the DPIE's assessment for the original Concept Approval (SSD 7664) and the Development approval for Building 1 (SSD 10404) was visual amenity. The assessment for SSD 10404 noted that due to the physical size of the Development there is the potential for visual impacts to occur within the locality. The EIS was accompanied by a Landscape and Visual Impact Assessment Report (LVIAR) prepared by Geoscapes Landscape Architects which provides an assessment of the predicted visual impacts of the Development.

The LVIAR noted that the Site is located within Precinct 9 of the POM 2030, which identifies the Site as being a 'Business Hub' and an extension of the Wetherill Park and Smithfield industrial areas. The LVIAR accepted that the Development will create visual impacts for those who experience views of the Development. The LVIAR concluded that the nearest sensitive receiver - VP9, would be subject to moderate visual impacts, with VP4 being subject to moderate/minor visual impacts. All others were rated to have minor or lower visual impact.

The department's assessment concluded in both applications that due to the design and finished levels of the Development, topography of the locality, and the distances to sensitive receivers and surrounding industrial developments, the Development has demonstrated that the predicted visual impacts are acceptable, are consistent with the predominate industrial land uses to the east and south of the Site, and is in keeping with the future intended character of the Site and broader Precinct 9 of the POM 2030.

The Concept Approval establishes parameters relating to the built form of buildings, including height controls, floor space ratios and landscaped setbacks to enable an assessment of the visual impacts of future development on the site. The EIS for the Concept Approval notes that there is a significant height difference (12.5m) between the pad level and Trivet Street level, that results in Lot 3 sitting significantly lower than Trivet Street. Significant landscaped areas are also being retained or proposed along the eastern and western boundaries of the site to soften any visual impact from future development. The Department's assessment concluded that the development will not result in unacceptable visual impacts within the locality or on sensitive receivers.

When considering the proposed increase in building height, it is important to recognise that this increase is only applicable for the components of the building where rooftop plant and equipment are located. These components are located across the roof of the building and are not concentrated in one area.

It is acknowledged that the rooftop plant and equipment will be visible, but on balance and when viewed in context with the overall development and surrounding development, it is unlikely these components of the building will generate new or additional visual impacts. Furthermore, Building 1 is not located adjacent or within close proximity to sensitive receivers and still maintains a predominant building height of 16 metres or less for the bulkiest part of the building. Adjoining industrial uses to the north, south and east and rural uses to the west are unlikely to experience adverse visual impacts by the proposed plant equipment due to the nature of the uses and because building 1 is generously setback from all side boundaries. In addition, development has been conditioned to provide landscaping to all side boundaries as a mitigation measure to minimise visual impacts of the built form.

An amended Visual Impact Assessment has been prepared by Geoscapes Australia (**Appendix B**) to assess and compare the proposed modifications against the approved SSD scheme. The assessment concludes that of the viewpoint locations assessed, the proposed modification will not create significant visual impacts when compared against the approved scheme and only three locations have been judge to receive minor visual impacts. The locations determined to have minor visual impacts when compared to the approved scheme are due to the close range of the receptor or the elevated position. At these locations direct views of the plant equipment may be visible. However, the assessment concludes that when viewing the plant equipment holistically together with the proposed modifications to the approved scheme, the visual impact of the proposed changes are not highly significant.

Overall, the proposed modification results in minimal environmental impacts from a visual amenity perspective.

5.2 Substantially the Same Development

Whilst there is no hard and fast rule when it comes to determining what constitutes 'substantially the same development' the 'substantially the same test' has been considered and approved through various cases within the Land & Environment Court.

The applied phrasing as described in *Moto Projects (No. 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280*, requires the consent authority to undertake both quantitative and qualitative analysis:

"The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved...Rather, the comparison involves an appreciation, qualitative, as well as quantitative, or the developments being compared in their proper contexts (including circumstances in which the development consent was granted)".

Further *Moto Projects Pty Ltd v North Sydney [1999] NSWLEC 280* established the following key principles when considering what constitutes a modification:

- The verb "modify" means to alter without radical transformation.

- “Substantially” in this context means essentially or materially or having the same essence.
- A development as modified would not necessarily be “substantially the same development” simply because it is precisely the same use as that for which consent was originally granted.
- A modification application involves undertaking both quantitative and qualitative comparison of the development as originally approved and modified.
- Although the comparative task required under Section 96 involves a comparison of the whole development being compared, the fact does not eclipse if a particular feature of the development, particularly if that feature is found to be important material or essential to the development.
- Environmental impacts of the proposed modifications are relevant in determining whether or not a development is ‘substantially the same’.

The development, as proposed to be modified, is in our opinion considered to meet the substantially the same development tests under Section 4.55(1A) of the EP&A Act as:

- The prevailing building height of buildings and structures is not altered by this modification. The changes to the wording of Schedule 2, Condition A10, Table 1 only allow a building height of 20m for components of the building associated with rooftop building and plant equipment. The roof pitch of all buildings and structures must remain consistent with the approved 16m height limit;
- The EIS material submitted with the original concept plan development application acknowledged that buildings higher than 16m may be required (and suitable) where it can be demonstrated that the proposed height is in keeping with the character of the locality; the building, or any part thereof, is not visually obtrusive; and the overall design of the development, including landscaping and building materials, reduces the impact of height and bulk of the building. Increasing the building height of Building 1 from 16m to 20m for the plant and equipment components of the building will not be visually obtrusive when considering the location of the building, the generous setbacks afforded to the building from Cowpasture Road and the nature and form of adjoining (industrial) development.
- The proposed modifications do not alter the key components of the approved development description.
- The essence of the approved development design and operation remains unaffected, the development (as modified) continues to provide general industrial, light industrial, warehouse and distribution and ancillary office land uses approved under the Horsley Drive Business Park Stage 2.
- The essence of the approved development design remains unaffected. No changes to the Overall Site Plan are required to facilitate the proposed changes. This is not a significant cumulative change across the Stage 2 business park.
- The proposed modifications do not generate any new or additional environmental impacts on users of the site or areas external to the site.

For these reasons, the DPIE can be satisfied that the modified proposal is substantially the same development for which consent was originally granted. Furthermore, it is important to note that the extent of the proposed modifications are generally minor in nature and are considered to have only minimal environmental impact beyond those considered during the assessment of SSD 7764 and the more recent approved plans.

Table 3 below demonstrates that all key elements of the approved development remain, resulting in a development that clearly meets the test of being substantially the same as originally approved.

Table 3 Consistency with the approved development

Component	Approved development	Amended proposed development	Consistency / substantially the same
Use	General industrial, light industrial, warehouse and distribution and ancillary office land uses.	No change	Yes
GFA	61,232m ²	No change	Yes
Building height	16m	16m to the highest point of the building, excluding rooftop plant and lift overruns	Yes – refer to discussion above in section 5.2.

Component	Approved development	Amended proposed development	Consistency / substantially the same
Lot configuration	Total of 4 lots, 3 for industrial development and 1 lot for stormwater mitigation and landscaping	No change	Yes
Site area	226,105m ² .	No change	Yes
Car parking	672 spaces	No change	Yes
Vehicular access	Access via a roundabout intersection with Cowpasture Road and Trivett Street.	No change	Yes
Traffic	Total of 3,225 vehicle trips per day	No change	Yes
Levels	Lot 1: RL 66, Lot 2: RL 67, Lot 3: 67	No change	Yes
Earthworks	Cut: -170,000, Fill: +233,600	No change	Yes

6.0 Conclusion

The proposed modification includes amendments to the concept development approval to facilitate an increase to the maximum building height to allow for the placement of rooftop plant and equipment which is necessary for the customer fulfillment centre to operate. This modification seeks to amend Schedule 2, Condition A10 to allow the way in which maximum building height is measured to exclude rooftop plant equipment and lift overruns.

Since SSD 7664-Mod 1 was approved, further detailed design changes have been made to improve the way in which the customer fulfillment centre operates and to respond to operational design and construction requirements.

The approved architectural drawings for the development approval involving Building 1 (SSD-10404) only showed indicative roof plant locations. The exact location and size of rooftop plant and equipment associated with the building was unknown when the development application was approved. Since the consent was granted for this approval on 10 August 2020, detailed design, mechanical, civil and structural drawings have been prepared by specialist consultants for construction documentation. This has confirmed that due to the nature of the proposed use and size of the building, very large air conditioning condensers are required to cool the building. The equipment must be located on the roof of the building to operate most effectively. This results in the overall height of the building exceeding the maximum building height of 16 metres, as conditioned by this Concept Approval.

As such, in order for this rooftop plant equipment to be placed on the building, an increase to the maximum allowable building height is requested.

The proposed modifications represents an improved outcome for Stage 2 of the Horsley Drive Business Park by maintaining its intended purpose to provide industrial and warehouse uses whilst ensuring the approved Customer Fulfillment Centre can operate as intended. No other changes to the concept approval are proposed.

Further and in accordance with section 4.55(1A) of the EP&A Act, the DPE may modify the consent as the proposed development if of minimal environmental impact and remains substantially the same development as that originally granted.

A section 4.55(1A) modification has been lodged concurrently with this application to amend the detailed design approval for the Horsley Drive Business Park Stage 2 – Building 1 (SSD-10404) to reflect the proposed building height increase along with other minor detailed design amendments that are proposed.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.