



16 March 2020

**Modification to Elf Mushroom Farm and Substrate Plant  
Concept Plan and Project Approval  
(CP 08\_0255 MOD 3 & MP 08\_0255 MOD 3)**

**1. INTRODUCTION**

1. On 16 January 2020, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) modification requests for Concept Plan CP 08\_0255 Mod 3 and Project Approval MP 08\_0255 Mod 3 (**Requests**) for determination under s75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Elf Farm Supplies and Elf Mushrooms (**Proponent**) seeks to modify the Concept Plan and Project Approval for the Elf Mushroom Farm and Substrate Plant. The concept plan modification is sought only to facilitate the modification of the Project Approval.
2. The Commission is the delegate of the Minister for Planning and Public Spaces (the **Minister**), the approval authority in respect of the project to which the former Part 3A of the EP&A Act applies. This is in accordance with the Ministerial delegation dated 14 September 2011. The Commission is required to determine the Applications because reportable political donations were made by the Proponent.
3. Professor Mary O’Kane AC, Chair of the Commission, nominated Professor Snow Barlow (Chair) to constitute the Commission to determine the Requests.

**2. BACKGROUND**

4. The Mushroom Farm is located at 521 The Northern Road Londonderry, in the Penrith local government area (**LGA**). The Substrate Plant, being the facility at which the nutrient rich medium for growing mushrooms is produced, is located at 108 Mulgrave Road Mulgrave. The **Site** of the Applications is that of the Mulgrave premises only. The Site is in the Hawkesbury City LGA (**Council**). Sections 1.1.1 and 1.12 of the Department’s Assessment Report (**AR**), dated 9 January 2020, describes the Site and locality.
5. A Concept Plan and Project Application for the expansion of the Mulgrave Substrate Plant and the establishment of the Londonderry Mushroom Farm were approved by a delegate of the then Minister for Planning and Infrastructure in December 2012. A concept plan was required because the Substrate Plant was not permissible under the then Hawkesbury LEP 1989, and this was the mechanism available under the previous Part 3A regime to overcome a land use prohibition.
6. The current Project Approval (being the Project as previously modified) permits the progressive expansion of the Substrate Plant’s production capacity over four stages as identified in Section 1.2.2.1 of the AR.
7. Under Schedule 2, clause 3C(1) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**ST&OP Regulation**), a concept plan can be modified under the now repealed s75W of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**), subject to Schedule 2, clause 3BA of the ST&OP Regulation. The project to which the Project Approval relates is a Transitional Part 3A project pursuant to Schedule 2, clauses 2(1)(a) and (b) of the ST&OP Regulation.

8. Clause 3BA(3) of Schedule 2 to the ST&OP Regulation provides that modification to both a concept plan and an approved project can still occur under s75W of the EP&A Act if the request to modify was lodged before the cut-off date, which was 1 March 2018. As confirmed in a letter to the Commission dated 12 February 2020, the 'request to modify' in relation to the Applications was 18 January 2017.
9. The Department's Assessment Report (**AR**) provides a summary of the approval history of the Elf Mushroom facility in Section 1.2. There have been two previous modifications to the Concept Plan and Project Approval as shown in Table 2 in section 1.2.1 of the AR. Modification 1 (**MOD 1**) applied to the Substrate Plant. Figure 3 in the AR shows the layout of the current Project Approval, as modified.

### 3. THE REQUESTS

10. The Requests seek approval to modify certain elements of the approved Substrate Plant at Mulgrave.
11. The proposed amendments to the approved facilities and layout of the Substrate Plant, according to the Department's AR are to:
  - **change the storage for straw bales**, from storage in two proposed buildings to storage wholly outdoors in an expanded hard stand area, as described in Section 2.1 of the AR
  - **import up to 2,250m<sup>3</sup> of fill** to raise the existing levels in the south-eastern corner of the proposed outdoor bale store hard stand area, as set out Section 2.1 of the AR
  - **construct a new southern noise barrier** along the southern and eastern boundaries of the Site, associated with the outdoor bale storage area, as set out in the second and third paragraphs in section 2.1.1 of the AR
  - **construct a new northern wall** to separate the outdoor bale storage area from the existing adjacent weighbridge and fuel storage plant, as set out in Section 2.1.2 of the AR
  - **change the approved stormwater management system**, as outlined in Section 2.2 of the AR, including reconfiguration of the catchment areas within the site, redesign of one of the approved basins (Basin 2) and the introduction of an additional stormwater basin (Basin 3).
12. Section 2.3 of the Department's AR states that

*In February 2015, the Proponent commenced construction of a mounded tree corridor located along the western boundary of the substrate plant site...designed to reduce the visibility of batters and structures approved under 08\_0255 MOD 1.*
13. The AR states that this **western tree corridor** has already been constructed and the landscaped mound contains 4,100m<sup>3</sup> of excavated natural material.

## 4. THE DEPARTMENT'S CONSIDERATION OF THE REQUESTS

### 4.1 Statutory considerations

14. Section 4.1 of the Department's AR states that the Department "...is satisfied that the modification request is within the scope of the former section 75W of the EP&A Act and does not constitute a new development application".
15. The Commission agrees with the Department's conclusions in this regard for the reasons set out in the Department's AR.

### 4.2 Consultation

16. The AR states in Section 5.2 that:

*Under the former s75W of the EP&A Act, the Department is not required to notify or exhibit the modification request. However due to the potential for public interest in the proposal, the Department exhibited the request from **Monday 21 May 2018 until Monday 4 June 2018.***

17. According to Section 5.2 of the AR a total of five submissions were received during the notification period, being from Council, two from public authorities (the Environment Protection Authority (EPA) and the Department of Primary Industries and Lands & Water (DPIL&W)); and two from the general public. One submission from the general public objected to the Requests.
18. The Proponent provided a 'Response to Submissions' report, dated 13 November 2018, prepared by Perram & Partners, (MOD 3 RTS) to address the issues raised during the exhibition period.
19. The MOD 3 RTS was referred to Council and the EPA. The Department also undertook direct consultation with Sydney Trains at this time in response to a recommendation made by Council in its original submission.
20. Section 5.4 of the Department's AR summarised the key concerns raised by the public authorities in relation to the RTS as follows:
  - Council reiterated its concerns in relation to construction within the floodplain, payment of developer contributions, and provision of bonds to address potential impacts on Council's road network
  - Sydney Trains raised concerns regarding the potential impacts on the Richmond railway line and provided recommended conditions to ensure the project does not impact upon the rail corridor and its associated easements
  - the EPA did not provide a response.
21. Section 5.3.2 of the AR summarised the key concerns raised by the public objector.

## 5. MATERIAL CONSIDERED BY THE COMMISSION

22. In determining the Requests, the Commission has carefully considered the following **Material**, being the:
- a. Terms of the of Concept Plan and conditions of the Project Approval (as modified), including the Proponent's current Statement of Commitments;
  - b. Environmental Assessment Requirements (**SEARS**) issued by the Department on 4 April 2017;
  - c. Proponent's Environmental Assessment (**EA**) dated May 2018, prepared by Perram & Partners, and its accompanying Appendices, including the:
    - i. Appendix C letter *Earthworks at 18 Mulgrave Road NSW 2050*, prepared by GRC Hydro, dated 22 January 2018 (**Flood Assessment**);
    - ii. Appendix E Soils Report *Supplementary Report to Elf Farm Supplies Pty Ltd on Incident Report for Imported Fill Material: Tree Corridor at 108 Mulgrave Road, Mulgrave NSW*, prepared by Compaction & Soil Testing Services Pty Limited dated 30 March 2016 (**Soils Report**); and
  - d. MOD 3 RTS and its accompanying Appendices, including:
    - i. the letter *Acoustic Review and Assessment Southern Acoustic Barrier Mulgrave Substrate Plant Mulgrave*, prepared by Acoustic Consulting engineers, dated 8 June 2018 (**Noise Impact Assessment (NIA)**);
    - ii. *Stormwater Management Report* prepared by Baker Ryan Stewart, dated October 2018 (**Stormwater Report**);
  - e. Further letter from Perram and Partners forming part of MOD 3 RTS dated 30 January 2019 commenting on the submission from Sydney Trains;
  - f. Submissions from Council, the agencies (Sydney Trains, EPA and DPIL&W) and the public, as outlined in Sections 5.3 and 5.4 of the Department's AR;
  - g. Proponent's original Environmental Assessment for the Concept Plan and Project application *Mushroom Industry Expansion in Western Sydney Environmental Assessment Volume 1*, prepared by Perram & Partners, December 2010 (**Original EA**);
  - h. The Department's AR for the original concept and project applications dated 11 January 2012 and the original conditions of approval;
  - i. Department's AR for the MOD 3 Requests, dated 10 January 2020 and draft conditions of approval; and
  - j. Proponent's revised Statement of Commitments dated 7 August 2018;
  - k. Notes from the Commission's site visit on 19 February 2020;
  - l. Letter from the Department regarding comments on draft conditions dated 11 March 2020.

## 6. THE COMMISSION'S CONSIDERATION OF PROPOSED MODIFICATIONS

### 6.1. External straw bale storage area and associated works

#### 6.1.1. Proposal

23. The Proponent seeks to delete two approved straw bale storage buildings in the south-eastern portion of the Site, adjacent to the weighbridge. These buildings were approved in the original Project Approval. Neither shed has been constructed to date, and the straw bales have been stored in the open air in the general location of the approved buildings, delineated by a straw bale perimeter wall which served as a temporary noise barrier. The Proponent seeks to expand the existing outdoor bale storage area, as illustrated in Figure 4 of the Department's AR.
24. The Original EA (p7.5) described these buildings as each being 50m x 36m in plan (total area 3,600m<sup>2</sup>) with a maximum height of 10m. Each shed was to include an automatic sprinkler system for fire protection.
25. The Project Approval as originally granted included an eastern walled bale wetting structure, located between the proposed bale storage sheds and an existing materials storage shed. This element was 49m long and included a seven metre high concrete wall along its southern side. The bale wetting area was deleted as part of MOD 1 and a portion of this space has subsequently been used as part of the external bale storage facility.
26. The Proponent's EA also notes that a temporary noise control solution was approved as part of MOD 1 whereby straw bales were stacked near the boundary in a configuration to achieve the desired noise screening.
27. The expansion of the straw bale storage area, and proposed noise barriers (discussed below), require a portion of the south-eastern corner of the Site to be filled to create a level surface matching the levels of the existing hardstand area. The Proponent's MOD 3 EA states on p2.2 that 2,250m<sup>3</sup> of fill is needed to raise the levels to RL16.
28. With the deletion of the approved sheds, the construction of an acoustic wall is now required to mitigate noise impacts. In relation to the proposed acoustic wall, the Proponent indicates in the MOD 3 EA (pp 2.1-2.2) that:

*Location and design details for the proposed noise barrier are shown in plan and elevation drawings in Appendix B. The barrier will extend along the full southern and eastern boundaries of the outdoor bale storage area and return approximately 18 metres along the western boundary where it is adjacent to the existing materials storage shed.*

*The wall will have a height of four metres above the finished surface of the bale storage area. This land has mostly been filled to 16 metres AHD for flood protection. The adjacent land to the south and east has not been filled to the same extent so the wall will have a variable height of up to eight metres with the section of the wall below the finished level of the bale storage area having the function of retaining the filled land. The noise barrier will be formed with concrete panels retained between steel columns and be of similar appearance to barriers used beside modern road projects. The panels will be of sufficient strength to tolerate occasional impact from front end loaders placing and collecting straw bales in the storage area.*

29. The plans accompanying MOD 3 show that the wall includes returns on the eastern side (61m) and western side (18m) of the outdoor bale storage area. It is noted that the plans for the eastern wall show a 6m wide (approx.) gate to the existing flood access road.

30. Another new wall, identified as the Northern Wall is proposed to be constructed to create a physical barrier between the outdoor bale storage area and the existing weighbridge and fuel storage tank. This element is described in Section 2.1.2 the AR as:

*...approximately 50 m in length, and would be separated by a distance of 2 m to the weighbridge and 6m to the fuel storage tank. For consistency, the wall would be of an identical height and design to the proposed southern noise barrier...*

31. The MOD 3 EA states (pp 2.2 - 2.3) that this wall does not have an acoustic function but is intended to delineate the edge of the bale storage area from the existing weighbridge and fuel tank and to create a physical separation, thereby ensuring that the straw bales cannot be stacked so close to the existing weighbridge or fuel tank so as to present a hazard to those assets in the event of fire.

### 6.1.2. Department's consideration

32. Regarding the **deletion of the storage sheds** and proposed expanded outdoor storage of the straw bales, the Department's AR (second paragraph, p15) indicates that the approved production levels of substrate will not change.
33. Regarding the **filling** of this part of the Site, Section 6.2 of the AR, under the issue of 'Flooding' notes that the area of filling, including the additional fill required to construct the western tree corridor, would not exceed the approximately 1.6ha expansion of footprint originally approved. The Department has concluded that based on the Proponent's Flood Assessment, "the potential flood impacts of the modification request are negligible, subject to the implementation of the recommended conditions of approval".
34. The Department also considered Council's submission, including recommended conditions in this regard.
35. In terms of the proposed new **noise barrier** on the southern and eastern boundaries, Section 6.1 of the Department's AR addresses the 'visual impact' of this element as follows:

*The Department is satisfied that the modification request will assist in improving the visual impact of the substrate plant, given that the southern barrier would be less than half the height of the approved bale storage sheds.*

36. The Department's AR has also addressed the suitability of the wall to attenuate noise. Section 6.2 Other Issues under 'Noise' states that the Department:

*Is satisfied that the Proponent's NIA is conservative, and that operational noise generated during the use of the outdoor bale storage area would comply with the relevant noise criteria at the nearest sensitive receivers.*

### 6.1.3. Commission's consideration

37. In terms of the **expansion of the bale storage area** the Commission notes that the Department's AR confirms that the approved production levels of substrate would remain unchanged as a result of the modification and that:

*"... on 31 October 2019, a request by the Proponent to increase substrate production to 2,400 tonnes per week [Stage 3 plant capacity] was approved in accordance with the conditions of the Minister's approval".*

38. The outdoor storage reflects the existing operations on the Site and with the noise barrier, should present no additional impacts beyond those associated with the previously approved storage sheds.
39. In terms of the **filling of land** the Commission notes that the additional fill associated with the MOD 3 works is generally within the approximately 1.6ha expansion of the Substrate Plant approved under the original applications and on this basis, the Commission is in agreement with the Department that the flooding impacts of the works associated with the modification request are negligible, subject to implementation of the recommended conditions of approval.
40. With regard to the **southern noise barrier**, based on the information in the original EA, the walls near or on the boundary were a total of 99m long and partly 7.3m high metal clad and part 7m high concrete walls. The new wall proposed as part of the Requests extend for a distance of approx. 137m on the southern edge of the bale storage area and will observe a 1 metre setback from the common boundary with the rail corridor.
41. The Commission notes that the Acoustic Report which accompanies MOD 3 indicates that the acoustic wall is proposed to be constructed of Hebel, precast concrete or equivalent with metal post supports.
42. As the Site adjoins the rail corridor to the south, the Commission considers the visual impact associated with the proposed southern arm of the wall is satisfactory, as confirmed during the Site visit. No landscaping or other treatment of the southern side of the acoustic wall is required.
43. The acoustic wall also returns at the western end for a distance of approx. 18m parallel to the eastern elevation of the materials storage shed, and for a distance of 61m at the eastern end, generally coinciding with an existing fence line.
44. The Commission finds that the **western return of the wall** is satisfactory as it will not be visible outside the Site boundaries.
45. The Commission notes that part of the **eastern portion of the noise barrier** will be visible from Mulgrave Road and Hawkesbury Valley Way. Although the impact is mitigated somewhat by the setback (approx. 95m) from the Mulgrave Road boundary, the Commission considers that the visual amenity would be improved through the implementation of screen planting. Condition 24C is imposed by the Commission in this regard. This was discussed with the Proponent at the Site Visit.
46. The Commission finds that the visual impact associated with the proposed **northern wall** which separates the bale storage area from the weighbridge and the fuel storage tank is negligible as it is internal to the site and will not be visible from the surrounding area.

## 6.2. Western tree corridor

### 6.2.1. Subject works

47. The Proponent's EA (p2.3) states that a corridor of trees had been established on the site from February 2015 to:
  - *delineate the western side of the substrate plant and its operations from the balance of property which remains as farmland extending to South Creek;*
  - *enclose and screen the existing dam, west of the site; and*

- *provide a continuous visual screen to the extent possible along the western side of the site to reduce the visibility of batters and structures being constructed under MOD 1 and to complement existing screening already established on other sides of the plant.*
48. The Proponent's MOD 3 EA (p 2.4) indicates that the tree corridor is on the western side of the Site and comprises a linear earth mound approx. 10m wide and 110m long. Further,
- The mound was created using excavated natural material imported to the site for this purpose and some material stripped from areas previously filled for MOD 1, including the biofilter pad. Reports from Compaction & Soil Testing Services Pty Ltd verifying the source and importation of material for the tree corridor are included as Appendix E. Tree species planted are from the schedule of species previously planted at the substrate plant site.*

### 6.2.2. Department's Consideration

49. Section 2.3 of the Department's AR indicates that the mound comprises approximately 4,100m<sup>3</sup> of fill, sourced from Breakfast Point, and 'was planted with species typical of a riparian zone'.
50. With regards to the visual impact of the tree corridor, Section 6.1 of the Department's AR states that
- the western tree corridor would have a reduced visual impact when compared to the original project, as it will help to screen the substrate plant's buildings and structures when viewed from the west.*
51. The western tree corridor is also considered in the AR under Section 6.2 Other Issues 'Flooding'. The conclusion was that this would have negligible impacts as in paragraph 33 of this SoR above.

### 6.2.3. Commission's consideration

52. The Commission notes that the tree corridor is already completed and the vegetative cover is well advanced. This provides screening of the Substrate Plant. The Commission refers to the Department's reliance on the information in the MOD 3 EA (Appendix E Soils Report) which stated that the fill material "...had been validated as Excavated Natural Material by Compaction & Soil Testing Services Pty Ltd (Report No. 659 – BAY 2149 ENV-AB)." The Commission finds that the western tree corridor is acceptable and that it should be formally approved and remain.

## 6.3. Amendment to stormwater system

### 6.3.1. Proposal

53. Section 2.2 of the Department's AR indicates that in the Project Approval as originally approved, the stormwater management of the Site:
- Included the conversion of two existing sediment basins into stormwater detention basins (known as Basin 1 and Basin 2) the construction of a bio basin (adjoining Basin 2) and the installation of a reed bed adjoining the north- eastern dam. As of December 2009, the approved stormwater management system had not yet been constructed.*
54. Further, that:



*In addition, changes made to the substrate plant site layout as part of MOD 1 have resulted in a reduction in the size of the north-western catchment, and a subsequent increase in the size of the western catchment.*

*In order to ensure stormwater flows from the substrate plant site do not exceed the pre-project discharge rate, the Proponent is seeking to:*

- *reduce and reconfigure Basin 2, incorporating a bio filter, on-site detention basin and sedimentation basin into one structure*
- *construction of a new south-western basin (Basin 3), incorporating a discharge control pit, bio filter and sedimentation basin (see Figure 5).*

55. The amendments now proposed in MOD 3 are required as:

*The Proponent has advised that the amended stormwater management system would reduce pollutant loads from the site and direct a greater volume of stormwater to the western discharge point. This would subsequently improve the balance of stormwater directed to each catchment area and reduce the length of stormwater piping required to service the substrate plant site. (AR, Section 2.2 bottom of p7.)*

### **6.3.2. Department's consideration**

56. Section 6.2 of the Department's AR assessed this aspect of the Requests. Based on the information provided by the Proponent in the MOD 3 EA and the MOD 3 RTS, including the Stormwater Management Report, the Department concludes:

*The Department is satisfied the amended stormwater management system is appropriate on the basis that:*

- *the amended system would have sufficient stormwater detention capacity to cater for a 1 in 100-year storm event*
- *the amended system would ensure peak stormwater discharge rates do not exceed pre-project levels*
- *the updated MUSIC modelling shows pollutant loads from the site would achieve Council's stormwater quality targets.*

*The Department's assessment concludes the amended stormwater management system has been designed in accordance with the requirements of Council and is adequate for the management and treatment of flows from the site.*

*The Department has recommended the Proponent update the substrate plant's Water Management Plan (WMP) to reflect the amended stormwater management system.*

### **6.3.3. Commission's consideration**

57. The Commission agrees with the conclusions made by the Department and supports the amendments to the stormwater regime as outlined in the Proponent's Stormwater Report. The proposed Stormwater Catchment Plan and Management Plans are referred to in the Instrument of Approval in Appendix (2A). Conditions 17D and 17E are to be imposed requiring an updated Water Management Plan to be submitted and implemented for the Substrate Plant Site.

## 6.4. Other issues raised in submissions

### 6.4.1. Issues raised by Council

58. The Council in its submission dated 23 October 2019, raised concerns with the impacts on **sewerage**.
59. The Commission notes that Proponent's RTS (p 8) states: "... that MOD 3 will not require any modification to the existing sewer on the property. There will be no impact on sewage disposal".
60. The Council also raised concern that no **contributions under section 7.12** of the EP&A Act had been paid under the Council's Section 94A Development Contributions Plan. This would apply to works with a value of over \$100,000.
61. The Department's AR addressed this in Section 6.2 Other Issues under 'Contributions' and indicated that the Proponent's MOD 3 RTS indicated that "the cost of the additional works proposed under the modification request would not exceed \$100,000."
62. The Department's AR concludes that the provisions of Hawkesbury Section 94A Contributions Plan 2015 do not apply to the modification request and the Department is satisfied no contribution is required for MOD 3.
63. The Council requested that conditions regarding **performance, damage and defects bonds** be applied to the approval, regarding damage from heavy vehicles.
64. The Commission notes that the Department has included a new condition regarding mechanisms for the protection of public infrastructure, including the need to repay the cost of any damage.

### 6.4.2. Issues raised by Sydney Trains

65. The Site is located adjacent to the Richmond railway line. Sydney Trains, in its submission dated 19 December 2018, raised concerns specifically in relation to potential impacts on its land and assets and requested the inclusion of various conditions 'on any consent issued'.
66. The Commission concurs with the Department's proposed simplified version of the condition required by Sydney Trains proposed in Conditions 9, 29 and 30.

### 6.4.3. Issues raised by other agencies

67. The **EPA** provided comment and a recommended condition on 7 June 2018:  
*the proposed discharge control pits be constructed to include stormwater isolation valves to facilitate the capture of accidental spills including from the fuel storage structures and workshop areas that drain through these systems.*
68. The Proponent's RTS included amendments to the stormwater design which specify the installation of stormwater isolation valves to each stormwater detention basin.
69. The Commission notes the proposed condition which requires the Proponent to update the Water Management Plan for the Substrate Plant to reflect the amended stormwater system and agrees with the Department that this issue has been addressed.
70. The **DPIL&W** requested a condition that requires the preparation of a Vegetation Management Plan (**VMP**) for the Riparian corridor.

71. The Commission notes that existing Condition 23 in Schedule 3 refers to the Riparian Management Area but does not require a VMP. However, it is further noted that the Riparian Corridor (which is located directly adjacent to South Creek) is different to the landscaped mound, the western tree corridor which is the subject of the MOD 3 application. On this basis the Commission finds that existing Condition 23 is satisfactory.

#### **6.4.4. Issues raised by the public**

72. The Department's AR (Section 5.3.2) summarises the key concerns raised in the public submission that objected to the Modification Requests as relating to the management of fill material, ongoing community consultation, fire safety, the storage and ongoing use of sulphuric acid and the legal description of the Substrate Plant site.
73. In relation to these issues, the Commission notes that there are existing conditions in the Project Approval that:
- stipulate that only VENM and/or ENM or material approved by the EPA is used as fill at the Substrate Plant site
  - require the preparation of a Community Consultation Strategy by the Proponent, including access to information being available on a publicly accessible website
  - require the implementation of suitable measures to minimise the risk of fire
  - require all dangerous goods and hazardous substances are stored and handled in accordance with the Dangerous Goods Code and relevant Australian Standards.
74. Having regard to the above, the Commission is satisfied that the matters raised in the public submission that objected to the Requests have been addressed in the conditions imposed by the Commission.

#### **6.5. Concept plan modification**

75. At the time of the original approval, the Substrate Plant component of the Project Approval was prohibited under the then applicable LEP. The site was partially rezoned by the subsequent instrument, the Hawkesbury LEP 2012, so that the Site is now zoned part IN2 – Light Industrial and part RU4 – Primary Production Small Lots.
76. That part of the Substrate Plant located in the IN2 Zone now constitutes a permissible use. However rural industries are not permissible in the RU4 Zone. The western tree corridor, the new stormwater detention basin (Basin 3), and the redesigned Basin 2 are located in the RU4 zoned part of the Site.
77. Under the former section 80(1) of the EP&A Regulation 2000, approval for the carrying out of a project which is partially prohibited can only be given where there is a concept plan in place. Therefore, the Concept Plan is still required in order to approve this component of the Project Approval modification. The Concept Plan therefore needs to be modified with reference to these works. The Commission agrees with the modifications made to the Concept Plan as shown in the draft instrument of approval prepared by the Department.

## 7. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

78. The Commission carefully considered the views of the submitters, including those of the objector as part of its decision-making process. The manner in which these concerns were considered by the Commission is set out in Section 6 above, including Section 6.4.4.

### 7.1 Scope of section 75W of the EP&A Act

79. Pursuant to section 75W of the EP&A Act, the Minister may modify an approval (with or without conditions) or refuse a modification. The Commission finds that the proposed changes are within the scope of section 75W.

### 7.2 The public interest consideration for Part 3A projects

80. The Commission has considered the public interest including the objects of the Act, the principles of ESD and community submissions and finds that the approval of the Modification Requests is in the public interest because the:

- provision of acoustic barriers to the open-air bale storage area will improve the attenuation of noise emanating from the operations on the Site, thus protecting the environment
- community concern with potential fire risk within the Substrate Plant will be mitigated through the installation of the proposed internal northern wall, which will provide physical separation between the external bale storage area and the fuel storage tank and weighbridge
- visual amenity of the development on the Site has been improved by the western corridor planting and will be further improved as a result of the screen planting required by the Commission to be installed along the eastern arm of the proposed noise barrier
- updated stormwater management system will allow for the on-going operation of the Substrate Plant, thus promoting the orderly and economic use of land as well as ensuring the protection of the environment
- potential impacts do not result in additional impacts beyond those already assessed and approved
- potential impacts can be appropriately addressed through amendments to the existing conditions of approval.

81. The Commission accepts the findings of the Department that the impacts of the proposed amendments to the project are acceptable and can be appropriately mitigated through the implementation of its recommended conditions of the Modification to the Project Approval, subject to the following as proposed by the Commission:

- Add more detail to **Condition 17F**, including in relation to structural aspects of the Noise Barrier, given that the Site is flood prone
- Apply a new **Condition 24C** that will require the submitted landscape plan to be amended to show additional landscaping along the eastern arm of the new noise barrier, in order to improve the visual amenity of the Site when viewed from Mulgrave Road and Hawkesbury Valley Way.

82. The Commission also accepts the Department's administrative changes to the Approvals, including to the Conditions in Schedules 4 and 5 of the Project Approval.

## **8. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION**

83. The Commission has inspected the Site and has carefully considered the Material before it. For the reasons set out above, the Commission finds that the modifications will not introduce any additional impacts that have not been previously assessed, and subsequently found to be acceptable by the Department in its determination of the applications CP 08\_0255 and MP 08\_0255, as modified.

84. The Commission agrees with the Department's finding that the Modification Requests should be approved, subject to the imposition of conditions.

85. The Commission finds that the modifications will have minimal environmental impact and are within the scope of section 75W of the EP&A Act.

86. The Commission has determined to approve the Modification Requests subject to the Department's recommended conditions and the additional conditions imposed by Commission on the Project Approval MP 08\_0255 set out in paragraph 81.

87. The reasons for the Decision are given in this Statement of Reasons for Decision, dated 16 March 2020.



**Professor Snow Barlow (Chair)**  
**Member of the Commission**