



Temperature Controlled Warehouse Facility Modification 2

State Significant Development Modification Assessment
(SSD-8586218-Mod-2)

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Glossary

Abbreviation	Definition
Applicant	ESR Australia Pty Ltd
BDAR	Biodiversity Development Assessment Report
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RFI	Request for Information
SSD	State Significant Development

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1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Temperature Controlled Warehouse Facility, Horningsea Park.

The modification application seeks approval to amend an error in the approved plans regarding the size of the cold and freezer room.

The application was lodged on 9 April 2021 by ESR Australia Pty Ltd (the Applicant) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

The Applicant is constructing a warehouse facility within the Bringelly Road Business Hub in the Liverpool local government area (see **Figure 1** and **Figure 2**). The development seeks to provide distribution and employment opportunities within an identified business hub within the Western Sydney Parklands.



Figure 1 | Regional Context Map



Figure 2 | Local Context Map

1.2 Approval history

On 30 November 2020, the Applicant was granted development consent for the construction and operation of a Temperature Controlled Warehouse Facility (SSD-8586218). The development consent permits the construction and operation of a warehouse, ancillary office, landscaping and carparking.

The development consent has been modified on a single occasion, as below.

SSD-8586218-Mod-1

On 1 April 2021, the Director Industry Assessments, as delegate of the Minister for Planning and Public Spaces modified the development consent under Section 4.55(1A) of the EP&A Act for the introduction of a mezzanine level for further storage and technical rooms, as well as the addition of cold and freezer rooms to the main warehouse floor.

2 Proposed modification

2.1 Proposed Modification

The Applicant has lodged a modification application under section 4.55(1) of the EP&A Act to correct an error within the approved plans. The modification is described in full in the modification letter included in Appendix B.

The plan in question is drawing DA101 revision F, approved as part of Modification 1. In response to a Request for Information issued by the Department, the Applicant supplied amended architectural plans on 25 February 2021. These plans addressed issues raised by the Department in response to the mezzanine level, however unintentionally reduced the size of the cold and freezer rooms on the Site Plan only.

The Applicant is therefore seeking to amend the approved drawings listed on the consent to replace the approved Site Plan with that originally submitted under Modification 1. This will result in the size of the cold and freezer rooms aligning with the size originally proposed.

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 a minor error, misdescription or miscalculation as the proposal:

- would not increase the environmental impacts of the project as approved
- the primary function and purpose of the approved development would not change as a result of the proposed modification
- the modification is of a scale that warrants the use of section 4.55(1) of the EP&A Act.
- is substantially the same development as originally approved
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1) 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(1) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent Authority

Minister's delegate as consent authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the application under section 4.5(a) of the EP&A Act. Under the Minister's delegation of 9 March 2020, the Director, Industry Assessments, may determine the application under delegation as:

- the application has not already been referred by the Planning Secretary to the Independent Planning Commission as at the date of the delegation
- a political disclosure statement has not been made and
- there are less than ten public submissions in the nature of objections.

3.3 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.

As the modification relates to amending a plan error of the consent, a BDAR is not considered to be required by the Department.

For the reasons discussed above, the Department's assessment concludes a BDAR is not necessary for the proposed modification.

4 Engagement

4.1 Department's engagement

The Department made the modification application available on its website from 15 April 2021. Given the minor nature of the modification application, the Department did not formally seek submissions on the application.

5 Assessment

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

- the modification letter provided to support the proposed modification (see **Appendix B**)
- the documentation and Department's assessment report for the original development application and subsequent modification application(s)
- 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 issues is provided below.

5.1 Approved plan error

The modification application seeks to amend an error on the plans submitted as part of the Department's Request for Information (RFI) in Modification 1. The RFI response submitted updated plans in relation to questions by the Department around the use of the site, however inadvertently submitted a previous version of the Site Plan. This Site Plan was later approved by the Department as part of the approved drawing set. The consequence of approving this Site Plan saw the cold and freezer storage rooms reduced in size, conflicting with that originally provided in the Modification 1 application.

The Applicant lodged the current modification application to rectify this error, reverting the cold and freezer rooms to the larger dimensions that were originally lodged and considered under Modification 1. It is noted the amended plans were used when consulting with Liverpool City Council in Modification 1.

The Department has reviewed the modification application and considers the Site Plan to have been included in the consent by error. The Department recommends updating the plans listed in the consent to reflect the supplied Site Plan under this modification application. Minor changes to include a new definition of this modification are also recommended, to facilitate the correction of the error.

The Department is satisfied the amendments to consent to replace the Site Plan is to rectify an error identified in the approved plans and would not alter the original intent of the development nor increase environmental impacts of the development.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate on the basis that:

- the proposed modification will result in minimal environmental impacts beyond the approved facility
- the proposed modification will amend inconsistencies within the plans
- proposed modification would retain jobs and investment in Western Sydney.

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

7 Recommendation

It is recommended that the Director, 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-8586218-Mod-2 falls within the scope of section 4.55(1)
- **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 this application as the application 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-8586218
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Thomas Bertwistle
Environmental Assessment Officer
Industry Assessments

Recommended by:



21 April 2021

Joanna Bakopanos
Team Leader
Industry Assessments

8 Determination

The recommendation is **Adopted** by:



21 April 2021

Chris Ritchie

Director

Industry Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Instrument of Modification

The modifying instrument for the subject modification may be found on the Department's website at:
<https://www.planningportal.nsw.gov.au/major-projects/project/41641>

Appendix B – Modification instrument

Modification Application Letter - Section 4.55(1) Modification Application, and attachments, prepared by Ethos Urban, dated 6 April 2021. - <https://www.planningportal.nsw.gov.au/major-projects/project/41641>

Appendix C – Consolidated Consent