

SYDNEY WESTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-42
DA Number	DA-263/2018/A
Local Government Area	Liverpool City Council
Proposed Development	<p>Modification to Development Consent DA-263/2018 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification seeks alterations to the site layout, including an enlarged slab, altered internal vehicle movements, and noise barriers; an increase in building height and footprint and the addition of an awning; the replacement of the existing dwelling with a purpose built single storey office building; the relocation of the car park and the provision of an additional vehicle access; changes to the drainage and easements across the site.</p> <p>The proposal is identified as Designated Development as specified in Schedule 3 of the Environmental Planning and Assessment Regulation 2000 and is identified as Nominated Integrated Development, requiring a license from NSW Environmental Protection Authority pursuant to Protection of the Environment Operations Act 1997.</p>
Street Address	55 Martin Road, Badgerys Creek Lot 4 DP 611519
Applicant/Owner	Claron Consulting / Antoun's Construction
Date of DA Lodgement	10 October 2019
Number of Submissions	1
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	<p>The Sydney Western City Planning Panel is the determining authority as the application is a Section 4.55(2) modification of a development application approved by the Sydney South West Planning Panel for a particular designated development, pursuant to Clause 7 of Schedule 7 of the SEPP (State and Regional Development) 2011, under Clause 123BA the Environmental Planning and Assessment Regulation 2000.</p> <p>The proposed waste management facility is identified as Designated Development as specified under Clause 32 in Schedule 3 of the Environmental Planning and Assessment Regulation 2000.</p>
List of All Relevant 4.15(1)(a) Matters	<ul style="list-style-type: none"> • <i>List all of the relevant environmental planning instruments: Section 4.15(1)(a)(i)</i> <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 33 – Hazardous and Offensive Development ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) (Deemed SEPP) ○ State Environmental Planning Policy (Sydney Region Growth Centres) 2006 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ Commonwealth Environment Protection and Biodiversity Act 1999 ○ Threatened Species Conservation Act 1995

	<ul style="list-style-type: none"> ○ Contaminated Land Management Act 1997 ○ Protection of the Environment Operations Act 1997 ○ Native Vegetation Act 2003 ○ Biodiversity Conservation Act 2016 ○ Liverpool Local Environmental Plan 2008 <ul style="list-style-type: none"> • <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: Section 4.15(1)(a)(ii)</i> <ul style="list-style-type: none"> ○ Remediation of Land SEPP – The Remediation of Land SEPP was exhibited from 25/01/2018 to 13/04/2018. The Draft Guidelines published on the major projects website has indicated that “the substance of Clause 7 (of SEPP 55 – Remediation of Land) will be incorporated into the new SEPP. On this basis, assessment under clause 7 of SEPP 55 – Remediation of Land is not affected. ○ Draft SEPP (Environment) was exhibited from 31/10/2017 to 31/01/2018. The Draft SEPP applies to land within the Hawkesbury-Nepean River Catchment. The Draft SEPP proposes changes that will repeal and replace Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997), which currently applies to the proposal. ○ Western Sydney Aerotropolis Plan Draft - for public comment, December 2019 • <i>List any relevant development control plan: Section 4.15(1)(a)(iii)</i> <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008. <ul style="list-style-type: none"> ○ Part 1: General Controls for All Development. ○ Part 5: Development in Rural and E3 Zones • <i>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: Section 4.15(1)(a)(iiia)</i> <ul style="list-style-type: none"> ○ No planning agreement relates to the site or proposed development. • <i>List any relevant regulations: 4.15(1)(a)(iv)</i> <ul style="list-style-type: none"> ○ Consideration of the provisions of the Building Code of Australia and National Construction Code.
List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> 1) Recommended Modified Conditions of Consent 2) Addendum to Environmental Impact Statement, including Appendices: <ol style="list-style-type: none"> A. Minutes of Pre-Lodgement Meeting B. Email from NSW DPIE C. Email from NSW EPA D. Architectural Plans & Visual Impact Assessment E. Civil and Stormwater Plans F. Landscape Plan Updates G. Traffic Report Letter

	H. Noise Impact Assessment I. Report on Air Quality Impacts J. Revised Stormwater Management Report
Clause 4.6 requests	N/A
Summary of key submissions	One submission was received in relation to the proposal raising the following key points: <ul style="list-style-type: none"> <i>All existing conditions should remain</i> <i>Impact of the exhibited Western Sydney Aerotropolis Plan and DCP</i> <i>Use not compatible with the area and future Aerotropolis</i> <i>Operation and enforcement of the existing consent</i> <i>Cumulative impact on all waste resource facilities in the local area</i> <i>Capacity of the road and road network to accommodate the truck movements associated with the use</i>
Report Prepared by	Adam Flynn – Senior Development Planner
Report date	29 May 2020

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? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.11EF)? **Yes**
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? **Yes**
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

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

Sydney Western City Planning Panel is the determining body for the proposal as the application is a Section 4.55(2) modification to a development application approved by the Sydney South West Planning Panel for a particular designated development, pursuant to Clause 7 of Schedule 7 of the SEPP (State and Regional Development) 2011, in accordance with Clause 123BA of the Environmental Planning and Assessment Regulation 2000.

The approved waste management facility identified as designated development as specified under clause 32 in Schedule 3 of the Environmental Planning and Assessment Regulation 2000.

1.2 The proposal

DA-263/2018 was approved on 17 April 2019 to establish a resource recovery facility for 95,000 tonnes per annum of construction and demolition waste including the installation of a weighbridge, hardstand, retaining walls and erection of a rural shed.

The proposal is regarded as 'designated development' for the purposes of the Environment Planning and Assessment Regulation 2000 and is identified as Nominated Integrated Development, requiring a license from NSW Environmental Protection Authority pursuant to Protection of the Environment Operations Act 1997.

The application seeks consent for modifications to DA-263/2018, including alterations to the site layout, including an enlarged slab, altered internal vehicle movements, and noise barriers; an increase in building height and footprint and the addition of an awning; the replacement of the existing dwelling with a purpose built single storey office building; the relocation of the car park and the provision of an additional vehicle access; changes to the drainage and easements across the site.

1.3 The site

The subject site is identified as Lot 4 DP 611519, being 55 Martin Road, Badgerys Creek.

1.4 The issues

The key issues relating to the modification are the impact of the additional building bulk and scale of the enlarged shed and potential noise impacts from the rearranged vehicle movement path.

1.5 Exhibition of the proposal

The application was advertised for a period of 30 days from 6 November to 5 December 2019. One submission was received to the proposed development during the public consultation process. The issues raised within the submissions are discussed within the report.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application, it is recommended that the modification application be approved, subject to the recommended conditions of consent.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Lot 4 in DP 611519, being 55 Martin Road, Badgerys Creek. The site is rectangular in shape with a total area of 2.54ha. The site has a frontage to Martin Road of 90.3m, and a frontage to Lawson Road of 90.3m. The site falls 8 metres from Martin Road to Lawson Road. There is an existing 2.5m wide drainage easement that burdens the site and benefits Liverpool City Council.

The proposed development is located towards the centre of the site, to the rear of the existing dwelling, with the existing dwelling to be converted into office use. There is sparse vegetation predominately on the site located predominately to rear along the Lawson Road frontage.

An aerial photograph of the subject site is provided below.



Figure 1: Aerial photograph of the site

2.2 The locality

The subject site is located on the western side of Martin Road, with frontage to Lawson Road to the west of the site, within the Badgerys Creek area, and is located approximately 15km west of the Liverpool CBD. The site sits just to the east of the proposed Western Sydney Airport, to the south of Elizabeth Drive, 375 metres to the west of South Creek and 450m from the boundary with Penrith Council to the north, as indicated in figure 2. The site is located approximately 420 metres to the east of Badgerys Creek.

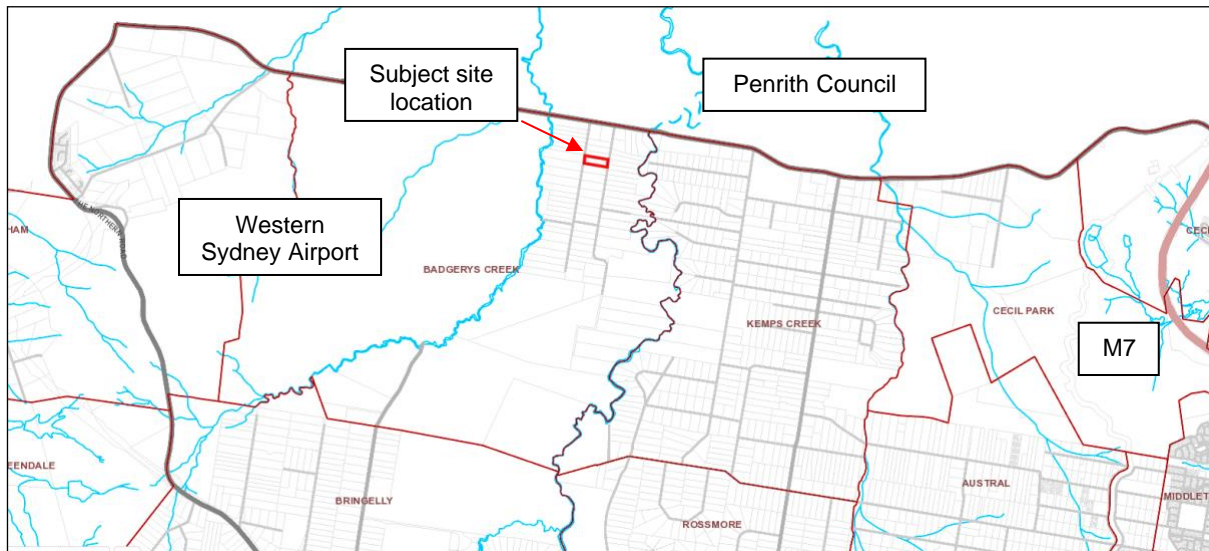


Figure 2: Overall Context

The locality within the immediate vicinity of the subject site is predominately of a rural character, with some similar uses and industrial uses in the vicinity.

2.3 Site Affections

2.3.1 Airport Noise

The subject site is located within the 30-35 and 35+ ANEF contours for the Western Sydney Airport.

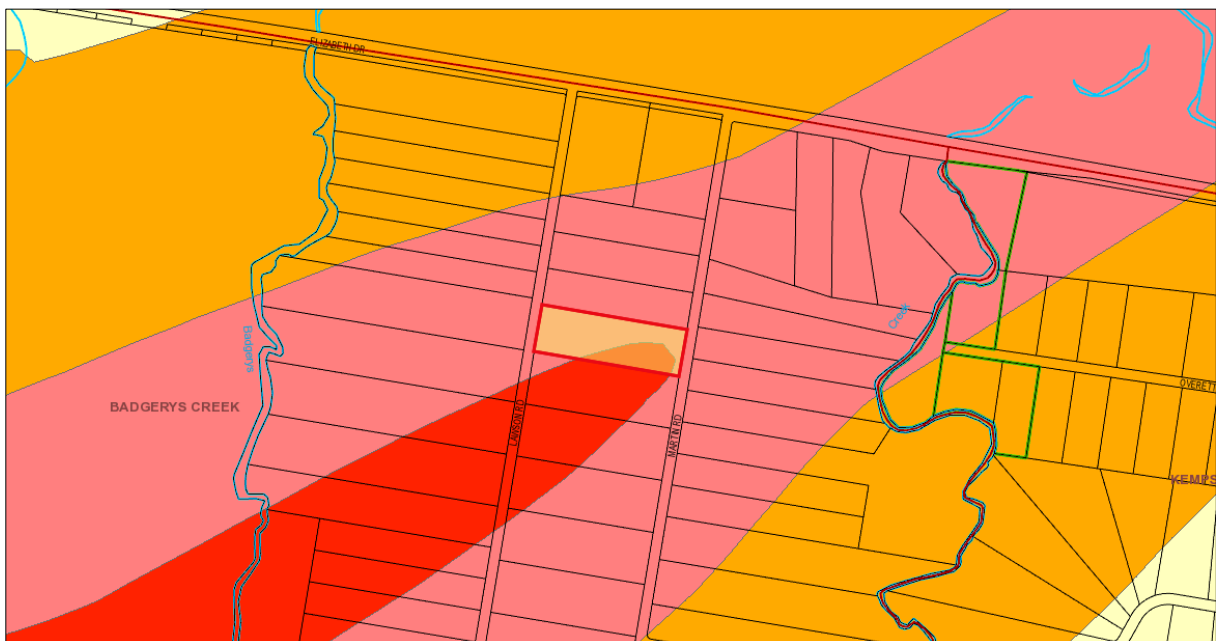


Figure 3: Airport Noise Affection

2.3.2 Biodiversity

The site is Biodiversity Certified.

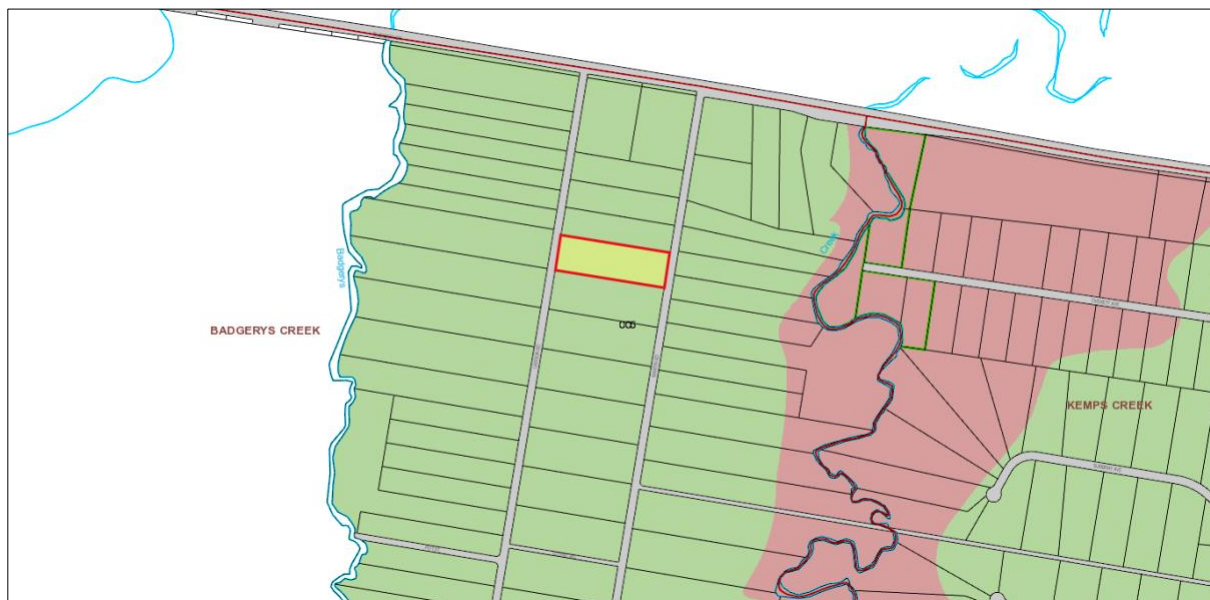


Figure 4: Biodiversity Certification

2.3.3 Heritage

To provide context and clarity, the subject site:

- is not listed as a heritage item under the Liverpool LEP 2008;
- is not located within the immediate vicinity of a heritage item; and
- is not located in a heritage conservation area.

In respect to heritage impact, the submitted documentation concludes that no Aboriginal cultural heritage sites were identified on the subject lot.

There are three heritage items in the wider vicinity of the site, 0.7km, 1.5km, and 1.5km away, however, given the distance of the site from these items, and the nature of the operations, no impacts on these items are likely to occur.

3. BACKGROUND

3.1 Planning Panel Briefing

The proposal was briefed to the Sydney Western City Planning Panel on 23 March 2020. The points discussed at the briefing are as follows;

- *This application seeks approval to modify an existing approval (previously determined by the panel) in a number of respects. Notably, the existing capacity, truck movements in the local area, and trading hours are not expected to change.*

Comment: Capacity, truck movements, and hours are not proposed to change as part of this modification.

- *Given that the shed will expand to incorporate all processing activities within the shed, it is anticipated that this will improve the noise and dust impacts, such that the overall environmental impact of the facility is expected to improve.*

Comment: The enlarged shed allows for loading to occur within the shed, as well as the processing, which will allow for improvements to the noise and dust impacts of the operations.

- *One aspect that may require examination is the changes to vehicular paths within the site in terms of acoustic impacts on neighbouring properties and safety.*

Comment: The impacts of the changes have been assessed by the relevant Council Departments, who consider the modifications are satisfactory, and will not result in a wider impact to that which has been approved.

- *The panel's determination report for the DA notably recorded a resolution to impose a condition relating to an acoustic report.*

Comment: This condition (condition 111 of DA-263/2018) would remain in force with this modification application.

4. DETAILS OF THE PROPOSAL

The application seeks consent for modifications to DA-263/2018. A detailed and itemised description of the changes proposed as set out in the addendum to the Environmental Impact Statement is as follows:

Site layout, internal truck movements and installation of a second weighbridge

- The approved working slab/platform has been extended towards the northern and southern boundaries and the approved shed position moved away from the northern boundary towards the south to allow for a counter-clockwise truck movement down the northern side of the shed, around the western end and onto the working platform.
- Installation of a new noise barrier at the slab edge level to all three sides of the working platform (i.e. north, west and eastern elevations).
- The addition of a second weighbridge.

Increased shed height and width, addition of an awning

- The amended shed will increase in height to 13.5m and width to allow trucks to fully enter the shed to unload, whereas on the approved plan the trucks could only back to the doors of the shed to unload.
- A high-level awning has been added to the southern side of the shed to allow for weather protection.

New office and carpark

- The amended plan seeks to demolish the existing disused brick veneer cottage, which was approved to be converted to a site office and replace it with a new single storey purpose-designed office building of similar size and footprint as that on the approved plan.
- The staff and visitor car park entry/exit to Martin Road has been separated from the main truck entry and now serves only the staff carpark.

Stormwater Management, OSD and Water Quality

- The only change to the approved stormwater plan is to slightly re-position the OSD tank and water quality system, which is located under the working platform concrete slab. There is no change to the capacity of the OSD tank or the water quality installation.

Easements

- The modification application also seeks to re-align the existing easements that traverse the lower (western) section of the site and were previously located under the concrete slab, to now run down each of the northern and southern boundaries directly to the Lawson Road boundary.

Note: this is deemed to be a 'housekeeping' amendment to avoid conflict between the current location of the easements within the site and the OSD tank position under the slab.

Landscaping

- The proposed modifications have also been addressed with an amended landscape plan which includes additional planting in native species to the western and eastern street frontages for enhanced visual amelioration.
- The stormwater water drainage swale that runs down the length of the site in the side setback zones (i.e. along the northern and southern boundaries) is proposed to be planted with local ground cover species (e.g. typically *Iomandra longifolia* or similar) in accordance with the recommendations of the stormwater/flood consultant to accommodate water flow and water quality.
- The chain wire boundary fencing will be planted with a low native climber.

Approved Operation

- The proposed amendments are to the site layout and structures only; there are no changes to the approved waste operation in terms of:
 - Staff numbers.
 - Operating hours.
 - Tonnages received or stored.
 - Types of materials received and processed.
 - Overall truck numbers and types of trucks.
 - Any other matter contained in Consent DA-263/2018 that is not specifically covered in this modification application.

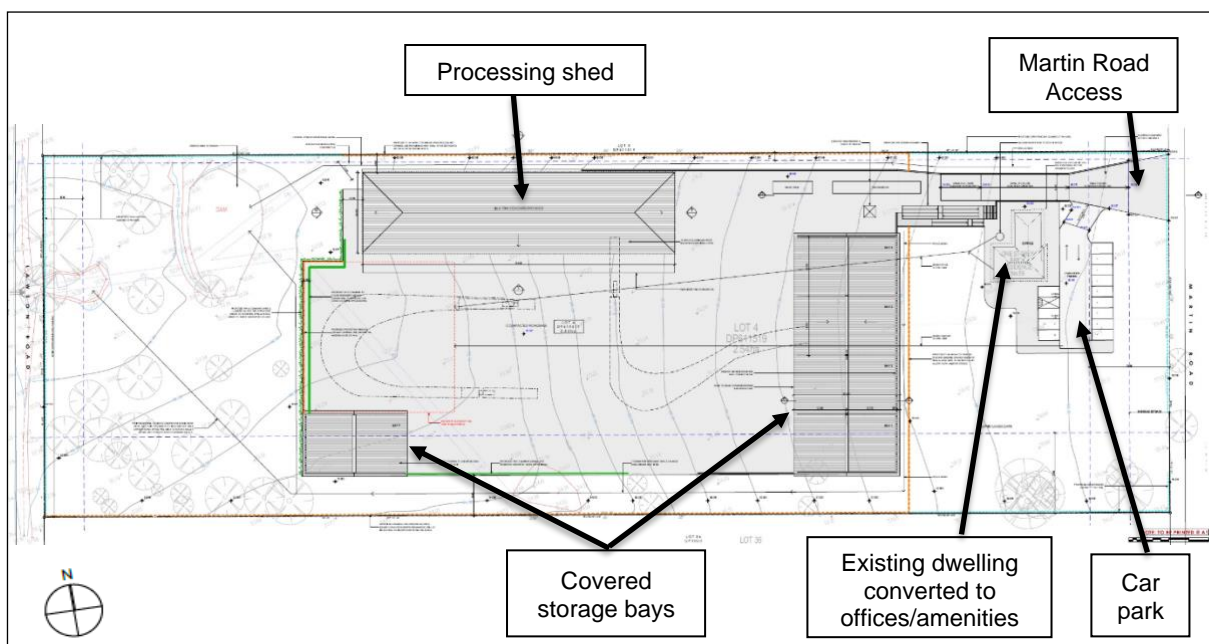


Figure 5: Site Layout as approved

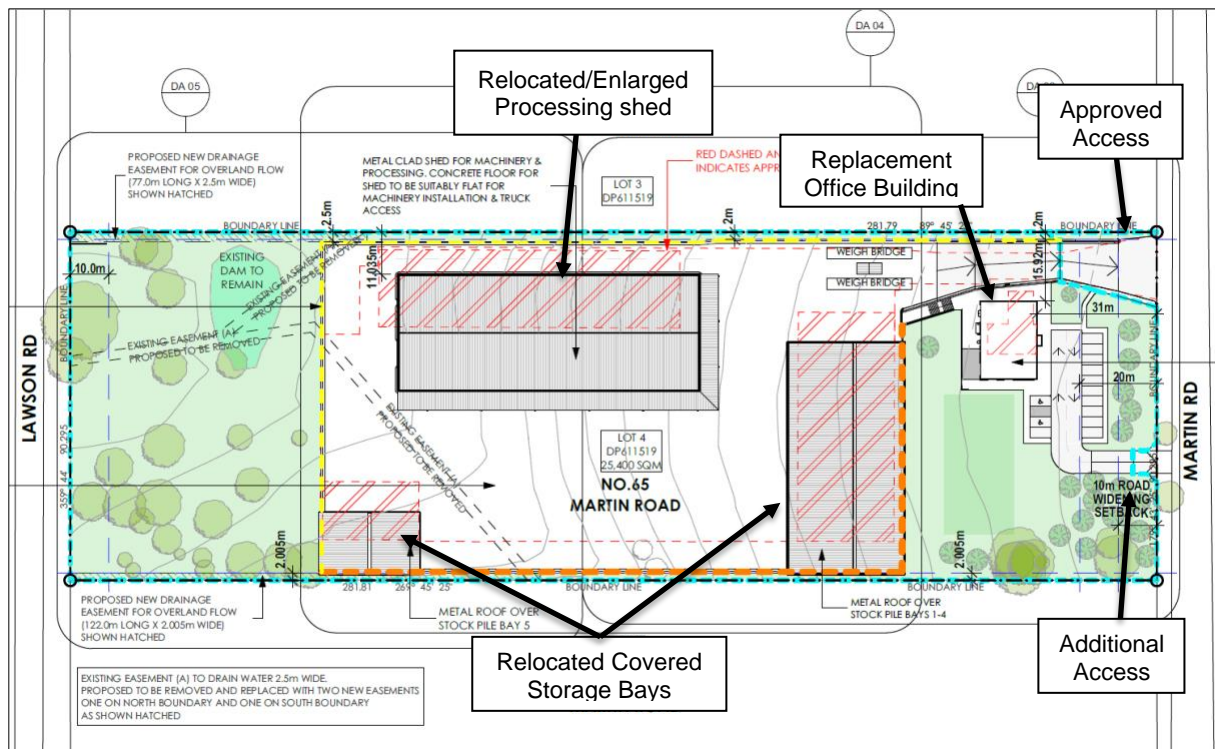


Figure 6: Site Layout as proposed (red-hatched areas are buildings as approved)

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy No. 33 – Hazardous and Offensive Development
- State Environmental Planning Policy No.55 – Remediation of Land
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) (Deemed SEPP)
- State Environmental Planning Policy (Sydney Region Growth Centres) 2006
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- Commonwealth Environment Protection and Biodiversity Act 1999
- Threatened Species Conservation Act 1995 Contaminated Land Management Act 1997
- Protection of the Environment Operations Act 1997
- Native Vegetation Act 2003
- Biodiversity Conservation Act 2016
- Liverpool Local Environmental Plan 2008

Draft Environmental Planning Instruments

- Remediation of Land SEPP – The Remediation of Land SEPP was exhibited from 25/01/2018 to 13/04/2018. The Draft Guidelines published on the major projects website has indicated that “the substance of Clause 7 (of SEPP 55 – Remediation of Land) will be incorporated into the new SEPP. On this basis, assessment under clause 7 of SEPP 55 – Remediation of Land is not affected.

- Draft SEPP (Environment) was exhibited from 31/10/2017 to 31/01/2018. The Draft SEPP applies to land within the Hawkesbury-Nepean River Catchment. The Draft SEPP proposes changes that will repeal and replace Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997), which currently applies to the proposal.
- Western Sydney Aerotropolis Plan Draft - for public comment, December 2019

Other Plans and Policies

- Metropolitan Plan for Sydney 2031;

Development Control Plans

- Liverpool Development Control Plan 2008
 - Part 1 – Controls applying to all development
 - Part 5 – Development in Rural & Environmental Zones

Contributions Plans

- Liverpool Contributions Plans do not apply to the site, however, the Special Infrastructure Contribution – Western Sydney Growth Areas is applicable.

5.2 Zoning

The site is zoned RU1 – Primary Production pursuant to LLEP 2008 as depicted in the figure below.

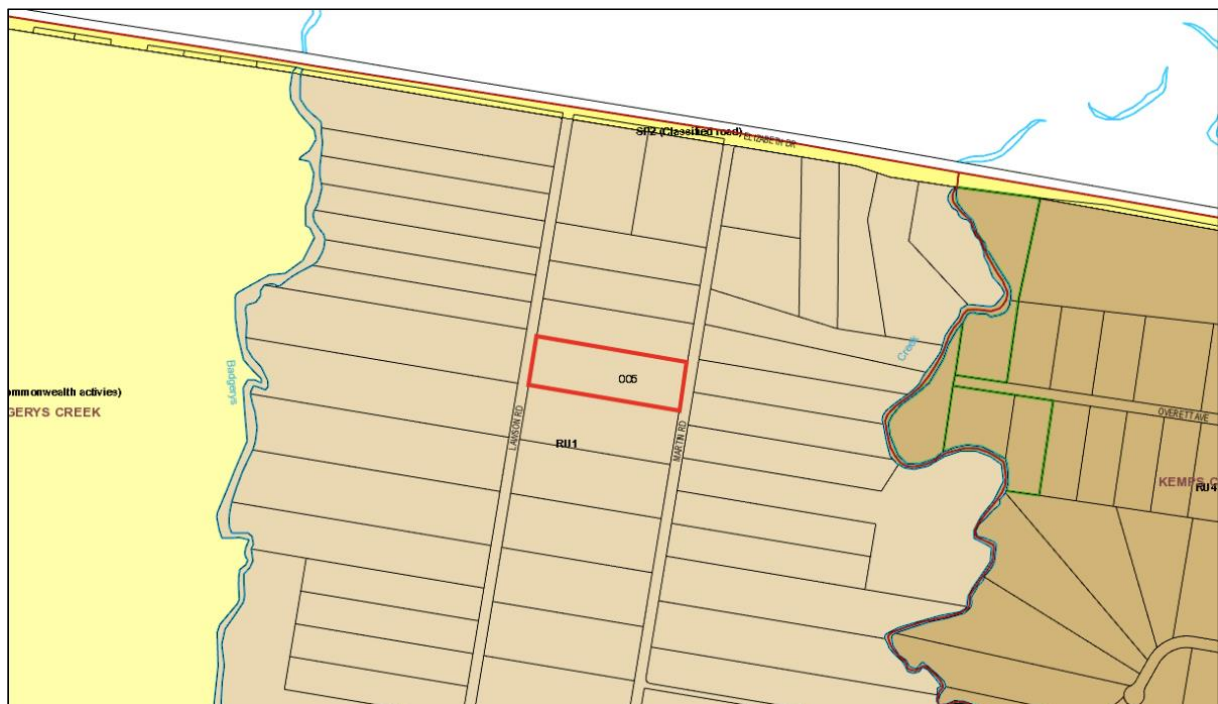


Figure 4: Extract of Zoning Map

5.3 Permissibility

The proposed development would be defined as a “resource recovery facility”, which is a prohibited use within the RU1 Primary Production zoning. However, a resource recovery facility is identified as permitted with consent pursuant to State Environmental Planning Policy (Infrastructure) 2007 which permits waste or resource management facilities within a prescribed zone (the RU1 zone is classed as a prescribed zone).

It should be further noted that the site is located within the Badgerys Creek Precinct of the Draft Western Sydney Aerotropolis Plan. This is identified as an initial precinct for rezoning, and the site would be within the Enterprise Zone, which allows for the type of land use proposed.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 as follows:

6.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

The proposal has been lodged under Section 4.55(2) of the EPA Act, an assessment under 4.55(2) is included below:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The proposal is considered to be substantially the same development as the originally determined application. The type and scale of the proposed operation is the same as that approved. The proposed amendments are to the site layout and structures only; there are no changes to the approved waste operation in terms of:

- Staff numbers.
- Operating hours.
- Tonnages received or stored.
- Types of materials received and processed.
- Overall truck numbers and types of trucks.

The modifications are discussed below:

Site layout, internal truck movements and installation of a second weighbridge

- The approved working slab/platform has been extended towards the northern and southern boundaries and the approved shed position moved away from the northern boundary towards the south to allow for a counter-clockwise truck movement down the northern side of the shed, around the western end and onto the working platform.
- The potential impact of this modification is increased noise from truck movements, this will be addressed by the installation of a new noise barrier at the slab edge level to ameliorate any additional truck noise, with the noise barrier extending to all three sides of the working platform (ie. north, west and eastern elevations).
- The addition of a second weighbridge allows for more flexibility in truck movements in and out of the site without any consequent delay in waiting for access to a single weighbridge, as was the case under the approved design.
- This result in trucks having an improved traffic flow within the site, the potential overflow 'stack parking' for trucks is now entirely within the site and does not impact upon Martin Road, and less conflict between truck movements and workers within the site.

Increased shed height and width, addition of an awning

- The amended shed has increased in height and width to allow trucks to fully enter the shed to unload, whereas on the approved plan the trucks could only back to the doors of the shed to unload. A high-level awning has been added to the southern side of the shed to allow for weather protection.

The main impact of these modifications is one of visual impact of the larger building. This has been addressed by the applicant in the amended Visual Impact Assessment and by providing additional boundary screen planting, with the result assessed as being of low visual impact.

- It is noted that the outcome of this modification is that there is a superior noise benefit as the trucks are now totally, rather than partially, enclosed within the building.

New office and carpark

- The amended plan seeks to demolish the existing disused brick veneer cottage, which was approved to be converted to a site office and replace it with a new single storey purpose-designed office building of similar size and footprint as that on the approved plan. This modification is sought for reasons of construction cost and efficiency of layout only, there are not expected to be any potential negative impacts.
- The staff and visitor car park entry/exit to Martin Road has been separated from the main truck entry and now serves only the staff carpark. This modification has been included at the specific request of Liverpool Council's Traffic engineer and is considered to be a more beneficial outcome than the approved plan in terms of safety and amenity, as the light vehicle movements are now separated from the heavy truck site access. The application was referred to Council's Traffic Engineer, who raised no objections to the modification

Stormwater Management, OSD, Water Quality and Easements

- The proposed modifications to the slightly enlarged impervious working platform/slab and reduced boundary setbacks have been assessed by the project stormwater engineer and have been found to be of minimal impact. The only change to the approved stormwater plan is to slightly re-position the OSD tank and water quality system, which is located under the working platform concrete slab. There is no change to the capacity of the OSD tank or the water quality installation. Council's Land Development Engineers raised no objection to the modification.
- The modification application also seeks to re-align the existing easements that traverse the lower (western) section of the site and were previously located under the concrete slab, to now run down each of the northern and southern boundaries directly to the Lawson Road boundary.
- The proposed relocation of the easements:
 - (i) has no additional effects upon the flood modelling contained within the original EIS and the Consent;
 - (ii) does not alter the modelled upstream area to the north and south of the site, nor alter the volumes of surface water captured by the easements;
 - (iii) does not change the position of the easements on the adjoining land to the north and south and where they intersect with the boundaries of the subject site;
 - (iv) does not change the volumetric capacity of the easements within the subject site;
 - (v) provides an additional discharge point to the Lawson Road table drain at the boundary.

Landscaping

- The proposed modifications have also been addressed with an amended landscape plan which includes additional planting in native species to the western and eastern street frontages for enhanced visual mitigation of the enlarged building.

Conclusion:

While it is noted that there is a substantial increase in the size of the main shed on the site, the key operations of the site will not change as a result of this modification. The impacts of the enlarged building will be mitigated by increased landscaping, and notwithstanding this, the building form is in line with what would be expected giving the future zoning of the site and wider area. Noise impacts will continue to be mitigated by acoustic fencing arounds the site. On this basis, the proposal is considered to be substantially the same development as originally approved.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment: The proposal been referred to the relevant bodies, who did not raise any objections in relation to the proposed modification.

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The application was notified from 6 November to 5 December 2019 in accordance with the Liverpool DCP 2008. One submission was received during the public consultation process.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: The issues raised within the submission are discussed in Section 6.9 of the report.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Comment: The matters referred to in Section 4.15(1) are discussed in the report.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Comment: Noted, as the proposal has been lodged in accordance with Section 4.55(2) this proposal is for a modification to an existing consent.

6.2 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

The modifications to the proposal generally do not result in changes to any conclusions reached from an assessment of the original proposal with regard to the provisions of applicable Environmental Planning Instruments.

6.3 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument

Remediation of Land SEPP

The Remediation of Land SEPP was exhibited from 25/01/2018 to 13/04/2018. The Draft Guidelines published on the major projects website has indicated that “the substance of Clause 7 (of SEPP 55 – Remediation of Land) will be incorporated into the new SEPP. On this basis, assessment under clause 7 of SEPP 55 – Remediation of Land is not affected.

Draft SEPP (Environment)

The Environment SEPP was exhibited from 31/10/2017 to 31/01/2018. The Draft SEPP applies to land within the Hawkesbury-Nepean River Catchment. The Draft SEPP proposes changes that will repeal and replace Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997), which currently applies to the proposal.

The original proposal was assessed as being in compliance with REP 20 and the proposal as conditioned is also generally in accordance with the Draft Environment SEPP. The current modification application will not result in any departure from the requirements of the Draft SEPP (Environment).

Western Sydney Aerotropolis Plan Stage 1 Draft

The Western Sydney Aerotropolis Stage 1 Plan was exhibited from 21/08/2018 – 21/11/2018. This plan set out the initial precincts for the aerotropolis under which the subject site is identified in the Badgerys Creek area as follows:

Directly adjoining the Airport to the east and Aerotropolis Core to the south, the Badgerys Creek precinct will support airport operations and the new urban centre. Affected by aircraft noise, it is not suitable for noise sensitive land uses. However, it will meet demand for a range of employment generating uses that do not require or benefit from direct access to public transport but which would benefit from proximity to airport operations and the new urban centre. Residential development is not appropriate.

The site is located within the Badgerys Creek Precinct of the Draft Western Sydney Aerotropolis Plan. This is identified as an initial precinct for rezoning, and the site would be within the Enterprise Zone, which allows for the type of land use proposed.

The approved use as modified is not a noise sensitive receiver and will generate employment. As such, the approved use and the proposed modifications to the use are considered to satisfactorily respond to the future envisioned character identified under the plan.

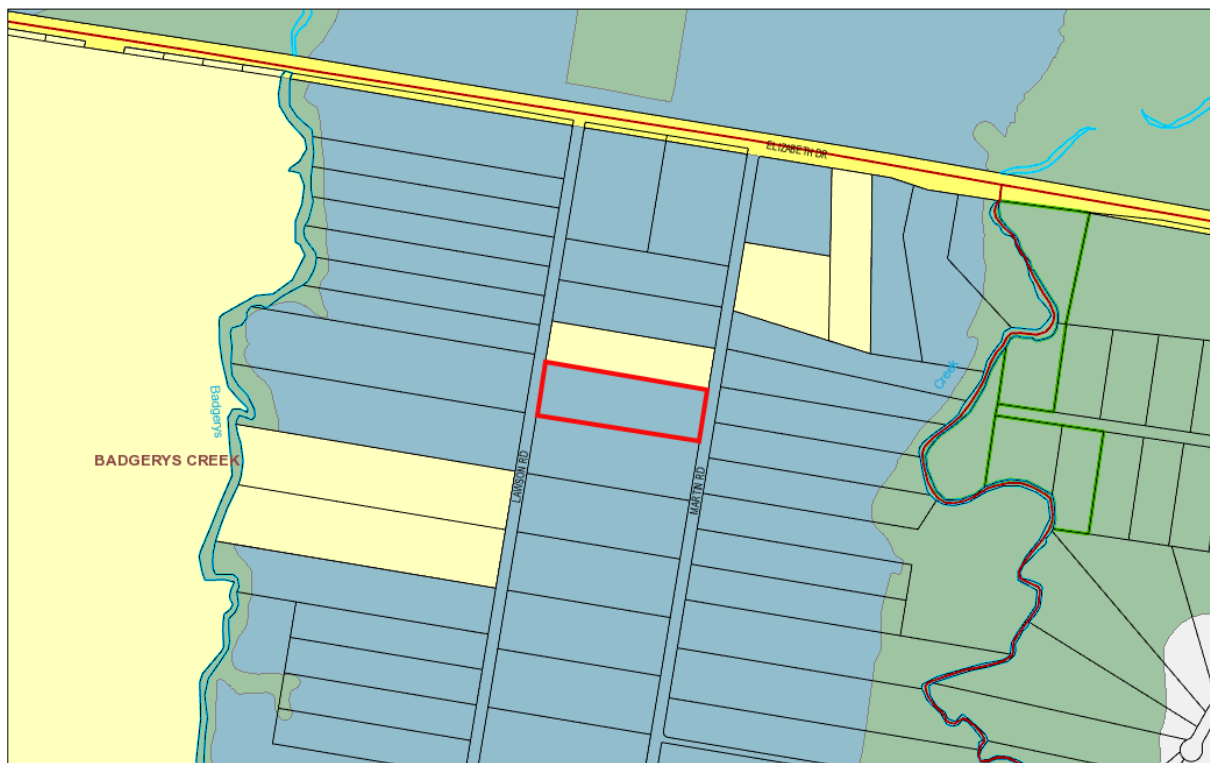


Figure 7: Enterprise Zoning under Draft Western Sydney Aerotropolis SEPP

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The application has been assessed against the controls of the LDCP 2008, particularly Part 1 *General Controls for all Development*; and Part 5 *Development in the Rural and E3 zones*.

The modifications to the proposal generally do not result in changes to any conclusions reached from an assessment of the original proposal with regard to objectives and controls of Part 1 of the Liverpool Development Control Plan.

The table below provides an assessment of the proposal against the relevant controls of the Part 5 of the LDCP 2008:

PART 5 – RURAL AND E3 ZONES		
CONTROLS	PROVIDED	COMPLIES
SITE PLANNING Location of buildings	The setbacks of the main shed combined with proposed perimeter landscaping will ensure there are no adverse character or amenity impacts arising from the proposal. It is noted that the main shed will be higher than the original approval, however, the wider benefits of internalizing the operations of the site within the larger shed are considered to outweigh the minor impacts of the increased height of the shed.	Yes
SETBACKS 15m Front Setback (as situated within the Growth Centre) 2m Side Setback 10m Secondary Frontage Setback	The new office will be located in the same area as the existing dwelling, which is 30m from Martin Road, and all other buildings will be behind this. Should road widening occur (approximately 10m), the development would still be 20m from Martin Road.	Yes

PART 5 – RURAL AND E3 ZONES		
	<p>The main shed will be 11.035m from the northern boundary (2.5m to the slab), with the storage sheds 2m from the southern boundary.</p> <p>The closest building to the rear boundary will be 64m from Lawson Road.</p>	
<p>BUILDING DESIGN, STYLE AND STREETSCAPE</p> <p>Non-residential maximum 8.5m – merit-based assessment if over 8.5m</p>	<p>The storage shed has a maximum height of approximately 13.5m (with an apparent height of up to 16m to the rear of the building where it sits upon the raised slab). The roof has a shallow pitch and is hipped to minimize its visual bulk.</p> <p>The shed height is considered to be appropriate for the intended industrial use and future Enterprise land zoning, with the additional height mitigated by the large front and rear setbacks and the increased side setback and screen planting. The increased height to the rear will be screened by the existing established vegetation which is to remain, and mitigated by planting to the retaining wall under the building.</p>	Yes
<p>LANDSCAPING AND FENCING</p> <p>Maximum height for transparent fences at the front of site: 1.8m</p> <p>Fences alongside and rear boundaries shall have a maximum height of 1.8m</p>	<p>Comprehensive landscaping and tree planting to the frontages of the site is proposed. A bush regeneration area is proposed between the development and the Lawson Road boundary of the site, which is welcomed.</p> <p>The proposed front and rear fences (to the two road boundaries) will be open fencing up to 1.8m in height.</p> <p>The proposed side fences will be open fencing of 1.8m, planted with climbing plants.</p> <p>It should be noted that there will be an additional acoustic fence of 1.8m, behind this on top of the slab/retaining wall that is required to provide sufficient height to be an effective safety and security barrier. The fence will be colourbond, which is a commonplace material for fencing, and will not appear out of place. It will also be integrated with landscaping as shown on the plans.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>CAR PARKING AND ACCESS</p>	<p>The access to the site is visible on a straight portion of Martin Road. The access point has been consolidated to the Martin Road frontage following consultation with RMS.</p> <p>Car parking remains compliant.</p>	Yes
<p>NOISE</p>	<p>To reduce the noise impact of the proposed development, the following reasonable and feasible noise mitigation measures are proposed:</p>	Yes

PART 5 – RURAL AND E3 ZONES

	<ul style="list-style-type: none"> • A 1.8m acoustic fence is to be installed to the side boundaries, and around the development within the front and rear setbacks. • Recommendations on machinery size/power. • Internal use of machines, and limits on door opening times. • Management plans. <p>Noise emission from the site, with all reasonable and feasible noise mitigation measures applied (as stated above), would comply with the project specific noise levels at all receivers.</p>	
AIR	<p>It is predicted that emissions of PM2.5, PM10, TSP and dust deposition will comply with the applicable assessment criteria at all sensitive receptors and would therefore not lead to any unacceptable level of environmental harm or impact in the surrounding area.</p> <p>The site will apply appropriate dust management measures to minimise the potential occurrence of excessive dust emissions from the site.</p> <p>Overall, the assessment shows that the project can operate without causing any discernible air quality impact at the sensitive receptors in the surrounding environment. It is also noted that the applicant will be required to apply for an environmental protection license (EPL) to lawfully operate.</p>	Yes
WATER CYCLE	The proposed development provides a concept storm water design. The proposed design was reviewed by Council's Development Engineers and considered acceptable subject to conditions.	Yes
HAZARDOUS MATERIALS	Some hazardous materials will be stored on the site in relation to the operation of the development, however the quantities of dangerous goods do not exceed the threshold quantities for applying SEPP 33.	Yes
SITE SERVICES	<p>Waste management will be provided by the proponent;</p> <p>A numbered letterbox will be installed at the gate in Martin Road;</p> <p>All works will be funded by the proponent;</p> <p>Existing electrical supply is adequate;</p> <p>The existing septic tank will be used.</p>	Yes

6.4 Section 4.15(1)(a)(iia) - Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

6.5 Section 4.15(1)(a)(iv) – The Regulations

The proposal is designated development, based on the following clauses from the *Environmental Planning and Assessment Regulations 2000*:

- Sch 3, cl. 32(1)(b)(iii) – Waste management facilities or works that store, process, recycle, recover, use or reuse material from waste and that sort, consolidate or temporarily store waste at transfer stations for transfer to another site for final disposal, permanent storage, recycling, use or reuse and that have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material;
- Sch 3, cl. 32(1)(c) – Waste management facilities or works that store, treat or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and that recover, reprocess or process more than 5,000 tonnes per year of solid organic materials (in this case greenwaste); and
- Sch 3, cl 32(1)(d)(ii) – Waste management facilities or works that store, treat, or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and that are located in an area of sodic or saline soils. NB the acidity and saline levels in the soil exceed threshold levels (waste management facilities or works).

The Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. If approved, appropriate conditions of consent will be imposed requiring compliance with the BCA.

6.6 Section 4.15(1)(b) – The Likely Impacts of the Development

(a) Natural and Built Environment

Built Environment

The proposed development is considered to be a reasonable form of development given the desired future character of the area. It is considered to be an industrial development that is of an appropriate bulk and scale, given the size of the development site. The proposed development is unlikely to generate any detrimental impacts in terms of acoustics, dust, overshadowing or privacy on adjoining properties. It is considered the proposed industrial development to be well suited within the immediate surrounding locality and will not be out of place within the future desired built environment of the locality.

Natural Environment

As part of the original application, a survey, assessment and report was prepared with reference to the NSW Office of Environment and Heritage *Threatened species survey and assessment guidelines*. The environment surrounding the site will be protected through mitigation measures proposed in the EIS. The minor area of vegetation to be cleared will have no significant impact, according to the Arboricultural Impact Assessment Report and Flora and Fauna Survey and Impact Assessment. The proposed RRF is environmentally sustainable, will increased re-use and recycling of materials and has manageable impacts. The applicant's EIS provides the following recommendations:

- The footprint of the proposed building / wash bay / carpark layout has been modified a number of times to reduce impact on ecological values – mostly the trees. Trees are still proposed for removal however with ~ 5 native trees proposed to be removed (see arborist report for details).
- Recommendations are made to preserve and increase ecological value and condition of the site by maintaining EEC species present on-site, by having areas delineated for natural regeneration and areas for planting with planting being with locally native species to this vegetation group. Landscaping Plan provides details for retention, replanting and regenerating of native species and communities and habitats for native fauna.
- At least two (2) microbat nest boxes are to be installed on site.
- No significant impact on endangered ecological communities or threatened species due to proposed works.
- Ongoing maintenance of environmental and ecological actions is required.

(b) Social Impacts and Economic Impacts

Social Impacts

The proposed facility will result in a minor intensification of activity in the immediate vicinity. The specialist reports that have been prepared in order to inform the EIS of the original application have demonstrated that the proposed RRF will create manageable impacts related to noise, dust, visual amenity and road safety / congestion. In relation to noise and air quality, the reports provided demonstrate compliance with the relevant guidelines. The modification is not considered to increase any of these impacts on the wider area.

Economic Impacts

The proposal will provide employment during the construction of the facility and will provide ongoing employment to operate the facility, which will have a trickle-down effect on the local economy. Additional benefits include the provision of infrastructure at no economic cost to the community; relieving of pressure on the local and state government to locate an appropriate site and fund a RRF.

6.8 Section 4.15(1)(c) – The Suitability of the Site for the Development

The site is considered suitable because mitigation / management measures can be designed and implemented in a cost effective manner to satisfactorily ameliorate potential adverse impacts to the surrounds. In this regard it is noted that the facility needs to be licensed by the NSW Environment Protection Authority which should provide an on-going safeguard to its satisfactory operation.

The site is also considered to be of an appropriate size for the bulk and scale for the proposal. The proposed development demonstrates compliance with the provisions of the LDCP 2008, Part 1 and 5. Having regard to the above the site is considered to be suitable for the development.

6.9 Section 4.15(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

DEPARTMENT	COMMENTS
Engineering	No objection.
Building	No objection, subject to conditions.
Environmental Health	No objection, subject to conditions.
Traffic	No objection, subject to conditions.
Waste Management	No objection.
Natural Environment	No objection.
Heritage	No objection.

(b) External Referrals

The DA was referred to the following external agencies for comment:

DEPARTMENT	COMMENTS
Environmental Protection Agency	The EPA has reviewed the information provided as part of the modification and has amended it GTAs accordingly.
Endeavour Energy	No objection, subject to conditions.
NSW Department of Planning, Industry & Environment	Revised EIS received, and no comments to make.
RMS	No objection to the proposed changes.
Department of Infrastructure and Regional Development – Western Sydney Unit	No comments received.

(c) Community Consultation

The application was advertised for a period of 30 days from 6 November to 5 December 2019. One submission was received to the proposed development during the public consultation process. The submission raised the following issues:

- *All existing conditions should remain*
- *Impact of the exhibited Western Sydney Aerotropolis Plan and DCP*
- *Use not compatible with the area and future Aerotropolis*
- *Operation and enforcement of the existing consent*
- *Cumulative impact on all waste resource facilities in the local area*
- *Capacity of the road and road network to accommodate the truck movements associated with the use*

Following further consultation between the Council and the submitter, the submitter considered that Council had provided a satisfactory response to the concerns raised in their submission as it relates to the proposed development.

6.7 Section 4.15(1)(e) – The Public Interest

The development has incorporated methods and design initiatives to alleviate any potential detrimental impacts on the surrounding locality. The proposal will allow for the provision of additional employment within the locality and create a positive economic impact. Having regard to the above, the proposed development is considered to be in the public interest.

7. CONCLUSION

The modification application predominately seeks approval for modifications that relate to building form and site layout. While it is noted that there is a substantial increase in the size of the main shed on the site, the key operations of the site will not change as a result of this modification. The impacts of the enlarged building will be mitigated by increased landscaping, and notwithstanding this, the building form is well suited within the immediate surrounding locality and is in line with what would be expected giving the future zoning of the locality. Noise impacts will continue to be mitigated by acoustic fencing arounds the site. On this basis, the proposal is considered to be substantially the same development as originally approved, and the proposal complies with the relevant provisions of Environmental Planning and Assessment Act 1979.

It is for these reasons that the proposed development is considered to be satisfactory and notwithstanding the submissions received, the subject application is recommended for approval, subject to conditions.

8. ATTACHMENTS

- 1) Recommended Modified Conditions of Consent
- 2) Addendum to Environmental Impact Statement, including Appendices:
 - A. Minutes of Pre-Lodgement Meeting
 - B. Email from NSW DPIE
 - C. Email from NSW EPA
 - D. Architectural Plans & Visual Impact Assessment
 - E. Civil and Stormwater Plans
 - F. Landscape Plan Updates
 - G. Traffic Report Letter
 - H. Noise Impact Assessment
 - I. Report on Air Quality Impacts
 - J. Revised Stormwater Management Report