



Horsley Drive Business Park – Stage 2 Modification 3

Subdivision and Gross Floor Area Amendment
State Significant Development Modification Assessment (SSD-7664-Mod-3)

May 2022



Published by the NSW Department of Planning and Environment

Planning.nsw.gov.au

Title: Horsley Drive Business Park – Stage 2 – Modification 3

Subtitle: State Significant Development Modification Assessment

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2022) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
CPP	Community Participation Plan
Council	Fairfield City Council
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 2000
Minister	Minister for Planning
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

Contents

1	Introduction	1
1.1	Site Description	1
1.2	Approval History and Background.....	1
2	Proposed Modification	4
3	Statutory Context	5
3.1	Scope of Modification.....	5
3.2	Consent Authority.....	5
3.3	Mandatory matters for consideration.....	5
3.4	Legislative Amendments	5
4	Engagement	7
4.1	Department’s Engagement	7
4.2	Agency Advice.....	7
4.3	Response for Information.....	7
5	Assessment	8
6	Evaluation	10
7	Recommendation	11
8	Determination	12
	Appendices	13
	Appendix A – List of referenced documents	13
	Appendix B – Notice of Modification	13
	Appendix C – Consolidated Consent.....	13

1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Horsley Drive Business Park – Stage Two (SSD-7664) (the development).

The modification application (the modification) was lodged on 21 February 2022 by The Trust Company (Australia) Limited (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification seeks approval for the following:

- amendment to the approved subdivision layout
- adjustment of the allocation of gross floor area (GFA) between the warehouse and office components. The modification does not propose any increase in the overall total development GFA.

1.1 Site Description

The Horsley Drive Business Park (HDBP) Stage 2 site is legally described as Lots 17-22 DP 13961 and Lot 2 DP 1212087 (site) and is located on the corner of Cowpasture Road and Trivet Street, Wetherill Park (see **Figure 1**), approximately 30 kilometres (km) to the west of the Sydney Central Business District (CBD) and 1.5 km south of the southern foreshore of the Prospect Reservoir. The site has been cleared of natural vegetation due to construction activities which have commenced under the current approved development. The southern portion of the site (Lot 2 DP 1212087) contains a 30.5 metre (m) wide Endeavour Energy electricity easement comprising overhead power lines.

A State heritage listed item, known as the Upper Canal System (UCS), adjoins the western boundary of the site. The UCS is owned and operated by WaterNSW and features an open water supply canal.

1.2 Approval History and Background

Horsley Drive Business Park (HDBP) Stage 1 was approved by the Department under delegation in 2016 under SSD-7564 (see **Figure 1**) and has been fully built out with various warehouse and distribution centres, including Nick Scali, Martin Brower, Vivin Imports and Just Wines. The HDBP is located within the central portion of the Western Sydney Parklands, in the Fairfield local government area (LGA).

HDBP Stage 2 (SSD-7664) is immediately to the north of HDBP Stage 1 and was approved on 9 November 2017 by the then Executive Director - Key Sites and Industry Assessments. The development consent was for a Concept Proposal and concurrent Stage 1 works including the establishment of up to 88,700 m² of Gross Floor Area (GFA) for general industrial, light industrial, warehouse and distribution and ancillary office uses. Stage 1 works included subdivision of the site into seven lots, construction of an access road off Cowpasture Road to service the development, demolition, bulk earthworks and infrastructure construction.

The approved layout of SSD-7664-Mod-2 is shown in **Figure 2**.

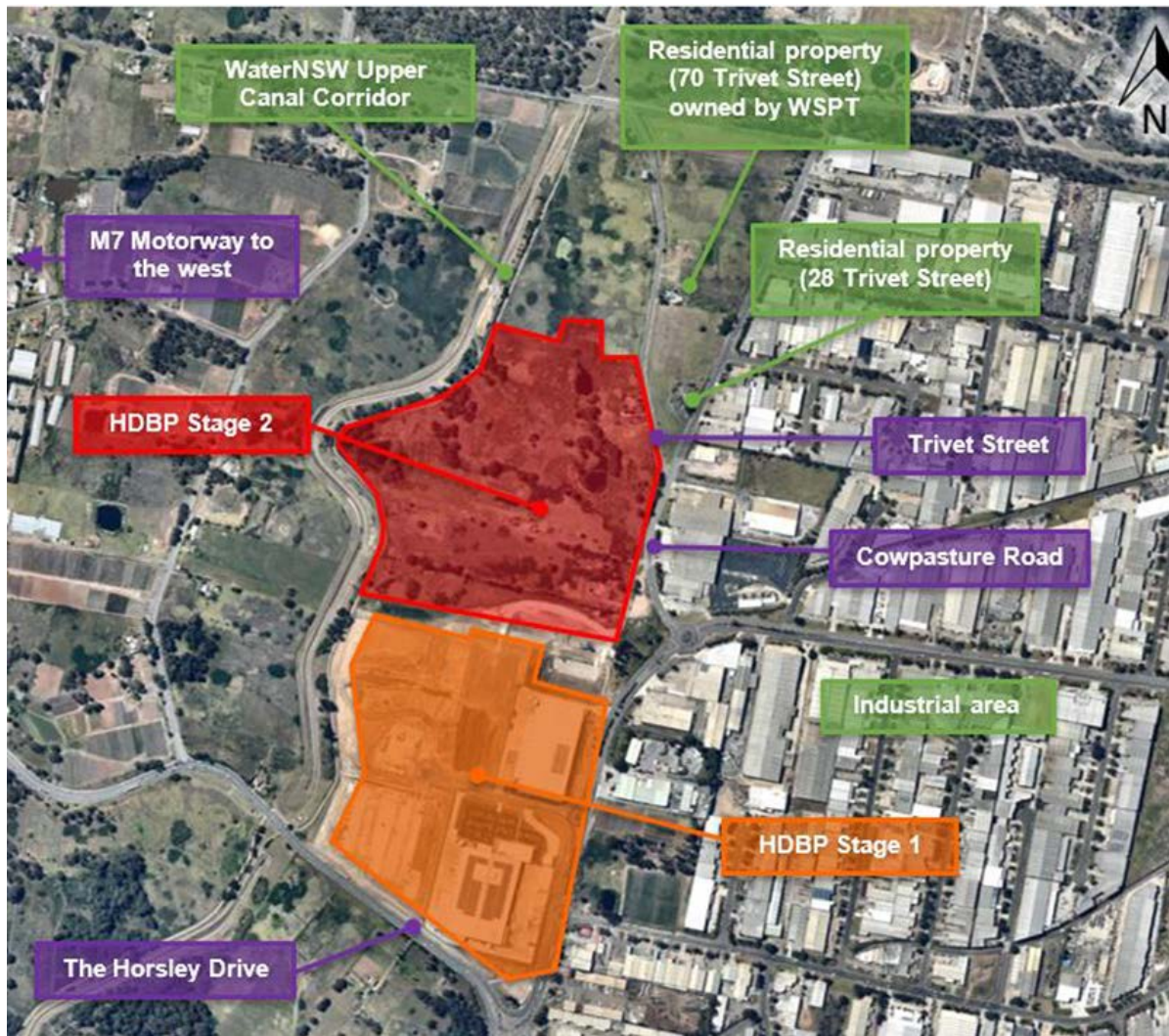


Figure 1 | Local Context Map

Since the approval of the development there has been one State significant development application approved under Ministerial delegation for the Horsley Drive Stage 2 – Building 1 (SSD-10404) which approved the construction and 24 hour, 7 day per week operation of a warehouse and distribution facility which will operate as a customer fulfilment centre. The Department is currently assessing another development application for the Horsley Drive Stage 2 – Buildings 2 and 3 (SSD-17161650) for two individual warehouse and distribution facilities. The location of both SSD-10404 and SSD-17161650 are shown in **Figure 2**.

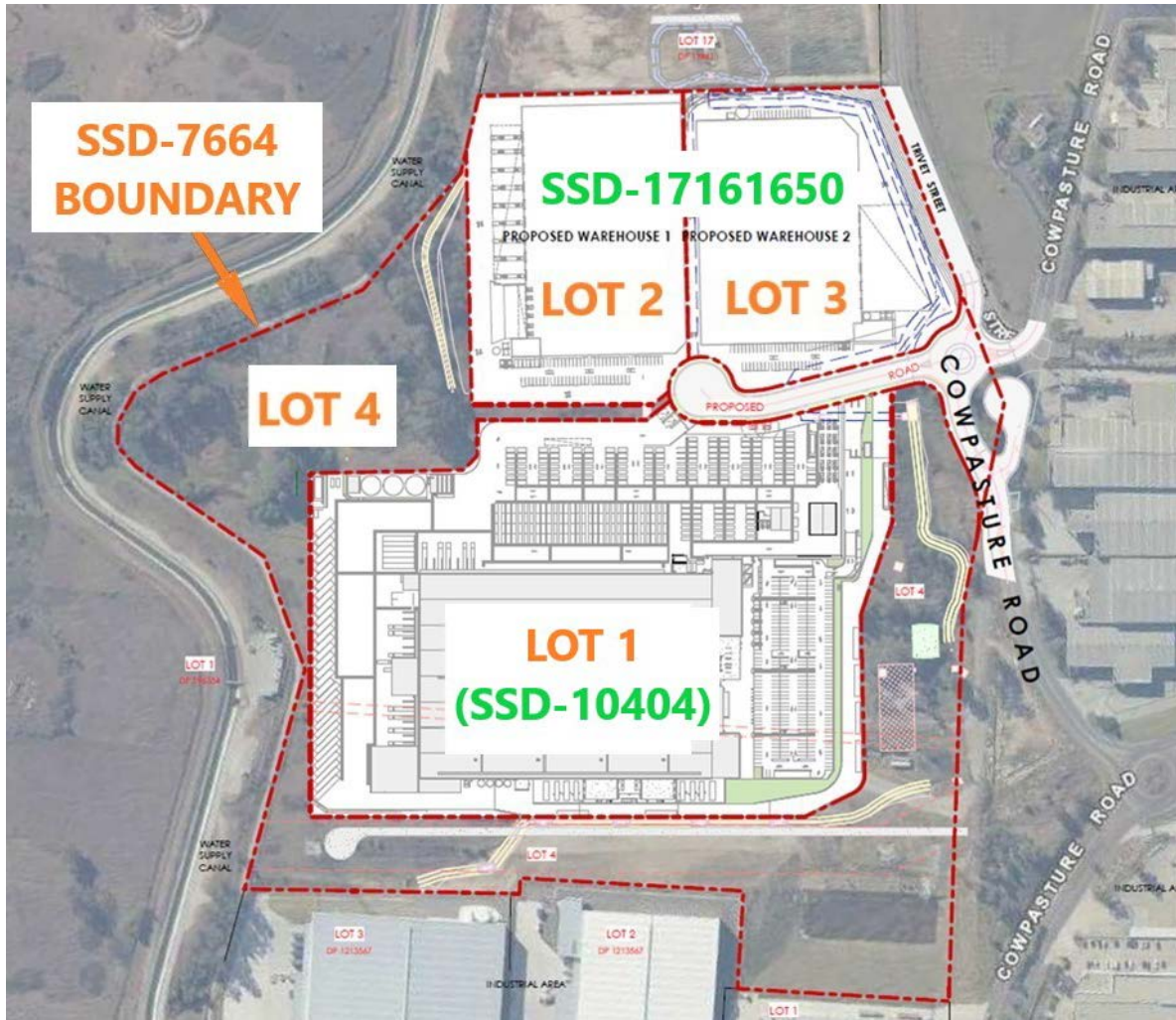


Figure 2 | SSD-7664-Mod-2 – Approved Development Site Layout Plan

The development consent SSD-7664 has been modified on two occasions (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
SSD-7664-Mod-1	Revised lot configuration, building footprint / levels, car parking, landscaping and access road design and alignment.	Department	s4.55(2)	10 August 2020
SSD-7664-Mod-2	Amendment to increase building height limit.	Department	s4.55(1A)	19 March 2021

2 Proposed Modification

On 21 February 2022, the Applicant lodged a modification application under section 4.55(1A) of the EP&A Act to modify SSD-7664. The modification is described in full in the Modification Report.

Modification 1 made changes to the subdivision layout reducing the number of lots from 7 to 4. Under the current modification, the Applicant is seeking to modify the consent to permit minor adjustments to the approved allotment size of these lots, as shown in the following table. The amended subdivision plan is shown in **Figure 3**. The Applicant notes the total area for subdivision has also been adjusted slightly due to a discrepancy between the title information and the actual site survey.

Table 2 | Proposed lot size amendments

Lot	Approved under Mod 1 (ha)	Proposed under Mod 3 (ha)
1	8.792	8.791
2	2.709	2.953
3	2.763	2.515
4	7.610	7.586
Total	21.874	21.845

In addition, the modification is also seeking to amend Condition A11 to transfer 500 m² of approved warehouse GFA (86,200m² to 85,700 m²) to office GFA (2,500 m² to 3,000 m²), whilst remaining within the total approved GFA for the development of 88,700 m².

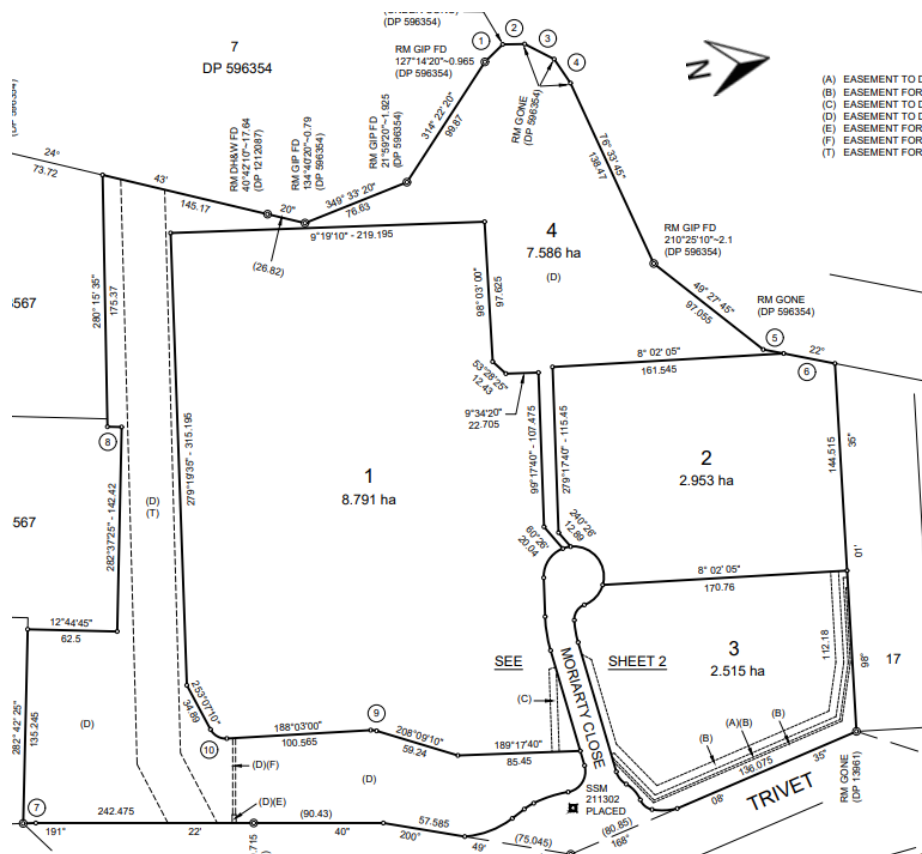


Figure 3 | SSD-7664-Mod-3 –Proposed Development Site Layout Plan

3 Statutory Context

3.1 Scope of Modification

The Department has reviewed the scope of the modification and considers the modification 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
- it would not increase the environmental impacts of the development which are managed through the existing conditions of consent
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act
- it is substantially the same development as originally approved
- it would not involve any further disturbance outside the already approved disturbance area for the development.

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

- the modification has not been made by a person who has disclosed a reportable political donation under section 10.4 of the EP&A Act
- there are no public submissions (other than a council) in the nature of objections, and
- Council has not made a submission by way of objection under the mandatory requirements for community participation listed under Schedule 1 of the EP&A Act.

3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the development against the mandatory matters for consideration as part of the original assessment of SSD-7664. The Department considers this modification does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

3.4 Legislative Amendments

The Department notes that since the lodgement of the modification, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation 2000) has been repealed by the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021). Under Schedule 6(3) of the 'savings, transitional and other provisions' of the EP&A Regulation 2021, the EP&A Regulation 2000 continues to apply (instead of the new EP&A Regulation 2021) to applications made but not finally determined before 1 March 2022. As the modification was lodged on 21 February 2022, the modification has been assessed having regard to the requirements of the EP&A Regulation 2000.

Since lodgement of the modification, all NSW State Environmental Planning Policies (SEPPs) have been consolidated. 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.

3.5 Biodiversity Conservation Act 2016

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

The Department is satisfied that there will be no additional clearing of native vegetation or habitat loss beyond that previously assessed and considered under SSD-7664, as modified.

For this reason, the Department's assessment concludes a BDAR is not necessary for the modification.

4 Engagement

4.1 Department's Engagement

Clause 117(4) of the 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 no additional environmental impacts (see **Section 5**), the modification was not notified or advertised. However, the modification was made publicly available on the Department's website on 10 March 2022 and referred to Fairfield City Council (Council) for comment.

4.2 Agency Advice

Council did not raise concerns with the modification and requested the Applicant confirm that current draft amendments in relation to SSD-17161650 do not impact on the modification.

4.3 Response for Information

On 21 March 2022, the Department requested additional information from the Applicant. The nature of the request sought clarification in relation to the proposed changes in lot sizes and confirmation that proposed amendments to the design of SSD-17161650 did not have a material effect on the modification or the nature of the amendments being sought by the Applicant.

On 4 April 2022 and further on 12 May 2022, the Applicant responded to the Department's request and confirmed there was a minor discrepancy between the lot sizes from the previous approval and the documentation as submitted. This discrepancy had arisen due to the Applicant having engaged a new surveyor, who on the conduct of a new boundary survey found some additional property boundary markers that had not previously been known. The Department notes that the change is immaterial to the development.

The Applicant also confirmed the current draft amendments to SSD-17161650 do not impact on the scope of the modification, and therefore there are no impediments to the Department's determination of the modification.

5 Assessment

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

- Modification Report provided to support the modification and further advice (see **Appendix A**)
- documentation and Department’s assessment report for the original application and subsequent modification applications (see **Appendix A**)
- advice from Council (**Appendix A**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department’s assessment of the key assessment issues is provided in **Table 3**.

Table 3 | Assessment of Issues

Issue	Findings	Recommendations
Construction Impacts	<p>The Department has considered if the modification would generate any changes to the approved construction profile of the development which might increase potential environmental impacts within the locality.</p> <p>The Department notes the existing consent already has a comprehensive suite of conditions to mitigate and minimise potential environmental impacts which may arise during construction activities.</p> <p>The Department is satisfied that, based on the information provided by the Applicant that the modification will not cause any known changes to the construction profile of the development.</p> <p>The Department’s assessment concludes the modification will not generate any additional construction impacts within the locality, and that the existing conditions of consent remain appropriate.</p>	<p>No amendments required.</p>
Operational Impacts	<p>The Department has considered the potential for the modification to generate potential operational impacts for the development which might increase potential environmental impacts within the locality.</p> <p>The Department is satisfied that based on the information provided by the Applicant that the amendments to the lot sizes will not result in any quantifiable change to predicted operational impacts.</p> <p>In relation to the amendment to reassign 500 m² of GFA from the warehouse to the office, the Department notes the existing conditions stipulate car parking rates based on GFA which attributes one space per 300 m² GFA for industrial type uses and 1 space per 40 m² GFA for office uses. Due to the increase in permitted office GFA this could result in an increase in overall parking demand, however this would be assessed under future development applications.</p>	<p>Amend Schedule 2 – Conditions of Consent for Concept Development: by updating development plan references in Condition A1 and amending the GFA allocations in Condition A11</p> <p>Amend Schedule 3 – Conditions of Consent for Stage 1: by updating development plan</p>

Issue	Findings	Recommendations
	<p>The Department further notes that previous assessments for the development adopted generic traffic generation rates for buildings without known tenancies. The adopted rates are: AM Peak Hour: 0.156 Trips / 100m² GFA, PM Peak Hour: 0.157 Trips / 100m² GFA, Daily: 2.100 Trips / 100m² GFA. These rates do not differentiate for example between office and warehouse uses, and therefore whilst car parking requirements may increase, the predicted traffic generation as a result of the modification is expected to remain unchanged from what has been previously assessed and approved as the total overall GFA for the site remains unchanged.</p> <p>The Department is satisfied that, based on the information provided by the Applicant, the modification will not increase the overall traffic generation of the development, with no corresponding changes to assessed impacts expected. The Department does however note that specific end users of the development (Buildings 1, 2 or 3) are required to demonstrate their own traffic generation impacts should end users be known.</p> <p>The Department's assessment concludes the change in GFA from warehouse to office is acceptable and unlikely to generate any additional impacts. The conditions are recommended to be modified to adjust the GFA between warehouse and office uses.</p>	<p>references in Condition A1, Condition A14 and Appendix A.</p>
<p>Subdivision Layout</p>	<p>The modification involves the minor adjustment of lots 1 to 4 to accommodate future development proposed at the site and does not involve any physical changes to the development as currently approved. The adjustment is in response to ground-truthing of the site survey and therefore the Department's assessment has concluded that there are no additional environmental impacts associated with the minor adjustment. The Department recommends the conditions be updated to reflect the amended plan of subdivision.</p>	<p>Amend Schedule 3 – Conditions of Consent for Stage 1: by updating subdivision plans in Appendix A.</p>

6 Evaluation

The Department has assessed the modification in accordance with the relevant requirements of the EP&A Act.

The Applicant is proposing to modify the development to to permit a minor amendments to the subdivision layout and to transfer 500 m² of approved warehouse GFA (86,200m² to 85,700 m²) to office GFA (2,500 m² to 3,000 m²) whilst remaining within the total approved GFA for the development of 88,700 m²

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

- is substantially the same development as that originally approved
- would not result in additional environmental impacts beyond those already assessed and approved, including impacts associated with noise, dust, traffic and stormwater
- facilitates the further development of proposed lots 2 and 3.

The Department is satisfied that the modification should be approved, subject to conditions.

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that SSD-7664-Mod-3 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** forms the opinion under section 7.17(2)(c) of the *Biodiversity Conservation Act 2016* that a BDAR is not required to be submitted with these applications as the applications will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent SSD-7664
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



David Koppers

Senior Environmental Assessment Officer
Industry Assessments

8 Determination

The recommendation is **Adopted** by:



23 May 2022

Joanna Bakopanos

Team Leader

Industry Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of referenced documents

Modification Application

- *State Significant Development 7664, Horsley Drive Business Park Stage 2, Section 4.55 (1A) Modification Application (Mod No. 3)*, prepared by Ethos Urban Pty Ltd, Revision V1, dated 11 November 2021.
- *Response to Request for Additional Information*, prepared by Ethos Urban Pty Ltd, dated 4 April 2022.
- Further plans submitted 12 May 2022.

Government Agency Advice

- <https://www.planningportal.nsw.gov.au/major-projects/projects/mod-3-subdivision-gfa-amendment>

Department's Assessment Report for SSD-7664

- <https://www.planningportal.nsw.gov.au/major-projects/projects/horsley-drive-business-park-stage-2>

Appendix B – Notice of Modification

Appendix C – Consolidated Consent