



Alesco Senior College Argenton Modification 1

State Significant Development Modification Assessment
(SSD 9683 MOD 1)

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Glossary

Abbreviation	Definition
Council	Lake Macquarie City Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
LEMP	Long-term Environmental Management Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RAP	Remedial Action Plan
SAR	Site Audit Report
SAS	Section A Site Audit Statement
SEPP 55	State Environmental Planning Policy No 55 – Remediation of Land
SVR	Contamination Site Validation Report
SSD	State Significant Development

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1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department) assessment of an application to modify the State significant development (SSD) consent for Alesco Senior College Argenton (SSD 9683).

The application was lodged on 29 June 2020 by Alesco Senior College (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application (SSD 9683 Mod 1) seeks approval to amend development consent condition number D13 relating to contamination documentation.

1.1 Background

The site is located at 7 James Street, Argenton and is legally described as Lots 14 and 15, Section L in DP 8993 within the Lake Macquarie local government area (LGA).

The site has an area of approximately 1,500m² and is rectangular in shape, with a 37m frontage to James Street to the south-east. The site is generally flat and contains a single storey brick building with an internal floor area of 400m², a double carport and an extensive asphalt area at the south-east which is used as a carpark. There are small gardens and scattered trees at the carpark edges and within the setback to James Street. All landscaping and remediation works approved under the subject consent (SSD 9683) have been completed.

The site is located approximately 250m from the former Pasminco lead and zinc smelter site. Consequently, a part of the site is subject to land contamination which is common to many properties in the immediate vicinity of the Pasminco site. This is discussed further in **Section 2** of this report.

An aerial view of the site and surrounding area is provided at **Figure 1**.



Figure 1 | Local Site Context Map (Source: SIX Maps 2019)

1.2 Approval history

On 13 December 2019, development consent was granted by the Executive Director, Infrastructure Assessments, as delegate for the Minister for Planning and Public Spaces, for the development of the Alesco Senior College Argenton (SSD 9683). The approved works comprise of a change of use to an existing building for use as an educational establishment to cater for 65 students including associated landscaping and remediation.

2 Proposed modification

The Section 4.55(1A) application seeks to modify condition D13 of the development consent which states:

Site Contamination

D13. Prior to commencement of operation, the Applicant must submit a Site Audit Report and Section A Site Audit Statement for the relevant part of the site prepared by a NSW EPA accredited Site Auditor. The Site Audit Report and Section A Site Audit Statement must verify the relevant part of the site is suitable for the educational establishment land use and be provided for the information of the Planning Secretary and the Certifier.

The Applicant proposes to modify the subject condition by replacing the requirement for submission of a Site Audit Report (SAR) and a Section A Site Audit Statement (SAS) with submission of the following:

- Contamination Site Validation Report (SVR).
- Long-term Environmental Management Plan (LEMP).

The Applicant's justification for the proposed amendment is that the area identified on the site as containing contaminated soil is very small in relation to the overall site area and approximately 95% of the site is reinforced with hard stand concrete.

The subject application has been accompanied by a SVR and LEMP prepared by a suitably qualified consultant. This is detailed further in **Section 5** of this report.

3 Statutory context

3.1 Scope of modifications

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

- would not increase the environmental impacts of the project as approved.
- 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(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

3.2 Consent authority

Minister's delegate as consent authority

The Minister for Planning and Public Spaces (the Minister) is the consent authority for the application under section 4.5(a) of the EP&A Act. In accordance with the Minister's delegation to determine SSD applications, signed on 9 March 2020, the Director, Social and Infrastructure Assessments may determine this modification application as:

- the application had not already been referred by the Planning Secretary to the Independent Planning Commission at the time the delegation was issued.
- the application has not been made by a person who has disclosed a reportable donation in connection with the application.
- there are less than 10 public submissions in the nature of objection.

3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of SSD 9683. The Department considers this modification application 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.

4 Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact applications. Due to the minor nature and minimal environmental impact of the proposed modification, the application was not notified or advertised.

5 Assessment

The findings and recommendations of the approved Remedial Action Plan (RAP) for the development are:

- no ground or surface water was encountered on site during testing.
- elevated lead concentration exceeding the adopted human health and ecological criteria was found in one soil sample consisting of mixed fill material containing 'black slag' (a by-product of the lead smelting process).
- the extent of the slag is limited to the area to the north-east area of the site, as shown in **Figure 2**.
- containment of the black slag on site is a suitable remedial strategy and is appropriate for the site as it would manage/eliminate exposure pathways to human and/or ecological receptors.
- the RAP recommended the onsite management of contaminated soils through the capping of the contaminated material.



Figure 2 | Area of site containing slag fill (Source: Applicant's SVR 2020)

The submitted SVR, prepared by a suitably qualified consultant, outlines that remediation of the site has been carried out in accordance with the approved RAP. The remediation consisted of onsite containment of the contaminated soils below a concrete hardstand capping layer. The completed concrete hardstand capping layer is shown in **Figure 3** below:



Figure 3 | Completed hardstand capping layer (Source: submitted SVR prepared by Agility Engineering)

The submitted SVR verifies that the site is suitable for use of as an educational establishment subject to management in accordance with the LEMP prepared for the site. The LEMP requires the capping layer to remain in place and that any excavation works to be undertaken beneath the cap for maintenance purposes must be undertaken in accordance with the following:

- personal protective equipment must be worn
- in the event that slag material is removed from the property, it must be disposed of in accordance with the NSW Environment Protection Authority Waste Classification Guidelines
- the cap must be reinstated immediately following completion of the works.

The SVR advises that SAR and SAS is not considered warranted in this particular case given the low risk nature of the contamination due to the following:

- the contamination is contained to a portion of the site and is capped underneath a concrete hardstand layer.
- the RAP found that no ground water was encountered on site during testing so the contaminated land can remain is-situ without risk of moving as a result of ground water.
- the LEMP does not require ongoing testing and/or monitoring and is not considered onerous for site users.

The Department has considered the information provided by the Applicant including the SVR and LEMP. The Department considers that the Applicant has adequately addressed clause 7 of State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) and demonstrated that the site is suitable for the approved use subject to compliance with the site's LEMP.

Given the above, the proposed amendment to condition D13 to allow for the submission of the SVR and LEMP in lieu of the SAR and SAS has merit and is supported. It is recommended that the condition be amended to require that copies of LEMP and SVR are provided to Council for its records. The Department has recommended amended wording to condition D13 that reflects this requirement, as shown in the Instrument of Modification (**Attachment B**).

6 Evaluation

The Department's assessment concludes that the proposed modification would continue to ensure compliance with the provisions of SEPP 55, would not result in any additional environmental planning impacts and accordingly is in the public interest. The proposed modification has merit and is supported by the Department.

7 Recommendation

It is recommended that the Director of Social and Infrastructure Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **determines** that the application (SSD 9683 Mod 1) 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 9683; and
- **signs** the attached Instrument of Modification (**Appendix B**).

Recommended by:



Tahlia Alexander
Senior Planning Officer
Social and Infrastructure Assessments

Recommended by:



Jason Maslen
Team Leader
School Infrastructure Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink, appearing to read 'KH', with a stylized flourish extending to the right.

7 July 2020

Karen Harragon

Director

Social and Infrastructure Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

Applicant's modification application, including Contamination Site Verification Report and Long-term Environmental Management Plan

<https://www.planningportal.nsw.gov.au/major-projects/project/37866>

Appendix B – Modification Instrument

<https://www.planningportal.nsw.gov.au/major-projects/project/37866>