



JM / GK
15077
24 August 2015

NSW Minister for Planning and Environment
23-33 Bridge Street
Sydney NSW 2000
via email

Attn: Mr Ben Lusher

Dear Mr Lusher,

**SSD 5175 EASTERN CREEK BUSINESS HUB – SECTION 96(2) MODIFICATION
ROOTY HILL ROAD SOUTH, EASTERN CREEK**

On behalf of Western Sydney Parklands Trust (WSPT), we hereby submit an application pursuant to section 96(2) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify State Significant Development SSD 5175 relating to the Eastern Creek Business Hub Staged Development Application at Rooty Hill Road South, Eastern Creek.

The modifications relate to:

- Provisions to allow gross floor area for large format retail and supermarket that is residual to the approved maximum gross floor area to be utilised by bulky goods and convenience retail tenants respectively;
- Amendments to the Structure Plan to enable the transfer of the Beggs Road easement and the Church Street pedestrian connection into the primary business hub land;
- Reconfigurations to the Stage 1 stormwater drainage system and the incorporation of a second on-site detention basin;
- Additional bulk earthworks as part of the Stage 1 early works to establish the pad sites, reduce the amount of retaining walls and accommodate the amended stormwater modifications; and
- Amending the Stage 1 consent to reflect the update Stage 1 site remediation work that has been undertaken post determination.

This application identifies the consent, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration contained in section 96(2) and 79C(1) of the EP&A Act. It is accompanied by:

- The original Development Consent for SSD 5175 (**Appendix A**);
- Amended Structure Plan, Preferred Indicative Plan, and Enabling Infrastructure Plan prepared by JBA (**Appendix B**);
- Civil Engineering Report prepared by Costin Roe Consulting (**Appendix C**);
- Amended Civil Infrastructure Plans prepared by Costin Roe Consulting (**Appendix D**);
- Phase 1 Early Works Remediation Action Plan prepared by Coffey (**Appendix E**);
- Site Audit Statement and Report prepared by JBS&G (**Appendix F**)
- Addendum to Ecological Assessment prepared by Ecological Australia (**Appendix G**)

1.0 CONSENT PROPOSED TO BE MODIFIED

Development consent SSD 5175 was granted by the NSW Minister for Planning on 7 January 2015 for the Eastern Creek Business Hub Staged Development Application. The development consent approved the following:

'A concept proposal for a new retail centre comprising 52,800 sqm gross floor area to accommodate 'retail premises', 'bulky goods premises' and 'business premises' uses and a development structure including:

Land uses;

Site layout;

Building envelopes; and

Design parameters.

Stage 1 subdivision and early works including:

Super lot subdivision to create three developable allotments and one residual allotment;

Construction of an access road;

Bulk and detailed earthworks;

Stormwater management;

Civil engineering works;

Landscaping; and

Rehabilitation of the existing woodland areas identified for open space / conservation

A copy of the Notice of Determination for SSD 5175 is included at **Appendix A**.

2.0 PROPOSED MODIFICATIONS TO CONSENT

The proposed modifications to the development consent comprises:

- Modify the approved Structure Plan and the Preferred Indicative Plan to transfer sections of the Beggs Road easement into the Phase 1, Phase 1b and Phase 2 development boundaries.
- Incorporate the proposed pedestrian link to Church Street into the Phase 2 development boundary.
- Reconfigurations to the stormwater drainage system and the incorporation of a second on-site detention basin;
- A provision to allow any:
 - Residual large format retail GFA up to the approved maximum to be used as bulky goods GFA; and
 - Residual supermarket GFA up to the approved maximum to be used as 'specialty shops/small business' GFA.
- Additional bulk earthworks to establish the development pad sites, reduce the amount of retaining walls and accommodate the stormwater modifications; and
- Amendments to the conditions to reflect the revised Stage 1 Remediation Action Plan.

The proposed modifications are described in more detail below.

2.1 Modifications to the Development

The following modifications are proposed to the approved development.

Beggs Road easement

It is proposed to incorporate the Beggs Road easement into the development areas in the following manner (refer to Figure 1):

- Incorporate the portion of the Beggs Road easement west of the new internal access road into development Phase 1b;
- Incorporate the portion of the Beggs Road easement east of the new access road into development phase 2; and

This purpose of this amendment is to remove the requirement for further administrative modifications to the Concept Proposal once the Beggs Road easement has been transferred from Blacktown Council to the WSPT.

The proposed amendment does not alter the requirement to satisfy condition B8 under Schedule 3 of the development consent. Condition B8 is reproduced below for information:

“Prior to the commencement of works evidence shall be provided to the Certifying Authority demonstrating an application for the closure of the Beggs and Belmore Roads easements has been submitted to NSW Trade and Investment Crown Lands.”

- Incorporate the location of the pedestrian connection to Church Street traversing Phase 2 on the approved ‘Structure Plan’ and ‘Preferred Indicative Plan’ into the development lot. The proposed modification clarifies that this land will fall under the management of the future tenants and not WSPT.

The relevant Concept Proposal and Stage 1 plans approved under SSD 5175 have been amended to reflect the proposed changes.

Reconfiguration of the stormwater management system

It is proposed to reconfigure the stormwater management system to include a second detention basin to capture stormwater in the northern catchment and road network. The proposed modification will consolidate the individual retention systems proposed under SSD 5175 for the future pad sites in the northern catchment. The Civil Engineering Report (**Appendix C**) and Plans (**Appendix D**) describe the proposed modifications in detail.

Gross floor area

The development consent restricts the WSPT to a maximum of two large format retail tenants with a combined maximum GFA of 14,000 sqm and supermarket floor space to a maximum of 4,000 sqm. It may transpire that the future tenants for the large format retail and supermarket do not utilise the maximum approved floor area available for each component. Large format retail tenants do generally seek tenancies of the maximum size approved (i.e. 14,000 sqm). Therefore, to provide the WSPT with the flexibility to achieve the maximum approved GFA on the site, this modification seeks approval to allow:

- Any residual ‘large format retail’ GFA to be transferred to ‘bulky goods’ GFA; and
- Any residual ‘supermarket’ GFA to be transferred to ‘specialty shops / small business’ GFA.

It is not proposed to increase the total quantum of ‘convenience retail’ GFA or the maximum GFA for the site. The economic impacts of the proposed modifications are discussed under Section 4.2.

Site preparation

It is proposed to undertake bulk earthworks beyond those contemplated under SSD 5175 to establish the four approved development pads to accommodate the future buildings prior to any Stage 2 development application. This will enable the site to be ready for future use and remove this requirement from any Stage 2 development application. The Civil Engineering Report and Plans outline the proposed bulk earthworks in detail.

Site Remediation

The revised bulk earthworks program has created an opportunity for addressing asbestos impact identified on the site in this phase of early works. The Phase 1 Early Works described in the June 2013 RAP addressed only a small part of the site area, and consequently only a small part of the identified asbestos impact.

The revised strategy is to identify and remediate asbestos impacted areas across the entire development area prior to development of each super lot. This should allow each super lot to be released to the market suitable for proposed land use.

An updated Phase 1 Early Works Remediation Action Plan (RAP) (**Appendix E**) has been prepared to identify and remediate asbestos impacted areas across the entire development area. The RAP is submitted with a Site Audit Statement and Report (**Appendix F**) stating that the site can be made suitable for the approved uses.

2.2 Modification to Conditions

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

Proposed Modifications to the Concept Proposal

Schedule 2

A4 Development in Accordance with Plans and Documents

The applicant shall carry put the development generally in accordance with the:

- a) Eastern Creek Business Hub State Significant Development SSD 5175 Environmental Impact Statement prepared by Architectus dated September 2012, as amended by the
- b) Eastern Creek Business Hub State Significant Development SSD 5175 Response to Submissions prepared by Architectus dated April 2014; and
- c) Eastern Creek Business Hub Design Guidelines prepared by Architectus dated 12 February 2014;
- d) As amended by the Section 96 (2) Modification prepared by JBA dated 24 August 2015; and the***
- e) Following drawings, except for:***
 - i) Any modifications which are 'Exempt' or 'Complying Development'; and
 - ii) Otherwise provided by the conditions of this consent.

Concept Proposal

Concept Plans prepared by ~~Architectus~~ JBA

Drawing No.	Revision	Name of Plan	Date
EIS-01 (G) A		Structure Plan	24 July 2013-19 August 2015
EIS-05 (H) C		Preferred Indicative Plan	24 July 2013-19 August 2015
EIS-03 (G) B		Enabling Infrastructure Works	24 July 2013-19 August 2015

A7 Maximum Gross Floor Area (GFA)

The maximum GFA for the total development shall not exceed 52,800 sqm and the individual land use components shall have a maximum GFA as follows:

Land Use	Maximum GFA (sqm)
Bulky goods	29,300
Large format retail	14,000
Convenience retail	9,500
- supermarket	(4,000)
- specialty shops/small business	(5,500)
TOTAL	52,800

If the supermarket use does not utilise the maximum 4,000 sqm GFA, any remaining supermarket GFA can be transferred to 'specialty shops / small business' uses provided the maximum GFA for convenience retail does not exceed 9,500 sqm , and the total maximum GFA does not exceed 52,800 sqm.

A8 Restriction of Large Format Retail

The large format retail component shall be operated by a maximum of two retailers and/or tenants for non-food or beverage purposes. *If the two large format retail tenants do not utilise the maximum 14,000 sqm GFA, any remaining large format retail GFA can be transferred to 'bulky goods' uses provided the total maximum GFA does not exceed 52,800 sqm.*

B12 Stormwater

Future development applications for construction of buildings shall include a stormwater management plan in accordance with the *Water Cycle Management Strategy Report Incorporating Water Sensitive Urban Design Techniques* prepared by J. Wyndham Prince dated March 2013 **as amended by Civil Engineering Report: Amendment to State Significant Development 5175-2012 prepared by Costin Roe dated 4 August 2015** and council's *Engineering Guide for Development 2005*.

Proposed Modifications to Stage 1 Subdivision and Early Works

Schedule 3

A2 Development in Accordance with Plans and Documents

The applicant shall carry out the 'Staged 1 subdivision and early works' generally in accordance with the:

- a) Eastern Creek Business Hub State Significant Development SSD 5175 Environmental Impact Statement prepared by Architectus dated September 2012, as amended by the
- b) Eastern Creek Business Hub State Significant Development SSD 5175 Response to Submissions prepared by Architectus dated April 2014; and
- c) Eastern Creek Business Hub Design Guidelines prepared by Architectus dated 12 February 2014;
- d) As amended by the Section 96 (2) Modification prepared by JBA dated 24 August 2015; and the**
- e) Following drawings, except for:
 - i) Any modifications which are 'Exempt' or 'Complying Development'; and
 - ii) Otherwise provided by the conditions of this consent.

[Amongst others]

Stage 1 Subdivision			
Early works drawing prepared by Architectus JBA			
EIS-04(H) D		Stage 1 Early Works Phasing Plan	24 July 2013 19 August 2015

B21 Remediation

Remediation approved as part of this development consent shall be carried out in accordance with the ~~Remediation Action Plan Phase 1 Early Works for Eastern Creek Business Hub prepared by Gensara dated 25 June 2013~~ **Phase 1 Early Works Remediation Action Plan prepared by Coffey dated 28 July 2015. A site audit must be carried out by a site auditor prior to the commencement of remediation works.**

C3 Site Remediation

The site the subject of the early works is to be remediated in accordance with the ~~Remediation Action Plan Phase 1 Early Works for Eastern Creek Business Hub prepared by Gensara dated 25 June 2013~~ **Phase 1 Early Works Remediation Action Plan prepared by Coffey dated 28 July 2015.**

3.0 SUBSTANTIALLY THE SAME DEVELOPMENT

Section 96(2)(a) of the EP&A Act states that a consent authority may modify a development consent if *“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”*.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it does not propose any modifications to the approved land use, overall quantum of gross floor area, site layout, building envelopes and design parameters.

4.0 PLANNING ASSESSMENT

Section 96(3) of the EP&A Act requires a consent authority to take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development the subject of the application. The Environmental Impact Statement and Response to Submissions submitted as part of the SSD 5175 addressed the following environmental impacts:

- Compliance with statutory and strategic plans;
- Built form, urban structure and design;
- Economic impacts;
- Ecologically sustainable development;
- Acoustic amenity;
- Social impacts;
- Transport and accessibility;
- Visual impacts;
- Indigenous and European heritage and archaeology;
- Safety and security;
- Stormwater management;
- Site contamination;
- Biodiversity; and
- Bushfire management.

The following discussion demonstrates that the proposed modifications do not compromise the merits of the Concept Plan or Stage 1 approval or provide any significant additional environmental impacts.

4.1 Compliance with statutory plans

The proposed modifications to the approved Concept Proposal and Stage 1 Subdivision and Early Works approval do not affect the developments compliance with the relevant environmental planning instruments. This is summarised in Table 1 below:

Table 1 – Compliance with the relevant statutory planning instruments

Instrument	Comment
State Environmental Planning Policy (State and Regional Development) 2011	The proposed modifications do not alter the developments consistency with the relevant provisions of the SEPP.
State Environmental Planning Policy (Western Sydney Parklands) 2009	The proposed modifications do not alter the approved development's compliance with the key matters for consideration under Clauses 2 and 12 of the SEPP.
State Environmental Planning Policy 55 (Remediation of Land)	Phase 1 and 2 Environmental Assessments and Concept and Early Works Remediation Actions Plans were submitted with SSD 5175. A revised Phase 1 Early Works RAP has been

	submitted as part of this modification to address the revised scope of the bulk earthworks. The revised RAP has been reviewed and approved by the Site Auditor. The Site Audit Statement and Site Audit Report are submitted as part of this modification. The site can be made suitable for the proposed uses.
State Environmental Planning Policy (Infrastructure) 2007	Clause 101 – Development with frontage to a classified road. The importation of fill to create the four pad sites will generate additional vehicle movements beyond those considered during the assessment of SSD 5175. A Traffic Impact Statement has been submitted with the modification (refer to 4.6 below).

4.2 Economic Impacts of the proposed transfer of residual GFA

The proposal to allow the WSPT to transfer any residual large format and supermarket GFA to ‘bulky goods’ and ‘specialty shops / small retail uses’ respectively will not generate any significant economic impacts beyond those considered during the assessment of SSD 5175. The relevant considerations are summarised below:

- The key issue identified during the assessment of SSD 5175 was the significant adverse economic impacts a large format retailer offering food and beverage goods (i.e. Costco) would have on retail turnover in the existing centres in the surrounding area. The Concept Proposal condition A8 ‘Restriction on Large Format Retail’ restricts the large format retail to two non-food and beverage tenancies only. The transferral of any residual large format retail GFA to bulky goods uses will not undermine the intent of Condition A8 or result in any additional adverse impacts on retail trading in the surrounding centres.
- Blacktown Council advised during the assessment of SSD 5175 that the surrounding centres at Mount Druitt, Rooty Hill and Blacktown CBD are not conducive to bulk goods development. The transferral of residual large format retail GFA to bulky goods will not impact the viability of these centres as they are not proposed to accommodate bulky goods retail.
- The target retail turnover is \$9,000/sqm for ‘supermarket’ floor space and \$5,500/sqm for ‘specialty shops / small business’ uses. Any reduction to the supermarket floor space and its subsequent transfer to specialty shops / small business will reduce the retail target turnover per sqm and therefore the potential economic impacts of the development on the surrounding centres.
- The WSPT’s ability to maximise the approved GFA is integral for the funding and ongoing management and improvement of the recreation and sporting facilities in the Western Sydney Parklands which will directly benefit local and regional communities in Western Sydney.

Allowing the transferral of residual floor area to lower impact uses will not result in any unreasonable impacts to the viability of the surrounding retail centres beyond those contemplated during the assessment of SSD 5175.

4.3 Contamination

The revised Phase 1 Early Works RAP (**Appendix E**) addresses the following scope of works:

- Bulk earthworks to move soil and rock within the site to create site pads for future development of the super lots;
- Earthworks for construction of roads and stormwater drainage system; and
- Remediation works across the site to address asbestos impact in soil and stockpiled fill materials

In summary, the RAP states that:

- Areas with a high likelihood of asbestos impact will be remediated by excavation to remove asbestos containing material and asbestos impacted soil prior to bulk earthworks in the Phase 1 Early Works. Low likelihood areas will be managed through implementation of a site management plan where remediation will be triggered only if asbestos impact is discovered during earthworks.

- The bulk earthworks provides an opportunity for isolation of asbestos impacted materials in one or more containment zones which will have a final cover of 3m of fill placed for pad construction. The asbestos impacted material may require mixing with more granular fill to achieve an acceptable geotechnical performance. Remediation areas will be validated after asbestos impacted material is removed. Controls will be placed on storage and transport of asbestos impacted material so that potential for incidental contamination of other areas of the site does not occur.

Coffey concludes that, through implementation of the RAP by a competent contractor with advice from a suitably qualified environmental consultant, the site can be made suitable for its approved use. The Site Audit Statement and Report (**Appendix F**) confirms the Coffey conclusion.

4.4 Stormwater Management

The proposed amendments to the stormwater management strategy are addressed in the Civil Engineering Report prepared by Costin Roe (**Appendix C**). Key matters are summarised below:

- The amended strategy will provide an estate level detention basin and bio-retention system to service the northern catchment and road network.
- The stormwater strategy will reduce peak flows and pollutant loads in stormwater leaving the site.
- The hydrological assessment demonstrates that local post development flows from the site will be less than pre-development flows and demonstrates that the site discharge would not adversely affect any land, drainage system or watercourse as a result of the development.
- MUSIC modelling results indicate that the proposed STM are effective in reducing pollutant loads in stormwater discharging from the site and meet the requirements of Council's pollution reduction targets. Best management practices have been applied to the development to ensure that the quality of stormwater runoff is not detrimental to the receiving environment. Best practice management has been applied to ensure the quality of stormwater runoff is not detrimental to the receiving environment.

4.5 Biodiversity

An addendum to the Ecological Impact Assessment submitted with SSD 5175 is submitted as **Appendix G**. The addendum considers the impacts of the amended stormwater management strategy. The addendum concludes that:

"The system is considered to be consistent with the previous impact assessments and biodiversity offset strategies in that it will not impact any additional listed vegetation communities or species under the NSW TSC Act or the Commonwealth EPBC Act. The s96 application is therefore supported."

The proposed stormwater modifications will not have any additional biodiversity impacts beyond those considered during the original assessment of SSD 5175.

4.6 Construction Traffic

The revised bulk earthworks will require approximately 160,150 m³ of fill to be imported to the site during Stage 1. This will result in approximately 10 trucks per hour during construction hours over an estimated 21 week period. Access is proposed via Church Street. The proposed traffic volumes are not concerning on capacity grounds. Vehicle movements and access will be managed by a construction traffic management plan prepared prior to the commencement of works.

5.0 CONCLUSION

The proposed modifications to SSD 5175 are the result of the further consideration of the development strategy for the site post development approval. The proposed modifications will enable subsequent Stage 2 development applications to proceed in an efficient manner and also

provide the WSPT with flexibility to accommodate the requirements of future users without losing revenue generating floor space.

In accordance with section 96(2) of the EP&A Act, the Minister may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved;
- the assessment of the likely environmental impacts demonstrates that the proposed modifications will not have any adverse impacts beyond those considered during the assessment of SSD 5175; and
- the proposed modifications do not alter the developments compliance with the relevant statutory planning instruments.

In light of the above, we therefore recommend that the proposed modification is supported by the Minister for Planning.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification. Should you have any queries in relation to the above, please do not hesitate to contact me on 9956 6962 or jmurray@jbaurban.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Jim Murray', with a stylized loop at the end.

Jim Murray
Principal Planner