

SUTHERLAND SHIRE COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSSH-107 |
| DA Number | MA21/0359 |
| LGA | Sutherland Shire |
| Proposed Development: | S4.55(2) modification to DA17/0161 – changes to warehouse internal and external design and height, layout and configuration of car and truck parking, layout and location of rainwater tanks, plant room, substation and waste area, new signage, introduction of temporary hardstand area to Stage 1, installation of weighbridge and revision of truck and car entry / exit driveways, changes to conditions 4A, 18, 35A and 46 |
| Street Address: | Lot 1 DP 1271001 - 186 Captain Cook Drive, Kurnell |
| Applicant/Owner: | Insight Project Services Pty Ltd |
| Date of DA lodgement | 1 October 2021 |
| Number of Submissions: | Nil |
| Recommendation: | Approval |
| Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021 | General development over \$30 million |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) • Sutherland Shire Development Control Plan 2015 (SSDCP 2015) • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • Section 7.12 Development Contribution Plan 2016 - Sutherland Shire |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none"> • Appendix A: DCP Compliance Table • Appendix B: Draft Conditions of Consent |
| Report prepared by: | Slavco Bujaroski – Development Assessment Officer Sutherland Shire Council |
| Report date | 27 May 2022 |

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No, not yet**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

REPORT SUMMARY

REASON FOR THE REPORT

This application is classified as a s.4.55(2) modification application and relates to a development that was approved by the Sydney South Planning Panel. Section 123BA of the Environmental Planning and Assessment Regulation 2000 limits Council's power to determine s.4.55(2) modification applications originally determined by a regional planning panel if the application satisfies the criteria in the document titled: *Instruction and Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Consents*. The relevant parts of this document state that if the application proposes amendments to a condition of development consent recommended in the Council assessment report but which was amended by the panel, then Council is not able to determine the application to modify the consent under s.4.55(2) of the Act. The applicant proposes amendments to conditions that were recommended in the assessment report and were amended by the panel and, therefore, Council is unable to determine the application and it must be referred to the Sydney South Planning Panel.

PROPOSAL

The application is for modification of DA17/0161 at the above property.

THE SITE

The site is located on the eastern side of Captain Cook Drive and directly adjoins the Caltex fuel import terminal (previously the refinery). The Sydney Desalination Plant (SDP) is about 250m to the south of the site.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

- A. That pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the requested modification to development consent No. DA17/0161 for construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes food and drink premises and amenities at Lot 1 DP 1271001 186 Captain Cook Drive, Kurnell be supported.
- B. That Development Application No. DA17/0161 for construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes food and drink premises and amenities at Lot 1 DP 1271001 186 Captain Cook Drive, Kurnell be modified in accordance with the draft conditions in Appendix B.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSED MODIFICATIONS

An application has made under the provisions of s.4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify the terms of development consent DA17/0161.

Council, by development consent No. DA17/0161 issued on 21 November 2018, granted a deferred commencement consent for the construction of a warehouse for storage and distribution of tyres and an ancillary office building which includes a food and drink premises. The consent was activated by Council on 19 March 2019 following the receipt of additional information.

The specific modification sought to the approved development involves:

- Redesign of the roof of the warehouse building to a regular pitched roof.
- Change to the warehouse building footprint to be a more regular shape.
- Reconfiguration of the internal areas of the warehouse and relocating storage areas and office areas to the south eastern corner of the building.
- Relocated loading docks to the warehouse
- Relocated car parking configuration and location.
- Altered layout and location of rainwater tanks, plant room, and waste area and relocation of the substation.
- Installation of a weighbridge and minor amendments to the car entry / exit driveways.
- Amendments to the approved stormwater drainage concept and requesting the deletion of Condition 18.
- Deletion of parts of Condition 4.
- Deletion of Condition 35.
- Deletion of Condition 46.
- Updated Vegetation Management Plan submitted.

2.0 APPROVED DEVELOPMENT

The approved development was for the construction of a warehouse for storage and distribution of new vehicle tyres and the construction of an ancillary office building that also contains a take away food and drink premises. Both buildings are for Tempe Tyres which is a retail outlet on Princes Highway, Tempe.

The warehouse building is irregularly shaped to address the triangular nature of the site and to provide for servicing and access by heavy and articulated vehicles to a series of loading docks along both the northern and southern sides. The warehouse consists of a total of 6 bays which vary in length from 130m up to 226m. The ground level of the warehouse is built up by 2m to address the flood prone nature of the site and in anticipation of climate change.

The proposed warehouse building heights are up to 17.6m to accommodate existing ground conditions and roof forms. The scale of the warehouse complex is compatible with the scale and mass of the buildings and large fuel storage tanks on the adjacent Caltex fuel import terminal.

The proposed 4 storey office building is circular in shape with an internal circular atrium enclosing a central garden with glazed roof above, rising to a height of 16.87m above existing ground level. The office building has been designed to provide a range of facilities for staff associated with the warehouse functions (including truck drivers) and office staff. One of these is a take away food and drink premises in the form of a “booth” from which staff, truck drivers and (potentially) external visitors can purchase food and drink. The form of the office building, together with the selected cladding, simulates a tyre-like appearance.

The proposal accommodates associated at-grade parking and includes a circulation road around the warehouse for large articulated trucks. There is a bay that accommodates up to 7 heavy vehicles in the south-eastern corner for trucks waiting for an available loading dock.

Demolition of existing structures and removal of existing concrete hardstand will occur in accordance with the approved DA14/0456, which granted consent to “Demolition of an Existing Hydrocarbon Extraction Plant”. New fill material will be required on site in order to construct at the proposed finished levels.

Tempe Tyres plans to operate the warehouse component on a 24 hours per day, 7 days per week basis. The ancillary office building is expected to operate between 7am and 6pm on weekdays.

The facility will employ up to 20 staff during the day shift (7am to 6pm) and 7 staff during the night shift (6pm to 7am). Tempe Tyres expects to employ up to 60 staff in the ancillary office building, between 7am and 6pm on weekdays. Therefore, there will be up to 80 staff on site at any one time during 7am and 6pm on weekdays.

Though documentation submitted with the DA refers to “stages” of the development, the DA is not a concept DA under s4.22 of the Environmental Planning and Assessment Act. Rather, the staging reflects the possibility to deliver 2 components of the development in 2 construction phases. The applicant has advised that Tempe Tyres may temporarily operate the warehouse prior to constructing the ancillary office building.

3.0 SITE DESCRIPTION AND LOCALITY

The site is legally described as Lot 1 in DP1271001 and is known as 186 Captain Cook Drive, Kurnell. It is situated directly adjacent to the former Caltex refinery plant (now operating as a fuel import terminal for New South Wales and the Australian Capital Territory).

The site has 3 road frontages including; Captain Cook Drive, Sir Joseph Banks Drive and Chisholm Road. The parcel of land is irregular in shape and has a total area of 58,800m². A former hydrocarbon extraction plant was located toward the south-eastern corner of the site. One small brick building

associated with this former operation remains to be demolished. Demolition of this structure was previously approved under a separate development application (DA14/0456).



Location plan

To the north and north-west, the site adjoins an internationally designated RAMSAR site, the *Towra Point Nature Reserve*. The site also contains remnants of the endangered ecological community (EEC) 'Kurnell Dune Forest' and is mostly confined to the south-west corner bounded by Chisholm Road and Sir Joseph Banks Drive. This is an endangered ecological species under the NSW Threatened Species Conservation Act. The remainder of the vegetation is heavily weed infested and has been damaged by a tornado that passed across the Kurnell Peninsula in 2015.

There are 2 threatened plant species on the site: *Callistemon linearifolius*, and *Syzygium paniculatum*, located in the EEC near Chisholm Road. There are 2 small man-made wetlands which are potential habitats for the Green and Golden Bell Frog and which are currently supporting sedges and rushes, *Gahnia spp* and *Phragmites*. The residual land comprises primarily remnant vegetation. In 2015 however, a storm cell of tornado-strength passed across the Kurnell Peninsula and, as a result, the site's vegetation has suffered significant disturbance.



Aerial view

There is a major easement adjacent to the north-west boundary containing a pipeline from the Sydney Desalination Plant.

The site's primary access point is located on Chiscolm Road where 2 egress points facilitate one-way traffic for entry and exit. A secondary access point is located on Sir Joseph Banks Drive, however, no paved driveway exists.

4.0 BACKGROUND

A history of the development proposal is as follows:

- Development consent was granted on 25 June 2014 under DA14/0456 for the decommissioning and demolition of the hydrocarbon extraction plant formerly located on site.
- DA17/0161 was lodged with Council on 21 February 2017 and approved by way of a deferred commencement consent by the Sydney South Planning Panel on 21 November 2018.
- The deferred commencement matters were addressed by the applicant and the consent was activated by Council on 19 March 2019.
- The current modification MA21/0359 was lodged with Council on 1 October 2021.
- The application was placed on exhibition between 14 February 2022 and 8 March 2022. No submissions were received.
- Following a preliminary assessment of the proposed modifications, Council sent a letter to the applicant on 29 March 2022 and requested the following:
 - Clarification of floor space and mezzanine levels as architectural plans indicate one floor level but BCA and Fire Engineering reports indicate mezzanine floor levels

- If no mezzanine levels, BCA and Fire Engineering reports to be updated to be consistent with architectural plans.
- Building height breach unacceptable if no mezzanine levels.
- Outdoor recreation area to be connected to indoor lunch room
- Staging plan to be updated
- Details of 'general warehouse storage' to be provided
- Stormwater design concerns regarding drainage of undercroft
- Deletion of entire contents of Condition 18 unacceptable but individual components may be acceptable if incorporated in plans
- Updated acoustic report required to support removal of Condition 35A(i) and (ii)
- Deletion of Condition 46 dependant on clarification of floor space noted above
- Submitted Vegetation Management Plan acceptable
- Deletion of Conditions 4A (i), (ii), (iii), (iv) and (v)
- Additional information and plans were received on 19 April and 21 April 2022.

5.0 NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. DA17/0161 pursuant to Section 4.55(2) of the EP&A Act.

An assessment of the type of modification proposed has been carried out in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 (EP&AR 2000) and a Section 4.55(2) is the appropriate type of modification application.

6.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application.

7.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

202 adjoining or affected owners were notified of the proposal and no submissions were received as a result.

8.0 STATUTORY CONSIDERATIONS

The site is within Zone IN3 Heavy Industrial pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *warehouse or distribution centre*, is a permissible land use within the zone with development consent from Council. Office buildings are prohibited in the zone.

The modifications do not propose any changes to the office building. The original application determined that the office component of the development was ancillary to the warehouse and was

permissible within the zone with consent from Council. This conclusion was based on the following which was included in the original assessment report:

- *The proportion of GFA allocated to the office is approximately 6% of the total GFA proposed (3,321 m² for the office compared to 55,792m² for the warehouse);*
- *Should the same quantum of office GFA be accommodated within a building that is attached to the warehouse and has the same form and aesthetic as the warehouse, it would be treated as an ancillary office component to the warehouse;*
- *The office is proposed to be constructed as a third and final stage of the overall development; and*
- *The facilities proposed within the office will directly support the warehouse staff, including the "take away food and drink booth" located on the ground floor of the office building.*

The reduction in warehouse floor space for the storage of tyres changes the office / warehouse floor space proportions. The office building is now 16.5% of the area of the warehouse.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)
- Sutherland Shire Development Control Plan 2015 (SSDCP 2015)
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- Section 7.12 Development Contribution Plan 2016 - Sutherland Shire

9.0 COMPLIANCE

The compliance table below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

9.1 Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

| Sutherland Shire Local Environmental Plan 2015 | | | | |
|--|-------------------------------------|--------------------------------|------------|--------------------------------|
| Clause | Standard | Proposed modifications | Compliance | Approved Development |
| cl.4.3 - Building Height | 16m maximum | 16.98m | No – 6.1% | 17.6m |
| cl.4.4 - FSR | 1:1 (58,800m ²) maximum | 0.53:1 (31,202m ²) | Yes | 0.95:1 (55,792m ²) |
| cl.6.14 - | 10% (5,880m ²) | 31.3% (18,399m ²) | Yes | 28% (16,515m ²) |

| | | | | |
|-----------------|---------|--|--|--|
| Landscaped Area | minimum | | | |
|-----------------|---------|--|--|--|

9.2 Sutherland Shire Development Control Plan 2015 (SSDCP 2015)

The proposal has been assessed for compliance with SSDCP 2015. A compliance table with a summary of the applicable development controls is contained within **Appendix A**.

10.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

External Referrals:

The original application was referred to the following external authorities:

- Roads and Maritime Services (RMS)
 - NSW Department of Planning and Environment
 - Commonwealth Department of Environment and Energy
 - DPI Fisheries
- i. RMS: Comments from the RMS under the original development application indicated that they had no objection to the proposal as Captain Cook Drive was a regional road under the care and control of Council. This modification application has not been re-referred to RMS.
 - ii. NSW Department of Planning and Environment (DPE): Original comments from DPE recommended conditions to be imposed regarding hazards and safeguards due to the proximity of the development to the Ampol Facility and due to the bulk storage of rubber tyres. Conditions 5 and 6 of the original consent relate to this recommendation. There is no proposal to modify these conditions, however, this modification application has been re-referred to the Department for comment. Updated comments were received from DPE which concluded that *“the hazards from the modified facility is substantially similar to the original facility, being the storage of tyres in the vicinity of the Ampol (formerly Caltex) Kurnell facility. The MOD scope in SEE Section 3 is not likely to substantially alter the risk profile of the modified facility compared to the original facility. As such, the MOD is not precluded in terms of hazards and risks, and the conditions we already provided in 2017 remain relevant.”*
 - iii. Commonwealth Department of Environment and Energy: The original application was referred to the Commonwealth Department of Environment and Energy by the applicant as the site is near the Ramsar listed wetlands at Towra Point Nature Reserve. The Commonwealth Department of Environment and Energy advised that the original proposal was not a controlled action and no further assessment was required. The proposed modifications do not significantly alter the development on the site, and, therefore, re-referral to this authority has not been carried out.

- iv. DPI Fisheries: NSW DPI Fisheries (a division of the NSW Department of Primary Industries) was consulted in the original development application due to the proximity of the site to the Towra Point Aquatic Reserve. Comments received from DPI Fisheries were taken into account during assessment of the original proposal and formed the basis of conditions of consent relating primarily to stormwater management and water quality. The proposed modifications do not significantly alter stormwater management on the site and conditions relating to water quality are to be retained in the consent. On this basis, this proposal has not been re-referred to DPI fisheries.

Internal Referrals:

The proposed modifications were referred to the following internal Council specialists and a summary of their comments have been included below:

i. Landscape Officer –

- *An updated landscape plan has not accompanied the Modification, but upon review of the Modified Architectural plans, the distribution of landscape area onsite appears as per the original DA in 2017 if not slightly more is provided and setbacks appear as were originally approved.*
- *A review of the original and revised VMPs was undertaken. Referring to '3.2 Revegetation Species List' of both documents, there are some changes to tree species proposed in 'Zone 5 the revegetation corridor' as the size / shape of this area has changed. What is now proposed with regards to tree species is more realistic with the removal of large gums and *Ficus rubiginosa* as the setback is only 5m wide.*
- *In terms of the large tree species specified in the Sydney Water Easement, Council's experience with Sydney Water Assets and trees would likely result in a conflict. It is likely that they could be removed by Sydney Water at any time for maintenance access. It is recommended that these large species be relocated out of this area and redistributing smaller specimens in this location.*

ii. Greenweb Officer –

- *The landscape area has increased under this modification.*
- *Overall, the proposed plant species are acceptable, however, in line with the landscape officer's comments, the canopy species can be reduced to just *Cupaniopsis anacardioides* and *Banksia integrifolia* subsp. *integrifolia*, which are small to medium size trees.*
- *Planting rates are appropriate, however, it is noted that the planting density for Ground covers in Zone 5 – Revegetation Corridor is 3 / m². This may have been changed because of discussions with Council's Stormwater Engineers that require this corridor to act as an open swale drain for major rain events and plant numbers needed to be reduced to provide better flow of the ground water.*
- *The VMP made references to outdated Acts i.e. Threatened Species Conservation Act 1995 & sections of the National Parks and Wildlife Act 1974, however, the impact of this*

or the potential requirement to obtain licences is still relevant under the new Act (Biodiversity Conservation Act 2016) but would not alter the requirements (works) of the VMP.

- Overall, the amended VMP is sound and functional. However, if an amended VMP is required, then perhaps these anomalies can be fixed and if the Revegetation Corridor (Zone 5) is no longer required as an open swale drain (because of the additional man-made wetland and any changes the Engineers may make regarding Stormwater requirements) then the Ground cover rates for this zone could be increased to 4 / m² to provide better coverage as per the other 3 zones with similar rates.*

iii. Environmental Scientist –

- The proposed modifications are acceptable subject to modifying the relevant conditions to refer to the new vegetation management plan.*

iv. Development Assessment Engineer

- The amended stormwater drainage concept plans are acceptable. The design would still have a large body of stormwater sitting under the building, however, Council was unable to put forward a strategy to the applicant's engineer to minimise the retention of stormwater under the building.*
- The amended parking layout, circulation and changes to the vehicle crossings have been assessed against the AS2890 series and Chapter 36 of SSDCP 2015 and were found to be acceptable subject to modifications to the relevant conditions.*

v. Traffic Engineer

- The proposed separate vehicle entry / exit driveways for both light and heavy vehicles off Chisholm Road is considered acceptable.*
- In accordance with Council DCP, the proposed development is required to provide 157 spaces for both Stage 1 and Stage 2 component. In response the applicant has proposed 176 spaces on-site for both stage 1 and stage 2 development. Therefore, parking provision for this development is considered acceptable. However, GFA discrepancies should be clarified to see that correct values have been used in determining the parking. At this stage we have no reason to impose staff levels based on our assessment.*
- In accordance with RMS guideline, the approved development would generate 319 vtp/h where the proposed development would generate 154 vehicle trips during peak hours.*
- Therefore traffic generating potential of the proposed development will be 50% less than currently approved on this site. Hence, traffic impact of this development is considered acceptable.*
- As the proposed development would generate significant vehicle movements including semi-trailers, it is therefore necessary that applicant contribute to the road works in the road reserve between the eastern end of Chisholm Road, along Sir Joseph Banks Drive and along Captain Cook Drive up to the new bus shelters as per previous approved development condition of consent.*

- *Based on the above considerations, the proposed development can be supported from traffic and parking perspectives.*

vi. Stormwater Engineer – Flooding

- *The architectural drawing show the finished floor level (FFL) of the habitable area for the proposed works to be minimum RL 4.2 m AHD and all non-habitable areas must be at or above RL 3.37 m AHD. All the internal driveway at 3.10 m AHD and all open car park within the subject site is at 3.40 m AHD.*
- *All proposed levels meet the minimum requirement according to DCP and are acceptable from a site specific flood risk management perspective. Hence, the proposed development is supportable from a site specific flood risk management perspective.*

vii. Health Officer

- *The deletion of Condition 35A(i) and (ii) is acceptable based on the lodgment of the revised acoustic report.*

viii. Building Surveyor

- *The submitted BCA report appears to be comprehensive and identifies a number of non-compliances. These non-compliances have been proposed to be addressed by way of performance solutions in lieu of modifying the design of the building.*
- *No additional conditions will be required to be imposed for this application other than the prescribed conditions for all new work.*

11.0 ASSESSMENT

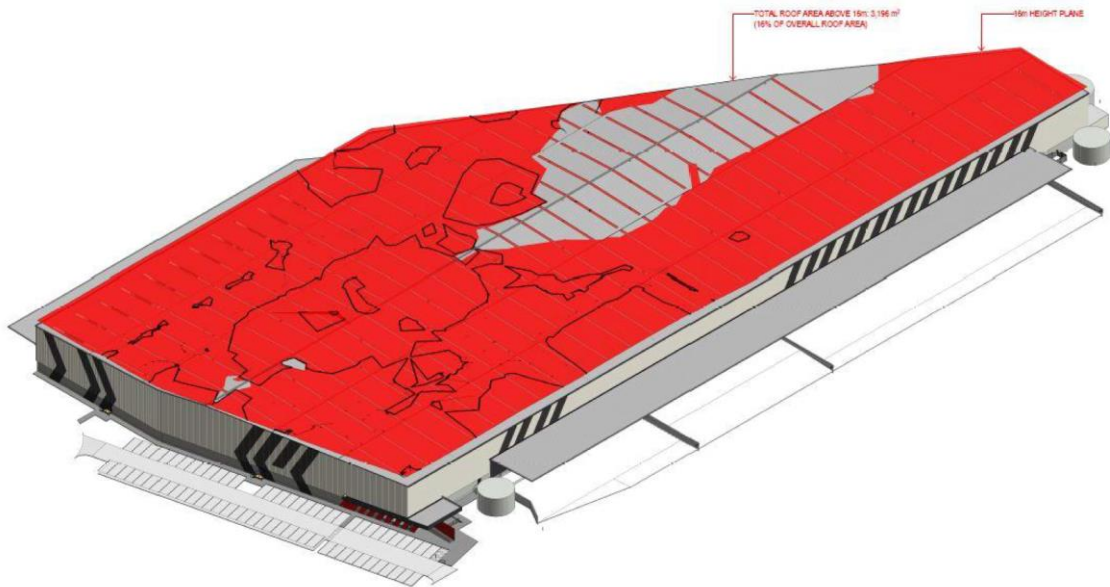
Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

11.1 Proposed warehouse modifications

The proposed modifications to the warehouse building include; a rationalisation of the building footprint by removing the stepping of the floor plan on the north and south sides of the building, replacement of the sawtooth roof with a standard pitched roof, the reduction in floor space by removing mezzanine levels (discussed in further detail below), rationalisation of internal spaces, the relocation of loading docks and the relocation of car parking spaces.

In terms of the building form, the proposed changes to the building shape both in plan and in section are logical and simplify the overall building form. The previous design was overly complicated and unnecessary given the utilitarian nature of the building and there was no need for 2 buildings on the site to provide a 'statement'; the 4 storey office 'tyre' building was sufficient. The rationalisation of the floor plan has also simplified truck movements and manoeuvring through the site and has allowed for the car parking areas to be separated from heavy vehicle movements. In terms of building height, the

extent of the breach to the building height has been reduced compared to the originally approved building. The originally approved building attained a height of 17.6m while the amended warehouse roof results in a maximum height of 16.98m. The proposed building form fills in part of the empty space of the sawtooth roof but achieves a lower height overall. The extent of the height breach across the building is a small percentage of the building footprint and is represented by the applicant's diagram below where the grey areas indicate the extent of the breach across the building.



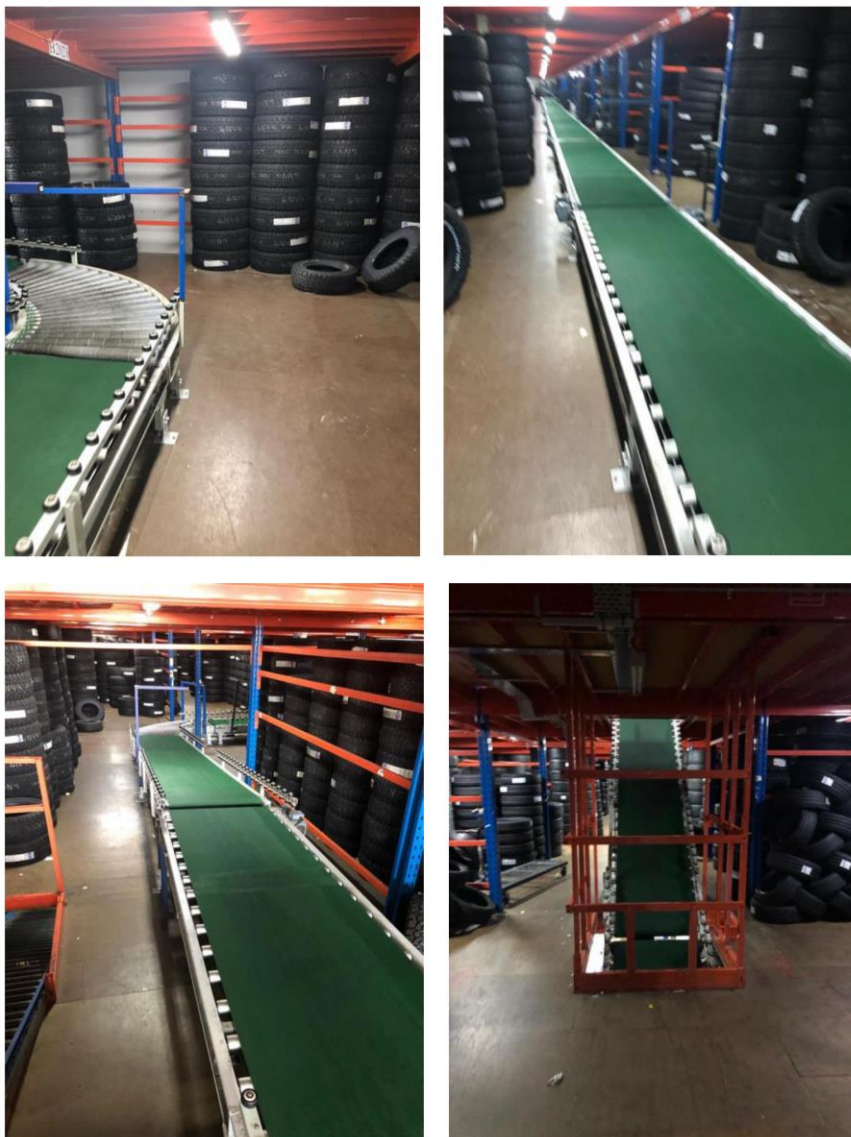
The proposed building form is considered to result in less visual bulk impacts compared to the original sawtooth design. The height breach is also concentrated mainly towards the northern side of the building where it faces Captain Cook Drive and the dense vegetation along the northern part of the site and would not introduce any additional visual bulk impacts to the street. The applicant has also argued that the reason for the height breach is to provide the necessary internal vertical height for the tyre racking system which comprises mezzanine levels like the approved building which is reasonable. Overall, the changes to the roof form are acceptable and will not introduce any significant additional external impacts compared to the approved building.

Internally, the architectural plans indicate that the building will now be a single level warehouse with only 4,266m² of the approximate 20,000m² area dedicated to tyre storage with the remainder being for 'general warehouse storage'. This is a significant change from the approved development whereby the approved building included 3 levels and over 50,000m² of floor space for tyre storage. Following a request for further information, the applicant has provided that 4,266m² of the ground floor area of the warehouse will be used for tyre storage in the short term and that, ultimately, the whole warehouse will be used for tyre storage. The applicant has indicated that the remainder of the warehouse (about 15,700m²) will be sub-let to a 3rd party warehouse operator for use as a warehouse in the short term. Notwithstanding the proposed change to the specific use of the warehouse by the applicant, the use of the building as a warehouse remains to be permissible and is acceptable. However, the proportion of the warehouse for tyre storage (the original intention) is significantly reduced.

In terms of the reduced tyre storage area of 4,266m², Council requested that details be provided regarding mezzanine levels inside the warehouse as the submitted BCA report and Fire Engineering

Report indicated mezzanine levels but the architectural plans did not. The applicant submitted that the tyre storage area comprises a special racking system that includes the installation of people accessible storage racks which are connected by conveyors (for the tyres) and stairs for people. They have stated that the storage racks are similar in appearance to mezzanines and have been treated as such from the point of view of the BCA but have argued that they should not be considered as floor space. Details of the storage system have not been included on the amended architectural plans with the applicant stating that the storage system should not have any implications for the assessment against the planning framework.

The applicant has indicated that the storage racks are 'people accessible' which is considered to generate floor space however the extent of this is not shown on the plans. The applicant provided photos of a tyre storage space (see below) in lieu of plans or sections, but this only shows a small area of tyre storage on a single level and indicates that there is a floor level above.



Photos of tyre racking system at other premises provided by applicant

As proposed, if the ground floor tyre storage area of 4,266m² is transposed to the 2 mezzanine levels, the warehouse would contain 8,532m² more floor space than shown on the plans. This additional floor

space does not affect the compliance of the development relative to floor space, however, it does affect the calculations in relation to car parking requirements for the development. As proposed on the amended plans, and only counting the ground floor area of the warehouse, the modified development would provide 23 more car spaces than required by Council's DCP. When including the additional area of 8,532m² (4,266m² over 2 mezzanine levels) the development would be short by 5 car spaces.

By comparison, the approved development included about 53,000m² of tyre storage space over 3 levels and provided 227 car spaces on site. The original development required 265 car spaces to be compliant, however, a car parking deficiency of 38 spaces was approved. Under the proposed modifications, the applicant indicates that the whole warehouse will ultimately comprise tyre storage which means that there is a potential for an additional 27,598m² of floor area to be included. This would equate to 92 more car spaces required to be provided to satisfy Council's parking requirement of 1 space per 300m² of warehouse space. The current proposal to use only part of the warehouse floor for tyre storage results in a parking deficiency of 5 car spaces which is considered a reasonable departure from the control. However, should the warehouse expand to its full capacity of mezzanine levels across the whole building, then the deficiency of 92 spaces would be considered significant and must be addressed by including additional parking on the site.

To ensure sufficient parking is available for the development as proposed, it is recommended that a condition be included that limits the area of mezzanines to an area of 4,266m² of the warehouse floor. The expansion of storage space within the warehouse in the future would require additional parking on the site which can be dealt with by a future modification application. Condition 4A is contained in the draft conditions in Appendix B and relates to this recommendation.

11.2 Stormwater drainage

The proposed modifications also include a new stormwater drainage concept for the development. While the new concept plans are generally acceptable, there is a question regarding the drainage of the undercroft area. The undercroft area is noted as having a ground level of 1.8m AHD while the downstream levels outside of the building are at about 2.1 to 2.2m AHD. This matter has been discussed with the applicant's engineer, however, Council has been unable to put forward a strategy to the engineer that would minimise stormwater retention under the building but has ultimately accepted the design. Proposed changes to the relevant conditions as a result of the new plans is discussed in section 11.4 and 11.5 of this report below.

11.3 Vegetation Management Plan (VMP) and Landscaping

The proposed changes to the building footprint and associated external hardstand areas results in an increase in landscaped area for the site of about 1,880m². In terms of plant species and planting rates, the ground cover rates for the bio-retention / channel flow paths proposed in the VMP (noted as being in Zone 5) are at 3 per m² whereas the other zones have ground cover rates of 4 per m² and 6 per m². A review of the ground cover species proposed in Zone 5 indicates that most of the species are 'scramblers' and vines which are not considered to impede the flow of stormwater in the channels. Therefore, it is recommended that the planting rates for Zone 5 be increased to 4 per m² to provide

better coverage and be consistent with the other planting zones on the site. Condition 25 has been updated with this requirement.

In terms of the large trees proposed to be planted in the Sydney Water easement, Council's experience with Sydney Water assets is that they could be removed by Sydney Water at any time for maintenance access. It is recommended that smaller species be planted in this area and Condition 25 has been modified in this regard. In addition, references in Conditions 21, 22, and 24 have been updated to refer to the new VMP.

11.4 Proposed modifications to conditions

In addition to the modifications to the building form of the warehouse and related external work, the applicant is proposing modifications to specific conditions of consent. The following conditions are proposed to be modified and comments have been provided in relation to the requested modifications for each condition:

- Condition 3 – Drawing and Document Table: The new table modifies the document table included in the deferred commencement activation letter. Condition 3 in the draft conditions in Appendix B reflects the changes.
- Condition 4 – Design Changes: The applicant has requested that Conditions 4A(i) to (v) be deleted as the changes required by the conditions have been addressed by the revised plans.

Comment:

- The requirements under sub-condition (i) and (ii) have been incorporated in the amended plans and can be deleted.
 - Sub-condition (iii) can be deleted as it is considered redundant,
 - Sub-condition (iv) can be deleted as staff parking along the eastern boundary is no longer proposed and;
 - Sub-condition (v) can be deleted as a staff recreation area has been provided on the amended plans.
- Condition 18 – Stormwater Drainage: The applicant has requested to delete the entire condition as they state that the requirements of the condition have been incorporated into the amended plans.

Comment: Deletion of the entire condition is not supported as; Condition 18A references a flood assessment report which has been updated and needs to be modified to reflect the new report and, Conditions 18B, 18C and 18D relate to requirements regarding certifications before construction certificate and before occupation as well as on-going requirements which must be maintained.

Notwithstanding this, Council has reviewed the items under Condition 18A relative to the proposed modifications and can confirm that most of the requirements can be deleted as they

have either been incorporated into the amended plans, are no longer relevant or are repetitive. The modification to Condition 18A has been described as follows:

- i. Sub-conditions i), iii), iv), v), vi), vii), viii), ix) and x) can be deleted as the amended stormwater plans satisfactorily address the requirements.
- ii. Sub-condition ii) is proposed to be modified as the plans now show acceptable locations for the bio-retention ponds and include required pipelines between ponds and required volumes and levels. The requirement for the type and size of pipelines within the verge of Chisholm Road has been retained to ensure appropriate pipes are used for stormwater drainage to the street kerb.
- iii. Item 2 of sub-condition xi) is proposed to be deleted as the information is on the amended plans. The remainder of the sub-condition is still relevant and to be retained.

Council is also proposing small changes to Part D of Condition 18 to clarify the requirements (in the case of sub-condition ii)) and to provide better wording in the case of Note 2 and Note 3.

- Condition 35 – Noise Mitigation Measures: The applicant has requested to delete Condition 35A(i) and (ii) due to the removal of roller doors and loading docks from the northern façade of the building stating that they no longer face residential properties to the north.

Comment: Council's Health Officer has raised no concerns in relation to this request following a review of additional information that comprised updated acoustic information.

- Condition 46 – Maximum Number of Staff: The applicant initially requested to delete the entire condition as they stated that the condition was originally applied in relation to the provision of car parking on the site. Following the lodgement of additional information, the applicant revised their position to request that the condition be modified to limit the staff on the site to 150 staff rather than 87 staff as originally approved. The applicant states that the 178 car spaces provided is sufficient to cater for 150 staff on the site while having the ability for 28 visitors to also park on the site.

Comment: The updated request by the applicant is reasonable and the condition is recommended to be modified to limit the staff on the site to 150.

11.5 Other changes to conditions

A review of all conditions has also been undertaken to ascertain whether other conditions need to be modified to suit the proposed modifications. The following modifications do not materially change the requirements of the conditions, they merely correct or update references and provide clarity to the conditions.

Condition 9: Updated condition to reference the correct section of the Environmental Planning and Assessment Act 1979 and Council contribution plan.

Condition 11: This condition is proposed to be midwived as follows:

- 11A(iii) amended to add a reference to the amended plans to clarify the requirement.
- Corrected an error in 11A(viii) to refer to the correct driveway.

Condition 15: Added clarification to 15A(x) to require a crash barrier where pavement is 600mm higher than ground level.

Condition 22: Updated references to certification schemes for the supervising ecologist.

Condition 25: This condition is proposed to be modified as follows:

- 25A is amended to refer to the new VMP, adding requirements in relation to trees in the Sydney Water easement and amending planting rate for Zone 5. Plant species are deleted as the new VMP includes appropriate species.
- 25B is amended to refer to the new VMP and the appropriate Council officer. Items i), ii) and iii) amended to reflect the new VMP.
- 25C wording simplified to refer to the supervising ecologist
- 25D amended to refer to the supervising ecologist.

12.0 SECTION 94 CONTRIBUTIONS

Section 7.11 / 7.12 contributions were levied on the original DA17/0161. The proposed modification will not increase the demand for public facilities and therefore the Section 7.12 contributions remain as originally applied.

13.0 DECLARATION OF AFFILIATION

Section 147 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts more than \$1,000. In addition, Council's development application form requires a general declaration of affiliation. In relation to this development application a declaration has been made that there is no affiliation.

14.0 CONCLUSION

The site is within Zone IN3 Heavy Industrial pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a *warehouse or distribution centre*, is a permissible land use within the zone with development consent from Council.

In response to public exhibition, no submissions were received.

The proposal includes variations to the building height and the number of car spaces. These variations have been discussed in this report and are considered acceptable subject to conditions of consent. The matter of floor space as it relates to car parking has been dealt with by a condition recommending that the floor area of mezzanines be limited so that the parking provided on the site satisfies the demands of the development.

This application satisfies the requirement that the development to which the consent as modified relates will remain substantially the same development as that originally granted consent. Further, there is no necessity for consultation with any Minister, public authority or approval body in respect to the modification sought by this application.

The application has been assessed having regard to the Heads of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Following a detailed assessment, it is considered that Development Application No. MA21/0359 may be supported for the reasons outlined in this report.