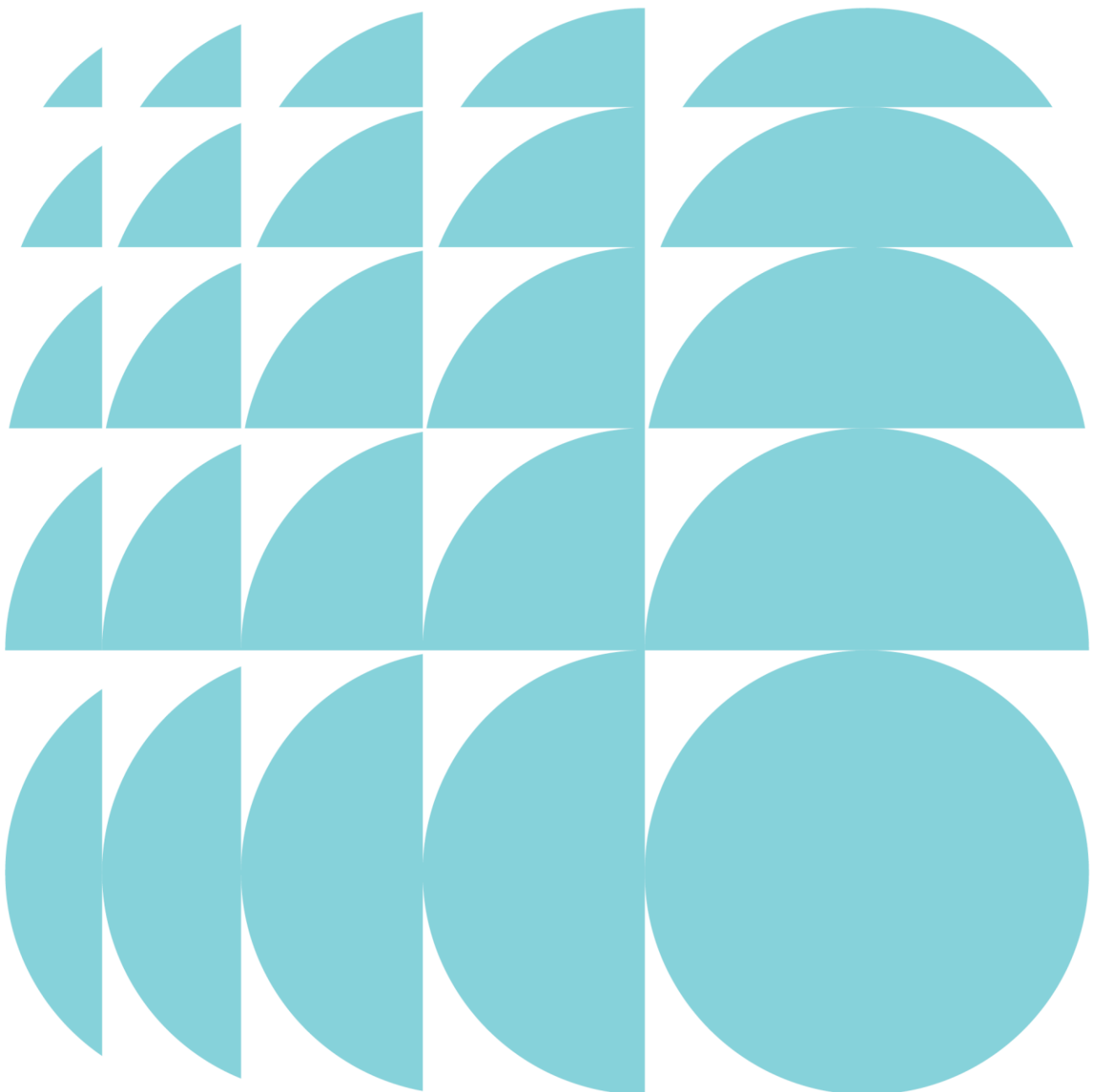




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Ethos Urban Pty Ltd
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1.0 Introduction

This application is submitted pursuant to section 75W of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Concept Plan Approval MP10_0129 relating to the development of an employment estate for light industry, warehouses and distribution centres at Lot A DP 392643, Horsley Park.

The modifications include changes to the Concept Plan Approval to reflect current terminology, and to account for the rezoning process that was instigated as a result of the assessment and determination of the Concept Plan (see Section 3 below).

This Modification Application identifies the approval, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 75W of the EP&A Act. It should be read in conjunction with the Environmental Assessment Report (EAR) prepared by JBA Planning dated March 2011 and the Preferred Project Report dated August 2012. This Modification Application is accompanied by:

- Concept Plan and Staging Plan as they are proposed to be modified (**Appendix A**);
- Revised Site Development Guidelines (**Appendix B**); and
- Table of requested amendments to Concept Plan Approval MP10_0129 (**Appendix C**).

2.0 Approval Proposed to be Modified

2.1 Concept Plan Approval (MP10_0129)

Concept Plan Approval MP10_0129 was granted by the Planning Assessment Commission (PAC), as delegate of the Minister for Planning and Infrastructure, on 28 October 2013 for an employment estate made up of warehouses, distribution centres, light industry and associated infrastructure.

The Concept Plan Approval was limited to Stages 1, 2 and 3A of the Concept Plan as proposed. Stages 3B, 4 and 5 of the proposed Concept Plan were deferred subject to specific conditions set out in the instrument of approval.

The PAC in its assessment of the Concept Plan considered in detail the need to balance the potential impacts of the proposal on neighbouring rural residential dwellings, against the unacceptable impacts of unnecessarily sterilising land to provide for a buffer zone. The PAC further acknowledged difficulties and uncertainties surrounding the installation of a landscaped bund, as was then proposed, with consideration of the local topography, and concluded that a better interface to the employment area may be possible through the realignment of the land use boundaries. The PAC considered that the option of rezoning a portion of the site (i.e. the land adjoining the neighbouring houses) may have merit – subject to design and further consideration of the appropriate boundary alignment and ground levels – specifically noting that any new residential development in the area being considered for rezoning would be developed with full knowledge that employment uses are permitted nearby, and any dwellings constructed could be designed with this in mind.

On the basis that the proponent and the Department of Planning and Environment (DP&E) agreed to further consider this option, the PAC determined to defer the approval of Stages 3B, 4 and 5 of the Concept Plan until a process of realigning the land use boundaries had been completed. The Concept Plan Approval includes a mechanism for the DP&E to approve the remainder of the Concept Plan once the land use boundary realignment has been finalised.

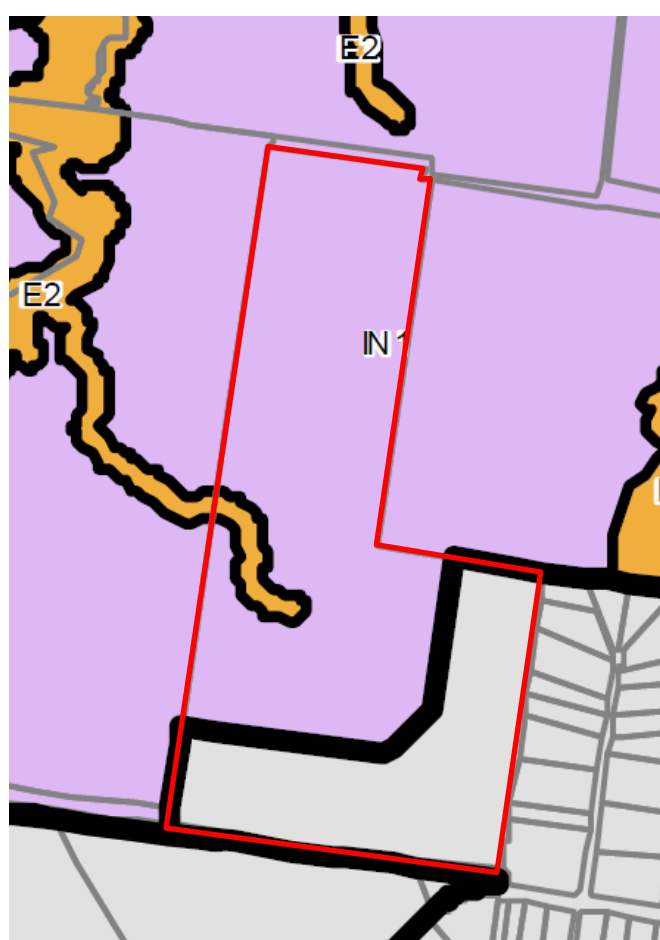
2.2 Project Approval

Project Approval MP10_0130 was granted by the PAC, as delegate of the Minister for Planning and Infrastructure, on 28 October 2013 for Stage 1 of the employment estate including the development of first warehouse, associated infrastructure and subdivision. A separate Modification Application has also been submitted in relation to the Project Approval.

3.0 Rezoning of part of Lot A DP 392643

Subsequent to the issue of the Concept Plan Approval, DP&E carried out a rezoning process. The rezoning process resulted in the rezoning of part of Lot A DP 392643 to a RU4 Primary Production Small Lots zone under *Penrith Local Environmental Plan 2010*. The rezoning was finalised and came into force on 24 June 2016. The zoning maps established by the rezoning under *State Environmental Planning Policy (Western Sydney Employment Area) 2009* and *Penrith Local Environmental Plan 2010* are shown in **Figures 1 and 2** respectively.

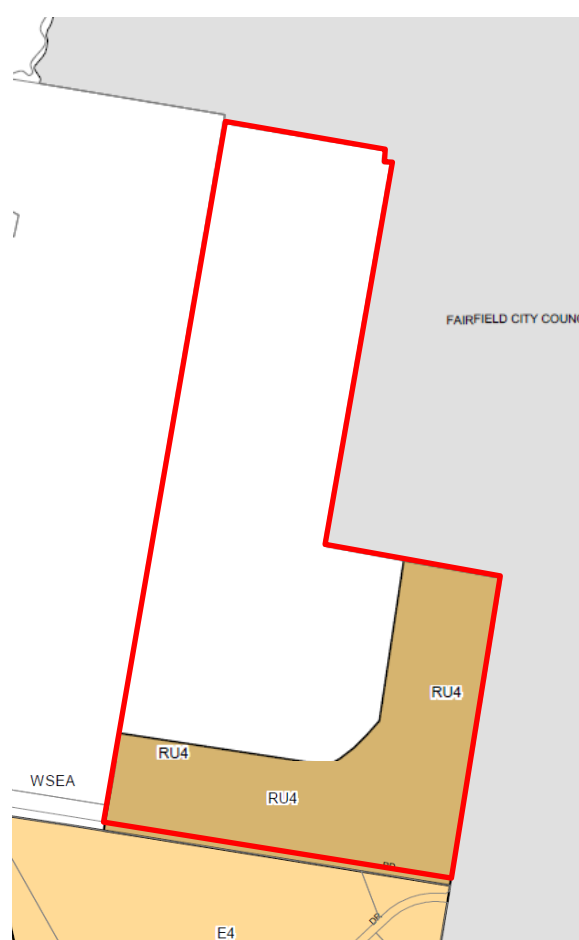
The RU4 Primary Production Small Lots zone permits a range of rural and other uses, including (but not limited to) agriculture, animal boarding or training establishments, cellar door premises, cemeteries and crematoria, farm buildings, information and education facilities, places of public worship, plant nurseries, recreation areas and recreation facilities (outdoor), rural supplies, schools, and veterinary hospitals. Importantly it also permits dwelling houses, and a range of residential-related uses including dual occupancies and secondary dwellings; home-based child care / business / industry; and tourist and visitor accommodation.



Zone

E2	Environmental Conservation
IN1	General Industrial
IN2	Light Industrial

Figure 1 WSEA SEPP Zoning Map



E2	Environmental Conservation
E4	Environmental Living
RU4	Primary Production Small Lots

Figure 2 Penrith LEP Zoning Map

4.0 Proposed Modifications

4.1 Proposed Modifications to the Concept Plan

4.1.1 Extent of Employment Precinct

The rezoning establishes a land use buffer between the industrially zoned employment precinct and the pre-existing rural residential properties to the south and east of the Concept Plan site. The new zoning boundary establishes an extent of the employment precinct that is different to what is currently set out in the Concept Plan Approval, and necessitates a re-drawing of the employment precinct boundary. It is therefore proposed to amend the Concept Plan and associated Staging Plan to reflect the new zoning boundary, and ensure that the Concept Plan Approval provides for employment related development to the full extent of the employment precinct.

An amended Concept Plan has been prepared (**Appendix A**) which illustrates the amended extent of the employment precinct within the land that remains zoned as IN1 General Industrial under the WSEA SEPP since the rezoning was completed. This generally comprises all of Stages 1, 2 and 3A (as already approved under the Concept Plan) as well as the parts of Stages 3B, 4 and 5 that retained the IN1 zoning following the rezoning process. Now that the rezoning has been completed, concept approval is sought for the development of the small area of remaining IN1 zoned land that was deferred under the original Concept Plan Approval. It is highlighted that the building footprints indicated in the amended Concept Plan, at **Figure 4** and **Appendix A**, are indicative only.



Figure 3 Approved Concept Plan



Figure 4 Proposed Concept Plan

4.1.2 Staging

It is proposed to rationalise the stages nominated under the Concept Plan, being Stages 1, 2 and 3 for the employment precinct, and Stage 4 for the RU4-zoned land. An amended Staging Plan (**Figure 6** and **Appendix A**) has been prepared to reflect the proposed staging.

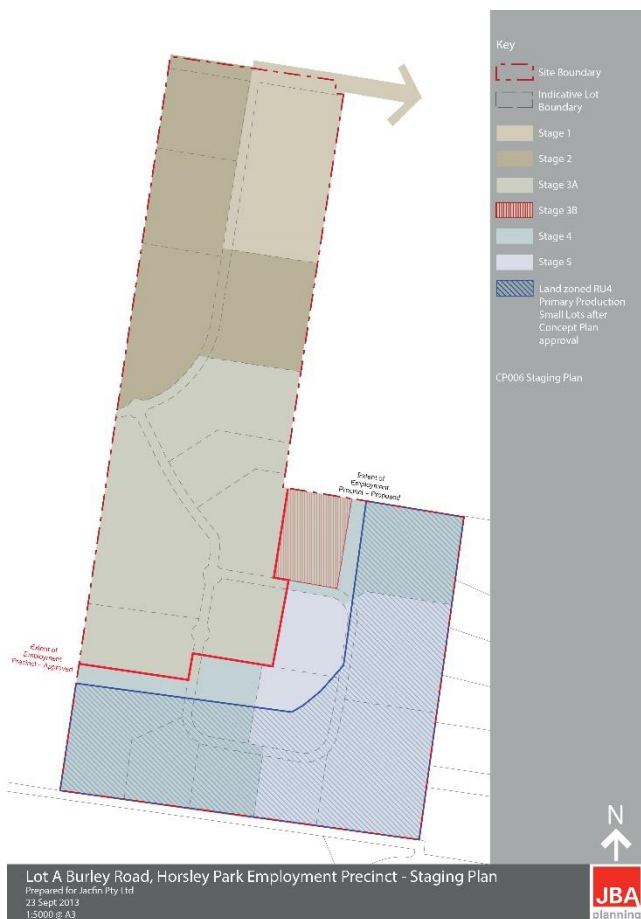


Figure 5 Approved Staging Plan

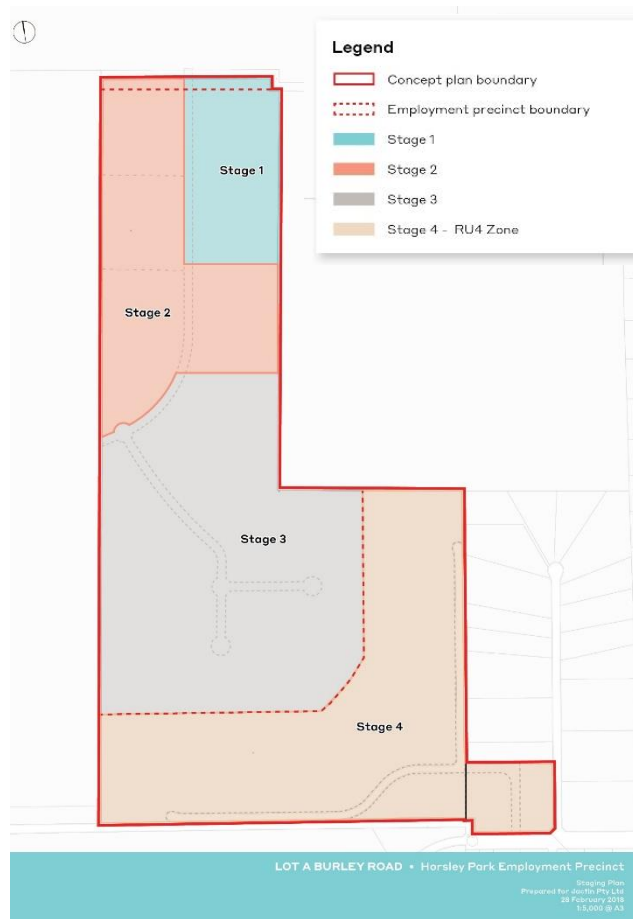


Figure 6 Proposed Staging Plan

4.1.3 Conceptual Use of Stage 4

Consistent with the future uses envisaged by the PAC as part of the Concept Plan Approval, Jacfin intends to subdivide the Stage 4 RU4-zoned land and to develop these lots for rural residential use. This use would extend the existing character of development on Greenway Place and Capitol Hill Drive into the eastern and southern parts of the site, and act as an appropriate land-use buffer between the pre-existing rural residential properties and the employment-generating development located within the employment precinct (i.e. Stages 1, 2 and 3).

The Modification Application does not seek approval for any development within the RU4 zoned land. Further, the Modification Application does not seek any site-specific development standards or controls under the Concept Plan for this development. Subdivision and future development of the RU4-zoned land will be the subject of future development applications, in accordance with the *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2010* and other relevant environmental planning instruments.

The Modification Application seeks only to prescribe the rural residential land use as an appropriate and acceptable conceptual land use for the Stage 4 RU4-zoned land, consistent with what the underlying RU4 zoning already provides for. Enshrining the conceptual rural residential land use in the Concept Plan will ensure that the intent of the PAC is achieved in that the land will provide an appropriate buffer to pre-existing rural residential properties, containing similar residential land uses, and will not be inappropriately sterilised. This will enable the orderly and economic use of the entirety of Lot A.

4.1.4 Land to Which the Concept Plan Approval Relates

In order to appropriately provide for the delivery of the land use outcome envisaged by the PAC, and established by the rezoning, Jacfin has purchased Lot 21 DP 1010514 and seeks to include this Lot as land subject of the Concept Plan. Lot 21 DP 1010514 is required to ensure the RU4 zoned land is able to be connected with the public road network at Horsley Road or Greenway Place, avoiding the need for future rural residential occupiers to access their residences via the employment precinct.

4.1.5 Employment / Rural Residential Boundary Treatment

In order to ensure a consistent approach to the management of the interface between new employment precincts and new adjoining rural residential properties, the Site Development Guidelines have been amended to provide for a minimum 10m wide landscaped interface located within the employment precinct. The final interface treatment will be the subject of assessment as part of future development applications for employment buildings (including height of retaining structures, height of noise wall, and landscaping details), however an indicative cross section of the landscaped interface is provided in **Figure 3** below. The proposed landscaped interface treatment seeks to replicate and extend the landscaped interface recently approved by the DP&E between the Jacfin RU4 zoned land and the future Oakdale South Employment Precinct.

Landscaped Interface Zone

Indicative Section

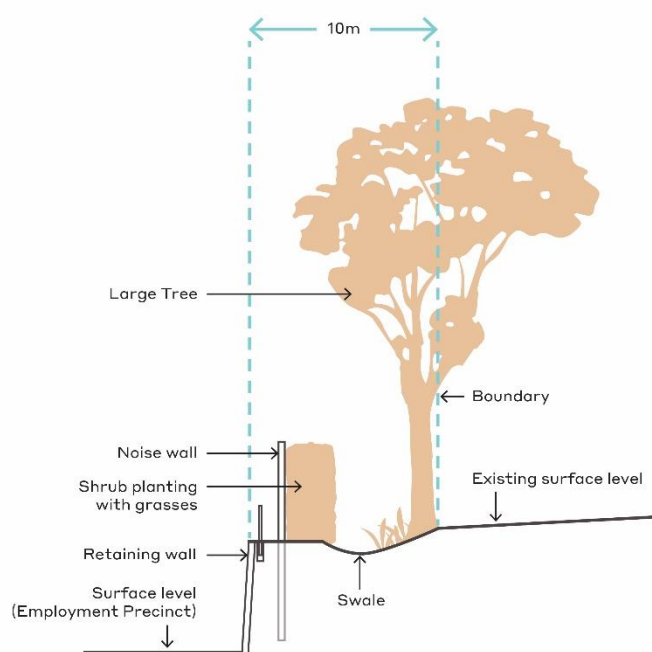


Figure 7 Indicative Landscaped Interface Treatment

4.2 Revised Site Development Guidelines

The Site Development Guidelines referred to in Condition 7 of the Concept Plan Approval are proposed to be revised to take into account the various changes sought as part of this Modification Application. An amended version of the Site Development Guidelines is provided in **Appendix B**. In addition to revisions to reflect current terminology, key changes proposed to the Site Development Guidelines are:

- Clarification that they do not apply to development on RU4 land subject of the Concept Plan Approval, or to development categorised as exempt or complying development under the EP&A Act.
- Inclusion of a setback control in relation to the boundary between the employment precinct and the RU4 zoned land, and replacement of the references to the Clouston landscaped boundary treatment with the indicative landscaped interface treatment described in Section 4.1.3 above.
- Removal of development controls for industrial buildings located immediately adjacent to rural residential properties on Greenway Place, on the basis that the amended Concept Plan no longer includes such buildings.
- Removal of the references to location of loading docks, as these controls were intended to address the noise emissions from warehouse buildings located immediately adjacent to rural residential properties on Greenway Place and Capitol Hill Drive and the amended Concept Plan no longer includes such buildings.
- Revised circulation plan to reflect the amended Concept Plan.

4.3 Amendments to the Concept Plan Approval

Changes to the Concept Plan Approval are being sought to reflect the proposed changes described above to the Concept Plan. **Appendix C** sets out the specific changes to the Concept Plan Approval sought as part of the Modification Application, and the key changes are described below:

- Nomenclature and terminology throughout.
- Inclusion of reference to rural residential development as a conceptual land use approved on the RU4 zoned land as part of the defined project subject of the Concept Plan Approval.
- Inclusion of Lot 21 DP 1010514 as land to which the Concept Plan Approval relates.
- Condition 1 amended to refer to conceptual rural residential land use, and updated staging pursuant to the amended Staging Plan (see **Appendix A**).
- Condition 2 amended to clarify that the Concept Plan Approval does not restrict the carrying out of exempt and complying development.
- Deleting Condition 4 as it is no longer relevant to the Concept Plan as it is proposed to be modified. Specifically, Condition 4 relates to the future assessment of employment-generating development within Stages 3B, 4 and 5 by the DP&E. These stages have essentially been removed as a result of the proposed modifications to the Concept Plan, and the issues that the condition sought to address have been resolved by the rezoning of the RU4 land as a buffer between pre-existing rural residential properties and the employment precinct. Matters referenced in Condition 4 are further considered in **Section 6** below.
- Deleting Condition 5, as it is no longer relevant because the service centre has been removed from the Concept Plan as it is proposed to be modified.
- Conditions 6 to 11 updated to reflect the new Staging Plan (see **Appendix A**).
- Condition 7 revised to ensure the Site Development Guidelines can be amended with the approval of the Secretary.
- Condition 8 revised to ensure the stormwater management system installed for the employment precinct takes into account runoff from the Stage 4 RU4-zoned rural residential land.
- Insert new conditions 11A and 11B relating to the proposed indicative landscaped interface treatment described in **Section 4.1.5** above, including to ensure that the landscaped interface is installed prior to the development of any buildings in Stage 3.
- Revisions to the Development Application Requirements set out in Schedule 3 of the Concept Plan Approval to avoid duplication of issues already addressed in conditions or avoid the need for further assessment where it is no longer required as a result of the proposed changes to the Concept Plan. In particular, changes to the requirements for the following issues are proposed:
 - Removing some of the specific requirements of the visual impact assessment, because the visual impacts of the proposal have been substantially reduced as a result of the proposed modifications to the Concept Plan.

- Removing the requirement for an ecological assessment, as Condition 9 of the Concept Plan Approval already requires the preparation of a Biodiversity Management Plan that is to be approved by the Secretary.
- Removing the need for a bushfire assessment, as Conditions 10 and 11 of the Concept Plan Approval already set out requirements for managing bushfire risk.
- Heritage assessments should be limited to Aboriginal heritage, as there were no European heritage values identified at the site during the original assessment of the Concept Plan.
- Revisions to the Statement of Commitments to reflect the proposed changes to the Concept Plan.

5.0 Statutory Provisions

The Concept Plan Approval (MP10_0129) was assessed and approved under the now repealed Part 3A of the EP&A Act. Schedule 6A provides transitional arrangements for Part 3A projects. Pursuant to clause 3C of Schedule 6A, the former Section 75W continues to apply for the purpose of the modification of a concept plan approved under Part 3A. Section 75W provides that the proponent may request the Minister to modify the Minister's approval for a project, and that the Minister may approve (with conditions) or disapprove of the modification.

6.0 Planning Assessment

The Secretary has not issued environmental assessment requirements with respect to the proposed modification. However, the planning assessment of the proposed modified Concept Plan remains generally unchanged with respect to all environmental and planning matters. Jacfin has consulted with the Department of Planning and Environment in the preparation of the Modification Application, and this planning assessment seeks to address the Department's requirements.

In particular, it is highlighted that the modification of the Concept Plan Approval relates only to addressing the boundary interface issues that were deferred to the Secretary for future consideration, and which have been subsequently resolved by the rezoning of Stage 4 as RU4 Primary Production Small Lots.

Consideration of the proposed changes against the key environmental planning issues addressed in the EAR is provided in **Table 1** below.

Table 1 Planning Assessment

Issue	Assessment
Environmental Planning Instruments	The Concept Plan remains consistent with the aims and objectives of <i>State Environmental Planning Policy (Western Sydney Employment Area) 2009</i> in relation to the development of employment generating development within the IN1 Industrial Zone. Clauses 21 and 23 of the SEPP include specific provisions to protect the amenity of existing residents and for new industrial development within 250m of land zoned primarily for residential purposes – predominantly relating to visual and noise impacts. The amended Concept Plan includes a buffer zone and a landscaped interface zone that will substantially reduce amenity impacts on existing residential development. Importantly, with implementation of the re-zoned buffer zone no existing residential building is located within 250m of the industrially zoned land. Notwithstanding, the Concept Plan still requires detailed noise and visual impact assessments to be submitted with each development application for employment-related development in the employment precinct, and includes requirements for measures (design measures or landscaping) to be implemented to ameliorate or reduce the visual impacts of the development. Further, the future development of rural residential development on the RU4-zoned land is consistent with the outcomes of the original PAC assessment of the Concept Plan, as well as being consistent with the objectives of the RU4 Zone under the <i>Penrith Local Environmental Plan 2010</i>, and permissible with consent. In particular, the rural residential use: • Is of a scale and nature that is compatible with the environmental capabilities of the land, noting that Jacfin will connect all new rural residential lots to the sewer. • Will maintain the rural landscape character of the land.
Stormwater and Flooding	A revised stormwater and drainage strategy will be prepared and submitted to the Secretary for approval, pursuant to Condition 8 of the Concept Plan Approval. The revised stormwater and drainage strategy will include details of an approach for ensuring that the stormwater system within

Issue	Assessment
	the employment precinct can handle and manage the inflows from the Stage 4 RU4-zoned land.
Traffic and Transport	The site circulation plan within the Site Development Guidelines has been revised to reflect the proposed modifications to the Concept Plan. However, no changes are proposed to the principles set out in the Site Development Guidelines in relation to internal site access, movement, or car parking. No changes to site access arrangements are proposed.
Geotechnical	No new or additional works are proposed as part of the Modification Application, so there are no new or additional geotechnical issues.
Contamination	A contamination assessment will be required to demonstrate that the RU4 zoned land is suitable for residential land use. The Statement of Commitments have been amended to include a commitment to undertake this assessment as part of any development application for the RU4 zoned land.
Heritage	Lot 21 DP 1010514 does not contain a heritage item and is not in close proximity to any heritage items. Assessment of Aboriginal heritage issues will need to be carried out as part of a development application for works on Lot 21 DP 1010514. Commitment 15 in the Statement of Commitments already provides for the future assessment of Aboriginal heritage impacts as part of future applications. Otherwise, no new or additional works are proposed as part of the Modification Application, so there are no new or additional heritage issues associated with the remainder of the Concept Plan.
Flora and Fauna	Lot 21 DP 1010514 does not contain any significant native vegetation. Assessment of the removal of any trees will need to be carried out as part of a development application for works on Lot 21 DP 1010514. Commitment 15 in the Statement of Commitments already provides for the implementation of a Hollow Bearing Tree Protocol to salvage tree hollows where possible. Otherwise, no new or additional works are proposed as part of the Modification Application, so there are no new or additional ecological issues associated with the remainder of the Concept Plan.
Bushfire Risk Assessment	Lot 21 DP 1010514 is not on bushfire prone land. No new or additional works are proposed as part of the Modification Application in relation to bushfire prone land, so there are no new or additional bushfire risk issues arising from the Concept Plan.
Noise	The extent of the employment precinct has been substantially reduced as a result of the rezoning process. The precinct noise goals are set out in the Site Development Guidelines, and future development applications for employment buildings will include assessment of noise emissions to inform the design details of the noise wall along the boundary interface zone. Commitment 11 in the Statement of Commitments already provides for this assessment.
Visual	The extent of the employment precinct has been substantially reduced as a result of the rezoning process, thereby substantially reducing the potential for visual impacts. A landscaped boundary interface will be installed between the future employment precinct and the future rural residential properties, which will protect the visual amenity of future residents as well as the existing residents beyond the Concept Plan boundary. Future development applications for employment buildings will include details of landscape treatments over and above the landscaped boundary interface where necessary. The Development Application Requirements already include the need for a visual assessment to be carried out for future employment development, and this is supported by Commitment 20 in the Statement of Commitments which requires a landscape plan to be prepared for future employment development applications.
Ecologically Sustainable Development	The extent of the employment precinct has been substantially reduced as a result of the rezoning process reducing the number of employment buildings. ESD provisions in the Site Development Guidelines remain valid for all future employment buildings.
Construction Management	Commitment 1 in the Statement of Commitments remains valid for future employment development applications.
Contributions	A VPA has been signed between Jacfin and the Minister for Planning and Infrastructure in respect of the Stage 1 development that ensures Jacfin makes appropriate contributions towards the delivery of regional infrastructure. Jacfin is currently seeking to negotiate a VPA with the Minister for Planning that would apply to the balance of the land in Stages 2 and 3.

6.1 Condition 4 Matters

Condition 4 of the Concept Plan specified further matters that needed to be addressed to the satisfaction of the Secretary prior to progressing employment-related development within Stages 3B, 4 and 5. As noted above, given that the rezoning has now been completed, approval is sought to proceed with employment-related development within what was previously Stage 3B and on a small part of the land that was previously included in Stages 4 and 5. Condition 4 is proposed to be deleted by this Modification Application as its purpose has been superseded by the subsequent rezoning of the eastern and southern parts of the Concept Plan area to RU4 Primary Production Small Lots.

DP&E has specifically requested that any additional development for which approval is now being sought under the Concept Plan by the Modification Application be subject of an assessment against the matters prescribed in Condition 4 of the Concept Plan.

As can be seen in **Figure 3** and **Figure 4**, the majority of the land subject of Condition 4 has been rezoned to RU4 and will no longer form part of the employment precinct. Only a small amount of land to which Condition 4 applies is still zoned industrial, generally limited to the three additional buildings located along the eastern and south-eastern boundary of the employment precinct. Consideration of these Condition 4 matters is provided in **Table 2** below, for these areas of the Concept Plan that are outside of the approved stages (i.e. within Stages 3B, 4 and 5) and remain zoned IN1.

Table 2 Condition 4 Matters

No.	Condition	Assessment
4(a)	Include revised plans (developed in consultation with the existing adjoining residents) and associated technical studies to demonstrate that: - a reasonable level of amenity (including visual and noise) is maintained for existing residents through the provision of appropriate mitigation measures, which could include an appropriate separation distance, building design and layout, landscaping and/or bunding; and - any change in ground levels have been appropriately engineered, including in relation to drainage.	The amended Concept Plan provides for a separation distance of at least 250m between all industrial buildings and existing rural residential dwellings, as requested by the existing adjoining residents during the original assessment of the Concept Plan. Industrial buildings will also be screened by a minimum 10m-wide landscaping interface zone, which will also incorporate, where necessary as a result of acoustic modelling, an acoustic barrier. The acoustic barrier and landscaping, combined with the setback from existing residential property boundaries, will ensure a reasonable level of amenity (including visual and noise) can be maintained for existing residents. No change in ground levels is proposed as part of this modification. Future ground levels for each employment building will be addressed in the relevant development applications.
4(b)	Include a Landscape Management Plan prepared by a suitably qualified and experienced expert which sets out the visual mitigation measures in detail including how they will be maintained and managed over time.	A Landscape Management Plan is not required as part of the Modification Application. Visual amenity is largely addressed by providing a separation distance of at least 250m to existing rural residential dwellings, as requested by the existing adjoining residents during the original assessment process. A landscaped interface zone will be provided on the boundary between the industrially zoned employment precinct and the RU4 rural residential zoned land. Specific objectives and controls that relate to this landscaped interface zone are set out in the revised Site Development Guidelines (see Appendix B), which include the requirement for shrub planting and canopy trees. Further details will be provided in the relevant development applications for the industrial lots incorporating the interface zone. Maintenance / management of the landscaped interface zone will be the responsibility of the owner and/or occupier of the relevant industrial lot.

No.	Condition	Assessment
4(c)	Detail the legally binding arrangements to be implemented to provide for the ongoing maintenance and management of the mitigation measures in the revised plans, including associated landscaping.	As noted, the key mitigation measure is the separation distance of at least 250m between the industrially zoned land and existing rural residential dwellings. This separation is secured by the rezoning of the eastern and southern parts of the Concept Plan area to RU4 Primary Production Small Lots. The rezoning has already occurred. Maintenance / management of the landscaped interface zone will be the responsibility of the owner and/or occupier of the relevant industrial lot, which will be reinforced in the conditions of future development consents and the terms of commercial lease agreements (where applicable).
4(d)	Demonstrate consistency with the modifications of this approval.	The Concept Plan as it is proposed to be modified is consistent with the specified modifications as it has removed the originally proposed (but not approved) service centre.
4(e)	Provide a timetable for the implementation of the revised plans and associated legally binding arrangements, consistent with the Staging Plan required in Modification 6 below, and demonstrate the mitigation measures (that are not building works) and the legally binding arrangements will be implemented, and appropriately established, prior to any building works commencing on Stages 3B to 5.	The RU4 rezoning that has been established came into effect on 24 June 2016. No further mitigation measures or legally binding arrangements are necessary at this stage. All additional mitigation measures will be determined as part of the assessment of future development applications for employment development, and will be the responsibility of the owner and/or occupier of the relevant industrial lot, reinforced in the conditions of future development consents and the terms of commercial lease agreements (where applicable). As required by Condition 6 of the Concept Plan a detailed Staging Plan will be prepared in consultation with Council and the relevant utility / service providers, for approval by the Secretary prior to any development in (new) Stages 2-3. As noted above, maintenance / management of the landscaped interface zone will be the responsibility of the owner and/or occupier of the relevant industrial lot, which will be reinforced in the conditions of future development consents and the terms of commercial lease agreements (where applicable).

7.0 Conclusion

The proposed modifications are a result of a rezoning process brought about by the PAC's assessment of the Concept Plan. The proposed modifications are therefore intended to ensure that the Concept Plan accurately reflects the outcomes of that rezoning process and to enable the orderly and economic development of both the employment precinct and the new RU4 zoned land.

The proposed modifications result in a substantial reduction in the extent of the employment precinct, which has substantially reduced noise and visual amenity-related impacts on pre-existing rural residential properties to the south and east.

The proposed modifications will therefore not result in any significant change to the assessed environmental impacts, other than a reduction in impacts on pre-existing rural residential properties, and environmental protection conditions set out in the Concept Plan Approval generally remain relevant and appropriate. Some changes to future Development Application Requirements and the Statement of Commitments have been made to ensure future development applications for employment-generating development within the employment precinct are properly assessed at the time.

As such, we therefore request that the proposed modification is supported by the DP&E and approved under Section 75W of EP&A Act.