

Modification of Minister's Approval

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate for the Minister for Planning and Public Spaces, under the Instrument of Delegation executed on 11 October 2017, I approve the modification of the concept approval referred to in Schedule 1, subject to the conditions outlined in Schedule 2.

Chris Ritchie
Director
Industry Assessments

Sydney

2019

File: EF18/30983

SCHEDULE 1

Concept Approval (MP 10_0129), granted by the former Minister for Planning on 28 October 2013 for the Jacfin Horsley Park Project, a distribution park of warehouses, distribution centres, light industries and associated infrastructure at Lot A DP 392643 in the Penrith local government area.

SCHEDULE 2

This approval is modified as follows:

In Schedule 1

1. Insert "Lot 21 DP 1010514" immediately after "Lot A DP 392643".

In Definition

2. Delete the definitions for Department, Director-General, Minister and Site Development Guidelines and insert the following definitions in alphabetical order:

Construction	The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including bulk earthworks, and erection of buildings and other infrastructure permitted by this concept plan approval
Department	Department of Planning, Industry and Environment
EA	Environmental Assessment titled <i>Lot A Burley Road, Horsley Park Industrial Estate Concept Plan & Concurrent Project Application for Employment Lands and Stage 1 Industrial Development</i> dated March 2012, prepared by JBA Urban Planning Consultants Pty Ltd, as modified by the PPR and EA titled <i>Horsley Park Employment Precinct Lot A DP 392643 Concept Plan Approval (MP 10_0129) S75W Modification Application</i> , prepared by Ethos Urban Pty Ltd, dated 28 February 2018
Minister	NSW Minister for Planning and Public Spaces (or delegate)
MOD 1	Section 75W Modification Request prepared by Ethos Urban Pty Ltd on behalf of Jacfin Pty Ltd dated 28 February 2018, as revised on 12 July 2018 and further revised by the Response to Submissions prepared by Ethos Urban Pty Ltd dated 24 November 2018
Planning Secretary	Planning Secretary under the EP&A Act, or nominee
Site Development Guidelines	Site Development Guidelines titled <i>Site Development Guidelines Lot A DP 392643, Burley Road, Horsley Park Concept and Concurrent Project Application for</i>

3. Delete all references to “Director-General” and replace with “Planning Secretary”.

In Schedule 2: Concept Plan Modifications

4. Delete Condition 1 and replace with the following:

1. Concept plan approval is granted for a distribution park of warehouses, distribution centres, light industries and associated infrastructure, comprising:
 - (a) Stage 1;
 - (b) Stage 2;
 - (c) Stage 3; and
 - (d) rural residential development comprising Stage 4.

Note: The general stages of this approval are shown on the plan in Appendix 1.

5. Delete Condition 2 and replace with the following:

2. The Proponent must ensure that all future development on the site is carried out generally in accordance with the:
 - (a) EA;
 - (b) PPR;
 - (c) Statement of Commitments (for Stages 1 to 3 only) (see **Appendix 2**); and
 - (d) MOD 1.

6. Delete Condition 4.

7. Delete Condition 5.

8. Delete Condition 6 and replace with the following:

6. Unless otherwise agreed to in writing by the Planning Secretary, the Proponent must prepare a detailed Staging Plan in consultation with Council and relevant utility and service providers to show how development within Stages 2 and 3 of the site is likely to be staged over the life of the Concept Plan. The Plan must be approved by the Planning Secretary prior to the lodgement of any development applications within Stages 2 and 3.

9. Delete Condition 7 and replace with the following:

7. The Site Development Guidelines are approved for use in relation to developments in Stage 1 to 3 and subject to any modifications approved by the Planning Secretary from time to time.

10. Delete Condition 8 and replace with the following:

8. Unless otherwise agreed to in writing by the Planning Secretary, the Proponent must prepare a revised Stormwater and Drainage Strategy (including flows from upstream areas) for Stages 2 to 4 in consultation with Council and Water NSW. The Strategy must be approved by the Planning Secretary prior to the lodgement of any development applications within Stage 3. The Strategy must:
 - (a) be prepared by a suitably qualified and experienced expert;
 - (b) include a strategy to manage flood waters including accepting flows in a 1% AEP storm event from upstream of stage 3 and 4;
 - (c) demonstrate the capacity of the proposed stormwater and drainage infrastructure for the Site to accommodate runoff from permissible development within the Stage 4 area which complies with Council’s runoff management requirements;
 - (d) include an Operation and Maintenance Plan for any OSD/bio basins, overland flow path; and
 - (e) ensure any proposed OSD and Bio basins not be located within the reserve of a constructed road.

11. Delete Condition 9 and replace with the following:

9. The Proponent must prepare and implement a Biodiversity Management Plan for the site to the satisfaction of the Planning Secretary. The Plan must:

- (a) be prepared by a suitably qualified and experienced expert;
- (b) be prepared in accordance with relevant OEH guidelines;
- (c) be prepared in consultation with the Water DPIE (former Department of Industry – Lands & Water Division);
- (d) be approved by the Planning Secretary prior to the issue of a subdivision certificate of any land within Stage 3 development, or the issue of an occupation certificate for any developments within Stage 3 area, whichever is the sooner;
- (e) include a program with timeframes for the implementation of all recommendations of the Ecological Impact Assessment prepared by Whelans Insites Pty Limited dated 19 November 2010 including measures to retain, enhance and rehabilitate the E2 corridor and riparian zone on site; and
- (f) detail the ecological maintenance and monitoring program/s to be implemented within the Stage 3 development for the life of the project.

12. Delete Condition 10 and replace with the following:

- 10. Prior to the issue of a subdivision certificate or the issue of an occupation certificate for any development adjoining the E2 zoned land, whichever is the sooner, the Proponent must establish and maintain a 10 metre wide Asset Protection Zone around the E2 corridor in accordance with recommendation 6.1 in Section 6 of the Bushfire Protection Assessment prepared by Australian Bushfire Protection Planners Pty Limited and attached Appendix G of the EA dated March 2012, prepared by JBA Urban Planning Consultants Pty Ltd.

13. Delete Condition 11 and replace with the following:

- 11. Prior to the issue of a subdivision certificate or the issue of an occupation certificate for any development adjoining the E2 zoned land, whichever is the sooner, the Proponent must establish and maintain a permanent vehicular access to bushfire prone vegetation within the E2 corridor in accordance with recommendation 6.6 in Section 6 of the Bushfire Protection Assessment prepared by Australian Bushfire Planners Pty Limited and attached Appendix G of the EA dated March 2012, prepared by JBA Urban Planning Consultants Pty Ltd.

14. Insert new Condition 14 immediately after Condition 13 as follows:

SETBACKS

- 14. The Proponent must ensure all buildings within Stage 3 of the Concept Proposal are setback at least 10 metres from the boundary of the Stage 4 development.

15. Insert new Condition 15 immediately after Condition 14 as follows:

LANDSCAPED INTERFACE ZONE

- 15. Prior to the commencement of construction of Stage 3 development, the Proponent must finalise the design of and operate the landscaped interface zone, including the noise wall, along the boundary between Stages 3 and 4 in accordance with the indicative design in Appendix 2 and the latest version of the Site Development Guidelines.

16. Insert new Condition 16 immediately after condition 15 as follows:

LANDSCAPED INTERFACE ZONE MANAGEMENT

- 16. Prior to the commencement of construction of Stage 3 development, the Proponent must prepare a Landscape Management Plan (LMP) for the landscaped interface zone to the satisfaction of the Planning Secretary. The LMP must:

- (a) be prepared in consultation with Penrith City Council;
- (b) include visual impact mitigation measures for construction including but not limited to:
 - (i) the location of site sheds, compounds and machinery parking areas, avoiding the western and southern site boundaries, or other locations highly visible from adjacent residential properties;
 - (ii) procedures for progressive grassing of exposed soil, as soon as reasonably practicable after disturbance, focusing on areas where building construction will occur at a later stage;
- (c) detail the works required to construct the landscape buffer along Stages 3 and 4 boundaries as shown in **Appendix 2**, including provision for the landscaping to incorporate mature trees (no less than 75 litres pot size);
- (d) include a schedule of works which priorities the construction of the landscape buffer along Stages 3 and 4 boundaries;

- (e) include a program for implementing the landscape buffer as soon as reasonably practicable, and no later than prior to operation of Stage 3;
- (f) describe the integration of landscaping with fixed elements including retaining walls and noise walls; and
- (g) detail the legally binding arrangements between the Proponent and future owners/occupiers of developments in Stage 3 for implementing ongoing monitoring and maintenance procedures to ensure the success of the landscaping works over the life of the development.

17. Insert new Condition 17 immediately after Condition 16 as follows:

17. The Proponent must:

- (a) not commence construction of Stage 3 until the LMP is approved by the Planning Secretary;
- (b) must implement the most recent version of the LMP approved by the Planning Secretary; and
- (c) include the monitoring and maintenance procedures contained in the LMP.

18. Insert new Condition 18 immediately after Condition 17 as follows:

18. The Proponent must complete the landscaped buffer zone along the boundary between Stages 3 and 4 as shown in **Appendix 2** within six months of commencement of construction of Stage 3.

In Schedule 3: Development Application Requirements

19. Delete Condition 1 and replace with the following:

- 1. The environmental assessment requirements in this schedule apply to all future development applications under Part 4 of the EP&A Act for developments in Stages 1 to 3 of this Concept Plan approval.

20. Delete Condition 2 and replace with the following:

- 2. Future development applications (DAs) on the site must be prepared in consultation with relevant state government agencies and Council. Future DAs must be prepared in accordance with the relevant policies and include but not be limited to:
 - (a) a detailed description of the layout and detailed design of the proposed development including construction, operation and staging and required infrastructure to enable the construction and operation of the development and interaction with existing and proposed utilities infrastructure for the site and other sites in the area;
 - (b) demonstration that the layout and design of the proposed development is generally consistent with the Concept Plan Approval;
 - (c) satisfactory arrangements for local and regional infrastructure provision;
 - (d) building design including:
 - consideration of the height, bulk and scale of the proposed buildings;
 - an assessment of compliance with the Building Code of Australia;
 - water and energy requirements and opportunities for incorporating efficiency measures;
 - (e) a detailed infrastructure plan for the provision of the following:
 - water supply, sewer, gas, electricity, telecommunications services;
 - fire-fighting services, including the location and design of fire access roads;
 - external lighting;
 - stormwater management in accordance with the revised Stormwater and Drainage Strategy (including the provision of any regional rainwater harvesting infrastructure);
 - parking and access, including bicycle facilities;
 - (f) a landscaping plan, which includes appropriate visual mitigation measures and associated drainage channels;
 - (g) details of a program to monitor stormwater controls and stormwater quantity and quality, including flows and amounts of pollutants discharging to local waters;
 - (h) a description of the measures that would be implemented to:
 - monitor and maintain the infrastructure and landscaping on site over time;
 - minimise energy and water use on site;

- avoid, minimise, reuse and recycle waste;
- (i) a noise assessment of the development in accordance with the *Interim Construction Noise Guideline (2009)* and the *NSW Noise Policy for Industry (2017)*;
- (j) a geotechnical assessment of the proposed development including a Phase 2 contamination investigation and an assessment of soil and groundwater salinity;
- (k) a flooding and stormwater assessment of the proposed development;
- (l) a greenhouse gas assessment of the proposed development;
- (m) consideration of biodiversity impacts of the development in accordance with the *Biodiversity Conservation Act 2016*;
- (n) a bushfire risk assessment of the proposed development which considers the recommendations of the Bushfire Protection Assessment in Appendix G of the EA;
- (o) a heritage assessment of the proposed development;
- (p) a traffic and transport assessment of the proposed development prepared in accordance with the RTA's *Guide to Traffic Generating Developments* including:
 - an assessment of the number and type of vehicles to be generated by the proposed development;
 - identification of transport routes to be utilised by traffic generated by the proposed development;
 - demonstration that traffic generated by the proposed development and any other development on site could be safely accommodated by the road network;
 - details of any necessary road and infrastructure upgrades and interim access arrangements until the regional road network in the WSEA has been completed;
 - details of parking provision;
 - demonstration that all road infrastructure works associated with the development are undertaken at no cost to TfNSW (former RMS), the Department, Council or any other landowner; and
 - a sustainable travel plan including measures to increase non-car travel, such as cycling and public transport;
- (q) an air quality assessment of the proposed development;
- (r) a hazard assessment in accordance with *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* (SEPP 33) and Applying SEPP 33 (DUAP, 1994); and
- (s) a construction management plan, containing a:
 - noise and dust management plan;
 - soil and water management plan;
 - traffic management plan;
 - Aboriginal heritage management plan that has been prepared in consultation with the OEH and relevant Aboriginal groups in accordance with relevant OEH guidelines; and
 - waste management plan.

21. Insert a new Condition 2a as follows:

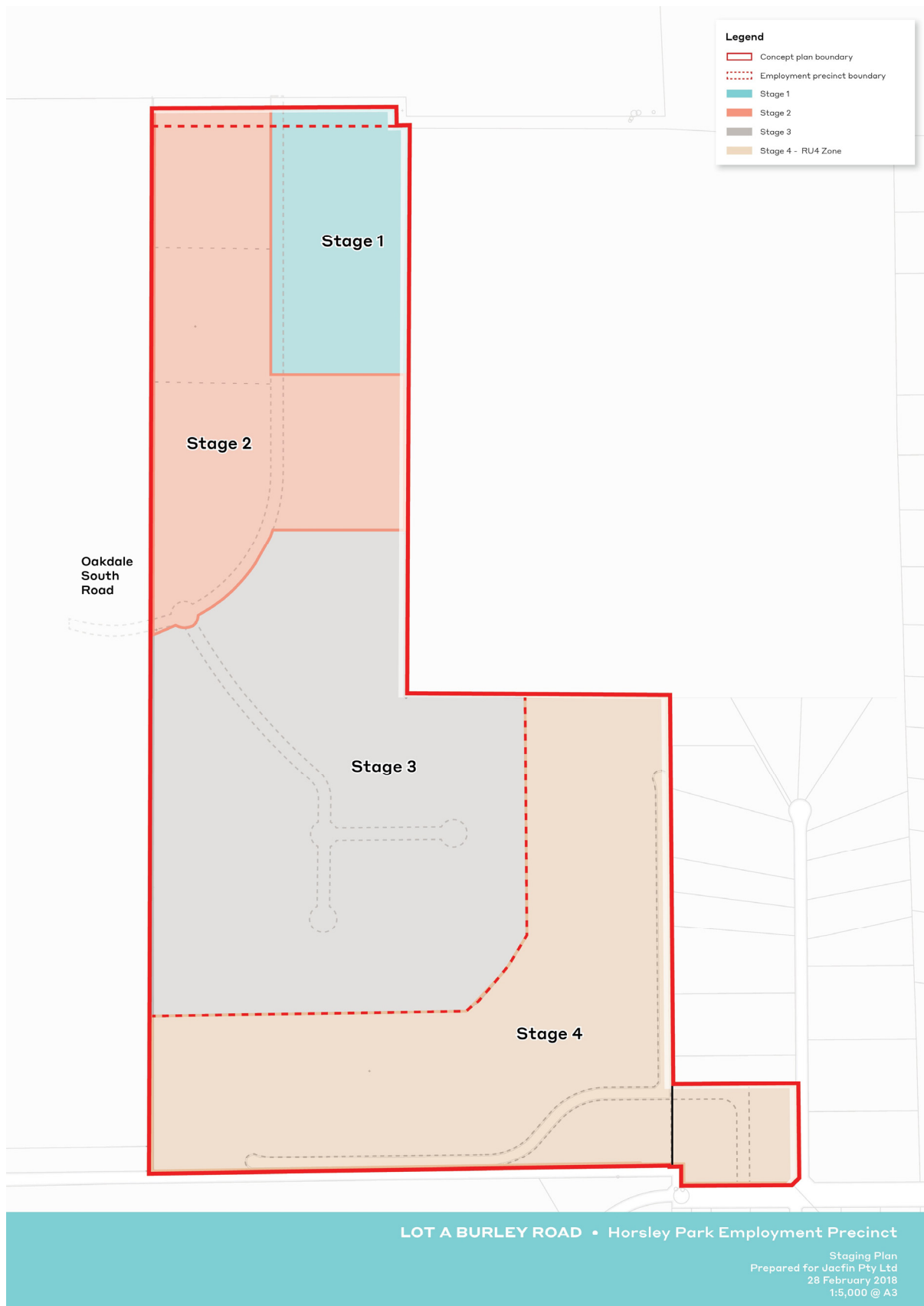
2a. Future developments in Stage 3 of the Concept Proposal must be accompanied with a Visual Impact Assessment (VIA) which:

- outlines the methodology used to define the visual catchment;
- describes the character of the existing visual environment surrounding the site;
- provides an overview of the visual objectives of the current planning controls;
- identifies the key vantage points on a location plan including residential properties;
- identifies the impact of the proposed development on the visual catchment and key vantage points using the principles established by the NSW Land and Environment Court in *Tenacity Consulting v Warringah [2004] NSW LEC 140*; and
- identifies (if necessary) any further design solutions that may be used to ameliorate or reduce the visual impacts of the proposed development.

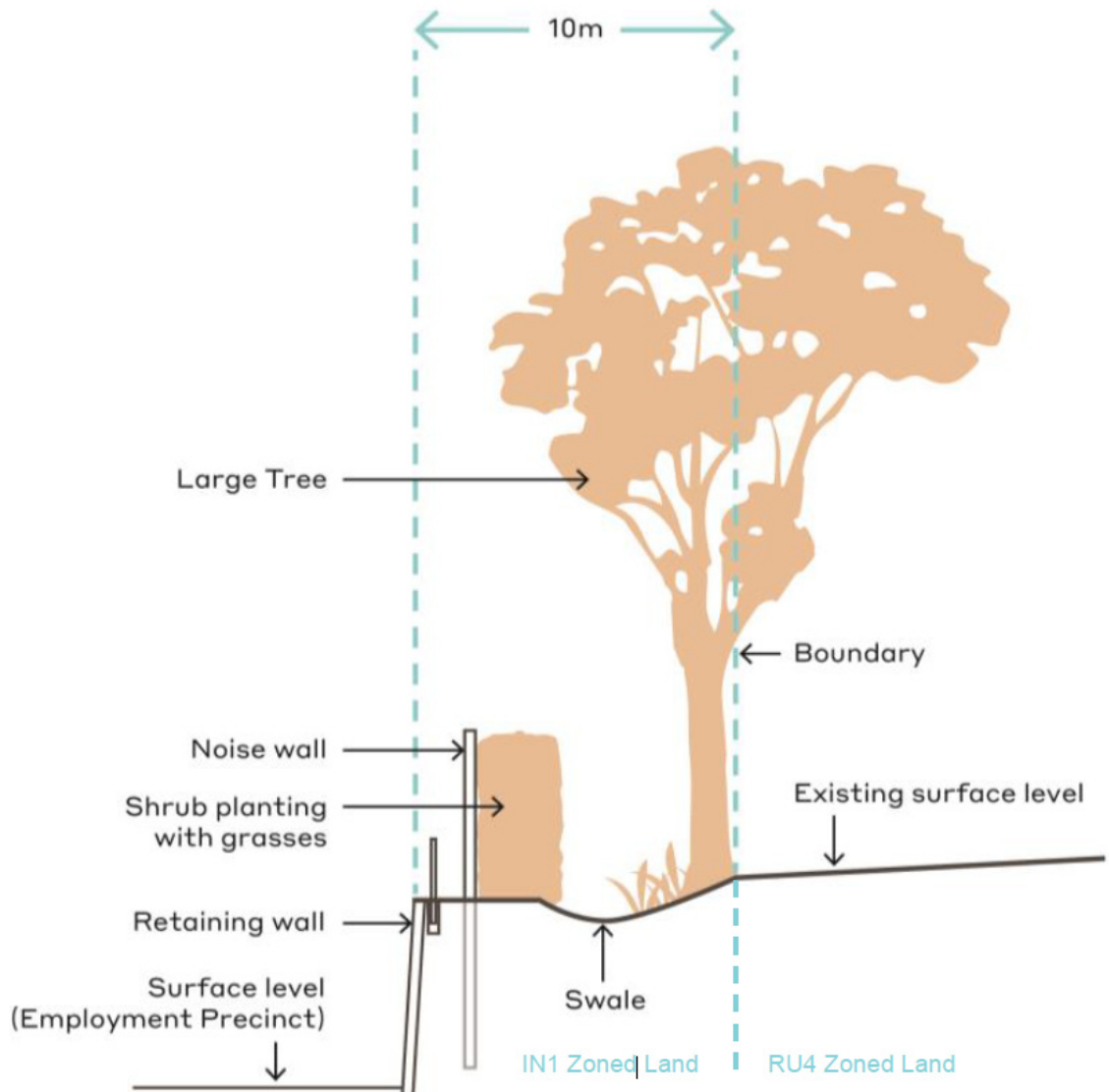
In the Appendices

22. Delete and replace Appendix 1 as below.
23. Delete and replace Appendix 2 as below.

APPENDIX 1: STAGING PLAN



APPENDIX 2: LANDSCAPED INTERFACE ZONE DESIGN



APPENDIX 3: STATEMENT OF COMMITMENTS

Subject	No.	Commitments	Timing
Construction Management	1.	A Construction and Environmental Management Plan will be prepared for each development by the appointed building contractor and will be submitted to the Principal Certifying Authority for sign off. The CEMP will address the following issues: - Site Management; - Air Quality; - Noise and Vibration Management; - Soil and Water Management; - Construction Traffic Management; - Waste and Hazardous Materials Management; and - Protection of E2 zoned land	Prior to works commencing. Copies of the CEMPs are to be provided to Penrith and Fairfield Councils.
	2.	The construction noise mitigation measures recommended by the Acoustic Consultant will be incorporated into the Construction and Environmental Management Plans for each project as relevant.	Prior to works commencing.
Geotech	3.	Future Development Applications within the Precinct will demonstrate compliance with the recommendations of the Geotechnical Assessment in relation to: Bulk Earthworks; Structural Design; Ground Water Management; Acid Sulphate Soils; and Soil Salinity.	Details to be provided with the relevant Development Application(s).
Stormwater Management	4.	Future Development Applications will demonstrate compliance with the targets in the Stormwater and Drainage Strategy approved under Condition 8 of Schedule 2.	Details to be provided with the relevant Development Application(s).
	5.	Future Development Applications will demonstrate that: the project water quality targets will be met; stormwater flow rates will be equal to less than the current existing flow rates; and stormwater works will be consistent with the requirements of the NSW Office of Water.	Details to be provided with the relevant Development Application(s).
Waste Management	6.	An Operational Waste Management Plan will be prepared for each of the warehouse buildings on the site.	Prior to the occupation of each warehouse.
Hazardous Materials	7.	Should storage of hazardous materials be required by the occupants of a warehouse building, a hazardous materials assessment will be prepared.	Prior to the occupation of the relevant warehouse, if applicable
Bushfire Protection	8.	Future Development Applications within the Precinct will demonstrate compliance with the recommendations of the Bushfire Consultant, in relation to: Access to the bushfire prone vegetation in the E2 Environmental Conservation corridor; Building setbacks;	Details to be provided with the relevant Development Application(s).

Subject	No.	Commitments	Timing
		Building construction requirements; Landscape Maintenance; and Emergency Planning.	
Signage and Lighting	9.	Future applications will provide detail on signage and lighting.	Details to be provided with the relevant Development Application(s).
	10.	Lighting will be designed to comply with Australia Standard AS4282:1997 – Control of the Obtrusive Effects of Outdoor Lighting. Specialist consultant reports confirming compliance will be submitted with each development application.	Details to be provided with the relevant Development Application(s).
Noise	11.	Acoustic Assessments will be submitted with future development applications for each warehouse building detailing acoustic mitigation measures where required. For buildings on lots with boundary to the Greenway Place properties: ▪ Loading docks are to be located on the western side of the buildings; and ▪ Barriers in the order of 5 metres in height are to be constructed in the gaps between the buildings. For buildings on lots with boundary to the Capitol Hill Drive properties: ▪ Buildings are to be orientated in an east west direction to form a barrier to Capitol Hill Drive and; ▪ Loading docks are to be located on the northern side of the buildings.	Details to be provided with the relevant Development Application(s).
Waste Management	12.	An Operational Waste Management Plan will be prepared for each of the warehouse buildings on the site.	Prior to the occupation of each warehouse.
Biodiversity	13.	A Hollow-bearing Tree Protocol will be prepared by a suitably qualified ecologist and implemented.	Prior to the removal of any trees within the Employment Precinct
Heritage	14.	A test excavation program will be undertaken in 4 PADs identified by GML. An Archaeological Research Design (ARD) will be developed prior to the test excavation program and presented to the relevant Aboriginal stakeholders for review and comment.	Prior to issue of a Construction Certificate for any parts of the site which include a PAD.
	15.	An Aboriginal Heritage Management Plan will be prepared for the precinct or Aboriginal Heritage Impact Assessments will be submitted with future Development Applications.	Prior to the lodgement of any Development Application beyond Stage 1.
Visual Impact Assessment	16.	Future project applications for developments with a boundary to adjoining residential areas will detail mitigation measures to be implemented to minimise any visual impacts.	Details to be provided with the relevant Development Application(s).
Contamination	17.	That a phase 2 assessment be undertaken for future developments located along the north-eastern boundary.	Details to be provided with the relevant Development Application(s).
NSW Office of Water	18.	Flood mitigation and stormwater basins should be located outside of the riparian area; and	Details to be provided with the relevant Development Application(s).

Subject	No.	Commitments	Timing
	19.	The basins are to be planted to complement the native plant communities of the riparian corridor.	Details to be provided with the relevant Development Application(s).
Landscaping	20.	Detailed landscape plans will be prepared for each future development application which will demonstrate compliance with the landscape principles established in this PPR.	Details to be provided with the relevant Development Application(s).
Driver Code of Conduct	21.	A driver code of conduct will be prepared for the site which will detail operational traffic management measures.	To be implemented prior to the issue of the first occupation certificate.