

LIVERPOOL CITY COUNCIL

SYDNEY WESTERN CITY PLANNING PANEL

**SYDNEY WESTERN CITY PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

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| Panel Reference | PPSSWC-64 |
| DA Number | DA-266/2015/A |
| LGA | Liverpool City Council |
| Proposed Development | <p>Modification to Development Consent DA-266/2015 under Section 4.55 of the Environmental Planning and Assessment Act 1979, to minimise building footprint, increase height, and changes to the acoustic wall, site grading and boundary retaining walls.</p> <p>The application is Designated Development under the Environmental Planning and Assessment Regulation 2000 and Nominated Integrated Development under the Protection of the Environment Operations Act 1997 requiring the activity to be licensed by the Environment Protection Authority.</p> <p>Liverpool City Council is the consent authority and the Sydney Western City Planning Panel has the function of the determining authority.</p> |
| Street Address | 25 Martin Road, Badgerys Creek LOT 1 DP 611519 |
| Applicant/Owner | Jeff Bulfin/Tracy and Daniel Buttigieg |
| Date of DA Lodgement | 12 November 2019 |
| Number of Submissions | One |
| Recommendation | Approval |
| Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011 | <p>The Sydney Western City Planning Panel is the determining authority as the application is a Section 4.55(2) modification of a development application approved by Sydney South West Planning Panel for a particular designated development, pursuant to Clause 8(c) of Schedule 4A of the Environmental Planning and Assessment Act 1979.</p> <p>The proposed waste and resource facility is identified as Designated Development under Schedule 3 Section 32 of the Environmental Planning and Assessment Regulation 2000.</p> |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none">• <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i><ul style="list-style-type: none">○ State Environmental Planning Policy No.55 - Remediation of Land○ State Environmental Planning Policy (Infrastructure) 2007○ Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2 - 1997) (Deemed SEPP)○ State Environmental Planning Policy No. 33 - Hazardous and |

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| | <p>Offensive Development</p> <ul style="list-style-type: none">○ State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44)○ State Environmental Planning Policy (Sydney Region Growth Centres) 2006○ Contaminated Land Management Act 1997○ Native Vegetation Act 2003○ Threatened Species Conservation Act 1995○ Protection of the Environment Operations Act○ Commonwealth Environment Protection and Biodiversity Act 1999○ Liverpool Local Environmental Plan 2008 <ul style="list-style-type: none">• <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s415(1)(a)(ii)</i><ul style="list-style-type: none">○ Remediation of Land SEPP – The Remediation of Land SEPP was exhibited from 25/01/2018 to 13/04/2018. The Draft Guidelines published on the major projects website has indicated that “the substance of Clause 7 (of SEPP 55 – Remediation of Land) will be incorporated into the new SEPP. On this basis, assessment under clause 7 of SEPP 55 – Remediation of Land is not affected.○ Draft SEPP (Environment) was exhibited from 31/10/2017 to 31/01/2018. The Draft SEPP applies to land within the Hawkesbury-Nepean River Catchment. The Draft SEPP proposes changes that will repeal and replace Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997), which currently applies to the proposal.○ Western Sydney Aerotropolis Plan Draft - for public comment, December 2019• <i>List any relevant development control plan: s4.15(1)(a)(iii)</i><ul style="list-style-type: none">○ Liverpool City Council Development Control Plan (LDCP) 2008<ul style="list-style-type: none">○ Part 1 – Controls for all development○ Part 5 – Development in Rural and Environmental Zones• <i>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s4.15(1)(a)(iv)</i><ul style="list-style-type: none">○ No planning agreement relates to the site or proposed development.• <i>List any relevant regulations: s4.15(1)(a)(iv)</i><ul style="list-style-type: none">○ Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC). |
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| List all documents submitted with this report for the Panel's consideration | <ol style="list-style-type: none"> 1. Acoustic report 2. Arborists report 3. Earthwork (cut and fill) Plan 4. BCA Performance Requirements Compliance Statement 5. DA Application form 6. Elevations and sections 7. Landscape plan 8. Owner's consent 9. Schedule of colours, materials and finishes 10. Site plans 11. Stormwater drainage plan 12. Survey plan 13. Original Assessment Report 14. Original approved conditions of consent. 15. Draft conditions of consent |
| Clause 4.6 requests | N/A |
| Summary of key submissions | <p>One neighbour submission was received in relation to the proposal raising the following key points:</p> <ul style="list-style-type: none"> ○ Use not compatible with the area and surrounding residences ○ Operation and enforcement of the existing consent ○ Remediation of the site ○ Impact of the exhibited Western Sydney Aerotropolis Plan and DCP ○ Capacity of the street network to accommodate the truck movements associated with the use ○ Cumulative impact on all waste resource facilities in the local area |
| Report prepared by | Peter Nelson – Senior Development Planner |
| Report date | 27 May 2020 |

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

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

Yes

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

N/A

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Special Infrastructure Contributions

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

Yes

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

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

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

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel is the determining authority as the application is a Section 4.55(2) modification of a development application approved by Sydney South West Planning Panel for a particular designated development, pursuant to Clause 8(c) of Schedule 4A of the Environmental Planning and Assessment Act 1979.

The proposed waste and resource facility is identified as Designated Development under Schedule 3 Section 32 of the Environmental Planning and Assessment Regulation 2000.

1.2 The proposal

DA-266/20185 was approved on 27 July 2017 as a deferred commencement for the construction and operation of a resource recovery facility and associated ancillary structures.

The application is Designated Development under the Environmental Planning and Assessment Regulation 2000 and Integrated Development under the Environmental Planning and Assessment Act 1979 requiring the activity to be licensed by the Environment Protection Authority.

The application proposes the modification to DA-266/2015 to minimise building footprint, increase height, and changes to the acoustic wall, site grading and boundary retaining walls.

1.3 The site

The subject site is identified as Lot 1 in DP 611519 and is known as 25 Martin Road, Badgerys Creek. The site is rectangular and comprises 2ha, with a frontage at its eastern end to Martin Road of 70.985 metres, a frontage at the western end to Lawson Road of 70.985 metres and a depth of approximately 281.75 metres.

1.4 The issues

After completion of a detailed assessment, no significant concerns have arisen. The modification application is compliant with the planning controls.

1.5 Exhibition of the proposal

The application was notified from 12/12/2019 to 7/2/2020 in accordance the Liverpool DCP 2008. One submission was received during the public consultation process. The issues raised within the submissions are discussed within the report.

1.6 Conclusion

The application results in no further unreasonable impacts and results in appropriate amenity under Section 4.15 of the EPA Act. The proposed modification application is to be recommended for approval.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Lot 1 in DP 611519 and is known as 25 Martin Road, Badgerys Creek. An aerial photograph of the subject site in relation to its context is provided below.



Figure 1: Aerial Photograph of the Site

The site is rectangular in shape and comprises 2ha, with a frontage at its eastern end to Martin Road of 70.985 metres, a frontage at the western end of Lawson Road of 70.985 metres and a depth of approximately 281.75 metres.

2.2 Locality

The subject site is located between Martin Road on the east and Lawson Road on the west, oriented east-west. The locality lies centrally between Badgerys Creek and South Creek, close to Elizabeth Drive. Surrounding land uses are predominantly made up of intensive horticulture, industrial-type storage and rural residential. In the locality is a large waste facility, a concrete batching plant, a landscape material yard, which includes processing of the material, as well as other uses of an industrial nature.

The subject site lies under the flight path for the proposed Badgerys Creek airport. The subject site is currently used for storage of demolition materials. It slopes marginally to the southwest corner and contains some regrowth vegetation in this corner. Whilst the site has frontage to Martin Road and Lawson Road, it has a constructed access only from Martin Road. The boundaries are fenced partially by an acoustic fence and partially by a post and wire fence.

There are no dwellings or structures erected on the site.



Figure 2: Surrounding Locality

3. BACKGROUND

- 3 August 2016 Application No. DA-266/2015 was referred to the SWCPP who deferred the proposal pending the lodgement and assessment of a hazardous materials protocol.
- 24 November 2016 Item considered by the SWCPP who deferred the proposal a second time, requiring that the applicant to *“consider an amended proposal reflecting the EPA’s preference for all activities at the premises to be enclosed in a suitable building to assist the management of any environmental impacts including but not limited to noise, dust and water issues.”*
- 10 April 2017 Item considered by the SWCPP who deferred the item for a third time specifying the following amendments to the proposal:
- The proposal was again considered by the SWCPP who unanimously agreed to defer the determination to allow the applicant to submit amended plans addressing the following issues:*

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1. Amended and detailed architectural plans, designed in consultation with the NSW Environment Protection Authority, shall be submitted. The required architectural plans shall address the following requirements:

i. The sail cloth component of the building shall be replaced with a more suitable material(s) including concrete or metal cladding subject to the material(s) providing the required noise attenuation outlined in the acoustic report accompany the application.

ii. Details of the proposed schedule of finishes, materials and colours of the proposed structure. The colours and materials of the structure shall be neutral so as to minimise visual impacts on the amenity of the area.

iii. Details of the proposed hardstand for the building, driveways and car parking areas.

iv. Details of the car park layout, driveways, vehicle manoeuvring areas and entry and exit points.

v. Submission of a detailed landscape plan prepared by a landscape architect providing additional landscaping along the Martin Road and Lawson Road frontages of the site in order to provide suitable screening of the proposed development from Martin Road and Lawson Road.

27 July 2017

DA-266/2015 was determined by the Sydney South-West Planning Panel as a deferred commencement approval. The deferred commencement was worded as follows:

1. Amended and detailed architectural plans, designed in consultation with and to the satisfaction of the NSW Environment Protection Authority, shall be submitted to and approved by the Manager Development Assessment of Liverpool City Council. The required architectural plans shall address the following requirements:

i. The eastern façade of the building shall be enclosed, subject to the material(s) providing the required noise attenuation outlined in the acoustic report accompanying the application.

ii. The materials proposed for all internal haulage roads must comprise of a suitable hardstand such as concrete or asphalt pavement. An updated Pavement, Signage and Linemarking Plan is to be provided identifying the revised materials.

iii. An external materials and finishes schedule will be provided which is sympathetic to the rural character of the locality and which minimises the visual impact of the building by incorporating natural earth colours and natural vegetation colours. This is to be accompanied by streetscape elevations from Martin Road and Lawson Road and a photomontage of the future built form.

25 July 2018

Deferred commencement consent activated.

12 November 2019

Current Modification Application DA-266/2015/A lodged.

- 11 December 2019 Amended plans and information requested to demonstrate that the proposal was substantially the same development in accordance with 4.55(2) of the EPA Act.
- 18 December 2019 Proposal advertised until 7 February 2020.
- 17 March 2020 Amended plans and information submitted in relation to Council's request dated 11/12/2019.
- 14 April 2020 SWCPP was briefed on Modification Application DA-266/2015/A. No significant concerns were raised as a consequence of the briefing meeting.

4. DETAILS OF THE PROPOSAL

The application proposes to modify the waste resource recovery facility approved under DA-266/2015/A, to allow for vehicular access around the waste resource facility for fire vehicles which necessitates the narrowing of the building; increase in the height of the proposal to allow for the change in grade within the building footprint as the existing approval did not identify natural ground level; introduce cut and fill within the proposed building footprint in order to provide for a ground floor slab with minimum stepping. The proposal also seeks approval for additional landscaping on site, a mounded earth landscaped area to provide for an acoustic barrier in place of a concrete fence and the provision of rainwater tanks and pump rooms for firefighting purposes.

A detailed and itemised description of the changes proposed as set out in the addendum to the Statement of Environmental Effects is as follows:

1. *BCA and Fire Compliance:*

Proposed amendments

- *Reduction in overall footprint of the proposed building;*
- *Rearrangement of proposed stormwater structures;*
- *Two (2) water storage tanks for fire-fighting purposes.*

2. *Acoustic Wall Arrangement:*

Proposed amendments

- *Maintain existing acoustic fencing (rather than replacing to 3m height);*
- *Additional 31.6m acoustic wall immediately north of the building's truck entrance*
- *Incorporate landscaped earth mounds in lieu of the existing walls to the Martin Road frontage and increase the height of the landscaped earth mound to the Lawson Road rear boundary*

3. *Site Grading & Boundary Retaining Walls:*

Proposed amendments

Introduction of two (2) retaining walls at the western ends of the northern and southern boundaries.

4. *Typographic error*

The first paragraph on the front page of the Notice of Determination makes reference to “Development Application No. RD-5/2016...”. This appears to be incorrect and should be modified to read “Development Application No. 266/2015...”

5. STATUTORY CONSIDERATION

5.1 Relevant matters for consideration

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

Environmental Planning Instruments

- State Environmental Planning Policy No.55 - Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No 2 - 1997) (Deemed SEPP)
- State Environmental Planning Policy No. 33 - Hazardous and Offensive Development
- State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44)
- State Environmental Planning Policy (Sydney Region Growth Centres) 2006
- Contaminated Land Management Act 1997
- Native Vegetation Act 2003
- Threatened Species Conservation Act 1995
- Protection of the Environment Operations Act
- Commonwealth Environment Protection and Biodiversity Act 1999
- Liverpool Local Environmental Plan 2008

Draft Environmental Planning Instruments

- Remediation of Land SEPP – The Remediation of Land SEPP was exhibited from 25/01/2018 to 13/04/2018. The Draft Guidelines published on the major projects website has indicated that “the substance of Clause 7 (of SEPP 55 – Remediation of Land) will be incorporated into the new SEPP. On this basis, assessment under clause 7 of SEPP 55 – Remediation of Land is not affected.
- Draft SEPP (Environment) was exhibited from 31/10/2017 to 31/01/2018. The Draft SEPP applies to land within the Hawkesbury-Nepean River Catchment. The Draft SEPP proposes changes that will repeal and replace Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997), which currently applies to the proposal.
- Western Sydney Aerotropolis Plan Draft - for public comment, December 2019

Development Control Plans

- Liverpool City Council Development Control Plan (LDCP) 2008
 - Part 1 – Controls for all development
 - Part 5 – Development in Rural and Environmental Zones

5.2 Zoning

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



5.2 Permissibility

The proposed RRF is a prohibited development in the RU1 Primary production zone pursuant to LLEP 2008 for which the site is zoned. However, the application has been made pursuant to SEPP (Infrastructure) 2007 which permits waste or resource management facilities within a prescribed zone.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration as prescribed by Section 4.15 of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 as follows:

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

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

(2) Other modifications

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

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

Comment: The proposal is generally considered to be substantially the same development as the originally determined application. The inclusion of reduced levels (RL'S) for the ground floor slab is supported by a cut and fill plan that indicates that grading of the site is to occur without the need to import or export fill. As a level slab was shown on the original approval, this method proposed to provide for a level construction surface is considered to be in accordance with the original approval.

The modification to the side boundary setbacks to provide for fire vehicle access around the approved shed is in direct response to conditions of consent relating to BCA and NCC compliance.

The modification to the Martin Road front boundary treatment is included to result in a more appropriate outcome for the streetscape by providing for an acoustic barrier in the form of an earth mound rather than the boundary concrete slab wall as originally approved. This earth mound will be heavily landscaped and will result in an identical acoustic separation as that resulting from the originally approved concrete slab wall.

As such, the modifications are assessed to be substantially the same development as the original approval.

The modification resulting from the provision of RL's is discussed below:

Built form

The inclusion of RL's in relation to the construction has resulted in the provision of a ground floor slab in response to the change in natural ground level and has required the provision of cut and fill to provide for a level construction surface.

This has resulted in the elevations being altered as follows:

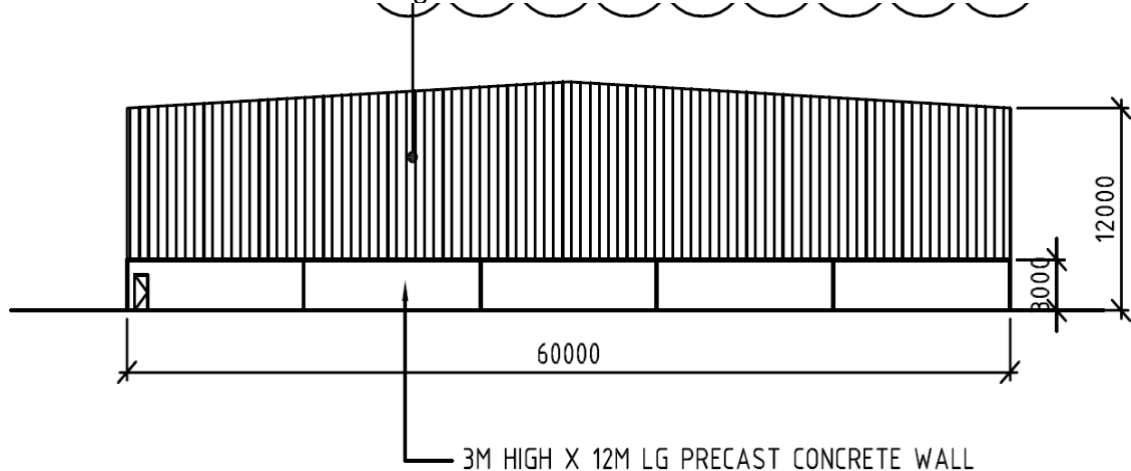


Image 1: Elevations as approved under DA-266/2015

To be noted from the above is the lack of any nominated reduced levels.

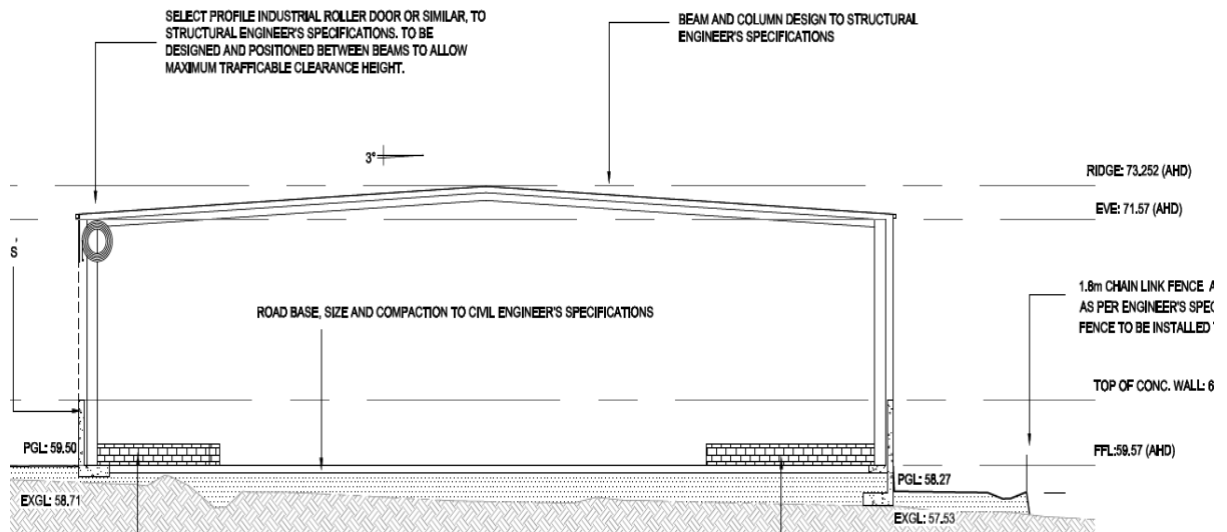


Image 2: Elevations proposed under current modification application DA-266/2015/A

As demonstrated in Image 2 above, the current modification application provides proposed finished levels resulting in the following:

- Maximum eave height 15.49 metres (south western corner of the building)
- Maximum roof ridge height 16.752 metres on the western facade
- Maximum cut to achieve FFL 1.59mm (NE corner of building)
- Maximum fill to achieve FFL 3.03 metres (SW corner of building)

The applicant has indicated that the application results in no change to the approved plans in terms of the height of the built form and is therefore suitable for consideration under Section 4.55(2) as follows:

It is our view that there is no change to the heights as shown on the approved plans with the DA.

The DA approved elevation plans show a building height of 12m to the eave and 13.3m to the ridge and the proponent will comply with these building heights. The DA approved plans from Castleage Drafting Services did not specify a finished ground RL or roof RL, only a building wall height (distance from top to bottom of wall) of 12m and a ridge height (distance from ridge to bottom of wall) of 13.3m. The wall heights are a different issue to the RLs for finished floor and roof ridge.

The proponent has, on the current version of the proposed modification plans, nominated a finished ground level of RL 59.57 for both the gravel section and the concrete section (the concrete part is only where the trucks drive and was added purely to comply with Council consent conditions). This RL has been determined as roughly the level at the middle of the building in order to equalise cut and fill volumes so that no fill material would have to be exported from the site. To achieve this RL will require some cut at the Martin Road end and some fill at the Lawson Road end, as you have correctly identified. The erection of the building with compliant wall and ridge heights will sit on top of the finished ground level. The wall and ridge heights will be compliant with the approved plan.

In light of the above, we see no breach of the approved plan in terms of building height.

In relation to the original survey, this was provided with the DA to provide a visualisation on the lot where the building was intended, as well as to outline contours and level data for stormwater design purposes. The survey does not determine a finished floor level for the building.

We have considered your suggestion regarding lowering the finished floor level to RL 58.85. However, this additional cut would result in about 4,000 cubic metres of excess material having to be transported from the site, whereas the RL nominated by the proponent (RL 59.57) would result in no material having to be taken offsite. Being a sustainable project (resource recovery) the proponent does not want to create or generate an overburden of spoil which is unnecessary and would have to be trucked off-site.

As the current modification does not propose an increase in wall height or ridge height, and the finished floor and roof RLs were not specified for the DA, the proposal currently before Council is substantially the same development, both quantitatively and qualitatively, and does not propose a radical transformation from the original approved proposal.

The cut and fill plan provided in support of this addendum identifies that the grading of the site to create a level construction surface will not require the export of fill from the site. On this basis, the proposal is considered to be substantially the same development as originally approved.

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

Comment: The proposal been referred to the NSW EPA who did not raise any issues in relation to the proposal during the referral period.

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

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

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

Comment: The application was notified from 12/12/2019 to 7/2/2020 in accordance with the Liverpool DCP 2008. One submission was received during the public consultation process.

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

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

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

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

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

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

(5) (Repealed)

Comment: Noted.

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

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

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

Remediation of Land SEPP

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

Draft SEPP (Environment)

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

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

Western Sydney Aerotropolis Plan Stage 1 Draft

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

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

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

6.4 Section 4.15(1)(a)(iii) – Provision of any Development Control Plan

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

6.5 Section 4.15(1)(a)(iia) – Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

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

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

6.7 Section 4.15(1)(b) – The likely impacts of the development

The modifications to the proposal generally do not result in changes that would result in any further unreasonable impact on the existing built or natural environment, or any further unreasonable economic or social impact. The modifications proposed have the following effect on the original assessment under Section 4.15:

Acoustic Impacts

The provision of an earth mound with associated canopy planting to the Martin Road frontage in lieu of a concrete acoustic wall is considered to be an improvement to the streetscape while still providing for appropriate acoustic amenity. An acoustic report and addendum to this report in light of the modifications proposed note that the proposal will not have any additional impact on any adjacent residential receiver and will be in accordance with the acoustic recommendations outlined in the original report.

It is noted that the nearest residential receiver is approximately 66m from the Lawson Road façade of the building. The acoustic report has based its recommendations in relation to acoustic amenity on the separation between the proposal and existing residential receivers and has indicated that the acoustic attenuation measures provided is sufficient to ensure appropriate acoustic amenity for these residential receivers.

The acoustic report does not provide comment in relation to the exhibited Draft Western Sydney Aerotropolis Plan (WSAP), dated December 2019. The WSAP identified the subject site and all adjacent neighbours as within the proposed “Flexible Employment” area in the “Badgerys Creek precinct” that will be zoned “Enterprise” under the WSAP. However, it is noted on page 28 of the Draft WSAP that the Enterprise Zone is “land where enterprise uses are supported while mitigating impacts of airport operations. Residential development and other noise sensitive uses are not permitted.” On this basis the application as modified is not likely to have any significant impact on any future permitted adjoining uses as these uses are not likely to be “noise sensitive uses.”

Built Form Impacts

The modifications to the built form include the increase in height of the building and the provision of additional setbacks to allow for the inclusion of a driveway around the perimeter of the shed to allow for fire vehicle access to the entire site. The proposal also replaces the concrete slab wall acoustic treatment to the Martin Road frontage and replaces this with a heavily landscaped earth mound.

In terms of the impact of the proposal, the modification is considered to result in a positive outcome for streetscape as landscaping will be increased, softening the appearance of the building when viewed from the street.

While the proposal to provide finished levels results in heights greater than those originally specified, this is within the scope of the original approval as a level slab was approved as part of the original approval. Despite this, the provision of additional setbacks to the southern boundary for fire vehicle access somewhat offsets the building height.

As such, the proposal generally results in a better outcome for built form and streetscape, especially when viewed from the primary street frontage on Martin Road.

6.8 Section 4.15(1)(c) – The suitability of the site for the development

The proposed development remains in keeping with the zones objectives and is compatible with the anticipated future character of the area. The proposal still effectively responds to its surroundings. Having regard to the above, it is considered the site remains suitable for the proposed development.

6.9 Section 4.15(1)(d) – Any submission made in relation to the development

(a) Internal Comments

The application was referred to the following internal departments for comments:

| Department | Response |
|-------------------------------|--|
| Land Development. Engineering | No objections subject to additional drainage conditions relating to drainage. These have been included as Condition 17(a) and 29(a) in the determination notice. |
| Environmental Health | No objections to modifications as proposed. |

(b) External Comments

The application was referred to the following external department for comments:

| Department | Response |
|-------------------------------|----------------------|
| Environment Protection Agency | No response received |

(c) Community Consultation

The application was notified from 12/12/2019 to 7/2/2020 in accordance with the Liverpool DCP 2008. One submission was received during the public consultation process.

The issues raised in the submissions received and Council's comments appear in the table below:

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SYDNEY WESTERN CITY PLANNING PANEL

| Issues | Comments |
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| Considered in relation to the Aerotropolis | |
| <p>The submission has stated:</p> <p><i>We would like to address our concerns regarding the application to modify the DA consent given to Mulgoa Excavations. We hope this modification will be considered carefully as the area is within the Critical State Significant Infrastructure (CSSI) and Obstacle Limitation Surfaces (OLS).</i></p> <p><i>The Aerotropolis Draft Plan December 2019 has now been released and the Development Control Plan (DCP) is now in Planning for the Aerotropolis as a whole.</i></p> <p><i>We ask has the (SIC) Special Infrastructure Contributions been applied to this development and any other new development within the Aerotropolis?</i></p> <p><i>We believe this type of activity it is not within the Greater Sydney Commissions vision for the future Aerotropolis. With its close proximity to the airport this precinct which is part of the Aerotropolis should be promoted for industries relating to running a modern airport with innovation surrounding it now and in the future not dirty industry.</i></p> | <p>The proposed modifications have been assessed in relation to both the exhibited Western Sydney Airport Plan and the associated DCP.</p> <p>Condition 25 of the determination notice covers special infrastructure contributions.</p> <p>The current application is for a modification to an existing consent. The approved use cannot be altered as part of the current application.</p> |
| Retention of original conditions of consent | |
| <p>The submission requested:</p> <p><i>We hope all existing conditions apply to this modification application that were imposed to their original DA-266/2015. We ask all existing conditions given by the JRPP will remain the same with special note to conditions regarding hours of operation, noise, dust monitoring and no hazardous waste materials coming to this site or any other site within the Badgerys Creek Precinct.</i></p> | <p>The current application does not seek any modification to conditions of determination. All existing conditions of consent relating to hours of operation, noise, dust monitoring and hazardous waste monitoring will be as per existing conditions of consent.</p> |
| Cumulative impact on Waste Recovery uses | |

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| <p>The submission has indicated that:</p> <p><i>With 2 resource recovery centres now approved at 25 and 55 Martin Road. When both of these facilities are operational along with Suez, Western Sydney Recycling Pty Ltd and a new DA for Mirvac Projects Pty Ltd in Penrith LGA for another Resource Recovery Facility.</i></p> <p><i>The health of the Badgerys Creek residents from dust, noise and traffic will be negatively impacted.</i></p> | <p>As stated above the current application is for a modification to an existing consent. The approved use cannot be altered as part of the current application.</p> |
| Road condition and treatment | |
| <p>The submission has stated:</p> <p><i>The road condition of Martin Rd should have been a major consideration and fixed before this DA was approved. No construction certificate should be issued till this is rectified. This road is not suitable for the increased truck movements and the amount of traffic that this activity will generate along with the existing users.</i></p> | <p>It is noted that the original consent requires the applicant to construct road pavement in front of the site (under condition 35 of the original consent).</p> |
| Waste volume monitoring | |
| <p>The submission has asked:</p> <p><i>Without a weighbridge how will Mulgoa Excavations maintain they do not exceed their original approval of 65,000 tonnes per annum of waste?</i></p> | <p>A weighbridge is included as part of the original consent and remains as a part of the modification application.</p> |
| Consent timing | |
| <p>The submission has raised the following query:</p> <p><i>Have they exceeded the time limit given to their original approved DA given by the JRPP?</i></p> | <p>The original consent was issued on 25 July 2018 and is valid for 5 years from that date.</p> |
| EPA requirements | |
| <p>The submission has asked:</p> <p><i>Is there a time limit on applying to the EPA for an operational license?</i></p> | <p>The development consent does not place a time limit on this requirement, however in accordance with condition 117 of the notice of determination, a license must be issued prior to the use commencing.</p> |

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| Ongoing monitoring | |
| <p>The submission has asked:</p> <p><i>How is the ongoing management of this facility going to be monitored and maintained against its approved conditions?</i></p> | <p>Council or the nominated PCA is responsible for ensuring compliance with conditions of consent.</p> |
| Future road locations | |
| <p>The submission has asked:</p> <p><i>The residents now ask this modification be referred by Council to all relevant departments and delayed indefinitely due to the Eastern Ring Road now on exhibition until such time that specific details are known about the exact position of road. Liverpool City Council should indefinitely delay approvals for both Resource Recovery Centres on Martin Rd until such planning is complete. Liverpool City Council should not be wasting tax payer money on compensation in the future as this Ring Road has now been identified for Martin Road.</i></p> | <p>The current application is for a modification to an existing consent. The approved use cannot be altered or delayed as part of the current application.</p> |
| Site remediation | |
| <p>The submission has asked:</p> <p><i>To date there is still contaminated waste on this site. How are the residents being protected from the contaminated waste located on this site? How will this waste be remediated before construction begins?</i></p> | <p>Site remediation works are required to be undertaken under Condition 82 and 83 of the attached consent.</p> |
| Future amenity | |
| <p>The submission has asked:</p> <p><i>How and who will ensure this facility maintains compliance and does not adversely affect residents living in the Badgerys Creek Precinct?</i></p> | <p>Following issue of an Occupation Certificate, Council is required to enforce ongoing conditions of consent. The NSW EPA will enforce licensing conditions of consent.</p> |

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

In addition to the social and economic benefit of the proposed development, it is considered to be in the public interest.

7. CONCLUSION

The modification application predominately seeks approval for modifications that relate to demonstrating compliance with existing conditions of consent. The grading of the site to create a level building platform for the establishment of the approved shed is within the scope of the current modification application and represents substantially the same development as the original approval. Additional changes in relation acoustic treatment have been included that result in a more appropriate streetscape and the proposal complies in full with the relevant provisions of Environmental Planning and Assessment Act 1979 (as amended).

Given the above, it is recommended that DA-266/2015/A be approved in accordance with the appended conditions of consent.

8. ATTACHMENTS

1. Acoustic report
2. Arborists report
3. Earthwork (cut and fill) Plan
4. BCA Performance Requirements Compliance Statement
5. DA Application form
6. Elevations and sections
7. Landscape plan
8. Owner's consent
9. Schedule of colours, materials and finishes
10. Site plans
11. Stormwater drainage plan
12. Survey plan
13. Original Assessment Report
14. Original approved conditions of consent.
15. Draft conditions of consent