



Oakdale South Industrial Estate

*State Significant
Development
Modification Assessment
(SSD-6917-Mod-11)*



October 2019

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Cover photo

Rendered image of the Oakdale South Industrial Estate as approved under the original State significant development application (Source: Oakdale South Design & Public Domain Report, SBA Architects, September 2015).

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Glossary

Abbreviation	Definition
BC Act	<i>Biodiversity Conservation Act 2016</i>
BAM	Biodiversity Assessment Methodology
BAR	Biodiversity Assessment Report
BBAM	BioBanking Assessment Methodology
BCT	Biodiversity Conservation Trust
BOA	Biodiversity Offset Area
BOS	Biodiversity Offset Strategy
Consent	Development Consent
Council	Penrith City Council
Department	Department of Planning, Industry and Environment
EES	Environment, Energy and Science Division
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection License
ESD	Ecologically Sustainable Development
FBA	Framework for Biodiversity Assessment
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
NRAR	Water and Natural Resources Access Regulator
OEH	Office of Environment and Heritage
RtS	Response to Submissions
SEARs	Planning Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
VMP	Vegetation Management Plan
WSEA SEPP	State Environmental Planning Policy (Western Sydney Employment Area) 2009



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1. Introduction

This report provides an assessment of an application to modify the State significant development consent (SSD 6917) for Oakdale South Industrial Estate (Oakdale South) lodged on 16 July 2019 by Goodman Property Services (Aust) Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks to update the biodiversity offsetting arrangements and the Vegetation Management Plan (VMP).

1.1 Background

Oakdale South (the site) is a warehousing and distribution complex in Kemps Creek, in the Penrith local government area (LGA). The site is located approximately 41 kilometres (km) west of the Sydney city centre, 21 km east of Penrith and 3.4 km from the M7 Motorway. Site access to the M7 is via Miller Avenue and Old Wallgrove Road.

The site is also located in the Western Sydney Employment Area (WSEA) which is strategically identified industrial and employment land under State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP). Key operations in the WSEA include manufacturing, warehousing, transport and logistics facilities (typically operating on a 24/7 basis) and retail trade (convenience food and drink premises) to service staff in large business hubs/warehousing estates.

The site location is depicted in **Figure 1**.



Figure 1 | Site Location

1.2 Site Description

Oakdale South is 117 hectares (ha) in area with a development footprint of 71.3 ha. The site is legally described as Lot 87 DP 752041 and Lot 12 DP 1178389. Several residential receivers are located near the site in the suburbs of Kemps Creek, Mount Vernon (Penrith LGA) and Horsley Park (Fairfield LGA), with the closest residence located 500 metres (m) to the west on Aldington Road.

Remnant vegetation exists along the western boundary of the site and Ropes Creek passes along the western boundary. Two unnamed tributaries traverse the site from the north-west to the south-east. High voltage (TransGrid) electricity transmission lines cross the south-western corner of the site.

Generally, surrounding land uses include those associated with industrial activities in the WSEA to the north, east and west, and residential land uses are located further to the east, south and south-west. Land uses near the site include:

- Oakdale Central Industrial Estate (MP 08_0065 & SSD 6078) to the north
- Oakdale West Industrial Estate (SSD 7348) to the west
- Jacfin Horsley Park warehousing hub (MP 10_0129 and MP 10_0130) to the east
- CSR Brickworks to the east and
- residential subdivision known as the Capitol Hill Subdivision to the south.

The local context of the site is depicted in **Figure 2**.



Figure 2 | Site Features and Immediate Surrounds

1.3 Approval History

On 26 October 2016, development consent was granted by the Executive Director, Key Sites and Industry Assessments for the staged development of the Oakdale South Industrial Estate (SSD 6917). The development consent permits the following:

- Concept Proposal for a warehousing and distribution complex with:
 - a total gross floor area (GFA) of 395,880 square metres (m²) across six development precincts
 - 15 building envelopes for warehouse and distribution uses
 - subdivision, site levels, landscaping, infrastructure services and development controls
- Stage 1 Development Application (DA) involving:
 - construction and operation of nine warehouse buildings with a total GFA of 237,070 m² across precincts 1, 4 and 5
 - estate-wide bulk and detailed earthworks involving the importation of 1,007,000 cubic metres (m³) of fill to achieve warehouse and infrastructure levels during standard construction hours
 - infrastructure works including road construction, drainage and landscaping across the site.

SSD 6917 has been modified on nine occasions (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Amend the Concept Proposal and Stage 1 DA site, building envelope, road layout and GFA mix; increase creek realignment works; add an amenity lot in precinct 3; remove the construction of warehouse buildings in precincts 3, 4 and 5 (to be assessed under future DAs); and amend site levels and bulk earthworks.	Planning Minister	Former 96(2)	21 April 2017
MOD 2	Withdrawn by the Applicant on 25 January 2017.	Planning Minister	N/A	N/A
MOD 3	Extend weekday construction hours for the importation of fill material for the Stage 1 DA bulk earthworks, including spreading and compacting of fill material.	Planning Minister	Former 96(1A)	5 October 2017
MOD 4	Amend the Concept Proposal and Stage 1 DA building envelope and internal road layouts in precincts 1 and 2, including the addition of one additional internal road.	Planning Minister	Former 96(1A)	18 December 2017
MOD 5	Update Condition E37 to remove a contradiction in the wording of the consent.	Planning Minister	Former 96(1)	23 November 2017
MOD 6	Amendments to the Vegetation Management Plan, Biodiversity Offset Strategy, Landscape Plans, Condition E46 and Condition E47.	Planning Minister	4.55(1A)	15 June 2018
MOD 7	Update the approved concept plans to replace a corner landscape, E2 zone in Lot 3A with hardstand, IN1 zone.	Planning Minister	4.55(1A)	11 December 2018
MOD 8	Update the approved concept plans to increase the building height limit for Precinct 5 from 15 m to 16.5 m.	Planning Minister	4.55(1A)	17 December 2018
MOD 9	Amend the Concept Proposal plan by consolidating two warehouses in Precinct 6 into one warehouse.	Planning Minister	4.55 (1A)	21 February 2019
MOD 10	Enable storage of dangerous goods within Warehouse 1D.	Planning Minister	4.55 (1A)	5 August 2019



2. Proposed Modification

The Applicant has lodged a modification application under Section 4.55(1A) of the EPA&A Act to remove references to the Biodiversity Offset Strategy (BOS) from the approval and to update the Vegetation Management Plan (VMP).

The Applicant was originally granted consent for the Concept and concurrent Stage 1 DA (SSD6917) by the Department of Planning and Environment (the Department) on 26 October 2016. Consent approval included the following:

- removal of 3.58 ha of native vegetation
- realignment of a first order tributary to Ropes Creek (Drainage Line 1)
- filling of an undefined drainage line (Drainage Line 2).

A Biodiversity Assessment Report (BAR) (Cumberland Ecology 2015) was lodged with and approved under SSD 6917. This BAR assessed the ecological impacts associated with vegetation clearing as per the requirements of the Framework for Biodiversity Assessment (FBA). The Applicant prepared a Biodiversity Offset Strategy (BOS) in accordance with the requirements of the FBA. The BOS set out the Applicant's commitment to offsetting the impacts of the Project on threatened species, populations and communities. The BOS (as modified) identified 158 ecosystem credits were required to offset the impact of the proposed development. To meet the requirement the BOS proposed to:

- purchase and retire 13 ecosystem credits to offset the loss of the Grey Box plant community type
- create a Biodiversity Offset Area (BOA) adjacent to the north-western boundary of the site to provide the remainder of the required ecosystem credits to offset the loss of the Forest Redgum and Swamp Oak Forest plant community types.

During the assessment of SSD 6917 the Threatened Species Conservation Act 1995 (TSC Act) was repealed and replaced by the Biodiversity Conservation Act 2016 (BC Act) with transitional arrangements provisioned for under the Biodiversity Conservation (Savings and Transitional) Regulation 2017. Transitional arrangements under the repealed TSC Act expired in February 2018. This meant the Applicant has been unable to retire the ecosystem credits as required by the conditions of consent (Condition E46). To address Condition E46 of SSD 6917 the Department advised the Applicant it had a number of options available:

- purchase appropriate credits from the market which met the previous BioBanking Assessment Methodology (BBAM) or
- obtain a statement of reasonable equivalence to convert the existing biobanking based credit obligation into credits based on the new Biodiversity Assessment Methodology (BAM) and:
 - enter into a Biodiversity Stewardship Agreement (BSA) under the BC Act on a parcel of land to generate the relevant credit types, then retire the relevant credits. This would require application of the BAM by an accredited assessor. The Biodiversity Conservation Trust (BCT) now manages the BSA process or
 - pay an amount equivalent to those credits into the Biodiversity Conservation Fund.

The Applicant has now lodged a modification request seeking to update the arrangements for the biodiversity offsets. The Applicant proposes to do this by obtaining a Statement of Reasonable Equivalence and then retiring the relevant credits. To facilitate this, the modification seeks to remove references to the BOS in the Conditions of

consent for SSD 6917 and remove Condition E47A, as Biobanking Agreements have now been replaced with Biodiversity Stewardship Agreements.

An updated Vegetation Management Plan (VMP) under Condition E47 was provided as part of the modification application to reinstate parts of the Ropes Creek riparian corridor. Parts of the Ropes Creek riparian corridor were not included in the original VMP as these would have formed part of the BOA. The Applicant is now proposing to restore and maintain areas of the Ropes Creek riparian corridor through the VMP to fulfil the objects of the *Water Management Act 2000* Act.

The modification is described in full in the Modification Report included in **Appendix B** and is shown below in **Figure 3**.

2.1 Applicant's Need and Justification for the Modification

The Applicant has stated the proposed modification is required due to changes in regulation and outcomes of the consultation with the Department and agencies to ensure the development can deliver the biodiversity offset obligations. The Applicant has stated that the modification does not seek to change the offset requirements as approved under SSD 6917 and, in terms of the VMP, substantially the same extent of vegetation is proposed to be disrupted and planted in accordance with that originally approved under SSD 6917.

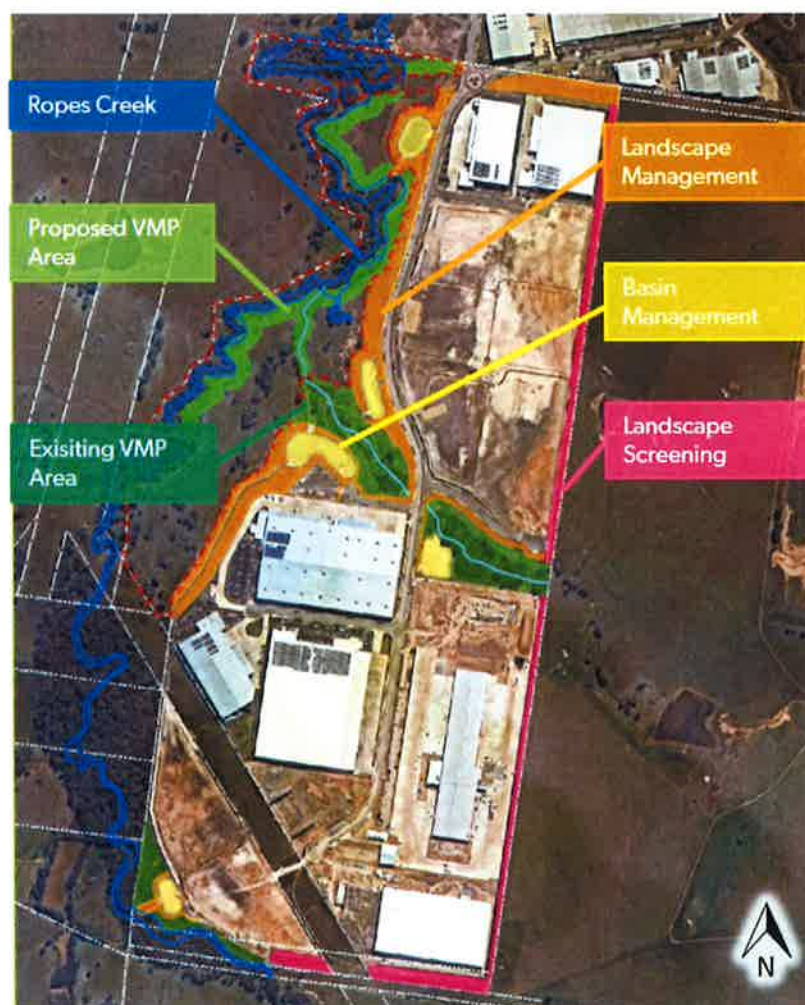


Figure 3 | Proposed Vegetation Management Area



3. Strategic Context

3.1 A Metropolis of Three Cities

The Greater Sydney Region Plan, *A Metropolis of Three Cities*, sets a 40-year vision and 20-year plan to manage growth and change for Greater Sydney. The Plan identifies 40 objectives to facilitate the implementation the 10 Directions established in Directions for a Greater Sydney.

The development is consistent with the objectives outlined in *A Metropolis of Three Cities* as it:

- would continue to assist in creating the required employment growth of 817,000 jobs (Direction of jobs and skills for the city)
- would continue to support the freight and logistics network (Objective 16)
- is appropriately located within the WSEA, which is land planned for industrial and urban services (Objective 23).

3.2 Western City District Plan

The Greater Sydney Commission has released six district plans encompassing Greater Sydney, which will guide the delivery of *A Metropolis of Three Cities*. The proposed development is in the Western City District, which is identified as one of the fastest growing districts in Greater Sydney. The development would assist in meeting the priorities and actions set out in the *Western City District Plan* as it represents the retention of industrial and urban service land in the Penrith LGA (Action 51). Specifically, the modification would ensure that biodiversity impacts are offset and would support the restoration of the riparian corridor consistent with Action 72 of the *Western City District Plan*.



4. Statutory Context

4.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not change the primary function and purpose of the proposed modification
- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application (DA). Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new DA to be lodged.

4.2 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(1) of the EP&A Act. However, under the Minister's delegation dated 11 October 2017, the Director, Industry Assessments, may determine the application under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made and
- there are fewer than 25 public submissions objecting to the proposal.



5. Engagement

5.1 Department's Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to State significant development. The application was not exhibited or advertised, however, it was made publicly available on the Department's website. The application was also referred to relevant agencies for comment.

5.2 Summary of Submissions

During the notification period, the Department received two agency submissions on the modification. No public submissions were received.

5.3 Key Issues

Environment, Energy and Science (EES, formerly OEH) did not object to the modification.

EES requested clarification of the purpose of the modification and highlighted that while the transitional arrangements had ceased the BOS remained relevant as it sets out the assessment undertaken at the time of the original application and the appropriate measures taken to offset any biodiversity impacts from the development.

EES reiterated that for the Applicant to deliver the offset obligations required by the consent (condition E46) it needed to apply to have the existing biodiversity credit obligations assessed for reasonable equivalence under the new arrangements and then either enter into a BSA or pay an equivalent amount into the Biodiversity Conservation Fund.

Natural Resources Access Regulator (**NRAR**) confirmed the revised VMP should be prepared in consultation with NRAR.

5.4 Response to Submissions

The Applicant provided further information on 15 August 2019 in response to the submission from the EES Division. The information provided included a Statement of Reasonable Equivalence received from Land Management and Biodiversity Conservation for the development. The Applicant also indicated it would likely be electing to pay the required credits into the Biodiversity Conservation Fund. The Applicant has addressed the key issues raised by EES through the provision of this additional information.



6. Assessment

The Department has considered:

- the Modification Application and RTS provided to support the modification (see **Appendix A**)
- the assessment report for the original development application and subsequent modification application(s)
- submissions from EES (**Appendix B**)
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issue is biodiversity.

6.1 Biodiversity

Condition E46

Under the BC Act, the Applicant is required to offset the biodiversity impacts of the development. Condition E46 of the consent requires the Applicant to retire 158 ecosystem credits to offset the removal of native vegetation on-site. To date, 13 ecosystem credits have been retired by the Applicant. Due to changes in legislation since granting of the original approval the Applicant has been unable to retire the remaining 145 ecosystem credits.

The Applicant has obtained a Statement of Reasonable Equivalence of biodiversity credits (dated 15 July 2019) which converted the 145 ecosystem credits calculated under the previous methodology (BBAM) to the new methodology (BAM). Under the BAM the number of ecosystem credits the Applicant is required to retire has been revised to 148. The Applicant has confirmed it now proposes to satisfy the offset obligation for the development by making an equivalent payment to the Biodiversity Conservation Fund.

In order to remove any ambiguity about the number and class of biodiversity credits to be retired, EES recommended Condition E46 be updated to include the new number of credits and additional details on those credits to be retired. EES also suggested a new condition (Condition E46A) be included in the consent which outlines how the requirement to retire those ecosystem credits could be satisfied in order to allow a degree of flexibility in meeting the requirements should circumstances change in the future.

The modification requests removal of references to the BOS from the conditions, however, EES noted the BOS was still relevant to the development and should not be deleted from the conditions as it contains information about the impacts on biodiversity, including the number and class of credits required under the original application. The Department agrees that the BOS plays an important part in the audit trail for the biodiversity requirements for the development. Instead of removing references to the BOS, the Department requested an updated list of management and mitigation measures which accurately reflects the changes to biodiversity offsetting arrangements. The Applicant provided an updated list of management and mitigation measures on 19 September 2019. The revised mitigation measures will replace the measures currently set out in Appendix 3 of SSD 6917.

The Department concludes that as a result of the modifications to Conditions E46, the addition of condition E46A and the updates to the mitigations measures, the Applicant would be able to meet its biodiversity obligations under the new legislation.

Condition E47

The Applicant requested the reference to OEH in Condition E47 be removed and replaced with the NRAR as the relevant agency responsible for creek alignment works and the Water Management Act 2000. The Department agrees Condition E47 should be updated to reference the correct agency responsible for the Water Management Act 2000.

The amended VMP applies to an area of approximately 9.2 hectares, which comprises three separate management areas:

- watercourse realignment (approximately 4.3 ha) – completed and now in maintenance phase
- Ropes Creek adjacent Precinct 6 (approximately 0.9 ha)
- Ropes Creek (approximately 4.0 ha).

The additional land overlaps with areas identified in the BOA and was removed from the VMP through SSD 6917 MOD 6. As the BOA is no longer proposed, the Applicant is reintroducing these areas into the VMP to ensure the Ropes Creek riparian corridor is restored in accordance with the objects of the WM Act.

The Department has considered the amended VMP and agrees it is consistent with the objectives of the previously approved VMP and with the approach to retire the ecosystem credits to the site by paying into the Biodiversity Conservation Fund. The Department is satisfied that updating the VMP would not create any significant environmental impacts beyond those previously assessed. Furthermore, the relevant government agencies raised no objections to the proposed amendments.

Condition E47A

As the Applicant is no longer proposing to enter an on-site BSA, the Department and EES agree that Condition E47A is no longer required. The Department proposes to remove this condition, however, notes that the Applicant would still have the option to establish a Biodiversity Stewardship Site under the revised conditions. Moreover, the Applicant is still required to retire the appropriate amount of credits to meet its biodiversity offset obligations.

Conclusion

The Department's assessment concludes references to the BOS should be retained. However, changes are required to Conditions E46, E47, E47A and Appendix 3 of SSD 6917 to reflect changes in the biodiversity offset arrangements. The Department is satisfied the Applicant's obligation to mitigate and manage the biodiversity impacts caused by the development would remain valid. Furthermore, the relevant government agencies raised no objections to the proposed amendments.



7. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act.

The Department considers the proposed modification can be undertaken on the basis:

- the modification is not seeking to make any physical changes
- the modification would ensure the Applicant can meet its obligations under the BC Act
- the modification would ensure there is no ambiguity regarding the number and class of biodiversity credits required to be retired to offset the biodiversity impacts of the development
- the modification would not result in any additional environmental impacts beyond those assessed under the original SSD application.

The Department is satisfied the modification should be approved, subject to conditions.



8. Recommendation

It is recommended that the Director, Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report;
- **determines** that the application SSD-6917-Mod-11 falls within the scope of 4.55(1A) of the EP&A Act
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification application
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modifies** the consent SSD 6917
- **signs** the attached approval of the modification (**Attachment 1**).

Recommended by:

Katelyn Symington

Senior Environmental Assessment Officer
Industry Assessments

Recommended by:

Sheelagh Laguna

Team Leader
Industry Assessments

28/10/19



9. Determination

The recommendation is: **adopted by:**

Chris Ritchie

Director

Industry Assessments

28/10/19.



Appendices

Appendix A – List of Documents

Letter for SSD 6917, Oakdale South Industrial Estate, SSD 6917 MOD 11 - S.4.55(1A) Applicant to update vegetation management plan, remove the biodiversity offset strategy and update relevant conditions of consent dated 14 June 2019 prepared by Goodman Property Services Pty Ltd.

Oakdale South Estate Vegetation Management Plan - Amended dated 16 June 2019 prepared by écologique.

Letter for Oakdale South Estate – biodiversity stewardship agreement dated 21 February 2019 prepared by écologique.

Statement of assessment of reasonable equivalence of biodiversity credits received from Land Management and Biodiversity Conservation (DOC19/526721-2) dated 15 July 2019

An updated list of management and mitigation measures dated 19 September 2019

Appendix B – Statement of Environmental Effects/Environmental Assessment

Available on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/16451>

Appendix C – Submissions

Available on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/16451>

Appendix D – Notice of Modification