



New South Wales Government
Independent Planning Commission

Eastern Creek Business Hub SSD 5175 MOD 5 & SSD 8858

Statement of Reasons for Decision

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SSD 5175 MOD 5 & SSD 8858 Final Report ©
State of New South Wales through the Independent Planning Commission 2020

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DEFINED TERMS

ABBREVIATION	DEFINITION
Applicant	Frasers Property Australia P/L
Applications	Modification Application MOD 5 to Concept Approval SSD 5175 and SSD Application 8858, as described in Section 2
Commission	Independent Planning Commission of NSW
Council	Blacktown City Council
DCP	Development Control Plan
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report
Development	Modification 5 to SSD 5175 and SSD 8858
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning and Assessment Act 1979
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Existing Concept Approval	Concept Approval SSD 5175, as modified
LEP	Local Environmental Plan
LGA	Local Government Area
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in Section 4.2
Minister	Minister for Planning and Public Spaces
Planning Secretary	Planning Secretary under the EP&A Act or nominee
Regulations	Environmental Planning and Assessment Regulation 2000
RtS	Applicant's Response to Submissions
SEPP	State Environmental Planning Policy
SRD SEPP	SEPP (State and Regional Development) 2011
WSP SEPP	SEPP (Western Sydney Parklands) 2009
Site, Concept	Concept Site is that subject to the Existing Concept Approval on land known as Eastern Creek Business Hub, Rooty Hill Road South, Rooty Hill, Western Sydney Parklands
Site, SSD	SSD 8858 Site, being lot 2 DP 1069269, lot 14 DP 882325, lot 1 DP 1069269, lot 12, DP 882325, lot 11 DP 882325, lot 9 DP 830836 and lot 10 DP 830336 known, as 'Lot 1' Rooty Hill Precinct, Rooty Hill Road South, Eastern Creek
SSD	State Significant Development
WSP	Western Sydney Parklands

1 INTRODUCTION

1. On 12 May 2020, the NSW Department of Planning, Industry and Environment (**Department**) referred two associated **Applications** to the NSW Independent Planning Commission (**Commission**) for determination. These are:
 - Modification Application SSD 5175 MOD 5 (**Modification Application**) under s 4.55(2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*
 - SSD 8858 a development application under s 4.38 of the EP&A Act, (**SSD Application**).
2. The Modification Application seeks approval to modify the Concept Approval SSD 5175 for the Eastern Creek Business Hub. This is to facilitate the construction of a specialised retail centre on Lot 1 of the Business Hub Site. The modifications to the Concept Approval and SSD 8858, are referred to in this Report as the **Development**. The Development is located in the Blacktown City Local Government Area (**LGA**).
3. Frasers Property Australia P/L is the **Applicant**. The Development is within the Western Sydney Parklands (**WSP**).
4. The Minister for Planning and Public Spaces is the consent authority for the **Modification Application** under s 4.55 of the EP&A Act. The Commission may determine the Modification Application as a delegate of the Minister under the Ministerial Delegations dated 14 September 2011.
5. The Commission is the consent authority for the **SSD Application** under s 4.5(a) of the EP&A Act and cl 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*. This is because the:
 - Application constitutes State significant development under s 4.36 of the EP&A Act as the Development is on land in Western Parklands on the Western Sydney Parklands Map and has a CIV in excess of \$10 million. The CIV is \$20,336,272 (p44 of Department's AR). This is under cl 5 of Schedule 2 of SRD SEPP; and
 - Department received an objection from Blacktown City Council.
6. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Mr Adrian Pilton (Chair), and Mr Soo-Tee Cheong to constitute the Commission determining the Applications.

2 THE APPLICATIONS

2.1 Site and locality

7. The site of the Concept Approval is the Eastern Creek Business Hub, Rooty Hill Road South, Rooty Hill, as described by reference to lot and DP in the Modification Application (**Concept Site**). This as described in the Department's Assessment Report (**Department's AR**) in section 1.2 as

The site is located within the Western Sydney Parklands (WSP), which extends from Quakers Hill in the north to Leppington in the south and provides important open space and recreation facilities in Western Sydney....

The site is one of nine business hub sites identified for development in the WSP Plan of Management (POM) 2030 to achieve the key objective of creating a sustainable revenue base to fund the ongoing management and improvement of recreation and sporting facilities in the Parklands.

The site is in the Rooty Hill Precinct, in the northern section of the WSP. The site was identified by the Trust as suitable for a business hub due to its low environmental and recreational value relative to other areas in the Parklands. The site is separated from the majority of the Parklands by the M7 Motorway, and its proximity to major roads also makes it suitable for commercial development.

8. The modification to the Concept Approval is to facilitate the SSD 8858. This **SSD Site** is as described by reference to lot and DP in the SSD Application, and is known as Lot 1 of the Rooty Hill Precinct of Western Sydney Parklands. It is Stage 2 of the Eastern Creek Business Hub, located on the corner of Rooty Hill Road South and the Great Western Highway. The M7 Motorway is to the east, see **Figure 1** below:



Figure 1: The Eastern Creek Business Hub - Concept Approval Site (black outline) and the SSD Site Lot 1 (red outline) [Source: Department's AR]

2.2 Background

9. The Department's AR in section 1.4 outlines the approval history of the Concept Site and past modifications to the Concept Approval, and associated development applications. The Report states that the then Minister for Planning approved the original Staged Development Application SSD 5175 on 7 January 2015. This included a:

...new retail centre to accommodate retail premises, bulky goods premises and business premises uses and Stage 1 subdivision and early works...The development was approved to be constructed in two stages. The first stage comprises two substages, being Lot 1 comprising specialised retail and Lot 2 comprising a convenience retail development, including a supermarket and specialty shops. The second stage comprises the development of Lot 3 for specialised retail.

10. The Concept Approval has been modified six times, as shown in the Department's AR in Table 1.
11. The Applicant advised in the Meeting with the Commission that the Concept Site has been subdivided into three super-lots. This was part of the Stage 1 works approved under SSD 5175, which also created a residual Lot 4 on the eastern side of the Concept Site for conservation and open space.
12. The Development is proposed on Lot 1 and is the second stage of the overall development of the Eastern Creek Business Hub. A retail development on Lot 2 was approved under SSD 8588 in July 2018. This retail development is nearing completion, and includes a supermarket. Lot 2 is to the north of the subject Development. The Department's AR indicates that development of the final stage of the Concept Approval, for a retail factory outlet, food and drink premises and indoor recreation premises on Lot 3 – is the subject of an SSD application which is in the preliminary stages of pre-lodgement.

2.3 Strategic context

13. The Department's AR in section 3 sets out the strategic context of the Development under the Greater Sydney Region Plan, the Central District Plan and the Western Sydney Parklands Plan of Management 2030. The Department states that the proposal is consistent with the Region Plan and the objectives of the District Plan and the development of business hubs is "...an opportunity to contribute to an income stream of \$10 million per annum, which is required to manage and develop the Parklands over the next ten years....The business hubs will collectively comprise a maximum of two percent of the total area of the Parklands."

2.4 The proposal

14. As described in section 2 of the Department's AR, the proposal is:
- *to modify the Concept Approval (as it relates to Lot 1), to amend the main building envelope and provide two additional smaller building envelopes, include a recreation facility (indoor), café, vehicle repair station and a future development site for a food and drinks premise, amend the landscape masterplan, Design Guidelines and update land use terminology to replace bulky goods with specialised retail premises (SSD 5175 MOD 5)*
 - *to construct a specialised retail centre on Lot 1 (gross floor area of 11,398 m²) comprising three buildings, ancillary uses including a café, indoor recreation facility and vehicle repair station, signage zones and content, 355 at grade car parking spaces, loading facilities and landscaping works (SSD 8858).*

15. The description of the Development is shown in Figure 2 below.

Amendment to Maximum GFA under Concept Approval

16. The change to the maximum Gross Floor Area (**GFA**) in the Concept Approval as shown in the Department's draft approval instrument is an increase of 600m² from the existing total GFA of 55,838m² to a new amended total GFA of 56,438m². This is for the whole Concept Site. The following detailed changes are:
- deletion of the reference to *bulky goods* and *large format retailing* and insertion of an updated land use term *specialised retail premises* (the existing maximum GFA for bulky goods is 29,300m² and large format retailing is 13,500m² with a total GFA of 42,800m² under the Concept Approval)
 - reallocation of that total GFA of 42,800m² to 39,400m² for *specialised retail premises*; 3,000m² to a new use *recreation facility (indoor)*; and 400m² for a new land use *vehicle repair station*
 - addition of an extra 600m² 'convenience retail' GFA to the Concept Approval.
17. As explained to the Commission at the Meeting with the Applicant, the final tenants for the development on Lot 1 and the floorspace requirements are unknown. Therefore the proposed wording of the amendment to Condition A7 of the Concept Approval provides flexibility in the allocation of floorspace, allowing for transfer of any 'residual' GFA from the maximum allocated to *recreation facility (indoor)* and *vehicle repair station* (likely to be a tyre repair service), to the newly termed *specialised retail premises* use.

SSD Application

18. In the SSD Application, a maximum of 10,800m² GFA will be used for *specialised retail premises*. *Convenience retail* will comprise 598m² being a café (100m²) and 498m² on the 'future development site'. The total GFA for Lot 1 only is 10,800m² + 598m² = 11,398m².
19. A footprint for a building identified in both Applications as a 'future development site' or 'pad site' is to be the subject of a separate DA. The Applicant's RtS 1 (p11) states that "With the exception of the pad site, consent is sought for the use of each tenancy." An area within the car parking for the pad site is identified on the architectural plans for the SSD Application. The Department's recommended conditions of consent for SSD 8858 states in Condition A7 that no approval is given to the "...construction, fit out, use or operation of any development on the future development site."
20. It is also noted that there is reference to the removal of trees under 'Landscape' in the table in Figure 2 below, however, the Commission was advised by the Applicant in the Response to the Commission that:

Tree removal was approved...under the early works DA. SSD 5175 and MOD 1 approved bulk earth works to create a pad site covering the extent of Lot 1. This consent included conditions requiring a Biodiversity Offset Strategy (Condition B2) and Vegetation Management Plan (Condition B10) prior to any land clearing required for the bulk earth works. These conditions have been satisfied.

Component	Description
Land use	Use GFA (m²)
	Building 1: 10 specialised retail premises, 1 major (1,900 m ²) and a café (100 m ²) 8540
	Building 2: 4 specialised retail premises 703
	Building 3: 6 specialised retail premises 1657
	Future development site (subject to separate approval) 498
	Total site 11,398
	Use of any specialised retail premise tenancy for: <ul style="list-style-type: none"> • a recreation facility (indoor) with up to a maximum GFA of 3,000 m² • a vehicle repair station with up to a maximum GFA of 400 m².
Building Height	<ul style="list-style-type: none"> • Building 1: 8 m • Building 2: 6.6 m • Building 3: 7.1 m.
Building Setbacks	<ul style="list-style-type: none"> • North: 15 m (Building 1) and 35.083 m (Building 2 and pad site) • East: 11.6 m (Belmore Road) • South: 35.8 m (Great Western Highway) • West: 20 m (Rooty Hill Road South).
Site coverage	<ul style="list-style-type: none"> • 29%.
Landscape	<ul style="list-style-type: none"> • Landscape area 3095 m² (8%) • Landscaped setbacks around primary frontages of the site (internal access road, RHRS and the Great Western Highway) • Tree planting throughout car park to provide shading, comprising 53% of the hardstand area • 130 new trees to be planted, 72 trees to be removed.
Hours of operation	<ul style="list-style-type: none"> • Specialised retail/ indoor recreation/ vehicle repair station: 7 am to 10 pm, 7 days • Café: 6:30 am to 6:30 pm, 7 days • Loading/ deliveries: 7 am to 10 pm, 7 days.
Vehicle access	<ul style="list-style-type: none"> • One vehicle access point via the roundabout on the internal access road, for public and loading vehicles • Separate loading zone behind Building 1 and two loading bays for smaller service vehicles located at Buildings 2 and 3.
Pedestrian access	<ul style="list-style-type: none"> • A pedestrian footbridge over the drainage channel provides pedestrian access from the internal access road to the site • Pedestrian marking throughout the car park to each building.
Car parking	<ul style="list-style-type: none"> • 355 at grade car parking spaces: <ul style="list-style-type: none"> ○ 307 specialised retail spaces ○ 11 accessible car spaces

Figure 2: SSD 8858 Proposal [Source Table 4 on p10 of Department's AR]

3 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

3.1 Key steps in the Department's consideration

21. The Department received the Applications on 1 November 2018. As set out in section 5.1 of the Department's AR, the Applications were exhibited from 29 November 2018 to 1 February 2019.
22. Ten submissions were received, nine of which were from NSW government agencies. Table 6 of the Department's AR sets out the issues raised by the agencies. The remaining submission was an objection by Blacktown City Council (**Council**). The Department advises that no public submissions were received.
23. The Applicant provided a Response to Submissions (**RtS 1**) on 10 October 2019. As described in section 5.5.4 and 5.5.5 of the Department's AR, the Applicant amended both the Modification Application and the SSD Application in the RtS Submission. As explained in RtS 1, the proposed concept and building envelopes and SSD Application buildings were changed due to a proposed anchor tenant withdrawing from the development (p5).
24. The RtS 1 was re-exhibited from 24 October 2019 to 20 November 2019. The Department's AR in section 5.5.7 states that five submissions were received, four from government agencies and one from Council. The key issues identified are shown in Table 7 of the Department's AR.
25. The Applicant provided additional information post the re-exhibition of the RtS on 9 January 2020 (**RtS 2**), as outlined in section 5.8.2 of the Department's AR. "The further RtS was made publicly available on the Department's website and referred to Council for comment (14 days)", according to the Department's AR. The Council maintained its objection.
26. As outlined in Section 5.9.2 and 5.9.3 of the Department's AR, at the Department's request, the Applicant provided **Additional Information** about the economic impacts of the development, in the form of a Supplementary Economic Assessment. This was placed on the Department's website.
27. Further information and amendments were made to the SSD Application by the Applicant on 8 April 2020, as described in section 5.10 of the Department's AR. This **Further Additional Information** was placed on the Department's website. The final proposal is as described in Section 2.4 of this Report, above.

3.2 Key issues in the Department's assessment

28. In section 6 of the Department's AR, the key issues addressed are:

Concept Approval modification (SSD 5175 MOD 5)

- *economic impacts*
- *specialised retail premises*
- *built form changes.*

SSD 8858

- *consistency with Concept Approval*
 - *built form and design*
 - *signage.*

4 THE COMMISSION'S CONSIDERATION

4.1 The Commission's meetings

29. As part of its determination of the Applications, the Commission met with the Applicant on 2 June 2020 (Commission's **Meeting with the Applicant**). The transcript of the meeting was placed on the Commission's website. The Commission had sent a letter to the Applicant on 27 May 2020, and the issues raised and other matters were discussed at the meeting. The Applicant provided a written response to the Commission's letter and questions from the meeting on 5 June 2020 (**Applicant's Response to Commission**).
30. The Commission invited the Council to meet, but the Council decided that the meeting was not necessary and on 2 June 2020 provided a written response to the Commission's letter dated 27 May 2020 (**Council's Submission to the Commission**). The Commission did not consider it necessary to meet with the Department but sent a letter on 27 May 2020. The Department responded on 2 June 2020 and further correspondence was received on 10 June 2020 regarding the draft conditions.
31. The Commission visited the SSD Site and nearby shopping centres on 22 May 2020. The Site Inspection Notes were placed on the Commission's website.
32. As no public submissions were received by the Department in response to the exhibition and notification of the Applications, the RtS (1 and 2) and the Applicant's Additional Information and Further Additional Information, the Panel determined that neither a public meeting nor period for public comment was required.

4.2 Material considered by the Commission

33. In this determination, the Commission has carefully considered the following **Material**, the:
 - Secretary's Environmental Assessment Requirements (SEARs), issued on 14 December 2017
 - **Applicant's EIS** for the Modification Application, and appendices, prepared by Ethos Urban, dated 1 November 2018
 - Appendices to the Applicants EIS and later submissions, reports prepared by HillPDA:
 - **Economic Report 1**, dated 20 November 2018 (with Original EIS)
 - **Economic Report 2**, dated 20 September 2019 (to reflect the changes to the development envelopes and GFA proposed in the RtS 1)
 - **Economic Report 3**, dated 20 December 2019 (as part of RtS 2)
 - Letter in response to additional questions from the Department, dated 5 March 2020.
 - Applicant's RtS and appendices, prepared by Ethos Urban, dated 10 October 2019 (**RtS 1**)
 - Applicant's further RtS, dated 9 January 2020 (**RtS 2**)
 - Department's AR, dated 8 May 2020
 - Department's draft Instrument of Modification of Development Consent 5175
 - Department's draft Development Consent for SSD 8858
 - Department's consolidated consent for SSD 5175
 - **Department's Response to Commission**, dated 2 June 2020 and 10 June 2020
 - Council's Submissions on the Applications in response to notification of the:
 - original exhibition, dated 4 February 2019 (**Council Submission 1**)
 - RtS 1 dated 9 November 2019 (**Council Submission 2**)
 - Additional Information, dated 31 January 2020 (**Council Submission 3**).
 - **Council's Response to Commission**, dated 2 June 2020

- Commission's **Meeting with the Applicant**, held on 2 June 2020, and transcript thereof
- Applicant's email to the Commission with material attached, dated 5 June 2020 (**Applicant's Response to Commission**)
- Department's Assessment Report for the original application SSD 5175
- economic assessment report *Peer Review of EIA for Eastern Creek Business Hub* prepared for the Department for SSD 5175, SGS Economics, dated July 2013
- original Development Consent for SSD 5175
- Assessment Report and Development Consent for SSD 8558 (development on Lot 2 under Concept Approval SSD 5175).

4.3 Mandatory considerations

34. In determining this application, the Commission has taken into consideration the following relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act (**mandatory considerations**):

- the provisions of all:
 - environmental planning instruments (**EPIs**)
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved); and
 - development control plans (**DCP**)
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4
 - the *Environmental Planning and Assessment Regulation 2000* (**Regulations**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act
 that apply to the land to which the Application relates
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- the suitability of the site for development
- submissions made in accordance with the EP&A Act and Regulations
- the public interest.

4.3.1 Relevant Environmental Planning Instruments

35. The Commission has taken into consideration the following EPIs:

- SRD SEPP
- *State Environmental Planning Policy (Western Sydney Parklands) 2009* (**WSP SEPP**)
- *State Environmental Planning Policy – Remediation of Land SEPP 55* (**SEPP 55**)
- *State Environmental Planning Policy (Infrastructure) 2007* (**ISEPP**).

Western Sydney Parklands SEPP

36. Although the Concept Site and SSD Site are within Blacktown LGA, cl 6(1) of WSP SEPP states that *Blacktown LEP 1988* (now *Blacktown LEP 2015*, **BLEP**) does not apply to the WSP. The Land Application Map in BLEP shows that the BLEP does not apply to the Site.

37. In addition, SEPPs that would otherwise be relevant to the Applications do also not apply, namely *State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64)* and *SEPP (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.
38. The WSP SEPP contains land use controls and by virtue of cl 11(2), the Development is permissible with consent.
39. Clauses 12, 13 and 14 and 14A of the WSP SEPP sets out the matters for consideration in determining a development application. The Department's AR has addressed cl 12 in Table 2 of Appendix B and the Department provided advice on clauses 13, 14 and 14A on 10 June 2020. The Commission has considered the matters under these clauses, as applicable, as assessed by the Department.
40. Clause 16(2) requires that the consent authority be satisfied that any signage that is visible from a public place is consistent with any signage policy prepared by the WSP Trust. The Department assesses this in section 6.8 *Signage* in the Department's AR and also uses the criteria in SEPP 64 in as a guide to a merit assessment of the signs in Table 3 of Appendix B of the Department's AR.

SEPP 55

41. Section 5.12 of the EIS on p 38 states that:

Site contamination was assessed as part of the original Concept Plan application which included the preparation of Concept Remediation Action Plans (RAP) and an Early Works RAP. These reports demonstrated that the land could be made suitable for the development and outlined a strategy to remediate areas of the site containing construction debris, including asbestos in the ground surface, associated with the site's historic uses for residential and agriculture. Remediation works in accordance with the RAP have now been completed and Site Audit Statements are included at Appendix K which demonstrate the site is now suitable for the proposed uses.

42. In Appendix B (p 46) of the AR the Department addresses the requirements of SEPP 55:

The original concept plan approval considered site contamination and included the preparation of a Concept Remediation Action Plan (RAP) and an early works RAP. These reports demonstrated the land could be made suitable for the development and included a strategy to remediate areas of the site. The EIS includes a Site Audit Statement advising remediation works in accordance with the RAP have been completed and the site is suitable for the proposed uses. The Department is satisfied the proposal has addressed the contamination requirements under SEPP 55.

43. The Commission notes that the site audit statement contained in Appendix K of the Applicant's EIS was dated 4 August 2015, and stated that the site can be made suitable for specified uses, if remediated in accordance with the submitted Remedial Action Plan. This was not a sign-off post the completion of remediation. The Commission raised this issue at the Meeting with the Applicant. In the Applicant's Response to the Commission an updated Site Validation certification document dated 11 August 2017 was provided. This certified that the site had been remediated and was suitable for uses including bulky goods retailing, subject to conditions and an Environmental Management Plan.

ISEPP

44. The Department addresses the provisions of the ISEPP in Appendix B of the Department's AR (p 46), with reference to cl 101 *Development with frontage to a classified road* and cl 104 *Traffic generating development*. The Commission is satisfied that the provisions of cl 101 are met. The Department referred the Applications to the RMS as required under cl 104(3) and their comments were referred to in section 5 of the Department's AR. The Commission is satisfied that the Department's assessment addresses the requirements of the ISEPP.

4.3.2 Draft environmental Planning instruments

45. The Draft Remediation of Land SEPP was exhibited in 2018. This is addressed on p 47 of the Department's AR, and the Commission agrees that the proposal "would be consistent with the intended effect of the Remediation of Land SEPP".

4.3.3 Relevant planning agreements

46. The Department's AR states in Table 2 of Appendix B that planning agreements are "not applicable" to the Applications.

4.3.4 The likely impacts of the development

47. The Department's AR addresses cl 4.15(1)(b) in Table 2 of Appendix B and states "The Department has considered the likely impacts of the proposed development are acceptable and/or have been appropriately managed by recommended conditions of consent (refer to Section 6)". The Commission largely agrees with the Department, as outlined in Section 5 of this Report below.

4.3.5 The suitability of the site for development

48. The Department's AR addresses cl 4.15(1)(c) in Table 2 of Appendix B and states "The site is suitable for the development as addressed in Sections 4 and 6 of this report." The Commission agrees with the Department, as outlined in Section 5 of this Report below.

4.4 Additional considerations

4.4.1 Consistency with the Concept Approval

49. The effect of s 4.24(2) of the EP&A Act is that SSD 8858 cannot be inconsistent with the related Concept Approval SSD 5175. Section 6.6 and Appendix C of the Department's AR addresses the consistency of the SSD Application with the Concept Approval. Section 6.6.3 states:

In summary, the Department is satisfied the proposal is consistent with the Concept Approval in that:

- *it is for specialised retail premises and supporting ancillary uses*
- *the built form is generally consistent with the indicative building envelopes and setbacks, as recommended to be modified*
- *the landscape plan retains the parkland setting and incorporates landscape buffers at the interface with the public domain*
- *the traffic generation would not have an adverse impact on the surrounding road network*

4.4.2 Modification to be substantially the same development

50. Section 4.55(2) of the EP&A Act states that a development consent may be modified ...”if the consent authority 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)”.

51. The Department’s AR addresses s 4.55(2)(a) in Table 5, and states:

The proposal seeks to alter building envelopes and GFA within Lot 1 but remains for the purposes of a specialised retail centre at Lot 1. The proposed ancillary uses (café, recreation facility and vehicle repair station) complement the specialised retail premises without changing the primary use of the lot.

The Department is satisfied that the proposed modification is substantially the same development as the key components of the development remain, being a concept plan for a new retail centre.

52. The Department provided further advice to the Commission on 2 June 2020 that:

In addition to the comments provided in Table 5, the Department is satisfied the development as modified will be substantially the same as the original development as:

- the variation to the GFA is minor, being an increase of 600m², which is only 1% of GFA approved across the concept plan*
- although the location and size of the building envelopes on Lot 1 are amended, there is no change to the maximum building heights or setbacks to Rooty Hill Road South as set out in the Design Guidelines and this continues to allow for a high quality built form to be achieved*
- the proposal remains for a specialised retail centre and the ancillary uses complement the site without changing the primary use*
- the modification does not alter the approved subdivision into three lots, the approved internal road layout, vehicular access or early works.*

53. The Commission agrees that the Modification Application meets the test of cl 4.55(2)(a).

5 KEY ISSUES

5.1 Economic impacts

Council Comments

54. Blacktown City Council objects to the Applications and maintained that objection in three submissions made to the Department and in the Submission to the Commission.

55. In relation to the economic impacts of the Development, Council in its **Submission 1** referred to concern that the additional 600m² increase in floor space “...would result in an increase over the additional approval of almost 3,000m² i.e. approximately 5%. This could be significant in regard to the impact on local centres given the nature of any future uses i.e. “convenience” retail.”

56. The Council considered that the Applicant’s Economic Report 1 did not adequately address the impact on existing centres. This concern also related to the location of the additional retail premises on Rooty Hill Road South, which would attract passing traffic.

57. Further, the Council was concerned with the incremental increases of floor space and the effect on the Rooty Hill and Doonside centres. This was also emphasised in **Submission 2**, in terms of challenging the findings of the Applicant's Economic Reports 1 and 2 that the existing trade in the centres was low and that this ignored the impact on the potential for growth in those centres.
58. With regards to the Minchin Drive Centre referred to in the Applicant's Economic Analysis, the Council stated in **Submissions 1 and 2** that this centre was rezoned to R2 in the *Blacktown Local Environmental Plan 2015*.
59. The Council also notes that the Applicant's Report relies on strong population growth in the Blacktown LGA, but that this growth is not in the vicinity of the Site.
60. Council's **Submission 3** reiterated Council's Submission 2 in terms of planning matters.
61. The Council's **Submission to the Commission**, addressed the questions raised by the Commission in the letter dated 27 May 2020. This was in regard to the basis of the objection to the Development on economic grounds.
62. The Council responded to the Commission with reference to information in Economic Report 3 regarding the estimated 5.1% loss of trade in Rooty Hill Shops and the Report's assertion that the centre in terms of population could support a 1,500 to 2,000m² supermarket and that higher density rezoning would increase the vitality of the centre.
63. The Council's response to this was:

Our concern is that as the ECBH proceeds there may be no incentive for a supermarket to locate in Doonside or for the redevelopment to occur as the trade is already lost. Further, there is an assumption that rezoning to higher density residential around the Doonside centre may occur. Such rezoning may not occur and the report needs to address that alternate scenario.
64. The Council also raised concerns that the Rooty Hill centre: would take around four years to return to current trading level; and that, as noted above for Doonside, there "...may be no incentive for a supermarket to locate in Rooty Hill or redevelopment to occur as the trade is already lost"; and that even if rezoning to higher densities occurred, once shopping habits are established that trade may be lost forever.

Applicant's Consideration

65. The Applicant's Economic Report 3 addressed the impacts of the Applications, as amended. This updated the information contained in the earlier Report versions and referred to the final GFA and retail mix in the SSD Application as to be determined.
66. The Report analysed the combined loss of turnover as a result of both Stages, Lot 1 (the subject Development) and Lot 2 (approved SSD 8558 with convenience retailing). The Report indicated that "in absolute dollar terms the largest impacts will be on Blacktown (\$21m) and Mount Druitt (\$23m). However these are large centres and the impacts are considered insignificant in terms of percentage loss below 5%."
67. Table 1 in Economic Report 3 showed that in percentage terms, the most affected centres in terms of the shift in turnover in 2021 (from both Stage 1 and Stage 2) would be Evans Road (-10.2%), followed by Rooty Hill (-8.8%), Minchin Drive (-7.1%) and Minchinbury BG Precinct (-6.7%).

68. The Report indicated that:

The impacts from Stage 2 would fall more on the existing specialised retail premises. The two most impacted centres would be Minchinbury (\$8m or 5% loss in trade) and Homemaker Prospect (\$4.5m or 4% loss in trade). The other bulky good centres would experience less than 4% loss in trade. These impacts are considered to be low to insignificant. (p4)

69. Economic Report 3 also provided additional commentary regarding Doonside Station Shops and Rooty Hill Shops in terms of their potential for growth, including reference that rezoning to higher densities could support the vitality of the centres.

70. The proposed impact of the indoor recreation centre was addressed in Economic Report 1 and that Report concluded that the “the demand for indoor fitness, sporting and recreational facilities is expected to grow with population growth and the proposed indoor recreation centre is a response to that growth...meeting less than 15% of growth in demand” (p4).

71. In response to the comments in Council’s Submission 1 referred to in paragraph 55, the Applicant in the RtS indicated with reference to the development on Lot 1 that “...the increase in ‘convenience retail’ (specialty shops/small business) at Lot 1 is to accommodate an ancillary convenience café to the centre and future restaurant which are not uses that would compete with those in a retail centre.” (p24)

72. The RtS 1 addressed Council’s comments in Submission 1 (on p24) including the source of the data on population growth and the issue of the growth in centres being that it was a hypothetical scenario only. In response to Council’s Submissions, RtS 2 referred the updated Economic Report 3 (Appendix B of RtS 2) and clarified how the size of the centres referred to in the Report was established (p4):

The sizes of the retail centres assessed were sourced from Property Council of Australia Shopping Centre News and HillPDA surveys (both physical surveys on site and by measurement from aerial photography using Nearmap software). The areas are presented in round figures as information is generally not available to provide exact areas. This methodology is in line with standard industry practice.

73. The confusion flagged by Council in relation to the reference to the Minchin Road shops and another centre in Minchinbury (see paragraph 58), was resolved in a letter to the Department from Ethos Urban on 13 February 2020, confirming that the reference to the Minchin Road Shops in the Economic Reports was to the shopping centre on the corner of MacFarlane Drive and Minchin Drive, and not the centre that had been rezoned to residential.

Department’s Assessment

74. The Department’s AR addressed the economic impacts in section 6.3. Table 8 shows the Convenience Retail impacts and the Specialised Retail impacts, based on the progression from that originally forecast in SSD 5175 in 2016, to that in SSD 5175 MOD 3, and the subject Modification Application.

75. The Department’s AR states in section 6.3.6 that:

The Department is of the view that the proposed increase in retail floor space is appropriate for the site because:

- *the 600 m² of increase in retail floorspace is minor in the context of the 400,000 m² of retail floorspace available in existing centres in the locality representing:*

- o only a 6% increase above the total convenience retail floorspace in the Concept Approval, as modified (10,154 m²)
 - o only 1% of the approved retail floor space across the business hub (54,154 m²) [54,154m² is the total existing approved GFA excluding 1,684m² 'circulation' space approved on Lot 2. Including the 'circulation' space the existing total is GFA 55,838m²]
- in terms of cumulative impacts, the proposed increase represents a 13% increase in convenience retail, however taking into account the proposed transfer of up to 3,400 m² of specialised retail floor space for use as an indoor recreation facility and vehicle repair station, the overall retail floor space could be up to 5% lower than the original approval.
76. In section 6.3.7 of the Department's AR, the Department considers the additional impact over and above that already created by the convenience retailing already approved on Lot 2 and those forecast in the original approval for SSD 5175 and notes that it is only slightly greater, and 1.3% higher at the closest centre, Evans Road.
77. In section 6.3.7 of the Department's AR, with regard to the potential for the other centres Rooty Hill and Doonside to expand, the Department states "...the proposal does not affect the potential for expansion of existing centres. Both centres have space to expand, and a growing population would provide further demand for these centres to expand." Further, "...the nature of the proposed uses... (a café and a future development site for a restaurant) are complementary and ancillary to the use of the site for specialised retail and is unlikely to redirect turnover so significantly to affect the viability of other centre".
78. The Department concludes (section 6.3.8 of the Department's AR) "In this context, the Department concludes that the proposed additional retail GFA represents a minor change to the retail environment and the trading impacts on existing local centres would be maintained within acceptable limits in accordance with the concept approval."
79. Section 6.4 of the Department's AR addresses the proposed change in the Concept Approval from the terms *bulky goods* and *large format retail* to *specialised retail premises*, to be consistent with the updated defined terms in the Standard Instrument LEP. The Department "is satisfied that the proposed change is consistent with the intent of the approval and will not result in any additional impacts" (section 6.4.7).

Commission's Findings

80. The Council's submissions raised the impacts on local centres from Eastern Creek convenience retailing. This has been a concern dating from the original Concept Approval and was revived with the first stage on Lot 2 that included a supermarket, and again with the subject Applications. This modification to the Concept Plan is only to provide a small café and to allocate additional GFA convenience retailing (possibly for a restaurant) on Lot 1. The indoor recreation facility and vehicle repair centre are within the GFA already approved under the Concept Approval for bulky goods premises.
81. As noted by the Department in paragraph 75 above, compared to the original Concept Approval, the proposed increase of 600m² for convenience retailing is minor compared to the GFA originally approved (9,500m²) and the GFA in the Concept Approval as modified to date (10,754m²).

82. A comparison of the total original approved GFA to that now proposed indicates the total floorspace has increased by 3,638m² (total approved was 52,800m², and is now 56,438m²). However, the increase is largely attributable to previous modifications including extra floorspace for a childcare centre (1,200m²) and extra convenience retailing on Lot 2 (2,338m²). The proposed extra 600m² GFA attributable to Lot 1 is minor compared to that in the original approval.
83. The proposed specialised retail premises in the SSD Application are well within the GFA approved for bulky goods and large format retailing under the Concept Approval. The Commission observed that specialised retailing types uses were not evident at the nearby neighbourhood shopping centres. The Commission accepts the information provided by the Applicant, referred to in paragraph 68, that the impact of the Development will be on the bulky good centres at Minchinbury and Prospect and that the impact will be low to insignificant. As indicated by the Department in Table 8 of the Assessment Report, these impacts are lower than originally forecast.
84. The Commission agrees with the Department's assessment of the implication of the change of the terms from *bulky goods* and *large format retail* to *specialised retail premises* in the Concept Approval as stated in paragraph 79 above. This change was suggested to the Applicant by the Department in February 2019.

5.2 Concept building envelopes

Applicant's Consideration

85. The Original Concept Approval was for one large and one smaller building envelope on the western boundary of the Site along Rooty Hill Road South. As now proposed (amended during the course of the Modification Application) there are three envelopes (Buildings 1, 2 and 3) and a 'future pad site' for a restaurant. The Applicant's RtS 2 provided an explanation for the change in envelopes which is based on the loss of a possible likely tenant for the largest building, necessitating a different retail mix.

Department's Assessment

86. The Department assesses the building envelopes in section 6.5 of the Department's AR and concludes in section 6.5.3 that:
- *The Department has considered the revised building envelopes and considers the layout is appropriate as:*
 - *it maintains the approved building height, landscape and building setbacks to RHRS and the internal road*
 - *it provides three buildings with smaller floor plates than originally approved, providing an improved transition and less visual impact to surrounding properties as:*
 - *the largest building, Building 1, is setback further from RHRS and neighbouring residential properties*
 - *the smaller scale of Buildings 2 and 3 will be significantly less dominant than the approved building envelope viewed from RHRS and neighbouring residential properties*
 - *it provides a landscaped setting, with tree planting throughout the carpark and landscaped setbacks to RHRS, the Great Western Highway and the internal access road*

- a high level of design quality is achieved through the Design Guidelines (Appendix D).

Commission's Findings

87. The Commission notes that the 'building envelopes' in the existing Concept Master Plan and the revision to be approved in the Modification Application provides for building footprints rather than 3D building envelopes. The height of buildings is determined by *the Eastern Creek Business Hub Design Guidelines* (referred to in the Concept Approval), which for Lot 1 under Height Control C1 specifies a maximum building height of 12m from natural ground level or 15m if undercroft car parking is provided.
88. The Commission agrees with the Department's assessment in paragraph 86 above, noting the approved Design Guidelines are to be amended as part of the Modification Application only to insert the updated Concept Master Plan and to change references to "bulky goods premises" to specialised retailing premises".

5.3 Built form, design and landscaping

Applicant's Consideration

89. The SSD Application provides an Architectural Design Statement, an Urban Design Rationale Study, an assessment against the Urban Design Guidelines, a Visual impact Assessment and architectural and landscape drawings of the proposed buildings, car parking and landscaping on the Site.
90. The Applicant's RtS 1 in Section 5.3 (p26) describes Built Form and Urban Design, including the following:

As shown in the Urban Design Study, the height of the new built form along Rooty Hill Road South is a similar scale to the development on the opposite side of the road...

Due to the nature of specialised retail premises, it is not possible to provide glazing to all street frontages, however, the buildings have been designed to present visually interesting façades to Rooty Hill Road South, the M7, Great Western Highway and Access Road. This is achieved through articulation in the building form and height, utilising a variety of materials, awnings, green walls, landscaping and signage. The character of the development complements the Stage 1 retail centre and the parkland setting of the site.

The development remains generally consistent with the Urban Design Guidelines and an assessment against the relevant provisions is provided at Appendix K. In particular, the built form complies with the indicative building envelopes and setback controls contained within the Design Guidelines (as proposed to be modified under concurrent MOD 5) which are less prominent than those approved under the original Concept Plan. This allows for additional vegetation across the site which will reinforce the landscaped setting of the centre.

Department's Assessment

91. Section 6.7 of the Department's AR addresses the proposed buildings in the SSD Application, and states:

The Department considers the detailed design provides an appropriate architectural response for the site because:

- *the building locations break up the built form across the site and will support a combination of specialised retail premises*
- *all buildings are setback at least 20 m from RHRS and the Great Western Highway, 10 m from the internal access road and 5 m for the rear internal property boundary, exceeding the minimum building setbacks in the design guidelines*
- *the building facades are predominately earth colour tones to blend in with the surrounds with varied materials and finishes to provide visual interest including (Figure 13):*
 - *timber vertical feature detail at prominent corners to highlight landscape surrounds*
 - *green walls, creating layers of texture and continue the landscaped surrounds into the built form*
 - *continuation of the feature wall pattern from Lot 2 on key corners of the buildings, tying the ECBH together*
 - *tenant signage integrated into the building facades.*
- *a landscaped setback of between 5 m and 20 m is provided around the site providing a landscaped setting and reducing visual impact of the buildings from neighbouring properties and the public domain*
- *the car park is integrated with landscaping to provide shade relief and visual amenity, while planting in the carpark allows the buildings to be seen but not stand out (Figure 14)*
- *a pedestrian bridge is provided providing pedestrian access to the internal access road and Lot 2*
- *some social spaces are provided including a café, small display areas and pockets of green space as rest points to provide amenity for future users*
- *the Building 1 loading area is located to the rear of the building to reduce visual and acoustic impacts.*

Commission's Findings

92. The form and design of the proposed buildings is a major consideration in the determination of the SSD Application. The Commission has considered the information provided in the Application referred to in paragraph 89 above, the Department's AR and the Material.
93. The architectural drawings show that **Building 1** is 7.1m high and up to 8m to the plant and is 210.5m long. The rear façade comprises part precast concrete panels and part 'standing seam profile metal cladding' (as shown in Drawing DA38 in the Urban Design Rationale document, prepared by i2C, dated 27 September 2019). A feature wall with signage and vertical timber cladding and a green wall (as shown on the Landscape Drawing 640 Issue L, prepared by Acacia) is proposed at the prominent entry to the Site on the corner of the Great Western Highway and Rooty Hill Road South.
94. The eastern façade of the building including proposed signage and loading docks will be visible in the distance from the M7. The Visual Impact Assessment (Ethos Urban, 15 September 2019) shows a view of the envelope visible in the middle distance from the M7 cycleway to the south of the Site.

95. **Building 2** is located off the new internal access road. From the architectural drawings, this building is 45.7m long and 5m to 6.5m high and 6m to the plant. This building also has a feature wall and signage on the north elevation, appropriate to it being at the vehicular entry to the Site.
96. The Commission agrees with the Department’s assessment in paragraph 91 above, with regards to Buildings 1 and 2 providing an appropriate design response to the Site.
97. **Building 3** is more prominently visible from the public domain, being setback 20m from Rooty Hill Road South. This building is 71.6m long and is 5m to 6.5m high and 6m high at the plant. The Rooty Hill Road South façade is shown in Figure 3 below:

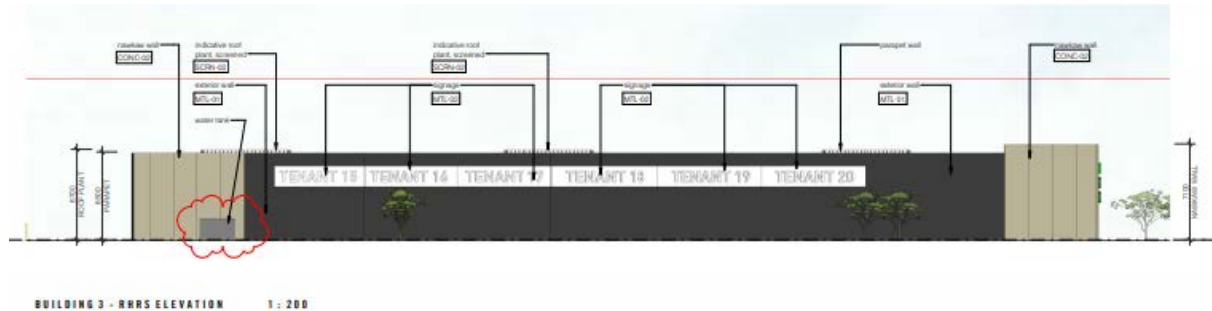


Figure 3 Building 2 western façade, facing Rooty Hill Road South.
[Source: Drawing DA09 C Issue C, prepared by i2C]

98. The dark areas shown in Figure 3 above are proposed to be profile metal cladding, and the lighter areas on the northern and southern ends are concrete ‘nawcaw’ finish. Notwithstanding that this building is well set back from Rooty Hill Road South, besides the signage, the façade is blank. This is not compliant with the Design Guidelines, including in Section 3.6.1 General guidelines (bold added):

- Objectives O2 Ensure that built form positively contributes to the existing streetscape of Rooty Hill Road South; and O7 **Encourage a high quality built form by encouraging visual interest on elevations fronting streets...**;
- Controls: C6 Provide articulated and well detailed elevations including the use of projections and recesses, variety of quality materials, externally expressed structures and framing systems, glazing, sun shade structures, colours and other forms of architectural detailing. **Blank building facades facing street frontages are not permitted.**

And under Section 3.6.5 Materials and finishes:

- Control C3 The use of Colorbond wall cladding combined with expressed timber and steel detailing is encouraged
- C6 Exposed structures and framing systems are encouraged to breakdown the bulk of the building.

99. In the Meeting with the Commission, the Applicant was queried as to whether there were any further details of the materials and finishes. In the Response to the Commission, the Applicant indicated:

There is no additional Schedule of Finishes and Materials beyond that referenced on the elevation plans and Design Statement. Detail in relation to the specific colours of the shopfronts (labelled "CONC-01") will be developed in consultation with future tenants and undertaken as Exempt Development in accordance with the provisions of the Parklands SEPP. Notwithstanding, details are provided for the key elements of the building facades to ensure that the development as a whole integrates with the Stage 1 development to the north and the surrounding Parklands in a manner that is generally consistent with the Design Guidelines. This is achieved through the use of earth toned colours and materials (such as timber vertical elements and green walls) and the continuation of the feature wall pattern from Stage 1 for the primary façade elements

100. The Commission also asked how the largely blank wall of Building 3 responded to the Rooty Hill Road South street frontage. The Applicant was asked to consider amending the design of this façade (to comply with section 3.6.1 C3 of the Design Guidelines).
101. The Applicant's Response was as follows (an extract of the southern, and not the subject western elevation was also provided):

The design of Building 3 reflects its intended use as a specialised retail premises where large areas are generally required. Building 3 is predominantly viewed by motorists travelling along Rooty Hill Road South, it is not a high frequency pedestrian environment, and the most visible components of the building are its north west and south west corners. The design of the building incorporates articulation and changes in materiality to emphasise the prominent corners, creating visual interest when viewed from the public domain.

In addition to the corner articulation, a generous 20m landscape setback is provided along the Rooty Hill Road South frontage and incorporates screening trees that will break down any perceived visual bulk and soften the building's eastern façade. It is also noted that the building is of a significantly smaller scale (height and length) than the built form permissible under the original Concept Approval. The reduction in built form creates additional site lines from Rooty Hill Road South into the site and through to existing and proposed vegetation.

102. The Commission notes the Applicant's Response to questions with regard to this façade in paragraph 101 above. However, the view of the building from motorists is important (as well as pedestrians); and the landscaped setback is not sufficient to justify a blank building façade fronting Rooty Hill Road South. The improvement of the size of the footprint of the building in the Concept Plan as proposed to be amended is noted and supported as outlined in Section 5.2 above. However, the design of the building now to be constructed under SSD 8858 is the subject of separate assessment and determination.
103. The Commission therefore proposes to add Condition B28 to Schedule B of the Conditions of Consent for SSD 8858 to ensure that the design of this façade be improved to comply with the Eastern Creek Design Guidelines.

Paving treatments

104. With regard to the landscaping, the Commission in the Meeting with the Applicant requested further details of hard and soft landscaping noting that the existing Concept Approval Condition B6 requires that in future development applications:

The detailed landscape plans should include relevant details of the species to be used in the various landscape areas ...and other soft and hard landscape treatments including any pavement areas.

- 105. The Department in Appendix C of the AR referred to this condition, but only with reference to the landscape plans identifying the trees and plant species to be used (p50).
- 106. The Applicant's Response to the Commission's question was provided on 2 June 2020 and the Applicant provided the diagram in Figure 4 below showing swales between the car parking spaces. However, no details of the paving treatment around the buildings and within the car park is provided on the submitted landscape drawings, other than Drawings 200 – 203 and 640 Issue L, dated December 2019, which provides concept level detail only.

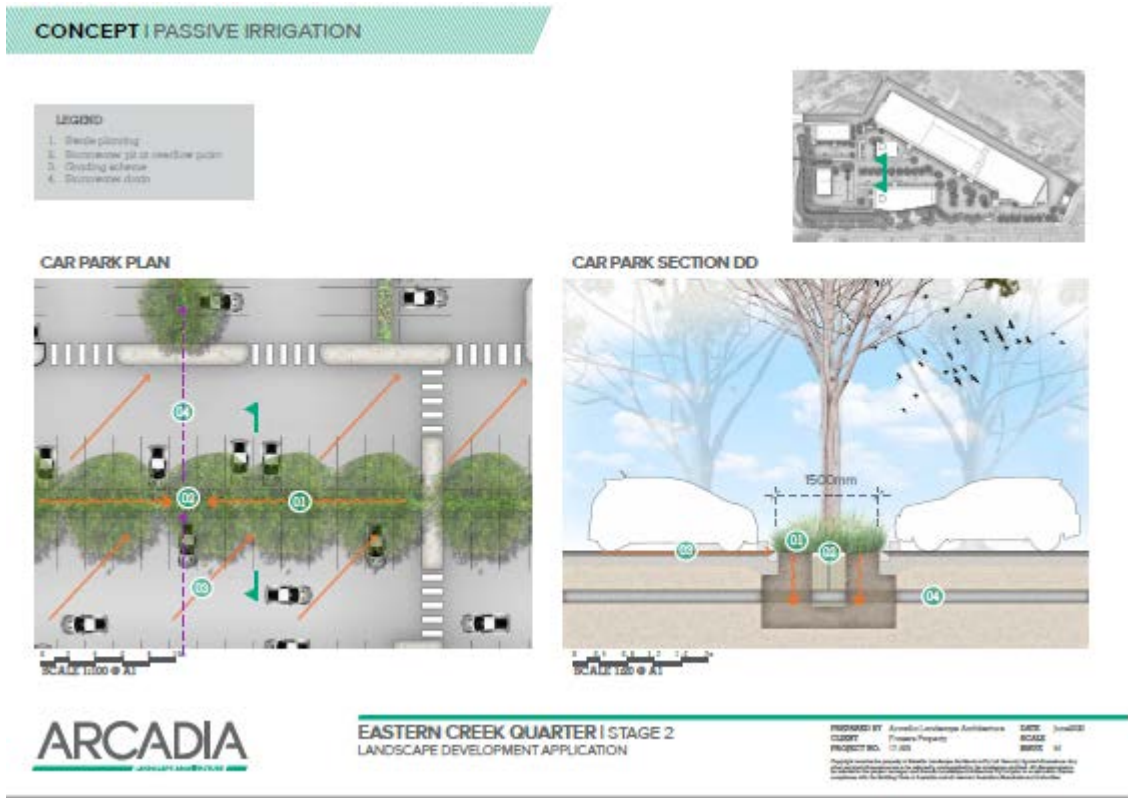


Figure 4: Additional Information provided to the Commission = Concept Passive Irrigation Drawing Issue M date June 2020, prepared by Arcadia

[Source: Applicant's Submission to Commission]

- 107. The Commission therefore imposes Condition B29 to Schedule B of the Conditions of Consent for SSD 8858 to require amended landscape drawings to be submitted with more detailed information including of paving treatment, consistent with the Eastern Creek Design Guidelines.

Footbridge on northern boundary of the Site

108. The landscape drawing Concept Master Plan Issue L, prepared by Acacia, shows a notation 01 'Footbridge', connecting the car park to footpath of the new access road to traverse the drainage swale at the northern boundary of the SSD Site. Drawing 'Riparian Strategy' Issue L shows that the drainage swale is 'Approx 12m' wide and provides a concept sketch of a 'pedestrian bridge with balustrade'. There is also a notation 'new retaining wall at footbridge' shown on architectural drawing DA04 Issue I. The Department confirmed in its Response to the Commission that the footbridge is to be approved as part of SSD 8858.
109. The bridge appears to be needed as the crossing point for pedestrians to move from the Stage 1 Development to the north to the subject retail centre on Lot 1.
110. The Applicant was requested to provide more information on this footbridge in the Letter from the Commission. The Applicant's Response provided a drawing and information that the footbridge will comprise a 13.5m long by 2.5m wide prefabricated structure.
111. A website link to the style of bridge envisioned by the structural drawings was provided: <https://www.landmarkpro.com.au/product/condamine-series/>. The link provides photographs of many different types of bridges, with different balustrade treatments and materials. Although a bridge in this location is approved, consideration of the form and materials is required prior to construction.
112. The Commission therefore imposes Condition B30 to Schedule B of the development consent for SSD 8858 to ensure that the design of the footbridge is consistent with the Eastern Creek Design Guidelines and meets relevant standards given its location over a drainage swale.

5.3.1 Signage

Applicant's Consideration

113. Signage zones for business identification signs for future tenants are proposed on all main facades of the proposed buildings. These are shown on the Signage Stage 2 drawings, prepared by i2C. The Applicant's RtS 1 in section 3.3.8 *Signage* identified the proposed signs in Table 5 on pp15-16. This shows 24 tenancy signs on Building 1 plus a centre identification sign 'Eastern Creek Quarter'; eight tenancy signs on Building 2 plus a centre identification sign and twelve tenancy signs on Building 3, plus a centre identification sign. The RtS 1 stated that "all signage's proposed to be illuminated LED".
114. The RtS 1 also states (p15):

...it is requested that the following condition of consent be imposed to allow for replacement signage to be installed, consistent with the signage strategy, without consent in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP). Under the provisions of the Parklands SEPP, the Codes SEPP does not apply to the site and replacing approved business identification signage requires development consent under the Parklands SEPP. To avoid the need for unnecessary business identification signage development applications as tenancies change in the future it is proposed to adopt the provisions of the Codes SEPP which allow replacement signage to be installed provided certain standards are met.
115. In response to the Department's concern regarding the private domain signage controls within the Design Guidelines, in RTS 2, the size of the signs was reduced and the Applicant stated (p3):

The proposal seeks to strike a balance between minimising the overall quantum of advertising signage whilst providing for the requirements of the specialised retail tenancies and general wayfinding....

The proposal allows for each tenant to have one individual front and rear sign which is considered appropriate for a development of this nature and use, and is in line with other comparable large format retail centres. The proposed signage is integrated into the architectural form of the building and their scale, form and proportion is appropriate for the setting and will contribute to the visual interest and viability of the site. The signage will not obscure or compromise any important views.

Notwithstanding, the proposed signage strategy has been amended (Attachment E) to reduce the size of signs across the site in response to this issue. The proposal reduces the amount of road facing signage from 350sqm to 227sqm which complies with this control based on a total road frontage of 750m...

116. Drawings DA20A Issue I and DA25 Issue C show an illuminated 'pylon' sign 4A on the corner of the Great Western Highway and Rooty Hill Road South (2.5m x 10m) and an illuminated 'monument' sign (2m x 6m high) on the corner of Rooty Hill Road South and the new internal access road; both to identify the Centre and main tenants.

Department's Assessment

117. The Department's assessment of the proposed signage is in Section 6.8 of the AR. As noted in paragraph 115, the size of the signs had been amended by the Applicant at the Department's request, resulting in a reduction from 350m² road facing signage to 227m² road facing signage (p32 of Department's AR).

118. The assessment states in section 6.8.4 that:

The Department has reviewed the amended signage strategy and supports the proposed signage zones and detailed signage content...for the following reasons:

- it reflects tenants' requirements for a specialised retail centre, allowing each tenant to have one front and rear building sign*
- the signage is integrated into the architectural form of the buildings with an appropriate scale for the setting*
- the signage will not obscure or obstruct any view*
- the illumination is consistent with illumination of signage approved for Lot 2*
- many of the signs are inward facing and are not visible from the public domain*
- minor directional and wayfinding signage will also be provided in accordance with the design guidelines and exempt development provisions of the Parklands SEPP.*

119. Section 6.8.6 of the Department's AR refers to the Applicant's request for a condition to be included in the consent to allow replacement signs to not require development consent, as referred to in paragraph 114 above. This is reflected in Condition A9 in Part A of Schedule 2 of the Department's recommended conditions of consent for SSD 8858.

Commission's Findings

120. The Commission agrees with the Department's assessment of the signage noting the amendments made by the Applicant. The Commission agrees with the conclusions in paragraph 118 above.
121. Regarding the proposal to not require separate development consent for replacement signs, the Commission agrees that this objective is reasonable, but draft Condition A9 reads as if the condition is attempting to override the provision of an EPI. The WSP SEPP requires consent for a sign.
122. The Department's recommended conditions of consent for SSD 8858 indicates that the content of the signs is to be approved. The 'content' of each sign shown on the relevant elevations is 'Tenant' (name) only. The outcome sought is to negate the need for a development application to be lodged to change the name of a tenant on a sign.
123. To achieve this, and following consultation with the Department, the Commission has imposed an amended Condition A9 to allow that a new sign is approved even if there is a change in tenant, provided the sign complies with the approved drawings, and the Department's recommended provisos as stated in the Condition.

5.3.2 Other issues

124. The Commission agrees with the Department's assessment with regards to the *Other issues* identified in Section of the AR. Additional comments are as follows:
125. With regards to *Staging*, the Commission notes that the time frames proposed for construction will not meet the timing originally proposed being that Stage A, Building 1 and the future development site would be completed in late 2020.
126. With regards to *Bushfire*, the Commission notes that a Bushfire Authority was issued by the Rural Fire Service (**RFS**) and the development complies with the required Asset Protection Zone. SSD 8858 Condition B7 requires compliance with the requirements of the letter from the RFS dated 11 March 2019 and *Planning for Bushfire Protection Guidelines 2006*, prior to the issue of a construction certificate.
127. The issue of *Contamination* was discussed in paragraphs 41 to 43 above.

5.3.3 Stormwater

Council Comments

128. In the three submissions made by the Council during the assessment of the Applications, the Council made comment with regards to inadequacy of the stormwater scheme, and in later submissions with regard to issues with the rainwater tanks.
129. In the Submission made to the Commission, the Council indicated that "Based on some amended plans and modelling submitted earlier this year these [issues] have been largely addressed. The issues around the rainwater tanks can be resolved with the following conditions". The Council provided conditions for inclusion in any consent regarding the size of rainwater tanks.

Department's Assessment

130. The Commission in the letter to the Department queried why there was no reference to approved stormwater drawings in the recommended conditions of consent for SSD 8858. The Department's Response to the Commission advised:

The Applicant submitted updated civil engineering drawings and a stormwater report as part of the further RtS dated 9 January 2020, Attachment H – updated Stormwater and Attachment J – updated Civil Engineering Drawings [link to drawings provided].

Council reviewed this information and advised in its comments dated 31 January 2020 that the engineering report and drainage report were inadequate and provided a list of outstanding issues [link to Council's letter provided].

As such the Department recommends Condition B22 which requires stormwater and drainage matters to be submitted to and approved by Council prior to the issue of the first Construction Certificate.

131. In the AR, the Department had stated that:

- *Council has raised concerns with the stormwater plans submitted by the Applicant and recommended amended plans and modelling.*
- *The Applicant provided amended plans and advised:*
 - o *the gross pollutant trap will be replaced by Enviro-pods (for all surface inlet pit and kerb inlet pits) or approved equivalent*
 - o *30,000L rainwater tanks will be provided across Buildings 1, 2 and 3, with roof catchment to be confirmed at detailed design stage with Council*
- *The Department is satisfied that stormwater volume and quality can be appropriately managed on the site to an acceptable standard. However, to ensure the civil works have been designed in accordance with Council's Engineering Guidelines, the Department recommends conditions of consent requiring amended stormwater plans to be submitted to and approved by Council prior to construction commencing.*

Commission's findings

132. Although it appears that the Council's issues with the stormwater concept for the Site may now be resolved, including by the application of the conditions as suggested by the Council in its Submission to the Commission, this information and the conditions proposed by the Council in relation to the sizing of rainwater tanks provided to the Commission have not been considered by the Applicant or assessed by the Department. The Commission therefore imposes Condition B22 as recommended by the Department and also includes reference to the need for compliance with Council's requirements for rainwater re-use in the Condition.

5.4 Objects of the EP&A Act and Public Interest

Applicant's Consideration

133. The Applicant's RtS 1 (p23) states:

The proposed development is consistent with the objects of the EP&A Act in that it will:

- *Promote the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community;*
- *Promote and co-ordinate the orderly and economic use and development of land;*
- *Protect the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,*
- *Promote ecologically sustainable development.*

Department's Assessment

134. The Department has assessed the Development in accordance with the Objects of the EP&A Act in Table 1 in Appendix B of the AR. Section 7.1.2 of the Department's AR states:

The proposed development is consistent with the objects of the EP&A Act and the State's strategic planning objectives for the site as set out in the Greater Sydney Region Plan and Central City District Plan, as it will support growth in jobs close to existing residential areas, increased business activity and provide a source of funding for the Western Sydney Parklands.

Commission's Findings

135. The Commission agrees with the Department's Assessment in paragraph 134 and is of the view that the Applications are in accordance with the objects of the EP&A Act.

6 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

136. The views of the community were expressed through the submissions by the Council during the exhibition and the Commission's determination processes. The Commission has carefully considered the Council's submissions in making its decision. The way in which these concerns were taken into account by the Commission is set out in Section 5 above.

137. The Commission has carefully considered the Material before it.

138. The Commission determines that the Modification Application be approved and that the existing Concept Approval for SSD 5175 as modified, be amended in accordance with the draft instrument of modification prepared by the Department. The Commission agrees with the conclusion of the Department (as outlined in Section 5.1 above, and as summarised in section 7.1.3 of the AR) with regard to the minor economic impacts of the increase in retail floor space for a café and for convenience retail use on the future development site, which may be a restaurant (subject to a separate DA).

139. With regard to the Application for SSD 8588 to construct the Stage 2 development on the Eastern Creek Business Hub Site, the Commission supports the Development, and accepts the conclusions of the Department in section 7.14 of the AR, other than that the Commission is not satisfied that the elevation of Building 3 that fronts Rooty Hill Road South is of sufficient architectural merit in terms of articulation and materials and finishes. As discussed in paragraphs 97 to 103 above, the Commission is not satisfied that this part of Building 3 is consistent with the Eastern Creek Design Guidelines and therefore imposes Condition B28, requiring amendments, prior to the issue of the construction certificate.

140. In addition, as discussed in paragraphs 104 to 107 regarding the paving and landscape details, the Commission also imposes Condition B29, requiring additional details to be provided prior to the construction certificate, consistent with the provisions of the existing Concept Approval and the Eastern Creek Design Guidelines.
141. The Commission approves the proposed footbridge on the northern boundary of the Site, as discussed in paragraphs 108 to 112, but imposes Condition B30, requiring the details to be provided prior to the issue of any construction certificate.
142. As discussed in paragraphs 119 to 123 above, the Commission imposes an amended Condition A9, with regards to allowing future changes to the tenant names on signs within Lot 1 to be allowed under the ambit of the approval.
143. Subject to the additional/amended conditions identified above, the Commission grants consent to SSD 8858.
144. The reasons for the Decision are given in the Statement of Reasons for Decision dated 15 June 2020.



Adrian Pilton (Chair)
Member of the Commission



Soo-Tee Cheong
Member of the Commission