



14 October 2019

Prestons Industrial Estate (SSD 7155 – MOD5)

1. INTRODUCTION

1. On 8 July 2019, the Independent Planning Commission of NSW (**Commission**) received from the Department of Planning, Industry and Environment (**Department**) a modification application (**Application**) under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* from Logos Properties Holding Pty Ltd (**Applicant**). The Application seeks to modify the existing development approval SSD 7155 (**Development Consent**) for the Prestons Industrial Estate, 5-35 Yarrunga Street, 36-36A Kookaburra Road North and 42B Kurrajong Road, Prestons (**Site**), which approved the staged construction and operation of five warehouse buildings (**Development**).
2. The Application seeks approval to:
 - delete Condition C16 of the Development Consent, which requires the Applicant to enter into a planning agreement for the construction of and payment for drainage works;
 - delete Condition C17 of the Development Consent, which requires, where drainage infrastructure works are carried out, that they must be subject to a works in kind agreement (**WIKA**); and
 - modify Condition B23 of the Development Consent to specify a fixed contribution amount that credits the cost of drainage works constructed on-Site and limits the contribution indexation to March 2017 rates.
3. The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)*. This is because:
 - the Development constitutes State significant development (**SSD**) under SEPP SRD as the capital investment value (**CIV**) is greater than \$50 million and, therefore, meets the criteria under Clause 12 of SEPP SRD (Warehousing and distribution centres); and
 - the Department received an objection from the council of the area in which the Application is to be carried out, namely Liverpool City Council (**Council**).
4. Professor Mary O’Kane AC, Chair of the Commission, nominated Chris Wilson (Chair) to constitute the Commission determining the Application.

1.1 Site and locality

5. The Site comprises the Prestons Industrial Estate, which is located near the intersections of the M5 and M7 Motorways, 30 kilometres (km) southwest of the Sydney Central Business District and 6 km southwest of the centre of Liverpool. The Site is located within the Liverpool local government area (**LGA**).
6. The Site is bound by Kurrajong Road, Kookaburra Road North, Yarrunga Street and Bernera Road. It is located to the north of suburban residential properties in Prestons and adjoins industrial properties to the north, east and west (**Figure 1**).



Figure 1 – The location of the Site (Source Department’s AR)

1.2 Background to the Application

7. The Department’s SSD Assessment Report (**Department’s AR**), dated 3 July 2019, outlines the background to the Application.

1.2.1 Development Consent

8. On 24 June 2016, the Department (as delegate of the Minister for Planning) approved the Development Consent. The Development Consent permitted the construction of five warehouse and distribution buildings on the 20-hectare (ha) site over four stages.
9. Since the original grant of the Development Consent, the Development Consent has been modified on six occasions. According to the Department’s AR, the modifications, “...*have expanded the size of the estate to approximately 24 ha*” and modified the Development Consent “...*to comprise six warehouse buildings when fully operational*”. The layout of the Development (as modified) is shown at **Figure 2**.
10. According to the Department’s AR, the Applicant has been progressively developing the Site. In addition, the “*approval and subsequent development of the Prestons Industrial Estate has changed the landscape character of the site from open paddocks in a rural context to industrial. Many of the remaining undeveloped industrial zoned lots surrounding the site to the north, west and east have been developed over the last few years or have recently been approved to be developed for industrial uses.*”
11. The Department’s AR confirms that “*Bulk earthworks, internal access roads and four of the approved six warehouse buildings in the Prestons Industrial Estate have been constructed (being Warehouses 2, 3A-3C, 5 and 6). In addition, the Commission notes that Warehouse 1 A/B is currently at an advanced stage of construction while construction of Warehouse 4 is yet to commence.*”
12. The Commission understands from the Department’s AR that the warehouses are “*intended for the storage, packing and distribution of fast-moving consumer goods*”.

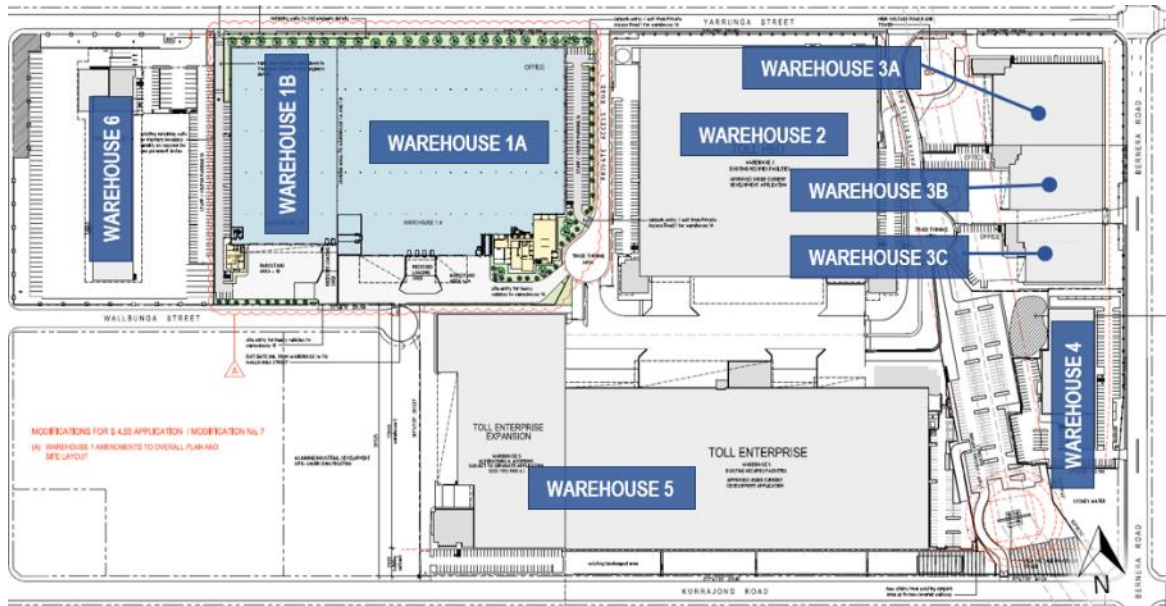


Figure 2 – The layout of the Development Consent (as modified) (Source Department’s AR)

1.2.2 Relevant Site history - drainage

Background

13. The Department’s AR confirms that prior to the development of the Site, it contained a natural gully located in its south-eastern corner that provided an overland flow path for water draining from the 33 ha upstream residential catchment (**Figure 3**).
14. The Liverpool Contributions Plan 2009 (**LCP 2009**) identifies in its schedule of works that new drainage infrastructure is required to address flooding within the Prestons area. In relation to the Site, the LCP 2009 required the construction of box culverts across the Site connecting Kurrajong Road in the south to the existing box culvert beneath Bernera Road in the east and extending to Yarrunga Road in the north (**Figure 3**).
15. The Department’s AR states that prior to the determination of the Development Consent, the Council commissioned the Prestons Trunk Flooding and Drainage Assessment (**2014 Drainage Report**), which “*identified that the stormwater infrastructure planned along Bernera Road under Council’s Contributions Plan may conflict with existing services and result in large infrastructure costs. As such, the [2014 Drainage Report] presented an interim and final drainage strategy to improve potential flooding issues on industrial zoned lots in Prestons and to provide a more cost-effective solution for Council and developers from that outlined in the Contributions Plan*”.
16. The Commission has reviewed the 2014 Drainage Report and notes that it proposed the creation of a large drainage basin (14,337 m³) and rain-garden in the south-eastern corner of the Site, together with grassed channels, a spillway and outlet pipes (**2014 Drainage Strategy**) (**Figure 4**).

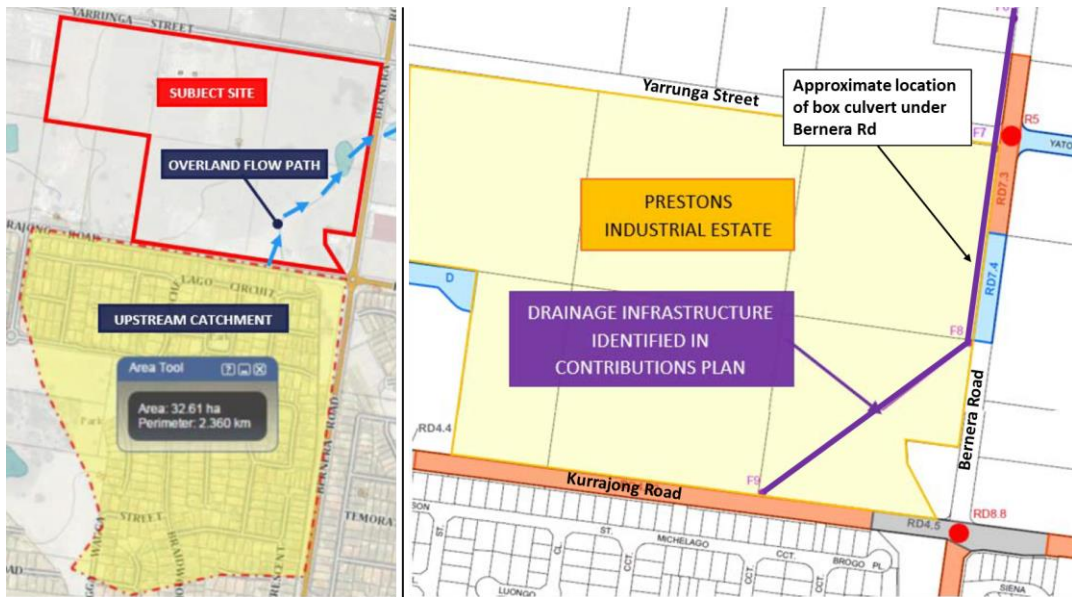


Figure 3 – Pre-development drainage flow path through the Site (left) and the LCP 2009 box culvert drainage solution for the Site (right) (Base source Department's AR)

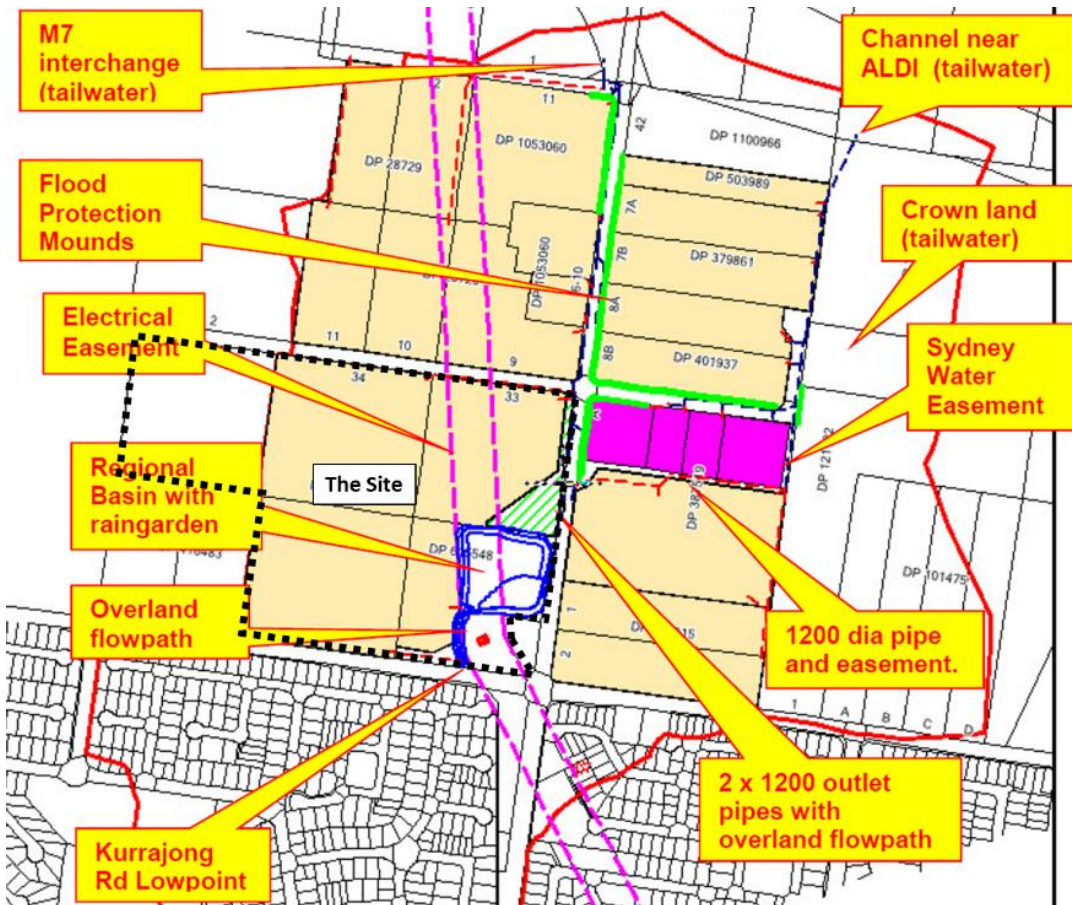


Figure 4 – The revised drainage solution for Prestons presented in the 2014 Drainage Strategy (Base source: 2014 Drainage Report)

17. The LCP 2009 has not been updated to take account of the revised 2014 Drainage Strategy infrastructure solution for Prestons or its cost.

Approved Site drainage solution

18. The Commission notes the Development Consent approved detailed stormwater infrastructure to manage stormwater flows and flooding (**Approved Drainage**). The Approved Drainage provides the following key drainage infrastructure / flow paths for the Site (**Figure 5**):
- lower volume flows are directed from Kurrajong Road through a box culvert, which connects to an open channel between Warehouse 3C and 4 that conveys water northwards and to the box culvert beneath Bernera Road; and
 - higher volume flows are directed from Kurrajong Road through the car parking area adjacent to Warehouse 4 (i.e. overland flow), retained in the archaeological area before discharging into the open channel, which continues north and connects to the existing box culvert beneath Bernera Road.

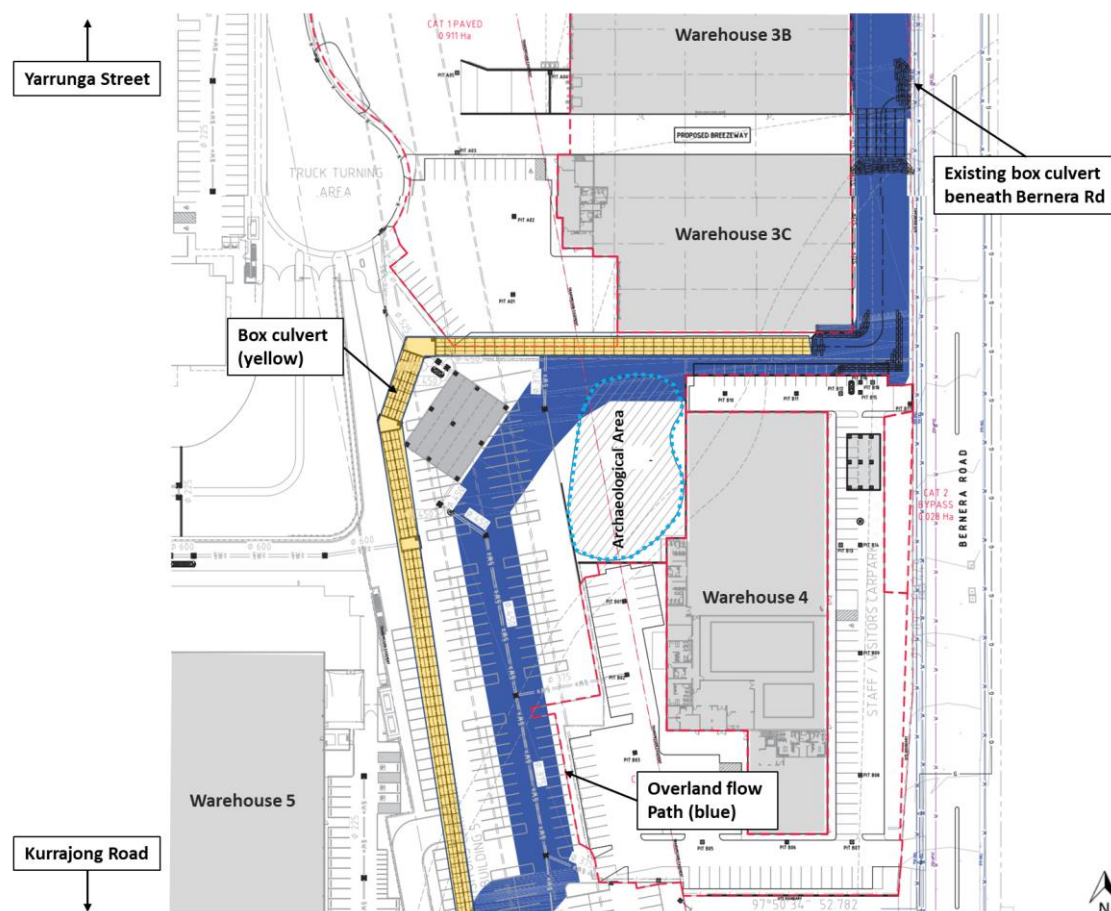


Figure 5 – The Approved Drainage for the south-eastern corner of the Site (Base sources: SSD 7155 MOD2 and the Department’s AR)

19. The Department’s AR states that the Applicant “*sought to revise the alignment of the box culvert from that identified in the Contributions Plan to maximise the development potential of the site and to enable a more appropriate site layout*”. In this regard, the Commission notes that Warehouse 4, and potentially the south-eastern corner of Warehouse 3C, are located in the position where the LCP 2009 and 2014 Drainage Report recommended the construction of drainage infrastructure (**Figures 3, 4 and 5**). Further, by comparison, the 2014 Drainage Strategy occupies a large portion of the south-eastern corner of the Site (**Figure 4**).

20. As summarised in paragraphs 14 to 19, the LCP 2009, 2014 Drainage Report and Approved Drainage each put forward a different drainage solution for managing stormwater and flooding at/across the Site. However, the Commission notes that the Approved Drainage design (**Figure 5**) has incorporated components of both the LCP 2009 (i.e. box culverts and flow path), the 2014 Strategy (i.e. detention basin and open swales) coupled with the Applicant's amendments to improve land-use efficiency in the south-eastern corner of the Site.
21. In its original assessment report for the Development Consent (**Original AR**), the Department stated that the stormwater drainage plan for the Development was prepared in consultation with the Council and in accordance with the LCP 2009 and the 2014 Drainage Report. In addition, the Original AR stated "*The flood impact assessment confirmed the development would have no effect on upstream, downstream or adjacent properties and would not direct any additional flows into Council's infrastructure adjacent to Bernera Road. Council advised it was satisfied with the conclusions of the flood impact assessment*".
22. Notwithstanding Council's general acceptance of the Approved Drainage (paragraph 21), the Original AR clarified that Council raised concern the "*... proposed drainage design... differs from the drainage design identified in the s94 Plan and any difference in cost due to the altered alignment would need to be paid by the Applicant*". Conversely, and in response to Council's position, the Applicant stated "*the costs included in the s94 Plan for the base drainage were inadequate and any shortfall should not be borne by the Applicant*".
23. The Department's Original AR concluded that consent should be granted subject to Council approving the final stormwater plan for the development (see Condition C14 of the Development Consent) and the Applicant engaging an independent quantity surveyor to determine the cost of the drainage works (see Condition C15 of the Development Consent). In addition to those conditions, and to ensure the appropriate payment of contributions, the Department imposed the following stormwater drainage conditions (the subject of this Application):
- C16. *Within 6 months of the date of this consent [being 24 December 2016], the Applicant must provide written evidence to the satisfaction of the Secretary demonstrating that an agreement has been made with Council for construction and payment of the drainage works detailed in the RTS.*
- C17. *If the carrying out of works to provide the drainage infrastructure set out in the Liverpool Contributions Plan 2009 is accepted in part or in full satisfaction of Condition B23, the works must be subject to a works-in-kind agreement executed in accordance with the provisions of the Liverpool Contributions Plan 2009 and Council's Developer Contributions Works In Kind Policy 2012.*
- B23. *Within 6 months of the date of this consent [being 24 December 2016] and prior to the issue of an Occupation Certificate for any part of the development, the Applicant must pay contributions to Council in accordance with the Liverpool Contributions Plan 2009.*
24. The Department's AR stated that:
- on 30 June 2016, the Council approved the Approved Drainage in accordance with Condition C14 of the Development Consent; and
 - on 2 August 2016, the Applicant and Council agreed on the appointment of an independent quantity surveyor to cost the drainage work in accordance with Condition C15 of the Development Consent (**Independent QS**).

25. The Department's AR stated that "On 16 February 2017, the Applicant wrote to the Department advising that, despite regular meetings and contact with Council, it had not been able to enter into an agreement with Council on the payment of the stormwater infrastructure, as required under Condition C16".
26. The Department's AR stated that "...the approved drainage works were completed at the end of May 2017 [by the Applicant] to meet construction and project delivery timeframes". In addition, in its meeting with the Commission (paragraph 48), the Applicant stated "Logos started the works to meet contractual obligations and safety requirements, due to high hazard water flows through the site and maintained ongoing contact with both the Council and Department on a continuous basis trying to resolve and compromise on all outstanding issues".
27. The findings of the Independent QS, a copy of which was submitted with the Application, provide an estimate of the cost of the LCP 2009 box culvert and associated works between Kurrajong Road and Bernera Road (shown as the diagonal purple line between points F8 and F9 at **Figure 3**) as equalling \$1,361,988 as at the start of 2017. For the section of infrastructure from point F8 to the box culvert beneath Bernera Road, the Department's AR states that "SSD 7155 approved an open channel/swale design instead of a box culvert, as originally planned in the Contributions Plan..., which required the construction of a retaining wall along Building 3. The cost of the retaining wall was an additional \$180,000 on top of the initial QS estimate, resulting in a total cost estimate of \$1,541,988" (**Table 1**).

Table 1 – Estimate of LCP 2009 drainage works as at start of 2017 (Source: Department's AR)

Description of Stormwater Works	Amount	Comment	
Stormwater Drainage Culvert Construction	\$1,834,932	The QS cost estimate is based on the length and path of the culverts as per the Contributions Plan (F8 to F9) and the detailed design and sizing of Costin Roe Consulting DA approved drawings	
Swale and retaining wall structure works	+ \$180,643		
Credit to Council for 825mm pipe through greenfield site per Council S.94 Plan	- \$653,587		
Independent QS Estimate at 17 January 2017	QS estimate	\$1,361,988	-
Retaining Walls along Bernera Rd to create drainage swale	+ \$180,000	Council agreed the cost of the retaining wall could be added to the QS estimate	
Revised Total QS Estimate	\$1,541,988	-	

28. The Department's AR states that at March 2017 indexation rates the:
 - LCP 2009 allows for a maximum offset for drainage works of \$970,029; and
 - difference between the LCP 2009 (above) and the Applicant's estimated cost (**Table 1**) is \$571,959.

1.3 Summary of the Application before the Commission

29. The Application was lodged by the Applicant with the Department on 12 July 2018 pursuant to section 4.55(1A) of the EP&A Act.
30. The Department's AR states the Application seeks approval to:
- “delete Condition C16 which requires the Applicant to enter into an agreement with Liverpool City Council (Council) regarding the payment of drainage works required on the development
 - modify Condition C17 to offset costs for drainage works against the development contributions required (under Condition B23) for the development
 - modify Condition B23 to specify a fixed development contribution amount payable to Council for the development which accounts for offsets for drainage works (under Condition C17) and indexation of contributions up to March 2017.”
31. Notwithstanding the Department's AR statement, as set out in paragraph 30, the Commission notes the assessment contained within the Department's AR is for the deletion (rather than modification) of Condition C17 of the Development Consent.
32. Noting the above, the Commission confirms that the Application seeks to:
- delete Condition C16 (quoted at paragraph 23);
 - delete Condition C17 (quoted at paragraph 23); and
 - modify Condition B23 as follows:
- B23. Within 6 months of the date of ~~this consent and prior to the issue of an Occupation Certificate for any part of the development,~~ **determination of MOD 5,** the Applicant must ~~pay contributions to Council in accordance with the Liverpool Contributions Plan 2009~~ **make payment of monetary contribution of \$5,019,522 to Council.**

Modification of Condition B23

33. As set out in paragraphs 27 and 28, the estimated cost (as at March 2017) of the LCP 2009 drainage works is \$1,541,988, Council has offered an offset of \$970,029 and the difference between the two positions is \$571,959.
34. As shown at (**Table 2**), the Application proposes to evenly split (50/50), between the Applicant and Council, the \$571,959 additional cost of drainage works above the maximum allowed under the LCP 2009. The Application, therefore, seeks a total offset of \$1,256,009 for the drainage works against the total development contributions payable, as required under Condition B23.

Table 2 – Offset/credit sought by the Applicant for drainage works (Source: Department’s AR)

Description	Calculation	Comment
Difference between Council credit and QS estimate	$\$1,541,988 - \$970,029 = \$571,959$	Council confirmed \$970,029 (at March 2017) rates would be available to offset the drainage works as per the Contributions Plan
50 % of the difference between Council credit and QS estimate	$\$571,959 \div 2 = \$285,980$	Applicant proposes to split the difference amount with Council
Amount sought to offset Development Contributions	$\$1,541,988 - \$285,980 =$ \$1,256,008	Calculated by subtracting the 50% difference from the revised total QS estimate

35. The Department’s AR has stated that the modified Condition B23 specifies “a fixed development contribution amount and due date for the payment of contributions to Council. This figure is based on the offset for drainage works and indexation up to March 2017, which is the date upon which the quantity surveyor’s report was provided to the Department. The contribution is calculated as \$5,019,522” (Table 3). In addition, “The Applicant has requested the development contributions be ‘frozen’ to waive any increase in the development contributions from indexation particularly as the stormwater infrastructure works were completed in 2017”.

Table 3 – Proposed modification to development contribution (Source: Department’s AR)

Stage	Contribution Payable	Due Date
SSD 7155 (original consent)	$\$6,275,530 - \$1,256,008 =$ \$5,019,522 (original DA contribution rate plus indexation to March 2017, less drainage offset works)	Within two months of the date of consent for this modification application

1.4 Stated need for the modification

36. In its letter to the Commission dated 12 August 2019 (paragraph 51), the Applicant asserts “...the additional cost incurred by the Applicant in delivering the drainage works must be taken into account as a material public benefit when applying the provisions of the section 7.11 [of the EP&A Act]... It is our position that Council’s refusal to account for the full costs incurred in delivering the drainage works is not lawful by reason of section 7.11(6) of the EPA Act.
37. Further, “While it is unfortunate that Council has not updated and recosted its ageing Contributions Plan, it is not reasonable to refuse to apply the provisions of the EPA Act on the basis that the Contributions Plan has not appropriately accounted for the real costs of the infrastructure for which it purports to provide. Further, the WIK Policy is not an environmental planning instrument, and there are cogent reasons not apply the policy in circumstance where it prevents implementation of the EPA Act. An updated Contributions Plan may be a more appropriate mechanism through which Council is assisted in managing its infrastructure obligations and mitigate against potential financial concerns”.

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

2.1. Key steps in the Department's consideration of the Application

38. The Department carried out the following key steps in relation to its consideration of the Application:
- On 12 July 2018, it received the Application;
 - on 6 December 2018, it made the Application publicly available on the Department's website and referred it to the Council for comment. The Department's AR stated that *"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. Accordingly, the application was not notified or advertised."*;
 - received two submissions, one from the public providing comments and an objection from Council. The submissions received are summarised at paragraphs 39 to 41;
 - received the Applicant's Response to Submissions (RtS) dated 2 April 2019. The RtS provided further justification, but did not propose any amendments to the Application;
 - made the RtS available on the Department's website in April 2019;
 - prepared the Department's AR; and
 - on 5 July 2019, referred the Department's AR and recommended instrument of modification to the Commission.

2.2. Submissions

39. The Department's AR stated that two submissions were received, including comments on behalf of a neighbouring business (Milestone, on behalf Aldi Stores) and an objection from Council.
40. The concerns raised by Milestone include that there should be no reduction to the development contributions relating to roads and intersections works and upgrade works to the Yarrunga Street / Bernera Road intersection which at the time had not commenced.
41. Council objected to the Application stating that LCP 2009 only provides for \$970,029 and raised objections to negative financial implications, non-compliance with conditions, the Applicant not entering into a WIKA and the setting of a precedent.

2.3. Department's AR

42. According to the Department's AR, the Application was lodged pursuant to section 4.55(1A) of the EP&A Act and stated that *"The Department has reviewed the scope of the modification application and is satisfied the proposed modification application would result in minimal environmental impacts. Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application be lodged"*
43. The Department's AR identified drainage works and the amendment to contributions as the key issues in the Application.
44. The Department's AR recommended that on balance, the Application is acceptable as the:
- *proposed modification will result in minimal impact beyond the approved development;*
 - *material public cost of the drainage works to be shared by the Applicant and Council is considered reasonable and appropriate given the works provide material benefit by managing high hazardous stormwater flowing through the site from the upstream*

- residential catchment;*
- *Applicant will still contribute over \$5 million in development contributions towards public infrastructure projects located in the Liverpool LGA in addition to the additional infrastructure works the Applicant has already provided for the site;*
- *the infrastructure works carried out by the Applicant to date has provided a broader public benefit to adjoining residential areas and nearby industrial developments;*
- *modification would retain jobs and investment in Western Sydney and would continue to facilitate industrial development on industrial zoned land; and*
- *... proposed modification is in the public interest and the application is approvable, subject to conditions."*

3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

45. As part of its determination, the Commission met with Council, the Applicant and the Department as set out below. All meeting transcripts were made available on the Commission's website on 28 August 2019.
46. There is no statutory requirement for the Commission to conduct a Site inspection or Locality tour when determining an application as per the Commission's *Site Inspection and Locality Tour Guidelines*.
47. Under those guidelines, the Commission elected not to undertake a Site inspection on the basis that it was unlikely to assist it in assessing or understanding the nature of the likely impacts of the Application.

3.1. Meeting with the Applicant

48. On 23 August 2019, the Commission met with the Applicant to discuss its Application. The key matters raised by the Applicant are summarised below:
 - all conditions were agreed with Council prior to the issue of the Development Consent. The Independent QS valued the works at \$1.54 million as of March at 2017. However, Council has only offered a credit of \$970,029;
 - the Approved Drainage was constructed to meet contractual obligations and safety requirements due to high hazard water flows through the Site;
 - resolution of the dispute has been frustrated by Council's unwillingness to comply with the conditions of consent. The Application proposes a fair compromise;
 - the Approved Drainage is different to the LCP 2009 to allow for an improved layout of the Development. Notwithstanding this, the drainage works that have been costed are what was proposed by the LCP 2009, which has been estimated at \$1.54 million at March 2017;
 - the Applicant asserts that if the costed drainage work was undertaken by Council in 2017 it would have cost \$1.54 million. The LCP 2009 therefore undervalued the drainage works;
 - the Applicant tried to negotiate with Council on numerous occasions. However, Council refused to change its position - reiterating the LCP 2009 is the maximum credit available;
 - the Applicant has undertaken approximately \$5 million of additional public infrastructure works over and above the contributions required by the conditions of the Development Consent; and
 - the Approved Drainage works were completed in early 2017, the Applicant recommends indexation for contributions should stop at that point.

3.2. Meeting with Council

49. On 23 August 2019, the Commission met with Council to discuss the Application. The key matters raised by Council are summarised below:
- the Department did not enforce Condition B23 of the Development Consent, which required the payment of contributions 6 months after the grant of the Development Consent;
 - the Applicant constructed the drainage works without entering into a WIKA with the Council. Notwithstanding this, Council offered the full amount available under the LCP 2009 (\$970,029, as at March 2017);
 - the Applicant was not asked or required to construct the drainage infrastructure and it could have requested Council complete the drainage works;
 - Council has a tight budget, and if the Applicant's proposed 50/50 split of costs above \$970,029 is approved, the Council's infrastructure fund would be left \$287,406 out-of-pocket;
 - the approval of the Application would set an undesirable precedent;
 - the Approved Drainage is in excess of what is required and the works may have been cheaper if they had gone out to tender through Council's procurement process;
 - Council agreed there has been a quick pace of development in Prestons and confirmed there had been a high take up of land in the Prestons Industrial area;
 - Council continually reiterated its objection about contributions in response to the Department's consultation on the subsequent modification applications to the Development Consent; and
 - The \$970,029 represents the funds available and Council cannot pay beyond that.
 - Council stated that most developers accept the maximum money available under the Council's LCP 2009.

3.3. Meeting with the Department

50. On 23 August 2019, the Commission met with the Department to discuss its assessment of the Application. The key matters raised by the Department are summarised below:
- Council commissioned the 2014 Drainage Report which provided a different solution to the LCP 2009 - and the LCP 2009 was not updated to reflect the 2014 Strategy
 - Council did not object to the Approved Drainage solution;
 - it was the Department's expectation that the Independent QS would clarify the cost of drainage works and therefore the offset against total contributions payable;
 - the Department was involved in negotiating a solution to the dispute regarding contributions payable for approximately two years. The Department considered it reasonable to cease indexation at the time of the lodgement of the Application at the start of 2017;
 - the Department considers the stormwater works are of material public benefit;
 - the Application's proposed 50/50 split of costs above the LCP 2009 is a reasonable outcome in order to address the dispute between the Applicant and the Council; and
 - the Applicant's request to resolve the dispute was first made as part of MOD2, it was then deferred to MOD3 before forming MOD5.

4. ADDITIONAL INFORMATION

Additional information from the Applicant

51. Prior to the Applicant meeting with the Commission, the Commission received from the Applicant:

- a letter dated 23 July 2019, confirming the Applicant has no objection to the Department's recommended modifications to the conditions of the Development Consent;
- a letter dated 12 August 2019, which provided the Applicant's interpretation of the EP&A Act relating to contributions; and
- a meeting agenda dated 23 August 2019, including a summary of the Applicant's position on issues relating to the Application.

Additional information from Council

52. Prior to the Council meeting with the Commission, the Commission received from Council:
- a letter dated 2 August 2019, which reiterated Council's objection to the Application, provided Council's response to the RtS, and Council's consideration of the Department's assessment and conclusions within the Department's AR;
 - a letter dated 7 August 2019, which confirmed that Council did not require a revised stormwater design and the Approved Design was agreed to by Council at the request of the Applicant. In addition, "...at no time did Council require the Applicant to implement any works... It was not Council's expectation that any drainage works, other than those described in the Liverpool Contributions Plan 2009, be constructed on the site..."; and
 - a letter dated 19 March 2019, which provided further clarification of Council's objection to the Application.

Additional information from the Department

53. In response to questions raised following the Commission's meeting with the Department, the Commission received documents dated 23 September 2019, including:
- a letter confirming the Department's conclusions and providing further clarification about:
 - the obligation of Council to update the LCP 2009;
 - the Approved Drainage; and
 - a copy of the 2014 Drainage Report.
54. On 1 October 2019, the Department submitted a revised recommended modification instrument to the Commission. The updated instrument included amendments to take account of the approval of a separate modification application relating to the Site (SSD 7155 MOD 9), which was granted by the Department on 5 August 2019.
55. The above correspondence was provided to the Commission after receipt of the Department's AR and was made available on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

56. In determining this Application, the Commission has carefully considered the following material (**Material**), including the:
- Application;
 - Development Consent;
 - Modification Report dated 4 December 2019 and prepared by Urbis Pty Ltd
 - submissions provided to the Department in respect of the Application by the public and Council;
 - RtS prepared by Logos Australia Group Pty Ltd and dated 2 August 2019;

- Independent Quantity Surveyor Services Stormwater Drainage report dated 17 January 2017 and prepared by Altus Group Cost Management Pty Ltd);
- LCP 2009;
- Development Contributions – Practice Note (Department of Infrastructure Planning and Natural Resources) (**Contributions Practice Note**);
- 2014 Drainage Report;
- Department’s AR prepared by the Department and dated July 2019 and recommended modification instrument;
- the Commission’s meetings with the Applicant, Council and the Department as summarised in section 3; and
- additional information provided to the Commission described in paragraphs 51 to 55.

5.2 Mandatory considerations

57. The Commission has considered the scope of the Application and is satisfied that the proposed modification is of minimal environmental impact and agrees with the Department’s assessment that the Application is within the scope of section 4.55 (1A) of the EP&A Act because of the reasons given by the Department in paragraph 42.
58. In determining this Application under section 4.55(1A) of the EP&A Act, the Commission has taken into consideration the following relevant mandatory considerations, as provided in section 4.15 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 of the Department has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - 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; and
 - the EP&A Regulation 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 the development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.
59. In considering this Application the Commission has had due regard to section 7.13 of the EP&A Act and generally agrees with the conclusions of the Department’s AR, which states
- “In determining this application, the Department has had regard to section 7.13(2) of the EP&A Act. This section allows the Minister for Planning and Public Spaces, as the consent authority, to impose a condition under section 7.11 (relating to the payment of a monetary contribution) even though it is not authorised by or determined in accordance with a contributions plan. In accordance with section 7.13(2)(b) of the EP&A Act, the Department has had regard to the Contributions Plan in determining this modification application”.*
60. Notwithstanding the Department’s view, the Commission notes that in accordance with section 7.11 of the EPA Act, a consent authority other than a council may impose a condition, even though it may not be authorised by a contributions plan provided the

consent authority has considered the applicable contributions plan. Given the IPC is a consent authority in its own right, and has had due regard to LCP 2009, it can impose a condition that is not authorised by the LCP 2009.

5.3 Relevant Environmental Planning Instruments

61. The Original AR indicates that the following EPIs were applicable to the Development Consent:
- *State Environmental Planning Policy (State and Regional Development) 2011*;
 - *State Environmental Planning Policy (Infrastructure) 2007*;
 - *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development*;
 - *State Environmental Planning Policy No. 55 – Remediation of Land*;
 - *State Environmental Planning Policy No. 64 – Advertising Structures and Signage*;
 - *Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment*;
 - *Liverpool Local Environmental Plan 2008 (LLEP 2008)*.
62. Based on the Material the Commission finds that the above EPIs remain relevant to the Application and the Commission further finds and accepts the Department's conclusion that the Development as modified by the Application would be substantially the same as the Development approved under the Development Consent.

Permissibility

63. The Original AR confirms that the Site is located within the IN1 General Industrial and IN3 Heavy Industrial zones under the LLEP 2008. The Original AR concluded that as the Development is for an industrial estate it is permissible with consent in both the IN1 and IN3 zones.
64. The Commission notes that the Application is substantially the same as the Development Consent and finds that the Application is permissible within both zones with consent.

5.4 Likely impacts of the development on both natural and built environments

65. The Commission considers the key matters to be considered for this Application are:
- offset of costs for drainage infrastructure works
 - the indexation and timing of payment of contributions

5.4.1 Offset of cost for drainage infrastructure works

Council and public comments

66. The Commission notes that Council has objected to the Application on the following grounds. The Commission also notes Council's elaboration on the grounds of its objection at its meeting with the Commission, as summarised at paragraph 49:
- the Applicant chose to construct the drainage works without entering into a WIKA to secure a contributions offset (in accordance with Condition C17 of the Development Consent). Council did not require these works to be implemented;
 - notwithstanding the lack of a WIKA, Council has offered a \$970,029 credit for the drainage works, which is the maximum budget set aside in the LCP 2009 for Prestons;
 - payment of a credit beyond the LCP 2009 would have negative financial implications for Council and the funding of local infrastructure elsewhere in the Prestons precinct;

- as Council is not the consent authority, it is the Applicant's (not the Council's) responsibility to comply with the conditions of the Development Consent. The Applicant incorrectly asserts Council caused the delays in the payment of the contributions;
 - no revised stormwater design was required by Council, it was not Council's expectation that any drainage works other than those described in the LCP 2009 be constructed on the Site. The revised stormwater design was approved by Council at the request of the Applicant; and
 - the approval of the Application would set an undesirable precedent.
67. In addition, Council has stated that the infrastructure works totalling \$5 million indicated by the Applicant are immaterial to the consideration of the Application as they include *"...necessary upgrades to the public domain in the vicinity of the Site all of which have been made necessary for the Proposal to carry out the day-to-day activities of a warehouse distribution centre"*.

Applicant's comments

68. In support of its Application, the Applicant has provided the following justification. The Commission also notes the Applicant's additional comments on its Application provided at its meeting with the Commission, as summarised at paragraph 48:
- *"The amount calculated in the Quantity Surveyor's Report is the relevant and appropriate costing of the drainage works and that Logos Property is entitled to a credit or offset from the total development contributions payable for the whole of the development...;*
 - *Logos Property has made reasonable and persistent attempts to reach agreement on the outstanding issues and has offered a compromise that benefits both Logos and Council;*
 - *Council has failed to comply with Condition C17 and has not been willing to reach agreement with respect to the Drainage Works; and*
 - *Logos Property has undertaken to contribute a further \$5,468,000.00 towards public infrastructure over and above the contributions required by the conditions of Consent"* which it asserts provide a material public benefit.
69. In response to Council's objection, the Applicant's RtS states *"The practical consequences of not undertaking the works would have not only stalled the development, it had the potential to cause environmental harm. It is LOGOS Property's position that to ensure minimal environmental harm, it was necessary to undertake the works at the time they were carried out"*.
70. In addition, *"While it is unfortunate that Council has not updated and recosted its ageing Contributions Plan, it is not reasonable to refuse to apply the provisions of the EPA Act on the basis that the Contributions Plan has not appropriately accounted for the real costs of the infrastructure for which it purports to provide. An updated Contributions Plan may be required to assist Council in managing its infrastructure obligations"*.

Department's comments

71. The Department's AR states *"By installing the approved stormwater infrastructure, the Applicant has minimised the potential for environmental harm. In this regard, Council's WIK Policy requires Council to consider the overall benefit of the works to the current and future development in the area"*.
72. The Department's AR also puts forward that *"had the Applicant ceased construction until the dispute with Council was resolved, the Applicant may have breached contractual*

deadlines with the prospective tenant, Toll, and jeopardised the viability of the project. Ceasing construction works would have also delayed the installation of necessary stormwater drainage works to manage the high hazard stormwater flows through the site. The Department considers the Applicant made reasonable attempts to resolve the dispute with Council prior to completing the drainage works”.

73. The Department’s AR states “...Council has not questioned the costings of the independent quantity surveyor which reflect the interim drainage strategy adopted by Council. The Department does not consider it reasonable for the Applicant to incur additional costs because a revised stormwater design was required by Council, which is not included in Council’s Contributions Plan”.
74. The Department’s AR states “Under section 7.11(6) of the EP&A Act, the Department has also taken into consideration the material public benefit the Applicant has provided on site, in the form of the drainage works and other public infrastructure...”. In addition, the Department concluded this additional infrastructure provides a material public benefit as “other industrial developments in the Prestons area..., which have been approved or completed since the approval of the Prestons Industrial Estate, have benefited or will benefit directly from the provision of this infrastructure”.

The LCP 2009

75. Clause 33A(1) of the EP&A Regulation requires the Council to keep a development contributions plan under review. In addition, if a review date is referenced in the plan, it requires Council to review the plan by that date. The Department’s Contributions Practice Note states that a works program should be realistic and achievable and identify costs that are accurate. The same practice note considers that contributions plans should also be periodically reviewed to take into account changing circumstances including the pace of development within the catchment.
76. The Commission notes that the LCP 2009 states it would be reviewed regularly. However, it does not indicate a date for review. The Commission also notes the LCP 2009 (dated December 2010) has not been the subject of a review and the adopted plan was approximately 6 years old at the time of the Development Consent and is now almost 10 years.

Commission’s consideration

77. The Commission acknowledges the Applicant’s desire to resolve the outstanding contributions issue through the Application. The Commission also acknowledges that a significant amount of time has elapsed since the grant of the Development Consent and that it is in the public’s interest that the ongoing negotiations between the Applicant, Council and the Department be brought to a conclusion and the matter of disputed contributions be resolved and contributions be paid.
78. To appropriately inform its determination of the Application, the Commission has considered the Original AR and the chronology of events following the issue of the Development Consent that has culminated in the Application. The Commission considers that there are a number of general matters that are relevant and important precursors to its assessment of the Application. These are as follows:
 - a key objective of the LCP 2009 is to enable Council to be both publicly and financially accountable in its assessment and administration of development contributions. The terms of the LCP 2009 were established in 2009 and any departures from it should have been appropriately addressed prior to the determination of the Development

- Consent through a change to LCP 2009 or some other agreement with the Council;
 - negotiating the cost of delivering public infrastructure after development consent has been issued, could be seen to undermine the proper functioning of Council's contributions plan and its public interest outcomes. This is particularly the case in this instance given the Applicant seeks an offset which is greater than what has been budgeted for in the LCP 2009; and
 - it is apparent from the Material that neither the Applicant nor the Council were likely to change their positions and the Department has been unable to resolve the dispute between the Applicant and Council.
79. The Commission has considered the Application before it on its merits. The Commission notes, in relation to the consideration of the Application and offset of cost for drainage works, there are a number of competing factors including:
- the LCP 2009 has budgeted for \$970,029 (as at March 2017) and an increase above that amount would impact Council's ability to fund infrastructure. Council has maintained its position that \$970,029 is the maximum offset it can provide (paragraph 66);
 - the Applicant's position that the 10-year-old LCP 2009 may be out of date (paragraph 70) is not unreasonable. In addition, it is Council's responsibility to ensure the LCP 2009 is up to date to levy adequate contributions in the public's interest and offer fair credits for works undertaken by developers (paragraph 75);
 - the Approved Drainage was ultimately designed to accommodate a larger developable area (paragraph 19), which may have inadvertently distorted the final cost of the stormwater and drainage requirements established in the LCP 2009;
 - Council did not dispute the findings of the Independent QS and although stating the cost may have been reduced if subjected to value for money principles (paragraph 49) it did not or put forward alternative costings for the works to justify this claim;
 - noting the Applicant's desire to fast-track the development (paragraphs 25 and 26), the risk of proceeding without agreement on the quantum of contributions to a large degree sits with the Applicant. In addition, as noted at paragraph 66, the Applicant could have alternatively requested Council to construct the drainage infrastructure. Furthermore, in that scenario, any discrepancies between the LCP 2009 and the construction would have been borne by Council; and
 - it appears that reasonable attempts have been made to resolve the dispute between the Applicant and Council about the drainage infrastructure works (paragraphs 25, 50 and 68).
80. The Commission has considered the Material and notes that Council has not provided justification in its submissions or at its meeting with the Commission as to why the LCP 2009 has not been reviewed in accordance with the requirements of the EP&A Regulation and the recommendations of the Contributions Practice Note. In addition, the Commission considers the existence of the 2014 Drainage Report (paragraphs 15 and 16) strengthens the perception that the LCP 2009 drainage strategy was not or is no-longer the best or only solution for the Prestons area.
81. The Commission notes that Council clarified in its submission (paragraph 66) that it did not require a stormwater design, and it did not expect that any drainage works other than those described in the LCP 2009 be constructed on the Site. However, the Commission notes the Department's Original AR confirms (paragraph 21) that the Approved Drainage was prepared in consultation with Council. Further, as stated at paragraph 20, the design of the Approved Drainage incorporates components of the LCP 2009 and 2014 Strategy. The Approved Drainage therefore appears to be the result of design evolution, and in such circumstances, it would be reasonable to expect that an alternative drainage infrastructure solution to the LCP 2009 would be put forward.

82. The Commission acknowledges that the Approved Drainage for the Site does not precisely replicate the LCP 2009 or 2014 Strategy. However, and although the Commission has considered this material, it does not consider it to be fundamental to the consideration of the Application as the Applicant has calculated the proposed offset based on the cost of the construction of a comparable drainage infrastructure scheme to the LCP 2009 (as at March 2017) and not the value of the construction of the Approved Drainage.
83. Further to the above, the Commission notes the Applicant's estimated cost of drainage infrastructure works (paragraphs 27 and 28) is based on independent advice. In the absence of any evidence to the contrary, the Commission finds no reason to disagree with the Applicant that the estimated cost (being \$1,541,988) is a fair representation of the cost of the drainage works.
84. The Commission notes Council's concern that the Applicant did not enter into a WIKA. The Commission agrees that prior to making this Application, entering into a WIKA would have been the appropriate course of action. However, the Commission finds that as the Application is SSD and the Council's Works in Kind policy is not an EPI the Commission is not required to apply it in making its determination of this Application. In determining the Application, the Commission considers modifying Condition B23 to secure a fixed contribution (rather than a WIKA) is an appropriate condition of consent.
85. The Commission has carefully considered the Material (paragraph 56), EP&A Regulation and the Contributions Practice Note (paragraphs 75 and 76), the factors at paragraph 79 and the estimated cost of works (paragraphs 27 and 28) and, on balance, finds that it is appropriate that given the specific circumstances of this Application that the Applicant should be afforded additional credit for the cost of drainage works beyond what was allowed for in the LCP 2009 (being \$970,029).
86. Turning to the question of the additional credit, the Commission notes the Applicant estimates the cost of drainage works above the LCP 2009 maximum is equal to \$571,959. In addition, the Applicant has proposed to split the \$571,959 in half between Council and the Applicant (being \$285,980 each). The Commission acknowledges the arbitrary nature of the Applicant's offer. However, it is noted that the Applicant has suggested this approach in good faith and as a shared compromise in order to progress the matter to resolution. In addition, the Commission notes the intractability and ongoing nature of the dispute between the Applicant and Council. In such circumstances, the sharing of the cost of drainage works above the LCP 2009 is reasonable.
87. In light of the above considerations, the Commission finds that, on balance, it is appropriate to provide the Applicant a credit for drainage works totalling \$1,256,009 (being the maximum credit allowed under the LCP 2009 and half the additional cost of drainage works above the LCP 2009 maximum).
88. The Commission notes that Council raised concern that the approval of the Application may set a precedent in the Council's LGA. The Commission notes that Council would be the consent authority for the majority of development applications within the LGA. Council will therefore apply and enforce the LLEP 2008 and the LCP 2009 in those circumstances. The Commission is satisfied the approval of the Application would not set a general precedent.
89. The Commission notes, as summarised at paragraphs 68 and 74, the Applicant and the Department have both highlighted additional works totalling approximately \$5 million (relating to drainage, road and intersection works) and stated these represent additional

public benefit. In addition, although no compensation has been requested for these works, it has been suggested that they are a material consideration in the Commission's determination of the case.

90. The Commission acknowledges the Applicant has provided infrastructure works as summarised in its Application. However, the Commission does not accept, given the nature of the Site and surroundings, that these infrastructure works go beyond the kind necessary to facilitate the Development and to address its impacts in the immediate surrounding area. Therefore, after considering the Material the Commission agrees with Council's conclusion (paragraph 67) and finds that those works should not form part of the Commission's determination of the Application. The Commission also notes the Applicant previously requested that such works be considered as a contribution offset during the determination of the Development Consent.
91. The Commission therefore finds that Condition C16 and C17 of the Development Consent should be deleted and Condition B23 should be modified to include a fixed contribution that incorporates a contribution offset of \$1,256,009.

5.4.2 The indexation and timing of payment of contributions

Council and public comments

92. The Commission notes that Council has objected to fixing the indexation rate of the contribution payment to March 2017, on the following grounds:
 - as at March 2019, the total contribution outstanding for the development \$7,257,173 and the adjusted amount under the LCP 2009 for the subject drainage works is \$1,003,147. The adjusted liability is therefore \$6,254,026;
 - the Application proposes a total of \$5,019,522 and therefore creates an unfunded liability of \$1,234,504 against Council's ability to fund necessary infrastructure works; and
 - Council should not be made financially liable for the Applicant's unwillingness to pay the development contributions in a timely manner.
93. Concern was raised in the public submission that no reduction should be granted for contributions relating to road or intersection works.

Applicant's comments

94. The Applicant stated in its Application that *"Logos Property have attempted to pay contributions with respect to the occupation of Warehouse 6 and were advised by Council that this was not possible to do so due to the exigencies of their administrative file management systems"*.
95. In addition, *"Logos Property have regularly met with the [Department] since shortly after the Consent was granted in order to reach agreement in accordance with the conditions of Consent. Compliance with Condition B23A has been frustrated as a result of the protracted delays caused by Council's unwillingness to comply with Condition 17"*.
96. The Applicant concludes *"As a consequence of the delay, the quantum of indexation for development contributions is exceeding the cost of the works required by the Contributions Plan. Logos have made all reasonable efforts to reach agreement with respect to this issue, that the delay has been caused by Council's failure to comply with conditions of the Consent and to insist on indexation is unreasonable in the circumstances"*.

Department's comments

97. The Department's AR states *"The Department considers that reasonable attempts have been made by the Applicant through multiple meetings and separate discussions to resolve the matter with Council since it was originally raised in March 2017. In addition, the Applicant completed the drainage infrastructure works in 2017 to meet contractual obligations with one of its prospective tenants"*.
98. The Department's AR concludes *"...directing the Applicant to pay the contribution amount sought by Council at current CPI rates would be manifestly unreasonable and agrees the contribution should be capped at March 2017. Further ..., the Department has taken into consideration the material public benefit provided by the Applicant and has formed the view that the drainage works are necessary to manage the stormwater generated by the adjoining residential development"*.

Commissions consideration

99. The Commission notes the Applicant's assertions at paragraph 94 that its payment of contributions relating to Warehouse 6 (i.e. the amalgamation of land into the Site) was frustrated by Council's systems. However, at its meeting with the Commission the Applicant confirmed this issue was addressed and the contributions for those separate parcels of land have been paid. The Commission finds that this was therefore not a significant or enduring issue that would have prevented the Applicant from paying outstanding contributions.
100. The Commission has considered the Material before it and agrees with the Applicant and the Department that reasonable attempts have been made to resolve the dispute between the Applicant and Council about the offset for drainage infrastructure works. In addition, the Commission has concluded (paragraph 91) that it is reasonable, in the circumstances of the Application, that the Applicant's proposed revised drainage infrastructure works offset be accepted and that it be fixed at March 2017 indexation rates being approximately the time of construction.
101. Notwithstanding the Commission's considerations at paragraph 100, the Commission does not agree with the Applicant and the Department that the indexation of all other contributions (i.e. those not relating to drainage infrastructure works) (**Other Contributions**) should be fixed at March 2017 rates, as:
- there was no material impediment to the Applicant paying all or part of the Other Contributions in advance of the resolution of the ongoing negotiations with Council about the offset for drainage infrastructure;
 - it was the Applicant's choice to withhold the payment of the Other Contributions. The withholding of payment represented a risk with associated financial implications that should be borne by the Applicant (rather than Council);
 - the Commission agrees with Council (paragraph 92) that it should not be made financially liable for the Applicant's unwillingness to pay the Other Contributions within the specified timeframe. The Commission also notes fixing the indexation of the Other Contributions to March 2017 would have significant financial implications on Council's ability to fund infrastructure within the precinct, which would not be in the public interest; and
 - the Commission agrees with the concern raised in the public submission (paragraph 93) that it would be inappropriate to reduce contributions relating to road and intersection works as they are unrelated to the dispute between the Applicant and the Council about drainage infrastructure.

102. The Commission therefore finds that Condition B23 of the Development Consent should be modified to require the payment of a fixed total contribution of \$6,001,164, being the total outstanding contributions, as at March 2019 indexation rates (\$7,257,173) minus the drainage offset accepted at section 5.4.1 (\$1,256,009). The amended condition is set out below:

B23. Within 6 months of the date ~~this consent and prior to the issue of an Occupation Certificate for any part of the development,~~ **of determination of SSD 7155 MOD 5**, the Applicant must ~~pay contributions to Council in accordance with the Liverpool Contributions Plan 2009~~ **make payment of a monetary contribution of \$6,001,164 to Council.**

5.5 Public interest

103. The Department's AR considered the public interest of the Application and concluded that the Application was in the public interest because it "*...is continuing to provide significant public benefit through the provision essential stormwater infrastructure and the retention of jobs and investment in Western Sydney*".

104. The Department's AR stated "*The Department's assessment of the modification application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development [ESD]*".

105. The impacts of the Application have been discussed throughout Section 5.4 of this statement of reasons for decision. The Commission refers to its conclusions in Section 7, which confirm that the Application is acceptable subject to the imposition of the Department's recommended conditions (as amended by the Commission).

106. Based on the Material, the Commission finds, as stated at paragraph 77, it is in the public interest to that the dispute between the Applicant and Council be resolved and the outstanding contribution be paid.

107. The Commission refers to its conclusions in paragraphs 91 and 102. Contrary to the Applicant's request, the Commission finds that it is in the public interest for the outstanding contributions (excluding works relating to drainage infrastructure) to be subject to contemporary indexation rates, as at March 2019.

108. In determining the public interest merits of the Application, the Commission has had regard to the objects of the EP&A Act. The Commission is satisfied with the Department's AR considerations that the Application is consistent with the objects of the EP&A Act, including the principles of ESD, as discussed in paragraph 104.

6. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING ITS DECISION

109. The views of the community were expressed through a public submission as part of public exhibition process received by the Department (paragraph 40).

110. In summary, the submission raised concern about the impact of the reduction of contributions relating to road and intersection works.

111. The Commission carefully considered the views raised in the submission as part of making its decision. The way in which these concerns were taken into account by the Commission is set out in Section 5.

7. CONCLUSION THE COMMISSION'S FINDINGS AND DETERMINATION

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

113. Based on the Material, the Commission finds that:

- the EPIs (paragraph 61) remain relevant to the Development and the Commission further finds and accepts the Department's conclusion that the development is substantially the same as the Development Consent (paragraph 62);
- it is in the public's interest that the ongoing negotiations between the Applicant, Council and the Department be brought to a conclusion and the matter of disputed contributions be resolved and contributions be paid (paragraph 106);
- in the absence of any evidence to the contrary, the Commission finds no reason to disagree with the Applicant's estimate of the cost of drainage works (paragraph 83);
- as the Application is SSD and Council's Works in Kind policy is not an EPI the Commission is not required to apply it in making its determination of this Application (paragraph 84);
- it is reasonable given the specific circumstances of this case that the Applicant be afforded additional credit for drainage works beyond what was allowed for in the LCP 2009 equal to \$1,256,009 (paragraphs 85 and 91); and
- limiting the indexation of the Other Contributions to March 2017 rates is not justified as those contributions could have been paid sooner and are unrelated to the dispute between the Applicant and Council about the offset for drainage infrastructure works (paragraph 102).

114. For the reasons at paragraph 113, the Commission has determined to approve the Application subject to conditions (**Decision**). These conditions are designed to:

- prevent, minimise and/or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance
- require regular monitoring and reporting; and
- provide for the on-going environmental management of the development.

115. The reasons for the Decision are given in this Statement of Reasons for Decision, dated **14 October 2019**.



Chris Wilson (Chair)
Member of the Commission