

COUNCIL ASSESSMENT REPORT
SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-581 – DA-263/2018/C
APPROVED DEVELOPMENT	<p>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 the erection of a rural shed. The proposal is identified as a designated development as specified in Schedule 3 of the Environmental Planning and Assessment Regulations 2000.</p> <p>The proposal is identified as Nominated Integrated Development, requiring a license from NSW Environmental Protection Authority pursuant to Protection of the Environment Operations Act 1997.</p> <p>Liverpool City Council is the consent authority, and the Sydney Western City Planning Panel has the function of determining the application.</p>
PROPOSED DEVELOPMENT	<p>Modification to Development Consent DA-263/2018 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to amend the architectural plans for the approved single storey office/administration building and associated staff and visitor parking to be replaced with a two-storey building, with an additional five (5) car parking spaces for visitors and staff.</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>
ADDRESS	55 Martin Road, Badgerys Creek Lot 4 DP 611519
APPLICANT	Claron Consulting Pty Ltd
OWNER	Antoun's Construction Pty Ltd
DA LODGEMENT DATE	24 February 2025
APPLICATION TYPE	s4.55(2) Modification Application

REGIONALLY SIGNIFICANT CRITERIA	<p>Sydney Western City Planning Panel was the determining body for the original approval as the development was for a waste management facility identified as designated development, which at the time was specified under clause 32 in Schedule 3 of the Environmental Planning and Assessment Regulation (EP&A Regulation) 2000, and as such is classed as 'particular designated development' under Clause 7 of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.</p> <p>Pursuant to the current Environmental Planning and Assessment Regulation 2021, Clause 275 - Functions exercisable by council on behalf of Sydney district or regional planning panel (Clause 123BA under EP&A Regulation 2000):</p> <p><i>(2) A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020.</i></p> <p>The effect of the <i>Instruction</i> is that Councils are unable to determine applications lodged under s4.55(2) of the Act if the application “<i>proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel.</i>” The subject modification application is therefore required to be determined by the SWCPP.</p>
CIV	\$1,811,856 (Excl. GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning System) 2021; • State Environmental Planning Policy (Biodiversity and Conservation) 2021; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Sustainable Buildings) 2022; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • State Environmental Planning Policy (Precincts—Western Parkland City) 2021;
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil.

DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Attachment A: Draft Conditions of Consent – 316199.2025 • Attachment B: Compliance Tables (WSAP, SEPP, WSA Precinct Plan and WSA DCP) – 316061.2025 • Attachment C: NSW Rural Fire Services – 185062.2025 • Attachment D: Western Sydney International Airport – 124375.2025 • Attachment E: Architectural Plans – 231665.2025 • Attachment F: Landscape Plans – 149675.2025 • Attachment G: Survey Plan (DA-263/2018) – 137643.2018 • Attachment H: Statement of Environmental Effects – 059116.2025 • Attachment I: Acoustic Report - Letter – 181331.2025 • Attachment J: On-Site Wastewater Report – 181329.2025 • Attachment K: Bushfire Hazard Assessment – 059132.2025 • Attachment L: Traffic & Parking Statement – 059120.2025 • Attachment M: QS Surveyor's Cost Estimate Report – 255022.2025 • Attachment N: Approved Architectural Plans (DA-263/2018/A) – 233986.2025
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	YES (Previously imposed under s7.23)
RECOMMENDATION	Approval, subject to conditions of consent
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	N/A
PLAN VERSION	Revision B - D
PREPARED BY	Ben Paterson
DATE OF REPORT	2 October 2025

1. EXECUTIVE SUMMARY

1.1 The proposal

Council has received an application to modify consent DA-263/2018 at No. 55 Martin Road, Badgerys Creek (Lot 4 DP 611519), approved by the Sydney Western City Planning Panel at its meeting of 17 April 2019. The approved development consists of 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 the erection of a rural shed.

The proposed modification, pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), involves amending the architectural plans for the

approved single-storey office/administration building and associated staff and visitor parking to be replaced with a two-storey building, with an additional five (5) car parking spaces for visitors and staff.

1.2 The Site

The subject site is known as 55 Martin Road, Badgerys Creek ('the site') and comprises Lot 4 in DP 611519 with a frontage to Martin Road of 90.3m, and a rear frontage to Lawson Road of 90.3m, and occupies a rectangular-shaped area of 2.54ha (25,400m²).

The site currently contains an existing dwelling with sparse vegetation, and works under DA-263/2018 do not appear to have commenced.

1.3 The Issues

The key issues identified with the proposal are as follows:

- 1.1.1 Application of the Aerotropolis provisions** – Although the original development consent was issued prior to the commencement of the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 and the associated Precinct Plan, Development Control Plan, and s7.12 contributions plan, any modification application under Section 4.55 of the Environmental Planning and Assessment Act 1979 must be assessed against the current planning framework.

This transition presents potential complexities in the assessment of the modification application, as elements of the originally approved development may not be able to align with the current planning controls, such as Recognise Country. A balance must be struck between recognising the validity of the existing consent and ensuring that any modifications do not undermine the objectives of the updated planning framework.

- 1.1.2 Start with Country** – It would be difficult for the subject modification application to comply with the 'Start with Country' principle when the original development was approved prior to this introduction of the Precinct Plan and its associated cultural requirements, as the initial design, layout, and underlying planning rationale were not informed by Country-led design thinking. Integrating 'Start with Country' retrospectively can present significant challenges, particularly if the built form, landscaping, or site orientation already limits opportunities to respond meaningfully to Country.

Key elements such as water flow, vegetation patterns, cultural narratives, and Aboriginal connection to the site were not considered in the original approval, making it difficult for the modification to fully address or incorporate these principles without fundamentally altering the approved development. Accordingly, full compliance with the Recognised Country provisions is not deemed to be necessary in the assessment of this modification application.

- 1.1.3 Processing Capacity** – The proposed modifications to the office building do not have any impact on the approved processing capacity. The tonnage limits are enshrined in the Environment Protection Licence (EPL), which is consistent with the original Development Consent at 95,000 t/p/a.

NSW EPA has issued EPL #21410 in respect of the premise's future operations. This means that the facility cannot be licenced for an amount greater than the limit conditioned within the Development Consent. Should the operator seek to receive

and process >95,000 t/p/a then the DA would have to be modified accordingly by the Consent Authority (Council or the Local Planning Panel), or a new development application would be required.

1.1.4 Substantially the same development – As described in detail within section 4.3 of this report, the use of the term 'substantially the same' is indicative of a qualitative standard rather than a quantitative one, and as such, the physical scale of modifications does not necessarily disqualify a proposal. It is undeniable that the extent of the physical changes, particularly the addition of a second storey to the office building, is significant; however, the core function, purpose, and land use remain consistent with the original approval and, as such, is considered qualitatively the same.

1.4 Exhibition of the Proposal

The proposal was required to be advertised in accordance with the Liverpool Community Engagement Strategy 2022. The application was advertised and notified between 12 March and 11 April 2025. Notwithstanding, no submissions were received

1.5 Reasons for the Report

Sydney Western City Planning Panel was the determining body for the originally approved development as it was for a waste management facility identified as designated development as specified, at the time, under clause 32 in Schedule 3 of the Environmental Planning and Assessment Regulation (EP&A Regulation) 2000, and as such was classed as 'particular designated development' under Clause 7 of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

Pursuant to the current Environmental Planning and Assessment Regulation 2021, Clause 275 - Functions exercisable by council on behalf of Sydney district or regional planning panel (Clause 123BA under EP&A Regulation 2000):

*(2) A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the **Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents** published on the NSW planning portal on 30 June 2020.*

The effect of the Instruction is that Councils are to determine applications lodged under s4.55(2) of the Act, except if the application:

- *proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or*
- *proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or*
- *meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.*

The proposed modification application meets the criteria relating to conflict of interest, contentious development, and departure from development standards set out in Schedule 1 of the instruction; however, the proposal requires the amendment of **Condition 102 Site to**

be Concreted (Figure 7 below), which was imposed by the Panel under DA-263/2018. Council is therefore not permitted to determine the application.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the State Environmental Planning Policy (Precincts – Western Parkland City) 2021. The proposed development is generally consistent with relevant standards and controls, and as such, it is recommended that the application be approved, subject to conditions.

2. THE SITE AND LOCALITY

2.1 The Site

The subject site is known as 55 Martin Road, Badgerys Creek ('the site'), legally defined as Lot 4 in DP 611519.



Figure 1: Aerial view of site (Source: Nearmap Feb 2025).

The site is rectangular in shape with a total area of 2.54ha (25,400m²). The site has a frontage to Martin Road of 90.3m, and a rear 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 modification works are located towards the front of the site, with the existing dwelling to be converted into office use. There is sparse vegetation on the site located predominantly to the rear along the Lawson Road frontage.

2.2 The Locality

The subject site is located on the western side of Martin Road, with a rear 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. As indicated in Figure 2, the site sits to the east of the Western Sydney Airport, south of Elizabeth Drive, 375 metres to the west of South Creek, approximately 420 metres to the east of Badgerys Creek, and 450m from the boundary with Penrith Council to the north.



Figure 2: Locality surrounding the proposed development.

The table below outlines site constraints.

Table 1: Site Constraints

Potential Site Constraints:	Site Constraints:
<ul style="list-style-type: none"> • Bushfire • Flooding • Heritage Items • Aboriginal heritage • Environmentally Significant Land • Threatened Species/ Flora/ Habitat/ Critical Communities • Acid Sulphate Soils • Aircraft Noise • Flight Paths • Railway Noise • Road Noise/ Classified Road • Significant Vegetation • Contamination 	<ul style="list-style-type: none"> • Moderate salinity potential. • Bushfire Prone Land <ul style="list-style-type: none"> ◦ Vegetation Category 3 (88.5%) ◦ Vegetation Buffer 100m and 30m (11.5%) <p><u>Subject to Aerotropolis provisions and restrictions:</u></p> <ul style="list-style-type: none"> • Obstacle Limitation Surface (OLS): 110-120 • Aerotropolis Australian Noise Exposure Concept <ul style="list-style-type: none"> ◦ ANEC 30 – 35 ◦ ANEC 35+ • Lighting Intensity – within 6km radius • Lighting Intensity Control Zones <ul style="list-style-type: none"> ◦ Light control Zone B ◦ Light Control Zone C • Wildlife Buffer Zone 3km • Aerotropolis Transport Corridor: <ul style="list-style-type: none"> ◦ Frontage to a Primary Arterial Road <p><u>Subject to Aerotropolis Precinct Plan Mapping:</u></p> <ul style="list-style-type: none"> • Transport Network • Active Transport Network • Street Hierarchy • Height of Buildings
Restrictions on title:	Easement to drain water 2.5m wide.

	<i>It is noted that the existing easement (A) is to be relocated along the northern and southern boundaries under approved DA-263/2018/A.</i>
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The tables below outline developments within close proximity to the site.

Table 2: Adjacent Developments

Location	Address	Development
Adjacent site to the south	65 Martin Road	<u>Current</u> : Residential property
Adjacent site to the north	45 Martin Road	<u>Current</u> : Vacant <u>Zone</u> : SP2 Infrastructure <u>Owner</u> : Department of Infrastructure & Regional Dev.
Site opposite to the east	50 Martin Road	<u>Current</u> : Depot <u>DA-422/2022</u> : Approval for: <i>Demolition of existing buildings, remediation of site, construction of gravel hardstand areas, short term office, short term use as depot.</i>
Site opposite to the west	75 Lawson Road	<u>Current</u> : Residential property.

Table 3: Nearby Developments

Location	Address	Development
70m north-west	55 Lawson Road	<u>Current</u> : Logistics Company <u>DA-495/2023</u> : Withdrawn: <i>Truck depot, office, warehouse, hardstand, parking and above-ground fuel tanks</i> <u>PL-41/2024</u> : Advice provided: <i>Demolition of residential structures and construction of truck depot, office, warehouse, hardstand and parking.</i>
100m south	75 Martin Road	<u>Current</u> : Greenhouse <u>DA-503/2020</u> : Withdrawn: <i>Proposed construction of plant nursery, landscape materials supplies & ancillary buildings in conjunction with approved greenhouses.</i>
140m north	25 Martin Road	<u>Current</u> : Resource Recovery Facility <u>PL-36/2024</u> : Advice provided: <i>Use the site as a truck depot and associated works. The previous DA on site has been commenced and the proposal will rely partially on the facilities under that DA.</i>

200m south-east	100 Martin Road	<u>Current:</u> Farm Shed <u>PL-36/2024:</u> Advice provided: <i>Office and storage yard for landscape contractor operations.</i>
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3. THE PROPOSAL AND BACKGROUND

3.1 The Proposal

The proposal is for modifications to the consent issued for DA-263/2018 and subsequent modification DA-263/2018/A. Specifically, the subject modification application includes:

Office Building:

- Building repositioned further south away from the truck driveway.
- Addition of a second floor with an internal staircase and lift.
- Increase the floor plate area by 60 m², from 280 m² (approved) to 340 m² (proposed).
- Reconfiguration of the internal layout, including Relocation of office spaces to the proposed second floor. An additional recreation area, including a gym.
- Geotechnical Laboratory addition to ground floor (subject to a future DA for fit out and use).
- Covered pergola and BBQ area provided to the rear of the Office Building.

Carpark:

- Relocate the staff parking area further north to be adjacent to the building.
- Increase the car parking provided at grade' external to the administration/office building from 13 spaces (as approved) to eighteen (18) spaces.

External Finishes:

- Changes in the approved paint finish.
- Changes to the approved Colourbond cladding.
- Additional aluminium cladding material.
- Additional aluminium blade material.

There is no change to the approved site activities and general site layout, hard surface area, type/volumes of waste received, staffing numbers, truck movements, site access, weighbridge location, ecology, landscaping, wastewater, hours of operation, the general nature of the resource recovery processing business conducted at the premises or any other matter that is any way inconsistent with the current Development Consent.

It is noted that an external shell for a Geotechnical Laboratory with no internal fit-out on the ground floor has been illustrated on the plans. Pursuant to the EP&A Act 1979:

4.19 Consent for erection of building authorises use of building

A development consent that authorises the erection of a building (but not the use of the building once erected) is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose was specified in the application for

development consent. This section does not authorise the occupation of such a building if Part 6 requires an occupation certificate to be issued.

While the use of a Geotechnical Laboratory is not a prohibited use in the Enterprise zone, a condition of consent would be imposed requiring a separate Development Application to be lodged for both the fit-out and use.

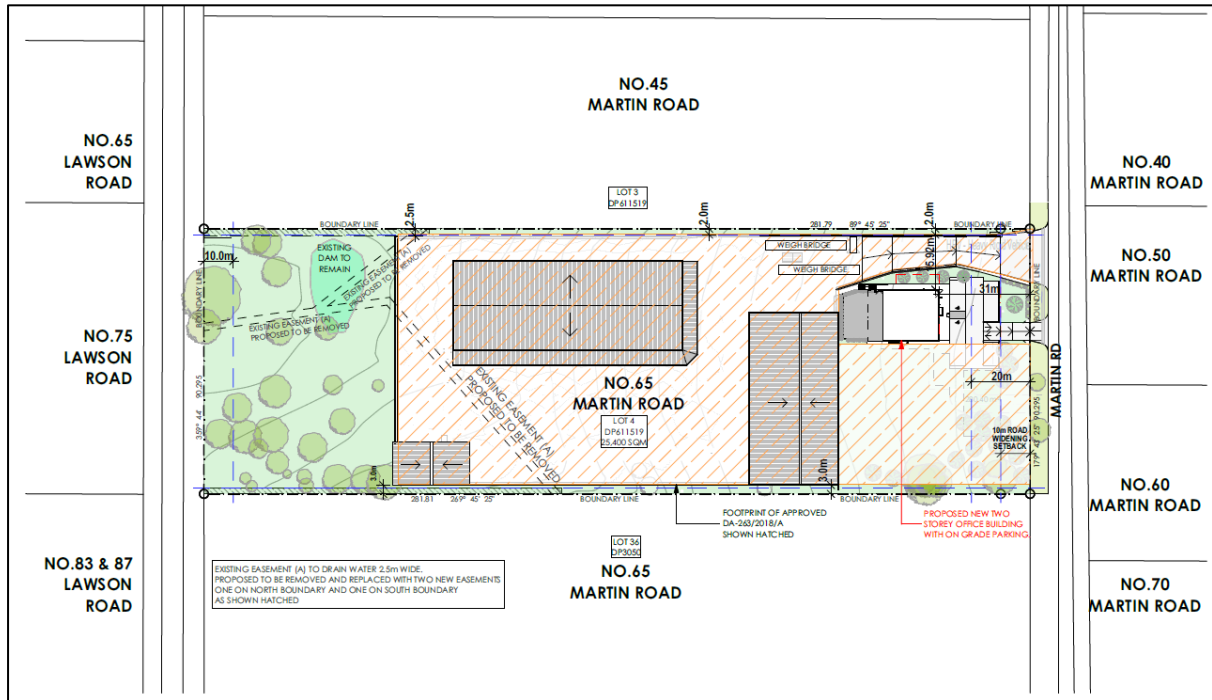


Figure 3: Proposed Site Plan.

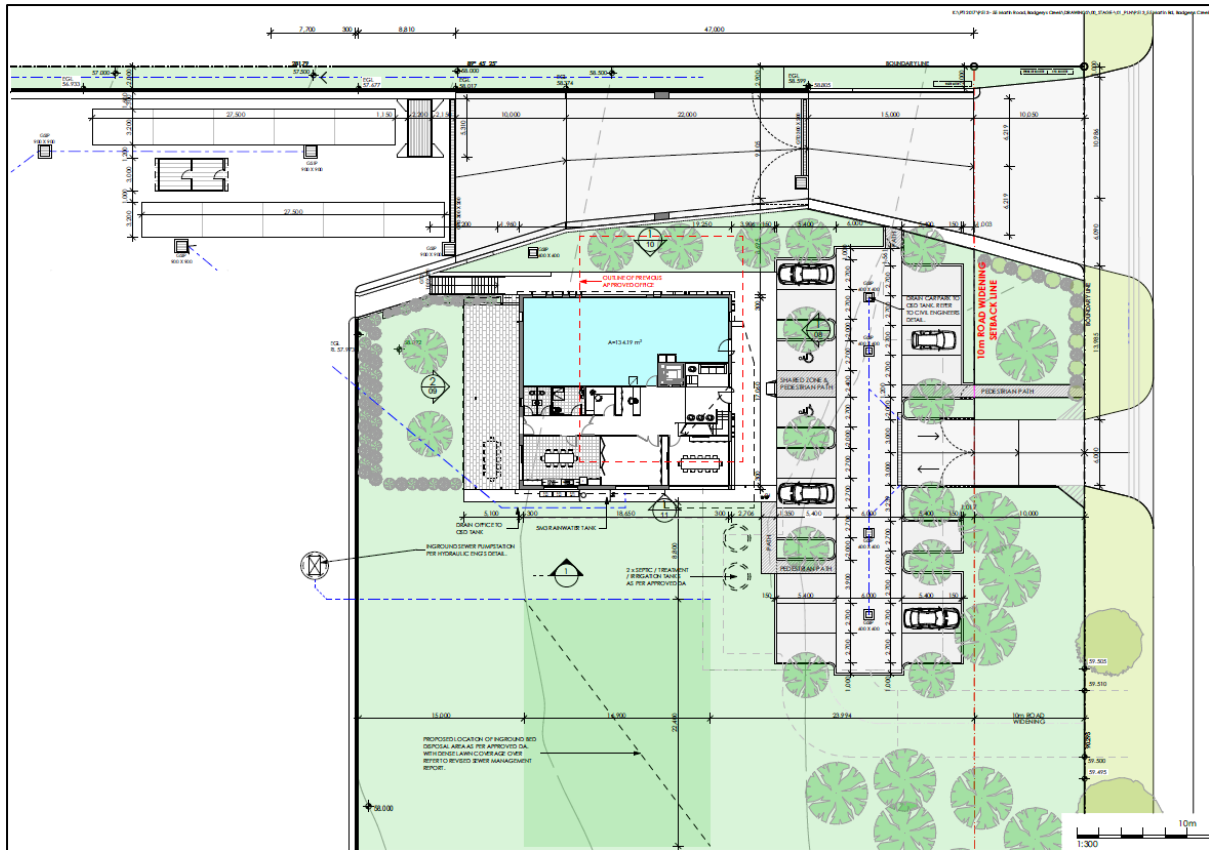


Figure 4: Detailed Site Plan

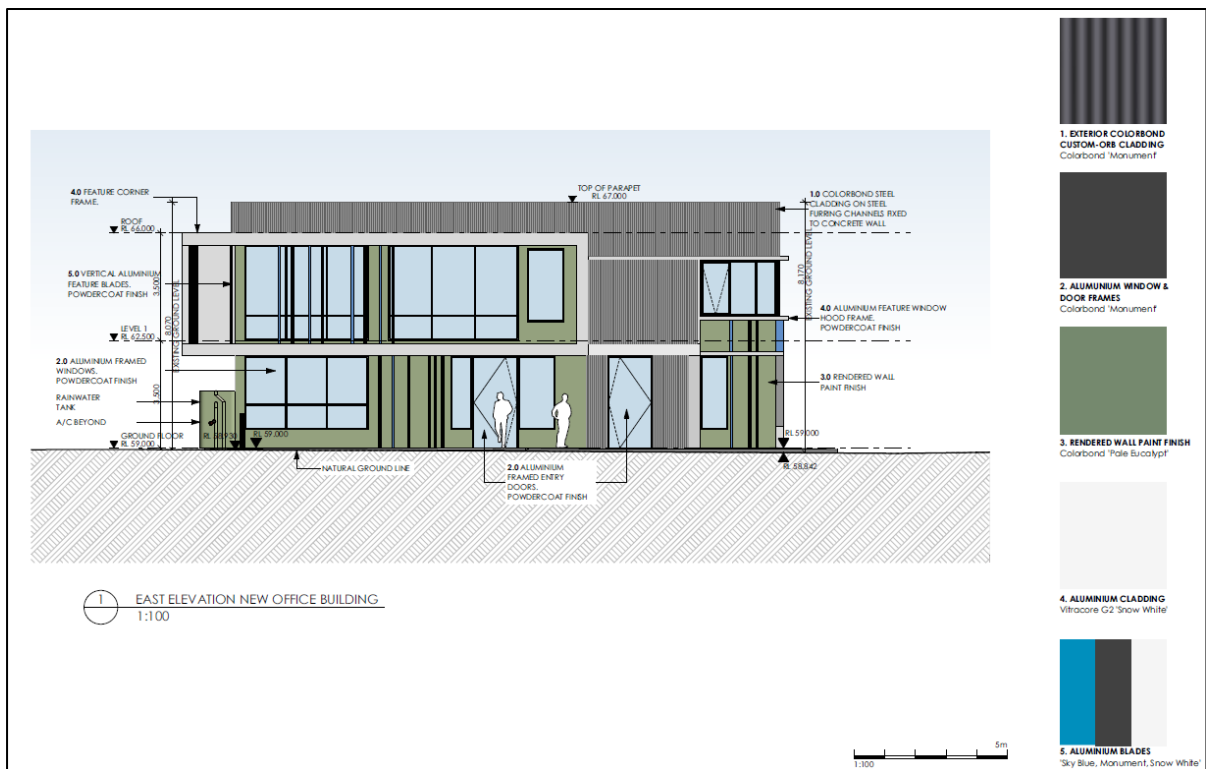


Figure 5: Eastern (front) elevation

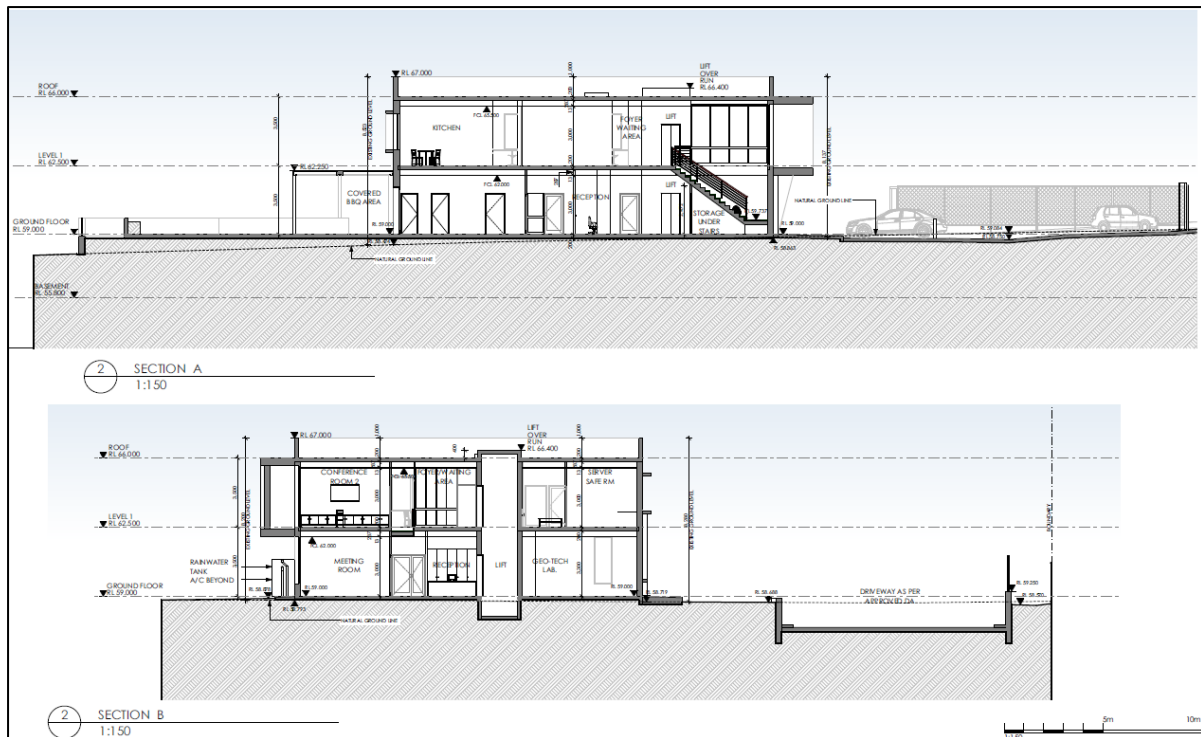


Figure 6: Sections

The proposed works would also result in a number of modified conditions. These would be reflected in detail within the modified condition of consent should the application be approved. These changes would primarily relate to:

Condition 1. Approved plans (as modified previously under DA-263/2018/A) - to reflect the amended architectural set and supporting documentation.

Pursuant to the current Environmental Planning and Assessment Regulation 2021, Clause 275, Council must not determine an application which proposes amendments to a condition amended or added by the SWCPP.

Under DA-263/2018, the panel:

- added condition – **102 Site to be Concreted**
- added condition 109A – **111 Acoustic Report**
- amended condition 89 – **89 Environmental Protection License**
- amended condition 102 – **103 Occupational Health & Safety**
- amended condition 115 – **117 Hours of Operation**

The subject modification involves the amendment of **Condition 102 Site to be Concreted** (Figure 7 & 8 below) to reflect the modified concrete area within the car park (as depicted in Figure 4 above). Council is therefore not permitted to determine the subject modification.

Site to be concreted

102. All areas to be trafficable by vehicles (being the area annotated with 'Concrete Driveway & Manoeuvring Area' and 'driveway', and the car spaces depicted on the plans prepared by 'PTI Architecture', Sheets DA 05 Revision N and DA 06 Revision J, dated 23/09/2019), are to be concreted to an appropriate engineering specification prior to the issuing of an Occupation Certificate.

Figure 7: Condition 102 (as amended by DA-263/2018/A)

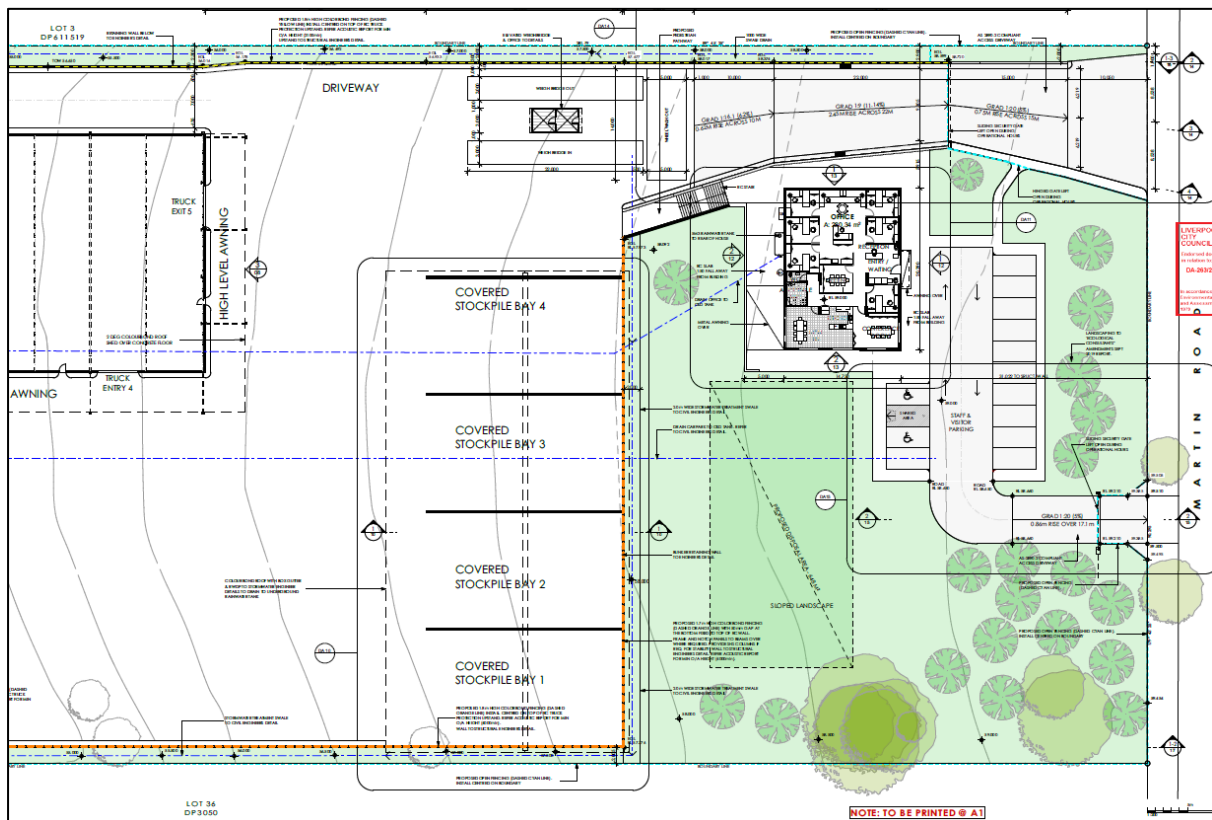


Figure 8: Sheet DA 06 referenced by Condition 102 (DA-263/2018/A)

3.2 Background

The development application was lodged on **24 February 2025**. A chronology of the development application since lodgement is outlined below, including the Panel's involvement (briefings, deferrals, etc) with the application:

Table 2: Chronology of the DA

Date	Event
24 February 2025	DA lodged
7 March 2025	DA referred to internal departments and external agencies

12 March 2025	Advertising and notification of the application commenced
11 April 2025	Advertising and notification of the application concluded (no submissions received)
2 April 2025	Stop-the-clock letter issued
20 May 2025	Request for Additional Information letter issued

3.3 Site History

The following are previous development applications lodged and considered on the subject site.

Table 4: Chronology of site history

DA Number	Proposal/Details	Status
DA-263/2018	Lodged 4 April 2018: 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 identified a designated development as specified in Schedule 3 of the Environmental Planning and Assessment Regulations 2000.	Approved SWCPP 17 April 2019
DA-263/2018/A	Lodged 10 October 2019: 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.	Approved SWCPP 12 June 2020
DA-263/2018/B	Lodged 12 March 2021: Modification to Development Consent DA-263/2018 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification seeks to amend the architectural plans for the office/administration building and associated staff and visitor parking to provide a two-storey building with basement parking and relocated driveways to the car parks	Withdrawn 27 July 2023
DA-263/2018/C	<i>Lodged 24 February 2025: Modification to Development Consent DA-263/2018 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to amend the architectural</i>	<i>Currently Under Assessment</i>

Subject Application	<i>plans for the approved single storey office/administration building and associated staff and visitor parking to be replaced with a two-storey building, with an additional five (5) car parking spaces for visitors and staff.</i>	
Concurrent Application	Lodged 14 March 2025: Section 4.55(2) Modification to Development Consent DA-263/2018 to amend the architectural plans for the approved processing shed to be relocated on the site and increased in floor area and height	Currently Under Assessment

4. PLANNING ASSESSMENT

4.1 Lapsing of Consent

Pursuant to Section 4.53 of the *Environmental Planning and Assessment Act 1979*, which provides:

4.53 Lapsing of consent.

(1) *A development consent lapses—*

- (a) *5 years after the date from which it operates if the development consent commences operation after the prescribed period, or*
- (b) *5 years after the date from which it operates if the development consent commences operation during the prescribed period, or*
- (c) *2 years after the date on which the development consent would otherwise have lapsed if the development consent commenced operation before, and has not lapsed at, the commencement of the prescribed period.*

The statutory Covid-19 Response ‘Lapsing of Development Consents’ as published on the NSW Govt. Planning website is relied upon. The Ministerial Direction provides for consents and deferred commencement consents granted before 25 March 2020 that had not already lapsed; the lapsing date has been extended by 2 years.

The original DA was approved 17 April 2019 with a lapse date of 17 April 2024. Therefore, a 2-year extension applies, permitting a lapse date of 17 April 2026.

4.2 Statutory Assessment

The application has been lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, which provides:

(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 the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: Refer to detailed discussion under item 4.3 below. It is concluded that the proposed modifications result in a development that is substantially the same as the original consent under DA-263/2018. However, the extent of physical changes places the proposal at the upper limit of what is permissible under Section 4.55(2).

- (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: As per EP&A Regulation 109(2), a copy of the modification application is required to be provided to the original authority. NSW Environmental Protection Authority (EPA) provided concurrence for the original application. The modification application was referred to NSW EPA, who did not object to the proposal to modify the consent.

- (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 proposal was required to be advertised in accordance with the Liverpool Community Engagement Strategy 2022. The application was advertised and notified between 12 March and 11 April 2025.

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

Comment: No submissions were received during the notification period.

- (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 of the development, the subject of the application.*

Comment: The application was submitted under Section 4.55(2). No matters relating to Section 4.15(1) were required to be considered.

4.3 Substantially the same Assessment

The central question is whether the development, as modified, bears the same essential character as the development originally approved.

The Land and Environment Court has held (*Moto Projects v North Sydney Council [1999] NSWLEC 280*)¹ that: “The requisite test is whether the modified development as a whole results in a development that is substantially the same as that originally approved, not whether each individual change is substantial.”

In order to determine the above, it is prudent to conduct a thorough review of the approved DA and the proposed modification.

4.3.1 Background

DA-263/2018:

Development consent DA-263/2018 was granted for a Resource Recovery Facility including:

- Processing shed 20 x 78m (1,560m²) to house a crushing plant;
- Two covered material storage bays;
- Stockpile areas;
- Hardstand slab and retaining walls;
- Weighbridge and wheel wash;
- Conversion of existing dwelling to offices;
- 13 space car park;
- The processing of 95,000 tonnes per annum of construction and demolition waste.

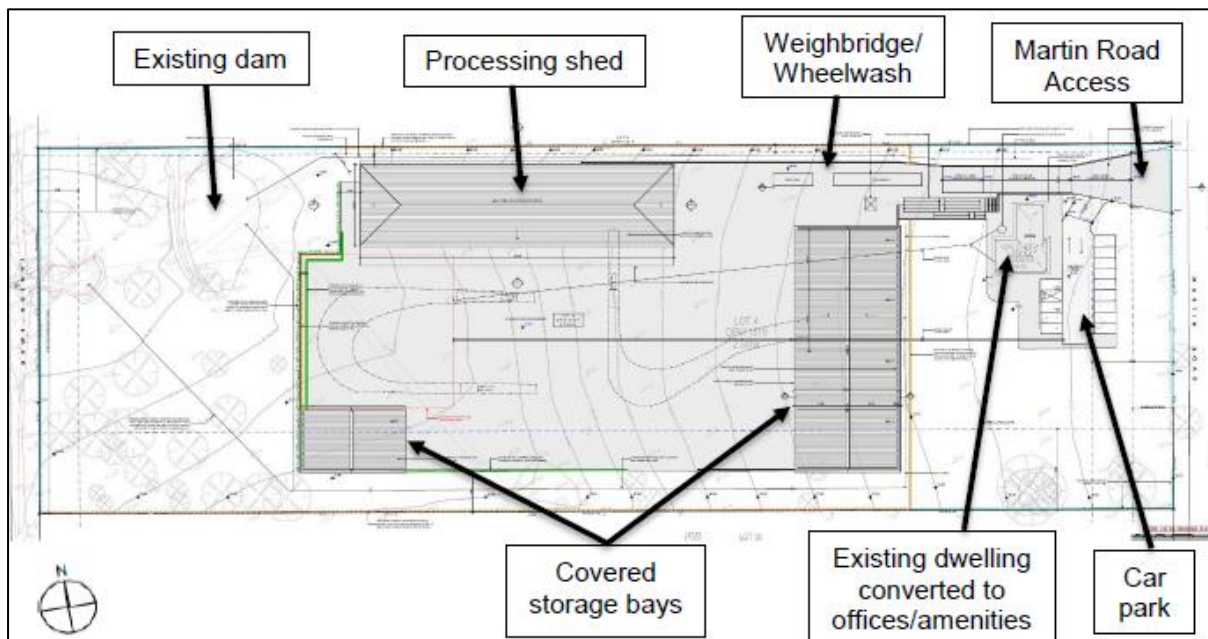


Figure 9: Site Plan (Approved DA-263/2018)

DA-263/2018/A:

A subsequent modification application DA-263/2018/A was approved including:

- Shed height increased to 13.5m, with additional awning;
- Enlarged hardstand slab;

¹ *Moto Projects v North Sydney Council [1999] NSWLEC 280*

- Demolition of existing dwelling and conversion to a single-storey purpose-built office building of similar footprint;
- Separate staff/visitor vehicle access;
- Additional landscaping to western and eastern frontages;
- Noise barriers to the north, west, and eastern sides;
- Re-alignment of existing easement and repositioning of OSD;
- No change to the approved operation.

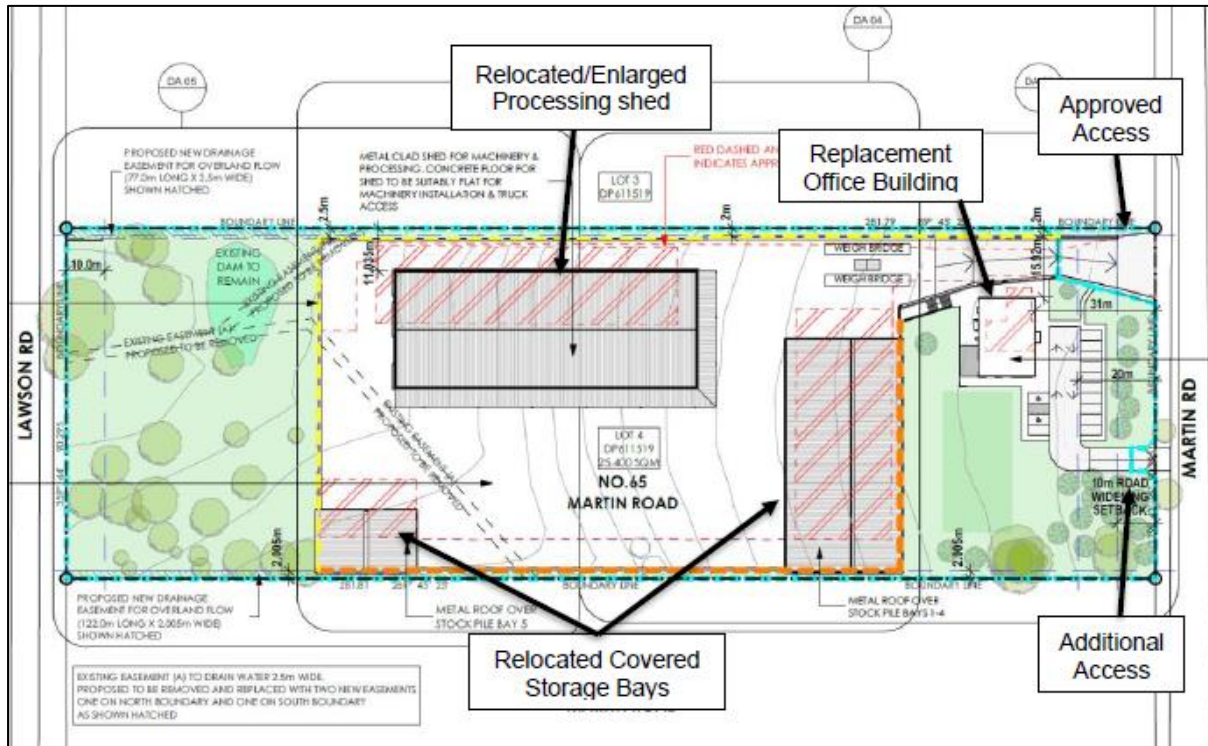


Figure 10: Site Plan (Approved modification DA-263/2018/A)

It must be noted that under Section 4.55(2) of the *EP&A Act*, the proposed modification must be substantially the same development as the *original development consent* — that is, DA-263/2018 as originally approved, not DA-263/2018/A.

This principle is well established in case law, including *Multiplex Blue Pty Ltd v North Sydney Council* [2004] NSWLEC 400² and others, which confirm that: "The phrase 'as originally granted' means the consent as originally granted *before any modifications*."

DA-263/2018/C:

The subject modification application DA-263/2018/C proposes:

- No change to the processing shed;
- Addition of a second floor to the office building;
- Increase the office floor plate area to 340m².
- Geotechnical Laboratory addition to ground floor (subject to a future DA for fit out and use);
- Increase the car parking from 13 spaces to eighteen (18) spaces;

² *Multiplex Blue Pty Ltd v North Sydney Council* [2004] NSWLEC 400

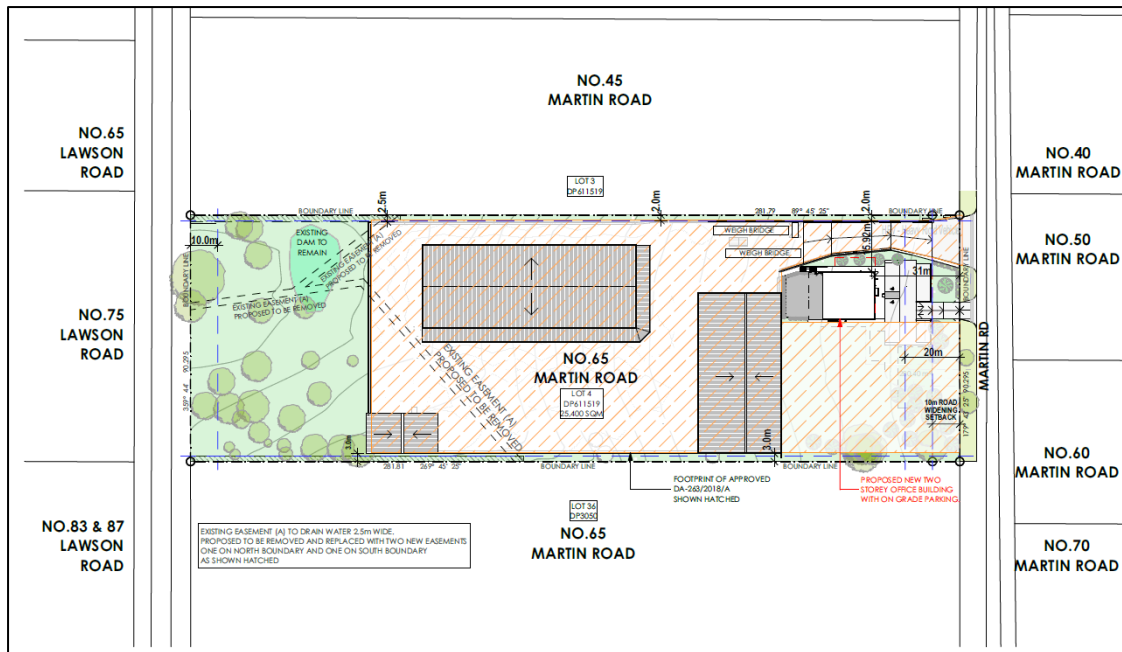


Figure 11: Proposed Site Plan (DA-263/2018/C)

DA-263/2018/D:

A subsequent modification application DA-263/2018/D has also been lodged including:

- Relocate the processing shed from the northern boundary to be more centrally located between the northern and southern side boundaries;
- Increase the footprint of the processing shed to 6,245m² to allow the relocation of the external stockpile bays and 'finished product' storage bins to be enclosed within the building;
- Increase the height of the processing shed to 16.045m to allow for 'truck & dog' trucks to tip entirely within the building;
- Increase the first floor footprint from to 172m² (including additional corridor and storage room);
- Reconfigured truck manoeuvring area;
- No changed to the approved processing capacity is proposed.

Office height	Single storey	Two-storey: 8.493m	No change	+Second storey
Additional Use	None	Geotechnical Laboratory (<i>subject to future DA</i>)	No change	Subject to future DA
Car Parking	13 spaces	18 spaces	No change	+5 spaces
Other				
Truck manoeuvring area	Centrally located	No change	Northern Boundary	Relocated
Processing capacity	95,000 tonne	No change	No change	No change

As detailed above, there are significant changes to the built form. The shed more than doubles in size (when considered in conjunction with the covered storage bays). The shed height significantly increases with the addition of a mezzanine level. Furthermore, the processing shed's location shifts from the northern boundary to a more central location, although the setback from the street frontage remains consistent with the original approval.

The significant street setback ensures the visual impact of the shed remains minor, while adequate side setbacks have been provided to ensure any potential overshadowing is not exacerbated.

An acoustic report has been provided that demonstrates the previously approved 2.1m Colorbond acoustic fencing can adequately mitigate any additional noise impact.

The relocation of the shed and provision of separate vehicular access for staff and visitors result in implications for traffic circulation; however, as demonstrated within the provided traffic statement, these modifications not only support safety but also improve truck manoeuvrability and promote the efficient operation of the facility.

The office space evolves from a converted residential building to a two-storey purpose-built office building. Whilst the test in s4.55 does not permit comparison between what it proposed and the consent as modified, it is noteworthy that the demolition of the existing dwelling and construction of a one-storey office building was approved under DA-263/2018/A.

4.3.3 Qualitative Assessment

The development continues to operate as a Resource Recovery Facility with no change in capacity or fundamental land use.

There is no additional environmental load and no intensification of the approved use. Processing output, vehicle movements, and waste volumes remain relatively consistent with the original approval.

While the fit-out and use of the proposed Geotechnical Laboratory space are deferred to a future DA, its inclusion reflects an expansion of the function scope of the Resource Recovery Facility. However, as no use is currently approved, it does not alter the development's character at this stage.

4.3.4 Conclusion

When the two modification applications are reviewed holistically, it is undeniable that the extent of the physical changes, particularly the increase in size of the shed and second storey to the office building, is significant. However, the core function, purpose, and land use remain consistent with the original approval and, as such, are considered qualitatively the same.

Physical scale and layout do not necessarily disqualify a proposal, provided the essence of the approved development remains the same as demonstrated by the case law principle in *Dennes v Port Macquarie-Hastings Council* [2011] NSWLEC 159⁴ "The use of the term 'substantially the same' is indicative of a qualitative standard rather than a quantitative one."

It is acknowledged that there are quantitative differences between the subject modifications and the original consent that may appear in isolation to be significant, the focus of the test in s4.55(2)(a) is on the whole and on an overall balancing of the developments (*Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437)⁵. It is considered that the qualitative similarities are enough to negate the large quantitative differences described above.

It is therefore concluded that the proposed modifications result in a development that is substantially the same as the original consent under DA-263/2018. However, the extent of physical changes places the proposal at the upper limit of what is permissible under Section 4.55(2).

5. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters that are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any 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, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

⁴ *Dennes v Port Macquarie-Hastings Council* [2011] NSWLEC 159

⁵ *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437

- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

5.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements, and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Western Sydney Aerotropolis Plan (WSAP) 2020*
- *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 6** and considered in more detail below.

Table 6: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2</u> : State and Regional Development Part 2.4, Clause 2.20 the Sydney Western City Planning Panel is the determining body for development specified in Schedule 6. Schedule 6 applies to particular designated development and includes waste or resource management facilities.	Y
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 2</u> : Vegetation in non-rural areas • Does not conflict with objectives of Chapter 2.	Y
	<u>Chapter 6</u> : Water Catchments • Does not conflict with objectives of Chapter 6.	Y
State Environmental Planning Policy (Resilience & Hazards)	<u>Chapter 3</u> : Hazardous and offensive development • Does not conflict with objectives of Chapter 3. The quantity of dangerous goods to be stored at the site does not exceed thresholds.	Y
	<u>Chapter 4</u> : Remediation of Land	Y

(c) waste management facilities or works that meet the requirements for designated development under the Environmental Planning and Assessment Regulation 2021, Schedule 3, section 45.

The original approved development (DA-263/2018) is for a **Resource Recovery Facility**, which is a type of waste or resource management facility.

Schedule 3 of the EP&A Regulation 2021, Clause 45 notes that:

45 Waste management facilities or works

(1) Development for the purposes of a waste management facility or works is designated development if—

(a) the facility or works dispose of solid or liquid waste by landfilling, thermal treatment, storing, placing or other means, and

(b) the waste —

(i) includes a substance classified in the ADG Code or medical, cytotoxic or quarantine waste, or

(ii) comprises more than 100,000 tonnes of clean fill in a way that, in the consent authority's opinion, is likely to cause significant impacts on drainage or flooding, or

(2) Development for the purposes of a waste management facility or works is designated development if—

(a) the facility or works sorts, consolidates or temporarily stores waste at a transfer station or material recycling facility for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse, and

(b) the facility or works—

(i) handle substances classified in the ADG Code or medical, cytotoxic or quarantine waste, or

(ii) have an intended handling capacity of more than 10,000 tonnes per year of waste containing food or livestock, agricultural or food processing industries waste or similar substances, or

(iii) 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.

(3) Development for the purposes of a waste management facility or works that purify, recover, reprocess or process more than 5,000 tonnes per year of solid or liquid organic materials is designated development (in this case greenwaste).

While the approved development (DA-263/2018) was considered designated development, it was not state significant as the amount of waste to be processed was estimated to be approximately 95,000 tonnes per year. The waste consists of Construction and Demolition (C&D) waste, including soil (VENM/ENM) and green waste (only garden waste). The waste was not to be putrescible, hazardous, or liquid waste.

The subject modification involves amendment solely to the office building and car parking area, with no intensification to the amount or type of waste handled each year.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The original development application was approved under *Sydney Regional Environmental Plan No. 20 – Hawksbury-Nepean River (No 2 – 1997) (Deemed SEPP)*. This was repealed in 2021 and replaced by SEPP (Biodiversity and Conservation) 2021.

(i) Chapter 2 – Vegetation in non-rural areas

The site is Biodiversity Certified. The subject modification would not conflict with the objectives of Chapter 2.

(ii) Chapter 6 – Water Catchments

Part 6.2 – Development in regulated catchments applies to the application as the development is within the Hawkesbury-Nepean Conservation area Sub-Catchment. The relevant clauses are as follows:

Clause	Comment
6.6 Water quality and quantity	Complies The development would not result in any unreasonable impacts to water quality or quantity.
6.7 Aquatic ecology	Complies The development would not result in any adverse impacts on aquatic ecology.
6.8 Flooding	Not Applicable The site is not affected by flooding.
6.9 Recreation and public access	Not Applicable The site is not in proximity to any waterbody
6.10 Total catchment management	Complies The proposed modification would not detrimentally impact the existing stormwater management system, and as such it is considered that it would not have an adverse impact on the total catchment.

Based on the above assessment, the proposed development as modified satisfies the requirements of Chapter 6 and is considered to comply with the SEPP (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Resilience and Hazards) 2021

The original development application was approved under *State Environmental Planning Policy 33 – Hazardous and Offensive Development* and *State Environmental Planning Policy 55 – Remediation of Land*. These were repealed in 2021 and replaced by SEPP (Resilience and Hazards) 2021.

(i) Chapter 3: Hazardous and offensive development

Chapter 3 of SEPP (Resilience and Hazards) has as its general aims to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account and to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact.

The 'Environmental Impact Statement Resource Recovery Facility 55 Martin Road, Badgerys Creek', Report No. 171127_EIS-Rev2 prepared by Benbow Environmental Released

22nd March 2018 confirmed that a preliminary risk screening of the proposed development was performed in accordance with SEPP No. 33 at the time and a preliminary hazard analysis (PHA) was not required as the quantity of dangerous goods to be stored at the site did not exceed SEPP 33 thresholds. Based upon this information and the nature of the proposed modifications, it is believed that further consideration is not required of Chapter 3, *State Environmental Planning Policy (Resilience and Hazards) 2021*. Furthermore, it is noted that the fit-out and use of the laboratory will be subject to separate development consent.

(ii) Chapter 4: Remediation of Land

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land.

The objectives of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a statewide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

During the assessment of DA-263/2018, Council's Senior Environmental Health Officer reviewed the Preliminary Site Investigation prepared by STS GeoEnvironmental Pty Ltd (report no: 18/0089) dated January 2018 (trim ref: 090495.2018) and was satisfied that the land was suitable for the proposed development without the need for remediation. The modifications approved to the office building do not affect the consultant's previous conclusions regarding the suitability of the land for the proposed development.

Clause 4.6(1) prescribes the contamination and remediation matters that must be considered by Council before determining the development application. Specifically, Council must consider:

- whether the land is contaminated; and
- if the land is contaminated, the Council must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation); and
- if the land requires remediation to be made suitable, Council is satisfied that the land will be remediated before it is used.

Pursuant to Clause 4.6(1) the following shall be addressed:

Clause	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless—	
(a) It has considered whether the land is contaminated, and	The Preliminary Site Investigation found the site was suitable for the proposed development.
(b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The PSI indicates that the site is suitable for the proposed use in its current state, and Council's Environmental Health section are supportive of the application subject to conditions of consent.
(c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The site does not require remediation.

State Environmental Planning Policy (Sustainable Buildings) 2022

At the time of lodgement of the originally approved development SEPP – Building Sustainability Index (BASIX) 2004 was in place, in which provisions were limited to residential development, and as such, the subject application was exempt.

SEPP Index (BASIX) 2004 was repealed on 1 October 2022 and was replaced by State Environmental Planning Policy (Sustainable Buildings) 2022. Sustainability standards for non-residential development were introduced to assist in reaching the state's target of net zero emissions.

Despite this, the proposed development is not required to be assessed against SEPP (Sustainable Buildings) 2022 as 'Savings and transitional provisions' apply, which state:

4.2 Savings and transitional provisions

(1) *This policy does not apply to the following –*

(f) *an application for modification of a development consent under the Act, section 4.55 or 4.56 submitted on the NSW planning portal on or after 1 October 2023, if the development application for the development consent was submitted on the NSW planning portal before 1 October 2023.*

Given the original application was lodged on 4 April 2018, the above savings provision applies, and therefore the subsection modification application is exempt from the provisions of SEPP (Sustainable Buildings) 2022.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The original development application was approved under *State Environmental Planning Policy (Infrastructure) 2007*. This was repealed in 2021 and replaced by SEPP (Transport and Infrastructure) 2021.

(i) Chapter 2 - Infrastructure

a. Division 23 – Waste or resource management facilities

The proposed development is best described as a resource recovery facility under SEPP (Infrastructure) 2007, which has the same meaning as in the Standard Instrument:

resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

Note—

Resource recovery facilities are a type of **waste or resource management facility**

Pursuant to Clause 2.153, development for the purposes of a waste or resource management facility may be carried out with consent on land in a prescribed zone. Although the ENT – Enterprise zone is not a prescribed zone pursuant to SEPP (Transport and Infrastructure), however, it is a permissible form of development under the SEPP (Precincts – Western Parkland City) 2021, which prevails to the extent of any inconsistency between itself and the SEPP (Transport and Infrastructure).

b. Schedule 3 – Traffic-generating development to be referred to TfNSW
Clause 2.122 refers to Traffic Generating Development:

2.122 Traffic-generating development

(1) This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—

- (a) new premises of the relevant size or capacity, or
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

The original application was classified as a traffic-generating development under Schedule 3, taking into consideration a response provided by RMS. The subject modification involves a minor enlargement in premises and capacity. The application has been referred to TfNSW in accordance with Clause 2.122, and no objection was raised to the modification application.

Western Sydney Aerotropolis Plan (WSAP) 2020

The Western Sydney Aerotropolis Plan September 2020 (WSAP) is the main strategic planning document governing the Aerotropolis and includes overarching planning principles, distribution of land uses, the phasing of precincts, and identification of high-level transport framework, blue–green infrastructure, and other key infrastructure.

Clause 35(4)(e) of the *Environmental Planning and Assessment Regulation 2021* requires applications submitted on land within the Western Sydney Aerotropolis to include an assessment of the consistency of the development with the Western Sydney Aerotropolis Plan.

(i) Aerotropolis-shaping objectives and principles

Table 7: Consideration of WSAP Objectives

Objective	Requirement	Comment
Productivity	1. An accessible and well-connected Aerotropolis	N/A The proposed modifications to the office area of the approved Resource Recovery Facility is unlikely to have any impact on future plans for walking, cycling, public and active transport.
	2. High-value jobs growth is enabled, and existing employment enhanced	Complies The approved facility may assist in the development of vibrant centres that attract workers and investment through the provision of jobs. The proposed modification is designed to facilitate the efficient use of employee area.
	3. Safeguard airport operations	N/A The proposed modifications to the office area of the approved Resource Recovery Facility would not impact airport operations. The application was referred to WAS who raised no objection subject to conditions of consent.
Sustainability	4. A landscape-led approach to urban design and planning	N/A The proposed modification would not result in any further impact on natural vegetation.

	5. A sustainable, low carbon Aerotropolis that embeds the circular economy	N/A The proposed modification is unlikely to significantly add to carbon emission.
	6. A resilient and adaptable Aerotropolis	N/A The proposed modification would not impact existing water quality, nor would it alter existing flood extents.
Infrastructure and Collaboration	7. Infrastructure that connects and services the Western Parkland City as it grows	N/A The proposed modification would not prevent the development of the Aerotropolis as a Smart City supported by fast and reliable adaptable digital connectivity.
	8. A collaborative approach to planning and delivery	Complies A collaborative approach with all three levels of governments, the community, industry, utilities and landowners is sought. Relevant community notification has been undertaken and referrals to relevant state government bodies have been made.
Liveability	9. Diverse, affordable, healthy, resilient and well-located housing	N/A The proposed modification would not restrict future potential for diverse, affordable housing.
	10. Social and cultural infrastructure that strengthens communities	N/A The proposed modification would not restrict future potential for community and cultural facilities and services.
	11. Great places that celebrate local character and bring people together	N/A The proposed modification would not restrict future potential to celebrate public and private spaces.

(i) Recognise Country – Guidelines for development in the Aerotropolis 2022

Recognise Country is the single overarching objective that underpins the WSAP, along with 11 other key objectives as outlined in the table above. Traditional understandings of Country will shape the Aerotropolis, influencing planning, urban design, and landscape management. Aboriginal peoples understand that they originated from Country; it is at the centre of their ways of knowing and being. An appreciation of Country ensures Country is cared for throughout the process of design and development.

Pursuant to *Section 1.2.1 Where these Guidelines apply*, the guidelines do not apply to the subject application as it does not fall under any of the below criteria:

- State Significant Development (SSD)
- State Significant Infrastructure (SSI)
- Master Plans as per the Western Parkland City SEPP
- Development applications (including concept applications) on sites 20 hectares or more in size
- Development applications progressing under the design excellence process
- Development applications located within or intersects areas of high Aboriginal heritage sensitivity (where deemed appropriate by the responsible planning authority).

Furthermore, it would be difficult for the subject modification application to comply with the 'Recognise Country' principle when the original development was approved prior to the

introduction of the Guidelines, as the initial design, layout, and underlying planning rationale were not informed by Country-led design thinking. Integrating 'Recognise Country' retrospectively can present significant challenges, particularly if the built form, landscaping, or site orientation already limits opportunities to respond meaningfully to Country.

Key elements such as water flow, vegetation patterns, cultural narratives, and Aboriginal connection to the site were not considered in the original approval, making it difficult for the modification to fully address or incorporate these principles without fundamentally altering the approved development.

State Environmental Planning Policy (Precincts—Western Parkland City) 2021

The original development application was approved under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. This was repealed in 2021 and replaced by SEPP (Precincts – Western Parkland City) 2021.

Chapter 4 of the State Environmental Planning Policy (Precincts - Western Parkland City) 2021 (Western Parkland City SEPP) establishes boundaries consistent with the WSAP, applies zoning to the initial precincts, provides performance criteria for master plans and describes a framework for planning pathways.

(i) Zoning

The subject land is zoned ENT – Enterprise pursuant to State Environmental Planning Policy (Precincts—Western Parkland City) 2021 - Chapter 4 Western Sydney Aerotropolis.

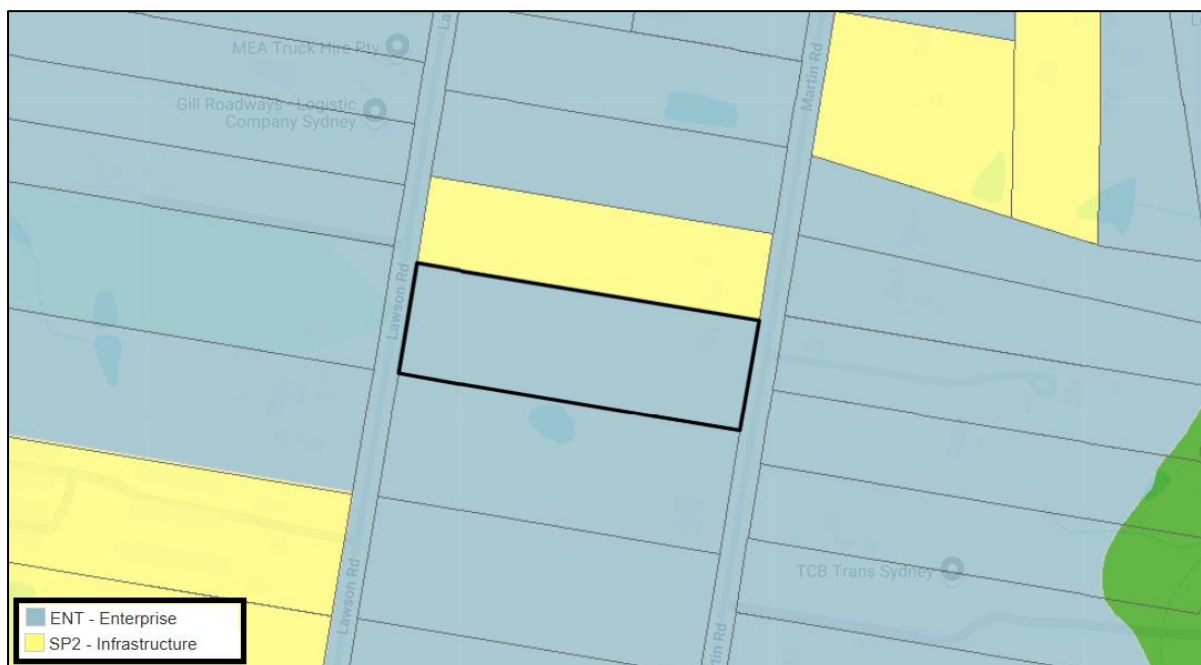


Figure 12: Extract of zoning map at the subject site.

(ii) Permissibility

The location of the proposed modification is within the ENT zone and is defined as *Resource Recovery Facility*, which is not a prohibited form of development or land-use within the zone.

The proposal meets the relevant land use definitions and is permitted within the ENT zone.

(iii) Objectives of the zone

The objectives of the Enterprise Zone are:

- *To encourage employment and businesses related to professional services, high technology, aviation, logistics, food production and processing, health, education and creative industries.*
- *To provide a range of employment uses (including aerospace and defence industries) that are compatible with future technology and work arrangements.*
- *To encourage development that promotes the efficient use of resources, through waste minimisation, recycling and re-use.*
- *To ensure an appropriate transition from non-urban land uses and environmental conservation areas in surrounding areas to employment uses in the zone.*
- *To prevent development that is not compatible with or that may detract from the future commercial uses of the land.*
- *To provide facilities and services to meet the needs of businesses and workers.*


It is considered that the proposed modification works would not impact the development's compliance with the objectives of the zone.

Table 8: Consideration Chapter 4 Western Sydney Aerotropolis provisions

Development Provision	Requirement	Proposed	Comment
PART 4.3 DEVELOPMENT CONTROLS – AIRPORT SAFEGUARDS			
4.17 Aircraft Noise	(a) to prevent certain noise sensitive development on land near the Airport, and (b) to minimise the impact of aircraft noise for other noise sensitive development, and (c) to ensure that land use and development near the Airport do not hinder or have other adverse impacts on the ongoing, safe and efficient 24 hours a day operation of the Airport.	The location of the proposed modification works is within the Australian Noise Exposure Concept (ANEC) zone 30 – 35, however, the proposed office building is not considered noise sensitive development. The modification works would not hinder or have any impacts on the safe operations of the future airport.	N/A
4.18 Building Wind shear and turbulence.	The objective of this section is to safeguard Airport operations from wind shear and turbulence generated by buildings.	The subject site is not located within the Windshear Assessment Trigger Area.	N/A
4.19 Wildlife Hazards	The objective of this section is to regulate development on land surrounding the Airport where wildlife may present a risk to the operation of the Airport.	The subject site is within the 3km buffer zone. The approved resource management facility falls under the category of 'relevant development', however, the proposed modification works does not impact the existing	N/A

		<p>processing, storage or handling of organic or putrescible waste.</p> <p>Ecology impacts have been previously assessed as part of DA-263/2018. The minor modifications to the configuration of the approved office/admin building do not materially increase any impacts upon wildlife within the development site.</p>	
4.20 Wind Turbines	The objective of this section is to regulate the construction of wind turbines and wind monitoring towers on land within 30 kilometres of the Airport.	The proposal is not for electricity generating works such as turbines or wind monitoring towers.	N/A
4.21 Lighting	The objective of this section is to safeguard Airport operations from the risk of lighting and reflectivity distractions for pilots.	The subject site falls within the 6km Lighting Intensity radius, however, the approved use does not fall under development within purposes specified under clause (2)(a).	N/A
4.22 Airspace Operations	<p>(1) The objectives of this section are—</p> <p>(a) to provide for the effective and ongoing operation of the Airport by ensuring that its operation is not compromised by development that penetrates the prescribed airspace for the Airport, and</p> <p>(b) the relevant Commonwealth body does not object to the development.</p> <p>(2) This section applies to development on land shown on the Obstacle Limitation Surface Map that is a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996 of the Commonwealth.</p>	<p>The site is located within the obstacle limitation surface (110-120m), however, the proposal is not for a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996 of the Commonwealth.</p> <p>The application was referred to WSA who raised no objection subject to conditions of consent.</p>	N/A
4.23 Public Safety	The objective of this section is to regulate development on land on which there is an appreciable risk to public safety from the operation of the Airport.	The land is not within the Public Safety Area.	N/A
4.23A Operation of certain transport facilities	The objective of this section is to regulate development that may impact the operation of certain air transport facilities.	The land is not within the Building Restricted Area	NA
PART 4.4 DEVELOPMENT CONTROLS - GENERAL			
4.24 Flood planning	(1) The objectives of this section are—	The land is not mapped within the flood planning areas in the Aerotropolis.	N/A

	(a) to minimise the flood risk to life and property associated with the use of land, and (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, and (c) to avoid significant adverse impacts on flood behaviour and the environment.		
4.25 Preservation of trees and vegetation in Environment and Recreation Zone and Cumberland Plain	1) The objectives of this section are— (a) to preserve the amenity of the Western Sydney Aerotropolis through the preservation of trees and vegetation, and (b) to promote the conservation of, and minimise the impact of development on, native vegetation.	The land is not within the Environment and Recreation zone and the proposed modification would not result in any impact on existing native vegetation on the High Biodiversity Areas Map.	N/A
4.25A Clearing of Native vegetation	This section applies to land shown as “existing native vegetation” on the High Biodiversity Value Areas Map.	As above	N/A
4.26 Heritage Conservation	1) The objectives of this section are— (a) to conserve the environmental heritage of the land to which this Chapter applies, and (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, and (c) to conserve archaeological sites, and (d) to conserve Aboriginal objects and Aboriginal places of heritage significance	The land is not mapped as a heritage area.	N/A
4.27 Transport Corridors	(1) Development consent must not be granted to the following development unless the consent authority has obtained the concurrence of Transport for NSW— (a) development on transport corridor land with a capital investment value of more than \$200,000, (b) development that involves the penetration of ground to a depth of at least 2 metres below ground level (existing) on land within 25 metres (measured horizontally) of transport corridor land.	The front of the subject site falls within land mapped for a future transport corridor (Primary Arterial Road). Although the subject modification works do not fall within this area a referral was made to TfNSW in accordance with CI 2.122 of the SEPP (Transport & Infrastructure) 2021. TfNSW raised no objection.	Complies

	 <p>Figure 13: Extract of Aerotropolis Transport Corridor Map</p>		
4.28 Warragamba Pipelines	<p>Development consent must not be granted to development on land shown as “Warragamba Pipeline” on the Warragamba Pipelines Map unless the consent authority—</p> <p>(a) has obtained the concurrence of Water NSW, and</p> <p>(b) is satisfied that the development will not adversely affect—</p> <p>(i) the quantity or quality of water in the Warragamba Pipelines controlled area (declared under the Water NSW Act 2014), or</p> <p>(ii) the operation and security of water supply pipelines from Warragamba Dam to Prospect Reservoir and associated infrastructure.</p>	<p>The land is not within pipeline areas as per the State Environmental Planning Policy (Precincts— Western Parkland City) 2021 Warragamba Pipelines Map.</p>	N/A
4.28A Sydney Science Park	<p>This section applies to land identified as “Sydney Science Park” on the Sydney Science Park Map.</p>	<p>Land not mapped within the Sydney Science Park</p>	N/A
4.28B Aboriginal cultural guidelines	<p>Development consent must not be granted to development on land to which this Policy applies unless the consent authority has considered Recognise Country: Guidelines for development in the Aerotropolis published in November 2022 on the Department’s website.</p>	<p>As previously noted, pursuant to <i>Section 1.2.1 Where these Guidelines apply</i>, the guidelines do not apply to the subject application.</p>	N/A
PART 4.7 PRECINCT PLANS AND MASTER PLAN			
4.49 Public Utility Infrastructure	<p>(1) Development consent must not be granted to development to which this Division applies unless the</p>	<p>In this section <i>public utility infrastructure</i> includes the supply of water, electricity and the management of sewage.</p>	N/A

	consent authority is satisfied that— (a) public utility infrastructure that is essential for the development is available, or (b) the public utility infrastructure will be available when required	Utility infrastructure is available as demonstrated under the approved DA-263/2018.	
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The proposed modification is consistent with the relevant controls outlines in the State Environmental Planning Policy (Precincts—Western Parkland City) 2021 - Chapter 4 Western Sydney Aerotropolis.

Western Sydney Aerotropolis Precinct Plan 2024

The Western Sydney Aerotropolis Precinct Plan, September 2024, has been developed under the Western Parkland City SEPP and provides more detailed outcomes for each initial precinct.

Clause 4.39(1) of State Environmental Planning Policy (Precincts – Western Parkland City) 2021 requires development consent not to be granted to development on land to which a precinct plan applies unless the consent authority is satisfied that the development is consistent with the precinct plan. Additionally, Clause 35(4)(e) of the *Environmental Planning and Assessment Regulation 2021* requires applications submitted on land within the Western Sydney Aerotropolis to include an assessment of the consistency of the development with the Western Sydney Aerotropolis Precinct Plan.

The proposal is considered to be consistent with the relevant controls outlined in the Western Sydney Aerotropolis Precinct Plan 2023. A full assessment of the development against the requirements of the Precinct Plan is provided in **Attachment B**. Non-compliances and variations only are listed below.

i. 2.1 Precinct Plan Objectives

Pursuant to Plan Objective 01, developments are to ‘Start with Country’ and celebrate culture by reflecting the cultural landscape and continuous connection of Aboriginal people and Country.

It would be difficult for the subject modification application to comply with the ‘Start with Country’ principle when the original development was approved prior to the introduction of the Precinct Plan and its associated cultural requirements, as the initial design, layout, and underlying planning rationale were not informed by Country-led design thinking. Integrating ‘Start with Country’ retrospectively can present significant challenges, particularly if the built form, landscaping, or site orientation already limits opportunities to respond meaningfully to Country.

Key elements such as water flow, vegetation patterns, cultural narratives, and Aboriginal connection to the site were not considered in the original approval, making it difficult for the modification to fully address or incorporate these principles without fundamentally altering the approved development. Accordingly, the Recognised Country provisions are not deemed to be relevant considerations in the assessment of this modification application.

ii. 4.6.2 Street hierarchy and typology

Pursuant to Plan Objective DS1-DS6 and SH1-SH3, the road network is to be generally consistent with the alignment shown in Figures 8-10 (refer to Figures 13 & 14 below).

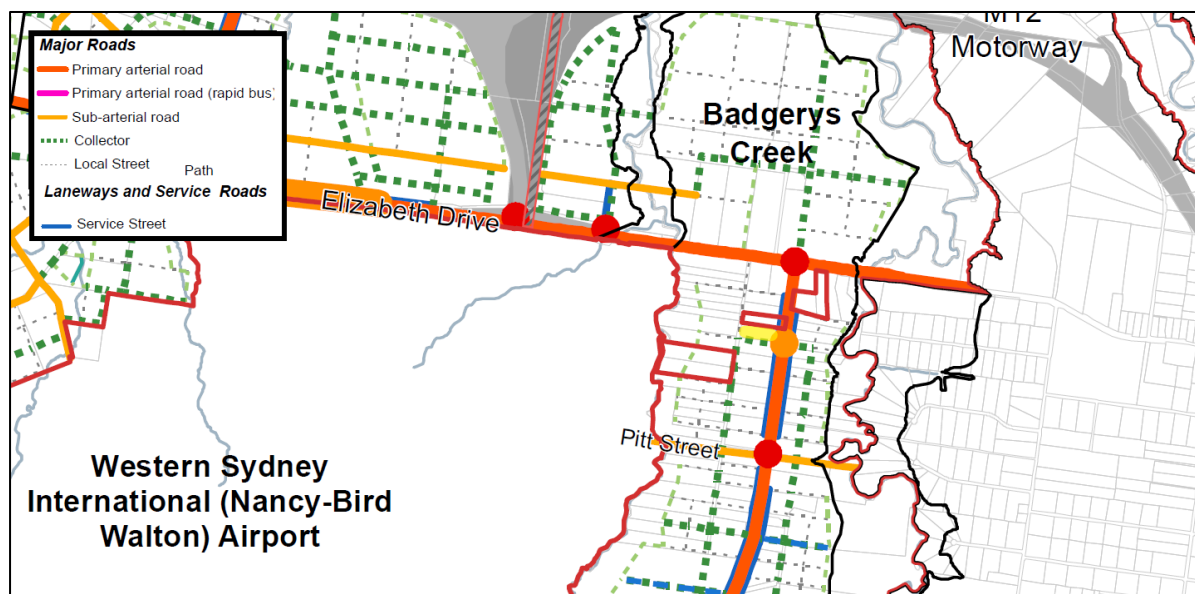


Figure 14: Street Hierarchy - Site in yellow (Figure 10* WSA-PP)

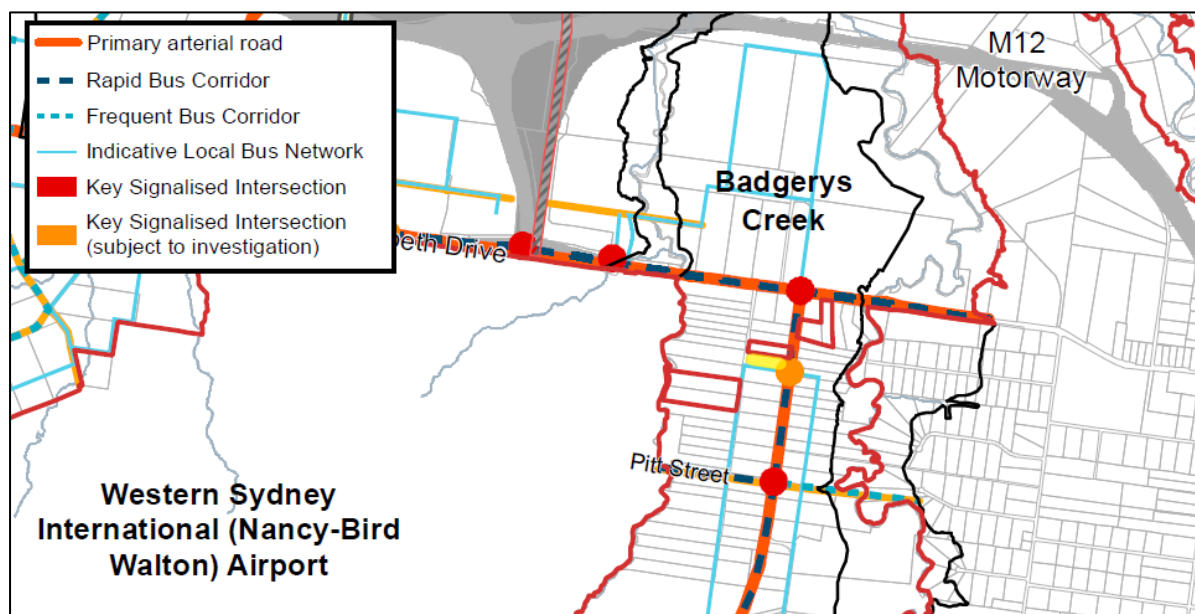


Figure 15: Transport Network Plan – Site in yellow (Figure 8 WSA-PP)

As can be seen in the above figures, the site is located along a Primary-arterial road (Martin Road) designed to accommodate freight transport. The approved DA-263/2018 incorporates a 10m road widening allowance within the front setback to Martin Road to accommodate this.

Furthermore, a combined future collector road/local bus network route is envisioned along the southern boundary of the site. Given that the Precinct Plan was introduced after the original approval for DA-263/2018 the envisioned road network has not been considered as part of the overall design. Despite this, the proposed modification works would not prevent the future alignment of the street network.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments that have been the subject of public consultation under the EP&A Act and are relevant to the proposal.

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

The following Development Control Plan is relevant to this application:

- **Western Sydney Aerotropolis Development Control Plan (Phase 2) 2022 ('the DCP')**

This DCP provides the planning, design, and environmental objectives and controls which will inform the preparation and assessment of Development Applications and Masterplans. These objectives and controls supplement those in Chapter 4 of the State Environmental Planning Policy (Precincts—Western Parkland City) 2021 and the Western Sydney Aerotropolis Precinct Plan.

Chapter 2 – General Controls. This chapter contains objectives and controls that need to be considered for all development on land where this DCP applies. The objectives and controls are designed to manage the natural and built environment across the Aerotropolis. Detailed compliance tables are located in **Attachment B**. Non-compliances and variations only are listed below.

iii. 2.6 Road design for Arterial and Sub-Arterial Roads

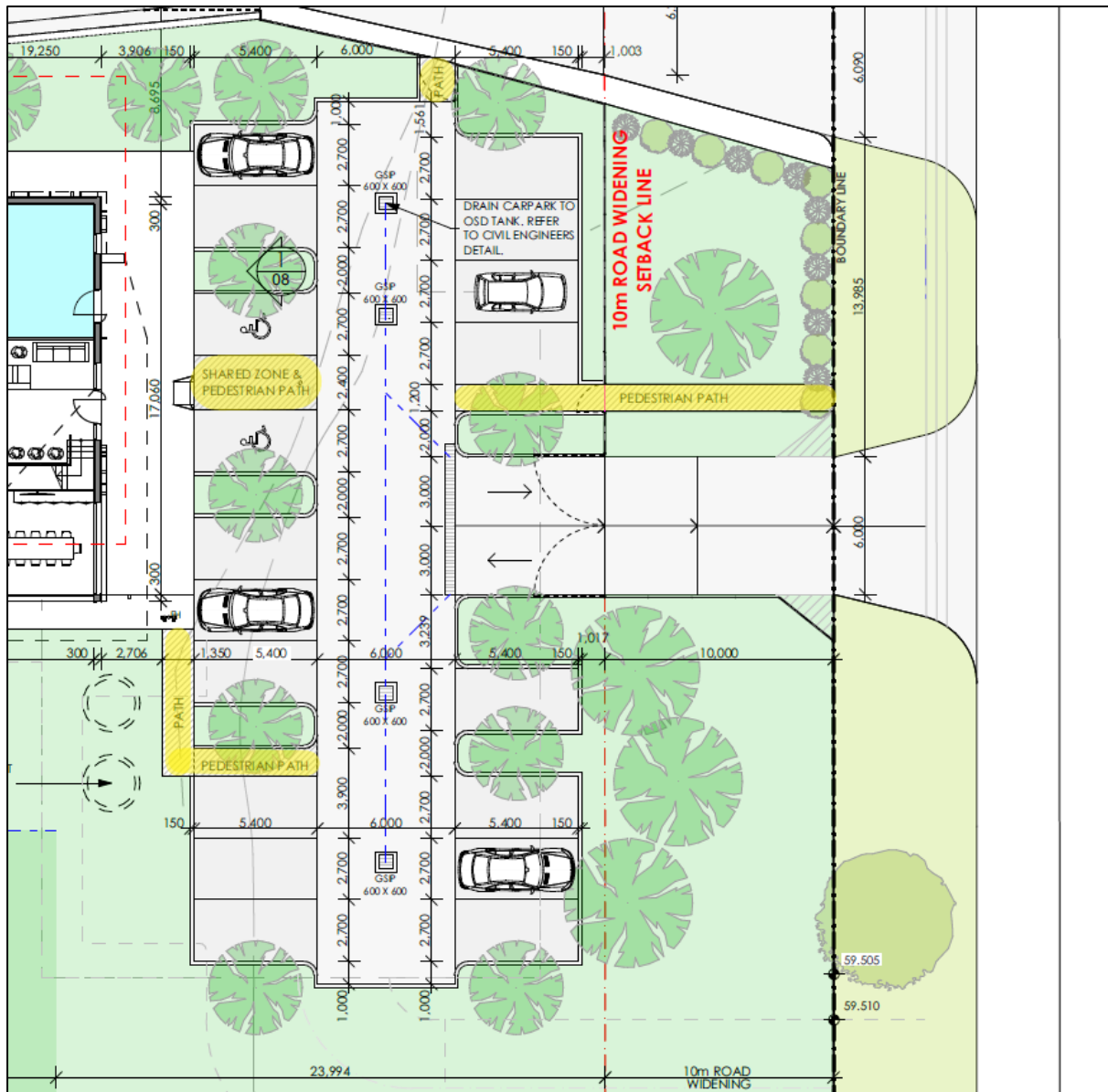
Pursuant to Performance Outcome PO1, Benchmark Solution 1, direct vehicle access to properties from the Arterial and Sub-Arterial roads identified in the Precinct Plan is not permitted, except for land uses that require or benefit substantially from access to major roads (for example, service stations) and where approval is obtained from the relevant roads authority.

Under the original approval DA-263/2018, at the time, RMS recommended that access be accommodated from Martin Road (identified as a Primary arterial road), rather than Lawson Road (local street), as this was preferred for vehicles exiting onto Elizabeth Drive. Direct vehicle access to the site from the Primary-Arterial road (Martin Road) is to be maintained as part of the modification proposal for consistency. The application has been referred to TfNSW, who raised no objections.

iv. 2.7 Parking Design and access – Pavement colour/texture

Pursuant to Performance Outcome PO6, Benchmark Solution 5, changes in pavement (colour and/or texture) are required to provide clear demarcation between pedestrian and vehicle spaces.

A condition of consent would be imposed requiring construction certificate plans to detail colour and/or texture to provide clear demarcation between the pedestrian areas (Figure 14) and vehicle spaces.



Similarly, while a pervious surface has not been proposed for the office car parking area the modification is considered to remain consistent with that which was approved under DA-263/2018.

vii. 2.10.2 Noise

Pursuant to Performance Outcome PO1, Benchmark Solution 2, an acoustic report is provided, which specifies the construction standards required to achieve the specified indoor design sound levels.

A Noise Impact Assessment was provided as part of the originally approved development application. The report concludes that following the carrying out of the recommendations in this report, the proposed site activities will have an acceptable noise impact on the surrounding receivers; however, it does not specify the construction standards required to achieve the specified indoor design sound levels of the office building itself. A condition of consent would be proposed to ensure that the modified development will meet the relevant provisions of *Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – Building siting and construction with respect to interior noise levels*.

viii. 2.12 Sustainability

Pursuant to Performance Outcome PO1, Benchmark Solution 1, all developments must demonstrate how 100% renewable energy supply can be achieved by 2030, whether on or off-site.

Given that by integrating waste management, energy recovery, and water efficiency, the approved Resource Recovery Facility closes the loop on material use, minimizes waste, and contributes to the creation of low-carbon, sustainable developments it is considered that the above benchmark solution requiring 100% renewable energy supply is onerous when considering the benefits provided by the development.

Chapter 3 – Development for Enterprise and Industry, and Agribusiness. This Chapter of the DCP applies specifically to development for the purpose of Enterprise and Light Industry, and Agribusiness only. The object of this Chapter is to meet the relevant performance outcomes established for each benchmark solution.

i. 3.2 Parking and travel management

Pursuant to Performance Outcome PO1, Benchmark Solution 1, on-site parking is to be provided at the rate 1 space per 40m² of office gross floor area, and 1 space per 200m² of industry. This would result in a requirement of approximately 16 office car spaces and 30 spaces related to the waste management industry.

The approved DA provided for 13 at-grade car parking spaces, including 2 accessible spaces. This was based on consideration of the operational characteristics of the proposal and the future workforce numbers. The TIA indicates that the new geotechnical laboratory would potentially generate the need for 2-3 additional staff, which is accommodated in the increase in car parking spaces from 13 (as approved) to a total of 18 spaces. The application was reviewed by the Council's Traffic & Transport officer, who raised no objection

ii. 3.3.4 Building and architectural design

Pursuant to Performance Outcome PO1, Benchmark Solution 8, the roof design must provide natural illumination to the interior of the building.

While illumination in the form of skylights has not been proposed, the design is considered to be consistent with the approval under DA-263/2018 utilising window openings and artificial lighting.

iii. 3.7 Noise and amenity

Pursuant to Performance Outcome PO1, Benchmark Solutions 1-7, it must be demonstrated that noise and vibration do not adversely impact human health and amenity.

A Noise Impact Assessment was provided as part of the original approval under DA-263/2018. The report concludes that following the carrying out of the recommendations in the report, the proposed site activities will have an acceptable noise impact on the surrounding receivers. Furthermore, a Construction Noise and Management Plan was provided, and its recommendations have previously been conditioned.

Numerous conditions of consent have been imposed under the original approval to address acoustic issues, such as the requirement for a Noise Management Plan, noise limits within the EPA General terms of approval, and conditions requiring further acoustic assessment to be undertaken if a noise complaint is received.

Upon completion of works and prior to the issue of an Occupation Certificate, a written certification prepared by a suitably qualified acoustic consultant would also need to be submitted to and approved by the certifier, confirming that the development complies with the recommendations of the acoustic report and meets the relevant provisions of *Australian Standard AS 2021:2015*.

As part of this modification application, the consent would be further strengthened by requiring acoustic review and certification prior to issue of the Construction Certificate. An additional condition would be imposed, requiring the recommendations of the approved acoustic report to be incorporated into the design and construction of the development, and a revised condition of consent requiring acoustic certification prepared by a suitably qualified acoustic consultant prior to the issue of the Occupation Certificate.

Existing condition 117 of DA-263/2018 restricts the operating hours for the premises including but not limited to administrative activities. This condition would be amended to include the proposed laboratory. With consideration for operational noise levels, the consent requires adherence to the General Terms of Approval issued by the NSW EPA.

- *Aerotropolis s7.12 Contributions Plan 2024*

This Contributions Plan has been considered and included within the recommended draft consent conditions.

(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into, and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

The provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

5.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, WSAP, WSA Precinct Plan, and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the resource recovery facility and ancillary office space complies with the relevant controls and standards and is consistent with development on similar sites within the immediate locality. Additionally, the site is located within the ENT Enterprise zone, which is an area intended for growth.
- Access and traffic – Existing access is retained via Martin Road (future Primary Arterial Road), and additional parking has been provided to suit the proposed development.
- Utilities – The site is appropriately serviced and has been supported by all relevant agencies.
- Natural environment – The subject site biodiversity certified. The proposal does not involve the clearing of vegetation. The proposal involves significant landscaping, including native planting, zones, and as such is considered to have a positive impact.
- Noise and vibration – Appropriate conditions of consent will be imposed to mitigate any potential impacts to the vicinity.
- Natural hazards – Appropriate measures have been incorporated in relation to Bushfire Prone Land. The site is not affected by other natural hazards.
- Social impact – The proposal would have a positive social impact through the provision of a new resource recovery facility as well as additional employment opportunities.
- Economic impact – The provision of additional office space and a future Geotechnical Laboratory would provide employment opportunities within the local area and would encourage economic investment in Liverpool.
- Site design and internal design – The proposal is situated appropriately on the site to minimise privacy, noise, and overshadowing impacts to adjoining lots while maximising economic use of land.

- Construction – Existing conditions of consent have been imposed under DA-263/2018 to mitigate impacts from construction. In particular, conditions around pollution, noise, and hours of work have been imposed.
- Cumulative impacts – The proposal is generally consistent with the planning controls and therefore would not result in an adverse cumulative impact.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

5.3 Section 4.15(1)(c) - Suitability of the site

The proposal fits within the locality, is appropriately serviced by relevant infrastructure, is not affected by natural hazards, and is not prohibited by the adjoining uses. As such, it is considered that the site remains suitable for the proposed modification.

5.4 Section 4.15(1)(d) - Public Submissions

The proposal was required to be advertised in accordance with the Liverpool Community Engagement Strategy 2022. The application was advertised and notified between 22 March and 11 April 2025. No submissions were received.

5.5 Section 4.15(1)(e) - Public interest

The proposal is generally consistent with the relevant planning controls, as well as generally consistent with the previously approved DA. It appropriately mitigates potential impacts and would provide economic and social benefits through the provision of resource management and additional employment opportunities. It is generally consistent with the relevant strategic planning documents and the principles of ecologically sustainable development. On balance, it is considered that the proposed development, as modified, is consistent with the public interest.

6. REFERRALS AND SUBMISSIONS

6.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 9.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent.

Table 9: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) – N/A			

Referral/Consultation Agencies			
NSW Rural Fire Service	Advice: Bushfire Prone Land – Vegetation Category 3	No objection, subject to recommended conditions of consent.	Y
Transport for NSW	Section 2.122 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	No change to the vehicle access arrangements onto Martin Road (Future Eastern Ring Road). The reconfiguration of the shed and increase of the warehouse gross floor area (GFA) from 2,340m ² to 6,270.5m ² is to increase the number of heavy truck movements by 3 into and out of the site which would not have a detrimental impact to the classified road network. As such TfNSW has no further comment on the DA.	Y
Western Sydney International Airport (WSA)	Section 4.21 – <i>State Environmental Planning Policy (Precincts – Western Parkland City) 2021</i> Lighting	No objection, subject to recommended conditions of consent.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Environment Protection Authority (EPA)	Protection of the Environment and Operations act s43(a), 47, 55 – scheduled development work	The proposal does not appear to affect activities carried out at the Premises which are authorised by Environment Protection Licence (EPL) 21410. The EPL authorises the carrying out of the scheduled development work, i.e. construction of a resource recovery facility, however no activities have commenced since the issuing of the EPL in 2020. The EPA notes that activities proposed to be undertaken at the premises following the construction of the facility are resource recovery and waste storage. The EPL will require to be varied to permit these activities. The EPA does not object to the proposal to modify the consent.	Y

6.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 10**.

Table 10: Consideration of Council Referrals

Officer	Comments	Resolved
Environmental Health	Supported – subject to conditions of consent.	Y
Strategic Planning	Not supported. <i>The combination of DA-263/2018/C and DA-263/2018/D is not considered by strategic planning to result in substantially the same development as was originally proposed.</i>	N
Traffic and Transport	Supported – no conditions required. <i>The Aerotropolis Precinct Plan identifies Martin Road to be part of a future Arterial Road with around 60m wide road reservation.</i>	Y

The outstanding matters raised by Council's Strategic Planning officer has been addressed in detail within section 4.3 of this report and is considered to be resolved.,

6.3 Community Consultation

No submissions were received.

7. DEVELOPMENT CONTRIBUTIONS

Development contributions are applicable to the subject modification application as outlined **Table 11**.

Table 11: Development Contributions

Contribution	Comments
7.12 Contributions	<p>This Site is located in the Western Sydney Aerotropolis and is therefore subject to The City of Liverpool Aerotropolis s7.12 Contributions Plan 2024 (Aerotropolis CP) adopted 24 July 2024. A Section 7.12 Levy of 4.6% applies to the Site. The contributions in this plan are based on the costs of land and works needed to provide essential local infrastructure only. Essential local infrastructure includes most roads, open space and recreation, and community facilities.</p> <p>It is noted that the CP was not in effect at the time of the original approval DA-263/2018. A condition of consent would be imposed</p>

	to ensure that the s7.12 contributions associated with modification DA-263/2018/C are paid prior to the issue of a construction certificate.
Special Infrastructure Contribution (SIC)	<p>The site is located within the Western Sydney Growth Area. Pursuant to Clause 7(1) of the <i>Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Determination 2022</i> a SIC is applicable to any land within a Western Sydney Growth centre that when granted has been rezoned land within the Western Sydney Aerotropolis Special Contributions Area.</p> <p>The existing Special Infrastructure Contribution condition No 21. is to be modified to reference the updated EP&A Act. It would correctly reference Schedule 4, Part 1, Section 1 Continuation of special infrastructure contributions.</p>
Housing Productivity Contribution (HPC)	The land falls within the excluded area – Western Sydney Growth Area and Aerotropolis SCAs, therefore the HPC does not apply.

8. KEY ISSUES

The following key issues are relevant to the assessment of this application, having considered the relevant planning controls and the proposal in detail:

8.1.1 Application of the Aerotropolis provisions – Although the original development consent was issued prior to the commencement of the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 and the associated Precinct Plan, Development Control Plan, and s7.12 contributions plan, any modification application under Section 4.55 of the Environmental Planning and Assessment Act 1979 must be assessed against the current planning framework.

This transition presents potential complexities in the assessment of the modification application, as elements of the originally approved development may not be able to align with the current planning controls, such as Recognise Country. A balance must be struck between recognising the validity of the existing consent and ensuring that any modifications do not undermine the objectives of the updated planning framework.

8.1.2 Start with Country – It would be difficult for the subject modification application to comply with the ‘Start with Country’ principle when the original development was approved prior to this introduction of the Precinct Plan and its associated cultural requirements, as the initial design, layout, and underlying planning rationale were not informed by Country-led design thinking. Integrating ‘Start with Country’ retrospectively can present significant challenges, particularly if the built form, landscaping, or site orientation already limits opportunities to respond meaningfully to Country.

Key elements such as water flow, vegetation patterns, cultural narratives, and Aboriginal connection to the site were not considered in the original approval,

making it difficult for the modification to fully address or incorporate these principles without fundamentally altering the approved development. Accordingly, full compliance with the Recognised Country provisions is not deemed to be necessary in the assessment of this modification application.

- 8.1.3 Processing Capacity** – The proposed modifications to the office building do not have any impact on the approved processing capacity. The tonnage limits are enshrined in the Environment Protection Licence (EPL), which is consistent with the original Development Consent at 95,000 t/p/a.

NSW EPA has issued EPL #21410 in respect of the premises' future operations. This means that the facility cannot be licensed for an amount greater than the limit conditioned within the Development Consent. Should the operator seek to receive and process >95,000 t/p/a, then the DA would have to be modified accordingly by the Consent Authority (Council or the Local Planning Panel), or a new development application would be required.

- 8.1.4 Substantially the same development** – As described in detail within section 4.3 of this report, the use of the term 'substantially the same' is indicative of a qualitative standard rather than a quantitative one, and as such, the physical scale of modifications does not necessarily disqualify a proposal. It is undeniable that the extent of the physical changes, particularly the addition of a second storey to the office building is significant, however, the core function, purpose, and land use remain consistent with the original approval and as such is considered qualitatively the same.

9. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, aerotropolis provisions, and the key issues identified in this report, it is considered that the application can be supported.

The key issues around this application are building car park layout, noise, processing capacity, and demonstrating that the proposal results in substantially the same development. These have been addressed, and on balance, it is considered that the development is compatible with the locality and worthy of approval.

Based on the assessment against the relevant planning considerations, it is deemed that the site is suitable for the proposed development. The proposal is considered to be compatible with the locality. The proposal takes into consideration characteristics of the site and adjoining lots, as well as the locality, and produces an overall acceptable development with limited detrimental impacts to neighbouring lots.

It is considered that the key issues as outlined in Section 8 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

10. RECOMMENDATION

The subject application has been assessed having regard to the provisions of Section 4.55(2) of the EP&A Act 1979, and the Environmental Planning Instruments, including applicable state

environmental planning policies, Western Sydney Aerotropolis Plan 2020, Western Sydney Aerotropolis Precinct Plan 2024, Western Sydney Aerotropolis Development Control Plan (Phase 2) 2022, and relevant codes and policies of Council.

It is recommended that the subject modification Application DA-263/2018/C be approved subject to the modified draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent – 316199.2025
- Attachment B: Compliance Tables (WSAP, SEPP, WSA Precinct Plan, and WSA DCP) – 316061.2025
- Attachment C: NSW Rural Fire Services – 185062.2025
- Attachment D: Western Sydney International Airport – 124375.2025
- Attachment E: Architectural Plans – 231665.2025
- Attachment F: Landscape Plans – 149675.2025
- Attachment G: Survey Plan (DA-263/2018) – 137643.2018
- Attachment H: Statement of Environmental Effects – 059116.2025
- Attachment I: Acoustic Report - Letter – 181331.2025
- Attachment J: On-Site Wastewater Report – 181329.2025
- Attachment K: Bushfire Hazard Assessment – 059132.2025
- Attachment L: Traffic & Parking Statement – 059120.2025
- Attachment M: QS Surveyor's Cost Estimate Report – 255022.2025
- Attachment N: Approved Architectural Plans (DA-263/2018/A) – 233986.2025