



Jacfin Horsley Park Project (Concept Plan)

Part 3A Modification Assessment
(MP 10_0129 MOD 1)



January 2020

© Crown Copyright, State of NSW through its Department of Planning, Industry and Environment 2019

Cover photo

Jacfin Horsley Park Project Stage 1 (MNIA Architects)

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in Jacfin Horsley Park Project (Concept Plan) Part 3A Modification Assessment Report. This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning, Industry and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
Consent	Development Consent
Department	Department of Planning, Industry and Environment
DoI	(former) Department of Industry
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
OEH	(former) Office of Environment and Heritage (now Climate Change and Sustainability Division of the Department)
RMS	(former) Roads and Maritime Services (now TfNSW)
RtS	Response to Submissions
Planning Secretary	As defined in the EP&A Act
SDG	Site Development Guidelines
SDS	Stormwater and Drainage Strategy
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
WSEA	Western Sydney Employment Area
WSEA SEPP	State Environmental Planning Policy (Western Sydney Employment Area) 2009



Executive Summary

Jacfin Pty Ltd (the Proponent) has lodged a Section 75W modification request and accompanying Environmental Assessment (EA) seeking approval to amend the Jacfin Horsley Park Industrial Estate (Jacfin Horsley Park) in the Penrith City Council local government area (LGA). The site is located in the suburb of Kemps Creek, legally described as Lot A in Deposited Plan (DP) 392642 and comprises 100 hectares (ha) of mainly cleared grazing land, aside from an area of intact riparian vegetation along Ropes Creek.

Concept Plan Approval

In August 2010, the Proponent lodged two Major Project applications for the Jacfin Horsley Park Industrial Estate. The applications included a concurrent Concept Plan (MP 10_0129) and Stage 1 development application (MP 10_0130) and were lodged under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Concept Plan included an industrial park of warehouses, light industries and associated infrastructure and the Stage 1 included a building and associated access roads and infrastructure.

Jacfin Horsley Park is located in the Western Sydney Employment Area (WSEA) which is strategically identified industrial land under *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (WSEA SEPP). The WSEA is around 2,000 hectares in area and supports a large range of industrial, warehouse, business park and industrial uses. On the southern and south-eastern parts of the WSEA, there are several existing and proposed residential developments including on the boundary of Jacfin Horsley Park. To address this interface issue, the WSEA SEPP includes some specific clauses to manage potential amenity impacts, such as by ensuring developments in this area are compatible in size and scale to the existing residential areas.

Clauses 21 and 23 of the WSEA SEPP seek to protect residential amenity, with Clause 23 requiring the consent authority to be satisfied that within 250 metres (m) proposed buildings are compatible with the height, scale, siting and character of existing residential buildings in the vicinity.

During the original assessment of the proposal, the Department, Fairfield City Council (FCC) and the community raised significant concerns regarding the potential amenity impacts of warehouse buildings in the original Stages 3B, 4 and 5 on nearby residences fronting Greenway Place.

The Department's assessment found the original concept plan did not satisfactorily address the requirements of Clause 23 of the WSEA SEPP and made some recommendations to address the interface. Primarily, the recommendation sought to reduce the scale of development in some areas and sought to establish a landscaped mound to screen future developments from existing residents.

In considering the Department's recommendation, the then Planning Assessment Commission (the Commission) was not satisfied sufficient mitigation would be achieved and determined further buffering should be established. The Commission determined that rural residential development should be created within the 250 m buffer area with a landscaped treatment to be created between this new residential area and the proposed industrial estate. The Commission considered any new rural residential developments in this area would be developed with full knowledge that warehouses and light industrial uses were permitted nearby, and any dwellings constructed could be designed with this in mind.

In considering the rezoning would change the land use pattern and permissibility within the original Stages 3B, 4 and 5, the Commission did not approve the conceptually industrial use of these stages proposed by the Proponent but deferred the determination of conceptual use until the rezoning was completed.

Rezoning History

Following approval of the Project and to satisfy the Commission's approval, the Proponent lodged a rezoning proposal to the Penrith LEP to allow for the proposed rural residential part of the site. While originally proposing 53 lots, the Proponent revised this to 29 lots following some concerns raised by Penrith City Council (PCC) and the local community.

The Planning Proposal was approved and came into force on 24 June 2016. The approved rezoning also imposed a minimum 2-hectare (ha) lot size requirement for RU4 zoned land within the Jacfin Horsley Park site to limit future development density and to address the community's concerns.

Proposed Modification and the Department's Assessment

As a result of the approved rezoning, the Proponent is seeking to modify the concept plan approval to revise the proposed stages that apply to the industrial estate, address the revised interface between the new rural residential and industrial area and to amend some of the conditions requirements that apply to the industrial estate.

The Project was originally approved under the former Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation). The power to modify transitional Part 3A projects under Section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply.

Consequently, this report has been prepared in accordance with the requirements of the former Part 3A and associated regulations, and the Minister (or delegate) may approve the modification request under the former Section 75W of the EP&A Act. Under the Minister's delegation of 11 October 2017, the Director, Industry Assessments can determine the modification request as there were no public submissions in the nature of objections, Penrith City Council did not object to the modification request and no political donations were made by the Proponent in the last two years.

The Department sought comments from landowners in the vicinity of the site and Fairfield City Council (FCC), PCC and state government agencies between 22 August 2018 and 5 September 2018. Previous submitters were also notified of the modification request and invited to make a submission.

During the notification period, the Department received a total of 11 submissions, including seven from government agencies, one each from FCC and PCC, one from a special interest group and one from an adjacent business. An additional public submission was received after the notification period which did not object to the modification request.

The key issues raised in the public submissions related to traffic impacts, the appropriateness of using RU4 zoned land as a buffer between future warehouses and distribution centres and existing rural residences on Greenway Place and Capitol Hill Drive, and the effectiveness of the proposed landscaped interface area. Government agencies raised concerns regarding stormwater management.

The Proponent submitted a Response to Submissions (RtS) on 24 November 2018 to address and clarify matters raised in the submissions. However, further issues were raised and discussed with the Proponent concerning proposed staging of access infrastructure works and requests to vary the timing of Regional contribution obligations under the project approval.

The Department's assessment of the modification request has fully considered all relevant matters under Section 4.15 of the EP&A Act and the objects of the EP&A Act. The Department's assessment has identified the following key issues for assessment:

- noise and vibration
- visual impacts
- land use conflict and conceptual uses of Stages 3B to 5
- stormwater and drainage.

The Department's assessment has concluded the modification request would:

- ensure the concept plan is consistent with the current zoning boundaries that would achieve the Commission's vision for protecting the amenity of existing residents on Greenway Place
- create a distance buffer between future warehouses and rural residences on Greenway Place and future residential subdivision to the south of the site
- reduce amenity impacts on current and future residents via constructing a 10 m wide landscaped interface area including a noise wall
- the revised concept plan is to align with the current

The Department notes future rural residential developments in Stage 4 are subject to a minimum 2 ha lot size requirement which would provide enough space to separate residences from warehouse buildings and noise sources. Impacts of the modification request can be mitigated and/or managed to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent.

The Department has assessed the nominated conceptual uses for the original Stages 3B to 5 against the relevant requirements of conditions 4, Schedule 2 of the concept approval. The Department has considered the amended concept plan meets all requirements of these conditions and the Planning Secretary or delegate can approve the proposed conceptual uses.

The modification request also involves several changes to concept approval conditions which were not supported by the Department. These changes relate to complying development, contamination assessment, biodiversity assessment, biodiversity assessment and heritage assessment. The Department's assessment and reasons for not supporting these changes are detailed in Section 6.5 of this report.

Consequently, the Department considers the modification request is in the public interest and is recommended for approval, subject to conditions.



Contents

Glossary	iii
Executive Summary	iv
1. Introduction	1
1.1 Background	1
1.2 Approval History	2
1.3 Rezoning History	5
2. Proposed Modification	8
2.1 Modifications to the Approved Concept Plan	8
2.2 Revisions to the Site Development Guidelines	11
2.3 Amendments to the Concept Approval Conditions	12
3. Strategic Context	13
3.1 Strategic Plans and Strategies	13
3.2 State Environmental Planning Policy (Western Sydney Employment Area) 2009	13
4. Statutory Context	14
4.1 Scope of Modifications	14
4.2 Consent Authority	14
4.3 Environmental Planning Instruments	14
5. Engagement	15
5.1 Key Issues – Councils and Government Agencies	15
5.2 Key Issues – Community	16
5.3 Key Issues – Special Interest Group	16
5.4 Response to Submissions	16
6. Assessment	17
6.1 Visual Impacts	17
6.2 Noise and Vibration	21
6.3 Land Use Conflict and Conceptual Uses of the Original Stages 3B to 5	22
6.4 Stormwater and Drainage	25
6.5 Other Issues	26
7. Evaluation	29
8. Recommendation	30
9. Determination	31

Appendices	32
Appendix A – List of Documents	32
Appendix B – Environmental Assessment	32
Appendix C – Submissions	32
Appendix D – Response to Submissions Report	32
Appendix E – Concept Approval	32
Appendix F – Notice of Modification.....	32



1. Introduction

This report assesses a modification request by Jacfin Pty Ltd (the Proponent) to amend the Jacfin Horsley Park Project (MP 10_0129) in the Penrith Local Government Area (LGA). The modification request has been lodged pursuant to former Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Jacfin Horsley Park Project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation). The power to modify transitional Part 3A projects under Section 75W of the EP&A Act, as in force immediately before its repeal on 1 October 2011, is being wound up, but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply.

Consequently, this report has been prepared in accordance with the requirements of the former Part 3A and associated regulations, and the Minister (or delegate) may approve the modification request under the former Section 75W of the EP&A Act. Under the Minister's delegation of 11 October 2017, the Director, Industry Assessments can determine the modification request.

1.1 Background

The site is located in the suburb of Kemps Creek, in the Penrith LGA and bordering the western boundary of the Fairfield LGA (see **Figure 1**). The site is legally described as Lot A in Deposited Plan (DP) 392643 and comprises 100 hectares (ha) of mainly cleared grazing land, aside from an area of intact riparian vegetation along Ropes Creek.

The local area is characterised by ongoing industrial development and rural residential properties. The site is immediately adjoined by the Oakdale Central Industrial Estate (MP 08_0065) to the north, CSR Bricks and Roofing to the east, the rural-residential suburb of Mount Vernon to the south and Oakdale South Industrial Estate (SSD 6917) to the west.

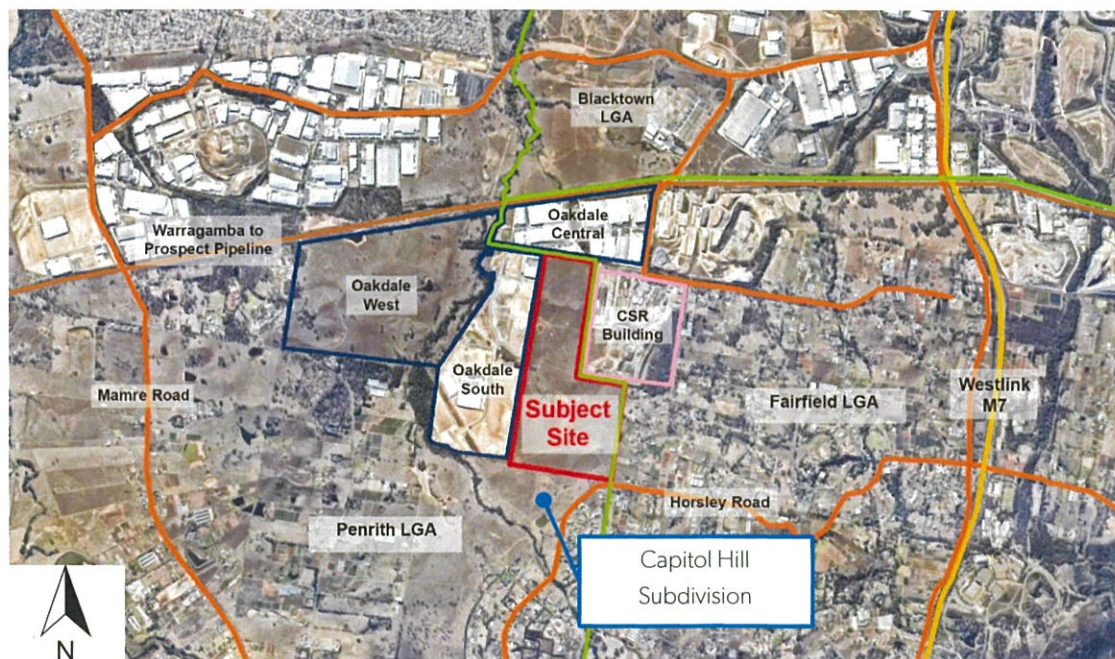


Figure 1 | Site Location (outlined in red)

The site is also located in precinct 8 of the Western Sydney Employment Area (WSEA) which is strategically identified employment land pursuant to State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP) (see **Figure 2**).

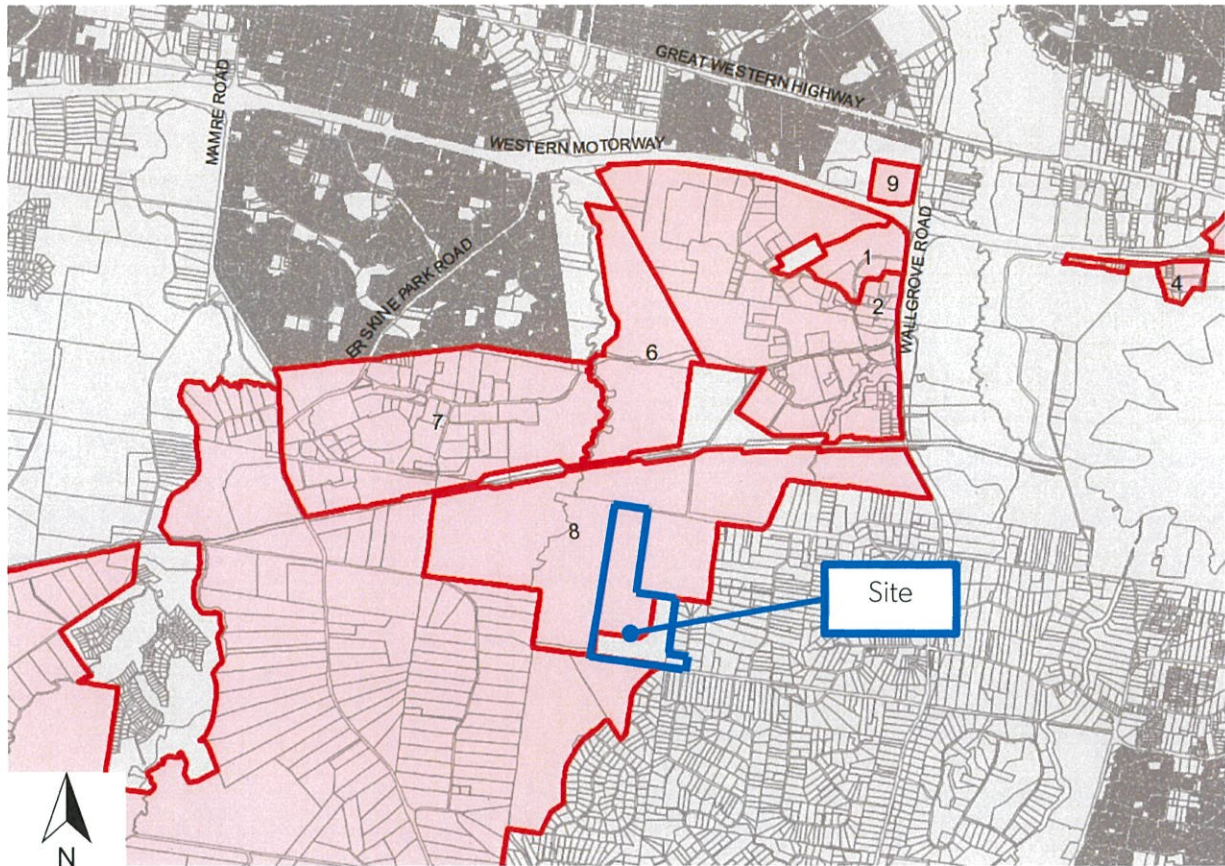


Figure 2 | Site Location within the WSEA

1.2 Approval History

In August 2010, the Proponent lodged two Major Project applications for the Jacfin Horsley Park Industrial Estate with the then Department of Planning and Infrastructure under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This included a Concept Plan for industrial park of warehouses, light industries and associated infrastructure across the estate and a Stage 1 development application for a single warehouse use and associated road access and infrastructure (see **Figure 3** and **Figure 4**).



Figure 3 | Original Concept Plan

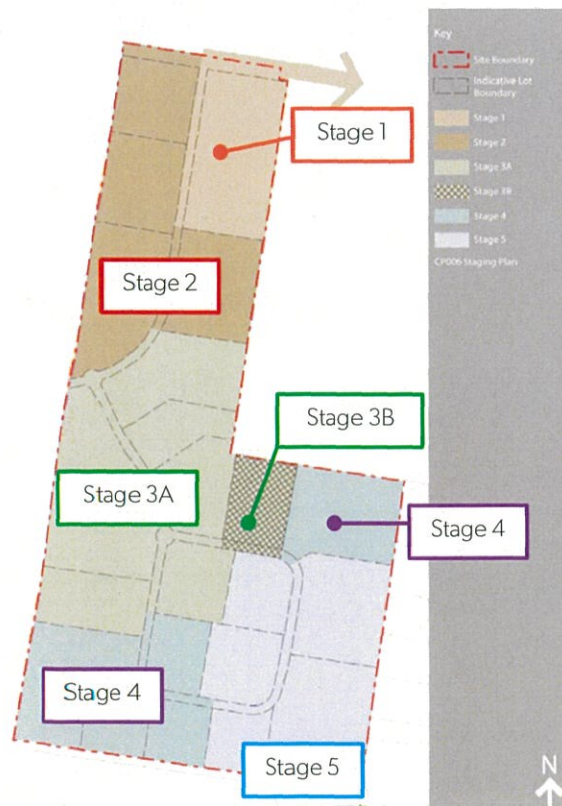


Figure 4 | Original Staging Plan

Key concerns were raised by the Department, Fairfield City Council and the public during the assessment of the proposal concerning the potential noise and visual impacts of warehouse buildings in the original Stages 3B, 4 and 5 on nearby residences at Greenway Place.

Clause 23 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (WSEA SEPP) seeks to protect the amenity of residents near industrial interface areas (i.e. within 250 m of existing residences). The original concept plan sought to develop the interface area up to the boundary with existing residences fronting Greenway Place for industrial purposes. The Department's assessment of MP 10_0129 found the original concept plan did not satisfactorily address the requirements of Clause 23 of the WSEA SEPP.

To address the issues raised and the requirements of the WSEA SEPP, the Department recommended the interface area only permit smaller compatible types of developments and a comprehensive landscaped network be developed complemented the natural topography of the site (see **Figure 5**).

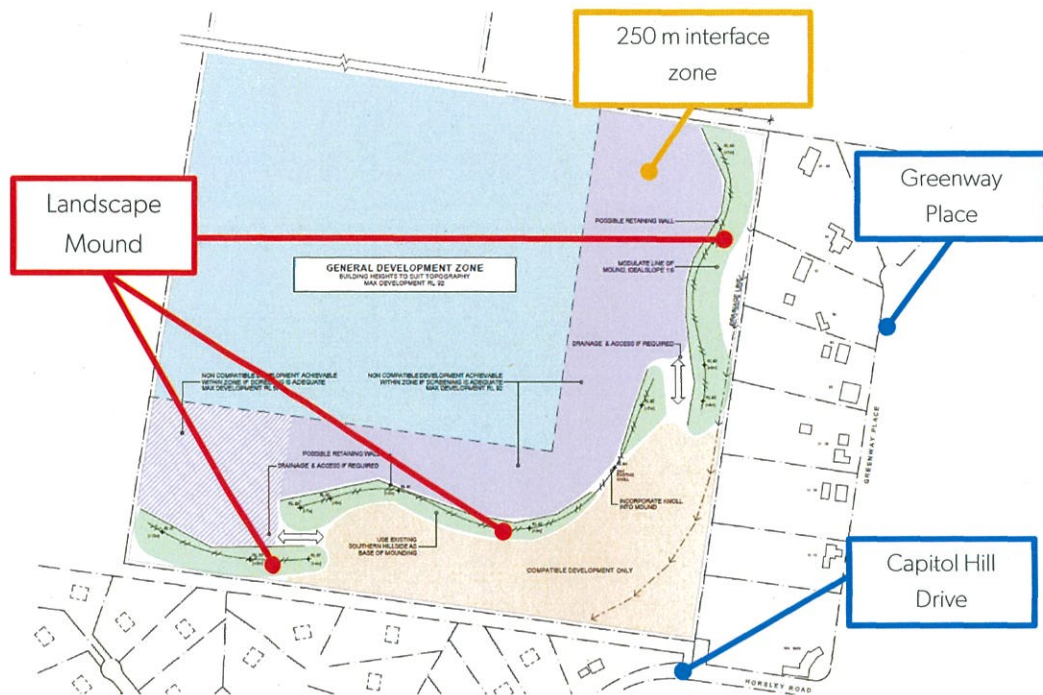


Figure 5 | The Department recommended landscaped mound in the assessment report

The then Planning Assessment Commission (the Commission) did not agree the Department's recommendation would sufficiently mitigate the future warehouses with the existing residences on Greenway Place. The Commission determined the 250 m interface zone should be developed as rural residential in order to address the potential interface impacts and the clauses within the WSEA SEPP. The Commission considered new landowners moving into the buffer area would do so with the knowledge of warehouse and light industrial uses were permitted within the WSEA.

The Commission noted the entire site was zoned IN1 General Industrial under the WSEA SEPP with rural residential uses prohibited in the IN1 zone. As such, the Commission recommended rezoning the 250 m interface area as rural residential and realigning zoning boundaries. Considering the rezoning would change the land use pattern and permissibility within Stages 3B, 4 and 5, the Commission did not approve uses within the concept stages 3B, 4 and 5 until the rezoning was completed.

On 28 October 2013, the Commission granted the concept approval for the Jacfin Horsley Park Industrial Estate concept plan including:

- site layout for an industrial park, including developable areas for warehouses and light industry
- staging plan
- internal road layout with connection to the future Southern Link Road (SLR)
- site infrastructure
- environmental management guidelines for future development applications on the site.

The Commission also concurrently approved the Jacfin Horsley Park Project Stage 1 development (MP 10_0130). The Stage 1 approval permits the following works:

- subdivision to create Stage 1 lot
- bulk earthworks across Stage 1 lot
- installation of utilities and services for Stage 1 development
- construction of the Stage 1 internal access road (Local Road 1)
- construction of the Stage 1 development including:
 - a total Gross Floor Area (GFA) of approximately 27,330 square metres (m²) (25,300m² of warehouse and 2,030 m² office)
 - loading docks
 - a total of 135 employee car parking spaces
 - landscaping.

On 11 October 2018, the Director, Industry Assessments as delegate of the Minister for Planning and Public Spaces approved a modification request to the Stage 1 development (MP 10_0130 MOD 1) amending the construction vehicular access for the Stage 1 construction works. Currently, the Proponent is carrying out bulk earthworks for the Stage 1 development.

1.3 Rezoning History

In October 2013, the Proponent undertook consultation with the Department's Land Release team to prepare an initial design solution for the interface area. The initial residential lot layout for the interface area included 53 lots, at an average density of half a hectare.

However, concerns were raised by the Department's Land Release team, FCC and PCC about the proposed residential density and impacts on the interface area with the adjoining future warehouse buildings. In light of these concerns, in March 2015 the Proponent submitted an amended proposal which reduced future residential lots from 53 to 29 and revised the internal road network within the interface area (see **Figure 6**).



Figure 6 | Amended Indicative Rural Residential Subdivision Plan

The updated proposal was provided to FCC, PCC and residents at Greenway Place. Consultation with Councils concluded the proposed separation buffer would provide an acceptable distance between industrial and existing rural residences. Community members raised concerns about the proposed density. To address this concern, the Department recommended a minimum lot size of 2 hectares to mitigate the potential impact on the surrounding community. The Department also considered a minimum lot size of 2 hectares would reduce traffic impacts on local road network and reduce the number of sensitive receivers close to future industrial developments.

The Planning Proposal was approved on 24 June 2016. The existing and amended land zoning maps of the WSEA SEPP and PLEP are shown in **Figure 7** and **Figure 8** respectively.

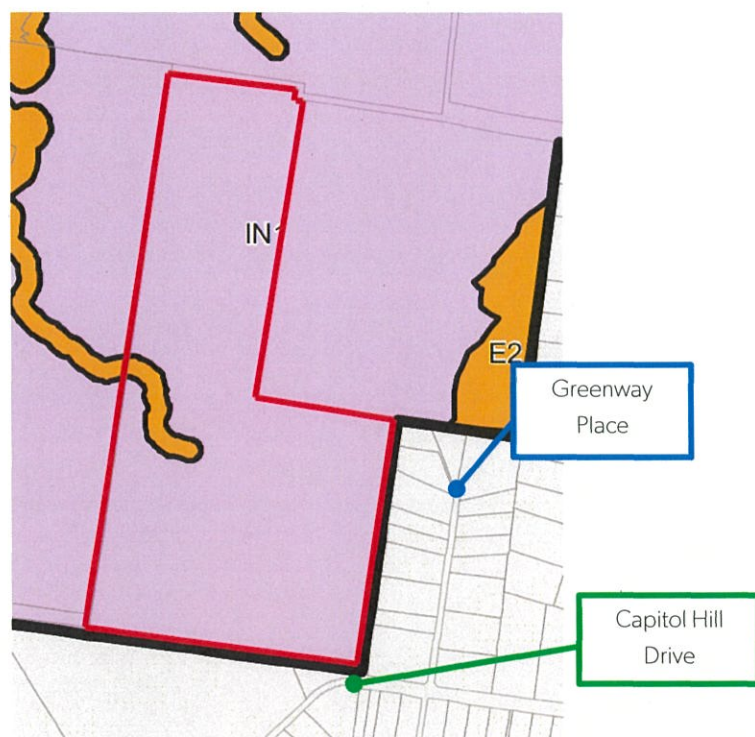


Figure 7 | WSEA Land Zoning Map Prior to Rezoning (2009)

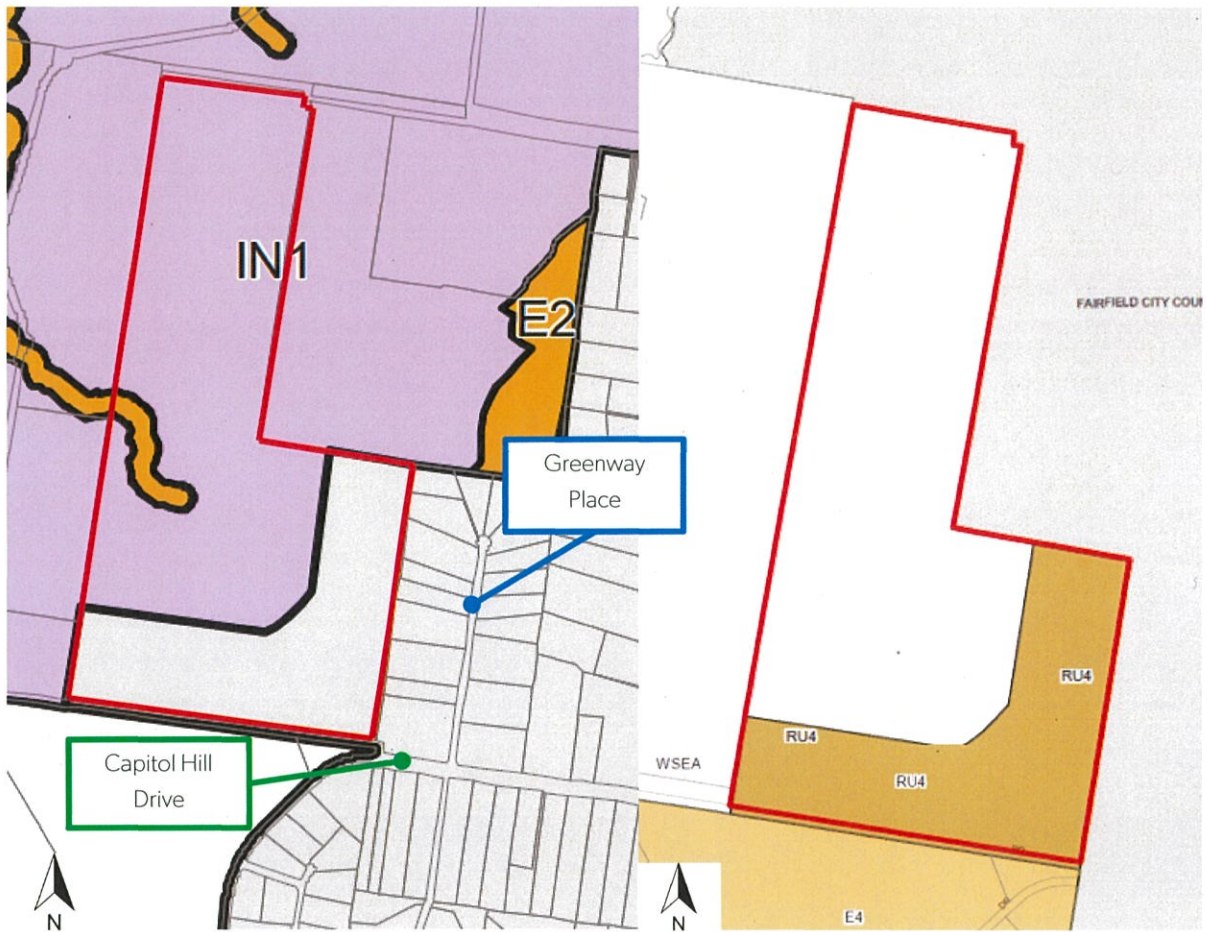


Figure 8 | Current WSEA Land Zoning Map (left) and PLEP Land Zoning Map (right)



2. Proposed Modification

The Proponent has lodged a modification request under the former Section 75W of the EP&A Act for the following amendments to the concept approval:

- modifications to the approved concept plan including the industrial park extent, inclusion of an additional lot into the concept plan, construction of a landscaped interface area between the new Stage 3 warehouse buildings and the new Stage 4 rural residential development
- revision to the staging plan
- conceptual uses within the revised Stages 3 and 4, given the Commissions determination deferred the approval of any uses in the original Stages 3B to 5
- revisions to the Site Development Guidelines (SDG)
- administrative amendments to the concept approval conditions to align with the new concept plan.

The modification request is described in full in the Environmental Assessment (EA) included in **Appendix B**.

2.1 Modifications to the Approved Concept Plan

2.1.1 Extent of the WSEA

Concept Plan

The amended zoning boundary necessitates a revision to the industrial park extent in the concept plan to align with the current zoning boundaries.

The approved and proposed concept plans are shown in **Figure 9** below.



Inclusion of Lot 21 DP 1010514 in the concept plan

The modification request seeks to include an additional lot at 1-9 Greenway Place, Horsley Park (Lot 21 DP 1010514) (additional lot) in the amended concept plan (see **Figure 10**).



Figure 10 | Location of 1-9 Greenway Place, Horsley Park (Lot 21 DP 1010514)

The Proponent has justified the need to include the additional lot in the concept plan to enable a direct road connection from Horsley Drive and Greenway Place to the future residential subdivision of the RU4 zoned land, thereby enabling the rural residential area to have a separate access and avoiding accessing future residences via the employment precinct which may cause potential land use conflicts.

Landscaped Interface Area between the new Stage 3 and Stage 4

Within the new Stage 3 development, the Proponent proposes to construct a minimum 10 metre (m) wide buffer area incorporating landscaping and a noise wall between future warehouses and adjoining RU4 zoned land (Stage 4 rural residences). The Proponent commits to finalise the detailed design of the landscaping and noise wall in the buffer area prior to the commencement of the new Stage 3 development. The final detailed design will be in accordance with the indicative design in the revised SDG. The indicative landscaped interface area is provided in **Figure 11** below.

The Proponent has indicated the proposed landscaped interface treatment was designed to be consistent with and extend the landscaped interface between the Jacfin site and Oakdale South Industrial Estate (SSD 6917) to the west (see **Figure 2** for the location of Oakdale South Industrial Estate).

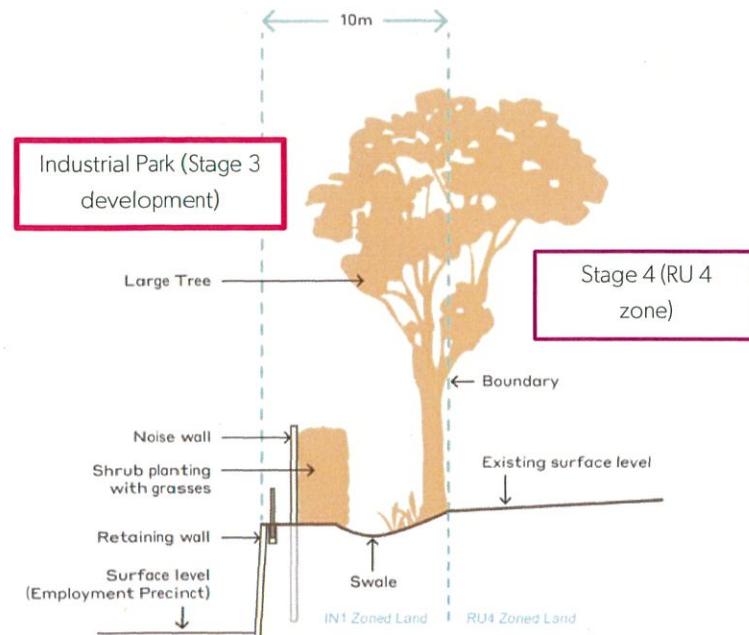


Figure 11 | Proposed Landscaped Interface Area

Staging Plan

The modification request includes a revised staging plan. The proposed industrial park includes the new Stages 1, 2 and 3, while the new Stage 4 is reserved as RU4 zoned land. The approved and proposed staging plans are shown in **Figure 12** below.

The Department notes Stage 1 site establishment works are currently underway.

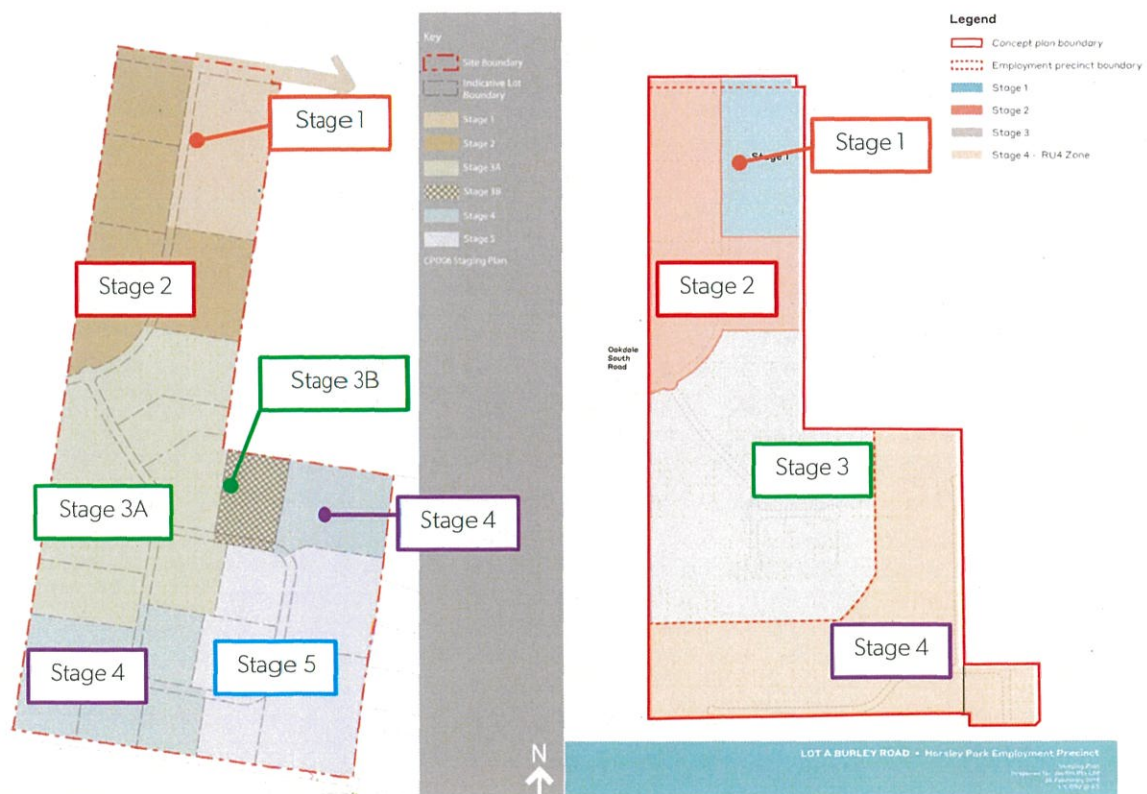


Figure 12 | Approved staging plan (left) and proposed staging plan (right)

Conceptual Use of Stage 4

The modification request did not include a final site layout for the proposed Stage 4 (the lands rezoned to RU4). Instead, the revised concept plan reserved Stage 4 for the purposes of primary production small lots with a minimum lot size of 2 hectares. The modification request included an indicative access road and subdivision patterns in Stage 4. On 8 November 2019, the Proponent lodged a development application (DA19/0785) with Penrith City Council for the subdivision of Stage 4 land including creation of 15 rural residential Lots, internal road network, landscaping, stormwater and utilities. At the time of writing this report, DA19/0785 was under assessment.

The Proponent explained the modification was necessitated by ensuring consistency with the Commission's vision for providing adequate buffers between industrial zoned lands and existing rural residences on Greenway Place and Capitol Hill Drive while facilitating economic and efficient development in Stage 4.

2.2 Revisions to the Site Development Guidelines

The modification request includes a number of proposed changes to the Site Development Guidelines (SDG). Key changes include:

- clarification that the SDG does not apply to development on RU4 zoned land
- revision to the sites internal access to align with the amended concept plan (see **Figure 13**)

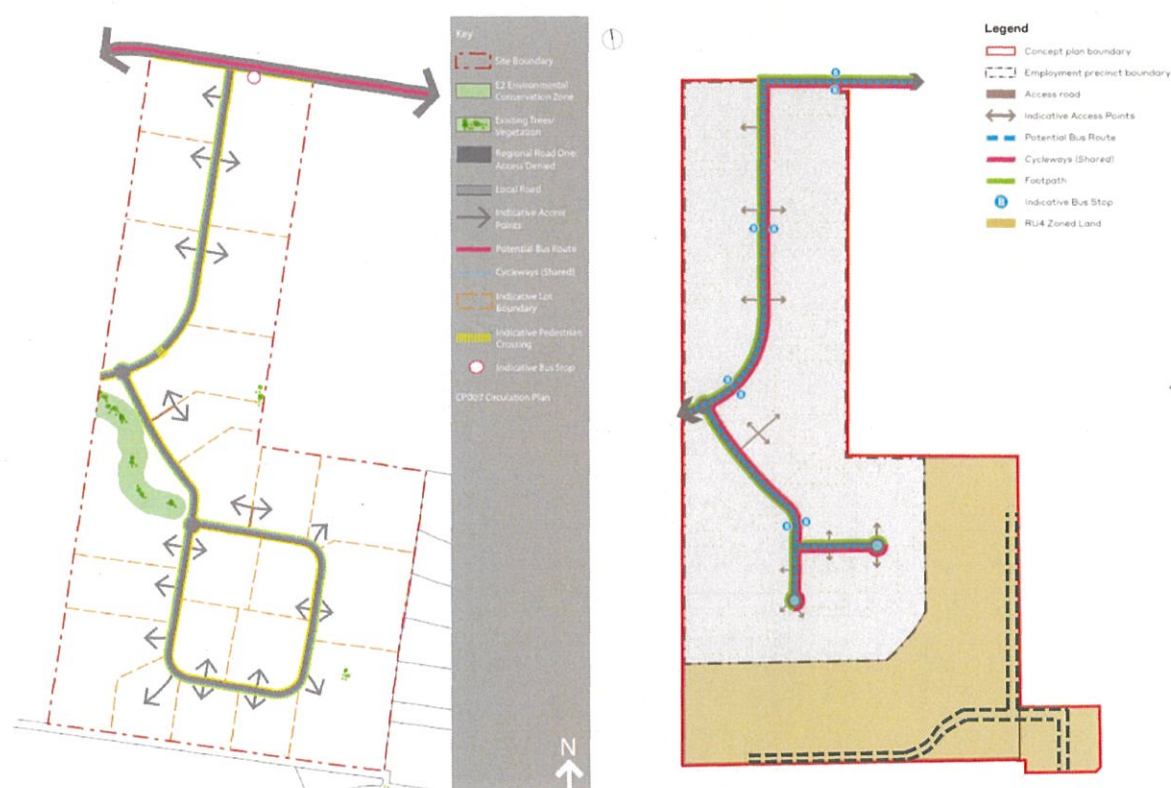


Figure 13 | Approved site access plan (left) and proposed site access plan (right)

- inclusion a requirement that future warehouse buildings in the new Stage 3 must be set back 10 m from the boundary shared with the new Stage 4 rural residential development
- removal of development controls for industrial buildings in the area now zoned for rural residential
- removal of the references to the 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 which were removed from the amended concept plan

- inclusion of development objectives and controls for the proposed landscaped interface zone in the amended SDG.

2.3 Amendments to the Concept Approval Conditions

To align with changes to the concept plan and the SDG, the Proponent proposed a series of administrative changes to the concept approval conditions including:

General

- revisions to definitions to update new agencies and to refer to the updated SDG

In Schedule 1

- several administrative amendments to reflect the revised concept plan and inclusion of an additional lot including:
 - update the subject land from Lot A DP 392643 to Lot A DP 392643 and Lot 21 DP 1010514
 - revise the project description as Jacfin Horsley Park Project, a distribution park of warehouses, distribution centres, light industries and associated infrastructure, and associated rural residential development.

In Schedule 2 Concept Plan Modifications

- amendment to condition 1 to align with the revised staging plan and Stage 4 RU4 zoned land
- deletion of conditions 4 and 5 as their purposes to mitigate amenity impacts on existing residence at Greenway Place has been achieved by the approved rezoning and future rural residential developments in the new Stage 4 will provide a buffer between existing Green Place residences and future warehouse buildings
- update of conditions 6 to 11 to reflect the new staging plan and the revised SDG
- revision to condition 8 to ensure the stormwater management system installed for the employment precinct considers runoff from Stage 4 RU4 zoned land
- insertion of new conditions 11A and 11B for the proposed landscaped interface treatment, including requirements to construct the landscaped interface prior to any Stage 3 developments commence

In Schedule 3 Development Application Requirements

- amendment to condition 2 to streamline the development application requirements, avoid duplication in conditions and the need for further assessment where it is no longer required as a result of the revised concept plan. The following key changes are proposed:
 - condition 2(i): removing the requirement for a visual impact assessment as part of the future DAs due to the revised concept plan significantly reducing visual impacts due to the inclusion of the RU4 zoned land
 - condition 2(k): limiting requirement for a geotechnical assessment including a Phase 2 contamination investigation for developments located along the north eastern boundary per recommendations of an Environment Assessment as part of the original concept plan application
 - condition 2(m): removing requirement for a bushfire risk assessment as conditions 10 and 11 of Schedule 2 set requirements for asset protection zone and bushfire access
 - condition 2(n): removing requirements for a biodiversity assessment to avoid duplication of condition 9 of Schedule 2 requiring the preparation of a Biodiversity Management Plan to be approved by the Planning Secretary
 - condition 2(p): limiting the heritage assessment to Aboriginal heritage as there were no European heritage values identified during the original assessment of the concept plan
- revisions to the Statement of Commitments aligning with the proposed changes to the concept plan.



3. Strategic Context

3.1 Strategic Plans and Strategies

The key strategic documents “NSW 2021” and “Draft Metropolitan Strategy for Sydney to 2031” were considered in the assessment of the original Jacfin Horsley Park project MP 10_0129. The Draft Metropolitan Strategy for Sydney to 2031 has been replaced by the current Sydney metropolitan plan “A Metropolis of Three Cities”.

Notwithstanding, the modification request does not change the projects consistency with these strategic directions.

3.2 State Environmental Planning Policy (Western Sydney Employment Area) 2009

The WSEA SEPP governs land use in the WSEA. The WSEA SEPP broadly aims to promote economic development and the creation of employment in the WSEA by providing for development including major warehousing, distribution, freight transport, industrial, high technology and research facilities.

There are specific clauses in the WSEA SEPP that deal with the interface area of the broader WSEA and adjoining residential areas. The intent of these clauses is to manage potential land use conflicts including visual, bulk and scale impacts associated with industrial development on residences. Key clauses include:

- clause 21 which aims to ensure building heights do not adversely impact on the amenity of adjacent residential areas
- clause 23 which aims to ensure buildings within 250 m of land zoned primarily for residential purposes are compatible with the height, scale, siting and character of existing residential buildings in the vicinity.

The revised concept plan reduces the application of the WSEA on parts of the Jacfin site, resulting in future warehouse buildings being more than 250 m from existing residences on Greenway Place. The modification request does not seek to amend the approved maximum building height control of 14 m for warehouse buildings in the revised SDG. The Department is satisfied that the modification request does not alter the Project’s compliance with the above provisions.



4. Statutory Context

4.1 Scope of Modifications

Under Schedule 2 of the EP&A (ST&OP) Regulation, the power to modify transitional Part 3A projects under former Section 75W of the EP&A Act, as in force immediately before its repeal on 1 October 2011, is being wound up, but as the modification request was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification
- the modification is of a scale that warrants the use of former Section 75W of the EP&A Act
- any potential environmental impacts would be appropriately managed through the existing or modified conditions of approval.

Therefore, the Department is satisfied the modification request is within the scope of former Section 75W of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers the modification request should be assessed and determined under former Section 75W of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the modification request. However, under the Minister's delegation dated 11 October 2017, the Director, Industry Assessments, may determine the modification request as:

- the relevant local councils have not made an objection
- a political disclosure statement has not been made and
- there is no public submission by way of objection.

4.3 Environmental Planning Instruments

The modification request was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)
- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)
- Penrith Local Environmental Plan (PLEP) 2010.

The Department is satisfied the proposal generally complies with the relevant provisions of the above EPIs.



5. Engagement

Under former Section 75W of the EP&A Act, the Department is not required to notify or exhibit the modification request. Upon receipt, the modification request was placed on the Department's website and following a review of the documentation, the Department did not consider that further consultation was necessary. Notwithstanding, the Department sought comments from landowners in the vicinity of the site and Fairfield City Council (FCC), Penrith City Council (PCC) and state government agencies between 22 August 2018 and 5 September 2018. Previous submitters were also notified of the modification request and invited to make a submission.

During the notification period, the Department received 11 submissions on the modification request, including from two councils, seven government agencies, one from the adjacent business and one special interest group submission. A community submission was received after the notification period ended.

A summary of the submissions is provided in **Sections 5.1 to 5.3** and a full copy of the submissions is provided in **Appendix C**.

5.1 Key Issues – Councils and Government Agencies

FCC supported the scope and intention of the modification request. However, FCC requested a traffic report be prepared to demonstrate the local road network in Horsley Park has adequate capacity to cater for the traffic generated by the future residential subdivision.

PCC did not object to the modification request and advised the Proponent should prepare a revised Stormwater and Drainage Strategy for the new Stages 1 to 4, not just for the new Stages 1 to 3 as requested by the Proponent.

Former **Department of Industry – Lands and Water Division (Dol L&W)** did not object to the modification request but recommended rezoning the landscaped buffer area to RU5 Village rather than RU4 Primary Production Small Lots given the potential land use conflicts.

Dol L&W supported the inclusion of a landscaped buffer area between the employment precinct and future residential development and recommended setting residential developments back from the industrial lands.

Former **Office of Environment and Heritage (OEH)** (now Climate Change and Sustainability Division of the Department) did not object to the modification request and had no comments.

Former **Roads and Maritime Services (RMS)** (now part of TfNSW) did not object to the modification request and advised the site was in the New Southern Link Road Network investigation area.

Transport for NSW (TfNSW) did not object to the modification request but recommend amendments to the revised Site Development Guidelines.

Water NSW requested correcting the reference to Sydney Catchment Authority to be Water NSW in the revised condition 8 of Schedule 2 of the concept approval. Water NSW supported the inclusion of stormwater management requirements in the revised Site Development Guidelines but requested retention of the Proponent's Statement of Commitments requiring post-development stormwater flows to be less or the same as pre-development flows.

Endeavour Energy had no objections to the modification request, but noted an easement benefiting Endeavour Energy for high voltage overhead power lines and overhead earth cables to the southern end of the site, a 11 kilovolt (KV) high voltage overhead power lines to pole mounted substation to the south eastern corner of the site

as well as low voltage and 11 KV high voltage overhead power lines to the Greenway Place. Accordingly, Endeavour Energy made comments relevant to its network assets.

TransGrid did not object to the modification request as it would not affect its infrastructure.

5.2 Key Issues – Community

CSR Building Products Pty Ltd (CSR) who owns and operates a brick manufacturing business to the north of the site made a submission to the modification request raising concerns about:

- inappropriate use of RU4 zoned land as a buffer between existing rural residences facing Greenway Place and the employment precinct
- introduction of RU4 zoned land immediately adjoining IN1 zoned land would cause land use conflicts and impede fulfilling the WSEA's role as a strategically critical employment precinct
- lack of buffer zone between the CSR landholding and Stage 4 RU4 zoned land
- capability of a proposed vegetated bund in CSR's land to ameliorate amenity impacts on rural residences in proposed Stage 4.

The community submission received after the notification period did not object to the modification request but did not support inclusion of 1-9 Greenway Place (the additional lot) into the concept plan.

5.3 Key Issues – Special Interest Group

Blacktown & District Environment Group Incorporation did not object to the modification request and stated the amendments would not diminish the importance of the approved conservation zone.

5.4 Response to Submissions

On 24 November 2018, the Proponent submitted a Response to Submissions (RtS) on the issues raised during notification of the modification request (see **Appendix D**). The RtS included a revised SDG incorporating TfNSW's recommendations.

The RtS was made publicly available on the Department's website and was provided to FCC, PCC and state government agencies. The Department received the following comments in response to the RtS:

PCC reiterated its recommendation regarding amendments to Condition 8 of Schedule 2 of the concept approval regarding the revised Stormwater and Drainage Strategy.

DoI L&W advised the Department of Primary Industries Agriculture noted the reasons for rezoning Stage 4 of the Project as RU4. The Department of Industry had no objections to the modification request as any land use conflict issues could be resolved at subdivision or at future development application stages.

TfNSW provided no further comments and requested consultation during future development applications for each stage of the Project.

However, further issues were raised and discussed with the Proponent concerning proposed staging of access infrastructure works and requests to vary the timing of Regional contribution obligations under the project approval.



6. Assessment

The Department has assessed the merits of the modification request. During this assessment, the Department has considered the:

- EA and assessment report for the original concept plan application
- existing conditions of approval
- the EA supporting the proposed modification (**Appendix B**)
- submissions from the public, state government authorities and Councils (**Appendix C**)
- the Proponent's response to issues raised in submissions
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key issues are visual impacts, noise and vibration, land use and interface area and stormwater and drainage.

6.1 Visual Impacts

Managing visual impacts is a key issue for the Jacfin Horsley Park Industrial Estate, particularly the proximity to existing and proposed rural residential developments on the south-eastern boundary of the site.

6.1.1 Visual Impact Assessment for the Original Concept Plan

The original concept plan sought to develop the Jacfin site for industrial purposes only. Under this approval, future warehouse buildings would be close (within 10-20 m) to existing residences fronting Greenway Place to the east and future Capitol Hill residential development to the south.

Clause 23 of the WSEA SEPP aims to protect amenity at the residential and industrial interface areas (areas within 250 m of existing residences). The Department's assessment of the major project application (MP 10_0129) found the original concept plan did not satisfactorily address the requirements of clause 23 of the WSEA SEPP.

During the assessment, the Department appointed O'Hanlon Design Pty Ltd (OHD) to independently review the visual impacts of the original concept plan on the existing residents at Greenway Place. At the Department's request, OHD also carefully analysed the visual impacts of the concept plan in the context of clause 23 of the WSEA SEPP and made a series of recommendations to further mitigate the potential visual impacts of the proposal to ensure residential amenity would be protected.

Based on the OHD recommendations, the Department recommended the southern portion of the site be divided into two zones:

- an 'interface development zone' extending 250 m from the southern and eastern boundaries
- a 'general development zone' applying to the remainder of the southern portion of the site.

Within the 250 m wide interface development zone, the Department recommended a landscaped mound to screen future developments in the industrial park and protect the visual amenity of the existing residents on Greenway Place (see **Figure 14**).

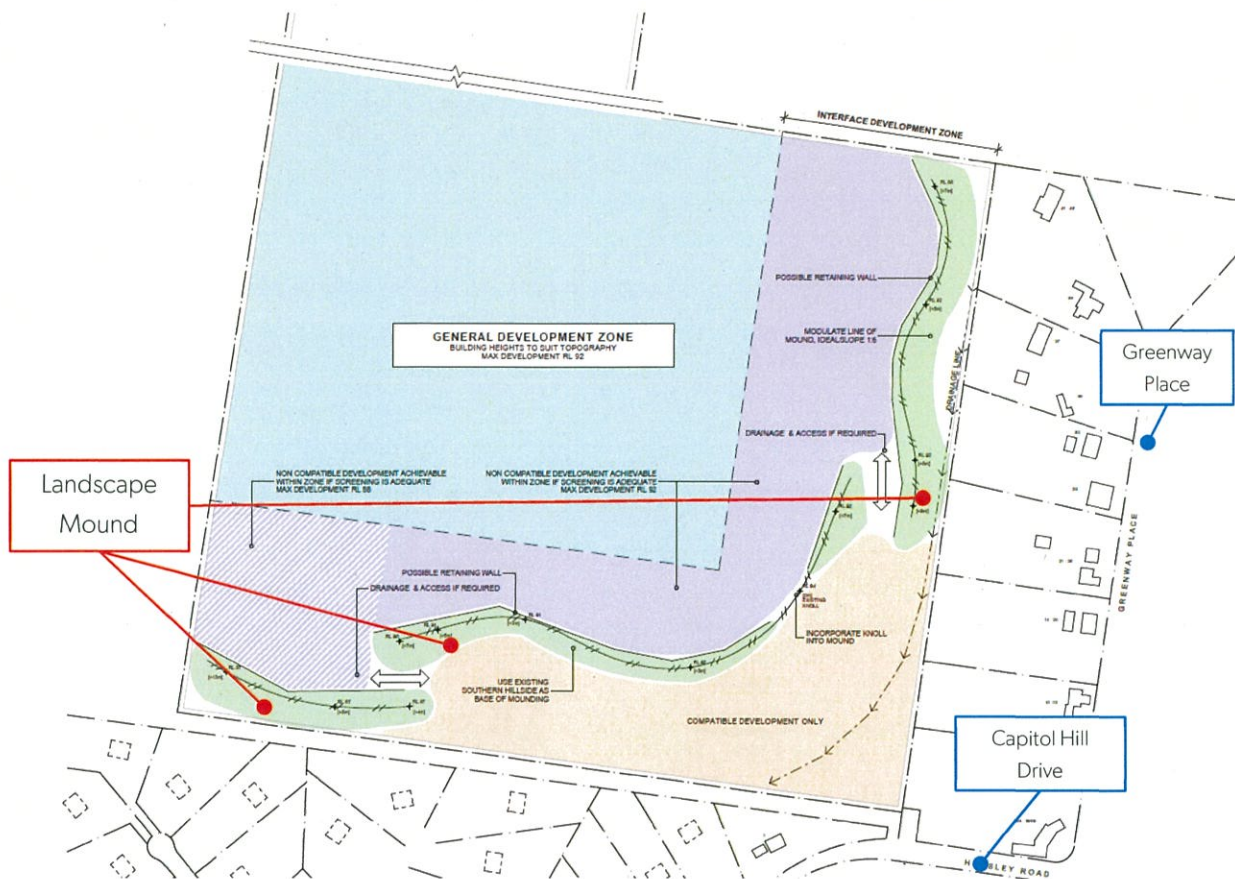


Figure 14 | The Department recommended landscaped mound in the assessment report

As a potential alternate option to the landscaped mound, the Department's assessment considered a planning proposal to rezone the interface zone to enable rural residential development would also likely have merit and be supported by the Department.

The Commission considered the landscaped mound was insufficient to mitigate visual impacts as:

- part of the mound was located on the immediate boundaries with neighbouring properties which had the potential to increase amenity impacts on existing residents
- the mound would require ongoing maintenance and cause uncertainty for future developments in the industrial park.

Considering the site's topography and the uncertainty of maintaining the mound, the Commission considered it would be more effective to mitigate any potential amenity impacts by rezoning the interface area and realigning the zoning boundary to allow residential developments as a buffer.

6.1.2 Rezoning

Following the Commission's determination of the project approval in October 2013, the Department's Land Release team lead a rezoning proposal process to create a rural residential buffer in the 250 m wide interface area between future industrial developments and existing residential dwellings on Greenway Place. The rezoning proposal removed the interface area from the WSEA and rezoned this area from IN1 General Industrial under the WSEA SEPP to RU4 Primary Production Small Lots under the PLEP 2010. The rezoning was approved and came into force on 24 June 2016.

The planning proposal also imposed a minimum lot size requirement of 2 ha for rural residential developments in the southern part of the site under the PLEP to limit the number of potential future dwellings in that area (sensitive receivers) and minimise the potential visual impacts of the industrial park.

6.1.3 Visual Impacts of the Amended Concept Plan

As the revised concept plan shifts the interface area between industrial and residential uses from the site boundary to the area between the new Stages 3 and 4, future residential dwellings in the new Stage 4 will be located within 250 m of the nearby warehouses. To mitigate any potential visual impacts on residential development in Stage 4, the Proponent proposes to construct a minimum 10 metre (m) wide buffer area incorporating landscaping and a noise wall within the new Stage 3 development (see **Figure 15**).

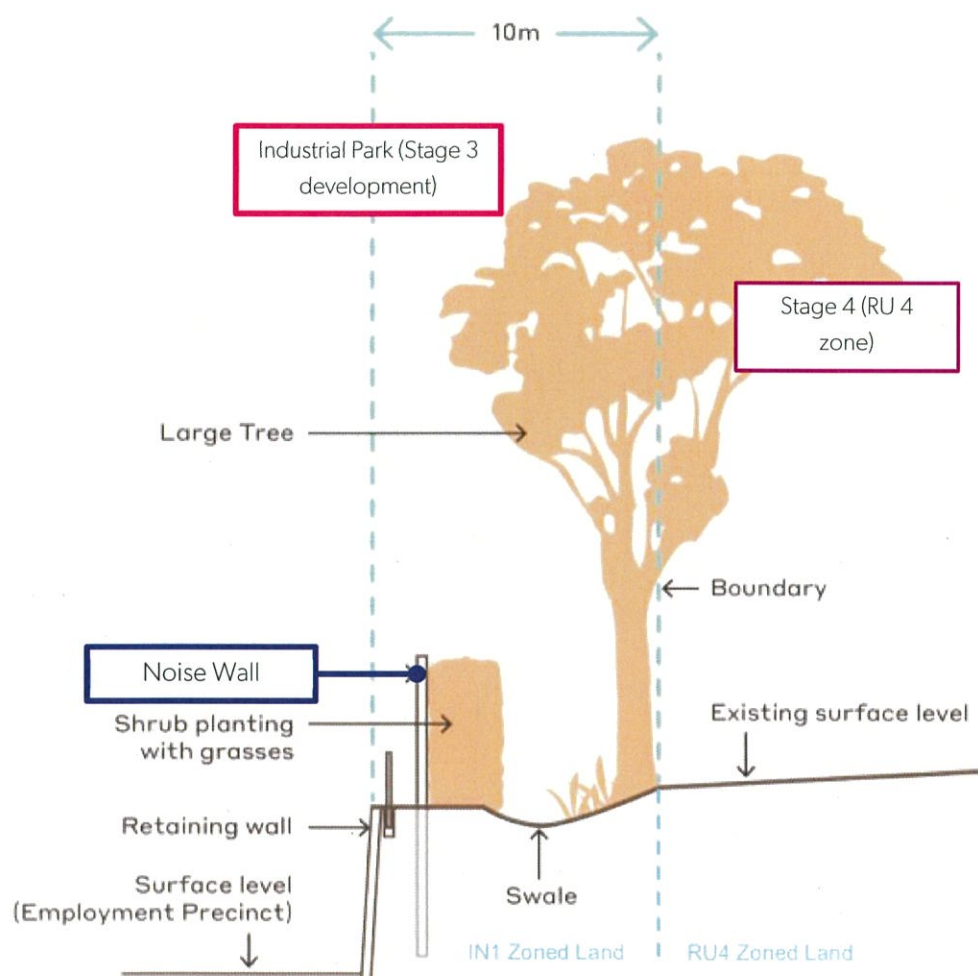


Figure 15 | Proposed landscape buffer area

The Proponent did not carry out an additional Visual Impact Assessment (VIA) as part of the modification request but advised specific objectives and controls for the landscaped interface area were set out in the revised Site Development Guidelines (SDG). These controls include requirements for shrub planting and canopy trees which would provide necessary visual screening between existing and future residences and warehouses. The Proponent stated future development applications would include landscape plans incorporating detailed landscape treatments to ensure visual amenity mitigation is provided at each stage of the industrial park (new Stages 1 to 3 of the Concept Plan). The modification request also seeks to retain the maximum building height control of 14 m for warehouse buildings as stipulated in the concept plan approval to ensure future developments

in the industrial park will have a compatible building height with the Oakdale South Industrial Estate to the west and minimise any potential visual impacts on existing and future residents.

The modification request also seeks to remove condition 2(i) of Schedule 3 of the project approval which requires the Proponent to prepare a VIA for each future development application) on the basis that the visual impacts had been adequately addressed by rezoning and the proposed landscaped interface area.

There were no submissions raising issues with potential visual impacts.

6.1.4 The Department's Assessment

The Department has reviewed the modification request and finds:

- the revised concept plan is consistent with the current zoning and addresses the potential visual impacts on existing residents at Greenway Place
- the revised industrial park is 250 m away from the existing residences on Greenway Place and Capitol Hill residential subdivision to the south, the revised concept plan would create an adequate buffer between existing and future houses and the proposed industrial use
- the RU4 zoning and a minimum lot size of 2 ha would reduce the number of sensitive receivers and ensure the Stage 4 development is compatible with the nearby existing rural residential developments
- views from Greenway Place, Stage 4 and the Capitol Hill subdivision towards the employment precinct would be screened by the landscaped buffer area between the employment precinct and Stage 4 RU4 zoned land
- landscaping would screen the noise wall and reduce visual impacts on the immediately adjoining Stage 4 development
- the employment precinct is located within an industrial estate on land strategically zoned for employment uses, where future buildings would be in keeping with the scale of buildings, including large scale warehouses, in the locality
- the Proponent retained the maximum building height control of 14 m for warehouse buildings in the industrial park as prescribed in the revised SDG, this will ensure future industrial developments will present a compatible built form to warehouse buildings in the Oakdale South Industrial Estate to the west where a 15 m maximum building height applies.

The Department is satisfied the potential visual impacts can be adequately managed through the revised SDG and the existing concept approval conditions requiring submission of landscape plans incorporating appropriate visual mitigation measures for each subsequent development application.

The Department has considered the Proponent's request to delete the requirements for preparing a VIA for each future development application. The Department acknowledges the Proponent has proposed a landscaped buffer between Stage 3 warehouse buildings and Stage 4 rural residences. However, the Department considers visual impact assessments are required for development applications of warehouses adjacent to Stage 4 (RU4 zoned land) as visual impacts, particularly cumulative impacts, are unknown until the detailed designs of warehouse and distribution centres have been finalised and submitted.

Given the site's proximity to the existing and future residents there is likely to be a need to implement ongoing visual impact mitigation measures. These mitigation measures will be made in accordance with the findings and recommendations of a VIA. The Department therefore does not support the Proponent's request to remove the visual impact assessment requirements for subsequent development applications. To ensure adequate mitigation measures based on the detailed Stage 3 design would be proposed and implemented, the Department recommends rewording condition 2(i) of Schedule 3 of the concept approval to require the Proponent to submit a VIA for each development application for warehouses adjacent to Stage 4.

6.2 Noise and Vibration

The operation of warehouse and distribution centres in the industrial park has the potential to impact the existing and future residents' acoustic amenity, particularly at night when warehouses operate 24 hours a day.

A detailed Noise Impact Assessment (NIA) was prepared as part of the original concept plan application by Wilkinson Murray Pty Ltd. The NIA assessed the operational noise impacts on the residential receivers in the site's vicinity using a worst-case operational scenario in which all warehouses were constructed and in full operation against the NSW Industrial Noise Policy 2000. The NIA concluded the predicted operational noise levels at all residential receivers during day and night would be below the intrusive noise criteria, except a marginal exceedance of 1 dBA at 14-20 Greenway Place during night time. The NIA also noted the operation of the industrial park would comply with the sleep disturbance criteria at all residential receivers.

Based on the predicted noise levels, the NIA recommended site specific operational intrusiveness and noise criteria (the criteria) at different sensitive receivers that were incorporated into the project approval as a condition and into the approved SDG. The revised SDG does not change the criteria but includes Stage 4 RU4 zoned land in the sensitive receiver area.

The modification request did not include an additional NIA, but the Proponent advised the extent of the employment precinct had been substantially reduced through the rezoning and revision to the concept plan. As there is no existing residence within 250 m of the industrial land resulting from the revised concept plan, the Proponent maintained there would be further reduction in the acoustic impacts of the industrial park on the existing residences. To mitigate the cumulative noise impacts of the employment precinct, the amended concept plan includes a noise wall as part of the landscaped interface area between the employment precinct and the RU4 zoned land (see **Figure 15**).

The Proponent has committed to undertake detailed noise impact assessments for future development applications in the industrial park which would assess noise emissions against the criteria set out in the revised SDG to inform the design details of the acoustic wall prior to commencement of construction in the Stage 3 development.

There were no submissions raising issues with noise and vibration impacts.

The Department considers the criteria are conservative in nature as the Wilkinson Murray NIA was undertaken based on a worst-case scenario and the revised concept plan reduces the extent of the employment precinct and the number of noise sources. The Department also finds the modification request addresses the Commission's considerations and recommendations by locating warehouse and distribution centres away from existing residences on Greenway Place and future Capitol Hill residential subdivision.

As stated in Section 6.1, the rezoning proposal required a minimum lot size of 2 ha for Stage 4 rural residential developments. The Department considers this large minimum lot size would provide enough space to allow future dwellings to have enough distance from adjoining warehouses and noise sources. Furthermore, the proposed noise wall and landscape works would assist in mitigating any potential noise impacts on the Stage 4 development. To ensure no warehouses would be built within the 10 m landscaped buffer area, the Department has recommended a condition requiring warehouses in Stage 3 to be setback at least 10 m from the boundary of the Stage 4 development. The Department recommends conditions requiring the Proponent to finalise the design of and construct the proposed acoustic wall in the landscaped interface area prior to commencement of construction in Stage 3.

The Department acknowledges that in the absence of detailed design of each warehouse building, including any mechanical plant, it is materially difficult to determine specifications and verify the effectiveness of the proposed noise wall. The Department has recommended conditions requiring the Proponent to prepare a noise verification

report (NVR) to demonstrate that operation of the noise wall could effectively mitigate the cumulative noise impacts of the industrial park and noise emissions from industrial uses could meet the noise criteria prior to commencement of construction of Stage 4 development. To protect the acoustic amenity of residents in Stage 4, the Department has recommended a condition requiring the Proponent to ensure operational noise generated by future warehouse buildings in the new Stages 1 to 3 would not exceed the noise limits depicted in Wilkinson Murray NIA.

In addition to the above, the Department notes the Jacfin site will be located within the noise exposure map for the new Western Sydney International Airport (see **Figure 16** below). As such, the site could experience noise generated by air traffic associated with the future Western Sydney International Airport's operation. Based on the noise map, the Jacfin site is located within the 20-25 contours.

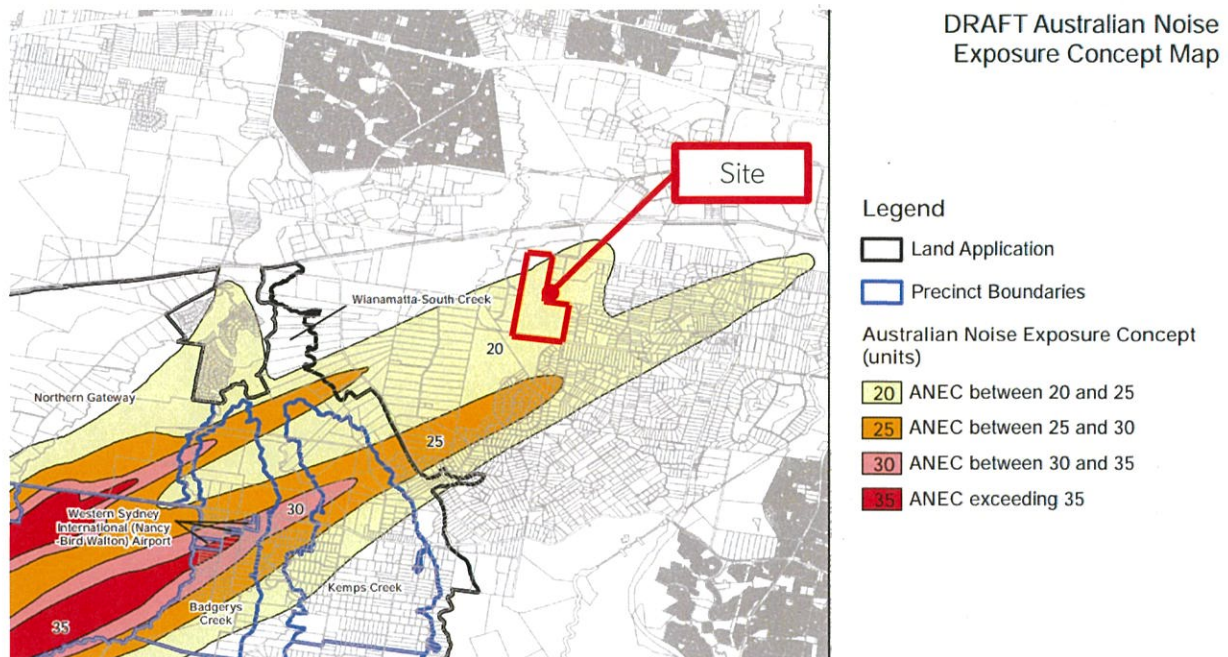


Figure 16 | Draft ANEC Map in the draft Aerotropolis SEPP

As the Jacfin site could be impacted by the air traffic noise, any future developments (such as residential developments) are required to achieve an acceptable internal noise amenity and compliance with Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusions – Building siting and construction. On this basis, the Department considers noise impacts from the industrial estate are likely to be further reduced due to the design needs of the residential properties located in the ANEC contour.

In addition, Condition 2(j) of Schedule 3 of the concept approval (MP 10_0129) requires each future development application on site must be accompanied with a noise assessment of the proposed development in accordance with the Interim Construction Noise Guideline (2009) and the NSW Industrial Noise Policy (2000). To protect acoustic amenity of existing and future residents, the Department has recommended retaining this condition and updating the superseded NSW Industrial Noise Policy (2000) to the NSW Noise Policy for Industry (2017).

6.3 Land Use Conflict and Conceptual Uses of the Original Stages 3B to 5

6.3.1 Land Use Conflict

The site is located in an industrial/residential interface area and has the potential to generate land use conflicts. The original concept plan sought to develop the whole site for industrial purposes, with warehouses immediately adjoining the existing and future residences at Greenway Place and within the Capitol Hill residential development respectively.

To mitigate amenity impacts, a 250 m section of the southern part of the proposed industrial and residential interface has been rezoned. While to address the new interface area between the industrial estate and the new rural residential area, a noise wall and comprehensive landscape buffer is proposed.

CSR's submission raised a number of issues about land use conflict, including the characterisation of the RU4 rezoning as a buffer between the employment precinct and the existing and future residences, the potential land use conflict resulting from the rezoning and the adequacy of landscaped buffers along the boundary with CSR's site.

The Department considers that as the revised concept plan excludes industrial uses within the 250 m from Greenway Place residential dwellings and future Capitol Hill residential development, then this would provide a sufficient buffer between existing houses and future industrial uses. A transitional use (landscaped buffer area) between the industrial park and Stage 4 is included in the amended concept plan.

In the Department's 2016 assessment of the rezoning proposal, a minimum 2 ha lot size on the Jacfin RU4 land under the PLEP was imposed. The Department's intent in adopting this minimum lot size was to limit the number of potential future dwellings to ensure future land use conflicts would be minimised. The large minimum lot sizes proposed would also limit the number of future dwellings near the employment precinct and the CSR Site, while also providing some flexibility on where the houses can be positioned away from the employment areas (see **Figure 17** below).

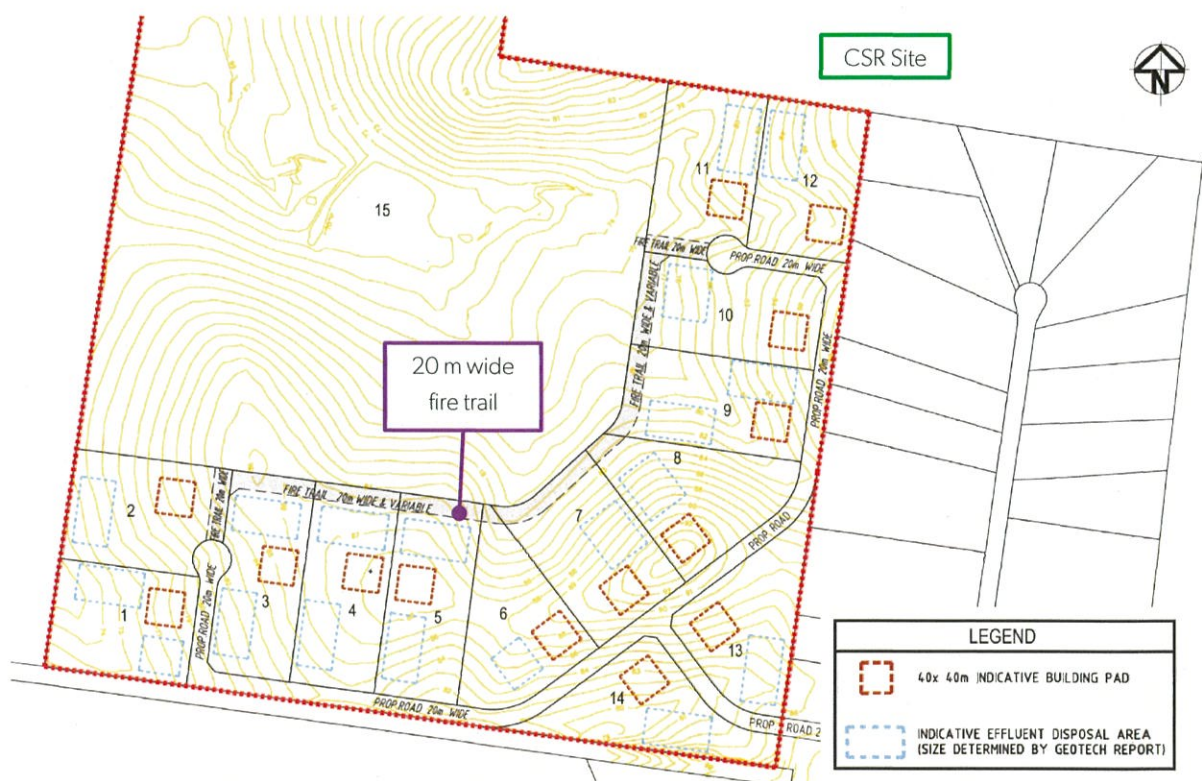


Figure 17 | Proposed Indicative Building Pads Plan under DA19/0785

The Department notes the modification request did not include a buffer between the Stage 4 residential development and CSR site to the north. The Department considers the proposed building pads within the two residential lots abutting CSR site are away from the site boundary as far as feasible which provides sufficient separation between future dwellings and existing CSR industrial development (see **Figure 17**). The separation distance could provide opportunities for landscaping and noise attenuation measures to further mitigate any

potential amenity impacts on residents. The detailed landscaping and noise attenuation design will be subject to future residential development applications.

6.3.2 Conceptual Uses of the Original Stages 3B to 5

As previously discussed, the Commission deferred approval of the conceptual uses for the original Stages 3B, 4 and 5. Conditions 4 and 5 of Schedule 2 of the concept approval (MP 10_0129) prescribed matters for consideration for the Department before approving the conceptual uses. The Department's assessment of the proposed conceptual uses under this modification request against these conditions is provided below.

Clause 4 of Schedule 2

(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 Department considers the revised concept plan ensures no industrial uses are located within the 250 m wide interface zone which provides a buffer between the existing houses on Greenway Place and future warehouse buildings. A transitional use (landscaped buffer area) between the industrial park and Stage 4 residences is also included in the amended concept plan. The landscaped buffer area will incorporate noise wall and screening plants to mitigate visual and acoustic impacts on future residents in Stage 4 development.

The Department's assessment concludes the noise wall and landscaping, combined with the setback from existing residential property boundaries, ensure a reasonable level of amenities can be maintained for existing residents. The Department also notes there are no changes to ground levels in the revised concept plan.

(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;

The Department notes the visual impact of future warehouse buildings on the existing residents are addressed by locating the industrial park more than 250 m away from the existing dwellings fronting Greenway Place. The modification request shifts the interface zone between residential and industrial uses from the site's eastern and southern boundaries to the new Stage 3 and Stage 4 boundary. The Proponent proposed to set up a landscaped buffer area incorporating screening plants and mature trees between the proposed Stages 3 and 4. A revised Site Development Guidelines (SDG) including several landscaping maintenance measures for the landscaped buffer area is also provided in the modification request.

The Department considers a Landscape Management Plan (LMP) is not required for developments along the site's eastern and southern boundary. To ensure the proposed landscaped buffer area could be properly managed, the Department has recommended conditions requiring that prior to the commencement of construction of the Stage 3 development, the Proponent must prepare an LMP for the landscaped buffer area to the satisfaction of the Planning Secretary.

(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;

The Department notes the mitigation measures of separating existing rural residences and future warehouses by more than 250 m is achieved through rezoning the interface zone from IN1 General Industrial under the WSEA

SEPP to RU4 Primary Production Small Lots zone under PLEP 2010. As explained before, the Department has recommended a condition requiring an LMP to be prepared by the Proponent for the Planning Secretary's approval.

(d) demonstrate consistency with the modifications of this approval; and

The amended concept plan is consistent with the specified modifications (Condition 5, Schedule 2 of the concept approval) as it has removed the originally proposed service centre.

(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.

As stated before, the rezoning proposal was approved and came into effect on 24 June 2016. The Proponent revised the concept plan to align the current zoning boundary and permissible uses under N1 and RU4 zones. Based on detailed warehouse design, future development applications for the proposed Stages 2 to 3 will include additionally applicable mitigation measures.

Condition 6, Schedule 2 of the concept approval stipulates the Proponent shall prepare a detailed Staging Plan in consultation with Council and relevant utility and service providers to show how development within this area 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 applications for development within (the original) Stages 2 to 5.

The Department considers Condition 6 of Schedule 2 should be retained and updated to align with the amended Staging Plan and development stages to ensure the Proponent will prepare a detailed Staging Plan in consultation with Council and the relevant utility/service providers.

Condition 5 of Schedule 2

The Service Centre identified in the Concept Plan is not approved.

The service centre was removed from the revised concept plan.

6.3.3 Conclusion

The Department's assessment concludes the modification request seeks to align the concept plan with the current zoning, with the objective to achieve the Commission's vision for protecting existing residents' amenities and give effects of the rezoning proposal's intention. The Department has assessed the nominated conceptual uses for the original Stages 3B to 5 against the relevant requirements of conditions 4 and 5, Schedule 2 of the concept approval. The Department has considered the amended concept plan meets all requirements of these conditions and the Planning Secretary or delegate can approve the proposed conceptual uses. The Department considers any potential land use conflict would be resolved by future development applications through detailed design, it has not recommended any further conditions relating to land use management.

6.4 Stormwater and Drainage

Condition 8, Schedule 2 of the concept approval requires the Proponent to prepare a Stormwater and Drainage Strategy (SDS) for the entire site. The SDS must be approved by the Planning Secretary prior to the lodgement of any applications for development within Stages 3B to 5 as shown in the approved concept plan.

The approved concept plan sought to develop the site as an industrial park without rural residences, but this has been amended to include the Stage 4 rural subdivision development in the modification request. Due to the site

layout, the industrial park would receive stormwater runoff from the Stage 4 development (RU4 zoned land), as such there is a need to amend the SDS. In the modification request, the Proponent advised a revised SDS would be prepared for the industrial park (Stages 1 to 3) to ensure the stormwater system within the industrial park could adequately accept and manage inflows from Stage 4 rural residences.

In its submission to the modification request, PCC recommended an amended condition 8 requiring the SDS be prepared for Stages 1 to 4, including demonstration of the stormwater system could accept surface runoff and flows in a 1% AEP storm event from Stages 3 and 4, on site detention and Bio basins, overland flow path and drainage easement. PCC also required the SDS be submitted prior to the lodgement of any applications for development within both Stages 3 and 4.

The Proponent submitted an RtS prepared by Tooker and Associates including information addressing PCC's stormwater concerns. The Proponent did not agree to prepare the SDS for Stages 1 to 4, instead advised the SDS would be prepared for Stages 2 to 4 only. This was because the Stage 1 development was subject to a separate Project Approval (MP 10_0130) with specific stormwater management requirements. The RtS also recommended the SDS only be submitted for the Planning Secretary's approval prior to the lodgement of any applications for development within Stage 3, not in Stage 4. The Proponent argued the stormwater drainage infrastructure in Stage 4 did not necessarily rely upon works within Stage 3. The Stage 4 stormwater strategy could include facilities which ensured any Stage 4 runoff flows and water quality matched existing conditions and have no adverse impacts on the industrial park. Moreover, development applications for Stage 4 would be submitted to PCC and assessed against the relevant provisions of the Penrith Development Control Plan 2014 to satisfy Council's relevant requirements. Accordingly, future development applications for Stage 4 would require detailed stormwater and drainage design work that would not necessarily need to be the subject of a further revision of the SDS for the industrial park.

PCC was satisfied with the information provided in the RtS and provided recommendations for updating condition 8 of Schedule 2 of the concept approval. The Department has reviewed the modification request and has concluded the revised SDG would adequately address the industrial and rural residential uses with an adequate management system to manage stormwater including surface runoff and flows in a 1% AEP storm. The Department considers the Stage 4 development would be subject to a development application assessed by PCC which would require the Stage 4 stormwater system be designed to meet Council's requirements and would be independent to the SDS. The Department is satisfied, it is appropriate for the SDS to be submitted prior to the lodgement of any applications for development within Stage 3 only.

The Department has recommended condition 8 of Schedule 2 of the concept approval be revised requiring the Proponent to prepare and implement a revised SDS for Stages 2 to 4 and condition 2 of Schedule 3 be amended requiring the revised SDS to be incorporated in an infrastructure plan prepared for any future development applications.

6.5 Other Issues

Besides the proposed amendments to the Concept Plan as described in Section 2, the Proponent also proposed the following changes to conditions which were not supported by the Department. The proposed changes and the Department's assessments of these changes are detailed below.

In Schedule 2 Concept Plan Modifications

1. condition 9: consider future stages of the Jacfin Horsley Park Project (the Project) as exempt or complying development under the EP&A Act

In Schedule 3 Development Application Requirements

2. condition 2(k): limit the Phase 2 Contamination Investigation for developments located the north eastern boundary
3. condition 2(n): remove this condition which requires the Proponent to prepare a biodiversity assessment for each future development application
4. condition 2(o): remove this condition which requires the Proponent to prepare a bushfire risk assessment for each future development application
5. condition 2(p): remove this condition which requires the Proponent to prepare a heritage assessment for each future development application.

The Department's assessment of these issues is provided below.

1. Complying Development

The modification request seeks approval for considering future stages of the Project as exempt or complying development under the EP&A Act. The Department notes the modification request was made under former Part 3A of the EP&A Act. Former Section 75P (2) of the EP&A Act stipulates that unless the Minister by order declares that any particular stage of a project is exempt or complying development, then exempt or complying development does not apply to that stage.

The Minister has not declared any stages of the Project can be considered under exempt or complying development. As such, any particular stage of the Project cannot be considered as exempt or complying development. The Proponent has reviewed and agreed with the Department's consideration.

The Department therefore does not support and cannot agree to the modification request to apply exempt or complying development to any stages of the Project.

2. Contamination Assessment

Condition 2(k) of Schedule 3 of the Concept Approval requires the Proponent to prepare a Phase 2 Contamination Investigation for each future development application. The modification request seeks to limit the Phase 2 Contamination Investigation for developments located along the north eastern boundary in accordance with the recommendation of the Phase 1 Preliminary Site Investigation (PSI) prepared by Consulting Earth Scientists submitted for the original concept plan application.

The Department reviewed the referred PSI and notes the PSI recommended a Stage 2 Detailed Investigation be undertaken for the site. The Department therefore does not support and cannot agree to the proposed amendment to Condition 2(k), Schedule 3.

3. Biodiversity Assessment

Condition 2(n) of Schedule 3 of the concept approval requires the Proponent prepare a biodiversity assessment for each future development application. The modification request seeks to remove the above condition as condition 9 of Schedule 2 of the concept approval requires the Proponent to prepare and submit a biodiversity management plan to the satisfaction of the Planning Secretary.

The Department notes section 7.7 of the *Biodiversity Conservation Act 2016* (BC Act) requires that if a proposed development is likely to significantly affect threatened species, a biodiversity development assessment report (BDAR) is required for development applications made under Part 4 of the EP&A Act. Section 7.9 of the BC Act requires preparation of a BDAR for State significant development applications.

As biodiversity impacts may not have been adequately addressed in the concept plan, the Department requires subsequent development applications to assess the potential biodiversity impacts based on detailed proposals. The Department reviewed condition 9 of Schedule 2 and considers this condition regulates the concept plan and future subdivision but does not relate to construction and operation of any future developments.

The Department therefore does not support the proposed removal of condition 2(n), Schedule 3 and recommends rewording of the condition requiring the Proponent to consider biodiversity impacts of the development in accordance with the BC Act.

4. Bushfire Assessment

Condition 2(o) of Schedule 3 of the concept approval requires the Proponent to prepare a bushfire risk assessment for each future development application. The modification request seeks to remove the above requirement as conditions 10 and 11 of Schedule 2 of the concept approval set asset protection zone and bushfire access requirements respectively.

The Department considers conditions 10 and 11 of Schedule 2 apply to the concept plan and future subdivision but do not apply to the assessment of subsequent development applications against *Planning for Bushfire Protection* (NSW Rural Fire Service, 2006), as recommended in the Bushfire Protection Assessment as part of the original concept plan application. The Department therefore does not support the proposed removal of condition 2(o), Schedule 3.

5. Heritage Assessment

Condition 2(p) of Schedule 3 of the concept approval requires the Proponent to prepare a heritage assessment for each future development application.

The modification request seeks to remove the above condition as there was no European heritage on the site and a heritage assessment was provided as part of the original concept plan application.

The Department reviewed the original heritage impact assessment and notes it stated the potential archaeological remains of the former farmhouse and associated outbuildings and old line of Privet tree plantings would be impacted by the concept plan.

The Department therefore does not support the proposed removal of condition 2(p), Schedule 3.



7. Evaluation

The Department has reviewed the EA and RtS and has assessed the merits of the modification request, taking into consideration the relevant matters under Section 4.15 of the EP&A Act, the objects of the EP&A Act and submissions received from FCC, PCC, state government agencies, the general public and special interest group.

The Department's assessment concludes the modification request follows the Commission's recommendation and would ensure the consistency of the concept plan with the current zoning boundaries. The modification request would also increase the separation distance between the industrial park and existing rural residences on Greenway Place and future residences on Capitol Hill Drive, locate rural residential subdivisions as a transitional use and provide a buffer between the industrial zoned land and existing residential properties. The Department has assessed the proposed conceptual uses of the original Stages 3B, 4 and 5 against the relevant requirements of conditions 4 and 5, Schedule 2 of concept approval (MP 10_0129). The Department's assessment concludes the conceptual uses meet the conditions' requirements and can be approved.

The Department's assessment concludes the impacts of the modification request are acceptable and can be appropriately managed through implementation of the recommended conditions of consent and amended Statement of Commitments. Consequently, the Department considers the modification request is in the public interest and should be approved, subject to conditions.



8. Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the Modification Request to Jacfin Horsley Park concept plan (MP 10_0129 MOD 1) falls within the scope of the former Section 75W 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 grant approval to the application
- **modify** the concept approval MP 10_0129
- **signs** the attached approval of the modification (**Appendix E**).

Recommended by:



20/01/2020.

Bruce Zhang

Acting Senior Environmental Assessment Officer
Industry Assessments

Recommended by:



20/01/2020

William Hodgkinson

Acting Team Leader
Industry Assessments



9. Determination

The recommendation is: **Adopted by:**

Chris Ritchie

Director

Industry Assessments

20/1/20



Appendices

Appendix A – List of Documents

- Horsley Park Employment Precinct Concept Plan Approval (MP 10_0129) s75W Modification Application Environmental Assessment, Ethos Urban, 28 February 2018
- Concept Plan and Staging Plan (MP10_0129) as proposed to be modified, Ethos Urban
- Revised Site Development Guidelines, Ethos Urban
- Tables of Requested Amendments to Concept Plan Approval, Allens Linklaters
- Horsley Park Employment Precinct Concept Plan Approval (MP10_0129) s75W Modification Application – Response to Issues Raised in Submissions, Ethos Urban, 12 November 2018
- Jacfin Horsley Park Employment Precinct Site Development Guidelines, Ethos Urban, November 2018
- Tables of Request Amendments to Concept Plan Approval, Allens Linklaters, 24 November 2018

Appendix B – Environmental Assessment

A copy of the Environmental Assessment can be found on the Department's website, at the following link:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9173

Appendix C – Submissions

A copy of the submissions received by the Department can be found on the Department's website, at the following link:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9173

Appendix D – Response to Submissions Report

A copy of the Proponent's Response to Submissions Report can be found on the Department's website, at the following link:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9173

Appendix E – Concept Approval

A copy of the concept approval for MP 10_0129 MOD 1 can be found on the Department's website, at the following link:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9173

Appendix F – Notice of Modification