

BAYSIDE COUNCIL SUBMISSION SSD-9691 – ORICA SOUTHLANDS WAREHOUSE ESTATE

Introduction

On 8 November 2018, Council was notified of a request submitted to the then Department of Planning and Environment (now the Department of Planning, Industry and Environment – DPIE) for Secretary's environmental assessment requirements (SEARs) for the Orica Southlands Warehouse Estate located in the southern part of the Botany Industrial Park. Council responded to the notification of the SEARs request by making a submission to DPIE on 21 November 2018 outlining the matters that should be considered in any Environmental Impact Statement (EIS) which accompanies any future State Significant Development (SSD) application on the land.

The request for SEARs was based on the following development proposal:

- Construction of two warehouse buildings with floor areas of 11,630sq.m. and 10,635sq.m for Warehouses 1 and 2 respectively;
- Car-parking provision of 60 spaces and 57 spaces for Warehouses 1 and 2 respectively;
- The warehouses, car-parking and hardstand areas to be constructed on a suspended concrete platform above an existing compensatory flood storage area; and
- The suspended platform to be supported by a grid of piles constructed approximately 1.5m above ground level.

Council staff responded to the SEARs request on 21 November 2018. The response is included as Attachment 2 to this report. In summary, the response outlined that the following matters should be adequately examined in any EIS:

- The development proposal should be consistent with all relevant planning strategies, plans and Environmental Planning Instruments, including:
 - State Environmental Planning Policy (Three Ports 2013);
 - State Environmental Planning Policy No. 33 – Hazardous and Offensive Development;
 - State Environmental Planning Policy No. 55 – Remediation of Land;
 - State Environmental Planning Policy (Infrastructure) 2007;
 - State Environmental Planning Policy (State and Regional Development) 2011;
 - Relevant s9.1 Directions (formerly s117 Directions);
 - Towards Our Greater Sydney 2056 – Greater Sydney Commission;
 - Premier's Priorities – NSW Government;
 - Future Transport Strategy 2056 – NSW Government;
 - NSW State Infrastructure Strategy 2018-2038 – NSW Government;
 - Eastern City District Plan – Greater Sydney Commission;
 - Botany Bay Planning Strategy 2013; and
 - Botany Bay LEP 2013;
- Flooding –
Additional modelling and sensitivity analysis is required in the flood study, including:
 - Examining the impact on flood flows and the reduction in storage capacity caused by the proposed piers;
 - Examining the impact of raising Nant Street and the use of culverts under the raised road; and

- Assessing the flood risk for the users of the site, providing information on site accessibility and evacuation measures.
- *Traffic and Transport –*
The minimum information expected to be covered by a Traffic Report includes:
 - A quantitative Traffic Impact Assessment which details all daily and peak traffic and transport movements likely to be generated during construction and operation of the development, and the ability of the existing and future transport networks to accommodate these transport movement;
 - An assessment of predicted impacts on road safety and the capacity of the road network to accommodate the development;
 - Details of the current daily and peak hour vehicle, public transport, pedestrian and bicycle movements and existing traffic and transport facilities provided on the road network in the surrounding area; and
 - Details of the type of heavy vehicles likely to be used during the operation of the development and a cumulative assessment of the predicted impacts of these vehicles, including existing and future performances of nearby key intersections;
- *Contamination –*
The EIS should provide a detailed assessment of the extent and nature of any contamination at the site.
- *Land Use Safety Risk –*
The EIS should include a preliminary hazard analysis, which should be prepared in accordance with Hazardous Industry Planning Advisory Paper No. 6 – Guidelines for Hazard Analysis, and Multi-Level Risk Assessment. In this regard, the EIS should also include a risk assessment undertaken in accordance with Hazardous Industry Planning Advisory Paper No. 6 – Hazard Analysis. This should demonstrate that the development complies with relevant quantitative and qualitative risk criteria in Hazardous Industry Planning Advisory Paper No. 10 – Land Use Safety Planning.
- *Urban Design/Visual Impact –*
A visual impact assessment should be included in the EIS which examines the development layout and design having regard to any potential views from surrounding residential areas or other sensitive sites.
- *Biodiversity –*
It should be demonstrated that that any actions negotiated with community groups in regards to the development of Southlands and the flood detention basin are not compromised as part of any proposed development. The EIS should include an assessment of the proposal's biodiversity impacts in accordance with relevant legislation and best practice.
- *Noise and Vibration –*
The EIS should include an assessment of nearby sensitive receivers, cumulative impacts of other developments and details of proposed mitigation, management and monitoring measures.
- *Air Quality –*
An air quality assessment should be included in the EIS which demonstrates compliance with the applicable regulatory framework, including the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations

(Clean Air) Regulation 2010. The assessment should also demonstrate consistency with the relevant Environment Protection Authority guidelines.

Council's Submission on SSD-9691

Council understands that consent for the following development is now sought:

'A warehouse and distribution facility including the construction of two warehouse buildings, ancillary office space and hardstand/car parking areas on an elevated concrete platform above the flood storage area.'

Key components of the development include:

- An elevated concrete platform to support buildings and hardstand areas with a minimum clearance height of 2.5 m above the flood storage area below;
- Two warehouse buildings with a combined gross floor area (GFA) of 19,780 m² and each with a maximum building height of 13.7 m;
- Two ancillary offices with a combined GFA of 2,000sq.m.;
- A combined 117 car parking spaces; and
- Landscaping works within easements along the site boundary.

Council staff have examined the EIS and supporting documents for the SSD and wish to make the following comments:

The following matters have been raised:

Flooding and Stormwater –

- Flooding:
 - The applicant is to liaise with Council and the SES to install flood water depth signs on McPherson Street, both at Springvale Drains and at Floodvale Drains, and in front of the property, to warn road users;
 - The flood storage area under the building will be flooded frequently even in a minor rain event. Access to the undercroft area access must be restricted to avoid risk of drowning. Signage is to be provided to warn the employees and visitors.
- Stormwater Water Quality:
 - An infiltration system is not suitable for water quality treatment in the same manner that an infiltration system is not a suitable method of stormwater management for an industrial site. It cannot be confirmed that the various industrial activities (historical) at any point in time conducted on the site will not result in unacceptable levels of ground pollution. Also there is a high likelihood that a significant quantity of stormwater will not be treated by the system (including stormwater runoff from the upstream sites). Hence, the ground floor slab and roof drainage system is to be designed to entirely treat run-off and meet pollutant reduction targets prior to discharging into the basin below;
 - The locations and specifications of water quality treatment devices need to be shown on the civil engineering plans; and
 - The MUSIC model should use the latest available rainfall data. Section 7.3.2 of the Civil Engineering Report states the MUSIC modelling has relied on the rainfall data from the 1962 to 1966 period.

- Stormwater Management:
 - More details are needed for the ground floor slab drainage. An even distribution of drainage flow across the site into the storage basin below is required. Concentrated discharges are not supported from the ground floor slab into the basin.
 - Further information is required on the connection detail for discharge from the site. It appears that Nant Street operates like a weir/part of the basin and hence stormwater discharge from the site is through Nant Street into the open Springvale Drain. This needs to be confirmed by the applicant, as Council does not wish to see piped discharge from this site into the catchment.
 - Further details are needed regarding the remediation required for the site:
 - What are the materials of the capping layer? Will this impact the natural permeability of the basin?
 - What is the purpose of the road base – is it just temporary during construction?
 - How will the basin area be maintained?
 - Will existing vegetation be completely removed?
 - A copy of the music model, hydraulic and flood assessment model shall be provided to Council for record.
- Fence and landscaping:
 - The proposed landscaping and black mesh fence adjacent to Nant Street have the potential to block overland flow into the undercroft of the building. The western site boundary must be maintained largely open (appropriate open form fencing – pool fencing) to ensure the floodwaters can pass unimpeded into the undercroft area. This will require appropriate planting and fencing and an ongoing maintenance regime to minimise vegetation growth.
 - **Note:**
The existing drain which runs parallel to Nant Street requires substantial clearing of overgrown vegetation. The proposed development may need to be subject to a legal agreement to provide maintenance to control the growth of vegetation in the drain.

Biodiversity –

It is noted this project will involve in substantial removal of vegetation (exotic and native), particularly in light of the limited area of vegetation and open space in the locale of this development. This will also result in loss of local biodiversity habitat. Particular comments on the Biodiversity Diversity Assessment Report (BDAR) (WSP – December 2018) are:

- Grey-headed flying fox:
Mapping undertaken by Ecological Australia for Bayside Council has identified foraging habitat to the west of the subject site (adjoining the rail corridor). Therefore, it is requested that any vegetation removal that could potentially loss in foraging habitat for grey headed flying fox is replaced on site, or alternative foraging habitat is provided in consultation with Bayside Council;
- Green and Golden Bell Frog:
It is noted that the BDAR reported no green and golden bell frogs were located on site. It is requested that the applicant contacts Dr Arthur White (who provided input into the development of the frog ponds for the previous development) to ascertain his input into the likelihood of the green and golden bell frogs on site and potential loss of foraging habitat;

- This site is mapped within the Connected Corridor mapping (created and hosted by Greater Sydney Local Land Services in collaboration with the Southern Sydney Regional Organisation of Councils and Sydney Coastal Councils Group. It is identified in this mapping as supporting area for biodiversity. This is not referenced in the BDAR and needs to be addressed;
- Council also has a record from Bionet that Cattle Egret have been sighted previously on the site, but this bird was not included in the BDAR report. This sighting should be clarified via Bionet and, if required, added into the BDAR; and
- It is also noted that the Office of Environment and Heritage in their SEARs response requested that a Green Roof, Cool Roof or Green Wall be incorporated into the development. This does not appear to have been addressed.
- Furthermore, the following comment included in Council's SEARs response has still not been addressed:

'It is acknowledged that the site was subject to replanting and vegetation schedule as part of original the Orica Southlands Remediation and Warehouse Development (MP 06_0191) and subsequent modifications. However, there is still a need to ensure that any actions negotiated with community groups in regards to the development of Southlands and the flood detention basin are not compromised as part of this proposed development.'

- In particular it is noted the Orica Southlands Project Landscape management plan was developed in consultation with former Botany Council and the community. This plan identified that the pallet of species planting species matched the East Coast Banksia scrubland species community and in particular the flood detention basin was to include screen plantings of locally-occurring native plant species to be planted in mulched areas around the perimeter and within the basin. The remainder of the non-planted areas were to be grass seeded with 'Parkland Blend'. The lower parts of the basin were to be planted with native sedges.
- While it is acknowledged that this application will maintain and enhance, where possible, edge planting around the perimeter of the site, as highlighted above there will still be substantial vegetation loss in terms of green space in the local area. The application needs to include more significant compensatory and mitigation options to reflect the proposed loss of this vegetation and of loss of local biodiversity. These measures should be developed in consultation with the community and Bayside Council and identified in the BDAR.

Traffic and Parking –

- The proposed development will see an increase in traffic to access Botany Road in the southbound direction via Exxel Street if the street network is kept as is;
- There are concerns regarding the location of the proposed access and its proximity to Nant Street, the laneway adjacent to the site. It is noted that the access would be located on the southwest corner of the site, situated within approximately 3.1 metres from Nant Street;
- In accordance with AS 2890.1 (2004) figure 3.1, access driveways are prohibited from being within 6.0 metres of the tangent point of another intersection;

- TRAFFIX is advised that Nant Street is primarily utilised as the main access for Qenos Tank Farm, located to the immediate north of the site on an intermittent basis only. As such, access is restricted with a rarely opened gate and the road does not accommodate general traffic;
- Whilst Nant Street is primarily providing access only to the Qenos tank farm and its access appears to be security restricted, the land and road it is still owned by Bayside Council and has the potential for more intense use in the future. Hence non-compliance with AS2890.1:2004 figure 3.1 is undesirable;
- The access width of 8 metres appears to only narrowly accommodate the B-doubles entry and exit and should be about 12.5m at least, as per AS2890.2;
- The applicant should be requested to provide a secondary access driveway or demonstrate the queuing in and out can be accommodated in a combined driveway;
- Swept paths need to detail how two truck vehicles driving in opposing directions can enter and exit the site simultaneously through the driveway;
- The western car park adjacent to the proposed Warehouse 1 is also within close proximity of the swept paths of B-doubles. Whilst there is no issue with the current arrangement, issues may arise if they intersect with the parking spaces and/or structures;
- The applicant should be required to pay contributions towards the improvement of traffic devices in the area to better manage traffic in this precinct;
- The TIA should further expand on the sources for the traffic and parking generation requirements;
- The active transport options should be further expanded, identifying nearby pedestrian routes and any limitations for pedestrians in the area;
- Additional swept path analysis needs to be provided for the sharp bend between Hills Street and McPherson St. There have been safety concerns in the past months related to B-doubles having difficulty turning at that bend. 'No stopping' restrictions may need to be implemented to facilitate swept paths;
- A requirement for item C3 of Botany DCP for a non B-double route may be necessary:

'A Road Pavement Performance Analysis Report along the local roads of the proposed B-Double route to and from the site is required to ensure existing road pavement can perform adequately under the anticipated traffic loading generated from the heavy vehicle movements.'

- The active transport options should be further expanded, identifying nearby pedestrian routes and any limitations for pedestrians in the area. An increase in the amount of bicycle parking and end of trip facilities is encouraged. A dedicated workplace "green" travel plan (including Transport Access Guides) will be required for the development either via conditions of consent or as part of the approval documentation regarding the operations of the facility.

Contamination –

Site Audit Report (J1130.39R-rev0 – 16 May 2019)

The report states that:

- The nature and extent of the contamination has been appropriately determined;
- The investigation, remediation or management plan is appropriate for the purpose stated above;
- If groundwater is safe and suitable for its intended use as required by the Temporary Water Restrictions Order for the Botany Sands Groundwater Resource 2017;
- The site can be made suitable for the commercial/industrial use if the site is remediated in accordance with the Remediation Action Plan, 28 McPherson Street, Banksmeadow NSW by JBS&G Australia Pty Ltd dated 15 May 2019 and subject to compliance with the following conditions:
 1. A construction environmental management plan (CEMP) must be prepared to manage any risk associated with contamination in soil, groundwater and ground gas that may be encountered during remediation and construction activities. The CEMP must be submitted to a site auditor for review;
 2. A validation report must be prepared which demonstrates that site work has been completed in accordance with the RAP and CEMP, and includes verification of placement of the contact barrier and confirmation of the construction of the deck, void and associated foundations. The validation report submitted to a site auditor for review prior to construction of any permanent buildings on the site;
 3. A long-term environmental management plan (LTEMP) must be prepared for the site. The LTEMP must provide a legally-enforceable mechanism to document the presence of residual contamination by asbestos and hazardous ground gases at the site and manage the risks associated with that contamination. In this context the term hazardous ground gases includes vapours. The LTEMP must be provided to a site auditor for review; and
 4. A site audit statement confirming that the site is suitable for commercial and industrial use must be issued by a site auditor prior to occupation of any permanent buildings constructed on the site.
- The EIS states that remediation/management is further required to enable the site to be used for commercial/industrial use including remediation works to address asbestos in fill, ground gases (CO₂) and potential vapour intrusion of volatile chlorinated hydrocarbons. The elevated concrete slab will create a large open void beneath the warehouse and hardstand areas and will allow for passive ventilation for gas mitigation;
- The Remediation Action Plan states that site can be made suitable subject to the implementation of all mitigation measures. The RAP requires the onsite containment of asbestos impacted soils using a marker and barrier layers across the site, with the exception of an existing buffer along the eastern portion of the site that will be retained in its current state and secured with fence to minimise access, and management of potential soil vapour intrusion into buildings by construction of any buildings on a suspended slab with a large open void beneath, which will provide a passive ventilation system for gas mitigation into buildings;
- These should be covered as conditions of consent by the consent authority; and

- It is noted that one monitoring well for the groundwater plume monitoring will need to be lowered into a pit to allow construction of the new access driveway. This will be part of the EPA's management of the residual contaminated groundwater plume beneath the site.

Urban Design and Landscaping –

- The landscape area provided is below the minimum required. The present layout provides only 3,093sq.m. The development shall be redesigned to achieve the 10% required, plus include sustainable approaches;
- The car park shall be redesigned to meet all controls included in Part 3L.6 of Botany Bay DCP;
- Frontage to McPherson Street should include a 3m landscape setback with canopy trees along the entire site. Further planting should be included to maximise the landscape setback with planting;
- Deep soil area required – 10% of the site plus landscape setback to frontage street;
- Setbacks should comply with Part 6.3.5: Setbacks – Botany Bay DCP;
- Carpark landscape treatments shall comply with Part 3L.6 – Botany Bay DCP;
- The following should be included in the proposal:
 - Rainwater harvesting for reuse in irrigation and other uses;
 - Include 100% of planting scheme native and indigenous species. Deciduous species may be included where sun access is required; and
 - All proposed planting shall be low water requirements, and with low maintenance.
- Considering the vast extend of the proposal, a more ecologically-sustainable approach is required to reduce the urban heat island effect. Some elements that can be included in the proposal are:
 - Green roof with a detention layer: This will reduce or remove totally the requirement of a detention tank elsewhere within the project. This element will purify rainwater before reaching water tank(s), reduce energy consumption, and reduce noise below the roof, and all other environmental, social and economic benefits that a green roof can provide;
 - Regular green roofs: Extensive (150mm deep) or intensive (more than 150mm deep) green roofs. The proposed carpark building can include this treatment which also will minimise the visual impact of the large built form. The green treatment can provide an attractive presentation of the enterprise seen from the air and neighbouring buildings from adjacent business areas. The green roof includes a vegetated layer, growing medium, and a waterproof membrane. Plants grown in sectioned lots are acceptable, however, potted plants/planter boxes which cover less than 30% of available rooftop space are not considered as a green roof. Additional to the minimum 30% vegetation cover, a green roof can include facilities for renewable energy, water collection infrastructure, walkways, furnishings and the like;
 - Green Walls: Green walls are either free-standing or part of a building that is partially or completely covered with vegetation. The wall may incorporate soil and/or inorganic material as the growing medium. There are two main types of green wall: green façades and living walls. Green façades are made up of climbing plants either

growing directly on a wall or on specially designed supporting structures. The plant's shoot system grows up the side of the building while being rooted in the ground. With a living wall, modular panels are affixed to the wall and geo-textiles, irrigation and a growing medium combine to support a dense network of plants;

- Green facades: A green facade is a system that mimics self-clinging plants but uses an engineered, trellis system to support the climbing plants off the building surface;
 - Bioswales within planter beds to filter water before entering the water way;
 - Permeable or porous pavers: in particular in parking spots, where traffic is not high, permeable pavers or interlocking system unit pavers can be included to reduce runoff and maximised the water filtration across paved areas.
- Materials Selection: Given the size of the structures proposed the use of high quality and interesting materials to contribute to a positive streetscape and building elevations and articulation of massive extent of materials;
 - Material properties to consider:
 - Suitability to the location and exposure to view from the street and adjacent open areas;
 - Thermal properties including insulation and thermal sink;
 - Reflectivity in general but specifically in the context of close proximity to airport and solar panels or other objects on the roof;
 - Maintenance, durability and life cycle expectation;
 - Use of recycled materials;
 - Embodied energies of fabrication, assembly, transport, and reuse;
 - Textural aesthetic quality and visual interest; and
 - Extent, scale and proportion in context of the overall building and its application.
 - Signage material and lighting is to be consistent with the architectural treatment. Signage should be sensitively located so as not to detract from the facade or streetscape and not be excessive in scale or quantity. Materials and lighting of the sign should complement the architecture;
 - Safety and security – CPTED Principles:
 - Maximise passive surveillance of street and public areas, and parking areas, should be visible from adjacent properties;
 - Ensure building design limits the ability for unauthorized entries;
 - Design to ensure clear demarcation between the public and private realm;
 - Ensure the design does not provide areas with minimal or no surveillance; and
 - For safety and way-finding reasons, public parking should be located within the public parking zone near the street front adjacent the cross-over.
 - Hardstand and Paving Areas:
 - The treatment of hardstand and paving areas will have significant implications for the quality and quantity of stormwater generated by a site, as well as having implications for microclimate and amenity;
 - Permeable surfaces should be maximised in order to reduce stormwater runoff; and
 - The swept paths of trucks should be identified and any areas available for landscape within the large area paving made available for swales with trees to mitigate the effects of flooding, water treatment and the provision of shade for environmental and visual amenity.

Noise Impact –

- The Acoustic Report states that the majority of construction works will be undertaken in accordance with the NSW Interim Construction Noise Guideline (NSW ICNG) during the standard daytime working hours of:
 - 7.00 am to 6.00 pm Monday to Friday
 - 8.00 am to 1.00 pm on Saturdays.
- The Acoustic Report also states 'limited works may be conducted outside of these hours provided they are managed so as to generate noise levels below the relevant ICNG Noise Management Levels';
- Every effort should be made to ensure 'noise related' works are undertaken within the nominated hours;
- It's also noted that the subject site is surrounded by various commercial warehouses and other industrial facilities contained within the Botany Industrial Park;
- The closest residential receivers to the east are located on Denison Street in Hillsdale, approximately 850m from the site, whilst the closest residential receivers to the west are located along Stephen Road in Botany, approximately 700m from the site; and
- Whilst the proposed operations on the site are intended to be 24 hours, the site is considered to have little potential for noise disturbance to the nearest residential properties or other sensitive land uses.

Air Quality –

The Air Quality Impact Assessment (SLR – February 2019) provides a detailed assessment of the following matters:

- Pollutants of concern;
- Ambient air quality criteria;
- Existing environment and background air quality;
- Potential sources and impacts of dust emissions during construction; and
- Potential sources and impacts of emissions during operations.

The findings of the assessment are as follows:

- Off-site impacts associated with dust deposition and suspended particulate during the construction phase are anticipated to be negligible for construction activities, as the site will be stripped and open for only a short period of time before it is capped with geotextile and a road base cap. A range of mitigation measures have been recommended for consideration as part of the CEMP.
- The potential for offsite air impacts from the operations at the Development Site is concluded to be neutral.

No objections are raised.

Waste –

Waste Management Plans have been prepared for both the construction and operational phases of the development. The key points from each plan are as follows:

Construction

(Waste Audit – January 2019):

The Construction Waste Management Plan states that it has been developed to ensure that all waste resulting from demolition activities is managed in an effective, safe and environmentally aware manner to:

- Minimise the generation of waste to landfill;
- Maximise waste material avoidance and reuse on site; and
- To ensure that where practicable, an efficient recycling procedure is applied to waste materials.

The following waste management principles are stated in the Plan:

- Stormwater pollution prevention;
- Litter management;
- Waste record keeping;
- On-site waste/recyclables storage; and
- Training and education.

Provided the principles stated in the Construction Waste Management Plan are adhered to, no objections are raised.

Operational

(Waste Audit – January 2019)

The Operational Waste Management Plan identifies three key objectives:

1. Ensure waste is managed to reduce the amount of waste and recyclables to land fill by assisting staff and visitors of the Warehouse Buildings to segregate appropriate materials that can be recycled; displaying signage to remind and encourage recycling practices; and through placement of recycling and waste bins to reinforce these messages;
2. Recover, reuse and recycle generated waste wherever possible; and
3. Compliance with all relevant codes and policies.

Based on the development profile, the plan identifies the following predominant waste streams that would be expected on a regular basis:

- General waste;
- Co-mingled recycling;
- Cardboard/Paper recycling;
- Hard/Soft plastic recycling;
- E-waste;
- Pallet recycling; and
- Secure Paper recycling.

The plan also sets out the following waste storage facilities that will be provided in the development:

General Waste:

General waste bins will be 3.0 m³ industrial bins. The lids and signage should be colour-coded red. The general waste stream does not include hazardous material (such as batteries, fluorescent light tubes, light bulbs and/or toner cartridges), recyclable material or electronic equipment such as computers, TVs and mobile phones.

Co-mingled (Mixed Recycling):

Comingled recycling bins will be 1100L MGB's and should accept all recyclable plastic containers, aluminium containers, glass bottles and steel cans in. Comingled recycling bin lids and signage should be colour-coded yellow.

Paper/cardboard Recycling:

All paper and cardboard (excluding waxed cardboard) will be deposited into 3.0 m3 industrial bin which have a blue bin lid and signage.

Soft Plastic Recycling:

Includes shrink-wrap, bubble-wrap, shopping bags, plastic strapping and film. These will be disposed of into a recyclable plastic bag, supported by a frame and identifiable with the appropriate signage.

Timber Pallets Recycling:

Non-treated timber pallets will be stacked and stored for collection by the appropriate contractor.

E-Waste Recycling:

Desktop computers, laptops, computer keyboards, computer hardware and accessories will be stored in a palletised crate or cage, made identifiable by appropriate signage.

The plan also commits to all staff and management in the warehouses receiving education on the waste collection systems including how to use the system, which items are appropriate for each stream and collection regimes. Appropriate signage and updated information will also be provided.

Provided the principles stated in the Operational Waste Management Plan are adhered to, no objections are raised.

Section 88B Instrument –

Council's SEARs response stated that, as well as the flooding implications of the at-grade structures being proposed, the applicant also needed to explain what the legal implications are of the inclusion of these structures at grade. The use of the land at grade for purposes other than for the maintenance and management of the flood detention basin is contrary to Condition 8A of Modification 2 of the original warehouse development consent (MP 06_0191). The use of the land at grade within the Easement Site for any purpose except the maintenance of the flood detention basin located within the Easement Site is also contrary to clause 5.1(a) of the Section 88B instrument.

Furthermore, Council has recently made a submission on MOD 5 of MP 06_0191. Council's comments were as follows:

'Council has no objection in principle to the proposed modification of the consent granted under 06/0191 provided:

- 1. The intent and requirements of Conditions 15 and 16 continue to be upheld by the proposed subdivision;*
- 2. The intent and requirements of Condition 8A continue to be upheld by the proposed subdivision; and*
- 3. The proponent commits to making the necessary request to Council as the authority to release vary or modify the easement.'*

Unfortunately the EIS and supporting documents continue to be silent on this matter, other than to state the following in the EIS:

'The Positive Covenant requires the landowner to maintain the lot for the purposes of a flood detention basin but is structured in such a way as to allow any uses that are approved by a consent authority and that do not interfere with or affect the maintenance of the site for the purposes of a flood detention basin.'

The development is proposed to be constructed upon an elevated concrete platform that will be constructed with a minimum clearance of approximately 2.5 m above the existing flood detention basin below. The development will therefore be designed to ensure no impact on the site's existing flood storage capacity.'

The Instrument confirms that Council is empowered to release, vary or modify the restriction on use of the land. However, before doing so, the Proponent needs provide clear and detailed advice on how it has satisfied, or intends to satisfy, the legal requirements enshrined in both the conditions attached to the consent and the relevant clauses contained in the Instrument.