

Submission in Relation to Oakdale South Industrial Estate, Erskine Park, Penrith LGA

Application No. SSD 6917 - Goodman Property Services (Aust) Pty Ltd

Lot 12 DP 1178389 and Lot 87 DP 752041 Milner Avenue, Erskine Park.

1 INTRODUCTION

On behalf of the Shareholders of Pazit Pty Ltd, SJH Planning & Design has prepared the attached submission concentrating its focus on its Clients concerns being the interface between proposed industrial development and the existing and approved residential estate.

Matters requiring further attention are not limited to, but include:-

- (a) Development Standards – Having sought clarification as to the relevance of Clause 23 of SEPP WSEA the proponent fails to address the planning principles of those standards in relation to:-
 - Setbacks;
 - Visual amenity;
 - Compatibility of uses;
 - Aural intrusion;
 - Height, bulk, mass, landscape; and
 - Other impacts all requiring mitigation.
- (b) Public Consultation – The Applicant's asserted that adjacent neighbours were notified/consulted. We are instructed that that is not the case. Unless this issue is addressed, the proponent runs the very real risk of being seen as disingenuous at the least and failing to fulfil the specifications of the Environmental Impact Statement.
- (c) Transport and Planning – Road Pattern/Horizontal and Vertical Alignment/Connectivity particularly for emergency and bus services.
- (d) Stormwater, Erosion and Sedimentation Control and Water Harvesting Storage and Reuse/Flood Mitigation – noting the scale of both earthworks and buildings requiring superior controls during execution and post development phase.

A review of the proponents SEAR's request, the EIS and concept plans together with relevant background information reveals deficiencies in the comprehension and application of fundamental principles by the proponent.

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The consequences of that failure of the proponent to implement and comply with relevant development standards with respect to adjacent land means that the proposal must not proceed without significant redesign; redesign that must embrace and embed established protections to contain impacts and protect the development potential of adjoining land.

The need to ensure such protection should come as no surprise to the proponent. Similar exhaustive investigation was conducted as a precursor to the almost identical development on land to the east (Jacfin). In that situation a large scale industrial development was advanced; neighbours raised issue with the proximity of and incompatible impact of buildings and their use with attendant noise, visual impact and destruction of rural residential amenity.

As a result of residents and local government authorities recognising the legitimacy of issues raised in the assessment process, the Department of Planning determined that that proposal *"did not satisfactorily address the development standards set by Clauses 21 and 23 of the WSEA SEPP (page 4 DG's assessment, May 2013)"*.

2 OVERVIEW

The Oakdale South Industrial Estate is a significant component of WSEA. It is difficult to accept that such a project could advance to its current stage in its current form exhibiting such fundamental flaws in its design; flaws exhibiting demonstrable non-compliance with established planning principles and development standards with respect to interface issues impacting on nearby and sensitive (primarily) residential receptors.

These deficiencies in terms of setbacks, landscaping, aural control/containment, separation, incompatibility of buildings (height, bulk, glare); and 24/7 operational impacts are such that one must ask the question:-

"Is the proposal intentional or incompetent?"

If it was intended to place monolithic industrial buildings of such height, bulk, and mass and with all their attendant noise, glare and visual impact immediately adjacent to sensitive rural residential receptors, then the proposal needs to be justified in terms of its non-compliance with statutory standards and the obvious externalities arising.

It isn't justified. The externalities are not mitigated and the proposal in its present form should be rejected.

If it was not intended to cause such impact then the proposal must be seen as incompetent or needs to be better explained in terms of non-compliance with well-established planning principles and its failure to comply with published statutory development standards.

The absence of any explanation or justification for non-compliance with statutory controls suggests that the proposal is at its very best, incompatible if not incompetent.

Either way, or for the reasons expanded on below, the proposal cannot proceed in its present form.

C PLANNING PRINCIPLES

It is a fundamental first principle of planning that incompatible land uses be separated. The degree, manner and means of separation reflect the degree of incompatibility requiring assessment of particulars in relation to:-

- Height and bulk
- Context
- Overlooking
- Noise (the proponent acknowledges wholesale and distribution centres are 24/7 – page 37 SEAR's)
- Visual impact and physical impacts all impacting and constraining the amenity and/or development potential of adjoining land

The basics of planning to separate incompatible land use activities were highlighted in the decision causing the redesign of the Jacfin development. Concerns raised by adjacent rural residents were recognised by local Councils (Penrith and Fairfield), the Department of Planning (which in recognition of the importance of the interface retained O'Halloron Design Pty Ltd) and the Planning Environment Commission.

These basic planning principles are recognised and have been elevated to "planning principle" status in the Land and Environment Court (see decisions of Senior Commissioner Roseth and Commissioner Bligh in Project Venture Developments and Pittwater Council; and Seaside Developments and Wyong Council).

Such planning principles, embodied in the development standards within SEPP WSEA, must therefore be complied with.

In the relevant and related consideration of the Jacfin proposal, the NSW Department of Planning & Infrastructure's "Major Project Assessment – Jacfin Horsley Park Project 10_0129_ & 10_0130" dated May 2013 (MPA May 2016), was unambiguous as to the purpose of Clause 21 and 23 which "*seek to protect visual and other amenity issues ...*" at the interface and that "*a consent authority must not grant consent... unless it is satisfied that the building heights will not adversely impact ... and site topography has been taken into consideration*". (See Page 26 – MPA 2016).

So concerned was the Department as to visual impacts of the Jacfin proposal it appointed O'Hanlan Design Ltd to independently review visual impacts – impacts of a similar development of similar to receptors on land of similar topography.

The result was a suite of recommended amendments to separate and screen non-compatible development. (See Page 28 – MPA 2016).

3 DEVELOPMENT STANDARDS

SEPP WSEA contains within it a suite of development standards including those found at Clauses 21 and 23 of Part 5 reproduced below:-

“STATE ENVIRONMENTAL PLANNING POLICY (WESTERN SYDNEY EMPLOYMENT AREA) 2009

Height of buildings

21 Height of buildings

The consent authority must not grant consent to development on land to which this Policy applies unless it is satisfied that:

- (a) building heights will not adversely impact on the amenity of adjacent residential areas, and*
- (b) site topography has been taken into consideration.*

STATE ENVIRONMENTAL PLANNING POLICY (WESTERN SYDNEY EMPLOYMENT AREA) 2009

Development adjoining residential land

23 Development adjoining residential land

(1) This clause applies to any land to which this Policy applies that is within 250 metres of land zoned primarily for residential purposes.

(2) The consent authority must not grant consent to development on land to which this clause applies unless it is satisfied that:

- (a) wherever appropriate, proposed buildings are compatible with the height, scale, siting and character of existing residential buildings in the vicinity, and*
- (b) goods, plant, equipment and other material resulting from the development are to be stored within a building or will be suitably screened from view from residential buildings and associated land, and*
- (c) the elevation of any building facing, or significantly exposed to view from, land on which a dwelling house is situated has been designed to present an attractive appearance, and*
- (d) noise generation from fixed sources or motor vehicles associated with the development will be effectively insulated or otherwise minimised, and*
- (e) the development will not otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting or the like, and*
- (f) the development will provide adequate off-street parking, relative to the demand for parking likely to be generated, and*
- (g) the site of the proposed development will be suitably landscaped, particularly between any building and the street alignment”.*

These development standards are commented on below.

The proponent acknowledged the relevance of Clause 23 by seeking clarification in the SEAR's at Pages 30 and 31 and again in Table 6 (Page 20).

The proponent then in the EIS and accompanying concept drawings (particularly for Precincts 5 and 6) proceeds to ignore the specific requirement under Clause 23.

4 INTERFACE ISSUES

Nowhere in the documents reviewed do the issues of height and bulk, context, overlooking, noise, visual, physical and potential impacts on the development south of Oakdale South receive any meaningful discussion.

The absence of any real consideration of the interface issues is a fatal factor of the proposal especially because these very same issues were a major consideration in the directly comparable Jacfin proposal next door.

It is not sufficient for a proponent to give lip service to potential impacts. The proponent is duty bound to identify impacts and, once identified, specify the methods and manner of mitigation.

Indeed, the graphical representation of the future development of Precincts 5A and 6B, which immediately abut our Clients land, show a total disregard for rural landscape/character, visual, aural and social impacts south of the site.

Even with the adjustment to natural ground line the rear of the buildings in Precincts 5 and 6 will be wholly exposed to view from within the Capitol Hill Rural Residential Estate as will the activities of 27 loading dock operations with attendant forklift and B double manoeuvring and unloading.

At "Clause 5.7.2 – Further Studies", Page 30 of the "Request for Secretary's Environmental Assessment Requirements", the author recognises the need to consider adjoining zoning and whether it constitutes "land zoned primarily for residential purposes". Under that heading the author recognises that:-

"The southern boundary of the Oakdale South site adjoins land zoned E2 (Environmental Conservation) and E4 (Environmental Living). The western boundary of the site adjoins land zoned RU2 (Rural Landscape)".

The WSEA SEPP is clear and requires that development of any land within 250 metres of land zoned principally for residential purposes must consider the potential acoustic impacts of developments on these adjoining lands.

The author of the proposal requested clarification of the application of Clause 23 of the WSEA SEPP.

Clause 23 is very clear.

It simply states that it applies to land within 250 metres of land zoned primarily for residential purposes and that a consent authority must not grant consent to development unless it is satisfied that:-

(a) Proposed buildings are compatible with the height, scale, siting and character of existing residential buildings within the vicinity;

Comment

The height, scale, siting and character of buildings contemplated in Precincts 5A and 6B of the Oakdale South Industrial Estate proposal are of such monolithic proportions and proximity as to be totally incompatible with the likely future development of land adjacent/land within the existing rural residential estate the character which is typified by those high quality rural residential assets in the completed stages of that rural residential subdivision.

The visual impact of the buildings contemplated is assessed in more expert terms in the Richard Lamb & Associates Report dated December 2015. This report recognises the relevance of earlier decisions concerning Jacfin.

(b) Goods, plant, equipment and other material resulting from the development are to be stored within the building ... screened from view;

Comment

The cavernous proportions of warehouse/distribution buildings and their attendant multiple 27 loading docks and associated activities give rise to potential visual and noise impacts that are totally incompatible to the rural residential environment adjoining.

The Richard Lamb & Associates report further amplifies and details the shortcomings of the proposal against Clause 23(b) and says:-

"No attempt has been made to ensure that items capable of visual impacts...will be screened from view..."

(c) The elevation of any building facing or significantly exposed to view from land upon which a dwelling house is situated has been designed to present an attractive appearance;

Comment

In spite of the extensive excavation on the south-eastern corner modifying the landscape and lowering the finished floor level of buildings in Precinct 5 the bulk of the buildings, will still pierce the skyline and present to view the unattractive rear end and active loading dock area. The concept plan tabled contains 27 loading docks, together with extensive manoeuvring space for articulated vehicles, service vehicles and staff carparking.

(d) Noise generated will be effectively insulated;

Comment

The placement of the 27 loading dock portals, together with the attendant 24/7 vehicular activity, reversing alarms, headlights, air brakes, diesel engines idling to maintain pneumatic pressure all conspire with the minimum horizontal separation and paucity of screening to be visually intrusive from vantage points within immediately adjoining properties.

More expert report in relation to this issue has been assembled by Sebastian Giglio (Acoustic Consultant) in his report dated 10th December, 2015.

Without reference to any acoustic advice however, it is self-evident to a lay observer that the proximity of such activities servicing a building of such proportions is likely to give rise to a level of disturbance unable to be effectively insulated.

Greater horizontal separation is required as is mandated by the SEPP provisions and ignored in the master plan/concept plan accompanying the EIS.

There is simply insufficient space to mitigate against obvious noise disturbance without further detracting from the rural residential setting by inclusion in the built environment of scenically objectionable acoustic walls or other devices and landscaping which would be required to conceal them.

(e) Development will not otherwise cause nuisance to residents by way of hours of operations, traffic movements, parking and lights glare, security lighting or the like;

Comment

To a lay person it is clearly apparent that multiple loading docks heavy vehicle manoeuvring, including reversing alarms, staff parking and shift turnover activities within and about monolithic warehousing/transport depot/distribution buildings operating 24/7 x 365 would all contribute to nuisance, if not intolerable noise disturbance including sleep disturbance, in nearby and adjacent rural residential properties.

Vehicular lights, security lighting and ambient lighting would further detract from rural residential amenity. All such externalities, even from a lay perspective, should be screened from view and earshot.

It is a reasonable assumption that those experts contributing to the component parts of the proposal must possess at least the equivalent skill of a lay person. It is therefore a reasonable conclusion that those advancing the proposal made a conscious decision to ignore the consequences of the site planning and building arrangements adopted and the need to address predictable off-site impacts.

Sebastian Giglio (Acoustic Consultant) and Richard Lamb & Associates (Visual Impact Specialists) identify the copious shortcomings and inaccuracies contained within the documentation of the proposal in relation to nuisance to residents by way of hours of operations, traffic movements, parking and lights glare, security lighting or the like.

It is therefore not practical for a consent authority to be satisfied that the proposal "passes the test" set by the provisions of Clauses 21 and 23 and in particular Sub Clause (e) of SEPP WSEA.

(f) Adequate off-street parking is provided;

Comment

The supply of parking to satisfy a numerical test of demand is only part of the "adequacy" of parking provisions. The location, screening, siting and design of parking provided must be so located, screened and designed to satisfy inter alia, the requirements of AS2890 in relation to dimensions, grades, manoeuvring space and the like and Crime Prevention Through Environmental Design with particular emphasis on security lighting. Each of these aspects must be considered as part of the architectural and landscape design especially when located within such proximity of sensitive receptors, as is the off-street parking for Precincts 5 and 6.

(g) That the site of the proposed development will be suitably landscaped.

Comment

It isn't. It can't be. Insufficient space has been provided.

The design (indicative as it may be) and the EIS have both ignored the essential requirement of providing adequate horizontal separation within which appropriate landscaping including bund walls might be installed. This aspect is reinforced in the Richard Lamb & Associates report.

It is inconceivable that the authors, conscious of sound planning principles and the requirements of Clauses 21 and 23 of the SEPP, could have concluded that the proposal as advanced would satisfy the practical test set by those provisions.

There must have been a conscious decision made to ignore those provisions in compiling both the text and indicative representations of future development as is proposed.

It is equally inconceivable that a competent proposal would be advanced with vehicular access, parking manoeuvring and multiple loading docks in such close proximity and facing rural residential land if the first principles of planning and/or the development standards of Clauses 21 and 23 were understood.

The physical separation of developments contemplated in Precincts 5 and 6 do not accord with any of those established standards; established not only in the text of the statutory controls in SEPP WSEA at Clause 23, but also via the requirements for the Jacfin Proposal at Horsley Park on land adjoining to the east.

The final determination of the Jacfin proposal, with all its similarities to the proposed Oakdale South Industrial Estate, required inter alia "... the rezoning of land (within 250 metres of receptors) along with minimum lot sizes to provide an adequate buffer between Jacfin employment lands and rural residential dwellings". (See Executive Summary PAC determination of Jacfin proposal).

5 Key Issues

Many of the key issues addressing the principal matters of concern to the developer i.e. traffic and transport, infrastructure and servicing, hydrology and flooding and contamination/geotechnical issues, while relevant and important, are no more relevant and certainly no more important from our Client's perspective, than for the need for a competent review of the application and compliance with controls at the interface of the industrial zone and that environmental living estate to the south.

While it is acknowledged that landscaping can be and is a useful device to assist in the visual screening of buildings for example, and/or the visual screening of acoustic walls that might contain offensive noise generated from 24 hour activities and/or screens that contain the head lights or general glare of lighting, it is the sheer proximity of those generators that require attention at this early stage.

Information contained within the drawings advanced suggests that insufficient space of about 10 metres width is available to accommodate landscaping, drainage and acoustic controls including a drainage swale upslope of a 7.5 metre excavation with an almost vertical retaining wall. An industrial building of overall height of 15 metres will be seen above that retaining wall and function as a reverberation chamber to amplify all noise generated from within and about the building.

The visual impact of the arrangement cannot be understated, nor can the impossibility of containing and separating the aural intrusion from future residential development. The only way it can be achieved is by observation of the absence of the 250 metre buffer minimum:-

- (a) Specified in the SEPP; and
- (b) Required in relation to the Jacfin site immediately adjacent to the east.

We submit that the Environmental Impact Statement prepared by Urban Advisory Services is defective, if not incompetent in that it has not fulfilled the practical requirements or the specifications in relation to the separation of uses.

6 Consultation with Neighbours

The owners of this land clearly rely on expert opinion in the development of its assets in order that strategic decisions be made with respect to the future investment and decision making.

Such a significant land holding requires expert input from many disciplines in order that decisions that are made fulfil not only the commercial opportunities, but also address inter alia, the obligatory matters for consideration which are contained not only within overarching legislation, primarily the Environmental Planning & Assessment Act 1979, but also in relation to established protocols and principles not limited to, but including Planning Principles established by decisions in the Land & Environment Court.

The support documentation reviewed by the writer outlined in the extensive "Request for Secretary's Environmental Assessment Requirements ", set out inter alia issues for consideration which included visual impacts, noting in particular:-

"The proposed Oakdale South development would introduce new buildings onto land which is currently underdeveloped and in rural character. Further, land to the south of the site is zoned RU2 – Rural Landscape under Penrith LEP 2010. The RU2 zone aims to protect the rural landscape character of the land. The potential impacts of the proposed development of the Oakdale South site require consideration in the EIS for the proposal".

Comment

Not only is that assertion at Page 33 of the formal "Request for Secretary's Environmental Assessment Requirements" incomplete, it is incorrect.

Land immediately to the south within the Penrith LEP is zoned E4 – Environmental Living.

The advice is incomplete as the land to the south also has the benefit of a consent which has been commenced for a use and development consistent with the E4 – Environmental Living zone for a rural residential subdivision which will fulfil the objectives of that zone for low impact residential development, as discussed further below.

In the "Request for Secretary's Environmental Assessment Requirements" the author, on behalf of Goodman Property Services (Aust) Pty Ltd, states also that:-

"Social issues of relevance to the proposal include the potential impacts of the Oakdale South development on the amenity of the surrounding area ... "

In addition to the concerns outlined above, we note the reference to public consultation at Page viii of the Environmental Impact Statement assures the reader that:-

"Formal and informal consultation was undertaken during the project development and EIS process with key stakeholders including:

- NSW Department of Planning & Environment;*
- NSW Roads and Maritime Services;*
- NSW Office of Water;*
- Penrith City Council; and*
- Adjoining landowners".*

We are instructed that no such consultation has taken place with the landowners immediately adjacent to Precincts 5 and 6 of the Proposed Oakdale South Estate and that such an assertion in the documentation, together with the other shortcomings of the report might be sufficient reason for it be more closely reviewed or revisited in its entirety.

NB: The landowner would be available to attend consultative meetings with the proponent and the proponent's representatives.

8 Summary of Issues

Impacts on our Clients land arise given the incompetent interpretation of development controls which apply, the apparent ignorance as to the status of the rural residential estate approved to the south and reliance on a redundant plan for development of the Jacfin Estate.

The author ought to have known of the modification required to the Jacfin development to deal specifically with impacts at the interface.

The siting and design of the proposed Oakdale South Industrial Estate and in particular those buildings in Precincts 5 and 6 adjacent to and north of the E4 zone boundary and the approved residential estate, will result in direct conflict in terms of both visual amenity and aural intrusion.

There is insufficient horizontal separation between the conflicting land uses i.e. those approved on the land to the south and those now proposed to the north to accommodate an acoustic and visual buffer of adequate proportions and height to conceal monolithic buildings from view and the 24 hour acoustic impact via disturbance of, for example, loading and unloading operations.

The location of something in the order of 27 loading docks as is contemplated in Precinct 5 shows not only an absence of practical understanding, but contempt for any noise sensitive receptor.

In spite of the absence of any detail in relation to Precinct 6 (given what has been advanced for Precinct 5) can only suggest that similar disrespectful and unthoughtful placement of buildings, loading docks and the like would follow.

It is accepted that the WSEA is likely to be a 24 hour, 7 days per week workplace with resultant lighting and light spillage.

The applicable development standards require that there be horizontal and visual separation and acoustic protection of primarily residential receptors and conflicting land uses in order for the on-going operation to avoid severe penalty and/or persistent monitoring.

Development control/assessment of the future construction, use and occupation of buildings avoids the usual local government scrutiny and the mechanism that might otherwise enable assessment of applications and closer consultation. It is therefore vital that the concept plan be amended to ensure those horizontal and visual separation requirements can be met.

As complying development may well follow the subdivision phase, it is vital that the subdivision phase embody sufficient controls to ensure that the potentially incompatible land uses are appropriately separated and screened.

The aural and visual intrusion issues are of such importance to our Client that they have been addressed in separate expert submissions prepared by Richard Lamb & Associates in relation to visual impact and Sebastian Giglio in respect of noise impacts.

It is clearly evident however, that the current arrangements cannot and do not provide adequate opportunity for containment and control of the visual impacts of monolithic buildings in terms of the present rural residential outlook, nor the diminution of the landscape values that might otherwise be enjoyed.

It is essential that the proposal be substantially amended and issues identified above addressed.

9 Conclusion

The Environmental Impact Statement and Annexures, while vast in proportion, exhibit a lack of fundamental understanding of planning, especially in relation to the interrelationship of land uses.

The proposal fails to identify impacts, recognise the manner and methods in which such interface might be better managed and ignores well-established planning principles and applicable development standards.

The evident lack of comprehension in the documentation with respect to potential impacts is sufficient for the application to fail.

Recognising the importance of the project at large, we conclude that the proposal:-

- (a) Should not proceed in its current form;
- (b) Requires redesign at least so far as to address the interface issues identified above;
- (c) Be the subject of full and complete consultation with neighbours including neighbouring consent authorities; and
- (d) The redesign embed aural and landscape screening separation in its design to address, at a minimum, matters raised in this submission and the expert reports of Richard Lamb & Associates in respect of visual impacts and Sebastian Giglio in respect of noise impacts.