



Our reference: P-666379-Y7M3  
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24 April 2024

Attn: Pamela Morales

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Dear Pamela,

**Council Response to Environmental Impact Statement – SSD-23480429  
– Westgate at 253-267 Mamre Road, Kemps Creek, NSW, 2178**

Thank you for providing Penrith City Council the opportunity to comment on the abovementioned Environmental Impact Statement (EIS).

Council staff have reviewed the information referred for comment on 20 March 2024 and provides the following advice for the Department's consideration.

**1. Planning Considerations**

- a) DPHI should consider if the current road infrastructure is suitable to support and service the proposed development, both in the short and longer-term scenarios. The existing road infrastructure in its current form is likely to be unsuitable to accommodate the proposed development. The MRP DCP requires consideration of the cumulative implications on existing and planned infrastructure.
- b) Given this concern about road infrastructure and capacity, DPHI should consider whether the proposed staged construction should be endorsed at this time. It is noted that the proposed development seeks staged construction of four warehouses (contained within three buildings) with a total gross floor area of 45,530 square metres. Staged construction should only be endorsed if it can be demonstrated that the required infrastructure will be delivered at the relevant stage, and whether this is in an interim solution or final design.
- c) In addition, it appears that the proponent is relying on road upgrade works being negotiated, approved, and completed by the LOG-E group for the Aldington Road and Abbots Road corridors,

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including intersections. The traffic assessment for the proposed development is based on the (future) road upgrades being carried out. In principle, this may not represent orderly development of land. DPHI should consider the mechanisms for staging development which is dependent on future road upgrades if approval is granted prior to the road infrastructure upgrades occurring.

- d) The proposed development also includes the construction of a portion of the Aldington Road intersection (shown in green on Figure 2 of the EIS, Page 19) and a portion of the widening of Aldington Road. The EIS states that the remaining portions of the intersection will be carried out by neighbouring landowners, including Fife Capital (270 Aldington Road). Therefore, it appears that the only proposed access into the SSD site is subject to a separate approval by another landowner. Regarding this, it is understood that Fife have lodged a new Development Application for Council's consideration, relating to works at 270 Aldington Road. This Development Application is in the very early stages of being checked for adequacy. Any piecemeal construction of an important intersection and distributor road is problematic. Either this SSD proposal should include the required intersection works (with the relevant landowners' consent) or determination of the SSD should not occur until the relevant application relating to the intersection works is determined and conditions about staging are used.
- e) Discussions with Council's City Planning Team should also have regard to the statements made at paragraph 3.16 of the EIS (page 54) relating to 'Voluntary Planning Agreement'. The statement indicates an offer to enter into a VPA for certain road upgrades and construction, including the half-width east-west local road, and the north-south local road. The EIS appears to anticipate section 7.11 offsets against the value of the construction of the local roads on the site. While this is a matter for Council's City Planning Team, the background report to the Mamre Road contributions plan (at chapter 6, page 14) does not identify the local roads on the site as being funded through section 7.11. The report specifically states that *"All Local Industrial Roads and Open Space Edge Roads are assumed to be funded and delivered by developers and do not form part of this Section 7.11 Plan"*. Figure 7 of the background report identifies the applicable section 7.11 transport infrastructure.

- f) The proposal includes a half-width road construction for the proposed East-West local road running along the southern boundary of the site, adjoining 269 Aldington Road. A half-width road construction is not supported for the following reasons:
- i. Heavy vehicles are unable to turn into the driveways without crossing onto the other side of the road.
  - ii. Due to the natural terrain, retaining walls or batters are generally required along the centre of the ultimate road (i.e. common boundary). Any batter would generally extend onto the adjoining property and will require landowners' consent.
  - iii. Any retaining wall located clear of the adjoining property to the south would be located within the half road pavement, thereby effectively reducing the pavement width. If the road was in fill, safety barriers would be required to prevent vehicles driving over the retaining wall, thereby reducing the pavement width.
  - iv. Any future development within the property to the south will require construction of the remaining half road, thereby requiring removal of any retaining walls and safety barriers, placing additional cost burdens upon the road construction. As the ultimate road pavement would not be homogenous (i.e. constructed by different contractors over different times), the new half road pavement would have to be 'keyed in' or 'stepped' into the old half road pavement requiring road closures to the existing old half road during construction, thereby disrupting traffic flow.
- g) The DCP Section 2.1 Mamre Road Precinct Structure Plan – Objective a) requires that the precinct develops in an orderly manner. Section 3.4 Transport Network – Objective f) encourages the orderly and economic provision of road and intersection works. Half road construction is not good orderly development nor is it economic. Further, Council is unlikely to accept the dedication of a half-width road.
- h) DPHI should consider if the adjoining site to the south, at 269 Aldington Road, will be isolated because of the proposed development. Planning principles about lot isolation should be explored and demonstrated by the proponent. Appendix II does not meet the considerations for lot isolation expressed by the relevant Planning Principle.

- i) The proposed development includes extensive fill and therefore a reliance on retaining walls. It is unclear how this achieves the objectives in the MRP DCP relating to land on ridgelines and highpoints (clause 3.2) and responding to the natural topography of the site, using tiered retaining walls, and using split level design (clause 4.4.1). DPHI should also consider the level differences between the subject site and the adjoining Frasers (Edge Estate).
- j) The proposed retaining wall at one side of the trunk drainage channel is high and is not tiered. This is likely to have a negative visual impact, particularly given the significantly raised level of the warehouses, and the restricted ability to provide for tall trees within and adjoining the drainage channel.
- k) DPHI should consider if it is a better design outcome to consolidate the driveways that traverse the trunk drainage channel. Access to warehouses 1B and 1C is separated into a truck entry (off the north-south local road) and a truck exit (via a driveway that traverses the drainage channel). Cars access the under-croft parking area via a separate driveway that also traverses the drainage channel. Given the level differences between the drainage channel and the future warehouses, and the use of retaining walls, it would be a better design outcome to remove unnecessary structures bridging the drainage channel. Therefore, the proponent should review whether truck entry and exit for warehouses 1B and 1C can be via the north-south local road, and whether car access can also be from the local road, along the western frontage of warehouse 1C.
- l) The extensive use of under-croft car parking as a design solution will negatively impact opportunities for better landscaping within the car parking hardstand areas, such as providing canopy trees. Canopy trees in hardstand parking areas can be successfully used to moderate bulk, scale, and visual appearance of buildings. However, this cannot be done in this instance given the extensive use of under-croft parking for every warehouse. The use of under-croft parking also adds bulk to the warehouse as the warehouse floor level is raised. There is also limited space available between the under-croft parking area for warehouses 1B and 1C, and the adjoining retaining wall along the drainage channel.
- m) DPHI should consider cumulative acoustic impacts, particularly as the proposed fit out works are generic, and the EIS refers to Complying Development Certificates for future tenant

requirements. Therefore, the intended occupier is unknown at this stage. This may have implications for acoustic emissions. It is also relevant that the documentation includes the likely future mechanical infrastructure required for each warehouse occupier, particularly for the proposed refrigerated warehouse 2.

- n) The south facade of warehouses 1B and 1C are articulated as a means of breaking up the long mass of that building. DPHI should consider whether a physical break or building setback/s is needed in addition to the proposed articulation through materials. The proponent should show proposed areas for future tenant signage on the southern facade (in addition to the '1C' and '1B' shown). This is relevant for the southern facade because of the detailing proposed on this elevation and the shape and outline of the shale grey profiled metal sheeting (material numbered 04).
- o) The landscaping located around infrastructure such as the tanks and pumps should not be included in the calculation of landscaped area.
- p) The front fence between warehouse 1A and Aldington Road should be further set back into the landscaped setback. Its current position will dominate the frontage of the site and limit the landscaping that should be positioned in front of the fence to assist with screening.
- q) The roofs of warehouses 1A and 1B directly adjoin the transmission easement. TransGrid should provide advice in this regard.

## 2. City Planning Considerations

Council's City Planning Department have reviewed the proposal and have raised the following considerations:

- a) The proponent has had preliminary discussions with Council on a planning agreement for the subject site. We would encourage and welcome the continuation of this discussion, noting the intended scope of works and land dedication of the proposed planning agreement in the EIS is different to discussions had with Council to date.
- b) The proposal seeks to deliver partial intersection works that will connect into Council's owned Aldington Road, therefore Council's

landowner consent is required for this portion of the works prior to any approval for this aspect of the proposal. To date Council have not provided landowners consent to the developer of this site.

- c) Council have been working with LOG-E on a Planning Agreement for the widening/upgrade works for Aldington Road. The proponent of this development has not been a party to these discussions/negotiations to date. Council seeks further details about how the proposed development connects into the road works LOG-E is proposing to undertake and how orderly and logical rollout of the infrastructure is proposed.
- d) Council does not support the partial intersection/ half Road 1 delivery into the site. This is not considered orderly and logical development.
- e) It is suggested that local industrial roads are dedicated to Council pursuant to section 9 of the Roads Act 1993. It is recommended that this is secured through any SSD approval and appropriate conditions of consent.

### 3. Development Engineering Considerations

Council's Development Engineering Department have reviewed the proposal and have raised the following considerations:

- a) The submitted Flood Impact and Risk Assessment report, notes that there will be an increase in the flood level at the upstream and downstream properties in the events of 5% AEP and 1% AEP flooding. This is detailed on the Afflux drawings provided in the report. As such, further information would be required to detail the exact flood level differences at the upstream and downstream locations for further review.
- b) The proposal includes the construction of a half road (Road 1) and the adjoining property with deliver the other half in the future. Any future development within the property to the south will require construction of the remaining half road, thereby requiring removal of any retaining walls and safety barriers, placing additional cost burdens upon the road construction. As the ultimate road pavement would not be homogenous (i.e. constructed by different contractors over different times), the new half road pavement would have to be 'keyed in' or 'stepped' into the old half road

pavement requiring road closures to the existing old half road during construction, thereby disrupting traffic flow.

- c) Half road construction is not supported as heavy vehicles are unable to turn into the driveways without crossing onto the other side of the road and using space that is beyond the intersection footprint. Also, due to the natural terrain, retaining walls are generally required along the centre of the ultimate road (i.e. common boundary) and the removal of this retaining wall for the delivery of the remaining half of the road will require significant work within the constructed half and subsequently impacting traffic flow.
- d) The DCP Section 2.1 Mamre Road Precinct Structure Plan – Objective a) requires that the precinct develops in an orderly manner. Section 3.4 Transport Network – Objective f) encourages the orderly and economic provision of road and intersection works. Half road construction is not good orderly development nor is it economic.
- e) The proposal includes works within the adjoining property to the south for the intersection at Addington Road. Owner's consent should be provided for any works within adjoining lands.
- f) Appropriate conditions should be provided to allow for the future extension of Road 2 to the north connecting to the road approved for The Edge Estate.

#### **4. Traffic Considerations**

Council's Traffic Engineer has reviewed the proposal and has raised the following considerations:

- a) The proposed development will require referral to Transport for NSW under SEPP (Transport and Infrastructure) 2021.
- b) It is understood that Transport for NSW may have raised a concern with the volumes adopted in the endorsed LOG-E model because of removing the Southern Link Road link. It is unclear whether this issue has been addressed.
- c) It is unclear when the development will become operational, noting the complexities around the delivery of the road network.

- d) The applicant should engage with neighbouring property developers regarding the delivery of the intersection at 253-267 Aldington Road.
- e) The updated modelling assessment shall be undertaken based on the agreed LOG-E model with Transport for NSW.
- f) The development is likely to require conditions to be decided by DPHI regarding staging of becoming operational until essential road infrastructure is completed.

## 5. Environmental Management Considerations

Council's Environmental Management Team have reviewed the proposal and have raised the following considerations:

- a) An Air Quality Assessment prepared by RWDI Australia (dated 26 October 2023, ref. 2105705) has been prepared to address the impacts to air quality associated with the construction and operational phases of the development. The report concluded that there would be no significant air quality impacts during construction, subject to the implementation of the proposed mitigation measures. Air quality impacts during operations were found to comply with the established criteria. The recommendations of the report should be incorporated into any approval.
- b) A Waste Management Plan (WMP) prepared by Land & Groundwater Consulting Pty Ltd (dated 25 October 2023, ref. LG2325.01) was provided as a part of the EIS. The WMP addressed the demolition, construction and operational phases of the development. Though disposal facilities were not identified, waste volume estimates were included, and recycling and/or disposal methods were nominated. This is satisfactory, and appropriate waste management practices can be captured through conditions.
- c) The documents provided do not confirm that the entirety of the site is suitable for the proposed use, identifying areas that require remediation, as well as those that still require further investigation and/or validation. However, ultimately, Chapter 4 of the SEPP requires that the consent authority be satisfied in



relation to the site's suitability for the proposed use. Nevertheless, the Environment Team has several concerns regarding the overall approach put forward in relation to the proposed remediation works:

- i. It is recognised that Section 1.2 of the EIS identifies that the proposed development includes remediation works, with Section 3.12 including it as a part of the Stage 2 works. However, given the location of the areas identified as requiring remediation, as well as the additional investigations required to be carried out to fill data gaps, it is not considered appropriate that the remediation works be carried out as a part of Stage 2. The description provided of the staging does not identify when the required demolition and bulk earthworks will be undertaken, and the staging appears to be an approach to capture stormwater management requirements, however the required contamination investigations and remediation works need to be carried out (at least in part) before these site preparation works can begin.
- ii. Section 3.5 of the RAP has a summary of remediation required, and Section 5.3 explores the remediation options available. However, Section 5.4 of the RAP only addresses AEC1, and the means of remediating other impacted soils is not clearly selected. For example, Section 6.1 mentions that other areas of environmental concern will be excavated, and it is assumed that only asbestos impacted soils are to be placed in any containment cell, or treated on site, with other impacted soils to be disposed of off-site (as per third bullet point of numbered point 4). DPHI should consider whether a Supplementary RAP is required to be submitted for approval should remediation of other contaminated soils (other than ACM impacted soils) be found to be necessary.
- iii. Section 6 of the RAP outlines the remediation methodology, identifying that the remediation of asbestos impacted soils from AEC1 could be addressed through placement in a containment cell or through a treatment process. While some level of detail is then

incorporated in this section of the RAP, there is a lack of certainty regarding the proposed remediation method, as the RAP does not commit to a specific remediation approach. Given the application is seeking consent for these works, a specific remediation method should be nominated.

- iv. Further to the above, should it be proposed that materials be retained on site, as would be the case with a 'cap and contain' strategy, Council would usually require significantly more detail to be incorporated into the RAP than what has been provided. For example, a specific location for the cell would need to be selected, and construction drawings provided, along with a Draft Long-Term Environmental Management Plan (LTEMP) for the ongoing management of the cell. In addition, Council would include a condition of consent requiring restrictions to be placed on the land title referencing the containment cell, and the requirements for ongoing management (i.e.. the implementation of the LTEMP). Council would not support locating the containment cell beneath future public land (Council-owned land), and the proximity to certain site features would also require consideration.
- v. The dewatering requirements as they pertain to biodiversity and water quality have been referenced in the EIS, however the contamination considerations have not been recognised. The PSI, DSI and RAP all make some comment about the need to address potential contaminants of concern present in the dam waters

- d) The Douglas Partners report documents a hazardous building materials assessment undertaken of the development site. Several hazardous materials were identified as being present on site and recommendations for their appropriate management were put forward. Compliance with this recommendation should be ensured through conditions of consent.
- e) The Benbow Environmental report has confirmed that the various thresholds within the SEPP 33 guidance documents have not been exceeded or triggered, and in turn, further

assessment (such as a Preliminary Hazard Analysis) is not required.

- f) The site is not yet connected to Sydney Water's sewerage infrastructure. It needs to be ensured that this infrastructure will be delivered, and that the site can connect, prior to the release of an Occupation Certificate for the development.

## 6. Biodiversity Considerations

Council's Biodiversity Team have reviewed the proposal and have raised the following considerations:

- a) The Biodiversity Assessment has assessed threatened entities listed under the EPBC Act. It is noted that in March 2024 approval under the Commonwealth was granted and therefore further consideration of EPBC matters are not required.
- b) Table 4-1 states 'The CPCP Mitigation Measures Guideline only applies to land within the Greater Macarthur Growth Area, and Greater Penrith to Eastern Creek Investigation Area. Therefore, this clause does not apply.' The site is located within the Greater Penrith to Eastern Creek Investigation Area therefore the development needs to satisfy Chapter 13 Part 13.5 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, namely how the development is consistent with the Cumberland Plain Mitigation Measures Guidelines.
- c) The mitigation measures report states that a Dam Decommissioning Plan is to be prepared. This plan is to be prepared prior to determination or required as a condition of consent.
- d) The development will result in decommissioning three large dams and other riparian areas. The Dam Decommissioning plan should include details of how aquatic fauna will be rescued and relocated. The plan will need to identify suitable locations for the fauna to be relocated to. It will be important to note that due to the development in the local area no relocation sites should be located on land that is certified – urban capable, due to the high likelihood the aquatic waterbodies in these areas are likely to be impacted by current proposed development or future development. If locations are located on private land

written confirmation from the landowner should be obtained. As there are several other similar developments DPHI should consider the relocation location and ensure it is not one that is proposed as a location for other applications, and if so will need to consider what implications this will have on the biodiversity that may be present in the aquatic ecosystem and ensure there is enough resources to accommodate relocated aquatic fauna.

- e) If the application is approved the other mitigation measures should be also included as conditions of consent.
- f) If the application is approved the Weed Eradication Management Plan should be conditioned and a condition included for the applicant to provide evidence that the measures outlined in the plan have been carried out by a qualified and experienced personnel.

## 7. Waterways Considerations

Council's Waterways Team have reviewed the proposal and have raised the following considerations:

- a) The development includes the provision of temporary stormwater management basins and associated infrastructure. It is indicated that ultimately the site will connect to Sydney Water's drainage network. Interim arrangements are proposed although it is noted that additional information is required to demonstrate compliance with the requirements outlined in the MRP DCP.
- b) It is recommended that prior to determination, DPHI ensure that the controls are met in terms of compliance with the stormwater and waterway health targets (for both the construction and operational stages). Additional information and many points of clarification are needed to address these matters.
- c) With respect to the GPTs, while the plans indicate locations, additional details (e.g., access arrangements and type) are required on the engineering plans. All GPTs need to be included on the plans. Further, the GPTs need to be prepared as per the specifications outlined in Sydney Water Technical Design

Guidelines. It is noted that the GPT's will be the responsibility of the developer / property owners to maintain. Conditions will need to be included in the consent requiring this.

- d) The engineering plans (Sheet C250) referred to providing Ocean guard / Enviropods pit inserts (or similar) & JellyFish JF3250-20-4 GPT to treat the road 01. The MUSIC screen shot also indicates that Enviropods (pit inserts) are proposed in both roads 1 and 2. Council will not accept the devices and should not be proposed if the road is intended to be dedicated for ongoing maintenance.
- e) It is recommended that additional details of the stormwater infrastructure are required. There appears to be inconsistencies between the plans and stormwater report (and MUSIC screen shot). This needs to be updated and addressed.
- f) Functional design drawings of the GPTs, temporary ponds, temporary irrigation systems and associated infrastructure needs to be provided. The plans should include additional details to demonstrate they can function and include details of levels, cross sections, access arrangements and landscape details and the like.
- g) This should include full details including a functional design and include an operation and maintenance manuals for the infrastructure. The maintenance manual should be provided prior to the approval of the development and conditions will need to be applied to ensure interim (and permanent) measures are maintained to the required standards.
- h) Rainwater tanks are proposed as interim measures until the delivery of the regional stormwater management scheme. At this stage additional details should be provided in relation to sizing and ability to meet demands. Conditions are also required to ensure they are designed to meet a minimum of 80% non-potable demand and that they are decommissioned once connection to the regional scheme once available.
- i) Passively irrigated street trees should be incorporated into the design of the streets. It is acknowledged this can be considered in detail as part of detailed designs. However, a condition needs to be applied to ensure that prior to completing detailed design

the plans must be submitted to Council for review and approval (in the case the roads will be dedicated). It is our understanding that they have some reliance in the scheme.

- j) Should the application be approved, adequate conditions will need to be in place to ensure that all temporary infrastructure is maintained until the regional infrastructure is available. The conditions should ensure that future development on the site achieves compliance with the Integrated Water Cycle Management (IWCM) controls in the MRP DCP in accordance with the Technical Guidance for achieving Wianamatta South Creek Stormwater Management Targets (NSW Government, 2022).
- k) Conditions should be applied to ensure that adequate land is reserved for initial stages of the development' treatment and management of stormwater (that is, irrigation of undeveloped land).
- l) Should the application be approved, conditions should be applied to ensure that all stormwater infrastructure, including GPTs, rainwater tanks, irrigation systems temporary ponds, and the like, remain under the ownership, control, and care of the registered proprietor of the lots. It is suggested that positive covenants and restrictions of use should be placed on the relevant lots to ensure that all privately owned systems will be maintained in perpetuity. It is also acknowledged some infrastructure will not be required once the regional scheme is available. Conditions may need to be included to manage the transition and decommissioning of the infrastructure once connection to the regional infrastructure is available.
- m) With respect to controlled activities and waterways, it is noted that a mapped 2nd order waterway is located on the site. It is noted that this is proposed to be realigned. Clause 3 of section 2.3 of the DCP states that *Waterways of Strahler Order 2 and higher will be maintained in a natural state, including the maintenance and restoration of riparian area and habitat, such as fallen debris*. I suggest that any works or changes to the alignment will need to be undertaken in accordance with Water Management Act and the Department of Climate Change, Energy, the Environment and Water (NRAR)

requirements/guidelines and DCP provisions. It is acknowledged that a naturalised channel is proposed in place.

- n) It's noted that the trunk drainage design is not consistent with the Sydney Water Scheme plan and additional information of the design should be sought. The Civil report and plans indicated that a 20m wide trunk drainage corridor is proposed. It is noted that this is a departure from Sydney Water's Scheme plan dated December 2023 which indicated that the trunk drainage should 30m to the north and west of the property and 40m along the southern Boundary.
- o) The EIS indicated there was some discussions about this departure with Sydney Water. In any case, full details should be provided, and Sydney Water will need to confirm they are satisfied with the design the departure from their recently drafted scheme plan is justified.
- p) High efficiency sediment basins are required to be provided meet the construction phase IWCM controls in the MRP DCP. Conditions will need to be included in the consent that requires high efficiency sediment basins to be used during the construction stages of the development, and that they are designed and audited by a CPESC as per the Technical guidance for achieving *Wianamatta South Creek stormwater management targets*.

## 8. Landscape Considerations

Council's Landscape Architect Team have reviewed the proposal and have raised the following considerations:

- a) Provide substantial species diversity generally, with tree species selected from the Penrith City Council's (Draft) Street Tree Masterplan (see below).
- b) For the west side of Aldington Road this includes, *Lophostemon confertus*, Brushbox.
- c) For the new local industrial road running north-south, this includes:
  - i. East Side, *Fraxinus pennsylvanica* 'Urbdel' Urbanite, Ash.
  - ii. West Side, *Fraxinus pennsylvanica* 'Urbdel' Urbanite, Ash.

- d) For the new local industrial road running east-west, this includes:
- i. East Side, Lophostemon confertus, Brushbox,
  - ii. West Side, Lophostemon confertus, Brushbox

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

Yours sincerely,



Sandra Fagan  
Principal Planner