



15 June 2022

Ref: WTJ21-592
Contact: Travis Lythall

NSW Department of Planning and Environment (DPE)
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Attention: **Chris Ritchie**

RE: SECTION 4.55(1A) APPLICATION FOR MODIFICATION OF SSD 7155

PROPERTY AT: 5-35 YARRUNGA STREET, PRESTONS (LOT 20 DP 1173483 AND LOTS 33-35 & 43 DP 2359)

1. INTRODUCTION

Dear Chris,

Reference is made in relation to Development Consent SSD 7155 granted on 24 June 2016 for the 'Prestons Industrial Estate' at 5-35 Yarrunga Street, Prestons, legally described as Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359 (the Site).

This Planning Report has been prepared in support of a Section 4.55(1A) Modification Application submitted to the NSW Department of Planning and Environment, seeking to modify Development Consent SSD 7155 (refer to **Appendix 1**), which granted consent for:

"Staged construction of five warehouse buildings, associated office space, access roads, parking, drainage and landscaping."

The overall intent of the proposed modification is to settle the issue of the upgrade to the intersection of Yarrunga Street and Bernera Road which has been plagued with conflicting requirements and indecision by removing the conditions of consent pertaining to Conditions C1-C4 of SSD 7155 in relation to development contributions to address intersection upgrade requirements within the Prestons Industrial Release Area. Accordingly, the purpose of this Modification Application is to substitute the Conditions of Consent requiring delivery of intersection works for the payment of money for delivery of the works by Council in accordance with the aforementioned Conditions of Consent – C1-C4 of SSD 7155. This would be satisfied through provision of new Conditions (C1-C3 – refer to **Section 3** below) pertaining to the remittance of monetary contributions in relation to the intersection works. The modifications sought are outlined in **Section 3** of this Planning Report.

This Application is made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), on behalf of the Proponent – The Trust Company (Australia) Limited as Trustees for Logos Australian Logistics Venture Prestons Trust. The following supporting documentation has been provided as part of this Application:

- **Appendix 1** Consolidated Development Consent (SSD 7155)
- **Appendix 2** Traffic Apportionment Report



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



▪ Appendix 3 Independent Cost Review

This Modification Application constitutes the **tenth** modification sought to SSD 7155. **Note:** this Application is not considered to be a continuation of SSD 7155 MOD 4 as it is considered there are inconsistencies and new material within the documents, including new consultants being engaged on behalf of the proponent.

2. SITE LOCATION & CHARACTERISTICS AND PLANNING HISTORY

2.1 Site Analysis

The Site is identified as 5-35 Yarrunga Street, Prestons and is legally defined as Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359. The Site features split zoning identified as IN1 General Industrial and IN3 Heavy Industrial, pursuant to the *Liverpool Local Environmental Plan 2008* (LLEP2008).

The Site is located within the suburb of Prestons (Prestons Industrial Release Area), which forms part of the wider Liverpool Local Government Area (LGA). The Site has an irregular configuration and exhibits a total site area of 20.72 hectares (ha).

In its existing state, the Site comprises a series of Warehouse and Distribution Facilities, which have been constructed in relation to SSD 7155 (and as modified).

Figures 1 & 2 illustrate the Site and surrounding context.



Figure 1 Aerial View of the Site and Surrounding Context (Source: Nearmap, 2021)



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarringa Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)

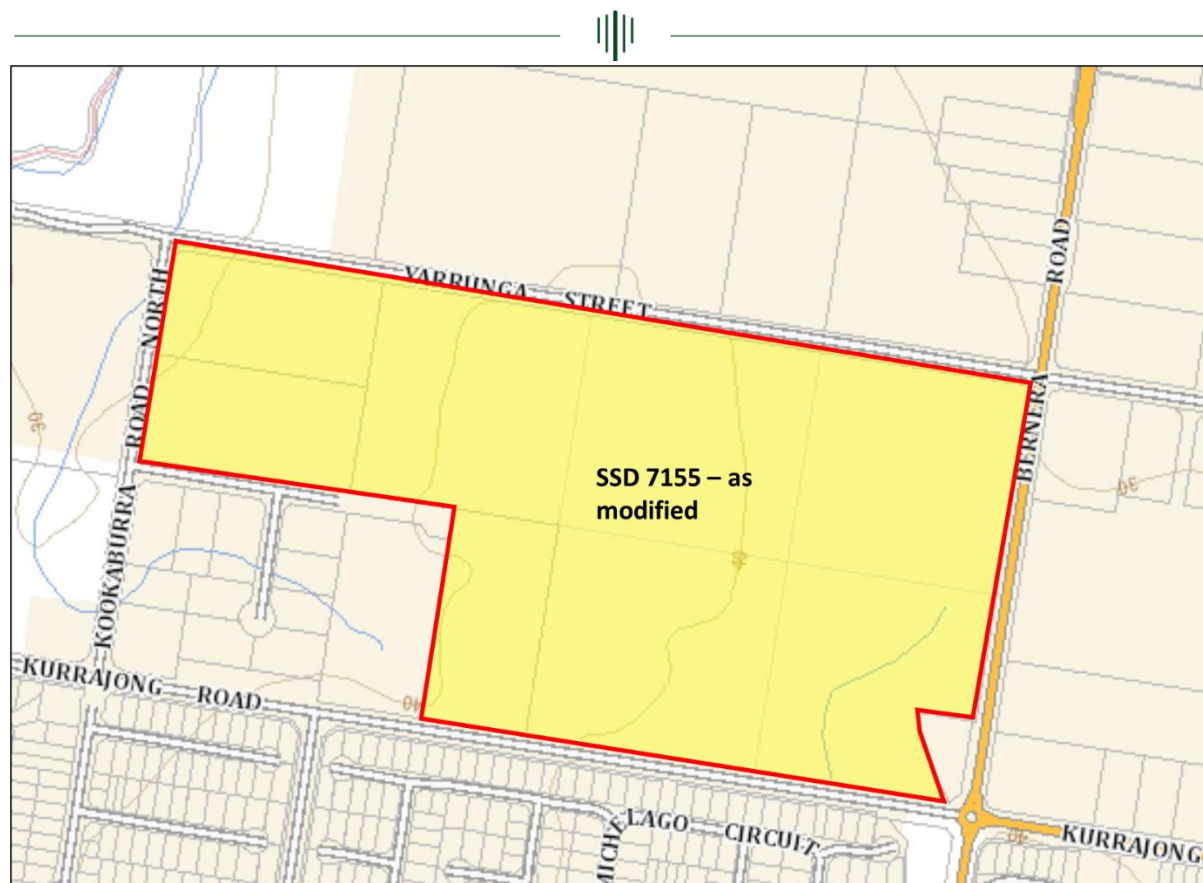


Figure 2 Cadastral View of the Site and Surrounding Context (Source: Six Maps, 2021)

2.2 Development and Planning History

On 24 June 2016, the delegate for the Minister for Planning granted approval to SSD 7155 for the construction of 'Prestons Industrial Estate', comprising the *staged construction of five warehouse buildings, associated office space, access roads, parking, drainage and landscaping*. Details of the development history are outlined in **Table 1** below.

Table 1: State Significant Development Application – SSD 7155 (and as Modified)		
Reference	Development Description	Determination
SSD 7155	<i>Staged construction of five warehouse buildings, associated office space, access roads, parking, drainage and landscaping</i>	Approved – 24 June 2016
SSD 7155 MOD 1	<ul style="list-style-type: none">▪ Relocation of sprinkler tank and pump room from the south eastern corner of Warehouse 5 to the north west corner of Warehouse 2;▪ Addition of a battery room on the northern side of Warehouse 5 adjoining the recessed docks;▪ Deletion of the indoor substations and replacement with external substations;▪ Addition of a pergola and shade cloth awning area adjoining Warehouse 5;▪ Removal of sun shades from southern façade of Warehouse 2 offices;▪ Removal of the car park lift; and	Approved – 17 November 2016

Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



	▪ <i>Minor changes to carparking to accommodate the relocated infrastructure.</i>	
SSD 7155 MOD 2	Amendments made to Schedules B, C, D and Appendix A	Approved – 11 January 2018
SSD 7155 MOD 3	Amendments made to Schedules A, B, C and Appendix A	Approved – 13 February 2018
SSD 7155 MOD 4	<i>Amendment to Condition C1 relating to the Bernera Road and Yarrunga Street intersections works</i>	Withdrawn
SSD 7155 MOD 5	<i>Amendment to development contributions</i>	Approved – 14 October 2019 Note: Condition B23 was revised to specify a monetary local infrastructure contribution to the amount of approximately \$6,001,164 to be made to Council within six (6) months of the determination in accordance with the Contributions Plan.
SSD 7155 MOD 6	<i>Construction and operation of an extension of the existing Warehouse 5 (currently on Lot 43 DP 2359) on Lot B DP 416483, including ancillary office, hardstand, car parking, landscaping and stormwater drainage infrastructure</i>	Approved – 21 December 2018
SSD 7155 MOD 7	<i>Alterations to the design of Warehouse 1 to create Warehouse 1A and Warehouse 1B and amendments to the car parking provision, stormwater design, landscaping and vehicle access arrangements to the site.</i>	Approved – 26 February 2019
SSD 7155 MOD 8	<i>Request to modify conditions of consent in relation to the upgrade of the Bernera Road and Yarrunga Street intersection. The intention is to enter into a VPA with Council.</i>	Withdrawn
SSD 7155 MOD 9	<i>Alterations and additions to the design of Warehouse 1A including extension of the awning and battery charge area and installation of a weighbridge and boom gate</i>	Approved – 5 August 2019

This Modification Application constitutes the **tenth** modification sought to SSD 7155.

2.3 Council Correspondence and Chronology of Events Leading to the Draft Development Control Order

Council Correspondence

In a letter dated 23 April 2018, prepared by Liverpool City Council, they note that “Council has reviewed the design and cost estimates of the intersection upgrade, taking into account the remaining component of the upgrade that needs to be carried out, to accommodate traffic impacts of developments in the Prestons Industrial Area. The total cost of the intersection upgrade is \$2.1 million, of which the costs attributable to LOGOS Property is \$1.45 million + GST (including a cost of \$300,000 for the relocation of a 750 mm Sydney Water main).” Based on the abovementioned extract, Logos would be responsible for 69% of the remaining apportioned costs.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



As outlined in **Table 1** above, under SSD 7155 MOD 5, Condition B23 was revised to specify a monetary local infrastructure contribution to the amount of approximately \$6,001,164 to be made to Council within six (6) months of the determination in accordance with the Contributions Plan.

For further context, in a cost estimate summary recently prepared by At&I, they note that the total cost of works for the Bernera Road intersection upgrades totals the amount of \$5,739,637.35. However, in a further cost apportionment spreadsheet provided by Council, they provide a revised breakdown of \$5,363,923 for the intersection upgrades, of which they identify the following cost breakdown:

- Lot D, Kurrajong Road, Prestons (DA-987/2015): 18% = \$956,243
- 24 Bernera Road, Prestons (DA-987/2015): 5% = \$288,865
- 14 Yarrunga Street, Prestons (DA-407/2017): 8% = \$408,395
- 55 Yarrunga Street, Prestons (DA-906/2017): 9% = \$473,141
- 5-35 Yarrunga Street, Prestons (SSD 7155): 60% = \$3,237,280

Noting the breakdown provided, it is understood that the following Modification Applications have been pursued with Council to undertake and execute formal VPAs:

- 55 Yarrunga Road Prestons – DA-681/2017/A – Resolved the VPA at Council meeting on 25 July 2018
- 14 Yarrunga Road Prestons – DA-527/2017/A – Resolved VPA at Council meeting on 24 June 2020
- 24 Bernera Road Prestons – DA-407/2017/A – Resolved VPA at Council meeting on 21 November 2018
- 28 Yarrunga Road Prestons – DA-904/2019/B – Resolved VPA at Council meeting 28 April 2021

As can be seen above, 28 Yarrunga Street, Prestons was not included in Council's cost apportionment spreadsheet provided to Logos. It is considered that Council's apportionment values are required to be updated to reflect the true and accurate apportionment quantities.

Draft Development Control Order

Furthermore, in accordance with Section 9.34 of the EP&A Act, the NSW DPE issued a notice pertaining to their intention to provide the proponent with a Development Control Order (DCO) in relation to causing a breach with Conditions C1-C4 of SSD 7155. The breach pertains to intersection upgrade requirements comprising the following scope of works, as stipulated within the draft DCO:

- Construction of a separate right-turn lane (southbound) into Yarrunga Street and localised road widening along the western side of Bernera Road (north of Yarrunga Street) to accommodate the new right turn bay;
- Upgrading of the Yarrunga Street approach to provide a shared left turn / through lane and separate right turn bay; and
- Localised road widening along the western side of Bernera Road (south of Yarrunga Street), to allow for (but excluding) the construction of separate right turn bay (northbound) into Yato Road.

On 7 September 2020, Logos Property made representation to the NSW DPE's Compliance Team, which detailed the chronology of events in relation to the works. Logos note that the delivery of the intersection works has been delayed due to a number of reasons wholly outside of Logos' control, which pertain to:

1. *Refusal or rejection of LOGOS' original intersection designs by the road authority despite approval from Council (refer to Document S in Annexure A – letter issued 7 September 2020).*



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



2. *Events which lead to Council taking over design and delivery of the intersection works (which are now envisaged to be materially different than what was intended at the time the Consent was originally granted), which involve co-ordination of funding and delivery objectives with various third parties including LOGOS.*
3. *LOGOS has agreed to enter into a voluntary planning agreement (VPA) with Council to provide a monetary contribution in substitution of the intended intersection delivery works (being works in kinds required under the Consent by the Applicant). Council delays in design and costings for these reconceived intersection works have resulted in the VPA completion being stalled for a period greater than 18 months (since around 30 April 2018 when LOGOS confirmed its in principal agreement to enter into a VPA with Council for this purpose) (refer to Document X in Annexure A – letter issued 7 September 2020).*
4. *LOGOS sought to lodge a modification application (MOD 4 and 5) on or around 19.07.2018 requesting to modify conditions of consent in relation to the upgrade of the Bernera Road and Yarrunga Road Intersection. The intention being to enter into a VPA with Council (refer to the Department's Major Project Webpage1) and LOGOS sought to modify the Consent to reflect the updated obligation to provide a contribution payment to Council. LOGOS was advised by the Department that it would not be able to seek MOD 4 until after the VPA was finalised and executed, and as such, MOD 5 has not been determined (although we note that the Department Major Portal Webpage states that it has been withdrawn). LOGOS acted in good faith on the advice of the Department and Council in regards to the progress of this matter and has not acted contrary to (or in any manner) resiled itself from its commitment to provide fair and reasonable development contribution payments in substitution of the works in kind for the intersection upgrade; it is LOGOS understanding that determination of MOD 4 is pending provision of a final VPA (or similar) representing the agreement between Council and LOGOS.*
5. *Having regard to the above, LOGOS was wholly prevented from delivering on their obligations under Schedule C, C4 of the Consent to complete the intersection upgrade works prior to operation of Stage 3. However, despite this oversight LOGOS' understand this failure does amount to an unintentional technical breach and confirms its commitment to rectify the non-compliance as a matter of immediate priority.*

In addition, At&I (on behalf of Council) have since recalculated the costs of works to undertake the intersection upgrades, which includes scope beyond that outlined within the draft DCO. The draft DCO stipulates works being undertaken solely to the west of Bernera Road; however, the revised cost apportionment prepared on behalf of Council takes into account, both the eastern and western intersection upgrade requirements, including the addition of acquisition requirements, which the draft DCO has not considered.

For additional context, **Figures 3-5** illustrated below depict the various versions of the intersection works.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10
Prestons Industrial Estate
5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)

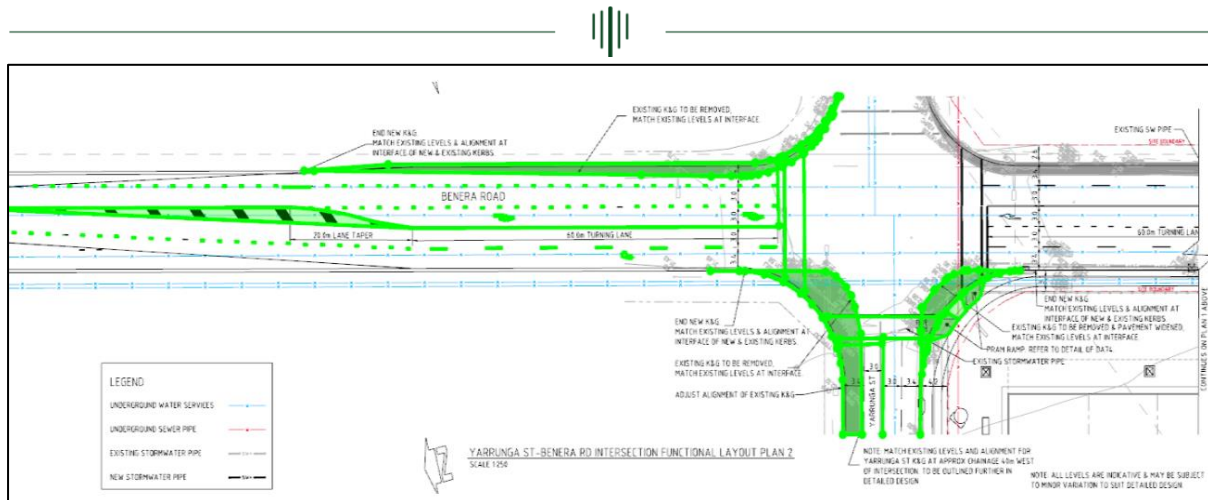


Figure 3 Intersection Works Per SSD 7155 (Source: WT Partnership, 2022)

In relation to **Figure 3** illustrated above, the Development Consent pertaining to SSD 7155 included provision for intersection upgrade requirements to the western portion of Bernera Road and Yarrunga Street, for which WT Partnership have estimated a cost plan totalling \$518,553.71 (excluding GST) (refer to **Appendix 3**).

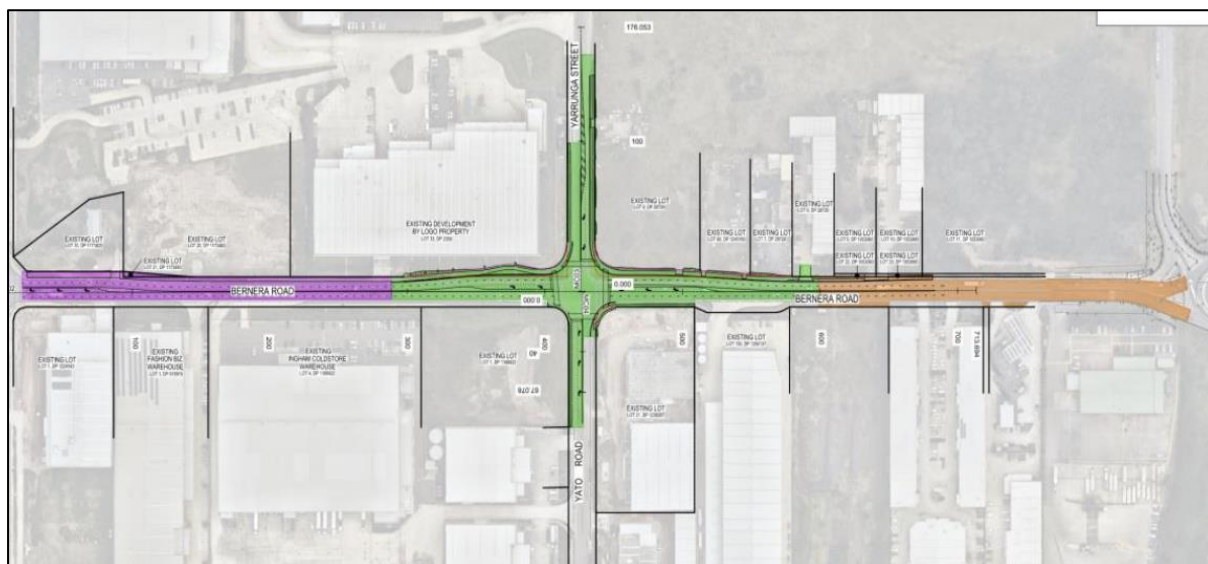


Figure 4 Intersection Works Per AT&L Design (Source: WT Partnership, 2022)

In relation to **Figure 4** above, At&I have prepared a design pertaining to the Bernera Road / Yarrunga Street & Bernera Road / Yato Road intersection upgrade, for which WT Partnership have estimated a cost plan totalling \$5,739,637.35 (excluding GST) (refer to **Appendix 3**). WT Partnership have reviewed the design further, which provides a revised calculation of the design totalling \$4,436,104.42 (excluding GST). Furthermore, WT Partnership took this a step further and reviewed the intersection works against the Draft DCO, for which this totalled \$3,168,155.69 (excluding GST).

Based on the above calculations undertaken by WT Partnership, the Draft DCO accounts to 71% of the total cost of the intersection works – which includes a \$1 Million skewed variance due to land acquisition costs. If land acquisition costs were to be excluded from the Draft DCO, the percentage of works would be reduced to 48%. The extent of these works are illustrated in **Figure 5** below.

Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)

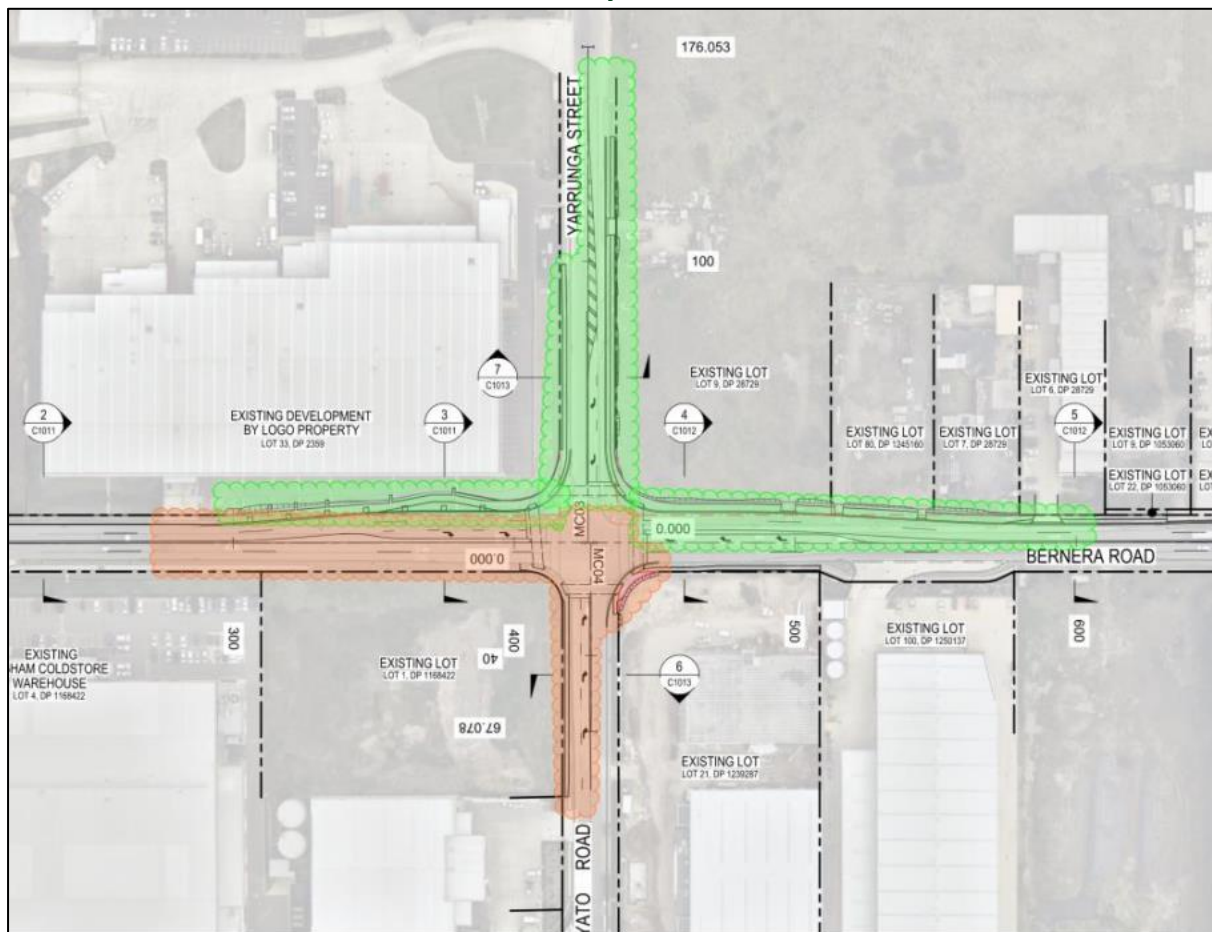


Figure 5 Draft Development Control Order Works (Source: WT Partnership, 2022)

Based on the abovementioned chronology, it is considered that the cost burden placed on Logos under the draft DCO is considered to substantially larger than that required, for which recalculation based on current DAs is recommended to be undertaken, including consideration of the apportioned calculations prepared by both CBRK and WT Partnership, as outlined within **Appendix 2 & 3** of this Planning Report. It is considered, that this should be aligned with all sites whom will benefit from said intersection upgrades in the future to appropriately apportion the costs pertaining to the western and eastern portions of Bernera Road.

It is understood Council and At&I based their calculations on traffic generation as a product of apportionment. Notwithstanding, it is considered that a far more accurate methodology could be utilised, including the total net developable area per total site area. This would be particularly accommodating noting the combination of built, proposed and vacant sites within the Prestons Industrial Release Area. **Note:** this apportionment value is commonly utilised in several Contributions Plans and Special Infrastructure Contributions levies based on developable area per hectare.

Accordingly, as a result of the chronology of events, Logos are proposing the subject modifications to rectify and resolve the outstanding issues pertaining to intersection works.



2.4 Consultation with Council – 7 April 2022

On 7 April 2022, Logos undertook consultation with representatives from both the NSW DPE and Council to discuss the intent of the proposed modifications, including the future contribution proposed. In a letter dated 6 May 2022, Council provided formal comments based on their preliminary review of the content contained within this Planning Report, including the annexures supporting the package. The comments from Council are outlined in **Table 2** below.

Table 2: Council Correspondence dated 6 May 2022	
Council Comments	Proponent Response
<p>A. Confirmation of the relevant scope of works to which LOGOS should be contributing</p> <p>As outlined in the consent conditions, C1-C4, summarised below, for the Bernera Road and Yarrunga Street intersection the applicant is required to:</p> <ul style="list-style-type: none"> Complete designs, meeting TfNSW and Council requirements. Complete the approved intersection upgrade and road work in Bernera Road, prior to operation of Stage 3 of the Development. <p>Council and TfNSW requirements for the intersection involves upgrade of the existing basic signalised intersection to provide dedicated right turn lanes and two-lane approaches in each direction along Bernera Road. In addition, localised road widening in Yarrunga Street and reconfiguration along Yato Road and Yarrunga Street to provide two lanes approaches to the signalised intersection.</p> <p>Details of the intersection upgrade includes the following:</p> <ul style="list-style-type: none"> Bernera Road southern approach – Two through lanes with a shared left turn lane and a right turn dedicated lane, for turning movements into Yato Road. Bernera Road northern approach - Two through lanes with shared left turn and right turn dedicated lane, for turning movements into Yarrunga Street. <p>The dedicated right turn lanes are being provided to allow diamond turn movements to meet the TfNSW requirement for right turn movements at the modified signalised intersection.</p> <ul style="list-style-type: none"> Yato Road and Yarrunga Street approaches –Road widening in Yarrunga Street, and reconfiguration in Yato Road, including installation of central median islands, to provide a shared left turn/through lane and 	<p>Whilst Logos are not objecting to contributing to the wider scope of intersection works, there should be emphasis placed on the deviation of scope from the time of the original Development Consent being obtained from the NSW DPE in 2016.</p> <p>The chronology of events has been detailed in Section 2.3 of this Planning Report above.</p> <p>It is considered that the documentation enclosed within this Planning Report satisfactorily analyses and addresses the complete scope of works, for which appropriate apportionment values have been suggested through a combination of quantity surveying to establish costs; and, traffic generation rates established.</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<p>separate right turn lane on the two approaches.</p> <ul style="list-style-type: none">▪ Other associated works include:<ul style="list-style-type: none">○ Modification of the existing traffic signal phasing○ 2.5m shared path on the western side and a 1.5m footpath on the eastern side.○ Localised road widening requiring land acquisition.○ Relocation of the existing fixed VMS sign along Bernera Road, south of Yarrunga Street.○ Installation of updated street lighting○ Driveway modification of 23 Bernera Road due to impact of the proposed intersection upgrade.○ Relocation of all affected underground services including watermain across Yarrunga Street. <p>The area for the intersection upgrade covers:</p> <ul style="list-style-type: none">▪ Bernera Road approximately 310m long▪ Yarrunga Street and Yato Road approximately 230m long <p>The area, as shown below, is similar to that identified in the LOGOS draft modification application with the exception that pavement overlay is required along sections of Yato Road and Yarrunga Street close to the intersection as indicated below.</p>	
<p>B. Cost Estimate</p> <p>As discussed in the recent meeting, Council has completed 50% concept design and has engaged consultants to prepare the required 80% and 100% detailed design.</p> <p>The design consultants have advised that the 80% design is almost completed. Council expects to receive the 80% design with associated cost estimate by the end of May 2022.</p> <p>The cost estimate that has been prepared to date is based on the completed 50% concept design and includes appropriate contingency used by TfNSW and Councils at such design stage.</p> <p>This estimated cost, as previously advised, is approximately \$5.7 million. The cost estimate includes a provisional amount of \$1 million for land acquisition and \$325,000 for services relocation. Final cost of these provisional amounts would be confirmed on completion of negotiations with the affected land owners and</p>	<p>All costs and quantities have been forecasted within the Independent Cost Review prepared by WT Partnership (refer to Appendix 3) which is considered to be consistent with the works proposed, which includes consideration of land acquisition etc. Conditions C1-C3 include consideration of the cost estimate for the subject works.</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<p>cost estimates from the utility agencies based on the 100% design.</p> <p>The cost estimate can be revised on completion of 80% and 100% detailed designs. It is expected that the 100% detailed design and associated cost estimate could be completed by the end of August 2022.</p> <p>In the meantime, it is noted that LOGOS has indicated that the cost estimate for the intersection upgrade is approximately \$3.16 million. Council would appreciate if a bill of quantities and assumptions used in this cost estimate can be provided for a review.</p>	
<p>C. Relevant Traffic Generation Rate</p> <p>Council notes the following:</p> <ul style="list-style-type: none">▪ The traffic report that accompanied the original DA estimated traffic generation potential based on a traffic generation rate of 0.21 vehicles per hour per 100 m² GFA.▪ The traffic and parking analysis report (submitted by LOGOS) has estimated traffic generation potential, using a traffic generation rate of 0.27 vehicles per hour per 100 m² GFA. <p>TfNSW specifies in its Guide to Traffic Generating Developments 2002, traffic generation rates that should be used to estimate traffic generation potential of different land uses including industrial developments.</p> <p>TfNSW in compiling traffic generation rates, has engaged a number of consultants to prepare reports that specifies traffic generation rates. For business parks and industrial estates such a study including surveys was carried out in 2012. A copy of the survey and study report has previously been provided to the DPE and LOGOS.</p> <p>Figures 3-16 and 3-17 on Page 12 of the survey report, indicates that traffic generation for any site under 200,000 m² GFA (site 5) should be calculated based on vehicular trip generation rates of between 0.92 and 0.89 per 100 m² of GFA during AM and PM peak hours, respectively.</p> <p>The Guide to Traffic Generating Developments 2002 also specifies a traffic generation rate of at least 0.5 vehicle/hour per 100 m² for warehouse development.</p> <p>The LOGOS development site has a floor area of 140,737 m². As such the traffic generation potential rate for the development site could be</p>	<p>With regards to traffic generation Council has identified a traffic generation rate of 0.92 and 0.89 vehicles per hour per 100 m² (two way) in the AM and PM peak hours for the Logos developments. This is based on 2012 surveys of a Business Park located in Tuggerah. CBRK note that Council then suggests a minimum generation of 0.5 vehicles per hour per 100 m² (two way) in the AM and PM peak hours for the Logos developments (based on the 2002 RMS Guide).</p> <p>The use of the traffic generation rate of 0.92 and 0.89 vehicles per hour per 100 m² (two way) is not considered to be appropriate as it is based on a development not located in the Sydney Metropolitan Region and for a business park that comprises different land uses to the Logos site which is a warehouse/distribution centre.</p> <p>As noted in the CBRK Report (refer to Appendix 2), a traffic generation rate of 0.27 vehicles per 100 m² of developable site area has been adopted as this is the average generation rate across the five (5) sites identified by Council in its email dated 31 March 2021 (developable area 395,810 m² and a traffic generation of 1,077 vehicles per hour).</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<p>between 0.92 and 0.89 per 100 m² of GFA during AM and PM peak hours, respectively.</p> <p>Council notes that the LOGOS development includes warehouses and transport distribution depot. As such, Council considers that the traffic generation potential would be between 0.5 and 0.92 per 100 m². In this regard, Council has previously advised that a traffic generation rate to be used in the assessment of the LOGOS application should be a minimum of 0.5 vehicle/hour per 100 m² of GFA in accordance with TfNSW Guide.</p>	
<p>D. Agreement on what lots should be included to apportion the cost of the intersection upgrade</p> <p>The existing Bernera Road, Yato Road and Yarrunga Street intersection is included in Council's Developer Contribution Scheme for monetary contribution to be collected to fund the construction of the existing basic signalised intersection. The construction was forward funded and completed approximately 12 years ago.</p> <p>In 2015, Council and TfNSW in their assessment of the LOGOS development applications identified that the existing basic signalised intersection treatment would need to be upgraded to meet the current and future traffic movements including heavy vehicles through the intersection.</p> <p>Hence, developments that were approved before this date have not been included in the development allotments that need to contribute towards the intersection upgrade necessitated primarily by the LOGOS development.</p> <p>Taking the above comments into consideration, the development sites that have been included to contribute to the intersection upgrade include development sites:</p> <ul style="list-style-type: none">▪ Close to the intersection that would generate significant and increase traffic movements through the intersection and▪ Approved after 2015▪ Expected to be carried out in the short to medium term. <p>However, it is noted that, the information provided in LOGOS draft modification application, includes a list of 59 development sites that could contribute towards the intersection upgrade.</p> <p>The list includes:</p>	<p>The 59 sites were purely included for additional context, rather the information pertaining to the actual report was holistically based on the figures provided in the CBRK Report (refer to Appendix 2) which is considered to be representative of the sites outlined by Council within their spreadsheet, plus those sites beyond 2016 that would be utilising the key intersections under investigation.</p> <p>Based on the available information review and consultation undertaken, Council have clearly acknowledged that they have not recovered contributions from developments approved prior to 2015, the result of which is that all of the development allotments which would benefit from the intersection upgrade have not contributed to the intersection upgrade works (in kind or by monetary payment).</p> <p>This appears to have created a shortfall in the contribution funding required for the proposed intersection works, being a matter, which is wholly the responsibility of Council. This is not properly a matter for Logos, and it is inappropriate and not in accordance with planning principals for Logos to bear any additional contribution burden resulting from Council's failure.</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<ul style="list-style-type: none"> ▪ Development sites close to the intersection that would not generate significant and increase traffic movements through the intersection ▪ Development sites approved prior to 2015 ▪ A number of small development sites which development applications would not be referred to Council for conditions to be imposed to require monetary contributions under the Voluntary Planning Agreement approach <p>Council's comments on the submitted spreadsheet are attached. When the above sites are removed from the list, the developments sites that are required to contribute towards the intersection upgrade is made of 16 lots.</p> <p>Council notes that other developments and through traffic will benefit from the upgrade and hence Council's involvement in the design and delivery of the intersection upgrade and recognition to fund possible shortfall.</p> <p>There is no funding mechanism for Council to collect monetary contributions from the existing and the previously approved development sites for the identified additional intersection upgrade. As such, the cost apportionment can only be applied to the sites with development consent approvals and a consent condition or a VPA with Council for the intersection upgrade.</p>	
Other Comments on the Draft Modification Planning Report	
<p>Monetary Contribution Apportionment Methodology</p> <p>The draft planning report submitted for the development consent modification has estimated monetary contributions attributable to individual development lots based on estimated developer area. Council notes that the estimated developable area is a total area of the individual development lots. Such approach assumes that the development lots will be developed to the same floor space ratio and generate similar traffic volumes.</p> <p>Developments carried out to date or proposed include warehouses, transport depots, industrial manufacturing and light industrial developments. These developments do not have the same floor spaces ratios, as car parking provision, vehicular access arrangements and landscaping are different.</p> <p>The draft modification planning report suggesting developable area can be used in apportioning the cost has estimated a</p>	<p>It is important to note, that the Proponent considers, that the apportionment methodology (product of net developable hectare per site area) could be considered as an appropriate method when calculating the intersection requirements to be undertaken by the Proponent (and other proponent's), to accurately determine the cost burden and responsibilities applicable to Logos and surrounding Proponent's concerning future developments undertaken within the Prestons Industrial Release Area.</p> <p>This method was suggested purely for additional context which reinforces the justifications supported by both CBRK and WT Partnership as a result of traffic generation and cost summary calculations. Both supporting studies are annexed as part of this Planning Report.</p> <p>Accordingly, the rationale was to highlight, that the contributions plan could have been forecasted far more efficiently, similar to the effect of other contributions plans (both Local</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<p>contribution of 15.85% attributable to LOGOS. Council considers that this approach is not equitable and therefore, not acceptable.</p> <p>An appropriate approach is to apportion the costs based on traffic generation potential of the applicable development site. Council has apportioned the costs based on this method. This method has been discussed with LOGOS and its consultants and no objection has been raised.</p>	<p>and State Infrastructure Contributions Plans) across NSW that apply similar methodologies.</p>
<p>Estimated Proportional Contribution Attributed to the Logos Development</p> <p>Based on traffic generation potential for the LOGOS development site and its existing obligations (item a) under the development consent, the company is required to contribute between 50% - 60% of the total cost towards the intersection upgrade.</p> <p>In addition, to the contribution towards the intersection upgrade, LOGOS is required to install a central median island along Bernera Road opposite Warehouse 4. LOGOS could make monetary contribution for Council to install this median island as part of the intersection upgrade works.</p>	<p>The recommended contribution pertaining to the Proponent's development is considered to be appropriately justified and demonstrated within Section 6.3 of this Planning Report.</p> <p>The Proponent does not agree or accept Council's position as it relates to the Proponent's estimated proportional contribution of total cost towards the intersection upgrade, rather than concise methodological interpretation through cost reviews apportioned with traffic data, which is seen to provide a much more accurate representation of the requirement that the Proponent should be subject to.</p>

3. PROPOSED MODIFICATIONS

The overall intent of the proposed modification is to remove the conditions of consent pertaining to Conditions C1-C4 of SSD 7155 in relation to development contributions, to address intersection upgrade requirements within the Prestons Industrial Release Area. Accordingly, the purpose of this Modification Application is to remove Conditions C1-C4 and insert new Conditions to allow for a monetary contribution to be made in respect of Logos apportionment for the intersection works in lieu of delivery of the works.

3.1 SSD 7155 Consolidated Consent – Schedule C – Intersection Works

C1. The Applicant shall meet the requirements of RMS and Council for the intersection upgrade works on the Bernera Road and Yarrunga Street intersection. The Applicant shall:

- (a) provide certified copies of the civil design plans for the intersection and traffic control signal works to RMS for approval prior to the issue of a construction certificate;*
- (b) obtain approval for the works under section 138 of the Roads Act 1993; and*
- (c) enter into a Works Authorisation Deed with RMS for the works.*

C2. Within 2 months of the date of this consent, the Applicant shall engage an independent Quantity Surveyor to determine the cost of the intersection upgrade works that will form the basis of a contribution to be paid by the Applicant to Council.

C3. Within 6 months of the date of this consent, the Applicant shall provide written evidence to the satisfaction of the Secretary demonstrating that an agreement has been made with Council for construction and payment of the intersection upgrade works.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



C4. The Applicant shall complete the intersection upgrade works on Bernera Road and Yarrunga Street prior to operation of Stage 3 of the Development.

Proposed Modifications:

It is requested to remove Conditions C1-C4 as remittance is being made to Council in-lieu of works that the abovementioned Conditions have no relationship with. Accordingly, the Proponent requests that new Conditions (C1-C3) be included as part of the Consolidated Consent as follows:

*C1. Within six (6) months of the date of determination of the subject Modification Application, the Applicant must make payment of a monetary contribution of \$1,215,492 (excluding GST) to Council in lieu of undertaking the intersection upgrade works on the Bernera Road and Yarrunga Street intersection and the design and construction of the central median on Bernera Road (**Upgrade Works** and a contribution for the costs of acquiring land for these works estimated as \$1,000,000 (excluding GST).*

[Note: This condition has been imposed under Section 7.11 of the EP&A Act.]

C2. Council agrees to hold the contributions paid in accordance with C1 on trust for the specific purpose of the Upgrade Works until all Upgrade Works are carried out or paid for, whichever comes first.

C3. Council agrees to refund all contributions paid by the Applicant in accordance with C1, in the event the Upgrade Works are not completed within two years of the date of determination of MOD 10.

Accordingly, as a result of removing Conditions C1-C4, the revised Conditions (C1-C3) will allow for the intersection works to be undertaken to a satisfactory standard, which take into account the appropriate apportionment quantities and values.

Extrapolated from pg. 123 of the Contributions Plan, it states, “To adequately handle the increased traffic on the site the intersection of Bernera Road / Yarrunga Street will be upgraded. This upgrade will include the installation of traffic signals. **The cost of these works will be proportioned across the West of M7 Catchment.**”

Emphasis has been added to the passage paraphrased above confirming that the contributions should be proportioned across the ‘West of M7 Catchment’ for which the data presented by WT Partnership and CBRK (refer to **Appendix 2** and **3**) has considered in detail.

In addition to the above, the Proponent considers, that the apportionment methodology (product of net developable hectare per site area) could be considered as an appropriate method when calculating the intersection requirements to be undertaken by the Proponent (and other proponent’s), to accurately determine the cost burden and responsibilities applicable to Logos and surrounding Proponent’s concerning future developments undertaken within the Prestons Industrial Release Area.

The Proponent considers that the sole cost burden should not purely be placed on them to facilitate the costs of the intersection upgrades as a result of the development approved under SSD 7155, as the Logos developments would be responsible for only 15.85% of the total land being developed, as well as only 27.4% of the total costs (predicted by CBRK – refer to **Section 6.3** below), based on the total traffic generation assumed by the Logos developments.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



The West of M7 Catchment Area comprises largely developed built form, for which contributions have been paid overtime. Importantly, the majority of built form would utilise the road network of interest pertaining to this Modification Application, comprising Bernera Road, which shares direct connectivity with the M7 Motorway.

For context, **Table 3** outlined below includes an analysis pertaining to the West of M7 Catchment Area regarding the total developable site area for each site in comparison to the Subject Site.



WILLOWTREE PLANNING



Table 3: Developable Site Area Pertaining to Sites South and Southwest of the M7 Motorway

No.	Address	Lot / DP	Catchment Area	DA Number	Developable Site Area (m²)	Percentage (%) of Developable Catchment Area
1	1 Illaroo Road, Prestons	Lots 1 & 2 DP 1234968	West of M7	DA-1450/2013 (approved)	14,827.62	1.13
2	5 Yarrowa Street, Prestons	100/1249662	West of M7	DA-30/2020 (approved)	27,713.62	2.12
3	10 Yarrowa Street, Prestons	11/1053060	West of M7	N/A – Undeveloped	35,610.41	2.72
4	40 Yarrowa Street, Prestons (inclusive of 30-50 Yarrowa)	10/1203200	West of M7	N/A	85,333.98	6.53
5	45 Yarrowa Street, Prestons	2/24315	West of M7	DA-1254/2010 (approved)	10,153.70	0.08
6	55 Yarrowa Street, Prestons	3/24315	West of M7	DA-229/2012 (approved)	10,132.59	0.08
7	65-75 Yarrowa Street, Prestons	Lots 4 & 5 / DP24315	West of M7	DA-410/2010 (approved)	15,910.76	1.22
8	90 Yarrowa Street, Prestons	27/2359	West of M7	DA-1038/2012 (approved)	21,132.43	1.62
9	2-10 Yarrunga Street, Prestons	9/28729	West of M7	DA-751/2015 (approved)	28,166.93	2.15
10	14 Yarrunga Street, Prestons	10/28729	West of M7	DA-527/2017 (approved)	20,497.23	1.57
11	20 Yarrunga Street, Prestons	11/28729	West of M7	DA-1607/2012 (approved)	20,355.16	1.56
12	28 Yarrunga Street, Prestons	2/35619	West of M7	DA-904/2019 (approved)	47,011.15	3.60
13	40 Yarrunga Street, Prestons	Lot 1 DP 536915	West of M7	DA-275/1995	36,969.60 ²	2.83



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



14	50 Yarrunga Street, Prestons	Lot 28 DP 2359	West of M7	DA-105/2018	22,628.35	1.73
15	55 Yarrunga Street, Prestons	1/1249246	West of M7	DA-229/2012 (approved)	58,620.19	4.48
16	1 Wulbanga Street, Prestons	2/1183856	Road D	DA-1837/2012 (approved)	3,532.45	0.27
17	3 Wulbanga Street, Prestons	3/1183856	Road D	CDC-1154/2018	2,870.33	0.22
18	5 Wulbanga Street, Prestons	4/1183856	Road D	DA-245/2020 (approved)	3,594.60	0.27
19	36 Kookaburra Road, North Prestons	Lots A & B/ DP 408207	West of M7	DA-29/2019 (approved)	30,252.43	2.31
20	2 Kookaburra Road, North Prestons (also Lot 11 & 88 Kurrajong Road)	11/1185132	Road C & West of M7	DA-593/2019 (approved)	33,510	2.56
21	119 Kookaburra Road North, Prestons	1/1183856	Road D	CDC-89/2018	2,403.64	0.18
22	2 Nuwi Place, Prestons	10/1183856	Road D	CDC-1132/2018	2,603.44	0.20
23	3 Nuwi Place, Prestons	5/1183856	Road D	N/A	2,123.96	0.16
24	4 Nuwi Place, Prestons	9/1183856		DA-196/2020 (approved)	2,245.11	0.17
25	5 Nuwi Place, Prestons	6/1183856	Road D	DA-423/2021 (under assessment)	4,311.43	0.33
26	6 Nuwi Place, Prestons	8/1183856	Road D	DA-1837/2012 (approved)	2,100.92	0.16
27	8 Nuwi Place, Prestons	7/1183856	Road D	DA-246/2019 (approved)	4,269.50	0.33
28	1-5 Yato Road, Prestons	1/1168422	Road B	DA-542/2016 (approved)	7,223.02	0.55
29	7-9 Yato Road, Prestons	2/1268422	Road B	DA-557/2011 (approved)	5,718.54	0.44
30	10 Yato Road, Prestons	SP102525	Road B	CDC-835/2020	9,724.60	0.74



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



31	11-13 Yato Road, Prestons	3/1168422	Road B	DA-561/2011 (approved)	4,538.61	0.35
32	15-19 Yato Road, Prestons	34/1154955	Road B	DA-1309/2010 (approved)	9,045.87	0.69
33	20 Yato Road, Prestons	Lot 1 DP 1266244	Road B	N/A – Undeveloped	2,089.19	0.16
34	1 Melito Court, Prestons	12/1263863	Road B	DA-354/2017	96,688.01	7.40
35	2 Melito Court, Prestons	1/1236397	Road B	DA-57/2019 (approved)	43,081.02	3.30
36	5 Melito Court, Prestons	1/405571	Road B	DA-1060/2020 (under assessment)	28,327	2.17
37	10 Bernera Road, Prestons	42/1100966	West of M7	DA-1231/2016 (approved)	24,631.26	1.88
38	12 Bernera Road, Prestons	2/1189409	West of M7	DA-32/2017 (approved)	8,714.31	0.67
39	14 Bernera Road, Prestons	Lot 1 / DP 1189409	West of M7	DA-850/2015 (approved)	3,658.94	0.28
40	16 Bernera Road, Prestons	SP94076	West of M7	DA-345/2005 (approved)	19,895.84	1.52
41	19 Bernera Road, Prestons	10/1053060	West of M7	DA-728/2013 (approved)	4,051.01	0.31
42	20 Bernera Road, Prestons	7B/379861	West of M7	DA-355/2005 (approved)	21,596.81	1.65
43	21 Bernera Road, Prestons	Lot 9 DP 1053060	West of M7	N/A	3,642.95	0.28
44	23-25 Bernera Road, Prestons	6/28729, 7/28729	West of M7	DA-932/2008	5,831.37	0.45
45	24 Bernera Road, Prestons	100/1250137	West of M7	DA-407/2017	18,371.49	1.41
46	27 Bernera Road, Prestons	Lot 80 / DP 1245160	West of M7	N/A	3,005.23	0.23
47	28 Bernera Road, Prestons (ALDI)	21/1239287	West of M7	DA-529/2008	9,797.45	0.75



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



48	38 Bernera Road, Prestons	B/387519	West of M7	DA-580/2013	51,515.08	3.94
49	48 Bernera Road, Prestons	1/515915	West of M7	DA-89/2009	20,319.51	1.55
50	52 Bernera Road, Prestons	1/1270601	West of M7	N/A	7,663.22	0.59
51	10 Burando Road, Prestons	1/1129090	Road A2	DA-209/2019	108,460.90	8.30
52	42B Kurrajong Road, Prestons	B/416483	West of M7	N/A	20,121.73	1.54
53	231 Kurrajong Road, Prestons	7/1224543	West of M7	Undeveloped	2,890.00	0.22
54	233 Kurrajong Road, Prestons	6/1224543	West of M7	Undeveloped	2,615.22	0.20
55	235 Kurrajong Road, Prestons	5/1224543	West of M7	CDC-130/2020	2,649.29	0.20
56	237 Kurrajong Road, Prestons	4/1224543	West of M7	CDC-924/2020	2,678.90	0.20
57	239 Kurrajong Road, Prestons	3/1224543	West of M7	DA-556/2019 (approved)	2,720.27	0.20
58	275 Kurrajong Road, Prestons	1/1246116	West of M7	N/A	18,368.37	1.40
59	5-35 Yarrunga Street, Prestons	Lot 20 DP 1173483, Lots 33-35 & 43 DP 2359	West of M7	SSD 7155	207,260	15.85
Total					1,307,408.174 m² (100%)	



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



In accordance with the Independent Cost Review undertaken by WT Partnership (refer to **Appendix 3**), WT Partnership reviewed At&I's cost plan, and estimated the construction cost to be \$3,386,104.42 (as opposed to \$5,739,637.35). Using this estimate, WT Partnership reviewed the NSW DPE's extract of the DCO and estimated the cost associated with the scope of works pertaining to \$2,386,104.42 (due to a \$1 Million variance due to acquisition) (excluding GST), for which the costs attributed to Logos include 62.6% of the overall intersection works. Accordingly, CBRK confirm that \$1,215,492 (excluding GST), plus a contribution for land acquisition costs, is considered to be an appropriate monetary contribution to satisfy the revised Conditions C1-C3 on the basis of estimated costs apportioned with respect to total traffic generation.

4. STATUTORY PLANNING FRAMEWORK

4.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principal planning and development legislation in New South Wales. Pursuant to Part 4, the proposal is considered to be a Modification Application to a State Significant Development Application – SSD 7155. The modifications sought to the development consent SSD 7155 warrants consideration of the provisions of Section 4.55(1A) of the EP&A Act. The provisions of Clause 4.55(1A) of the EP&A Act provided in **Table 4** below require consideration in this instance.

Table 4: Section 4.55(1A) – (3) Assessment

Clause	Response
<i>(1A) Modifications involving minimal environmental impact 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—</i>	
<i>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</i>	<p>The proposal as modified, is considered to be of minimal environmental impacts, as demonstrated in Section 6 of this Planning Report.</p> <p>Noting the proposal does not include any built form works, there would be minimal additional environmental impacts, over and above those that have already been assessed and determined acceptable under SSD 7155 (and as modified).</p>
<i>(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 as originally granted was modified (if at all), and</i>	<p>Given the nature and extent of the changes proposed, the modifications sought would have limited undue environmental impacts.</p> <p>The proposed modification will result in the same overall development outcome to that previously approved under SSD 7155 (and as modified).</p> <p>Section 4.1.1 of this Planning Report demonstrates that the development as modified would result in substantially the same development as the development for which consent was granted under SSD 7155 (and as modified).</p>



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



<p>(c) it has notified the application in accordance with—</p> <p>i. the regulations, if the regulations so require, or</p> <p>ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>As acknowledged within the <i>Liverpool City Council Community Participation Plan 2019</i>, a Modification Application will not be notified unless Council deems the changes to involve adequate environmental impact. Notwithstanding, the NSW DPE is the Consent Authority for which it is anticipated notification will be required for 14 days.</p>
<p>(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.</p>	<p>It is acknowledged that consideration would be given to any submissions that are received concerning the proposed modifications.</p>
<p>(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>The proposed modifications are consistent with the matters referred to in Section 4.15(1)(A) of the EP&A Act (refer to Table 3 below) and has considered the reasons given by the Consent Authority in relation to SSD 7155 (and as modified). This is further described in Section 4.1.2 below.</p>

4.1.1 Section 4.55(1A)(b) – Substantially the same

The NSW Land and Environment Court has established several precedents as to what may be considered substantially the same development, and what should be factored into the consideration of this threshold test.

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of SSD 7155 (and as modified) for the following reasons:

- The modification maintains the approved use of the Site for warehousing and distribution, as approved under SSD 7155;
- The modification will not result in any alterations to the approved building’s bulk and scale;
- There are no detrimental quantitative changes to the approved building bulk and scale that will impact the environmental impact of the proposed development (as modified); and
- The function, form, operations and importantly, public perception of the Site, would remain unchanged.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved (refer to **Appendix 1**), satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”, providing a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The proposal does not result in any significant quantitative changes to the approved development, and from a qualitative perspective, the development retains its identity as an Industrial Estate for the purposes of warehousing and distribution.

Therefore, the proposal, as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(1A) of the EP&A Act.

4.1.2 Section 4.15 – Reasons given by the consent authority for the grant of the consent

Section 4.15(1) of the EP&A Act specifies the matters which a consent authority must consider when determining a development application. The relevant matters for consideration under Section 4.15(1) of the EP&A Act are provided in **Table 5** outlined below.

Table 5: Section 4.15(1)(A) Considerations	
Section	Response
Section 4.15(1)(a)(i) any environmental planning instrument, and	The proposal as amended is deemed to be wholly consistent with the provisions of the <i>Liverpool Local Environmental Plan 2008</i> (LLEP2008).
Section 4.15(1)(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	There are no applicable draft instruments for consideration.
Section 4.15(1)(a)(iii) any development control plan, and	The Site is subject to the relevant provisions of the <i>Liverpool Development Control Plan 2008</i> (LDCP2008). Notwithstanding, the development as approved under SSD 7155 (and as modified) would not require any further consideration of the controls pertaining to the LDCP2008.
Section 4.15(1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	There is no Voluntary Planning Agreement (VPA) pertaining to the Site; however, this Modification Application has been prepared in accordance with the requirements of the Conditions of Consent under SSD 7155, including Conditions C1-C4. Accordingly, the Proponent is proposing a revised monetary contribution in relation to the infrastructure upgrades required to be



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



	undertaken pursuant to Conditions C1-C4 by removing these conditions with revised Conditions C1-C3.
Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	There are no matters prescribed by the Regulation that are relevant to the proposal.
Section 4.15(1)(b)-(c)	Refer to Section 6 of this Planning Report.

4.2 Environmental Planning and Assessment Regulation 2021

This application has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). Further, the proposed modification does not trigger 'Designated Development' pursuant Clause 7 and Schedule 3 of the EP&A Regulation.

4.3 Liverpool Local Environmental Plan 2008

The *Liverpool Local Environmental Plan 2008* (LLEP2008) is the primary Environmental Planning Instrument that applies to the Subject Site. The relevant provisions of the LLEP2008 as they pertain to the Subject Site are considered below.

4.3.1 Zoning and Permissibility

The Subject Site is zoned IN1 General Industrial and IN3 Heavy Industrial, pursuant to the LLEP2008 (refer to **Figure 6** below).

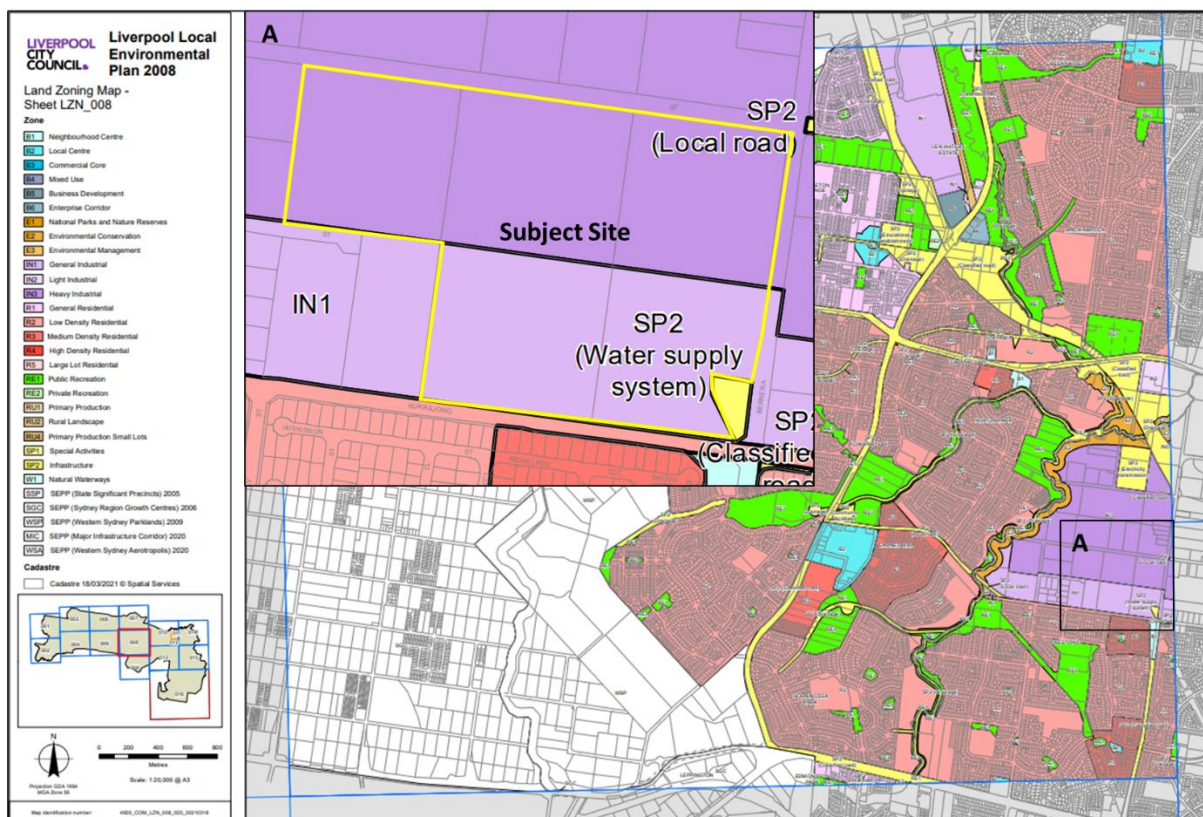


Figure 6 Land Zoning Applicable to the Subject Site and Surrounding Area under the *Liverpool Local Environmental Plan 2008* (Source: NSW Legislation, 2022)

The objectives of the **IN1 General Industrial zone** are:



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To particularly encourage research and development industries by prohibiting land uses that are typically unsightly or unpleasant.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.

The objectives of the **IN3 Heavy Industrial zone** are:

- To provide suitable areas for those industries that need to be separated from other land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of heavy industry on other land uses.
- To support and protect industrial land for industrial uses.
- To preserve opportunities for a wide range of industries and similar land uses by prohibiting land uses that detract from or undermine such opportunities.

The approved development on the Site is identified for the purposes of warehousing and distribution, under the following LLEP2008 definition:

“warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.”

Accordingly, the use of the Site for the purposes of warehousing and distribution centre is permitted with consent in the IN1 and IN3 zones and remains wholly consistent with the aforementioned zone objectives.

Table 6 outlines the developments consistency and compliance with the relevant development standards and controls under LLEP2008. It is noted that the development standards below are not subject to any change as a result of this Modification Application.

Table 6: LLEP2008 Development Standards and Provisions	
Clause	Comment
PRINCIPAL DEVELOPMENT STANDARDS	
Clause 4.1 – Minimum Lot Size	The Site is subject to a minimum lot size of 2000m ² . The proposed modification does not seek to alter the approved minimum lot size.
Clause 4.3 – Height of Buildings	The Site is subject to a maximum height of 15-30m, dependent on the location of the buildings on the Site. The proposed modification does not seek to alter the approved building height.
Clause 4.4 – Floor Space Ratio	The subject site is not restricted to a maximum floor space ratio.
Clause 4.6 – Exceptions to development standards	The proposal, as modified, does not seek to contravene any additional development standards.
MISCELLANEOUS PROVISIONS	



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



Clause 5.10 – Heritage conservation	The Site does not contain any heritage items, nor is it in the vicinity of a heritage item or area.
ADDITIONAL LOCAL PROVISIONS	
Clause 7.7 – Environmentally Significant Land	The Site does not contain any land identified as 'Environmentally Sensitive Land'.
Clause 7.8 – Flood Planning	The Site is identified as containing flood prone land. This Clause was addressed under SSD 7155, and the flood risk was covered accordingly. Furthermore, the proposed modification does not seek to alter any of the flood risk management requirements addressed.

5. NON-STATUTORY PLANNING FRAMEWORK

5.1 Liverpool Development Control Plan 2008

The proposal, as modified, is generally consistent with the relevant provisions of the *Liverpool Development Control Plan 2008* (LDCP2008). Given the proposed modifications are primarily limited to amending the conditions of consent, in line with the monetary contributions associated with infrastructure upgrades, it is considered that all LDCP2008 conditions remain unchanged from those addressed in the original assessment pertaining to SSD 7155 (and as modified).

5.2 Liverpool Contributions Plan 2009

Liverpool Contributions Plan 2009 applies to all land within the City of Liverpool LGA. The Contributions Plan enables Liverpool City Council to fund new public developments, as well as funding public/community services and amenities, across the Liverpool LGA. These contributions are levied under Section 7.11 of the EP&A Act, with Section 7.12 of the same Act, allowing Council to include these calculated contributions as a condition of development consent. Under Section 2.7 of the Contributions Plan, the Site is identified as residing within the Prestons Industrial Area. As such, there are specific contributions to be levied in this instance. Primarily, these Contributions pertain to road and drainage upgrades and maintenance, indexed in accordance with Council's requirements.

The modifications proposed pertain primarily to the satisfaction of the conditions pertaining to delivery of intersection works in their entirety, from the Development Consent (refer to **Appendix 1**). The satisfaction of these conditions will allow for the proposed amendment of conditions in the Development Consent (SSD 7155), to allow for apportioned monetary contributions to be made in relation to the works. Remittance has been provisioned for the amount of \$1,215,492 (excluding GST), to be utilised as an apportioned contribution towards the specified intersection works in lieu of delivery of works by Logos.

6. LIKELY IMPACTS OF DEVELOPMENT

6.1 Context and Setting

The Site comprises part of the Prestons Industrial Release Area, located within the wider Liverpool LGA. The land portion is surrounded by existing IN1 General Industrial and IN3 Heavy Industrial land uses, with R2 Low Density Residential dwellings located to the south of the Site on the opposite side of Kurrajong Road.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



The Site is located within the suburb of Prestons, within close proximity to the intersection of the M5 Motorway and M7 Motorway. Other major roads include Hoxton Park Road, Hume Highway and Camden Valley Way. The Site is located approximately 32.5 km southwest of the Sydney CBD, whilst significant commercial, recreational, community and transport services are offered in the Liverpool City Centre which is located approximately 5.6 km from the Site, as well as nearby residential community in close proximity to the Site.

The proposed modifications will therefore remain consistent with the Site's context and setting, proving substantial the same as approved under SSD 7155 (and as modified).

6.2 Built Form

The built form approved under SSD 7155 (and as modified), is not subject to change as a result of the proposed modifications. Overall, the function, form, operations, and importantly, public perception of the Site as an industrial estate will remain unchanged, with the modifications retaining the original intent of the development as approved.

6.3 Traffic and Transport

Colsten Budd Rogers & Kafes Pty Ltd (CBRK) have undertaken a cost apportionment assessment to determine the appropriate contribution by future development, for works associated with the upgrade of the Bernera Road and Yarrunga Street intersection (refer to **Appendix 2**).

The cost apportionment has been calculated two (2) ways as set out below:

- Based on the works required by the draft DCO, the catchment on the western side of Bernera Road and the WT Partnership cost estimate for these works (refer to **Appendix 3**); and
- Based on Council's intersection upgrade, the catchment on the eastern and western sides of Bernera Road, and the WT Partnership cost estimate for these works (refer to **Appendix 3**).

6.3.1 Draft Development Control Order (DCO) Intersection Upgrade

The upgrade works set out in the draft DCO issued by the NSW DPE pertain to access to and from Yarrunga Street at the intersection with Bernera Road as set out below:

- Construction of a separate right turn lane (southbound) into Yarrunga Street and localised road widening along the western side Bernera Road (north of Yarrunga Street) to accommodate the new right turn bay;
- Upgrading of the Yarrunga Street approach to provide a shared left turn/through lane and separate right turn bay; and
- Localised road widening along the western side Bernera Road (south of Yarrunga Street), to allow for (but excluding) the construction of separate right turn bay (northbound) into Yato Road.

The cost apportionment assessment has been undertaken to determine the level of contribution by SSD 7155, taking into account other future development on the western side of Bernera Road that would generate traffic through the same intersection and benefit from the DCO works. The Site pertaining to SSD 7155 and other landholdings owned by Logos comprise sites 9-12¹ identified in **Figure 7** below, whilst other development sites are identified as items 1-8 in **Figure 7** below.

¹ Item 17 is part of Item 9 (Source: Logos Property, 2021)



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



Figure 7 Yarrunga Street Intersection – West of Bernera Road (Source: Logos Property, 2021)²

CBRK note, their assessment has been based on the following parameters:

- Cost contribution being determined by the amount of additional traffic generated by the Logos site and other development sites on the western side of Bernera Road;
- Developable site area for the Logos site is some 257,634 m²;
- Developable site area for other sites on the western side of Bernera Road is some 318,121 m²; and
- A uniform traffic generation rate of 0.27 vehicles per hour per 100 m² of developable site area in the weekday AM and PM peak hours has been applied across all sites.

CBRK note, that the traffic generation rate of 0.27 vehicles per 100 m² of developable site area has been adopted as this pertains to the average generation rate across the five (5) sites identified by Council in their email dated 31 March 2021 (developable area of 395,810 m² and a traffic generation of 1,077 vehicles per hour). CBRK affirm that the generation rate of 0.27 vehicles per 100 m² of developable site area is considered to be conservative when compared to similar sized developments in the Western Sydney Region (traffic generation rate of 0.19 vehicles per 100 m² of developable site area).

The assessment undertaken applying the above methodology confirms that the sites owned by Logos, plus other development sites on the western side of Bernera Road would be some 1,554 vehicles per hour (two-way) in the weekday AM and PM peak hours. This comprises 695 vehicles per hour (two-way) for the Logos site and 859 vehicles per hour (two-way) for other sites.

Based on the abovementioned data, the cost apportionment pertaining to the DCO intersection upgrade for the Logos sites is calculated as follows:

$$\frac{\text{Traffic generated by the Logos sites}}{\text{total additional traffic}} \\ 695 / 1,544 = \mathbf{44.7\%}$$

² Developable Site Area values were obtained via means of a GIPA to Liverpool City Council.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



In accordance with the WT Partnership cost estimate, they estimate the DCO works as a value of \$3,168,155, for which the contribution required by Logos would be some \$1,416,165 (or 44.7% of the apportioned values).

6.3.2 Council Intersection Upgrade

CBRK note, that Council have prepared a concept design pertaining to the upgrade of the intersection of Bernera Road / Yarrunga Street / Yato Road that takes into account the DCO works and further works to improve access to and from Yato Road and the precinct, located to the east of Bernera Road.

A cost apportionment has been calculated for the Logos sites, taking into account other development of the eastern and western sides of Bernera Road that would generate traffic through the intersection and benefit from the Council upgrade. The development sites on the eastern side of Bernera Road comprise sites 1-14 as illustrated in **Figure 8** below.



Figure 8 Yarrunga Street Intersection – East of Bernera Road (Source: Logos Property, 2021)³

CBRK note, that developable site area and adoption of a uniform traffic generation rate provides the best metric for determining cost apportionment over a precinct of similar land uses, as it takes into account the full development potential of each site. Accordingly, their assessment has been based on the following parameters:

- Cost contribution being determined by the amount of additional traffic generated by the Logos site and other development sites on the eastern and western sides of Bernera Road;
- Developable site area for the Logos site is some 257,634 m²;
- Developable site area for other sites on the western side of Bernera Road is some 318,121 m²;
- Developable site area for sites on the eastern side of Bernera Road is some 363,681 m²; and

³ Developable Site Area values were obtained via means of a GIPA to Liverpool City Council.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



- A uniform traffic generation rate of 0.27 vehicles per hour per 100 m² of developable site area in the weekday AM and PM peak hours has been applied across all sites.

As mentioned above, the traffic generation rate of 0.27 vehicles per 100 m² of developable site area has been adopted as this pertains to the average generation rate across the five (5) sites identified by Council in their email dated 31 March 2021 (developable area of 395,810 m² and a traffic generation of 1,077 vehicles per hour). CBRK affirm that the generation rate of 0.27 vehicles per 100 m² of developable site area is considered to be conservative when compared to similar sized developments in the Western Sydney Region (traffic generation rate of 0.19 vehicles per 100 m² of developable site area).

Accordingly, the total traffic generation of the Logos sites and other development sites on both the eastern and western sides of Bernera Road would be some 2,536 vehicles per hour (two-way) in the weekday AM and PM peak hours. This comprises 695 vehicles per hour (two-way) for the Logos sites and 1,841 vehicles for the surrounding sites.

Based on the abovementioned data, the cost apportionment pertaining to the DCO intersection upgrade for the Logos sites is calculated as follows:

$$\text{Traffic generated by the Logos sites} / (\text{total additional traffic}) \\ 695/2536 = \mathbf{27.4\%}$$

Therefore, the Logos site contribution for the intersection upgrade (as set out in the draft DCO) would be some 27.4% of the cost of these works, whereby WT Partnership estimate the cost of Council's works at \$4,436,104, for which the Logos contribution in accordance with the DCO intersection upgrade works would be apportioned to a total of \$1,215,492.

CBRK conclude that the updated cost apportionment using the abovementioned approaches in **Sections 6.3.1 & 6.3.2** has found that:

1. The Logos contribution pertaining to the DCO intersection upgrade (western side of Bernera Road) would be 44.7% of the cost of works, totalling **\$1,416,165 (excluding GST)**; and
2. The Logos contribution pertaining to the Council intersection upgrade (eastern and western sides of Bernera Road) would be 27.4% of the cost of works, totalling **\$1,215,492 (excluding GST)**.

7. SUITABILITY OF THE SITE FOR DEVELOPMENT

The suitability of the Subject Site for the development has been established through the approval of SSD 7155 (and as modified). The proposal, as modified, does not alter the nature of the development or its operations, such that it would become unsuitable for the Subject Site.

The proposed modification includes a requirement for the works to be undertaken within a 2-year period or the contribution refunded. While unusual, this is considered essential due to the chronic indecision of Council in this matter and its pleading of lack of funds available to it.



Section 4.55(1A) Modification Application – SSD 7155 MOD 10

Prestons Industrial Estate

5-35 Yarrunga Street, Prestons (Lot 20 DP 1173483 and Lots 33-35 & 43 DP 2359)



8. CONCLUSION

This application seeks consent for modifications to development consent SSD 7155 (and as modified), pursuant to Section 4.55(1A) of the EP&A Act. The proposal has been prepared after taking into consideration the following key issues:

- Development history of the Subject Site;
- Development Consent SSD 7155 – Consolidated Consent;
- Site context and locality;
- Relevant heads of consideration under Section 4.55(1A) of the EP&A Act; and
- Relevant statutory and non-statutory planning instruments.

The proposed modifications are considered acceptable, and worthy of support by the NSW DPE, for the following reasons:

- The proposed modifications reflect the payment of an apportioned monetary contribution by the proponent to Liverpool City Council, to enable intersection works are undertaken in accordance with Council's expanded key requirements; to the amount of \$1,215,492 (excluding GST);
- The proposed modifications maintain compliance with the key development standards contained within LLEP2008 and LDGP2008; and,
- The development, as modified, will remain substantially the same, and will not result in additional environmental impacts.

In light of the above, the modifications proposed to development consent SSD 7155 (and as modified) are considered worthy of support by the NSW DPE (including concurrence with Liverpool City Council).

Should you require additional information, please do not hesitate to contact the undersigned.

Yours faithfully,

Chris Wilson
Managing Director
Willowtree Planning Pty Ltd

