



Our reference: P-564673-G8R1
Contact: Sandra Fagan
Telephone: 02 4732 7992

16 October 2023

Attn: Bruce Zhang
Email: bruce.zhang@planning.nsw.gov.au

Dear Bruce Zhang,

**Penrith Council comments on Modification Report- SSD-10448-Mod-4
– Modification Application to Aspect Industrial Estate at 804-882
Mamre Road, Kemps Creek, NSW, 2178**

Thank you for providing Penrith City Council with the opportunity to comment on the above-mentioned modification proposal.

The proposal includes changes to the water management strategy for the AIE site, by incorporating land at Mirvac's Elizabeth Enterprise Precinct (at 1669A and 1669-1723 Elizabeth Drive, Badgerys Creek). The proposal justifies this by stating that it will enable development to continue at the AIE site in advance of a regional stormwater scheme.

Council has reviewed the Modification Report dated September 2023 and Appendices A-D and provides the following advice for the Department's consideration.

1. Planning Considerations:

The proposed stormwater management in this modification application is an unusual approach. It seeks to rely on the inclusion of existing undeveloped, pervious land in the Elizabeth Enterprise Precinct (EEP) to meet compliance targets (as an interim solution) to allow development on the AIE site to proceed prior to a regional waterway strategy being adopted.

Although both the AIE and EEP sites are within the same contributing catchment, the EEP site is not contiguous with the AIE site, did not form part of the original SSD-10448, and is not located within the Mamre Road Precinct, thereby having different planning controls.

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The Department will need to be satisfied that the approved SSD can be modified in a manner that permits the annexure of land to the approval via modified conditions of consent. It raises the consideration as to whether the description of the land that forms the 'proposed development' can be modified through this MOD 4 application versus whether existing conditions of consent can be modified to alter the 'subject site'. The Department will also need to be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted.

The proposed approach also raises concerns about staging of development, and the ability to lock-in assurity at every stage of both the subject developments (a number of warehouse developments at AIE) and future development in the EEP.

Mirvac are progressing development of the EEP site, having obtained SEARS for the Concept Masterplan Stage 1 (SSD-19618251) and are at EIS preparation stage. The SEE to MOD 4, at page 45, states that SSD-19618251 will be seeking approval for a Concept and Stage 1 development for eight industrial buildings and subdivision of the site.

The Department should therefore be satisfied about how the stages of development at the EEP site fit with the proposed (interim) water management strategy for the AIE site, and how the potential for two SSD approvals operating at the same time on the EEP site can remain consistent with each other.

The Department should also be satisfied as to the effectiveness of the suggested and/or imposed conditions of consent. This is particularly in relation to the correct checks and balances in terms of demonstrating the attainment of waterway health targets, as well as the triggers for potentially allowing development of approved and future warehouse buildings on the AIE site, as well as on the EEP land that is to be retained in its undeveloped state.

For example, it is noted that page 29 of the SEE provides a variety of warehouse options associated with Phase 2 of the proposed interim water management strategy. The suggested condition on page 32 of the SEE (additional condition A23) is potentially onerous as it states that a condition of consent must be applied to any future approval for development works at the EEP site. It also suggests a condition to be imposed on any concept consent issued for EEP under SSD-19618251.

Further, there does not appear to be a 'fall-back/failsafe' position should the staging outlined in the SEE not follow the proposed sequence.

It also appears that this proposed approach to stormwater management does not meet the Technical guidance for achieving Wianamatta-South Creek stormwater management targets. This is discussed below. This proposed approach does not appear to comply with the Mamre Road Precinct DCP.

The Department should discourage the applicant from submitting further applications for future development that relies on the proposed MOD 4 modification, until such time as this current application is finalised. The outcome of this Modification application will have implications for future development on Lots 2, 6, 7, and 8, which all rely on the proposed changes to the water management strategy. This would also potentially allow the Department to impose relevant conditions on future warehouse SSDA's which align with the eventual accepted position for MOD 4.

2. Development Engineering Considerations:

Council's Development Engineering team have reviewed the proposal and recommend that any approval include appropriate restrictions and a positive covenant on the EEP site as relevant to satisfy DPIE and Sydney Water.

3. Waterways Considerations:

A review of the stormwater strategy indicates that in addition to providing stormwater measures in the form of GPTs and rainwater tanks on AIE on a staged basis for the future buildings, the proposed modification also seeks to incorporate 132Ha of undeveloped land at Mirvac's Elizabeth Enterprise Precinct at 1669-1723 Elizabeth Drive, Badgerys Creek (Lot 100 DP1283398 & Lot 741 DP810111) (EEP) within the AIE concept approval.

The report notes that the EEP site is owned by Mirvac and is located directly adjacent to Wianamatta-South Creek and upstream of the Mirvac AIE site. The EEP site is proposed to be included within cumulative MUSIC modelling to satisfy the stormwater quality, quantity, and flow targets to enable progression of the

abovementioned development on AIE in advance of a regional stormwater scheme for the Mamre Road Precinct. The report notes that no works are proposed within the Mirvac EEP site as part of the Mod 4 application.

Under the Mod 4 application, the EEP site is proposed to be retained in its undeveloped state unless either of the following:

- A regional stormwater scheme is delivered within the Mamre Road Precinct;
- An alternative interim stormwater strategy is approved by DPE to enable development within the AIE site whilst maintaining compliance with waterway health targets;
- Any other reason as approved by DPE (i.e., interim catchment wide approach currently being investigated by DPE).

From a review of the information provided in support of the application, it is not clear how the proposed approach is fully compliant with the intent of the Technical guidance for achieving Wianamatta-South Creek stormwater management targets. The guideline includes case studies for the interim arrangements for compliance with the absence of the regional scheme. This approach appears to be a departure from the guidelines.

In the case the department decides to approve the proposed modification, it is likely that restrictions on use and positive covenants and the like will need to be in place to ensure the EEP land cannot be developed. It is noted that some proposed conditions have been put forward in the Modification report around this.

In summary, the proposed approach appears to be a departure from the Technical guidelines for achieving Wianamatta-South Creek stormwater management targets, however, the Department of Planning and Environment (as applicable consent authority) and Sydney Water must be suitably satisfied that the DCP waterway health requirements are met, and the stormwater systems design is prepared in accordance with the Technical Guidelines for achieving Wianamatta-South Creek stormwater management targets.

It is acknowledged that the approach may provide a pathway forward in the absence of the regional scheme. It would be beneficial if the regional scheme and basins to support developments in the various precincts could be delivered as a priority.

It is also noted that no updated engineering plans were submitted in support of the modification and the proposed conventional biorientation system has now been proposed in place of the previously approved Filterra basin. Further there are no plans to support the assumptions around the MUSIC modelling for the EEP land.

Further, there is no reference to passively irrigated street trees. It is acknowledged this was not included in the consent for this development, however, it is understood that Sydney Water's regional scheme did have some reliance on them being provided. Clarification is still required on what was finally adopted for the regional scheme in terms of stormwater management systems to account for the removal of passively irrigated street trees that were outlined as being required in the previous schemes modelling and Sydney Water's Draft Stormwater Scheme Infrastructure Design Guideline, Dec 2022. I am of the view that it is appropriate that an updated strategy for the regional scheme also be provided.

Should you wish to discuss this matter further, you may contact me on 02 4732 7992.

Yours sincerely,



Sandra Fagan
Principal Planner