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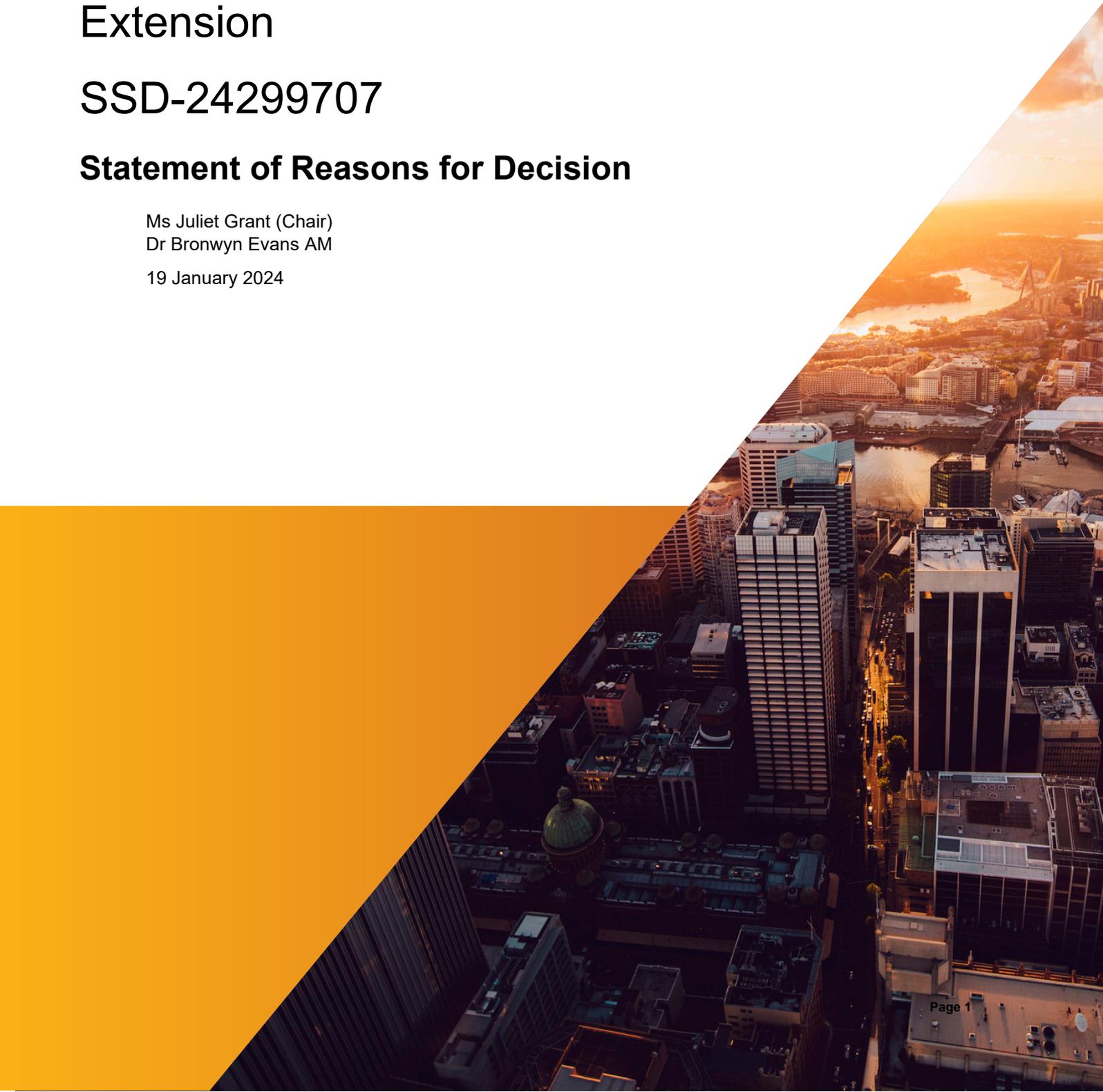
Talavera Road Data Centre Campus Extension

SSD-24299707

Statement of Reasons for Decision

Ms Juliet Grant (Chair)
Dr Bronwyn Evans AM

19 January 2024



Executive Summary

Macquarie Data Centres Pty Ltd (the Applicant) has sought consent for an expansion to an existing data centre at 17-23 Talavera Road, Macquarie Park, to construct and operate additional data halls, associated office space, supporting infrastructure, new hardstand areas and landscaping (the Project).

The Project represents an investment of over \$332 million and would generate approximately 610 construction jobs and support 20 additional knowledge intensive operational jobs.

The NSW Independent Planning Commission (Commission) is the consent authority for the Project because an objection was received from the City of Ryde Council and a company connected to the Applicant disclosed a reportable political donation.

Commissioners Ms Juliet Grant (Chair) and Dr Bronwyn Evans AM were appointed to constitute the Commission Panel in making the final decision. The Commission undertook a site inspection and met with the Department of Planning, Housing and Infrastructure (formerly the Department of Planning and Environment), City of Ryde Council and the Applicant.

Key issues which are the subject of findings in this Statement of Reasons for Decision relate to noise and vibration, air quality, stormwater, and flooding. After careful consideration, the Commission has determined that consent should be granted to the development application, subject to conditions to manage and mitigate matters including construction hours, consultation with adjoining receivers during construction, power outage protocols and the carrying out of stormwater relocation works through the formal deed of agreement.

The Commission finds that the Project is consistent with the existing strategic planning framework as it will help retain and support the efficiency of employment-zoned land within the Eastern Economic Corridor. The Commission finds that the Project is in accordance with the Objects of the EP&A Act and is in the public interest.

The Commission's reasons for approval of the Project are set out in this Statement of Reasons for Decision.

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Defined terms

ABBREVIATION	DEFINITION
Applicant	Macquarie Data Centre Pty Ltd
Application	SSD Application for an expansion to an existing data centre at 17-23 Talavera Road, Macquarie Park (SSD-24299707)
Approved Methods	Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA, 2016)
AR para	Paragraph of the Department's Assessment Report
BCD	Biodiversity Conservation Division
Commission	NSW Independent Planning Commission
Council	City of Ryde Council
Department	NSW Department of Planning, Housing and Infrastructure (formerly the NSW Department of Planning and Environment)
Department's AR	Department's Assessment Report, dated November 2023
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPA	NSW Environment Protection Authority
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
GFA	Gross Floor Area
GSRP	Greater Sydney Region Plan: A Metropolis of Three Cities
ICNG	EPA's Interim Construction Noise Guideline (DECC, 2009)
Infrastructure SEPP	<i>State Environmental Planning Policy (Infrastructure) 2007</i>
LGA	Local Government Area
LSPS	Local Strategic Planning Statement
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 3.1
NDP	North District Plan
NPfi	NSW Noise Policy for Industry
Planning Systems SEPP	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
Project	Construction and operation of an expansion to Talavera Road Data Centre including additional data halls, associated office space, supporting infrastructure, new hardstand areas (including relocated driveways and parking areas) and landscaping
Regulations	<i>Environmental Planning and Assessment Regulation 2000</i>
RLEP 2014	<i>Ryde Local Environmental Plan 2014</i>
RtS	Response to Submissions
SEPP 33	<i>State Environmental Planning Policy No. 33 – Hazardous and Offensive Development</i>
Site	Lot 527 DP 752035 and Part Lot 3 DP 1043041, 17-23 Talavera Road, Macquarie Park
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
TfNSW	Transport for NSW
Transport and Infrastructure SEPP	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>
VPA	Voluntary Planning Agreement

1. Introduction

1. On 27 November 2023, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred State significant development (**SSD**) application SSD-24299707 (**Application**) from Macquarie Data Centres Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks approval under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) for the Talavera Road Data Centre Campus Expansion (**Project**) located in the City of Ryde Council Local Government Area (**LGA**).
3. The Application constitutes SSD under section 4.36 of the EP&A Act and under section 25 of Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021* (**Planning Systems SEPP**) (previously clause 25 of Schedule 1 of *State Environmental Planning Policy (State and Regional Development) 2011* (**SRD SEPP**), which was in force at the time of lodgement).
4. In accordance with section 4.5(a) of the EP&A Act and section 2.7 of the Planning Systems SEPP, the Commission is the consent authority as the Department received an objection from the City of Ryde Council (**Council**) and a company connected to the Applicant disclosed a reportable political donation.
5. Professor Mary O’Kane AC, Chair of the Commission, determined that Ms Juliet Grant (Chair) and Dr Bronwyn Evans AM would constitute the Commission Panel for the purpose of exercising its functions with respect to the Application.
6. The Department provided its Assessment Report (**AR**) and recommended conditions of consent to the Commission on 27 November 2023. The Department concluded that the Project would help support the ongoing data storage needs of greater Sydney, is in the public interest and is approvable, subject to conditions of consent.

2. The Application

2.1 Site and locality

7. The ‘site’ is located at 17-23 Talavera Road, Macquarie Park (Lot 527 DP 752035 and Part Lot 3 DP 1043041) (**Site**). According to paragraph 1.3.1 of the Department’s AR (**AR para**), the Site is approximately 12 kilometres (km) north-west of the Sydney central business district (CBD), 12 km north-east of the Parramatta CBD and has an area of 2 hectares (ha). The Site is currently occupied by a data centre campus.
8. The surrounding development comprises a range of land uses within the Macquarie Park business precinct including a multi-level carpark, the Macquarie Park Data Centre (currently under construction), commercial office building and complex, Johnson & Johnson’s Macquarie Park campus and a tertiary education provider known as Excelsia College. The Site’s location and local context is illustrated in Figure 1.

Figure 1 – Local Context Map (Source: Department’s AR, Figure 2)



2.2 Existing operations

9. The existing data centre has been in operation since 2012 and several alterations and additions have been made to the facility within the last 10 years, the most recent expansion having been completed in 2022.
10. LDA2018/0322 issued by the NSW Land and Environment Court on 20 September 2019, granted consent for alterations and additions to the existing data centre including the removal of 32 trees, site preparation works, construction and operation in two stages and associated infrastructure and landscaping. Stage 1 included a data centre expansion of 6,371 square metres (m²) of gross floor area (GFA) and 101 car parking spaces. Stage 2 included a further expansion of 6,371 m² of GFA and the removal of 30 car parking spaces.
11. Stage 1 of the project was completed in March 2022. This current Application seeks to replace Stage 2 of the works approved under LDA2018/0322 with a larger eight storey extension to the existing data centre and would retain the access and parking arrangements previously approved under LDA2018/0322.

2.3 The Project

12. The Applicant is seeking approval to construct and operate an expansion to the existing data centre, including additional data halls, associated office space, supporting infrastructure, new hardstand areas (including relocated driveways and parking areas) and landscaping.
13. The key components of the Project (as amended by the Applicant’s Response to Submissions and Supplementary Response to Submissions reports) are set out in Table 1 of the Department’s Assessment Report.

3. The Commission's consideration

3.1 Material considered by the Commission

14. In this determination, the Commission has considered the following (**Material**):
- the Secretary's Environmental Assessment Requirements (SEARs) issued by the Department, dated 12 August 2021;
 - the Applicant's Environmental Impact Statement (**EIS**) and supplementary information including the Applicant's Amendment Report and Response to Submissions (**RtS**);
 - all submissions on the EIS made to the Department during public exhibition;
 - all Government Agency advice to the Department;
 - the Department's AR, dated November 2023;
 - the Department's recommended conditions of consent, dated November 2023;
 - comments and presentation material at meetings with the Department and the Applicant, as referenced in Table 2;
 - Council's response to the Commission, dated 18 December 2023;
 - the Department's response to the Commission, dated 18 December 2023;
 - the Department's comments on the feasibility and workability of proposed conditions, dated 16 January 2024.

3.2 Strategic context

15. AR para 2.6.4 states that the purpose of the proposed development is to allow the Applicant to further improve the operational efficiency of its existing data centre, while continuing to support the ongoing demand for secure, reliable data storage services from government authorities and private businesses. The Department, at section 3 of its AR, states that the Project is consistent with the priorities of relevant strategic plans, including the Greater Sydney Region Plan, North District Plan 2018, and Council's Local Strategic Planning Statement.
16. The Commission has considered the strategic planning policies and guidelines relevant to the Site and the Project. The Commission agrees with the Department's view that the Project is consistent with the strategic planning framework as it will help retain and improve the efficiency of employment-zoned land, including within Sydney's 'Eastern Economic Corridor'.
17. The Commission notes that the Project represents an investment of over \$332 million and would generate approximately 610 construction jobs and 20 additional knowledge-intensive operational jobs.

3.3 Statutory context

3.3.1 State significant development

18. The Application is SSD under section 4.36 of the EP&A Act because it is development for the purpose of a data centre that has a total power consumption of more than 10 megawatts (38 megawatts), as per section 25 of Schedule 1 of the Planning Systems SEPP) (previously clause 25 of Schedule 1 of the SRD SEPP, which was in force at the time of lodgement).

3.3.2 Permissibility

19. The Site is located within the B7 Business Park zone under the *City of Ryde Local Environmental Plan 2014 (RLEP 2014)*.
20. Under section 2.31 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)* (previously clause 27 of *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)*), development for the purposes of a data storage premises is permissible with consent in the B7 zone.

3.3.3 Other approvals

21. As per section 4.3 of the Department's AR, the Commission notes that the Department has consulted with the relevant government authorities. The Commission acknowledges that the Applicant may also require other approvals which are not integrated into the SSD process as referenced by the Department at AR para 4.5.1.

3.4 Mandatory considerations

22. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 1 – Mandatory Considerations

Mandatory Considerations	Commission's comments
Relevant Environmental Planning Instruments (EPIs)	<p>Appendix C of the Department's AR identifies relevant EPIs for consideration. The key EPIs include:</p> <ul style="list-style-type: none"> • SRD SEPP; • Planning Systems SEPP; • Transport and Infrastructure SEPP; • <i>State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)</i>; • <i>State Environmental Planning Policy No. 55 – Remediation of Land</i>; • draft <i>State Environmental Planning Policy (Remediation of Land)</i>; and • RLEP 2014. <p>The Commission agrees with the Department's assessment of EPIs set out in Appendix C of the AR. The Commission therefore adopts the Department's assessment.</p>
Relevant DCPs	<p>Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.</p>
Likely impacts of the development	<p>The likely impacts of the Application have been considered in section 5 of this Statement of Reasons.</p>

Suitability of the site for development	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> • the proposed use is permissible with consent; • the site is within the Eastern Economic Corridor; • the Project meets the objectives of the B7 Business Zone; • the use of the Site for the purpose of a data centre will help support the ongoing data storage needs of greater Sydney and will therefore help facilitate related and ongoing societal and economic benefits; • the use of the Site is an orderly and economic use and development of land; • the environmental impacts have been minimised as far as practicable and are capable of being further managed through the imposed conditions of consent; and • impacts on surrounding land uses have been minimised where possible and are capable of being further mitigated through the imposed conditions of consent.
Objects of the EP&A Act	<p>In this determination, the Commission has carefully considered the Objects of the EP&A Act. The Commission finds the Application has been assessed against the relevant EPIs and, subject to the conditions imposed, is consistent with the objects of the EP&A Act.</p>
Ecologically Sustainable Development (ESD)	<p>The Commission finds that the Project is consistent with ESD principles and would achieve an acceptable balance between environmental, economic and social considerations.</p>
The public interest	<p>The Commission has considered whether the grant of consent to the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts.</p> <p>The Project would economically serve the community by generating 610 construction jobs and 20 new operational jobs for the local area.</p> <p>The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD.</p> <p>The Commission finds that, on balance, the Application is not inconsistent with ESD principles, and that the Project would achieve an appropriate balance between relevant environmental, economic and social considerations. The likely benefits of the Project warrant the conclusion that an appropriately conditioned approval is in the public interest.</p>

3.5 Additional considerations

23. In determining the Application, the Commission has also considered:

- NSW Noise Policy for Industry (**NPfi**);
- Interim Construction Noise Guideline (**ICNG**);
- Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA, 2016) (**Approved Methods**);
- Greater Sydney Region Plan (**GSRP**);
- North District Plan 2018 (**NDP**);
- Planning Ryde – Local Strategic Planning Statement 2020 (**LSPS**); and
- City of Ryde Section 7.11 Development Contributions Plan 2020.

3.6 The Commission's meetings

24. As part of the determination process, the Commission met with various persons as set out in Table 2. All meeting and site inspection notes were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date	Transcript/notes available on
Department	8 December 2023	13 December 2023
Applicant	8 December 2023	13 December 2023
Council	8 December 2023	13 December 2023
Site inspection	7 December 2023	11 December 2023

3.6.1 Council's comments

25. During its meeting with the Commission on 8 December 2023, Council discussed several issues including the Department's assessment relating to clause 6.9 of RLEP 2014 and the workability of conditions including engineering and flooding conditions.
26. On 18 December 2023, Council provided its response to questions taken on notice during its meeting with the Commission, including:
- the current value of contributions applicable to the Project under clause 6.9 of RLEP 2014;
 - recommended additional conditions of consent and proposed modifications to the Department's recommended conditions of consent; and
 - a copy of the development consent issued by the Land and Environment Court for LDA2018/0322.

3.6.2 Department's comments

27. On 18 December 2023, the Department provided a response to the Commission's request for further information, including:
- further assessment of clause 6.9 of RLEP 2014;
 - discussion (and copy of) of the Applicant's VPA offer to Council and its subsequent withdrawal; and
 - note of section 7.7 of the EP&A Act.

4. Community participation and public submissions

4.1 Public submissions

28. The Department publicly exhibited the Application between 18 November 2021 and 15 December 2021. No submissions from the public were received. The Department received an objection from Council, comments from Fire and Rescue NSW (**FRNSW**), NSW Environment Protection Authority (**EPA**), Transport for NSW (**TfNSW**) and the Department's Biodiversity Conservation Division (**BCD**). Upon submission of the finalised Aboriginal Cultural Heritage Assessment Report (**ACHAR**), Heritage NSW also provide comments to the Department.
29. The Commission determined not to seek public submissions due to the absence of public interest during public exhibition of the Project.

4.2 Public meeting

30. The Commission determined that a Public Meeting was not necessary for this Application given that no public submissions were made to the Department during public exhibition of the Project.

4.3 Site inspection

31. On 7 December 2023, the Commission Panel conducted an inspection of the Site.
32. In accordance with the Commission's Site Inspection and Locality Tour Guidelines, and in line with the Commission's principles of openness and transparency, the Commission Panel may exercise its discretion to invite community observers, in addition to the Applicant, to attend a site inspection. However, in this instance, the Commission Panel determined not to exercise its discretion to invite observers to the site inspection. The Commission Panel was satisfied that the Commission's principles of openness and transparency were met through the publishing of detailed site inspection notes, including photographs, on the Commission's website, as outlined in Table 2 above.

5. Key issues

5.1 Noise and vibration

5.1.1 Construction noise and vibration

33. The Applicant's EIS was accompanied by a Noise and Vibration Report (NVR) which assessed potential noise impacts during construction and operation. The Department requested the Applicant provide additional information to justify works being undertaken outside the recommended standard construction hours outlined in the ICNG. The Applicant subsequently provided an updated NVR.

34. In relation to construction noise, the Application seeks consent for works to be undertaken outside of the standard construction hours identified in the ICNG. The Department notes that Excelsia College, which is the closest and most affected receiver, operates from 5:30am to 10:00pm Mondays to Fridays and from 7:30am to 7:00pm on Saturdays. The Department considers the predicted exceedances of the relevant noise management levels at nearby commercial and education receivers, including Excelsia College, are likely to negatively impact these receivers during extended hours of construction and therefore the Department have not supported these hours.
35. In its meeting with the Commission, Council indicated the standard construction hours typically imposed within the LGA are longer than the standard construction hours identified in the ICNG, being 7:00am to 7:00pm Mondays to Fridays, and 8:00am to 4:00pm Saturdays.
36. Council also noted the difficulties in allowing construction works outside of Council's standard construction hours, such as the recommended condition B2 which permits works outside of the approved construction hours in certain circumstances including if the works are inaudible at the nearest sensitive receivers, approved by the Planning Secretary, if required by an authority such as the NSW Police or in an emergency. Council noted that this presents compliance challenges for Council's regulatory officers.
37. In its meeting with the Commission, the Applicant commented that although it was disappointed that the Department did not support the proposed extended construction hours, it was supportive of condition B2 allowing out of hours work in certain situations, including where works are inaudible at the nearest residential receivers.
38. The Commission understands the Department's concerns regarding the proposed extended construction hours, however, considers it reasonable for construction hours to align with Council's standard construction hours as this:
- aligns with the construction hours observed during Stage 1 works as part of LDA2018/0322;
 - aligns with other developments in the area including LDA2022/0127 for works at 45-61 Waterloo Road and SSD 15822622 (Ivanhoe Estate Redevelopment Stage 2);
 - provides public benefit by reducing construction timeframes; and
 - provides consistency and transparency to aid public understanding.
39. The Department notes that construction noise management levels can be met at residential receivers. Noise experienced at nearby businesses is expected to vary throughout the course of the construction period and the proximity to the receiver, with no receiver predicted to be highly noise affected (noise above 75 dBA).
40. The Commission is satisfied that the construction noise and vibration impacts can be appropriately managed. The Commission has therefore imposed condition B1 which requires compliance with the standard construction hours recommended by Council. It has also imposed condition B4 requiring the Applicant to undertake consultation with adjoining businesses during construction including direct consultation with Excelsia College to develop strategies to manage high noise generating works.
41. The Commission notes Council's concerns regarding the out of hours works permitted by Condition B2, however considers it reasonable for these works to be undertaken as the subject works will fall into one of the three following categories:
- permitted works will be inaudible at the nearest sensitive receivers;
 - the impacts will be considered when approval is sought from the Planning Secretary; or
 - be necessary in an emergency situation or for the delivery of materials required for safety reasons.

5.1.2 Operational noise

42. Operational noise will arise from the proposed cooling system, the regular testing of back-up generators and the on-site plant.
43. The Department notes that subject to the recommended conditions requiring back-up generators to be tested during daylight hours on weekdays only, and the recommended operational noise limits for residential properties, the development would comply with the relevant noise criteria at all surrounding sensitive receivers during typical day-to-day operations.
44. The Commission finds that operational noise can be appropriately managed subject to ongoing testing and monitoring, and use of a back-up generator as outlined above. The Commission has therefore imposed Condition B1 which stipulates the hours in which back-up generator testing can be undertaken and Condition C15 requiring the Applicant to maintain a log of all back-up generator tests undertaken at the site.

5.2 Air quality

45. During construction, the Project may generate dust and particulate emissions, particularly during bulk earthworks, civil works and the erection of the expansion to the building. The Department notes that the sensitivity of the surrounding area to dust and particulate matter during construction would be low to negligible provided the Applicant implements a Construction Environmental Management Plan (CEMP).
46. The Department notes the standard day to day operations of the Project would not result in any exceedances at any nearby sensitive receivers. However, during a power outage event, the operation of the Project includes potential exceedances of the relevant air quality impact assessment criteria for particulate matter and nitrogen dioxide (NO₂) at several nearby sensitive receivers, associated with the combustion of diesel fuel in the backup generators. As the Department has identified, the likelihood of such exceedances occurring is extremely low, being once every 92 years for particulate matter and once every 2,920 years for NO₂ emissions. Additionally, the Department notes that the standard day to day operations of the Project would not result in any exceedances at any nearby sensitive receivers.
47. The Commission finds that the potential construction air quality impacts can be appropriately mitigated, subject to conditions, and the potential operational air quality impacts in the scenario of an exceedance, as outlined above, are acceptable as the likelihood is extremely low.
48. The Commission has therefore imposed condition B14 requiring a Power Outage Notification Protocol to be implemented to identify and notify neighbouring properties in the event a power outage event that lasts 30 minutes or more, and condition B13 which requires the back-up generator system to be able to be retrofitted in the event that power outage events become more frequent.

5.3 Stormwater and flooding

5.3.1 Stormwater

49. This SSD originally sought consent to extend the 'future' stormwater easement approved under LDA2018/0322, for which Council would have the option to relocate the existing stormwater pipe to the new easement if/when funds became available.

50. Council objected to the location of the proposed expansion of the data centre on the basis that it would restrict Council's ability to maintain the existing stormwater pipe within the Site and would increase costs associated within any future maintenance/relocation works. Council noted that this would increase the risk and liability to Council with no inherent public benefit.
51. Extensive consultation was undertaken with Council and as a result the Applicant amended the Application to include the relocation of the existing stormwater pipe and associated easement. The amended application proposes the construction of a new 2,100mm stormwater pipe around the perimeter of the expanded data centre (AR para 2.1.6) and the reconstruction of an existing Sydney Water sewer main.
52. The Department's AR states that a formal deed of agreement covering the relocation works has been entered into by Council and the landowner. Council confirmed in its meeting with the Commission that the formal deed of agreement has been executed between the Applicant, Council and landowner.
53. Council raised concerns in relation to the increase of total hardstand area across the Site and lack of an On Site Detention (OSD) system. At AR para 6.4.23, the Department states:
- The Department has reviewed the proposed stormwater management system and is satisfied that it would be appropriate for managing the stormwater quality and volumes generated by the development. Given the available capacity of the existing OSD system and the site's role as an overland flow path during flood events, the Department is satisfied that further OSD tanks are not required to support the subject SSD application.*
54. The Commission agrees with the Department's view that the new stormwater pipe will adequately maintain the capacity of Council's broader stormwater network. The Commission is satisfied that Council's concerns raised in its objection have been adequately resolved through the formal deed of agreement and through the imposition of condition A7 requiring the relocation works to be carried out in accordance with the abovementioned deed.
55. The Commission is satisfied with the Department's assessment of the proposed stormwater management system. It has therefore imposed condition B43 which requires the existing stormwater system to be upgraded.

5.3.2 Flooding

56. The Site is located within the Industrial Creek catchment and in events greater than the 20% (1 in 5) Annual Exceedance Probability (**AEP**) level, the Site and the surrounding area are subject to flooding. The Site is currently utilised as an overland flow path (subject to a positive covenant and restriction on the use of land) and the Applicant has therefore designed the ground floor with an open car park/undercroft area to maintain the flow of stormwater under the building. The Project also includes the upgrade of the existing on-site stormwater system as identified in para 52.
57. Following concerns from Council in relation to the impact of the existing stormwater pipe and easement on the on-site overland flow path, the Applicant amended the Application to include the relocation of the existing stormwater pipe and associated easement (AR para 2.1.6) and subsequently provided an updated Flood Impact Risk Assessment (**FIA**).
58. The Department notes that the new stormwater pipe is capable of conveying upstream flows from the existing stormwater network during all modelled flood events (1% AEP, 5% AEP and 20% AEP) and the new 2,100mm stormwater pipe will result in significant decreases (up to 114mm) of flood depths at adjacent properties in these events.

59. In the Probable Maximum Flood (**PMF**) event, the Department notes that the Project will result in localised flood level increases within the Talavera Road corridor (up to 250mm), however this is due to an existing constraint caused by the two existing 1,200mm stormwater pipes running beneath Talavera Road.
60. The Commission agrees with the Department's assessment in conjunction with the advice provided by its Chief Engineer and Council's engineering team and finds that the Project will not result in significant additional flooding impacts beyond existing flood conditions as:
- the localised flood depth increases within the Talavera Road corridor during a PMF event are due to existing constraints;
 - the Project design is consistent with the positive covenant and restriction on the use of land associated with the on-site overland flow path; and
 - condition B39 requires a Flood Emergency Response Plan (FERP).

5.4 Other issues

5.4.1 Developer contributions

61. Under Council's *Section 7.11 Development Contributions Plan 2020*, the Application would be subject to a developer contribution of approximately \$657,535.75 based on the office GFA and data hall/circulation GFA.
62. LDA2018/0322 required the Applicant to make a section 7.11 contribution for each stage of the project. The Stage 1 section 7.11 contributions have already been paid by the Applicant.
63. AR para 1.5.7 states the Applicant has previously entered into a 'works in kind' agreement with Council to offset the section 7.11 contributions (of \$504,144.01) for what would have been Stage 2 of LDA2018/0322.
64. AR para 1.5.8 states:
Instead of a monetary contribution, this agreement required the Applicant to deliver public domain improvement works along Talavera Road on behalf of Council. These works were completed by the Applicant in late 2021, and cost approximately \$865,734 (around \$360,000 more than required of the section 7.11 plan).
65. AR para 1.5.9 states that LDA2018/0322 was also supported by a Voluntary Planning Agreement (**VPA**) which provided Council a monetary contribution of \$795,000 in exchange for access to the bonus height incentive offered under clause 6.9 of RLEP 2014, paid upon execution of the VPA on 22 October 2019.
66. This Application seeks to offset any applicable developer contributions on the basis that the subject contributions would be covered by the monetary value of the public domain improvement works which were intended to act as the contribution for Stage 2 of the development.
67. In its meeting with the Commission, Council confirmed they are satisfied that no further section 7.11 contributions are required for this SSD.
68. The Commission agrees with the Department's view that adequate provision for local infrastructure has been made by the previous 'works in kind' agreement which are of greater value than the required contribution. The Commission has therefore not imposed further developer contributions for this Application.

5.4.2 Voluntary Planning Agreement

69. In its meeting with the Commission, Council raised concerns regarding whether clause 6.9 of RLEP 2014 had been satisfied. Council outlined that the standard process for satisfying clause 6.9 (where a site within the Macquarie Park Corridor Precinct is not identified as being directly required to provide recreation areas or road connections) is through a VPA. Council noted the Deed of Agreement entered into with Council for the stormwater relocation works was not linked to the satisfaction of clause 6.9 of RLEP 2014.
70. AR para 1.5.9 states:
Following the guidance in Council's Development Control Plan 2014 - Part: 4.5 Macquarie Park Corridor, LDA2018/0322 was also supported by a Voluntary Planning Agreement (VPA), which provided Council with a monetary contribution of \$795,000 in exchange for access to the bonus height incentive (45 m) offered under clause 6.9 of the City of Ryde Local Environmental Plan (LEP) 2014. The monetary contribution was paid to Council upon execution of the VPA, which occurred on 22 October 2019.
71. In its meeting with the Commission, the Applicant outlined that a VPA was not being offered given the monetary value of the additional works to relocate the stormwater which is being undertaken at no cost to Council. The Applicant noted that under LDA2018/0322 the monetary cost of the stormwater relocation was the responsibility of Council.
72. In its response to the Commission dated 18 December 2023, Council outlined that the applicable rate at present for a monetary contribution towards satisfying clause 6.9 of RLEP 2014 is \$305 per square metre. This would equate (when applying a credit for the floor area included in the LDA2018/0233 VPA) to \$954,650 for this Application.
73. The Commission requested the Department provide a further assessment with respect to clause 6.9, including discussion of Council's standard process of applying contributions. In its response to the Commission dated 18 December 2023, the Department noted that the Site is not impacted by any proposed future precinct roads or parks and that the Applicant has recently upgraded the Talavera Road public domain as part of a work-in-kind agreement. The Department noted that the Applicant had provided a Letter of Offer to Council on 10 October 2022 and subsequently withdrew the offer on 17 November 2023.
74. The Commission notes the Department's comments regarding section 7.7 of the EP&A Act, which states that any EPI that requires a planning agreement to be entered into before a development application can be determined or have effect, has no effect. Further, a consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into or an offer has not been made.
75. The Commission is satisfied that the imposition of a condition of consent requiring the Applicant to enter into a VPA with Council to satisfy clause 6.9 of RLEP 2014 is not required because:
- the provision of public domain upgrades have already been completed by the Applicant;
 - the Site is not impacted by future precinct roads or parks;
 - the Commission as the consent authority cannot refuse to grant consent on this basis.
76. The Commission is satisfied that the Application meets clause 6.9 of RLEP 2014.

5.4.3 Council's comments on the recommended conditions of consent

77. In its meeting with Commission, Council raised concerns with the workability of conditions - specifically stormwater, flooding and engineering related conditions.

78. In its submission to the Commission dated 18 December 2023, Council recommended condition A8 and condition B2 be deleted. The Commission has discussed condition B2 in section 5.1.1.
79. Council also provided additional recommended conditions of consent for the Commission's consideration relating to screening, security bonds, flooding, public infrastructure/domain works, stormwater and assets handover. The Commission has considered each of Council's recommended conditions.
80. Condition A8 relates to a certificate to be provided to Council confirming that the existing 1,800mm stormwater pipe has been fully grouted. Council notes that this has been covered in the Deed of Agreement entered into with the Applicant and therefore has recommended that condition A8, as recommended by the Department, be deleted. The Commission is satisfied that the works are covered by the Deed of Agreement and has therefore not imposed the Department's recommended condition A8.
81. The Commission considers the inclusion of additional screening on the roof level to be unnecessary, as the proposed development includes adequate screening on the roof level as demonstrated in the Visual Impact Assessment prepared by Geoscapes Landscape Architects dated 26 October 2022.
82. The Commission considers the specific mention of the FIA is not necessary as the FIA is included in condition A2, as an appendix to the Amendment Report which the development must be carried out in accordance with. The Commission considers all other recommended flood matters within Council's recommended conditions to be already addressed in the recommended conditions of consent.
83. In regard to Council's recommended conditions regarding stormwater and public domain works, including joint inspections, certification and security bonds - the Commission is satisfied that Council's intended objectives can be met through other mechanisms whereby Council will be involved in the construction and operation of these assets including:
- conditions A7 to A10 regarding the relocation of the stormwater pipe;
 - conditions A21 to A24 requiring pre and post dilapidation reports which include all existing public infrastructure and the requirement for the Applicant to repair or pay the full costs of repairing and public infrastructure that is damaged by the carrying out of the development; and
 - the Commission has included condition A25 which requires a Compliance Certificate from Council confirming all works for the restoration of infrastructure assets that have been dilapidated as a result of construction works have been completed to Council's satisfaction to ensure all damaged Council assets are repaired adequately.

6. The Commission's findings and determination

84. The Commission has carefully considered the Material before it as set out in section 3.1 of this report. Based on its consideration of the Material, the Commission finds that the Project should be approved subject to conditions of consent for the following reasons:
- the Project is consistent with the existing strategic planning framework as it will help retain and improve the efficiency of employment-zoned land within the Eastern Economic Corridor;
 - the Project is permissible in the B7 Business Park zone of RLEP 2014 under section 2.31 of the Transport and Infrastructure SEPP (previously clause 27 of the Infrastructure SEPP) and meets the objectives of this zone;
 - the relocation of the stormwater pipe and easement has been resolved with Council through a deed of agreement;
 - adequate provision for local infrastructure has been made by the previous 'works in kind' agreement;
 - the potential impacts on nearby residents and surrounding businesses during construction and operation are capable of being managed and mitigated through conditions of consent;
 - the Project is an orderly and economic use of the Site; and
 - the Project is in accordance with the Objects of the EP&A Act.
85. For the reasons set out in paragraph 84 above, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
86. The reasons for the Decision are given in the Statement of Reasons for Decision dated 19 January 2024.



Ms Juliet Grant (Chair)
Member of the Commission



Dr Bronwyn Evans AM
Member of the Commission



New South Wales Government
Independent Planning Commission

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