

9 October 2020

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Mr Jim Betts  
Secretary  
Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Attn: Ms Emily Dickson, A/ Principal Planning Officer

Dear Emily

## **Section 4.55(1A) Modification Application – Extension of loading dock operating hours Rooty Hill Road South, Eastern Creek**

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 SSD 8588 relating to Rooty Hill Road South, Eastern Creek (the site).

The application seeks to extend the delivery hours permitted for the loading dock associated with Stage 1 of the ECQ development. The modification seeks to extend the loading dock hours of operation to 5:00am to 10:00pm, seven days a week.

The proposed modification is consistent with the recent amendments made to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* through *State Environmental Planning Policy Amendment (COVID-19 Response) 2020* which currently permits 24 hour operations. This amendment was introduced by the NSW Government in order to address impediments to the replenishment of retail stocks, in light of unprecedented demand due to the COVID-19 pandemic. This modification seeks permanent extended hours for the loading dock in response to the change in consumer behaviour arising from the pandemic and associated increased demand for online grocery shopping and deliveries.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(1A) of the EP&A Act. This application is accompanied by an Acoustic Impact Assessment prepared by Acoustic Logic which is provided at **Attachment A**.

### **1.0 Site location and context**

The Eastern Creek Business Hub site is situated to the north of the Great Western Highway between Rooty Hill Road South and the M7 Motorway. Church Street marks the site's northern boundary. The site forms part of the Western Sydney Parklands and is located within the Blacktown Local Government Area. It is located approximately 1.5km south east of Rooty Hill Station.

The subject site for which this modification relates, is Stage 1 of the Eastern Creek Business Hub, which is fully constructed and includes the following:

- supermarket;
- specialty shops;
- food and drink premises;
- medical centre;
- pharmacy;
- gymnasium;
- car parking for 432 car spaces;
- end-of-trip facilities; and
- loading dock facilities (for which the subject application relates).

A Site Plan which illustrates the layout of Stage 1 of the Eastern Creek Quarter development is included at **Figure 1**.

The site is owned by the Western Sydney Parkland Trust (the Trust) and Frasers entered into a development management agreement with the Trust to develop the land for a retail hub in accordance with Concept Plan Approval SSD 5175.



**Figure 1 Site Plan of Eastern Creek Quarter Stage 1 Site**

Source: I2C

## 2.0 Background

### 2.1 Approval history and consent to be modified

This section 4.55(1A) application relates to Stage 1 of the Eastern Creek Quarter development. The history of the relevant development applications is summarised in **Table 1** below.

**Table 1 Site Approval History**

Reference	Description	Status
SSD 5175 (as modified)	<ul style="list-style-type: none"> <li>• Concept Plan for a new retail centre to accommodate predominantly 'retail premises' and 'specialised retail premises' uses, building envelopes and design guidelines.</li> <li>• Stage 1 subdivision and early works including:                             <ul style="list-style-type: none"> <li>- Super lot subdivision to create three developable allotments and one residual allotment;</li> <li>- Construction of an access road;</li> <li>- Bulk and detailed earthworks;</li> </ul> </li> </ul>	Approved 7 January 2015. Last modified for MOD 8 which received approval on 17 February 2020.

	<ul style="list-style-type: none"> <li>- Stormwater management;</li> <li>- Civil engineering works;</li> <li>- Landscaping; and</li> <li>- Rehabilitation of the existing woodland areas identified for open space / conservation.</li> </ul>	
SSD 8588	<ul style="list-style-type: none"> <li>• Detailed design of Stage 1 (Lot 2) of the Eastern Creek Business Hub that is consistent with the revised built form as approved under MOD 2.</li> </ul>	Approved 20 July 2018.
SSD 8588 MOD 1	<ul style="list-style-type: none"> <li>• Modifications to the detailed design of the retail centre building (in Stage 1), comprising:                             <ul style="list-style-type: none"> <li>- façade realignment at the southwestern corner;</li> <li>- changes to plant and services, rainwater tank, loading dock, trolley bay, waste and recycle room; and</li> <li>- reconfiguration of the internal layout.</li> </ul> </li> </ul>	Approved 21 November 2018.
SSD 8588 MOD 2	<ul style="list-style-type: none"> <li>• Modification to the layout of the Lot 2 car park and building envelope, to be consistent with the changes proposed concurrently to the early works approved under Concept Plan (SSD 5175).</li> </ul>	Approved 18 July 2019.
SSD 8588 MOD 3	<ul style="list-style-type: none"> <li>• Design modifications including:                             <ul style="list-style-type: none"> <li>- Revised provision of solar panels;</li> <li>- Internal alterations to tenancy layouts;</li> <li>- Provision of car park shade sails; and</li> <li>- Signage content.</li> </ul> </li> </ul>	Approved 29 November 2019.
SSD 8588 MOD 4	<ul style="list-style-type: none"> <li>• Modifications seeking to allow vehicles to exit Lot 2 via the roundabout on the internal access road.</li> </ul>	Approved 2 July 2020
SSD 8588 MOD 5	<ul style="list-style-type: none"> <li>• Subject of this section 4.55 (1A) application.</li> </ul>	

### 3.0 Proposed modifications to the consent

The proposed modification seeks to extend the loading dock trading hours servicing stage 1 of the Eastern Creek Quarter development. The existing loading dock hours of operation are 7:00am to 6:00pm on Monday to Saturday and 8:00am to 5:00pm on Sundays.

The modification seeks to permanently extend the loading dock operating hours to 5:00am to 10:00pm, seven days a week in response to increased demand for online deliveries driven by the Covid-19 pandemic. No change is proposed to Condition F7 relating to the waste collection hours.

#### 3.1 Modifications to Conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in **bold strike through** and words to be inserted are shown in **bold italics**.

#### PART F – POST OCCUPATION – HOURS OF OPERATION

##### CONDITION F2

The loading docks shall not operate outside the following hours:

Loading and Unloading	
<b>Monday to Saturday</b> <b><i>7</i> 5:00am – <del>6</del> <i>10</i>:00pm</b>	<b>Sunday</b> <b><del>8</del> 5:00am – <i>5</i> 10:00pm</b>

## 4.0 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:

- it retains the same use as the approved development and in this respect, there is no material change in the essence of the development;
- it does not seek to alter the approved building envelope or fit out of the retail tenancies or outdoor area;
- it will not alter other operational provisions, such as capacity, security, cleaning, waste management and emergency procedures;
- the fundamental elements and public benefits delivered by the development will continue to be provided; and
- the proposed modification does not give rise to any new areas of non-compliance and it results in minimal environmental impact.

The modified development proposal is therefore considered ‘substantially the same’ as that approved and is of minimal environmental impact (as set out below), and appropriately dealt with under Section 4.55(1A) of the EP&A Act.

## 5.0 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.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

### 5.1 Compliance with Statutory Plans and Policies

#### 5.1.1 Consistency with Concept Plan

The proposed modification will not result in any inconsistencies with the Concept Plan approved under SSD 5175.

#### 5.1.2 Eastern Creek Business Hub Design Guidelines (13 September 2019)

The Eastern Creek Business Hub Design Guidelines do not include any controls pertaining to loading dock operating hours.

#### 5.1.3 Compliance with Other Statutory Plans

The proposed modification does not affect the development’s compliance with the relevant environmental planning instruments. An assessment against the primary instruments is summarised in **Table 2** below.

**Table 2 Compliance with the relevant statutory planning instruments**

Instrument	Comment
State Environmental Planning Policy (State and Regional Development) 2011	The proposed modification does not alter the development’s consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (Western Sydney Parklands) 2009	The proposed modification does not alter the approved development’s compliance with the key matters for consideration under Clauses 2 and 12 of the SEPP.
State Environmental Planning Policy 55 (Remediation of Land)	The proposed modification does not alter the developments consistency with the relevant provisions of the SEPP. The site has previously been remediated and a Site Audit Statement submitted as part of the Stage 1 DA (SSD 8588).
State Environmental Planning Policy (Infrastructure) 2007	The proposed modification does not alter the development’s consistency with the relevant provisions of the SEPP.
Blacktown Local Environmental Plan 2015 and Development Control Plan 2015	Clause 6 (1) of the Western Sydney Parklands SEPP excludes the provisions of the Blacktown LEP 2015 for development within the Western Parklands and Development Control Plans do not apply to SSD.

**5.2 Impacts of the development**

The Environmental Impact Statement and Response to Submissions submitted as part of the SSD 8588 addressed the following environmental impacts:

- Built form, urban structure and design
- Landscaping
- Ecology
- Visual Impact
- Signage
- Stormwater Management
- Geotechnical and Structural Design
- Contamination
- Bushfire Safety
- Traffic and Parking
- Infrastructure and Services
- Electromagnetic Field Exposure
- Crime Prevention
- Waste Management
- Operational Impacts
- Construction Impacts
- Building Code Compliance

The proposed modified development remains generally unchanged with respect to the above matters and the specific areas which are affected are discussed in further detail below. The following assessment considers the relevant matters under Section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

**5.3 Noise Impacts**

An Acoustic Impact Assessment has been prepared by Acoustic Logic (**Appendix A**) which assesses the acoustic impacts of the proposed extended loading dock hours at Stage 1 of the Eastern Creek Quarter site. Both long term unattended noise monitoring and attended noise measurements were conducted to quantify the existing acoustic environment at the site and thereby enable an accurate representation of how the proposed modification will impact on the existing development.

The primary receiver is the dwelling that adjoins the property to the north-west of the site. The development currently includes a 2.5m acoustic fence at the interface of the development and this dwelling to mitigate noise impacts associated with the loading dock. A 2.2m acoustic fence is also located along the Rooty Hill Road South frontage of the site. In addition to these existing acoustic measures, the Acoustic Impact Assessment recommends the following:

- the loading dock is not to operate outside of the proposed extended hours;
- any garbage removal is to occur between the hours of 9:00am – 5:00pm;
- use of the loading dock within the extended hours is to be limited as follows:
  - between 5:00am – 7:00am – up to one large/medium truck/heavy vehicle delivery OR three car/van delivery in a given 1 hour period.
  - between 6:00pm – 10:00pm – up to one large/medium truck/heavy vehicle delivery and three car/van deliveries in a given 1 hour period.
- bail and/or garbage compactors are to be used only within the loading dock areas and are not to be used between the hours of 5:00am – 7:00am;
- vehicles associated with the loading dock should not be parked within the vicinity of the loading dock outside of the hours of 5am to 10pm; and
- vehicle engines are to be switched off during loading and unloading within the dock.

The Acoustic Impact Assessment concludes that subject to the abovementioned recommendations being implemented, the proposed modification is capable of achieving all the relevant noise emission requirements for the extended loading dock hours.

The centre has been successfully operating with extended loading dock hours since the start of the COVID-19 pandemic, pursuant to *State Environmental Planning Policy Amendment (COVID-19 Response) 2020*. Notably, the loading dock hours it has been operating with since the start of the pandemic exceed those sought under the subject modification application and have not resulted in any complaints from surrounding residents.

#### 5.4 Reasons given for granting consent

Section 4.55(3) of the EP&A Act requires a consent authority to take into consideration the reasons for approval of the original application and the matters referred to in Section 4.15 as relevant to the subject application. **Table 3** addresses the relevant Statement of Reasons provided by the IPC in their determination of the application.

**Table 3 Assessment Against IPC Statement of Reasons**

Reason	Assessment
The modification application and the DA satisfy the respective statutory schemes set out by the EP&A Act, including: <ul style="list-style-type: none"> <li>• The Concept Plan (SSD 5175) dated 29 January 2015, as previously modified</li> </ul>	The proposed modifications will not affect the consistency of the approved retail centre with the Concept Plan.
<ul style="list-style-type: none"> <li>• Section 4.15 of the EP&amp;A Act and the matters it requires the Commission to consider including the likely impacts on the environment, social and economic impacts in the locality, the principles of ecologically sustainable development, the public interest and relevant environmental planning instruments</li> </ul>	The modifications will not result in any unwarranted environmental impacts, will not impact the ESD initiatives, continues to be in the public interest and will not affect compliance with the relevant environmental planning instruments.
<ul style="list-style-type: none"> <li>• The modification application and the development application are in the public interest for the reasons set out in paragraph 29</li> </ul>	The proposal will allow for the extended operation of the loading dock in response to changes to consumer behaviour brought about by the COVID-19 pandemic, whereby online purchases have increased.
<ul style="list-style-type: none"> <li>• Council’s objections do not provide adequate reasons for why consent for the concept plan modification application and State Significant Development Application should not be granted because the potential impacts are small and can be appropriately managed.</li> </ul>	The proposed modifications do not relate to matters previously raised as concerns by Council.

## 6.0 Conclusion

The proposed modification seeks to extend the delivery hours permitted for the loading dock associated with Stage 1 of the ECQ development so that it may operate from 5:00am to 10:00pm, seven days a week.

The proposed extension of the loading dock operating hours will address the increased demand for online deliveries which is a result of the change in consumer behaviour brought about by the COVID-19 pandemic. It is noted that the proposed extended hours are less than that currently permitted by *State Environmental Planning Policy Amendment (COVID-19 Response) 2020* and that the centre has been successfully operating in accordance with these provisions, without any complaints.

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

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

The assessment of the environmental impacts of the proposed modifications has determined that no unacceptable impacts will result from the proposed extended loading dock hours. Accordingly, we have no hesitation in recommending that the Minister for Planning and Environment approve this Section 4.55 modification application as submitted.

Yours sincerely,



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