

**Section 75W Modification Request
Bungarribee Industrial Estate, Huntingwood West Precinct
Stage 5B Bulk Earthworks - Project Approval MP08_0225 MOD2**



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

September 2013

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1 INTRODUCTION

This report assesses a Section 75W request to modify project approval MP08_0225. The proposed modification relates to Lot 5B within the Bungarribee Industrial Estate, Huntingwood West Precinct in the Blacktown Local Government Area. The Project Approval has been previously modified and the current proposal is the second modification of the project approval.

The modification request is confined to Lot 5B and relates to bulk earthworks and development pad levels. The proposed modification will facilitate a development application to Council for a warehouse building that will incorporate undercroft car parking.

2 THE SITE

The site is an allotment within Bungarribee Industrial Estate, Huntingwood West, and is known as Lot 5B within the approved masterplan and is part of a land parcel within the estate legally described as Lot 5 in DP 1127100 (Refer to **Figure 3**). Lot 5B has an area of 30,613 m². The Bungarribee Industrial Estate as a total area of 562,271 m². The Estate is located in western Sydney and is bounded by the M4 to the south, the Great Western Highway to the north, Brabham Drive to the east, and Western Sydney Parklands to the west. The estate is also within close proximity to the M7 (Refer to **Figures 1 and 2**).

Lot 5B has a northern frontage to The Great Western Highway. The eastern boundary of the site has frontage to Rudders Street and the southern boundary has frontage to William Dean Street. Both Rudders Street and William Dean Street are internal roads within the estate.



Figure 1: Bungarribee Industrial Estate - Regional context



Figure 2: Lot 5B within the Bungarribee Industrial Estate (The subject site is shaded Orange)

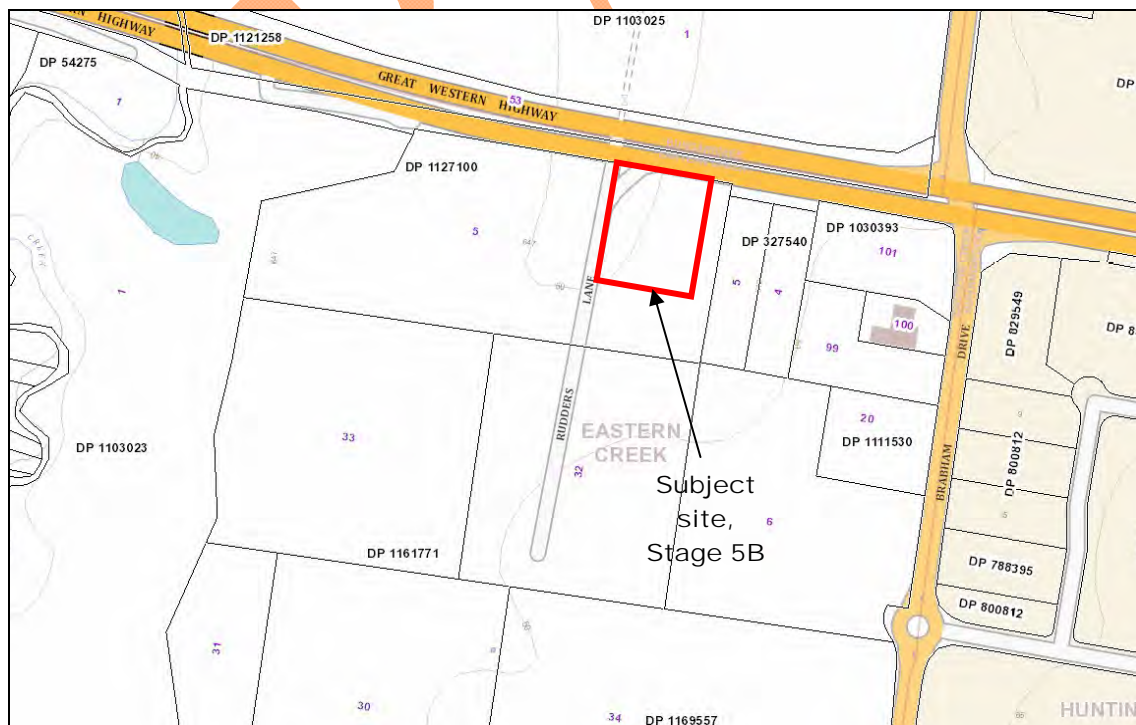


Figure 3: Lot 5B (red border) within Lot 5 DP1127100

The nearest residential properties are to the west of the estate on Pikes Lane, approximately 500-600m from the subject site.

Eastern Creek runs north-south on the western side of the estate and Eastern Creek Raceway lies south-east of the estate, beyond the M4 Motorway. To the east of the estate lies Huntingwood and Arndell Park which largely comprise industrial uses. Stretching from the north-east to the north-west are the residential areas of Mount Druitt, Rooty Hill, Doonside and Blacktown.

3 BACKGROUND

On 11 May 2007, the Huntingwood West Precinct was gazetted as a State Significant site in Schedule 3 of *State Environmental Planning Policy (Major Development) 2005* and rezoned as IN1 General Industrial, to facilitate regional employment land objectives. The Bungarribee Industrial Estate is part of the Huntingwood West Precinct.

The relevant precinct approvals are described below.

3.1 Concept Plan MP06_0203

On 9 December 2006, concept plan approval was granted to Landcom for a 47-lot subdivision, future employment uses, associated roads, services, infrastructure, and open space. The *Huntingwood West Employment Lands Development Design Controls (DDCs)* were adopted as part of the concept plan approval. The DDCs provide for a development vision, specific aims and detailed development controls.

3.2 Project Application for Subdivision MP08_0055

On 4 September 2008, approval was granted for project application MP08_0055 to alter the subdivision design to create 6 consolidated 'superlots' (Refer to **Figure 4**). The application related to subdivision design only and did not include any development works or use.

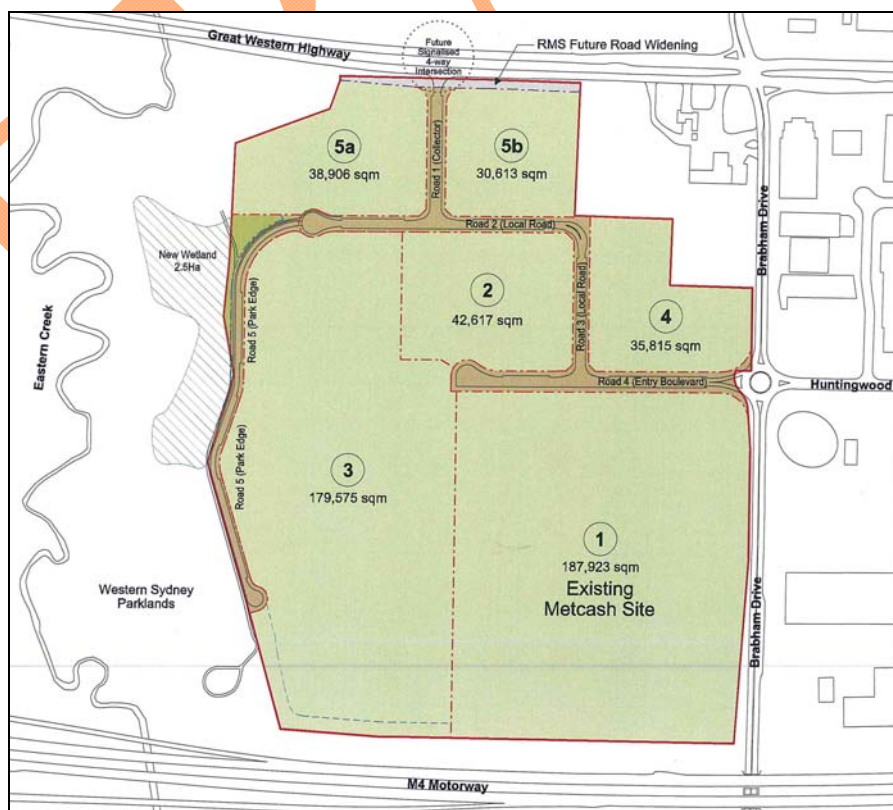


Figure 4: Approved 6 super lot site layout (MP08_0055)

3.3 Stage 1 Infrastructure MP08_0225

On 25 January 2011, approval was granted for project application MP08_0225, being for Stage 1 infrastructure works including bulk earthworks, internal roads, estate landscaping and utility infrastructure.

3.4 Modification to MP 08_0225 (MOD 1)

On 13 February 2013, approval was granted for the modification to the Stage 1 infrastructure works project approval including an amended subdivision plan, site layout, amended earthworks levels, storm water management and landscaping works.

The current approved layout for the estate is shown in **Figure 5**, below.

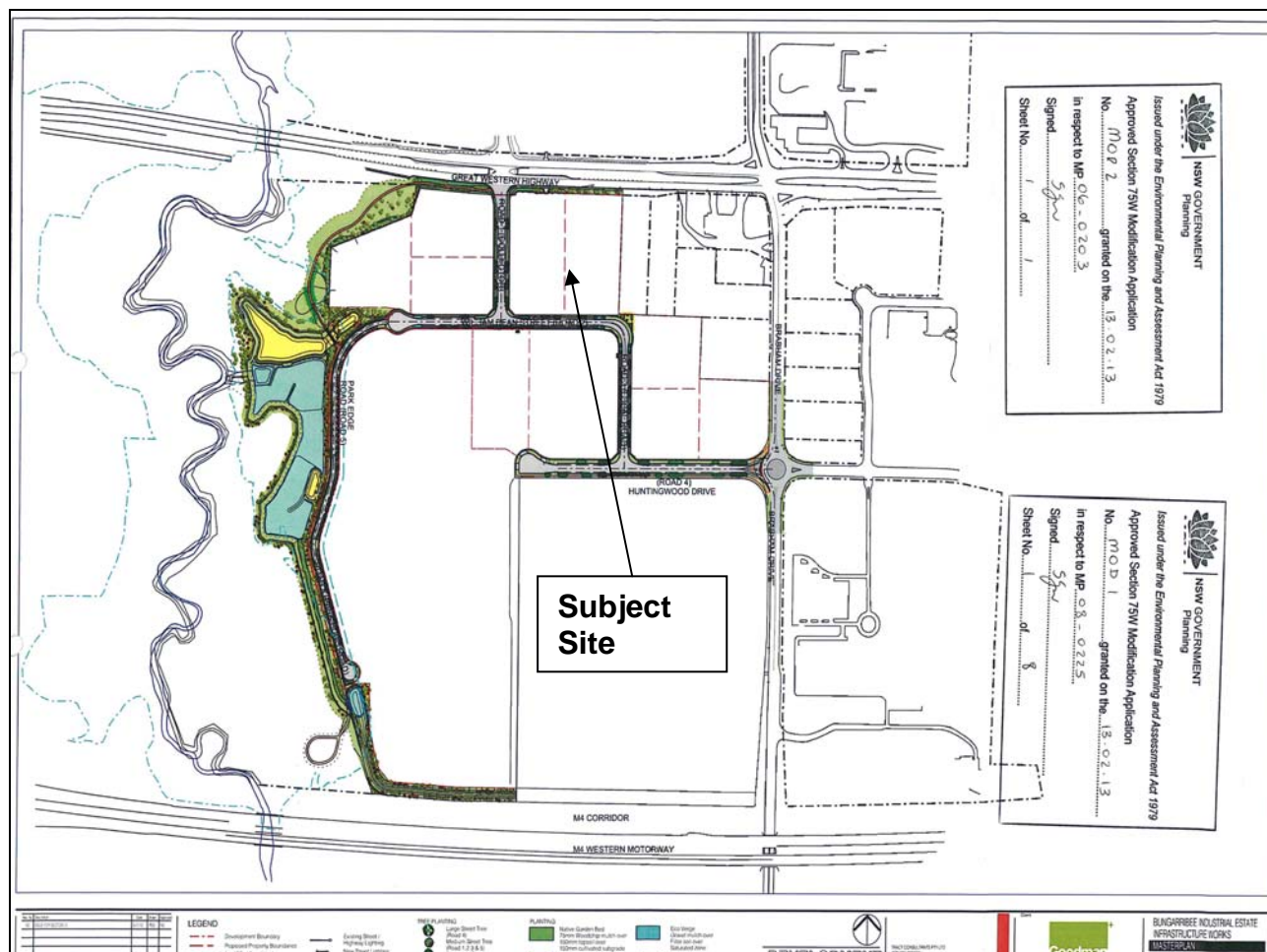


Figure 5: Current Estate Masterplan (Source: MP 08_0225 Mod 2 Approval, DoPI website)

3.5 Development Application DA13-1233

The proposed modified bulk earthworks will facilitate the final built form design for the site, including a warehouse building and the future under croft car parking area. In this regard, the proponent has lodged a development application with Blacktown City Council. At the time of writing this report, the development application had been notified and was currently under assessment.

The warehouse floor plan and the car parking layout which accompanied the development application currently before the Council is shown in **Figure 6**.

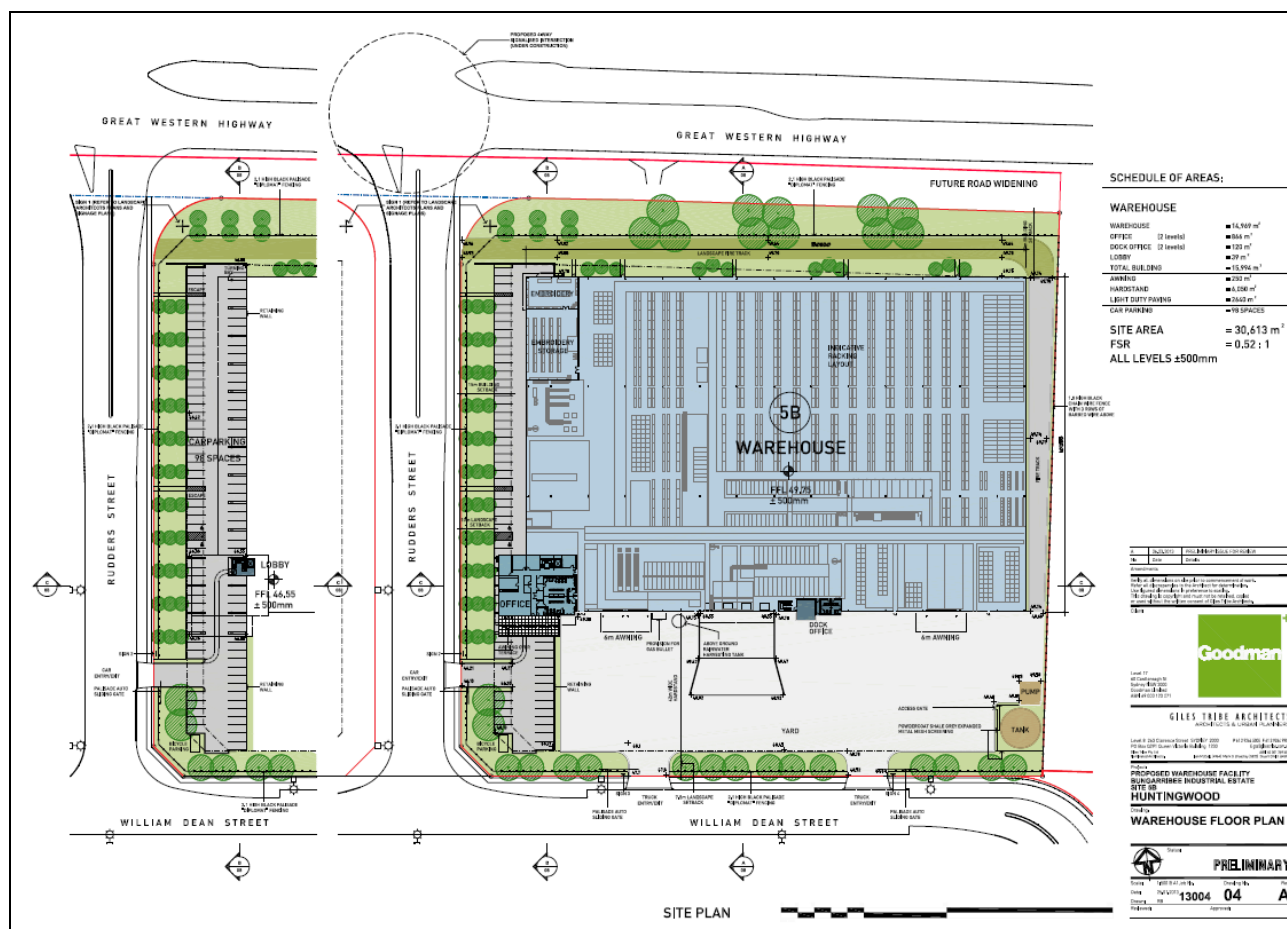


Figure 6: Council DA warehouse floor plan and undercroft parking layout (Source: McKenzie Group DA 13-1233)

4 PROPOSED MODIFICATION

The proposed modification would increase the approved pad levels of the site (which currently range between RL 49.00 and RL 49.10) to RL 49.40 at the location of the future warehouse building, and reduce the levels at the location of the future undercroft car parking area, adjacent to the western boundary of the site, to a range between RL 46.30 and RL 45.77 (Refer to **Figure 8**, over). The proposed RL 46.30 to 45.77 cutting will drain to a temporary sediment basin in the south western corner of the site, designed to ensure all stormwater runoff is contained on the site.

Batters are to be provided to create the level change around the perimeter of the site, allowing for future vehicle cross-overs, with an additional internal batter to the RL 46.30 to 45.77 cutting. No retaining walls are proposed as any required structures form part of the development application to the Council.

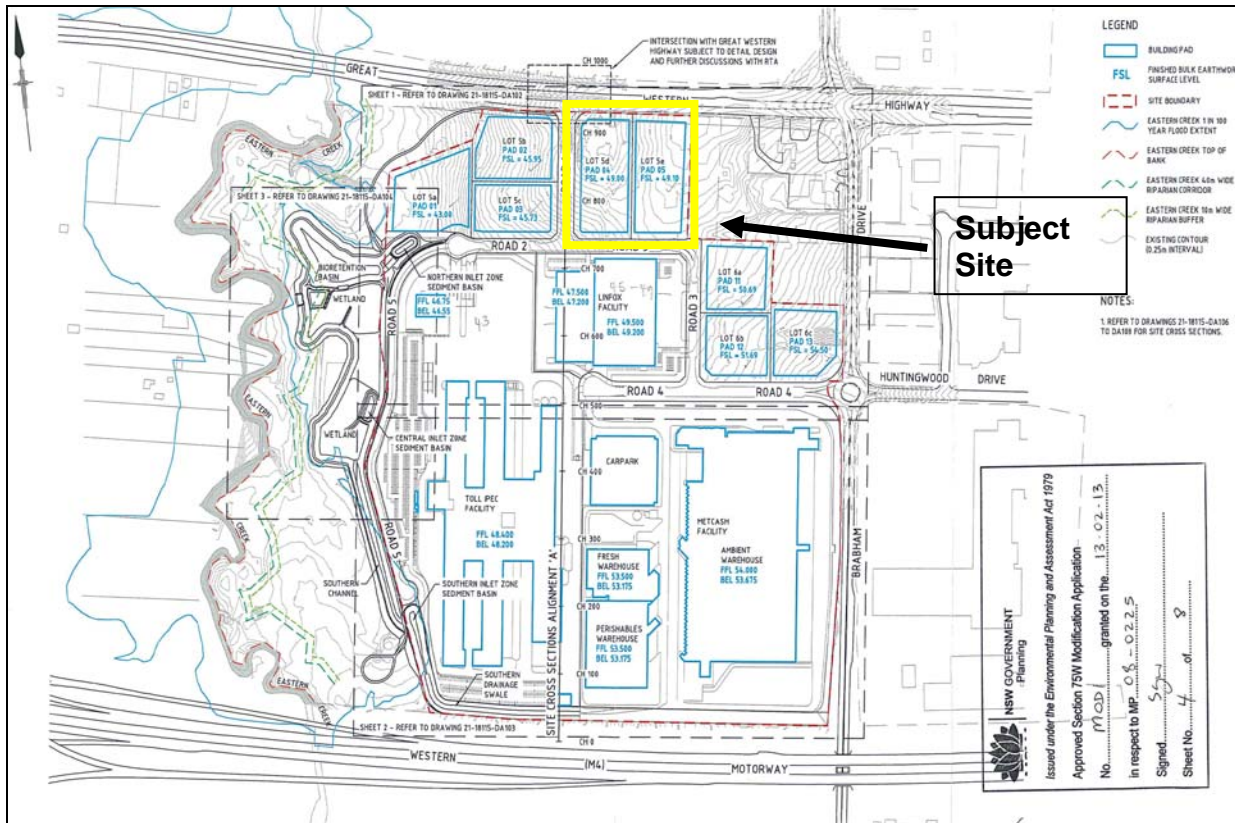


Figure 7: Current Approved Development Pad Levels (Source: MP 08 0225 Mod 2 Approval, DoPI website)

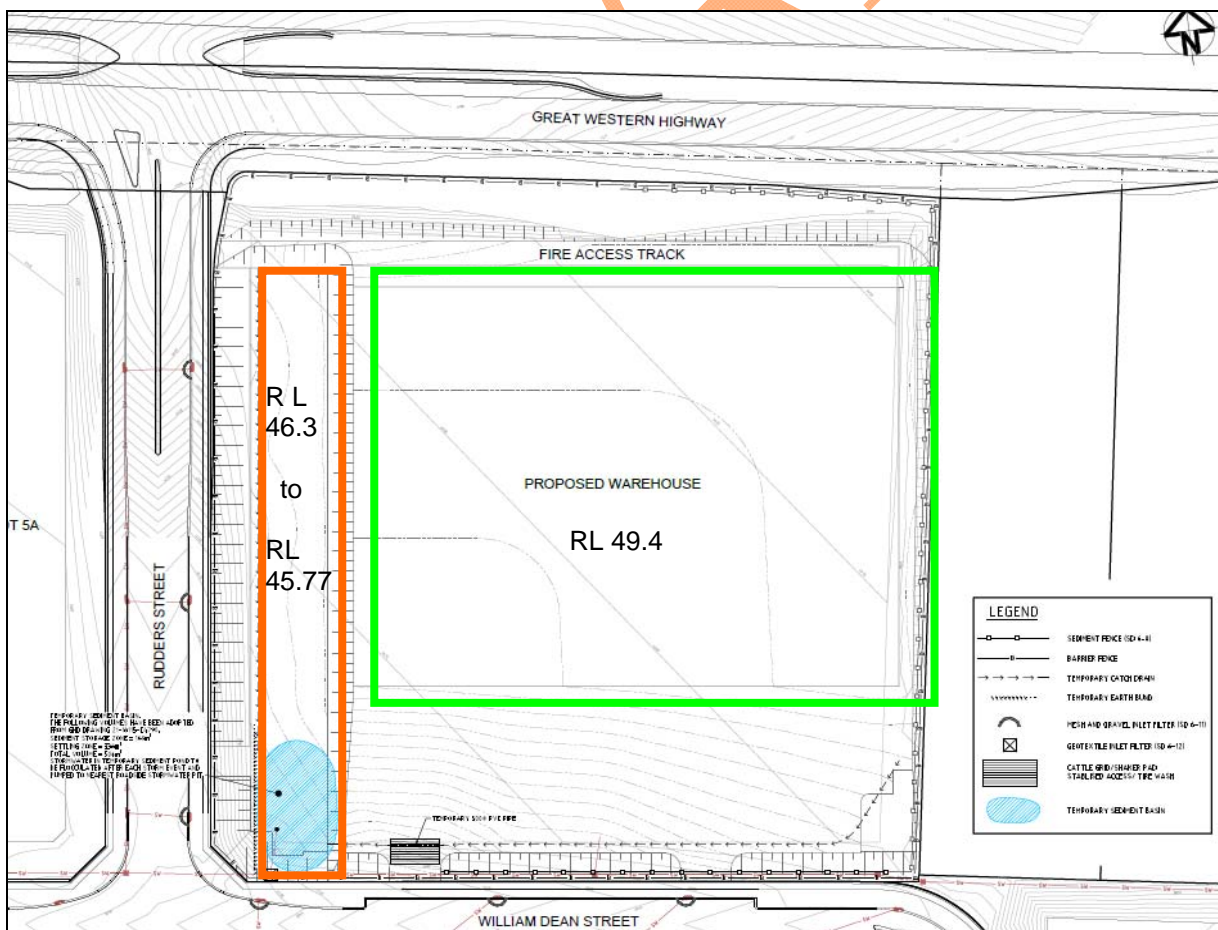


Figure 8: Proposed modified cut and fill Levels to facilitate Council DA warehouse (Green rectangle – RL 49.4) and under croft car parking (Orange rectangle - RL 46.30 to RL 45.77)

5 STATUTORY CONTEXT

5.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act, 1979 (EP&A Act), Section 75W, as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to modifications of Part 3A Approvals. The proposal was approved under the repealed Major Project provisions of the EP&A Act and therefore the assessment of the proposed modification remains subject to the same provisions.

This report has been prepared in accordance with the requirements of Part 3A and any associated regulations, and the Minister (or his delegate) may determine the request to modify the project approval under Section 75W of the EP&A Act.

5.2 Modification of the Minister's Approval

The Modification Application has been lodged with the Director General pursuant to Section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval." The Minister's approval of a modification is not required if the project as modified will be consistent with the existing approval. In this instance, the proposal seeks to modify conditions and modify the approved works, and therefore approval to modify the application is required.

5.3 Environmental Assessment Requirements (DGRs)

It is considered unnecessary to notify the Proponent of environmental assessment requirements pursuant to Section 75W(3) of the EP&A Act with respect to the proposed modification, as sufficient information has been provided to the Department to consider the application and the potential issues remain consistent with the key assessment requirements addressed in the original DGR's.

5.4 Delegated Authority

Under the Instrument of Delegation dated 4 April 2013, the Minister delegated his functions to determine Section 75W modification requests to the Executive Director, Development Assessment Systems and Approvals, where:

- the relevant local council has not made an objection to the proposal; and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions in the nature of objections.

Blacktown City Council has not objected to the proposed modification and no public submissions were received. The proponent made a political donations disclosure under Section 147(3) of the Act in respect to a previous related application, ie Concept Plan application (MP08_0203). Accordingly, the Executive Director, Development Assessment Systems and Approvals has delegation to determine the modification request.

6 EXHIBITION AND SUBMISSIONS

6.1 Exhibition

Under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the EP&A Regulation 2000, the request for modification was made publicly available on the Department's website and notified to Blacktown City Council on 22 July 2013.

6.2 Submissions

A submission was received from Blacktown City Council. The submission raises no objections in principle to the proposed modification, but requests that consideration be given to the requirement for the proponent to obtain an Environment Protection Licence in accordance with the Protection of the Environment Operations Act 1997 in relation to the discharge of stormwater from the temporary sediment basin into a nearby stormwater pit. The issue of wastewater disposal is discussed in section 7.2 of this report, under the heading Stormwater Drainage.

7 ENVIRONMENTAL ASSESSMENT

The Department considers the key issues associated with the modification requests to include:

- bulk earthworks; and
- stormwater drainage.

7.1 Bulk earthworks and Levels

The proposed bulk earthworks have been necessitated as the owners of the site (Goodman) have identified BOC Gases as a future user for Lot 5B. In order to accommodate the operational requirements of BOC and comply with Council's on-site parking and manoeuvring requirements, and landscaped area controls, the future built form design for Lot 5B requires the proposed modified bulk earthworks levels to facilitate a future undercroft car parking area (Refer to **Figures 6 and 8**).

The proposed level of RL 49.4 is similar to the approved levels for Lot 5B of RL 49.00 and RL 49.10, and would result in an additional 0.3-0.4 metres of fill over the portion of the site intended to accommodate the future warehouse building. The proposed gentle slope to RL 47.4 at the southern boundary is designed to ensure that heavy vehicular access is available from the vehicle cross-overs on William Dean Street. The proposed RL 46.30 to RL 45.77 adjacent to the western boundary represents a 2.70 to 3.23 metres decrease from the approved RL 49.00 level in the western portion of the site, and is necessary to facilitate future undercroft car parking. The proposed temporary sediment basin in the south-western corner of Lot 5B, together with the cut adjacent to the western boundary is designed to ensure that all stormwater run-off is contained within Lot 5B until such time as a permanent stormwater drainage system is established.

The Department is satisfied that the proposed levels are in keeping with the original approval and will not result in any adverse impacts. Accordingly, the Department does not raise any objection to the proposed development pad levels and other proposed bulk earthworks.

7.2 Stormwater drainage

The approved stormwater arrangements for the Bungarribee Industrial Estate provided for by MP08_0225, as modified have been designed to accommodate the 20 year and 100 year ARI events. The proposed changes to the pad levels will have flow on effects for stormwater drainage within Lot 5B. These flow on effects have been addressed through the provision of a 504 m³ capacity temporary sediment basin in the south-eastern corner of Lot 5B. The proposed bulk earthworks have been designed to drain towards the temporary sediment basin to ensure that all stormwater run-off is contained within Lot 5B. It is envisaged that stormwater contained within the temporary sediment basin would be flocculated after each storm event and pumped to the nearest roadside stormwater pit.

The submission received from Blacktown City Council indicates that if the applicant intends on disposing stormwater from the temporary sediment basin to the stormwater system, the discharge should be controlled under the conditions of an Environment Protection Licence (EPL) issued in

accordance with the *Protection of the Environment Operations Act 1997 (POEO Act)*. The requirement to obtain an EPL is considered to be unduly onerous and unnecessary given that **Condition 19** of the current project approval draws the attention of the proponent to the provisions Section 120 of the *POEO Act*. (Section 120 relates to the 'prohibition of pollution of waters' and states that a person who causes or permits any waters to be polluted is guilty of an offence.)

The Environment Protection Authority advises that the discharge of stormwater from the temporary sediment basin to the stormwater system is not a scheduled activity in terms of the activities described in Schedule 1 of the *POEO Act*, and strictly speaking does not require an EPL. However, an EPL can be issued for a 'non-scheduled miscellaneous discharge to waters', but this is not normally imposed and is usually sought at the discretion of the developer.

Further to the requirement to comply with Section 120 of the *POEO Act*, **Conditions 38 and 39** of the project approval contain requirements for environmental reporting of incidents that cause or may cause harm to the environment, while **Condition 40** empowers the Director-General to require an update of compliance with all or any part of the conditions of the project approval. Accordingly, it is considered to be unnecessary to require the proponent to obtain an EPL.

7.3 Development Design Controls

The *Huntingwood West Employment Lands Development Design Controls (DDCs)*, were approved as part of the concept plan approval. The proposed modifications are considered to be consistent with the objectives, overall vision provided for by the DDCs. The proposed modification will maintain the performance of the Bungarribee Industrial estate from an environmental perspective and will not result in any unreasonable additional environmental impact.

8 CONCLUSION

The Department is satisfied that the proposed bulk earthworks and modified development pad levels are reasonable and justified, and that there is a demonstrable need for the proposed modification. The proposed modification would not result in any additional adverse environmental impact.

The modifications to the approved bulk earthwork levels will not result in any substantial change to the approved project approval and are consistent with the concept plan approval. The proposed modifications will facilitate the development of Lot 5: Stage 5B of the Bungarribee Industrial Estate for an identified end use which will support the provision of jobs in Western Sydney.

The Department is satisfied that there are no significant impacts arising from the proposed modification and considers that the proposed modification should be approved subject to conditions.

9 RECOMMENDATION

It is recommended that the Executive Director, Development Assessment, Systems & Approvals, as delegate of the Minister for Planning and Infrastructure:

- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification, subject to conditions, under Section 75W of the *Environmental Planning and Assessment Act, 1979*; and
- (c) **Sign** the attached Instrument of Modification for MP08_0225 (MOD 2) (**Appendix A**).

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APPENDIX A RECOMMENDED MODIFYING INSTRUMENT

DRAFT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation dated 4 April 2013, I approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.

Chris Wilson
Executive Director
Development Assessment, Systems & Approvals

Sydney,

2013

File No. 10/15809-1
MP08_0225 MOD2

SCHEDULE 1

Project Approval:

MP 08_0225 granted by the then Minister for Planning on 25 January 2011.

For the following:

Bungarribee Industrial Estate (Huntingwood West) Stage 1: Infrastructure Works Project including:

- 7 lot subdivision;
- site layout;
- roadworks;
- bulk earthworks;
- landscaping; and
- stormwater management.

On land comprising:

Lots 3 & 5 in DP 1127100, Lot 20 in DP 1158955 and Lots 30, 31, 32 & 33 in DP 1161771

Modification:

MP08_0225 MOD2

Amendments involving changes to the approved bulk earthworks and development pad levels, confined to Stage 5B: Lot 5 in DP 1127100.

The project approval is modified as follows:

SCHEDULE 2

1. In condition 2 of schedule 2 after the word “EA” in point (a) insert the words “except where modified by the Environmental Assessment titled Huntingwood West Precinct – Bungarribee Industrial Estate: Proposed Section 75W Modifications to MP06_0203 and MP08_0225 prepared by Urbis and dated November 2012, **and the Environmental Assessment titled Section 75W Modification Stage 1 Infrastructure MP 08 0225 MOD 1 Stage 5B Bungarribee Industrial Estate Huntingwood West Lot 5 DP 1127100 July 2013 prepared by McKenzie Group Consulting.**”
2. In condition 2 of schedule 2, point (b) delete plans referenced “LD DA 1002 (02), BIE DA01 (B), 21-18115-DA001(B)” and insert plans referenced “LD 1002 (00) dated 06.11.12, BIE DA01 (C), 21-18115-DA001(E), proposed plan of subdivision of proposed Lots 332 & 333, Lot 5 in DP 1127100, proposed Lots 230 & 231, Lot 31 in DP 1161771 and Lots 4 & 5 in DP 327540 dated 07.11.12 and 21-18115-DA101(E), **except where amended by Lot 5B Civil Engineering Plans referenced Cover Sheet, Notes, Legends and Locality Plan C200-12-106-C, General Arrangement Plan C202-12-106-C, Bulk Earthworks Plan Sheet 1 C205-12-106-C, Bulk Earthworks Plan Sheet 2 C206-12-106-C, Bulk Earthworks Plan Sheet 3 C207-12-106-C, Bulk Earthworks Plan Sheet 4 C208-12-106-C, Sediment and Erosion Control Plan C210-12-106-C, Sediment and Erosion Control Details C211-12-106-C (refer to Appendix A).**”