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NSW Department of Planning & Environment
Sydney NSW 2000

Attention: Joanna Bakopanos

Section 96(1A) Modification Application (SSD 5169) – MOD 4

Horsley Drive Business Park, Burilda Close, Wetherill Park (Lot 5 DP 1212087)

Dear Joanna,

This Modification Application is submitted to the NSW Department of Planning & Environment (NSW DP&E) on behalf of Frasers Industrial Constructions Pty Ltd and relates specifically to Horsley Drive Business Park, Burilda Close, Wetherill Park.

Approval to State Significant Development (SSD 5169) was granted by the Minister for Planning on 8 January 2013 for subdivision and infrastructure works. Specifically, the proposal as modified includes:

- 5 Lot subdivision and access road under leasehold arrangement;
- Demolition of two existing dwellings, ancillary structure and existing trees across the site;
- Remediation of part of the site which was associated with former fuel storage;
- Bulk and detailed earthworks to create building pads;
- Estate infrastructure including central access road, connection with essential utilities and provision of OSD basins and associated stormwater infrastructure; and
- Estate landscaping treatments, comprising predominately native vegetation.

The proposed modifications have been brought about by the irregular access arrangements to the stormwater detention basin located at the corner of The Horsley Drive and Cowpasture Road. The approved access to the stormwater detention basin from Cowpasture Road is limited by walls and batters thereby modification is sought to create an alternate driveway for maintenance access from The Horsley Drive.

The new access crossover and driveway will grant access to the stormwater detention basin for maintenance purposes only. Use of the proposed access crossover and driveway is required on an infrequent basis and will not be used to gain entry to any facilities at Horsley Drive Business Park.

This application represents the **fourth** modification to SSD 5169.

Attached to this submission are the following specialist reports and plans:

- **Appendix 1 – Civil Design Plans & Maintenance Report**
- **Appendix 2 – Road Safety Audit**
- **Appendix 3 – Deposited Plan 1213567**

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Should you require further information, please contact the undersigned.

Yours Faithfully,



Andrew Cowan
Director
Willowtree Planning Pty Ltd

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1. HORSLEY DRIVE BUSINESS PARK - BACKGROUND

Consent was granted to the subject application, **State Significant Development No. SSD 5169** on the 8 February 2013 for subdivision and infrastructure works at Horsley Drive Business Park. It has subsequently been modified as follows:

- 5 Lot subdivision and access road under leasehold arrangement;
- Demolition of two existing dwellings, ancillary structure and existing trees across the site;
- Remediation of part of the site which was associated with former fuel storage;
- Bulk and detailed earthworks to create building pads;
- Estate infrastructure including central access road, connection with essential utilities and provision of OSD basins and associated stormwater infrastructure; and
- Estate landscaping treatments, comprising predominately native vegetation.

As such, SSD 5196 did not grant consent for any building footprint or construction of any warehouse facilities.

Modification 1 to SSD 5169 was lodged in 7 August 2014 to modify the approved Estate layout, however it was subsequently withdrawn on 23 February 2015.

Modification 2 to SSD 5169 was granted on 6 August 2015 for the following:

- Reduce the number of allotments from 12 to 6;
- Provision of a new round-about on Cowpasture Road;
- Amend retaining wall heights comprising a tiered design;
- Re-shape detention basin to improve stormwater management outcomes; and
- Registration of subdivision and titles over 4 stages.

Modification 3 to SSD 5169 was granted on 16 September 2015 to consolidate proposed lots 5 and 6 into 1 lot within Horsley Drive Business Park. The modification was required to facilitate the construction of the Martin Bower Warehouse/Distribution and Industrial Facility as proposed under SSD 7078.

Review of the approval granted under SSD 5169 and the subsequent modifications indicates there is a need to modify consent Condition D8, which currently states:

No Vehicular Access – Registration of Restrictive and Covenant

D8. Prior to the issue of a subdivision certificate, a restrictive covenant shall be registered over lots adjacent to The Horsley Drive identifying that there shall be no vehicular access to or from The Horsley Drive.

It is requested to modify this condition by adding "except for Lot 4 DP1212087"

Approval is also sought under the Roads Act as access is sought from a classified road

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2. PROPOSED MODIFICATIONS

The proposed modifications have been brought about by the irregular access arrangements to the stormwater detention basin located at the corner of The Horsley Drive and Cowpasture Road. Access to the stormwater detention basin from Cowpasture Road is limited by walls and batters thereby modification is sought to create a crossover and driveway for maintenance purposes.

Use of the proposed crossover and driveway is required on an infrequent basis and will not be used to gain entry to any facilities at Horsley Drive Business Park.

As evident in **Figure 1** and **Figure 2**, the modifications are minor and do not alter the aims or objectives of SSD 5169.



Figure 1: Estate Masterplan (as modified under MOD 3)

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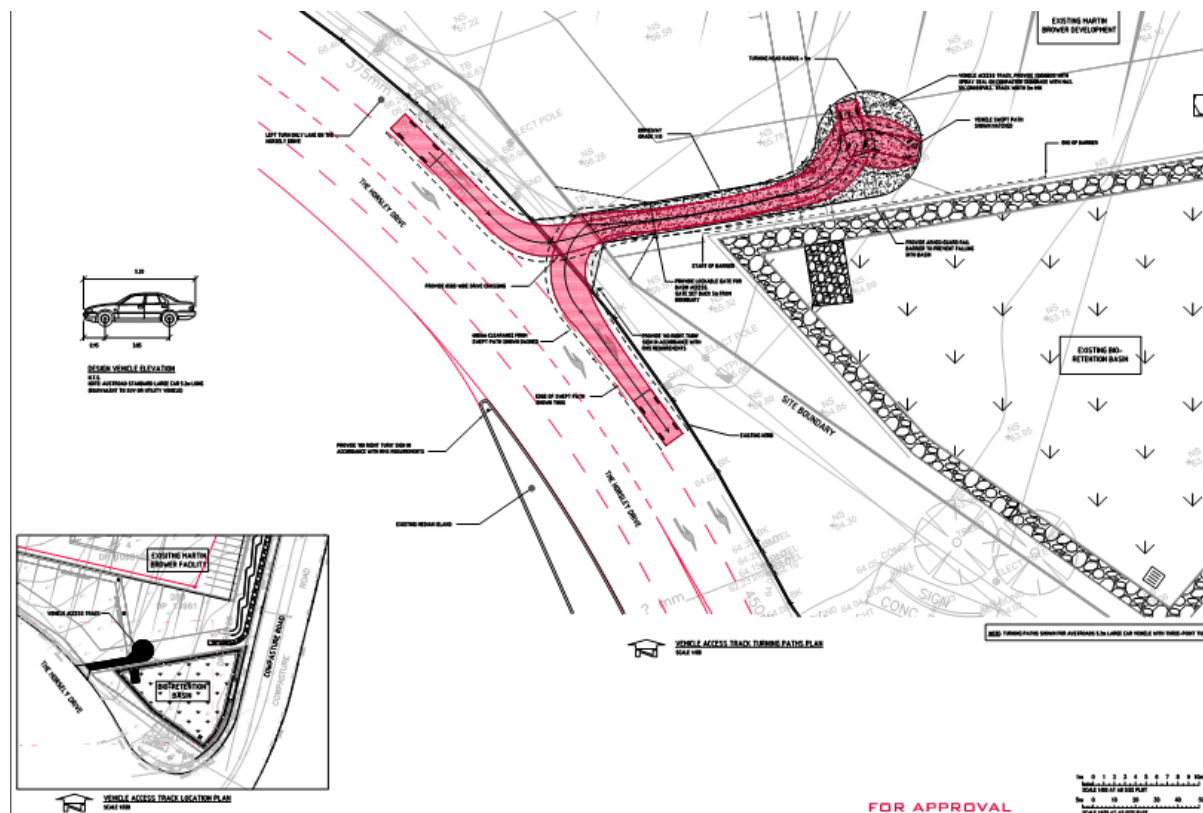


Figure 2: Proposed Layout – Access Road

3. ENVIRONMENTAL ASSESSMENT

The key Environmental Assessment requirements as they relate to the modified proposal are addressed below.

3.1 Soil and Water

Updated Civil Design Plans prepared by Costin Roe are attached at **Appendix 1**.

The stormwater management arrangements for the site and broader Estate are not proposed to be changed under the subject application.

3.2 Traffic and Transport

A Road Safety Audit prepared by DC Traffic Engineering Pty Ltd (**Appendix 2**) has been undertaken to identify the road safety implications of the modified design in the context of the existing approval.

The proposed crossover and driveway constitutes minor changes to the configuration to the Estate and will not impact the existing flow of traffic as the use is restricted to infrequent maintenance.

3.3 Noise

There will be no undue impact on the noise outcomes of the site.

3.4 Visual

The proposed modification provides an efficient and practical access route to the stormwater detention basin located at the corner of The Horsley Drive and Cowpasture Road. It is considered that

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the extent of the modification proposed will not adversely affect the interface with the surrounding land uses, or the aesthetic value of the streetscape as viewed from Burilda Close.

The plans provided in **Appendix 1** confirm suitable landscaping has been provided to screen the access road and retain the high level of visual amenity of the estate within the public domain.

3.5 Contamination

Contamination of the site has previously been dealt with under the previous approval SSD 5169. No further consideration is required as part of this Modification Application.

3.6 Flora & Fauna

No vegetation is proposed to be removed.

3.7 Heritage & Archaeology

A combined Aboriginal and European Archaeological & Cultural Heritage Assessment (Heritage Assessment) that included the outcomes of consultation undertaken with the local Aboriginal community for the project, an evaluation of the results of the site inspections, and a discussion of the aboriginal and European archaeological and cultural heritage management conclusions was prepared for SSD 5169 by Dominic Steele Consulting Archaeology.

The framework for the protection of any documented and/or potential Aboriginal and European archaeological sites (or areas of potential cultural heritage sensitivity) relative to the proposed development remains unchanged for the subject modification application.

3.8 Utilities

All utilities and services approved under SSD 5169 will be maintained in respect of water, sewer, electricity, gas and telecommunications.

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4. LEGISLATIVE FRAMEWORK

4.1 *Environmental Planning & Assessment Act 1979*

Section 96 of the *Environmental Planning & Assessment Act 1979* makes provisions to modify a Development Consent that has been granted pursuant to Part 4 of the Act. The proposal as submitted to NSW DP&E is considered to satisfy the provisions of Section 96(1A) of the Act in that changes proposed will result in minimal environmental impact.

The relevant provisions are addressed below:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment:

- The proposal is considered to result in minimal environmental impact as the underlying land use at Horsley Drive Business Park for industrial purposes is to remain unchanged.
- The proposed modification does not exhibit any adverse environmental impact associated with the construction of the access crossover and driveway.

b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent was originally modified (if at all), and

Comment:

- The underlying use of the land at Horsley Drive Business Park will remain as originally approved.
- Access and transport arrangements at the subject site will not be adversely impacted as a result of the proposed maintenance access crossover and driveway.
- The proposed crossover and driveway constitutes a minor changes to the estate and will not impact the existing flow of traffic as the use is restricted to infrequent maintenance.

c) it has notified the application in accordance with:

- i. the regulations, if the regulations so required, or*
- ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification of advertising of applications for modification of a development consent, and*

d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: For the purpose of this application and the provisions set out in the *Environmental Planning & Assessment Regulation 2000*, notification of the application is not required.

4.2 *Roads Act 1993*

The proposed modification involves the construction of an access crossover and driveway thereby approval is required under Section 138 of the *Roads Act 1993* with concurrence from the Roads Maritime Services (RMS).

Consultation was carried out with RMS prior to lodging the subject application being lodged. To date,

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a formal written response is yet to be received, however in-principle support has been provided subject to conditions.

4.3 Western Sydney Parklands Act 2006

The Western Sydney Parklands Act 2006 (WSP 2006) was passed in late 2006 to guide the establishment of Western Sydney Parklands Trust (the Trust) and the Trust's management of the Parklands.

Clause 12 of the WSP Act identifies the key functions of the Trust. While the principal function of the Trust is to develop the Parklands into a multi-use urban parkland for the region of Western Sydney and to maintain and improve the Parklands on an ongoing basis, Clause 12(2) outlines additional functions, including:

(j) to undertake or provide, or facilitate the undertaking or provision of, commercial, retail and transport activities and facilities in or in relation to the Parklands with the object of supporting the viability of the management of the Parkland

Clause 12 also states the following actions of relevance to the proposed development are permitted by the Trust:

(5) In carrying out its functions, the Trust is to have regard to the principles of sustainable development, including ecologically sustainable development.

(6) The Trust may, with the consent of the Minister, exercise functions on or in relation to land outside the Parklands (including, for example, acquiring any such land). The consent of the Minister is to be given only if the Minister is satisfied that the exercise of the Trust's functions in relation to that land is consistent with the exercise of its functions in relation to the Parklands.

Nothing in the Western Sydney Parklands Act 2006 prevents or restricts the development (as modified). Approval has previously been granted under SSD 5169 for the development of the site having regard to these objectives.

The Owners Consent from the Trust has been provided.

4.4 State Environmental Planning Policy (Western Sydney Parklands) 2009

The proposed development (as modified) will support the function of the estate for employment generating activities within the Western Sydney Parklands (WSP) consistent with the underlying objectives of the Plan.

All land within the Western Sydney Parklands is unzoned under the provisions of the WSP SEPP. Pursuant to Clause 11(2), the proposed access road is permissible with consent. In addition, the proposed modification does not result in any inconsistencies with the objectives of the provisions of the SEPP.

Matters to be considered by the consent authority—generally

Clause 12 of the WSP SEPP identifies a number of general matters that must be taken into account by the consent authority during determining of a development application on land within the Parklands.

These matters are addressed in **Table 1**.

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Table 1: WSP SEPP General Matters for Consideration		
Matters	Compliance	Comments
<i>(a) the aim of this Policy, as set out in clause 2</i>	YES	The proposed modification is consistent with this aims as previously assessed and approved under SSD 5169.
<i>(b) the impact on drinking water catchments and associated infrastructure,</i>	YES	The proposed modification is consistent with this aim as previously assessed and approved under SSD 5169.
<i>(c) the impact on utility services and easements,</i>	YES	The proposed modification is consistent with this aim as previously assessed and approved under SSD 5169.
<i>(d) the impact of carrying out the development on environmental conservation areas and the natural environment, including endangered ecological communities,</i>	YES	No impact is to result in this respect under the proposed modification. All earthworks and site clearing has been previously approved under SSD 5169.
<i>(e) the impact on the continuity of the Western Parklands as a corridor linking core habitat such as the endangered Cumberland Plain Woodland,</i>	YES	As above.
<i>(f) the impact on the Western Parkland's linked north-south circulation and access network and whether the development will enable access to all parts of the Western Parklands that are available for recreational use,</i>	YES	No impact on the circulation of the Parklands will result from the modification given the position of the proposed access crossover and driveway.
<i>(g) the impact on the physical and visual continuity of the Western Parklands as a scenic break in the urban fabric of western Sydney,</i>	YES	As above.
<i>(h) the impact on public access to the Western Parklands,</i>	YES	No impact on the circulation of the Parklands will result from the proposed modification given the position of the development area as approved under SSD 5169.
<i>(i) consistency with:</i> <i>(i) any plan of management for the parklands, that includes the Western Parklands, prepared and adopted under Part 4 of the Western Sydney Parklands Act 2006, or</i> <i>(ii) any precinct plan for a precinct of the parklands, that includes the Western Parklands, prepared and adopted</i>	YES	The proposed modification is consistent with this aim as previously assessed and approved under SSD 5169.

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<i>under that Part,</i>		
<i>(j) the impact on surrounding residential amenity,</i>	YES	The site does not adjoin any residential areas.
<i>(k) the impact on significant views,</i>	YES	The approved setbacks under SSD 5169 are to be retained as a result of the proposed modification therefore no significant views will be adversely impacted.
<i>(l) the effect on drainage patterns, ground water, flood patterns and wetland viability,</i>	YES	The works are minor and will have no undue impact.
<i>(m) the impact on heritage items,</i>	YES	No heritage items will be impacted.
<i>(n) the impact on traffic and parking.</i>	YES	See Section 3.1.

Bulk Water Supply

Access to the Bulk Water Supply Infrastructure for maintenance and operation activities by the Sydney Catchment Authority and Sydney Water Corporation will not be impeded by the proposed modification.

Nature Reserves and Environmental Conservation Areas

The site does not contain and does not adjoin any Nature Reserves or Environmental Conservation Areas identified under the WSP SEPP.

Heritage Conservation

The site is located adjacent the Upper Canal System which is listed on the State Heritage Register. It is considered that the proposed modification will have no direct impact on the Upper Canal System or its heritage listed curtilage system.

Development on Private Land

The land subject of the proposed modification is under ownership of WSPT and is the subject of a development agreement between Frasers and WSPT. Owners Consent has been provided by WSPT in support of the proposal.

4.5 State Environmental Planning Policy (Infrastructure) 2007

The proposal does not constitute traffic generating development and therefore referral to RMS under the SEPP Infrastructure is not required.

4.6 Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River

The site lies within the area covered by Sydney Regional Environmental Plan No.20 Hawkesbury – Nepean River (SREP 20). The aim of the SREP is to:

protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

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The subject site is located within the South Creek Catchment and does not fall within any other areas of significance.

The SREP provides the following general planning considerations relevant to the proposal:

- (a) the aim of this plan, and*
- (b) (the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy, and*
- (c) whether there are any feasible alternatives to the development or other proposal concerned, and*
- (d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.*

Impacts associated with the proposed modification including stormwater and traffic have been assessed in Section 3 of this report. As stipulated within Section 3, there will be no change to stormwater quality or quantity outcomes for the proposed development. As such the proposal as amended is considered to satisfy the objectives of the SREP.

4.7 State Environmental Planning Policy No. 55 – Remediation of Contaminated Land

Contamination of the site has previously been dealt with under the previous approval SSD 5169. No further consideration is required as part of this Modification Application.

4.8 Fairfield Local Environmental Plan 2013

Fairfield Local Environmental Plan 2010 (FLEP 2013) is not applicable to the land as the provisions of *State Environmental Planning Policy (Western Sydney Parklands) 2009* apply.

4.9 Fairfield Development Control Plan 2013

It is noted that Section 11 of *State Environmental Planning Policy (State and Regional Development) 2011* states:

11 Exclusion of application of development control plans

Development control plans (whether made before or after the commencement of this Policy) do not apply to:

- (a) State significant development*

Notwithstanding, the proposed modification is generally consistent with the provisions of the *Fairfield City Wide Development Control Plan 2013 (FDCP 2013)*. Any departure from the FDCP is minor as compliance is achieved with the Concept Plan controls.

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5. CONCLUSION

The subject Modification Application seeks consent for the modification of SSD 5169 located at Horsley Drive Business Park. As detailed throughout this report, the changes sought will result in the development being substantially the same as that for which consent was originally granted. Notable aspects of the proposal which confirm the development will be substantially the same include and shall result in minimal environmental impact, are as follows:

- The proposed modification is required to facilitate access the stormwater detention basin from The Horsley Drive;
- The use of the proposed access crossover and driveway will be limited on an infrequent basis for the purpose of maintenance. As such, the modification does not alter the existing traffic flow and access arrangements within the Estate; and
- The modification does not alter the approved uses at Horsley Drive Business Park.

Accordingly, it is requested that the Department of Planning & Environment support the application and modify Condition D8 as requested.

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Appendix 1
Civil Design Plans & Maintenance Report

DRAFT

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**Appendix 2
Road Safety Audit**

Appendix 3
Deposited Plan 1213567