



NSW PLANNING ASSESSMENT COMMISSION

21 September 2009

Report on the Proposed Jacfin Warehouse Project

EXECUTIVE SUMMARY

In August 2009, The Minister for Planning referred the major project application for the Jacfin warehouse project at Erskine Park to the Planning Assessment Commission (the Commission) for a review of the reasonableness of the recommendation of the Department of Planning (DoP). The DoP had recommended approval of the application subject to certain conditions.

The Minister requested that Jacfin and Penrith City Council should be given the opportunity to address the Commission during the review. These meetings took place on 26 August 2009.

The Commission has considered the documentation of this application, the matters raised in the meetings and additional information provided to it on some matters and has visited the site and the employment area. It has concluded that the approval of the application should be deferred until the applicant has submitted amending plans addressing certain matters relating to the provision of a biodiversity corridor on the site, access to the site and the provision of stormwater controls on the site.

The Commission is of the opinion that the recommended changes are too significant to be able to be implemented through the placing of additional conditions on the project application consent.

As a result the Commission has concluded that the application should be returned to the DoP and that they be requested to forward the Commission report to the applicant and request that the project application plans be amended to implement the recommendations of the Commission prior to the approval of the application which may be determined by the DG under delegation.

Abbreviations used in this Report

BMP	Biodiversity Management Plan
DCP	Development Control Plan
DEC	Department of Environment and Conservation
DECC	Department of Environment and Climate Change
DECCW	Department of Environment, Climate Change and Water
DoP	Department of Planning
EA	Environmental Assessment
EPEA	Erskine Park Employment Area
SEPP	State Environmental Planning Policy
PCC	Penrith City Council

1.0 INTRODUCTION

Jacfin Pty Ltd (Jacfin) is the owner of a 4.2ha of land in the Erskine Park Employment Area (EPEA). It proposes to develop a warehouse on its land. The project involves:

- Construction of a single storey warehouse of 21,005m² and an office of 1285m²;
- Extending Templar Road to the site including a small bridge to cross an unnamed creek;
- Construction of 218 car spaces at the eastern end of the site;
- Associated stormwater management system and landscaping works; and
- A "buffer area" of 5m between the northern site boundary and the internal access road.

On 6 September 2007 the then Minister for Planning declared the project a Part 3A project. Hence the Minister is the approval authority for the project. However, the Director General may determine the application under delegation.

On 3 April 2009, Jacfin filed Class 1 proceedings on the project with the Land and Environment Court.

2.0 REFERRAL FROM THE MINISTER

On 6 August 2009, the Minister for Planning referred the Director General's report to the Planning Assessment Commission for advice. The request asked the Commission to review the reasonableness of the Department's recommendation on the project application.

The Minister also directed that the Commission be constituted by at least 2 members. In addition, Jacfin and Penrith City Council (the Council) should be given the opportunity to address the Commission during the review.

On 7 August 2009, Ms Janet Thomson was nominated to chair the review. Mr John Court is the other member to constitute the Commission.

3.0 INFORMATION AVAILABLE TO THE COMMISSION

The Ministerial referral to the Commission includes the following documents:

- The Director General's Environmental Assessment Report, July 2009;
- The recommended conditions of consent;

- Jacfin's revised Statement of Commitments;
- Assessment of the Part 3A Application for Lot 11 DP229784, Erskine Park – Ecological Advice, by Sinclair Knight Merz, April 2009;
- Jacfin's response to submissions by JBA Urban Planning Consultants Pty Ltd, Nov 2008;
- The Environmental Assessment Report by JBA Urban Planning Consultants, July 2008; and
- Submissions from:
 - Penrith City Council;
 - Mr Ivan Jeray
 - GPT Group
 - Fitzpatrick Investments Pty Ltd
 - Sydney Catchment Authority
 - Ministry of Transport
 - NSW Department of Environment and Climate Change
 - Paxit Pty Ltd
 - Sydney Regional Development Advisory Committee
 - Department of Water & Energy
 - Sydney Water

4.0 DEPARTMENT OF PLANNING'S RECOMMENDATION

In assessing the proposed development the Department identified the key issue to be the potential impacts on the biodiversity corridor. The fundamental difference in opinion between Jacfin and the Council is the relevance of DCP 2006 to the site and whether the northern part of the Jacfin site should still be considered as part of the biodiversity corridor and the minimum width of such a corridor to achieve its objectives. The Department engaged an independent expert (Sinclair Knight Merz) to review the biodiversity aspect of the proposal. The expert advice was forwarded to Jacfin, Penrith City Council and the Department of Environment and Climate Change for comments.

Having regard to the submissions and expert advice available to the Department, the conclusion was:

- The site has some conservation value with its two hollow-bearing trees, regenerative potential, and ability to contribute towards the creation of an east-west biodiversity corridor; but that
- The conservation value is not as significant as suggested by some parties, and has been devalued by grazing and other agricultural activities that have been carried out on the site over several decades.

The Department believes the conservation significance of the site should be balanced against its development potential, and its ability to contribute towards the achievement of the strategic planning goals for the Western Sydney Employment Hub.

Following further discussion and negotiation with the Department, Jacfin agreed to modify its proposal to increase the "buffer area" to 10m as a contribution to the biodiversity corridor; remove all stormwater management works from the buffer area; and provide a 7ha off-set in the Ropes Creek riparian corridor.

The Department is satisfied that the proposed modification provides a reasonable balance between conservation and economic use of the site.

Other issues considered by the Department included traffic, consistency with 2006 DCP, soil and water, visual amenity, noise, air quality, Aboriginal heritage, infrastructure and contributions and bushfire hazard. The Department is satisfied that these impacts can be suitably managed to ensure an acceptable level of environmental performance.

On balance, the Department believes that it is in the public interest that the project should be approved subject to conditions.

The Commission met with Departmental staff on 13 August 2009 for a briefing on the proposal. The Department provided a brief outline of the history of the application and the key issues, particularly the biodiversity issue

A second meeting was held on 9 September 2009 to seek clarification from the Department on issues raised in the meetings with Jacfin and the Council, particularly on issues relating to the biodiversity corridor; stormwater management; access road; the location of the proposed offset; and whether the Minister has endorsed the 2006 Biodiversity Management Plan (BMP).

The Department advised that:

- The Minister has considered a number of applications based on the BMP. The Minister has never approved the BMP.
- The biodiversity corridor in its opinion is an aspirational goal and its potential to succeed was questioned by the Department
- Stormwater management is subject to recommended conditions of consent.
- It is not clear why Council insists on the bridge to meet its standards given it only provides access to the site.
- It does not have a plan indicating the location of the proposed offset. The Commission advised that it received a plan from Jacfin identifying the location of the proposed offset.

5.0 MEETING THE PROPONENT AND COUNCIL

The Minister requested the Commission to meet Jacfin and Penrith City Council as part of the review process. The Commission met with the two parties separately on 26 August 2009. As explained to both parties, the purpose of the meeting was for the Commission to listen to their views in support of/objection to the proposal.

Jacfin Pty Ltd was represented by:

Ms Jackie Waterhouse
Mr Ray Waterhouse
Mr John Waterhouse
Mr Noel Hemmings QC
Mr Bill McCredie
Mr Tom Cregan
Mr Dominic Fanning
Ms Julie Bindon
Mr Gordon Kirkby
Mr Mark Tooker

The Commission opened the meeting by outlining what it considered to be the key issues for discussion. These included history and the purposes of the biodiversity corridor; access to the site; size, design and use of the proposed building; and stormwater management.

Jacfin's submission focused on the history of the site and the relevance of DCP 2006 to the site. The following is a brief summary of points raised by Jacfin in the meeting.

- The site has been cleared of most vegetation and continuously used for grazing purposes.
- Jacfin was not a party to the Biodiversity Management Plan (BMP) 2006 but had not refused to participate.
- The BMP2006 as endorsed by the Minister was self contained and did not require the conservation of land outside that identified in the BMP.
- Until early 2006, Jacfin was unaware of a biodiversity scheme proposed by PCC which obstructed Jacfin's only means of access to the site.
- The BMP reflects the biodiversity strategy for the Erskine Park Employment Area (EPEA) as a whole.
- The site was recently rezoned for industrial use in the SEPP (Western Sydney Employment Area) 2009.
- The key issues were the relevance of DCP 2006, the conservation value of the site and the need for a 100m minimum corridor.
- Jacfin argued that the 40m minimum width biodiversity corridor shown in BMP 2006 was self sufficient for biodiversity (ie did not require the Jacfin 'corridor' land).
- Jacfin questioned the need for a bigger bridge as required by the Council and whether such requirement is consistent with the conservation objective when the bridge would be constructed across the biodiversity corridor.
- The stormwater management system is yet to be designed.
- Jacfin agreed to provide a 7ha off-set in the Ropes Creek riparian corridor.
- The DECC's second submission is inconsistent with its first submission. Also it was made before Jacfin's revised proposal to increase the buffer area and provide an offset.

Penrith City Council was represented by:

Mr Roger Nethercote
Mr Tony Crichton
Mr Mark Broderick
Mr Terry Agar
Mr Paul Lemm

Council's submission focused on the history of the site; the DCP and BMP; the need and management of the biodiversity corridor; stormwater management; and access. The following is a brief summary of points raised in the meeting.

- The Biosis report (2000) was the bases for DCP2002. The biodiversity corridor is to provide an east-west link to the two riparian corridors in Ropes Creek and South Creek. The link is significant in the regional context.
- The 2006 BMP is to facilitate the implementation of the biodiversity corridor and economic development of the EPEA.
- The 2006 BMP covers areas where landowners have participated in the agreement. DCP 2006 is still the planning controls for areas outside the agreement.
- Jacfin has been approached many times during the preparation of the revised biodiversity strategy and the BMP but chose not to participate.
- A minimum functional width for a biodiversity corridor is 100m.
- Council objects to the proposed 10m buffer as it is too narrow to meet DECC requirements for an effective biodiversity conservation corridor.

- Council is extremely concerned that approval of the proposed development on the Jacfin site may trigger the potential loss of the CSR and Fitzpatrick Investment lands from the biodiversity conservation corridor. Such loss would result in the destruction of the whole eastern end of the corridor.
- Council is also concerned that the proposed access road and bridge do not meet council's standards and there is insufficient detail for a proper assessment of the stormwater management system.

6.0 ADDITIONAL INFORMATION MADE AVAILABLE TO THE COMMISSION

At the meetings with Jacfin and the Council, the Commission received a submission from Jacfin which included 23 attachments. Council provided a power point presentation to outline its concerns. The Commission requested additional information from both Jacfin and the Council to support their claimed minimum width required for the biodiversity corridor to achieve its objectives. The following documents were received by the Commission:

Jacfin Pty Ltd

- Templar Road, Erskine Park Wildlife Corridors – Notes and References by Dominic Fanning, 8 September 2009; and
- A plan identifies the location of the proposed offset in Ropes Creek.

Penrith City Council

- Biosis Report
- DECC letter dated 28 October 2005
- Email from Suellen Fitzgerald forwarded by Tony Crichton dated 3 September 2009; and
- Submission to the Commission dated 8 September 2009.

The members of the Commission visited the EPEA and surrounding area, and looked at, but did not enter, the site.

7.0 MAJOR ISSUES IDENTIFIED BY THE COMMISSION

7.1 Background

In examining the report of the DoP and the submissions to the Commission from the applicant and Penrith City Council the Commission identified several major issues in relation to the application and its approval. The Commission examined these matters in more detail in order to be able to come to a position on them as their resolution impacted on the project application approval. The following is a brief summary of these matters.

7.2 Equity Issues

The development of the Erskine Park Employment Area (EPEA) has a long history and over that time extensive negotiations have taken place between the various landowners, the DoP and Penrith City Council in relation to the development of the EPEA. Differences of opinion have arisen in relation to the planning of the area, especially in relation to the development of biodiversity areas and corridor through the area, and the contribution from each landowner to this. Some landowners and not others have entered into various agreements and this has led to equity issues in relation to development potential of the various sites in the EPEA.

7.3 Relevant Planning Controls and their Development

The planning controls relating to the Erskine Park Employment Area have been implemented through State Environmental Planning Policies, the Local Environmental Plan, Development Control Plans and Planning Agreements. At times the provisions of these various levels of control have apparently been inconsistent, especially in relation to the Jacfin site, and this has led to further disagreements between the land owner and the relevant planning authorities in relation to the status of the planning provisions applying to the site.

7.4 Extent of the Biodiversity Corridor on the Jacfin Land

One of the major areas of conflict between the authorities and the landowner has related to the extent of the area on the Jacfin site to be dedicated to the proposed biodiversity area and corridor connecting South Creek to Ropes Creek through the EPEA. This corridor was originally identified in the Biosis report prepared for Penrith City Council in 2000. Over time, both the objectives of the corridor and its location have changed considerably through the Biodiversity Management Plan (BMP) and planning agreements, but not in the relevant Development Control Plan (DCP). The extent of the area proposed on the Jacfin site however has remained as originally defined.

7.5 Access to the Jacfin Land

The original access route to the Jacfin site became part of the proposed biodiversity area and as a result Jacfin had to negotiate a new access route to their site over a neighbouring property. This new access point was on land shown in the DCP as part of the biodiversity area and as a result Jacfin proposed a 11m wide bridge crossing part of the biodiversity area on adjoining land to access the site. A cul de sac head was proposed at the entry point to the site within the biodiversity area shown in the DCP.

7.6 Stormwater and Water Treatment on the Site

Because of changes recommended in the DoP report on the project application it was necessary to include a condition of consent requiring the revision of the stormwater management system for the project to the satisfaction of the Director General prior to the commencement of construction on the site. Penrith City Council expressed concern that the system should be revised prior to the granting of approval to ensure that it could be satisfactorily implemented on the site.

7.7 Off set Proposal

A further condition of consent recommended by the DoP for the application related to the preparation and implementation of an Offset Strategy for the project to the satisfaction of the Director General for the conservation of at least 7ha of land adjacent to Ropes Creek. The exact location of the land was not identified in the recommended conditions of consent.

8 EQUITY ISSUES

There are significant differences between the parties involved in planning for the biodiversity corridor through the Erskine Park Employment Area (EPEA) and adjoining lands. These have been put to the Commission mainly by Jacfin and Penrith City Council during briefings at Penrith on 26 August 2009. It is also apparent reading the documentation and in briefings from the Department of Planning (DoP) that equity issues arise with other parties involved.

Jacfin has not been involved in the negotiations between the Council, DoP, the Department of Environment, Climate Change and Water (DECCW) and other land owners in the EPEA to develop the Biodiversity Strategy 2005 and establish the current Biodiversity Management Plan (BMP 2006). The BMP 2006 establishes the biodiversity corridor through the EPEA and specifies the amount and shape of land to be given up by landholders for the corridor. Where the corridor passes the Jacfin site, on land owned by parties to BMP 2006, it reduces in width to 40m at its narrowest point (the northern apex of the triangular-shaped Jacfin lot). According to the Council and DECCW the land designated for the biodiversity corridor on the Jacfin site in 2000/2002 and contiguous with the corridor land designated in BMP 2006 is essential for effective functioning of the corridor in order to provide a minimum width of 100m as the corridor passes the Jacfin site. Penrith City Council issued a DCP in 2006, showing the Jacfin 'corridor' land as biodiversity area. The Commission understands that the 2006 DCP Map 3 was unchanged from the map in the 2002 DCP in so far as it related to the Jacfin land. Jacfin has claimed it was not involved in these decisions or the preceding negotiations. Why Jacfin has not been involved is disputed. The Commission does not consider it is in a position to make a judgment on the history of events leading up to this situation or on equity issues arising from dealings between the parties.

The parties to the BMP 2006 agreement have been able to rationalize the shape of their land contributions to the biodiversity corridor, thereby yielding shapes of developable land which are more amenable to industrial and commercial purposes.

Jacfin have argued that their original site access corridor from the west was assumed into the biodiversity corridor without consultation with themselves. Again, the Commission does not consider it is in a position to make a judgement on this issue. In any case, any problem of access to Jacfin land seems to have been resolved through negotiations with adjoining land owners.

Penrith City Council have advised that other parties to the BMP 2006 agreements may withdraw their commitment to be part of the agreement if the 'corridor' land across Jacfin's site is not preserved for the corridor. The Commission has not taken account of this advice in making its recommendations.

These matters constitute the main equity issues involved in resolving the Jacfin application. However, it is apparent that for a considerable period there have been differences between many of the parties involved and these may have influenced the processes which have led to the present situation.

While the Commission would not wish to endorse any serious inequity through its recommendation to the Minister nor would it be totally unmindful of equity considerations, it does not consider itself enabled or equipped to test or resolve the differences involved on equity grounds. Accordingly it has made its recommendation on planning and environmental grounds.

9 PLANNING CONTROLS

The nature of the precise planning controls applying to the site was a major issue of difference between the applicant and Penrith City Council. The Commission understanding of the situation is as follows.

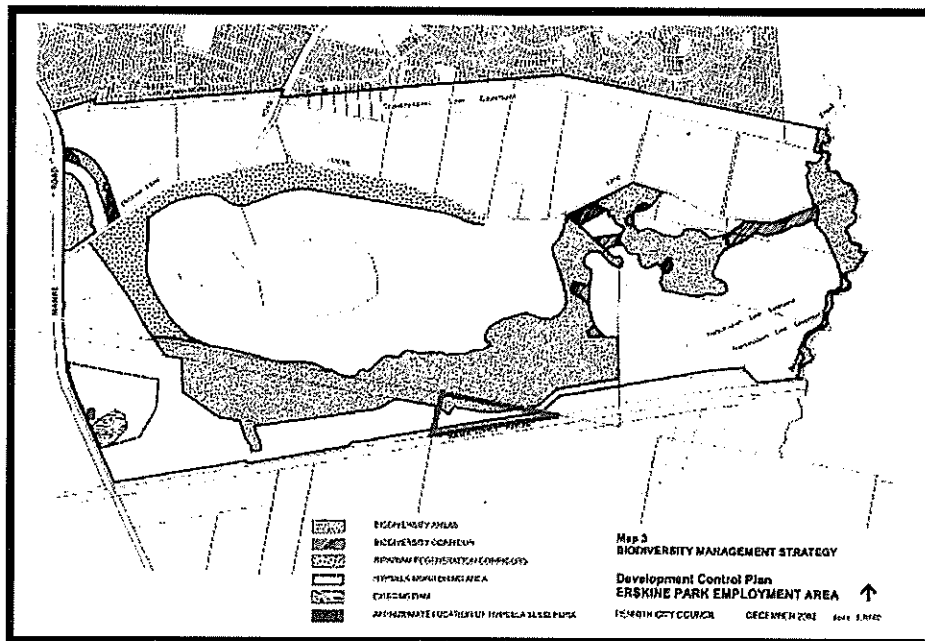
The site is currently zoned IN1 under the provisions of State Environmental Planning Policy (Western Sydney Employment Area) 2009 (SEPPWSEA). cl 18 (1) of the SEPP provides as follows:

"Except in such cases as the Director-General may determine by notice in writing to the consent authority or as provided by clause 19, the consent authority must not grant consent to development on any land to which this Policy applies unless a development control plan has been prepared for that land"

Cl 18 (6) provides as follows:

"For the purposes of this clause, a development control plan is taken to have been prepared for so much of the land to which this Policy applies as is identified as the "Erskine Park Employment Area" under the Penrith Development Control Plan 2006 (approved 21 August 2006 and as in force on 15 December 2006)".

DCP 2006 includes the following plan:



This plan shows a substantial biodiversity area on the Jacfin site.

The status of this plan has been questioned by the applicant in view of the fact that in 2005 various landowners in the employment area (not including Jacfin) got together and prepared an alternative biodiversity strategy and management plan for their land. In 2007, this alternative was accepted by the State Government and Penrith City Council and formalised through a number of planning agreements. Development consents have subsequently been granted to development on those sites subject to the alternative strategy and management plan on the basis of the provisions in the 2006 BMP.

The Commission is of the opinion that the 2006 BMP did not relate to the Jacfin site. As a result the site was not included in the BMP although it was included in the 2005 Strategy. This cannot be taken to mean that the proposed biodiversity area was removed from the site. Part of the Jacfin site is shown in the 2006 DCP as biodiversity area and as such this provision must be taken into consideration in the assessment of any application relating to the site. The Commission could not find any evidence that consideration had ever been given to removing the proposed biodiversity area from the DCP as it related to the Jacfin site.

The Commission accepts that the strategic nature of the biodiversity areas and corridors has changed over the years as a result of further studies and the adoption of the 2006 BMP and

as such considers that this change should be taken into consideration when considering the relevance of the DCP provisions in relation to the development of the site.

10.0 BIODIVERSITY AREAS/CORRIDOR

A key issue is the impact of the Jacfin proposal on the biodiversity corridor which is planned to run through Erskine Park Employment Area (EPEA). An intention to link the parallel north-south riparian zones associated with South and Ropes Creeks through a biodiversity corridor has long been espoused by Penrith City Council and the Department of Environment, Climate Change and Water (DECCW) and its predecessor organisations. The provision of biodiversity or conservation connectivity between areas of remnant vegetation is well established in conservation practice (Bennett 1999).

Research commissioned by the Council identified tracts of land suitable for such a corridor through the proposed EPEA (Biosis 2000). The boundaries of the 'corridor' lands appear to have been largely determined by existing topographic and ecological features, such as the routes of unnamed watercourses. Council incorporated these tracts into its DCP 2002 as a biodiversity corridor through the EPEA.

Subsequently a group of landholders in the EPEA (holding the majority of the estate land) developed an alternative Biodiversity Management Plan (BMP 2006), based on a further ecological input. This identified an alternative biodiversity corridor running through the EPEA that yielded a greater proportion of land for development while still preserving what was considered by the authorities concerned (Council & DECCW) to be an adequate allowance for the biodiversity corridor. Arrangements to establish and maintain the management plan were agreed by these EPEA owners with the relevant authorities including Council and DoP. Jacfin was not a party to the development of this alternative arrangement and none of its land was included in the BMP 2006. Council retained in DCP 2006 the land identified as part of the original (2000/2002) biodiversity corridor on the Jacfin site, being 1.8 ha of the total 4.18 ha area.

The biodiversity corridor identified in BMP 2006 on land adjacent to the Jacfin site narrows to about 40m at the northern apex of the triangular-shaped Jacfin land. (This is the dimension scaled from the enlarged sketch provided to the Commission by the Council as part of its submission. Note that the DoP report refers to a 50m width in this context, which is located at a point further east on the Jacfin land). With the provision of a 10m strip along approximately 280m of the northern side of the Jacfin land, as agreed by Jacfin with DoP, the minimum width of the biodiversity corridor at the apex of the Jacfin land would be 50m.

The Commission has focused on the biodiversity corridor design as a long term objective. Much current remnant vegetation on the EPEA site has been removed, water ways have been re-channelled and the land contours significantly changed as sites are prepared for industrial development. The biodiversity corridor will be re-established and replanted under the BMP arrangements. In the short term it seems inevitable that any existing connectivity will be impeded.

The key issues the Commission has considered in reaching its recommendations are, firstly, limitations on the width of the biodiversity corridor to maintain its effectiveness and, secondly, alternative layout arrangements which may contribute more effectively to the biodiversity corridor while maintaining a reasonable developable area for the proposed use.

10.1 Width of the corridor

There have been several biological studies/inputs to the biodiversity corridor through the EPEA:

- The original biological report (Biosis 2000) to Council identified a larger corridor area than that in the BMP 2006. It identified a 50m-wide and a 100m-wide corridor to be established to complete the linkage with Ropes Creek (Fig 5, Biosis 2000).
- The biological input to the BMP 2006 was the *Biodiversity Strategy 2005: Erskine Park Employment Area*, prepared for the landowners by HLA-Envirosciences Pty Ltd. It identified a minimum width for the biodiversity corridor of 100m (p12).
- The biological inputs by the proponent's consultant (Whelan Insites 2008, 2009 a & b) have argued that a 40m corridor is adequate, citing direct experience and literature references.
- Responding to the DoP request for advice, DECC initially acquiesced to the project as proposed (letter 28 August 2008), but subsequently (letter 12 December 2008) advised that the 'corridor' land previously identified on the Jacfin site should be retained as part of the corridor as a minimum. Council has provided the Commission with earlier advices from DECC in respect of biodiversity corridor land on the Cumberland Plain (letters to Council dated 8 April 2005 re: EPEA - Biodiversity Strategy 2005 and 28 October 2005 re: Glenmore Park Stage 2 - biodiversity corridor) to the effect that the preferred width for such corridors is 200m but that the 100m widths proposed were the minimum for functionality.
- SKM was commissioned by DoP in 2009 in the course of assessment of the proposal to review it from a biological perspective. SKM concluded that a width of only 40m was likely to "limit the long term effectiveness" of the biodiversity corridor, but considered that the proposed 10m strip along the northern boundary of the Jacfin site was appropriate to maximize the effectiveness of the corridor.

A commonly cited precept in design of biodiversity or conservation corridors is "the wider the better" and "as wide as possible" (Bennett 1990, p140; MacDonald 2003)¹. This precept seems to have been at work in this case. But the Commission was unsure as to whether its application precisely defined a minimum effective width or a desire to resist any further narrowing.

In discussing the design of corridors, Bennett, an Australian expert (1990, 1999), stresses the concept of connectivity and linkages rather than corridors specifically. The desirable features for linkages depend on a range of biological and socio-political issues which differ widely from case to case. "There is no single uniform answer." "Linkages are established for a wide range of purposes and consequently there is no uniform set of guidelines for their design and management" (1999, p 139 & 151). He cites Harris and Schecks' 'rule of thumb' to the following effect: for animals of known behaviour and corridors functioning over short periods, widths can be measured in metres; for species of known biology and corridors functioning over years, widths should be measured in 100's of metres; and for movement of entire assemblages when little is known of the biology and/or for corridors functioning over decades, widths should be measured in kilometers (p. 139). This suggests that the design of biodiversity corridors is not a matter where precision is significant.

The South Australian Forestry Corporation has established guidelines for its South Eastern region calling for 80m wide corridors where there is a single linkage and 40m when there are

¹ The universal application of the precept has, however, been questioned (Andreassen et al. 1996 *Journal of Applied Biology*, Vol 33, No 1, pp 63-70), although "there is no suggestion that reducing the corridor width is beneficial to any species targeted for conservation" (MacDonald p 44).

multiple linkages (Horn 2003). It seems likely that linkages in this situation were influenced by the availability of roadside verges as corridors. MacDonald's review (2003) mentions 100m corridors in several contexts. Hendry (1999) also cites 100m corridors as desirable in some contexts. However, many researchers refer to narrower corridors functioning effectively when circumstances limit the width available.

The proposed biodiversity corridor crossing the EPEA has several possible choke points or points of restriction in addition to that at the Jacfin site. The two road crossings (Mamre Road and Erskine Park Road) and one foreshadowed crossing on the eastern side of EPEA present significant barriers to wildlife movement. To the extent that the value of this biodiversity corridor is generally supported and that it already faces significant barriers, it would be wise to minimize any restriction imposed by the Jacfin development.

On balance the Commission considers it appropriate to seek to achieve a width approaching 100m, to the extent feasible without unduly compromising development, for the biodiversity corridor where it passes the Jacfin site. The Commission also notes that the narrow section of the corridor as it passes to the north of the Jacfin land is about 250m long and that sections which open out significantly lie immediately to the east and west of this 'throat'.

10.2 Alternative layouts

The land in EPEA has been identified as an industrial and commercial growth centre for many years. Accordingly the Commission concurs with the DoP judgment that a balancing of development and ecological goals is appropriate on planning grounds. This has clearly been a guiding principle in the modification to the original biodiversity management approach between 2002 and 2006 as agreed by all participating parties.

The area designated for conservation as part of the biodiversity corridor arising from the original Biosis 2000 study is irregular in shape and follows topographic contours. In the Jacfin site, it occupies an area of approximately 1.8 ha. If it were taken as the effective northern boundary to development on Jacfin site it would provide a corridor width of 100m at its narrowest point. Other sites have been able to regularize the shape of developable area in giving land for biodiversity purposes and there seems no reason why Jacfin should not have the same opportunity.

To develop the site without encroaching on the area designated in the DCP 2006 would require more than 1.8 ha to be given up, probably over half of the total area on the 4.2 ha site. The Commission questions whether such a constrained area would support a viable development.

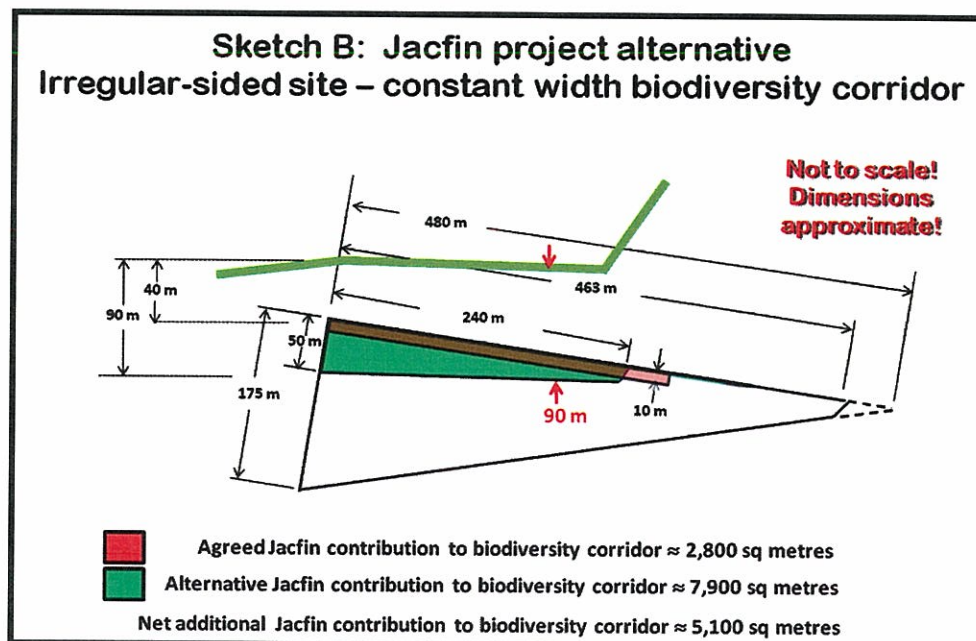
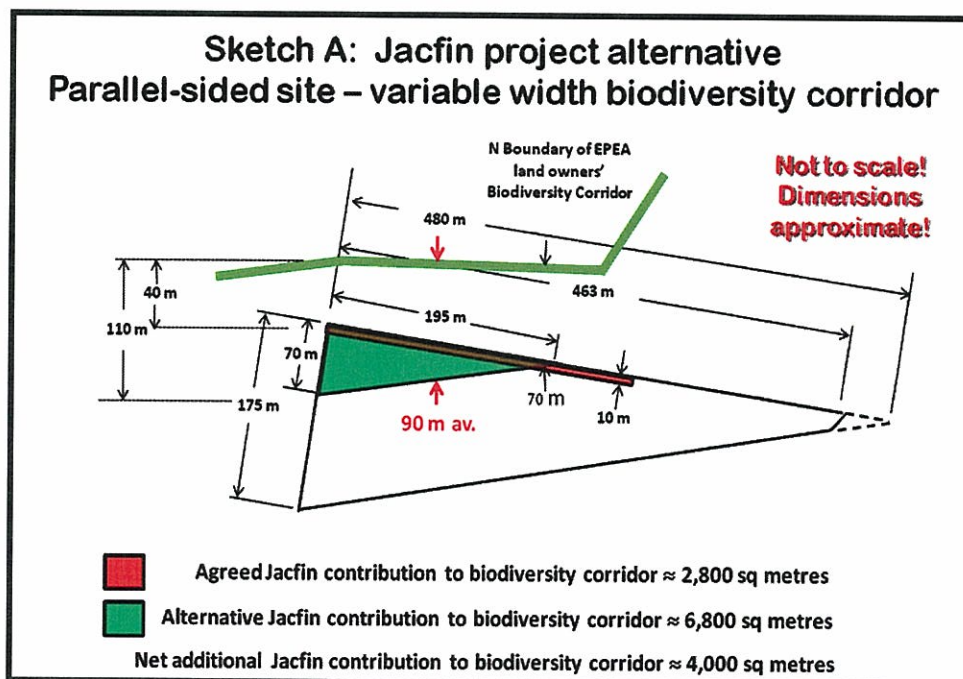
The Commission considers an alternative layout could take advantage of the triangular shape of the Jacfin site and enhance the biodiversity corridor, without requiring excessive sacrifice of developable land. In principle the triangular apex could be removed from the northern part of the site with the resultant shape becoming a four-sided figure, either an irregular trapezoidal shape or an irregular quadrilateral. This would enhance the corridor width in the most effective manner in terms of width-for-land-given-up.

The Commission has made some approximate calculations to demonstrate the concept, based on achieving an average width of 90m through the throat area of the biodiversity corridor as shown in sketches A and B. This alternative layout would require a re-design of the entrance to the site and the maneuvering apron to the west of the warehouse building. Arrangements for adequate passage of wildlife would also be needed. The presumption in this re-design would be that the 10m strip along the northern boundary would no longer be required as a contribution to the biodiversity corridors. This is estimated to have occupied about 0.28 ha.

If the layout resulted in a lot of developable land with parallel north and south sides (Sketch A), then the width of the corridor at the eastern entrance to the 'throat' would be about 70m and at the western entrance about 110m, with an average width of 90m. Allowing for the 'returned' 10m strip, the additional land Jacfin would need to give up to achieve this increase in corridor width would be 0.40 ha.

If the layout resulted in a biodiversity corridor with parallel sides (Sketch B), then the width of corridor would be 90m, the developable land would have an irregular quadrilateral shape. Allowing for the 'returned' 10m strip, the additional land Jacfin would need to give up to achieve this increase in corridor width would be 0.51 ha.

The Commission considers that re-design along these lines would represent a better compromise between conservation and development than the design as proposed.



11.0 ACCESS TO THE SITE

The proposed access point to the site in the project application is via an extension of the existing Templar Road. A bridge is proposed across the realigned creek and proposed biodiversity corridor of a maximum width of 11m, the road terminating in a cul de sac head adjacent to the entry point to the site. Manoeuvring and hard standing areas are provided along the western frontage of the warehouse building.

As the Commission has concluded that the biodiversity corridor should be widened in this area, it will be necessary either to relocate the cul-de-sac head to the south out of the biodiversity area or remove it completely. The Commission was unable to ascertain the need for a cul de sac in this area in view of the extensive manoeuvring areas to the south adjacent to the warehouse. It could be possible that the cul de sac head could be removed from the plans.

The road within the biodiversity area should be a maximum of 11m wide. An additional crossing for terrestrial wildlife should be provided in the biodiversity corridor equivalent in distance across the corridor to the proposed bridge over the creek. This can be either another bridge or a series of tunnels.

12.0 STORMWATER AND WATER TREATMENT

The application as submitted proposed compliance with the DCP 2006 and DoP requirements for rain water harvesting and control of the quantity and quality of stormwater runoff from the site to water ways. This involved installing a tank for rain water harvested from roof areas and collecting stormwater from the site and treating it through a gross pollutant trap, two bioretention swales and a 'rain garden'. The total area of the swales and garden amounted to about 0.1 ha for the 4.2 ha site (Worley Parsons 2008 *Appendix H, Environmental Assessment*).

It is not appropriate for stormwater management facilities to be installed in a biodiversity corridor, especially one as constrained in width as that on the northern boundary of the Jacfin site. So any retention and treatment facilities should be installed on developable land on the site.

Concerns have been raised in submissions about water quality impact from the development. The Commission shares these concerns in general for the EPEA. While 'water sensitive urban design' principles have been espoused in the DCP 2006, requiring harvesting and use of 'clean water' and detention and treatment of stormwater runoff, it is important that the very best methods of management are used to minimize impacts on both the flow and quality of receiving waters. The creek being reformed on adjacent property flows into South Creeks, a tributary of the Hawkesbury-Nepean River, a river system already highly stressed for nutrient pollution.

The applicant indicated to the Commission at the briefing on 26 August that water management arrangements submitted with the EA needed to be re-designed. There may be further need for re-design following the Commission recommendations. The Commission considers the design should be re-worked to the stage of allocating space for the treatment facilities, specifying the parameters for the treatment facilities and designating the points and mode of release of stormwater to waters, before consent is granted. In particular the Director General should satisfy himself that the pollution reduction targets can be achieved with the size of bioretention swales and garden proposed. As there is a tendency for the

claimed pollution removal capability of such devices to be optimistic, some credible evidence should be provided by the applicant of performance in similar situations.

Relying solely on a condition of approval to achieve the goals of water management is likely to be compromised if not enough space is allocated on the site in the first place for this purpose.

13.0 OFF – SET PROPOSALS

Whilst not opposing the proposed condition relating to the provision of an offset corridor on the site, the Commission considers that the land to form part of the offset should be identified in the consent condition.

14.0 CONCLUSIONS OF THE COMMISSION

The Commission has come to its conclusions in relation to the issues raised on the basis of planning and environmental considerations and they are as follows:

1. The site can be developed for a warehouse use as permitted by the zoning of the site while at the same time providing land, which appears on the basis of available evidence, to be adequate to enable the proposed biodiversity corridor to satisfactorily function
2. The Commission could not find any evidence that consideration had been given to the removal of the proposed biodiversity area from the relevant Penrith City Council DCP as it related to the Jacfin site and therefore the provisions of the DCP are a relevant planning consideration in relation to determining the application
3. The Commission accepts that the nature of the biodiversity area and corridor in the Erskine Park Employment Area has changed over the years since it was first proposed as a result of the outcome of further studies
4. The Commission considers that a redesign of part of the development proposal is required to provide a better compromise between conservation and development in relation to the provision of the biodiversity corridor
5. Access to the site needs to be redesigned to remove the cul de sac and internal roads from the biodiversity corridor land.
6. The proposed road through the widened biodiversity corridor needs to make provision for wildlife to traverse this barrier.
7. The stormwater concept for the site needs to be designed to a stage to provide certainty that the scheme can be implemented without impacting on the biodiversity corridor
8. Offset areas should be identified in the conditions of consent

15.0 RECOMMENDATION TO THE MINISTER

The Commission has concluded that its recommended proposed changes to the development proposal are such that they cannot be dealt with by the imposition of additional conditions of consent. As a result, it is recommended that the Minister return the application to the DoP and request that the applicant be informed of the findings of the

Commission and requested to submit revised plans to the Director General prior to the issue of the consent for the project.

The plans are to make provision for:

- a biodiversity corridor which, taken together with committed land on adjacent properties, has an average width across the narrowest section adjacent to the Jacfin site (the 'throat') of at least 90m and a minimum width at any point of 70m;
- The road within the biodiversity area should be a maximum of 11m wide for additional crossing for terrestrial wildlife in the biodiversity corridor should be provided equivalent in length across the corridor to the proposed bridge over the creek. This can be either another bridge or a series of tunnels.
- No other works associated with the operation of the development, including the cul de sac and any internal access roads, are to be located within the biodiversity area.
- Land identified as biodiversity area should be landscaped and planted in accordance with the relevant controls (DCP 2006 and BMP 2006).
- The redesign of the building to accommodate the reduced development area
- The provision of a concept for stormwater disposal on the site which indicates to the satisfaction of the Director General that the proposed scheme can be accommodated on the site with acceptable performance.

The DoP is to amend its recommended conditions of consent as necessary to accommodate these changes.



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PAC Member



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