

Modification Request  
Project Approval MP08\_0066 MOD8

Oakdale Central Industrial Estate, Horsley Park

1. BACKGROUND

On 2 January 2009, the then Minister for Planning approved a concept plan (MP 08\_0065) for the establishment of the Oakdale Central estate including subdivision, internal road layout, recreation and biodiversity land, seven industrial buildings, pad levels, external road upgrades and infrastructure (see **Figure 1**).

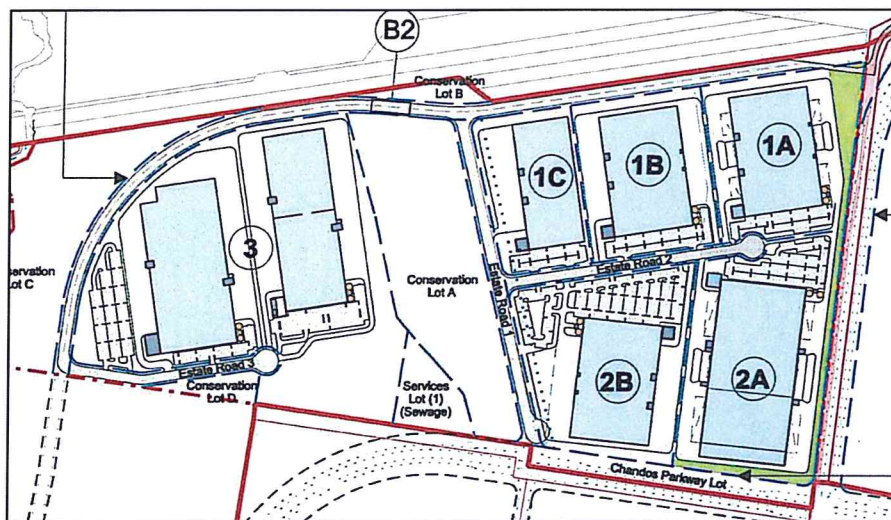


Figure 1: Site layout approved under MP08\_0065

The Minister also approved a concurrent stage 1 project application (MP 08\_0066) for the establishment of a DHL Logistics Hub and associated infrastructure. The project approval included subdivision, bulk earthworks, the construction of warehouses on lots 1A and 2A and, internal roads and parking (see **Figure 2**).

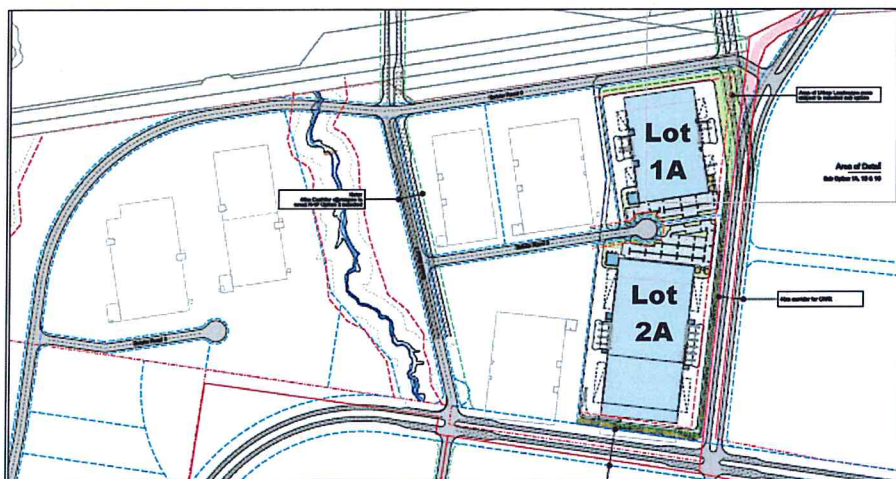


Figure 2: DHL Logistics Hub Site Plan (MP 08\_0066)

The concept plan (08\_0065) and project approval (08\_0066) established the building pad levels across the entire site. The Environmental Assessment (EA) submitted in support of the project application stated that the earthworks would involve the removal of an earthen bund around the eastern and southern boundaries of the site, with a balance cut and fill to achieve the required levels for building pads, roads and the service lot. The EA concluded that no importation of fill would be required to meet the desired levels on site.

Subsequently, the Proponent determined that fill was required to be brought to the site to meet the required levels. The proponent proceeded to import fill to the site in early 2012 however was advised by the Department to stop work given that consent had not been granted for the importation of fill, including no assessment of the environmental impacts such as truck movements and air and noise quality. At this time a total of 279,300m<sup>3</sup> of fill had already been imported to the site and a total of 138,500m<sup>3</sup> remained to be imported.

On 5 March 2013, the then Director Metropolitan and Regional Projects North as delegate of the then Minister for Planning and Infrastructure approved modifications to the concept plan (Mod 2) and the project application (Mod 5) to allow the importation of fill to meet the approved pad levels on site. The application also approved the construction of retaining walls to lot 1C and construction of the Estate Road batters. At the request of Fairfield City Council, a condition (Condition 18C) was imposed on the project application restricting the fill to be imported to Virgin Excavated Natural Material (VENM).

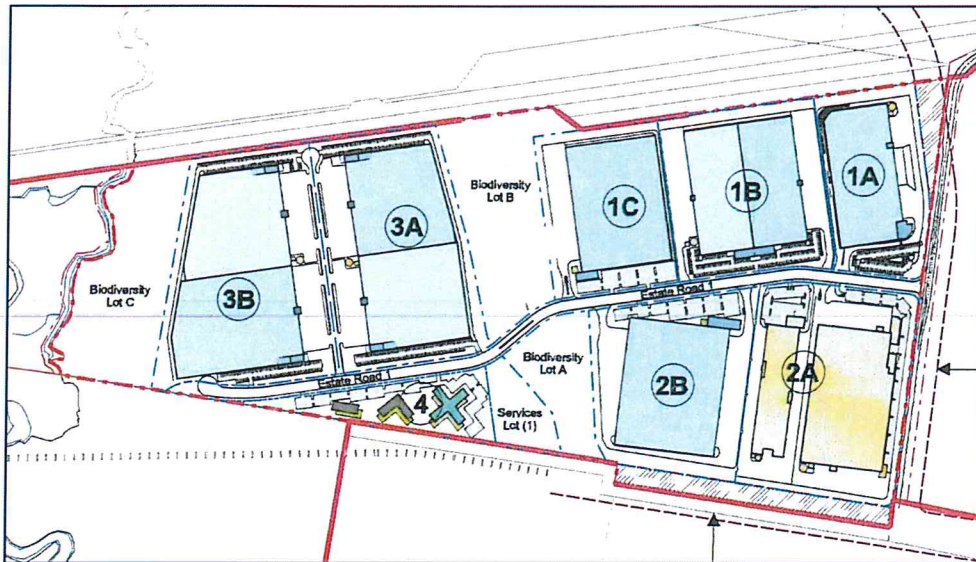
On 19 November 2013, Fairfield City Council approved DA 652.1/2013 being for the construction of retaining walls, bulk earthworks, concrete path paving, landscaping, bio-retention basin (within Proposed Lot C) and an extension of the estate road. This application granted consent to the importation of an additional 213,382m<sup>3</sup> of fill to the site to be used for use in the construction of the estate road extension, bio retention basin and the pad levels for Lot 3A, Lot 3B and Lot 4.

The applicant is now requesting approval to modify the project approval (08\_0066) to allow the importation of "Excavated Natural Material" (ENM) to the site. The importation of ENM would be in addition to VENM which they will continue to import to the site.

## 2. MODIFICATIONS

A summary of the modification applications relating to the site is provided below:

- a) **Modification 1 to Concept Plan 08\_0065 and Project Approval 08\_0066** was approved on 4 November 2010. It modified the configuration, and number, of internal estate roads approved under the concept plan so that they aligned with the final design of the regional road network. The project approval was also amended to allow construction of 2 warehouse buildings on lot 2A instead of one larger building.
- b) **Modification 2 to Project Approval 08\_0066** was approved on 17 February 2011. It modified the timing for entry into the Voluntary Planning Agreement (VPA) to be prior to occupation or subdivision certificate (Note: the VPA was subsequently entered into on 25 March 2011).
- c) **Modification 3 to Project Approval 08\_0066** was approved on 8 July 2011. The application approved minor changes to warehouses 2 and 3 on lot 2A.
- d) **Modification 4 to Project Approval 08\_0066** was approved on 20 September 2012. It amended the orientation and positioning of the proposed warehouse on lot 1A.
- e) **Modification 2 to Concept plan 08\_0065 and Modification 5 to Project Approval 08\_0066** was approved on 5 March 2013. It modified the approved concept plan, including the subdivision layout, shape and location of the estate stormwater basin, bulk earthworks, pad levels, staging and the importation of fill. In addition, Condition 18C was imposed on the project application to restrict the importation of fill to Virgin Excavated Natural Material (VENM). This modification is the current approved concept plan for the precinct (see **Figure 3**).



**Figure 3:** Current (approved) site layout – MP08\_0065 MOD2 and MP08\_0066 MOD5

- f) **Modification 6 to Project Approval 08\_0066** was approved on 10 May 2013. The application approved minor changes to the building and structures approved on lot 1A.
- g) **Modification 3 to Concept Plan 08\_0065** was lodged on 12 November 2013 but has not yet been determined. It requests approval to modify the concept plan so that it aligns with the design and layout of State Significant Development (SSD) application No. 6078 (SSD 6078) which is currently under assessment. The application also requests approval to investigate the viability of creating bio-banking areas within the site.
- h) **Modification 7 to Project Approval 08\_0066** was lodged on 12 November 2013. It has not yet been determined, but requests approval for deletion of Condition 2 of Schedule 3 (road upgrade works) and deletion of Appendix 5 ("General Terms for the Planning Agreement"). Appendix 5 has already been deleted under Modification 1, and the deletion of Condition 2 is not considered necessary. The Applicant has indicated their intention to withdraw the Application, however a written request has not yet been received.

### 3. THE SITE

The Oakdale Central Industrial Estate is a 62ha site, located adjacent to and south of the Sydney Water pipeline and falls under State Environmental Planning Policy (SEPP) Western Sydney Employment Area 2009. It is being developed by Goodman Property Services (the Proponent) and is being developed for warehouse, distribution and freight logistics purposes. The estate is accessed off Old Wallgrove Road (see **Figures 4 and 5**).

The eastern side of the site has now been developed with three warehouse and distribution buildings which are currently operated by DHL Logistics. These buildings are located on lots 1A and 2A. In addition, the construction of a fourth warehouse and distribution building approved by Fairfield City Council on lot 1B is nearing completion. The remainder of the site is undeveloped, however three of the remaining lots are the subject of State Significant Development (SSD) Application No. 6078 which requests approval for the construction of three warehouse and distribution buildings on Lots 1C, 2B and 3 (Note: Lot 3 is the proposed amalgamation of Lots 3A and 3B which is currently the subject of Modification Application 3 to the Concept Plan 08\_0065).

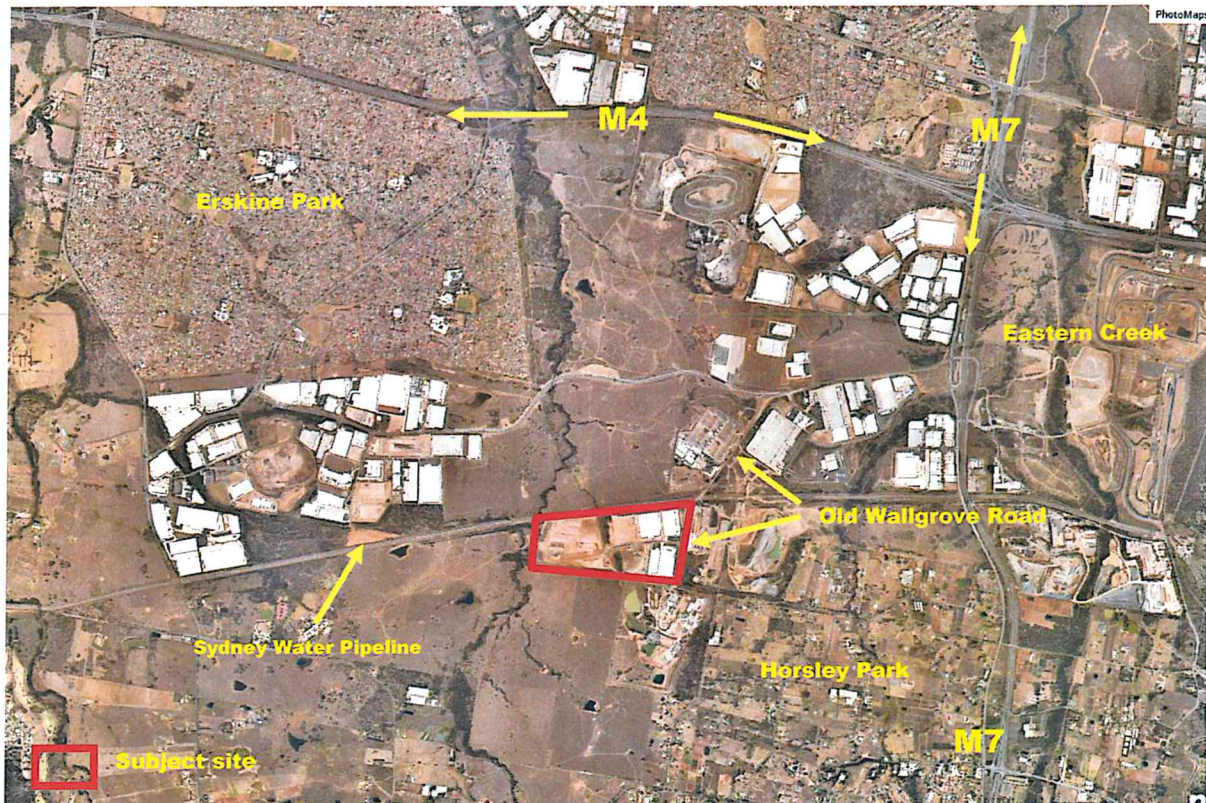


Figure 4: Site location

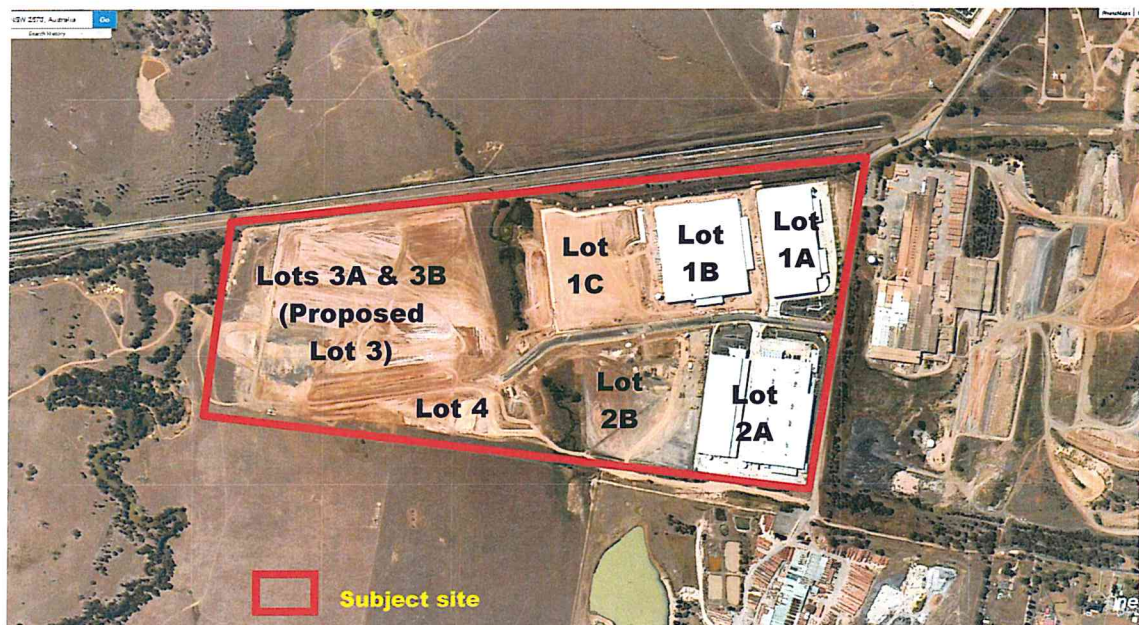


Figure 5: Subject site

### 3. PROPOSED MODIFICATION

This modification application requests an amendment to Condition 18C of Schedule 3 to allow the importation fill to the site that meets the classification of Excavated Natural Material (ENM).

Condition 18C of Schedule 3 currently reads as follows:

- 18C. *The importation of fill must meet the criteria of 'Virgin Excavated Natural Material' (VENM) as defined in EPA Environmental Guidelines – Assessment Classification and*

*Management of Liquid and Non-Liquid Waste 1999. The proponent is required to keep supporting documentation (receipts / dockets) of VENM imported to site."*

Following consultation with Fairfield City Council, it is proposed that Condition 18C be replaced with the following condition to allow the importation of Excavated Natural Material (ENM) to the site:

- 18C. *Any soils / materials imported onto the site must meet the definition of Virgin Excavated Natural Material (VENM) as contained in the Department of Environment, Climate Change and Water publication Waste Classification Guidelines – Part 1: Classifying Waste (December 2009); or Excavated Natural Material (ENM) as per the Excavated Natural Material Exemption 2012, made under the Protection of the Environment Operations (Waste) Regulation 2005 – General Exemption Under Part 6, Clause 51 and 51A.*

The Applicant also requested the inclusion of three (3) additional conditions as requested by Council. The additional conditions relate to approval requirements, record keeping requirements and contamination thresholds for fill proposed to be imported to the site. The proposed wording for the conditions is the result of consultation between the Applicant, Fairfield City Council and the Department, and reads as follows:

- 18D. *Prior to the importation of any soils / materials to the site that meet the requirements of ENM, documentation to clearly demonstrate that the soils / materials satisfy the requirements of ENM shall be submitted to, and approved by, Fairfield City Council.*
- 18E. *Any soils / materials imported onto the site shall meet applicable contamination threshold limits for the proposed land use, as contained within the Department of Environment and Conservation publication Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (2nd edition) 2006.*
- 18F. *Any supporting documentation (such as records / receipts / dockets / log book entries) relating to the importation of VENM / ENM to the site shall be maintained at all times and made available to Council's Officers upon request.*

## 4. STATUTORY CONTEXT

### 4.1. Modification of the Minister's Approval

In accordance with Clause 12 of Schedule 6A of the EP&A Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under Section 75W of the EP&A Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification;
- the modification is of a scale that warrants the use of Section 75W of the EP&A Act; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of approval.

Therefore, it is considered that the proposed modification is within the scope of Section 75W of the EP&A Act. Consequently, the Department considers that the application should be assessed and determined under Section 75W of the EP&A Act rather than requiring a new development or project application to be lodged.

### 4.2. Delegated Authority

On 14 September 2011, the functions of the Minister for Planning were delegated to the Department to determine Part 3A applications. Under the Instrument, the Minister delegated determination of a modification request under Section 75W to senior staff of the Department where:

- the council has not made an objection; and
- there are less than 10 public submissions objecting to the proposal; and
- a political disclosure statement has not been made in relation to the application.

The proposed modification was not required to be formally exhibited, however the modification request was made publicly available on the Department's website. In addition, Fairfield City Council (council) were consulted during the process.

Council has not objected to the proposed modification, no public submissions were received and no current or previous political donations have been made. Accordingly the application is able to be determined by the Director, Development Assessment Systems and Approvals, under delegation.

## 5. CONSULTATION AND SUBMISSIONS

### 5.1 Exhibition and Submissions

Under Section 75X(2)(f) of the Act, the Director-General is required to make the modification request publicly available. The modification request was made publicly available on the Department's website.

Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means. No public submissions were received.

The Department did, however, invite submissions from Fairfield City Council (Council). Council did not object to the proposal however provided recommendations to ensure that the proposed ENM brought to the site would be of a satisfactory quality in accordance with relevant guidelines. The Department has included appropriate approval conditions in the recommendation.

## 6. ASSESSMENT

### 6.1. Importation of fill to the site

In its assessment of the modification application, the Department has considered the following:

- the EA for the proposed modification;
- all submissions received by the Department; and
- the Director-General's assessment reports for the original development application and earlier modification approvals.

This modification application does not request approval for the importation of any additional volume of fill to the site, but requests approval to allow for the importation of "Excavated Natural Material" (ENM) to the site as well as the importation of "Virgin Excavated Natural Material" (VENM) which is already approved. Therefore, this application is not required to consider any additional impacts from truck movements, air quality or noise.

The Applicant has advised the Department that the ENM proposed to be imported to the site would be from a nearby site (within the M7 Hub) where it is currently stockpiled. Furthermore, according to the Applicant, this fill is only classified as ENM because it has been stockpiled, but would otherwise be classified as VENM.

Therefore, consideration has been given to the potential environmental impacts associated with the proposed importation of ENM to the site. It is considered that no additional environmental impacts would result subject to compliance with the following criteria:

- Approval for the ENM being obtained from Council prior to its importation to the site;
- The ENM satisfying the requirements of the *Excavated Natural Material Exemption 2012, made under the Protection of the Environment Operations (Waste) Regulation 2005 – General Exemption Under Part 6, Clause 51 and 51A*;
- The ENM meeting applicable contamination threshold limits for the proposed land use; and
- Documentation demonstrating compliance with the above requirements being maintained by the Applicant and made available upon request.

The Department has therefore included the above measures as conditions of consent.

Subject to the inclusion of the recommended conditions, Council raises no objection to the proposal importation of ENM to the site.

The Department is satisfied that the proposed amendment to allow the importation of ENM to the site will mean the development will remain substantially the same as that approved and that no additional adverse environmental impacts will result if the modification request is approved.

## 6.2. Proposed amendments to approval

The key amendments to the project approval will be the replacement of Condition 18C and the inclusion of additional Conditions 18D, 18E and 18F as detailed in Section 3 of this report.

In addition, minor changes are proposed to the project approval to update the references to other government agencies as well as update references to superseded guidelines.

## 7. CONCLUSION

The Department has assessed the proposed modification to project approval MP 08\_0066 and has determined that they are in accordance with the requirements of the Act. This assessment has also found that the proposed importation of ENM to the site can be carried out with minimal additional environmental impact.

No public submissions were received and council did not object to the modifications.

Consequently the Department is satisfied that the proposed modification is minor, is in the public interest and should be approved subject to some minor changes to the existing conditions of approval as set out in the recommended notice of modification at **Appendix A**.

## 7. RECOMMENDATION

Under delegation of the Minister, it is RECOMMENDED that the Acting Director – Industry, Key Sites & Social Projects:

- approve of the proposed modification under Section 75W of the Act; and
- sign the attached instrument (**Appendix A**).



Pascal van de Walle  
**Planning Officer**  
Industry, Coastal and Regional Projects



Chris Ritchie  
**A/Director**  
Industry, Key Sites & Social Projects

15/5/14.

**APPENDIX A**

**MODIFYING INSTRUMENT**

**CONCEPT PLAN MP08\_0066 MOD8**

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# Notice of Modification

## Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, under the delegation executed on 14 September 2011, I hereby modify the Project Approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Chris Ritchie  
A/Director – Industry, Key Sites and Social  
Projects

Sydney *15 MAY* 2014

### SCHEDULE 1

<b>Application Number:</b>	08_0066
<b>Proponent:</b>	Goodman Property Services
<b>Approval Authority:</b>	Minister for Planning & Infrastructure
<b>Land:</b>	Lot 21 in DP 1173181
<b>Project:</b>	Establishment of a DHL Logistics Hub and associated infrastructure (Oakdale Central)
<b>Modification:</b>	08_0066 MOD 8

### SCHEDULE 2

1. In the definitions, delete the definition for Department, Director-General and RTA and insert the following definitions in alphabetical order:

EPA	Environment Protection Authority
Mod 8	The modification as described in the letter report titled " <i>Section 75W Modification Application (MP08_0066) – Oakdale Central, Horsley Park (Lot 21 in Deposited Plan 1173181)</i> ", dated 18 February 2014 and prepared by McKenzie Group.
NOW	NSW Office of Water
Department	Department of Planning and Environment
RMS	Roads and Maritime Services
Secretary	Secretary of the Department of Planning and Environment

2. Delete the following references:
    - a. DECC in conditions 22 and 26, and replace with EPA;
    - b. DECC in condition 34 and replace with OEH;
    - c. Director-General in all instances and replace with Secretary;
    - d. DWE in condition 20(a) and replace with NOW; and
    - e. RTA in all instances and replace with RMS.
  3. In Condition 2(b) of Schedule 2 insert the following words after "25.03.13;"

"and modification application 08\_0066 MOD8 with supporting document titled *"Section 75W Modification Application (MP08\_0066) – Oakdale Central, Horsley Park (Lot 21 in Deposited Plan 1173181)"*, dated 18 February 2014 and prepared by McKenzie Group;"
  4. In Condition 15 of Schedule 3 insert the word "former" in front of the word "DWE's".
  5. In Condition 18 of Schedule 3 insert the word "former" in front of the word "DECC's".
  6. Replace Condition 18C of Schedule 3 with the following words:

18C Any soils / materials imported onto the site must meet the definition of Virgin Excavated Natural Material (VENM) as contained in the Department of Environment, Climate Change and Water publication *Waste Classification Guidelines – Part 1: Classifying Waste (December 2009)*; or Excavated Natural Material (ENM) as per the Excavated Natural Material Exemption 2012, made under the *Protection of the Environment Operations (Waste) Regulation 2005 – General Exemption Under Part 6, Clause 51 and 51A.*
  7. After condition 18C of Schedule 3 insert new condition 18D as follows:

18D. Prior to the importation of any soils / materials to the site that meet the requirements of ENM, documentation to clearly demonstrate that these soils / materials satisfy the requirements of ENM shall be submitted to, and approved by, Fairfield City Council.
  8. After condition 18D of Schedule 3 insert new condition 18E as follows:

18E. Any soils / materials imported onto the site shall meet applicable contamination threshold limits for the proposed land use, as contained within the Department of Environment and Conversation publication *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (2nd edition) 2006.*
  9. After condition 18E of Schedule 3 insert new condition 18F as follows:

18F. Any supporting documentation (such as records / receipts / dockets / log book entries) relating to the importation of VENM / ENM to the site shall be maintained at all times and made available to Council's Officers upon request.
  10. In Condition 20(b) of Schedule 3 insert the words "the former" in front of the word "DWE's".
-