Modifications under section 4.55 of the EP&A Act

Purpose

This practice note provides general guidance on the application of section 4.55 of the *Environmental Planning & Assessment Act 1979* (EP&A Act), which establishes the statutory framework for modifying a development consent.

Section 4.55 sets out the available modification pathways, including processes for correcting minor administrative errors, modifications with no or minimal environmental impact, other modification applications, and applications determined by the Land and Environment Court (the Court).

This practice note provides general policy guidance about each modification pathway and outlines the key considerations for preparing and determining a modification application. It is intended to assist councils, applicants and industry practitioners in navigating the modification process.

Recent amendments to the EP&A Act have updated the modification framework, including the introduction of a deemed non-refusal provision for minor modification applications. A summary of the key changes arising from these reforms is provided in Appendix A.

The interpretation of section 4.55, including key concepts such as “no environmental impact”, is likely to evolve as it is tested and considered by the Court. Applicants, consent authorities and members of the community are encouraged to seek independent legal or planning advice to understand how case law may affect specific projects, noting that advice may vary on a case-by-case basis.

This practice note is not legal advice, and users should consult the legislation and obtain professional advice before acting on any of its content.

4.55(1) Modifications involving a minor error, misdescription, miscalculation or no environmental impact

Section 4.55(1) provides a streamlined pathway to modify a development consent to correct minor administrative errors or to make changes that have no environmental impact. This pathway is intended to provide a simple, efficient mechanism for addressing straightforward corrections or changes.

Minor errors, misdescriptions or miscalculations

Section 4.55(1) allows modifications to correct minor errors, misdescriptions, or miscalculations. Examples may include typographical or clerical errors, incorrect references to plans or documents, or arithmetic or drafting errors in conditions of consent.

Meaning of “no environmental impact”

A modification can also be approved under section 4.55(1) if the consent authority is satisfied that it will not have an environmental impact. This means that the modification must not introduce any new negative environmental impacts, including increases to the severity or distribution of an existing environmental impact.

This pathway is a threshold test, not a balancing exercise. If any new environmental impacts arise, the modification cannot proceed under section 4.55(1), even if it would result in improvements overall, or in other areas.

The EP&A Act does not define the phrase “no environmental impact”. Accordingly, the meaning of the phrase is to be informed by established principles of NSW planning law and the ordinary meaning of the words.

In determining whether a modification involves “no environmental impact”, the consent authority should have regard to whether:

- any elements of the environment could be affected, including amenity, air quality, biodiversity, Aboriginal cultural heritage, water, soils, environmental heritage, and economic and social factors;
- the modification could affect elements of the environment that were not previously assessed;
- the location, extent, intensity or distribution of impacts would change, even if overall impacts are reduced; and
- additional or updated environmental assessment would be required to understand the impacts of the modification.

Deemed non-refusal

Section 4.55A of the EP&A Act applies to modification applications made under section 4.55(1) and establishes a deemed non-refusal framework.

Under this provision, the consent authority must determine an application under section 4.55(1) within the period prescribed by the regulations (14 days after lodgement). If the application is not determined within the prescribed period, the consent authority must, after the period has expired, determine the application as soon as practicable and must not refuse it.

Section 4.55A does not prevent the consent authority from imposing conditions on the modified development consent. However, where conditions are imposed after the expiry of the prescribed period, they must:

- relate only to the modification application, and
- not defeat the purpose of the modification application.

These requirements ensure that any conditions imposed are confined to matters arising from the proposed modification and are not used to undermine or negate the modification sought.

The deemed non-refusal framework does not apply to applications seeking to modify a housing and productivity contribution condition imposed under section 7.28, unless the proposed modification has been approved by the Minister under section 7.28(6).

Submission and lodgement

Local development applications

Once a modification application is submitted, the consent authority should promptly check whether the application has been categorised in the correct pathway and is likely to meet the "no environmental impact" test. This should be done within 7 days of submission, noting that the statutory 14-day assessment period does not begin until lodgement.

If the application does not meet the section 4.55(1) criteria, the consent authority should consult with the applicant about lodging the application under the correct modification pathway.

State significant development applications

Prior to lodging a modification application, the applicant must consult with the Department of Planning, Housing and Infrastructure (Department) to identify the issues to be addressed in an application by submitting a request on the planning portal. Once this request is submitted, the Department should promptly check whether the application has been categorised in the correct pathway and is likely to meet the “no environmental impact” test.

If the application is unlikely to meet the section 4.55(1) criteria, the Department may invite the applicant to amend or reconsider the application. This decision should be made in consultation with the applicant.

4.55(1A) Modifications involving minimal environmental impact

This pathway applies to applications made under section 4.55(1A) of the EP&A Act. It is available where the consent authority is satisfied that the proposed modification would result in only minimal environmental impact and that the development, as modified, would be the same or substantially the same as the development originally approved.

Meaning of “minimal environmental impact”

The following principles provide guidance in determining whether a proposed modification involves minimal environmental impact:

- “minimal” takes its ordinary meaning of very small or negligible;
- elements of the environment include amenity, air quality, biodiversity, cultural heritage, water, soils, historic heritage, and economic and social factors; and
- the requirement for “minimal environmental impact” qualifies the nature and extent of the impact, rather than the scope and scale of the modification itself which is separately constrained by the requirement that the development remain the same or substantially the same under section 4.55(1)(b) (as outlined below).

4.55(2) Modifications

This pathway is used where a proposed change cannot be dealt with under section 4.55(1) or section 4.55(1A). This includes modifications that would result in more than no or minimal environmental impact, but where the development, as modified, would still be the same or substantially the same as the development originally approved.

Applications under this pathway are made under section 4.55(2) of the EP&A Act.

Meaning of “the same or substantially the same”

A modification under s 4.55(1A) or 4.55(2) must be the same or substantially the same as the original development. In this context, “substantially” means “essentially or materially having the same essence”.

The onus is on the applicant to demonstrate that the modified development is the same or substantially the same. However, it is ultimately a matter for the consent authority to be satisfied, on balance, and as a matter of overall planning judgement, that the test is met.

To determine whether it would be the same or substantially the same, a comparison must be made between the development originally approved (not the development as modified) and the development as proposed to be modified.

This comparison may identify quantitative (e.g. changes to building height, gross floor area or setbacks) and qualitative (e.g. changes to land use, configurations of development and amenity) differences (not solely any numerical differences). However, this is not mandatory, and the mere presence of differences is not enough to fail the test. What matters is the nature, extent and effect of those differences.

Modifications by the Court

Section 4.55(8) extends the modification provisions to enable the Court to modify a development consent it has granted.

Where a modification application is determined by the Court, the Court exercises the power to modify the consent. However, any statutory functions relating to notification and the consideration of submissions that would otherwise be carried out by a consent authority under section 4.55(1A) or section 4.55(2) must be exercised by the relevant consent authority, not the Court.

General requirements

Matters of relevance

Section 4.55(3) sets out the matters a consent authority must consider when determining modification applications under section 4.55.

When determining a modification application, the consent authority must consider:

- the matters referred to in section 4.15(1), but only to the extent that those matters are relevant to the proposed modification; and
- the reasons given for the grant of the original development consent, again only to the extent that those reasons are relevant to the modification application.

This approach ensures that the assessment remains focussed on the impacts and planning considerations raised by the proposed modification, rather than reopening or reassessing the merits of the approved development as a whole.

Targeted assessment development

The EP&A Act provides a streamlined assessment framework for development applications classified as targeted assessment development.

Section 4.55(3A) applies where an application is made to modify a development consent that was originally granted for targeted assessment development. In these circumstances, the consent authority must only consider the relevant matters in section 4.15(1)(a) and (d) when assessing the proposed modification. This ensures modification applications are assessed in a manner consistent with the assessment framework that applied to the original development application.

Further information about targeted assessment development can be found here.

Condition-only modifications

The EP&A Act allows development consents to be modified even where the proposed change relates only to a condition of consent.

Section 4.55(5) confirms that a consent may be modified under sections 4.55(1), 4.55(1A) or 4.55(2) where the proposed modification does not involve any physical change to the approved development. This enables condition-only modifications to be assessed on their merits.

Further information

If you have any questions or require further information about this practice note, please contact planningsystemreform@dphi.nsw.gov.au.

Appendix A: Reforms to Section 4.55 (2025)

The 2025 reforms to section 4.55 of the EP&A Act were introduced to improve clarity, efficiency and certainty in the modification framework. The reforms respond to issues identified through court decisions and practice, clarify modification pathways, and support timely and proportionate decision-making.

Further information on the reforms is available on the Department's website.

A summary of the key provisions amended by the reforms is set out below.

Provision	What it does	Why it matters
Section 4.55(1)	Allows modifications which involve "no environmental impact" to be approved under this pathway.	Expands the scope of modifications that can be dealt with under section 4.55(1).
Section 4.55(1A)	Clarifies the pathway for modifications involving minimal environmental impacts, including updated notification requirements.	Narrows the scope of section 4.55(1A) and reinforces the distinction between minor modifications and those requiring a more detailed assessment.
Section 4.55(3)	Clarifies the matters a consent authority must consider when determining a modification application.	Reinforces that modification assessments must be proportionate to the proposed change, avoiding unnecessary re-assessment of the entire development.
Section 4.55(3A)	Applies the targeted assessment development framework to modification applications where the original consent relates to targeted assessment development.	Ensures consistency between the assessment of the original development application and a subsequent modification application.

Provision	What it does	Why it matters
Section 4.55(3B)	Provides that section 4.13 applies to modification applications under sections 4.55(1A) and (2) where an environmental planning instrument requires notification, consultation or concurrence.	Ensures statutory notification, consultation and concurrence requirements continue to apply where required, and are not avoided through the modification process.
Section 4.55A	Introduces a deemed non-refusal period for section 4.55(1) applications that are not determined within the prescribed period (14 days after lodgement).	Encourages timely determination of applications under section 4.55(1). Provides greater certainty for applicants, while preserving the consent authority's ability to impose appropriate conditions.