

13 November 2019

218088

Emily Dickson
A/ Principal Planning Officer
Key Site Assessments
Department of Planning, Industry and Environment
320 Pitt Street
Sydney NSW 2001

Dear Emily,

SSD 5175 MOD 8 – Eastern Creek Business Hub – Conditions D8 and A9

This application has been prepared by Ethos Urban on behalf of Frasers Property Australia, pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 5175 relating to the Eastern Creek Business Hub located at Rooty Hill Road South, Eastern Creek.

The modification seeks to delete Condition D8 of Concept Plan approval SSD 5175 to clarify that the internal access road is not to be dedicated to Blacktown City Council (Council) upon completion, rather ownership will be retained by the Western Sydney Parklands Trust (WSPT) in accordance with Condition A9 of the consent.

This application identifies the consent, describes the proposed modification and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act.

1. Consent proposed to be modified

Approval for SSD 5175 was granted by the Minister for Planning and Environment on the 7th January 2015 for the following:

"A concept proposal for a new retail centre comprising 52,800 sqm gross floor area to accommodate 'retail premises', 'bulky goods premises' and 'business premises' uses and a development structure including land uses; site layout; building envelopes and design parameters.

Stage 1 subdivision and early works including super lot subdivision to create three developable allotments and one residual allotment; construction of an access road; bulk and detailed earthworks; stormwater management; civil engineering works; landscaping and rehabilitation of the existing woodland areas identified for open space/conservation."

2. Proposed modification to the consent

It is proposed to delete Condition D8 of the Concept Plan consent (SSD 5175) to clarify that the internal access road is not to be dedicated to Council upon completion, rather ownership will be retained by the WSPT in accordance with Condition A9 of the consent. Condition D8 is contradictory to Condition A9 in terms of ongoing ownership of the internal access road.

Condition D8 reads:

Condition D8

The internal access road shall be constructed by the applicant and is to be dedicated to Council as a public road. Prior to any dedication, the applicant shall ensure that the construction of the road has been completed to the satisfaction of Council. Despite any formal dedication, the applicant shall remain responsible for the maintenance of the road for the duration of the maintenance period, being 12 months from the date of dedication of the road to Council.

Condition A9 reads:

Condition A9

Western Sydney Parklands Trust (WSPT) is to retain ownership of the basins and the internal roads.

Condition D8 formed part of the original Concept Plan approval (SSD 5175). Condition A9 was added as part of MOD 1 to the Concept Plan (28 April 2016) following concerns raised by Council about land management. Council's submission to SSD 5175 MOD 1 (dated 26 October 2015) stated that:

The proposed modifications seek to transfer all responsibilities for the management of the land from WSPT to the future tenants. Council strongly objects to any proposal by WSPT to divest itself from these responsibilities as this would be contrary to the spirit and intent of the Western Sydney Parklands to remain predominantly a parkland use. We believe the Trust should remain in full control of the land and maintain responsibility for the land at all times.

In response, the applicant's Response to Submissions Report (dated January 2016) agreed that WSPT will retain ownership of the basins and the internal access road. This position was endorsed by Council's subsequent submission (dated 5 February 2016) which recommended a condition of consent to this effect. Accordingly, Condition A9 was imposed on SSD 5175, however Condition D8 was not amended at the time which has resulted in uncertainty in terms of the ongoing management of the internal road.

It is noted that the Department's assessment report for MOD 1 (dated April 2016) stated that:

The Department notes that Western Sydney Parklands Trust will retain ownership of the basins and the internal road with the exception internal access road which will be dedicated to Council as per Condition D8. This is appropriate to ensure that Western Sydney Parklands Trust is able to mitigate and prevent any potential impacts from future operators on the wider parkland. A condition has been recommended accordingly.

This statement does not appear to reflect Council's position outlined in their submissions to MOD 1 and, the applicant's response, nor the current will of either party. Therefore, it is proposed to delete Condition D8 to remove the contradiction between the conditions.

3. Consultation

Numerous meetings have been held with Council throughout the preparation an assessment period of SSD 8588 relating to the detailed design of the Eastern Creek Business Hub development application. Council has consistently advised at these meeting that they do not want ownership of the internal roads for maintenance and insurance reasons.

WSPT has also been consulted during the preparation of this application and agrees to the proposed amendment.

4. Substantially the same development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if "*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 as originally granted was modified (if at all)*".

The development, as proposed to be modified, is substantially the same development as that originally approved in that the modification will clarify the ongoing ownership of the internal access road and will not change the essential characteristics of the approved development. It will not result in any changes to the approved uses, floor area or site area. In accordance with Section 4.55(1A)(b) the proposed modifications as outlined above, result in a development that is substantially the same as the approved development.

5. Environmental assessment

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the proposed modification is of minimal environmental impact”*. Under section 4.55(3) the consent authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

As above, the modification only seeks to clarify the ongoing ownership of the internal access road and will not result in any additional environmental impacts.

6. Conclusion

The proposed modification SSD 5175 seeks delete Condition D8 of Concept Plan approval SSD 5175 to clarify that the internal access road is not to be dedicated to Blacktown City Council upon completion. The proposed amendment is minor in nature and will not result in impacts beyond those considered and deemed acceptable during the original SSD assessment.

In accordance with section 4.55(1A) of the EP&A Act, the Department may modify the consent as:

- The proposed modification is of minimal environmental impact; and
- Substantially the same development as development for which the consent was granted.

We trust that this information will enable a prompt assessment of the proposed modification request.

Yours sincerely,



Chris Forrester
Principal
02 9956 6962
cforrester@ethosurban.com