

Eastern Creek Business Hub

Modification to extend the recessed supermarket loading dock operating hours
State Significant Development Modification Assessment (SSD 5175 MOD 5)

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Glossary

Abbreviation	Definition
Council	Blacktown City Council
Department	Department of Planning, Industry and Environment
ECBH	Eastern Creek Business Hub
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
INP	Industrial Noise Policy
LEP	Local Environmental Plan
LDMP	Loading Dock Management Plan
Minister	Minister for Planning and Public Spaces
NIA	Noise Impact Assessment
RMS	Roads and Maritime Services, TfNSW
RHRS	Rooty Hill Road South
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SEPP (COVID- 19)	State Environmental Planning Policy Amendment (COVID-19 Response) 2020
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
RtS	Response to Submissions

1 Introduction

This report provides an assessment of a request to modify the State significant development (**SSD**) consent for (SSD 5175) for a new retail centre at Rooty Hill Road, Eastern Creek.

The application has been lodged by Frasers Property Australia (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

The proposal seeks approval to amend the approved hours of operation for the supermarket loading dock.

1.1 The Site

The site is within the Eastern Creek Business Hub site within the Western Sydney Parklands. The site is legally described as Lot 2 in DP126436 and has area approximately 4.19 hectares.

The site is occupied by a retail shopping centre (**Figure 1**), with the loading dock access being provided from Beggs Road, public vehicle access being provided from Cable Place and the public pedestrian access being provided from the new access road and Rooty Hill Road South. The site is the first lot to be developed in the ECBH.

The surrounding area is characterised by a mix of land uses including the M7 Motorway and other Western Sydney Parkland land to the east, low density residential development, the Eastern Creek Public School and Eastern Creek Rural Fire Brigade Station to the west of Rooty Hill Road South (RHRS) and the Morreau Sporting Reserve and The Rooty Hill reserve to the north of Church Street. The nearest residential dwellings (**Figure 1**) include:

- 151 Rooty Hill Road South, Eastern Creek identified as R1
- 158A to 168 Rooty Hill Road South, Eastern Creek identified as R2
- 146-156 Rooty Hill Road South, Eastern Creek identified as R3



Figure 1 | Site location - site outlined in blue, approximate location of the loading dock is shown in purple and the nearby residents in yellow (Base Source: Near maps)

1.2 Approval history

1.2.1 SSD 5175 Eastern Creek Business Hub Concept Plan

On 7 January 2015, the then Minister for Planning granted consent for the ECBH Staged Development Application, including a new retail centre to accommodate retail premises, bulky goods premises and business premises uses and Stage 1 subdivision and early works (**Figure 1**).

The development was approved to be constructed in two stages. The first stage comprises two substages, including specialised retail on Lot 1 and a convenience retail development on Lot 2. The second stage comprises the development of Lot 3 for specialised retail.

The concept plan has been modified on nine occasions.

1.2.2 SSD 8588 – Eastern Creek retail centre (Lot 2)

On 20 July 2018, the Independent Planning Commission granted consent for the detailed design, construction and operation of a convenience retail development on approved Lot 2 (stage 1). The development consent has been modified on four occasions (see **Table 1**).

The development (as modified) has a GFA of 11,438m², including a supermarket, specialty shops, food and drink premises, medical centre, pharmacy, gymnasium, 432 car parking spaces, loading dock facilities and associated landscaping (as modified) (**Figure 2**).

The development is serviced by two loading docks that are located on the southern portion of the site and service various uses and tenancies. Vehicle access to both of the loading docks is provided from Beggs Road. The recessed supermarket loading dock is located in the south eastern corner of the retail centre services Woolworths and the second loading dock is located in the south western corner services the other tenancies (**Figure 2**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Туре	Approval Date
MOD 1	Modify the detailed design of the retail centre building, including the facade, changes to plant and services, rainwater tank, loading dock, trolley bay, waste room and reconfigure the internal layout.	Department	4.55(1A)	21 November 2018
MOD 2	Modify the retail centre, including changes to the layout of the southern part of the Lot 2 car park and location of future building envelopes.	Department	4.55(1A)	18 July 2019
MOD 3	Design refinements to the retail centre including shade sails, signage and solar panels.	Department	4.55(1A)	29 November 2019
MOD 4	Amend vehicle access to allow vehicles to exit the car park via the roundabout	Department	4.55(1A)	2 July 2020

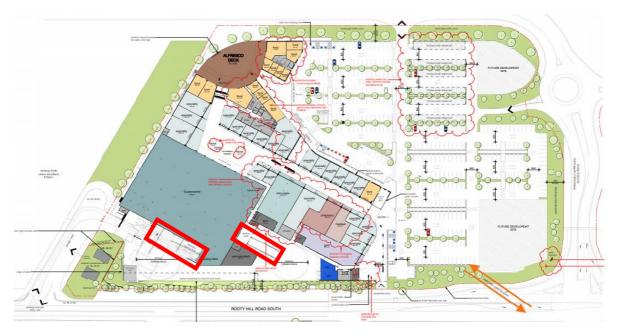


Figure 2 | Approved retail centre (Lot 2) site plan – loading docks are shown in yellow (Source: i2C)

1.2.3 Other relevant projects

Eastern Creek Retail Centre Lot 1

On 15 June 2020, the Independent Planning Commission approved the construction of a specialised retail centre on Lot 1 (SSD 8858). The approval has been modified once and includes:

- · three specialised retail buildings
- ancillary uses comprising a recreation facility (indoor), vehicle repair station and café
- two future development sites
- · signage zones, car parking spaces and landscaping.

Eastern Creek Retail Centre Lot 3

The Department is currently assessing a Concept Plan proposal for a retail outlet centre on Lot 3 at the Eastern Creek Quarter (SSD 10457), including:

- retail (factory outlet), ancillary food and drink premises, recreation facilities (indoor and outdoor) and amusement centre land uses
- building envelopes, up to a maximum of 12 metres, including basement
- a maximum totally gross floor area 39,500m²
- Concept landscape design, Design Guidelines, access, parking and road upgrades
- Stage 1 early works including removal of Cumberland Plains Woodlands in the south west corner of the site, bulk earthworks and extension of the internal access road
- Subdivision to incorporate the former Beggs Road reserve into Lot 3

At the time of writing this report, the Applicant is preparing its Response to Submissions.

2 Proposed modification

The modification application seeks to amend Condition F2 to increase the approved hours of operation of the supermarket loading dock as outlined in **Table 2** below.

Table 2 | Proposed changes to loading dock hours of operation

Loading Dock	Approved hours of operation	Proposed hours of operation	Difference
Supermarket	 Mon to Sat: 7:00am to 6:00pm Sun: 8:00am to 5:00pm 	 Mon to Sun: 5:00am to 10:00pm 	 Mon to Sat: + 2 hours in AM + 4 hours in PM Sun: + 3hours in AM + 5 hours in PM
Speciality retail	 Mon to Sat: 7:00am to 6:00pm Sun: 8:00am to 5:00pm 	No change	No change

The Applicant seeks to increase the loading dock hours in response to the COVID-19 pandemic, changes in consumer behaviour and the associated increased demand for online grocery shopping and deliveries.

The Applicant has also advised that it has been successfully operating the loading dock with extended hours in accordance with the *State Environmental Planning Policy (Exempt and Complying Development Codes)* 2008 and *State Environmental Planning Policy Amendment (COVID-19 Response)* 2020 (SEPP (COVID-19)) which currently permits 24 hour operations until 31 March 2022.

The Applicant has provided an updated Loading Dock Management Plan to support the proposed increase in hours and notes:

- home deliveries will use small trucks, there are no pallet jacks therefore there will be minimal noise impacts
- instructions will be provided to team members that conversations are to be at a minimum
- truck movements will be scheduled manage online/home deliveries and warehouse deliveries
- the extended loading hours will ease loading dock congestion as deliveries will be spread over a longer period.

A link to the modification application documents is provided in **Appendix A**.

3 Statutory context

3.1 Scope of modification

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 proposal:

- would not increase the environmental impacts of the project as approved;
- is substantially the same development as originally approved; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is provided in **Appendix B**.

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 for Planning and Public Spaces is the consent authority for the applications under section 4.5(a) of the EP&A Act. However, the Director, Key Sites Assessments, may determine the applications as:

- a political disclosure statement has not been made; and
- there was one public submission in the nature of an objection.

3.3 Mandatory matters for consideration

The following are mandatory matters for consideration:

- environmental planning instruments or proposed instruments
- any planning agreements
- EP&A regulation
- likely impacts of the modification application, including environmental impacts on both the natural and built environments, and social and economic impacts
- suitability of the site
- · any submissions
- · the public interest
- the reasons for granting approval for the original application.

The Department has considered all of these matters in its assessment of the proposal. The Department has also given consideration to the relevant matters in **Section 5** and **Appendix B**.

4 Engagement

4.1 Department's engagement

The Department notified the application for 14 days from 20 October 2020 to 2 November 2020 to the surrounding landowners/occupiers and made the application publicly available on the Department's website.

The application was also referred to Blacktown City Council (Council) with a request for comments by 26 October 2020 (14 days).

The Department made the Applicant's Response to Submissions (RtS) available on its website and referred it to Council.

4.2 Summary of submissions

The Department received two submissions from Council and one public submission (Appendix A).

Council initially did not support the proposal and raised concerns about the operational management of the loading dock, in particular to address noise and scheduling of vehicle movements. However, in response to the Applicant's RtS, Council raised no objections subject to conditions.

The public submission objected to the proposal raising concerns about health impacts.

4.3 Response to submissions

The Department placed copies of all submissions received on its website and requested that the Applicant provide a response to the issues raised.

On 16 February 2021, the Applicant lodged its RtS, which includes additional information, justification and amendments to the proposal in response to the issues raised in submissions, including:

- Clarification that no changes are proposed to the specialty retail loading dock hours
- an amended Loading Dock Management Plan and Noise Impact Assessment.

5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the modification and associated documents
- the Environmental Impact Statement and conditions of approval for the original application (as modified)
- all submissions received on the proposal and the Applicant's response to these
- relevant EPIs, policies and guidelines and the requirements of the EP&A Act.

The Department's assessment is provided in **Table 3Table 3** | Department's Assessment below.

Table 3 | Department's Assessment

Issue	Findings	Recommendations
Noise	 The Applicant provided a Noise Impact Assessment (NIA) which assessed the impact of the proposal on the nearest residential properties (Figure 1) against the noise criteria established in NSW EPA Industrial Noise Policy (INP). The NIA assessed the background noise level and recommended noise criteria for the proposal of 43 dB(A) in the evening (6pm – 10pm) and 38 dB(A) in the morning (5 am – 7am). It also provides a sleep disturbance trigger of 60-71 dB(A). The NIA demonstrates that the average noise levels from the operation of the loading dock will comply with the INP criteria during the proposed evening and morning extended hours. The peak noise levels will also comply with sleep disturbance criteria, with the exception of trucks using air brakes on Sunday mornings (5am-7am), which would result in a noise level of 64 dB(A) at the first floor facade of residential properties on the opposite side of Rooty Hill Road (R2 in Figure 1). This exceeds the INP sleep disturbance criteria by 4 dB. The NIA, however, contends that even with windows open, there would typically be a 10 dB noise reduction inside the residence. It therefore concludes that the use of air brakes would be unlikely to cause sleep disturbance, subject to the following management measures: any garbage removal is limited to the hours of 9am – 5pm, Monday to Sunday a maximum of one large/heavy vehicle delivery OR three small delivery trucks in a one hour period between 5 am – 7am a maximum of one large/heavy vehicle delivery AND three small delivery trucks in a one hour period between 6 pm and 10 pm garbage compactors must only be used within the loading dock area and are not to be used between 5 am and 7 am vehicles must arrive and depart within the approved hours vehicle engines must be switched off during loading and unloading within the dock 	The Department recommends new conditions F19 and F20 requiring: • the LDMP be updated to include the NIA recommendations and a restriction on the use of forklifts in the supermarket loading dock • verification that the use of the loading dock does not exceed the noise goals identified in the NIA and that all recommendations of the NIA have been implemented within one month of the commencement of extended hours • implementation of any measures to address any non-compliances prior to continuation of the extended hours.

- Council raised no objection to the proposed hours of operation. However, it raised concern that use of forklifts (with beepers) for loading/unloading may cause noise impacts. It therefore recommended conditions to restrict the use of forklifts for loading and unloading within the supermarket loading dock.
- The Department has considered the findings of the NIA and considers that average noise from the loading dock is unlikely to have adverse impact on nearby residential properties as it is consistent with the INP criteria. Although the peak noise between 5 am and 7 am on Sundays would exceed the sleep disturbance criteria at the first floor façade of nearest properties, the Department is satisfied that the use of trucks with air brakes can be managed so it does not cause adverse impacts as:
 - a maximum of one large/heavy vehicle delivery will occur per hour between 5 am – 7am
 - small trucks and vans do not typically use air brakes
 - although the noise level at the façade would exceed 60 dB(A), the internal noise within residential properties, even with windows open, is likely to be between 50-55 dB(A) which would not cause sleep disturbance.
- To ensure impacts are minimised, the Department recommends conditions requiring:
 - the NIA recommendations be included within the LDMP
 - a restriction on the use of forklifts between 5 am and 7am and 6pm and 10 pm, Mondays to Sundays, to minimise potential noise impacts from beepers
 - verification that the use of the loading dock (during extended hours) does not exceed the noise goals identified in the NIA and that all recommendations of the NIA have been implemented be provided within one month of the commencement of the extended hours
- The Department also notes that existing Condition F18
 requires further acoustic assessment and mitigation of noise
 from the site, in the event that substantiated complaints are
 received by Council in relation to noise impacts.
- The Department concludes that subject to the above management measures, the proposed extended hours of operation of the supermarket loading dock is unlikely to cause adverse noise impacts to nearby residential properties.

Loading dock manage ment

- The Applicant provided an addendum to the LDMP, which outlines measure to minimise delays and incidents and disruption to neighbouring properties. In particular, with regard to the proposed extended hours of operation:
 - minimal noise is expected from the loading of home delivery vehicles
 - o conversations are to be kept to a minimum
 - deliveries are rostered to ensure the dock operates efficiently
- The Department considers these measures are acceptable and, in conjunction with the NIA recommendations, will ensure the efficient operation of the loading dock and minimise impacts to nearby residential properties.
- The Department therefore recommends the recommendations of the NIA are included within an updated LDMP within one month of the approval.

The Department recommends new condition F19 which requires the LDMP referred to in condition E7, to be updated within one month of the approval.

Health Impacts

- Concern was raised in the public submission that proposal would result in health impacts.
- The Department considered the location of the approved loading dock in its assessment of the original application and was satisfied that:
 - it is adequately separated from nearby residential properties by the solid acoustic wall
 - all other properties located on the opposite side of Rooty Hill Road South are separated by a four-lane arterial road carrying high volumes of traffic
 - the loading dock is setback 20m from Rooty Hill Road South and is lower than street level.
- The Department is satisfied that the proposed extended hours of operation would not:
 - result in adverse noise impacts which would cause sleep disturbance to nearby residential properties
 - alter the air quality within the site as it does not intensity the use of the loading dock and it is separated from neighbouring properties by a solid wall and Rooty Hill Road South
 - increase traffic movements, as existing deliveries will be scheduled over the proposed extended loading dock hours of operation
- The Department therefore concludes the proposed increase in the hours of operation for the supermarket loading dock is acceptable and is unlikely to result in any noise, air quality or traffic impacts which would lead to adverse health impacts, when compared to the approved development.

The Department considers no additional conditions or amendments are necessary.

6 Evaluation

The Department has reviewed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposal is appropriate as:

- noise from the loading dock will generally comply with the Industrial Noise Policy, and the
 peak noise impact caused by air brakes on Sundays between 5 am and 7 am is limited to a
 maximum of two vehicles and is unlikely to be at a level which would cause sleep disturbance
 to residents inside neighbouring residential properties
- the NIA and LDMP, and recommended conditions of consent will adequately manage the loading dock and minimise impacts on the existing operations of the Eastern Creek Business and adjoining and surrounding residents
- it complies with the relevant statutory provisions and the proposal remains consistent with relevant EPIs and the strategic planning context
- it is substantially the same development as originally approved and would not result in any adverse environmental impacts

The Department concludes the impacts of the proposal are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

Consequently, the Department considers the modification application is in the public interest and should be approved, subject to the recommended changes to the existing conditions of consent (**Appendix C**).

7 Recommendation

It is recommended that the Director, Key Sites Assessment, as delegate of the Minister for Planning and Public Spaces:

- considers the findings and recommendations of this report
- determines that the application SSD 8588 MOD 5 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 consent SSD 8588
- signs the attached approval of the modification (Appendix C).

Recommended by:

Recommended by:

PL

Candice Pon
Planning Officer
Key Sites Assessments

Amy Watson

Team Leader Key Sites Assessments

8 Determination

The recommendation is **Adopted** by:

Sollisted 6 April 2021

Anthony Witherdin

Director

Key Sites Assessment

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

The following supporting documents and information to this assessment report can be found on the Major Project's website as follows:

- SSD 8588 MOD 5 Modification Report, dated 9 October 2020 prepared by Ethos Urban
- Response to Submissions, dated 16 February 2021 prepared Ethos Urban
- Additional Information
- Submissions

https://www.planningportal.nsw.gov.au/major-projects/project/40191

Appendix B – Statutory Considerations

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 4.55(1A) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 4.55(1A) of the EP&A Act is included in **Table 4**.

Table 4 | Consideration of section 4.55(1A) of the EP&A Act

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the modification application. The Department is satisfied that the proposed extension of the recessed supermarket loading dock hours is of minimal environmental impact as: • the proposed hours of operation will not result in any adverse impacts on the amenity of the adjoining and surrounding properties including the residents • there are no changes to the approved built form of the Eastern Creek Business Hub
b) 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 and before that consent as originally granted was modified (if at all), and c) the application has been notified in accordance with the regulations, and	The application seeks consent for extension of the loading dock hours. The use of the site remains consistent with the original development consent and the application is considered to result in development that is substantially the same as the originally approved development. The modification application has been notified in accordance with the EP&A Regulations. Details of the notification are provided in Section 4 of this report.
d) any submission made concerning the proposed modification has been considered.	The Department received one submission. The issues raised in these submissions have been considered in Sections 4 and 5 of this report.

Under section 4.55(3) of the EP&A Act, the consent authority must consider the matters referred to in section 4.15(1) of relevance to the development. **Table 5** identifies the matters for consideration under section 4.15 of the EP&A Act that apply to the proposed modification.

Table 5 | Consideration of the matters listed under Section 4.15(1) of the EP&A Act

Section 4.15(1) Matters for consideration	The Department's assessment
(a)(i) any environmental planning instrument	The proposed modification is consistent with the relevant Environmental Planning Instruments (EPIs) as addressed below.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Under clause 11 of the SRD SEPP, Development Control Plans (DCPs) do not apply to SSD.
(a)(iiia) any planning agreement	Not applicable.
(a)(iv) the regulations	The application satisfactorily meets the relevant requirements of the <i>Environmental Planning and Assessment Regulation 2000</i> , including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA).
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The likely impacts of the proposed modification are acceptable and have been appropriately addressed (refer to Section 5 of this report).
(c) the suitability of the site for the development	The site is suitable for the development as addressed in Section 5 .
(d) any submissions	The Department has considered the submissions received (refer to Sections 4 and 5 of this report).
(e) the public interest	The Department considers the proposed modification to be in the public interest.

Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Western Sydney Parklands) 2009
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No.55 Remediation of Land
- Draft Remediation of Land State Environmental Planning Policy
- Blacktown Local Environmental Plan (BLEP) 2015

The Department undertook a comprehensive assessment of the applications against the abovementioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied the modifications do not result in any inconsistency with these EPIs.

Appendix C - Notice of modification

• SSD 8588 MOD 5 https://www.planningportal.nsw.gov.au/major-projects/project/40191

Appendix D – Consolidated Consent

https://www.planningportal.nsw.gov.au/major-projects/project/40191

Appendix E – Considerations of issues raised in submissions

The Department's reasons for the determination (decision) and consideration of how community views were considered during the assessment of the applications is provided at **Table 6**.

Table 6 | Department's reasons for determination and consideration of community views

Issue	Consideration
Health impacts	Assessment
	 The Department is satisfied that the proposed extended hours of operation would not result in adverse noise impacts which would cause sleep disturbance to nearby residential properties.
	 The proposal will not alter the air quality within the site as it does not intensity the use of the loading dock and it is separated from neighbouring properties by a solid wall and Rooty Hill Road South.
	 The proposal will not increase traffic movements, as existing deliveries will be scheduled over the proposed extended loading dock hours of operation
	 The proposal is therefore unlikely to result in any noise, air quality or traffic impacts which would lead to adverse health impacts, when compared to the approved development.
	Recommended Conditions/Response
	No additional conditions recommended.