



# ***Prestons Industrial Estate***

*State Significant  
Development  
Modification Assessment  
(SSD 7155 MOD 5)*



July 2019

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### **Cover photo**

Aerial view of Prestons Industrial Estate, Landscape and Visual Impact Assessment Report dated 15 August 2018 prepared by Habit8

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# Glossary

Abbreviation	Definition
<b>Applicant</b>	Logos Properties Holding Pty Ltd
<b>AHD</b>	Australian Height Datum
<b>BCA</b>	Building Code of Australia
<b>CIV</b>	Capital Investment Value
<b>Consent</b>	Development Consent
<b>Council</b>	Liverpool City Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2000</i>
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environmental Planning Instrument
<b>EPL</b>	Environment Protection Licence
<b>ESD</b>	Ecologically Sustainable Development
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>RMS</b>	Roads and Maritime Services
<b>RtS</b>	Response to Submissions
<b>SEARs</b>	Secretary's Environmental Assessment Requirements
<b>Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>SEPP</b>	State Environmental Planning Policy
<b>SRD SEPP</b>	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
<b>SSD</b>	State Significant Development



# Executive Summary

This report details the Department of Planning, Industry and Environment's (the Department) assessment of an application to modify the State significant development (SSD) consent for the Prestons Industrial Estate located at 5-35 Yurrunga Street, Prestons in the Liverpool local government area (LGA).

On 24 June 2016, development consent for the Prestons Industrial Estate (SSD 7155) was granted by the Executive Director, Key Sites and Industry Assessments, as delegate for the then Minister for Planning and Public Spaces. The development consent permits the staged construction and operation of five warehouse buildings and associated drainage works and has been modified on five previous occasions.

## *Site History – Drainage Works*

The site has a history of stormwater drainage issues. To manage stormwater flows during large storm events, specific drainage infrastructure and an overland flow channel was required for the development. This drainage infrastructure was identified in the *Liverpool Contributions Plan 2009* (Contributions Plan). However, during the assessment of the original application, Liverpool City Council (Council) noted the Applicant's proposed drainage design was different to the design in the Contributions Plan, therefore any difference in the costs associated with the altered drainage design would need to be paid for by the Applicant. The Applicant, on the other hand, considered the costs identified in the Contributions Plan for the drainage works to be inadequate in managing the on-site drainage issues.

At the time of the original assessment, the Department sought to address this dispute through the implementation of Conditions C15 and C16, which required the Applicant to appoint an independent quantity surveyor to cost the drainage design and provide evidence to the Secretary demonstrating an agreement had been reached with Council for the construction and payment of the drainage infrastructure.

Since the determination of the development application, the Applicant was unable to enter into an agreement with Council on the payment of the drainage infrastructure, despite regular meetings and multiple discussions. In March 2017, the Applicant provided to the Department the independent quantity surveyor report which estimated the drainage works at around \$1.5 million, which was above the amount that Council was prepared to offset through a works-in-kind agreement being \$970,029 at March 2017 rates. This resulted in a difference of around \$500,000. The Applicant has offered to split the difference 50/50 in the shortfall between the Contributions Plan and the cost of the stormwater infrastructure and is now seeking to modify Conditions C16 and C17 to resolve the ongoing dispute with Council regarding the payment of the stormwater infrastructure. Specifically, the Applicant is seeking a \$1.2 million offset to be applied to the final development contributions amount.

Given the delays in reaching an agreement with Council on the payment of stormwater infrastructure works, the Applicant has not yet paid development contributions and during this time, the Consumer Price Index and land value indexation of the development contributions amount has significantly increased. As such, the Applicant is seeking to restrict the indexation of development contributions to restrict the indexation of contributions to March 2017 rates, which was the date upon which the independent quantity surveyor's report was provided to the Department.

## *Modification Application*

A section 4.55(1A) modification application has been lodged by Logos Properties Holding Pty Ltd (the Applicant), seeking approval to:

- delete Condition C16 which requires the Applicant to enter into an agreement with Liverpool City Council (Council) regarding the payment of drainage works required on the development
- modify Condition C17 to offset costs for drainage works against the development contributions required (under Condition B23) for the development
- modify Condition B23 to specify a fixed development contribution amount payable to Council for the development which accounts for offsets for drainage works (under Condition C17) and indexation of contributions up to March 2017.

### **Statutory Context**

The Department has reviewed the scope of the modification application and is satisfied the proposed modification application would result in minimal environmental impacts. Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application be lodged.

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 14 September 2011, the Independent Planning Commission may determine the application under delegation as Council objected to the modification application.

### **Engagement**

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to SSD. Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department's website on 6 December 2018 and was referred to Council for comment.

Council objected to the proposed modification advising it has offered to enter into a works in-kind agreement with the Applicant for the drainage works and to credit the amount of \$970,029 (March 2017 rates), with indexation.

### **Assessment**

The Department's assessment of the modification application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development.

With regard to the cost of the drainage infrastructure, Council raised concerns that modifying Conditions C16 and C17 may have financial implications for Council's local infrastructure program, potentially reducing the amount available for Council to spend on local infrastructure within the Liverpool LGA by approximately \$286,000. The Applicant considers the approved stormwater infrastructure provides material public benefit as the works manage 'high hazard' stormwater flows from an adjacent upstream residential zone. The Applicant proceeded to complete the drainage works to meet its contractual obligations and to immediately address the high hazard stormwater flows through the site.

The Department has considered Council's and the Applicant's position at length and considers the Applicant's request for a \$1.2 million offset is reasonable and fair as the works provide a material public benefit that was necessary to correct stormwater flow issues at the site. The provision of this infrastructure and other infrastructure works carried out by the Applicant such as the Yarrunga Street and Bernera Road works (amounting to \$5 million for which no credit is being sought) has directly benefited other industrial developments in the area. Given a works in kind agreement was never entered into with Council, the Department is of the view that a \$1.2 million offset for the drainage works should be applied against the total development contribution amount payable. As the Minister for Planning and Public Spaces can impose a condition under section 7.13 relating to the payment of development

contributions, the Department has recommended this offset be applied to the overall contributions amount required under Condition B23. The Department also recommends Conditions C16 and C17 be deleted.

The Department has also considered the Applicant's request to cap the development contribution amount at March 2017 rates and considers it manifestly unreasonable to require the Applicant to pay the contributions amount at current CPI rates, given the Applicant has sought to resolve the drainage issues with Council since 2017 when the independent quantity surveyors report was provided to the Department. Around this time, the Applicant also completed the drainage works. The Department has recommended that Condition B23 be amended to require the Applicant to pay contributions to Council indexed at March 2017 rates, which would also include the offset amount of approximately \$1.2 million. The final contribution amount would be \$5,019,522. The Department considers this amount still allows the Applicant to contribute towards public infrastructure projects in the Liverpool LGA.

The Department concludes development is continuing to provide significant public benefit through the provision essential stormwater infrastructure and the retention of jobs and investment in Western Sydney. The Department concludes the proposal is in the public interest and the applications are approvable, subject to conditions.



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# 1. Introduction

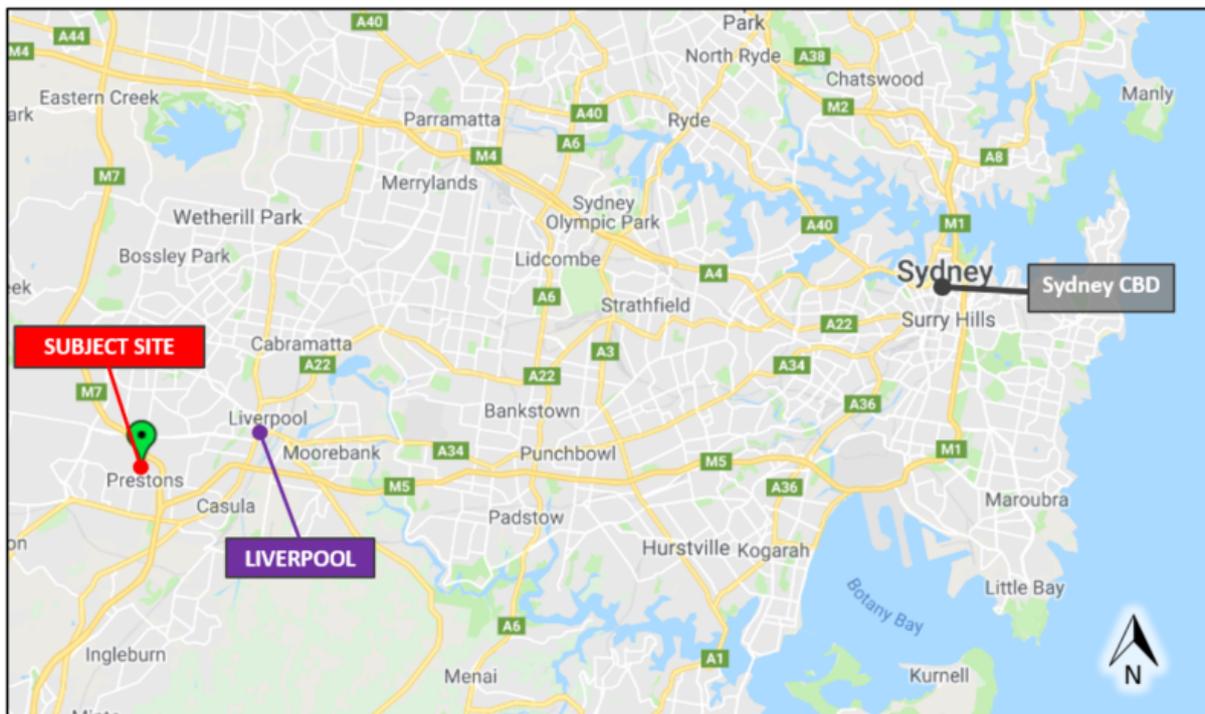
This report provides an assessment of an application to modify the State significant development consent (SSD) for the Prestons Industrial Estate. The modification application has been lodged by Logos Properties Holding Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The SSD for the Prestons Industrial Estate (SSD 7155) approved the construction and operation of five warehouse buildings and drainage works on the site. The modification application seeks approval to:

- delete Condition C16 which requires the Applicant to enter into an agreement with Liverpool City Council (Council) regarding the payment of drainage works required on the Prestons Industrial Estate
- modify Condition C17 to offset costs for drainage works against the development contributions required (under Condition B23) for the Prestons Industrial Estate
- modify Condition B23 to specify a fixed development contribution amount payable to Council for the Prestons Industrial Estate which accounts for offsets for drainage works (under Condition C17) and indexation of contributions up to March 2017.

The Independent Planning Commission (the Commission) may determine the application under delegation, as Council objected to the modification application.

## 1.1 Background

The Applicant is progressively developing the approved Prestons Industrial Estate located at 5-35 Yarrunga Street, 36-36A Kookaburra Road North and 42B Kurrajong Road, Prestons in the Liverpool local government area (LGA) (the site). The site is located near the intersections of the M5 and M7 motorways, 30 kilometres (km) south-west of the Sydney city centre and 6 km south-west of the centre of Liverpool (refer to **Figure 1**).



**Figure 1** | Site Location

On 24 June 2016, the Prestons Industrial Estate development application (SSD 7155) was approved. SSD 7155 permitted the construction of five warehouse and distribution buildings on the 20 hectare (ha) site over four stages. Several modifications to SSD 7155 have expanded the size of the estate to approximately 24 ha and allowed for the estate to comprise six warehouse buildings when fully operational (refer to **Section 1.3**).

## 1.2 Site Description and Context

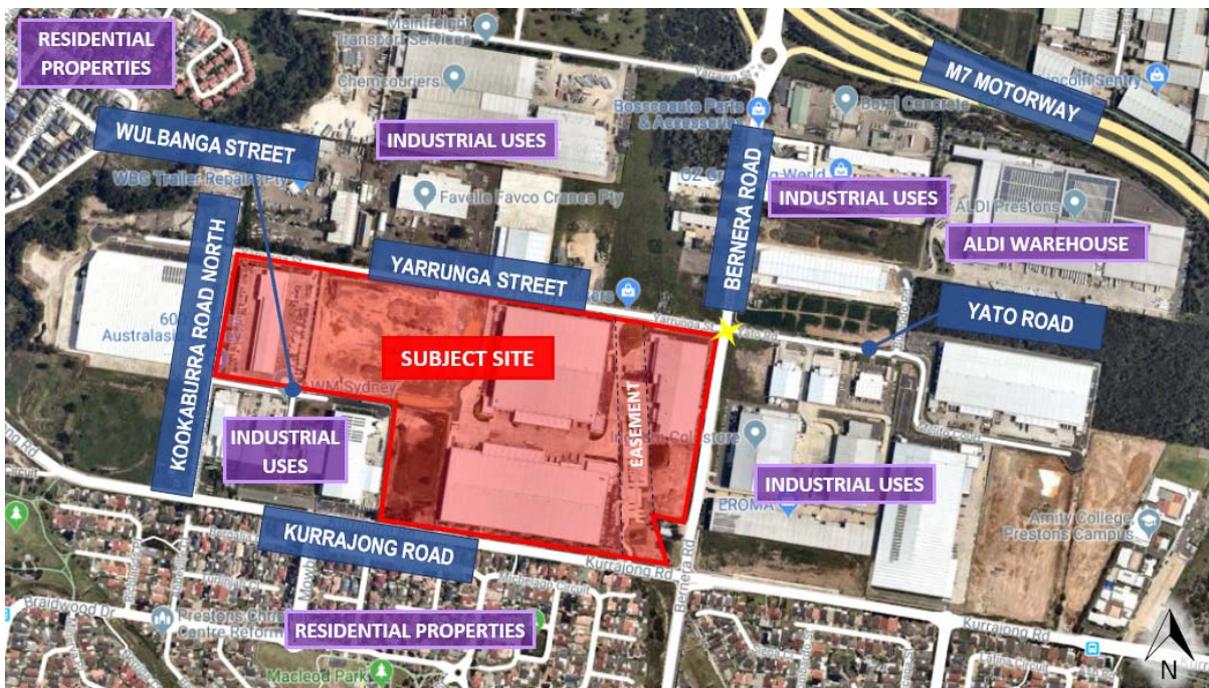
Bulk earthworks, internal access roads and four of the approved six warehouse buildings in the Prestons Industrial Estate have been constructed (refer **Figure 2**). The constructed warehouses are identified as Warehouses 2, 3A, 3B, 3C, 5 and 6 as shown in **Figure 4**.

Two high voltage transmission towers are located on the eastern part of the site within a 61 metre (m) wide transmission line easement (shown dotted in **Figure 2**).

Residential properties are located directly to the south of the Prestons Industrial Estate and to the north-west (refer **Figure 2**).

The road network surrounding the site includes:

- Bernera Road, a four-lane collector road that runs in a north-south direction and connects with the M7 motorway located 520 m to the north
- Kurrajong Road, a four-lane collector road that runs in an east-west direction along the southern site boundary and connects to Cowpasture Road to the west
- Yarrunga Street, a two-lane local road along the northern site boundary
- Kookaburra Road North, a two-lane local road along the north-western site boundary
- Wulbanga Street, a two-lane cul-de-sac located along the south-western boundary.



**Figure 2** | Site Context

The approval and subsequent development of the Prestons Industrial Estate has changed the landscape character of the site from open paddocks in a rural context to industrial. Many of the remaining undeveloped industrial zoned lots surrounding the site to the north, west and east have been developed over the last few years or have recently been approved to be developed for industrial uses. These sites are shown in **Figure 12**.

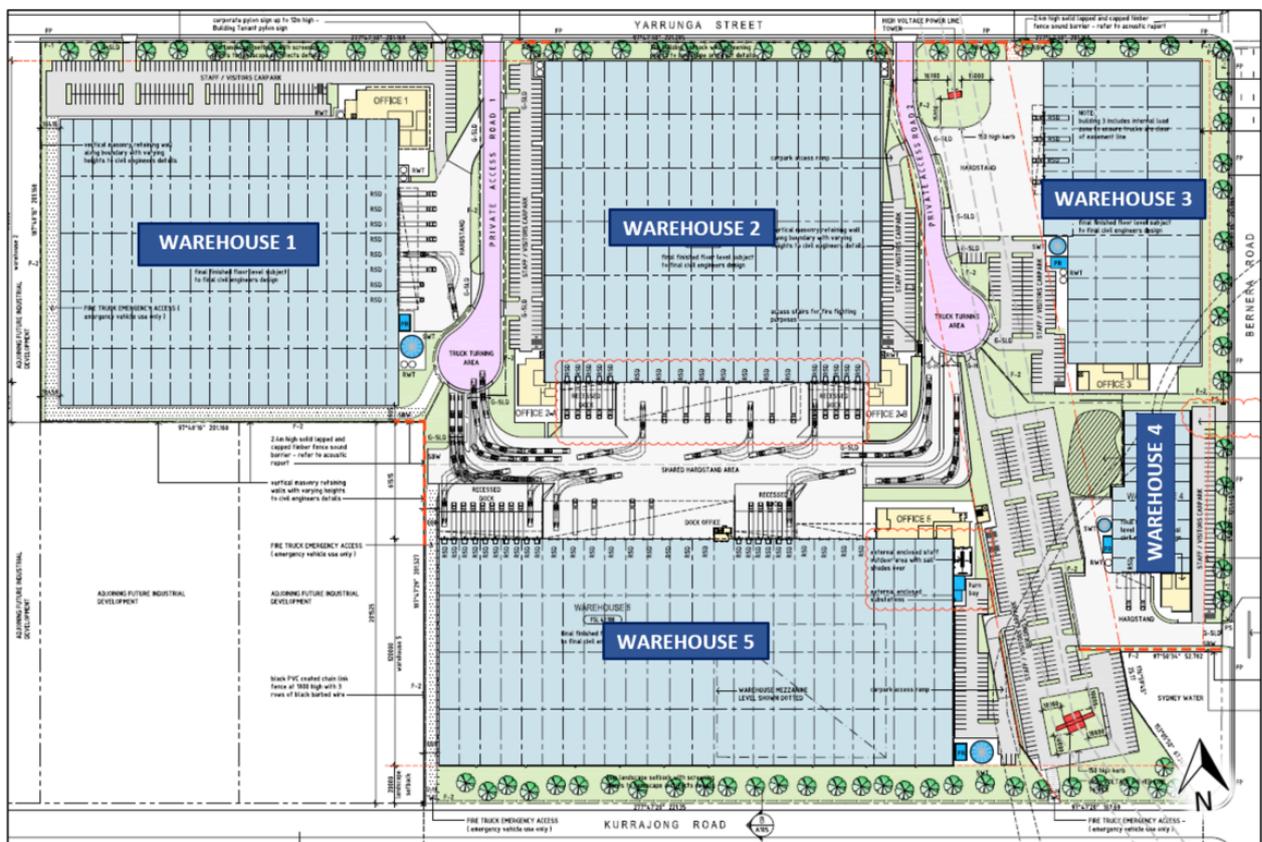
### 1.3 Approval History

#### Overview of SSD 7155

On 24 June 2016, SSD 7155 was approved by the Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning. The development consent was for the construction of an industrial estate in four stages as follows:

- Stage 1: Warehouses 2 and 5 covering 30,005 m<sup>2</sup> of gross floor area (GFA) and 32,400 m<sup>2</sup> of GFA respectively with three associated offices, two private access roads from Yarrunga Street and on-site parking
- Stage 2: Warehouse 1 covering 26,950 m<sup>2</sup> of GFA, a two storey ancillary office space and associated parking
- Stage 3: Warehouse 3 covering 12,280 m<sup>2</sup> of GFA, a two storey ancillary office space and associated parking
- Stage 4: Warehouse 4 covering 3,285 m<sup>2</sup> of GFA, a single storey office space, an access road off Bernera Road and associated parking.

The warehouses were intended for the storage, packing and distribution of fast-moving consumer goods. **Figure 3** shows the site layout of the industrial estate, as approved under SSD 7155. Warehouses 1 and 4 are yet to be constructed.



**Figure 3** | Approved Site Plan under SSD 7155

## Summary of Modifications to SSD 7155

SSD 7155 has been modified on five occasions as summarised in **Table 1**.

**Table 1** | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Amendments to the location of the sprinkler tank and pump room, car parking, removal indoor substations and replacement with external substations, a new battery charge room, removal of sunshades, the car park lift and construction of a pergola and shade cloth awning	Department	4.55(1A)	17 November 2016
MOD 2	Alterations to the design of Warehouse 3 and Warehouse 4 and amendments to car parking, stormwater design, landscaping and vehicle access arrangements	Department	4.55(1A)	11 January 2018
MOD 3	Reconfiguration of the layout of the industrial estate to incorporate additional Lots A and B DP 408207, amendments to the design of Warehouse 1, construction of new Warehouse 6 on new lots, revised construction stages, car parking, servicing and landscaping	Department	4.55(2)	13 February 2018
MOD 4	Seeking to enter into a VPA with Council for works to the Bernera Road/Yarrunga Street/Yato Road intersection, currently required under C1-C4	Department	4.55(1A)	Yet to be submitted
MOD 5	Seeking to modify the conditions relating to the payment of drainage works and development contributions	Department	4.55(1A)	This modification application
MOD 6	Expand the size of the Prestons Industrial Estate by extending the existing Warehouse 5 on Lot 43 DP 2359 onto an adjacent lot (Lot B DP 416483), construct an ancillary office space, hardstand areas and car parking, modify the fire access arrangements and provide new vehicle access, landscaping and stormwater drainage on the site	Department	4.55(2)	21 December 2018
MOD 7	Amendments to the layout of Warehouse 1 to create two separate warehouse tenancies with ancillary office space, modifications to car parking, stormwater design, landscaping and vehicle access arrangements (refer <b>Figure 4</b> )	Department	4.55(1A)	26 February 2019

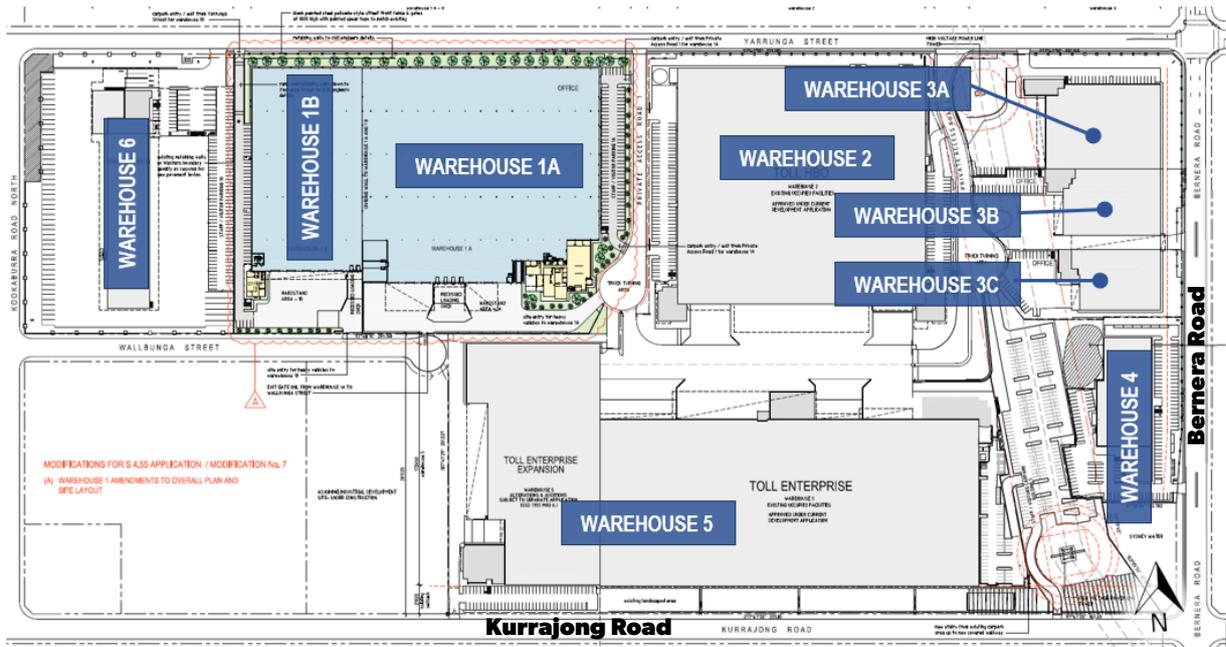


Figure 4 | Approved Site Plan under SSD 7155 (MOD 7)

## 1.4 Site History – Drainage Issues

### Pre-Development Drainage Conditions

Prior to the development of the Prestons Industrial Estate, the site featured a natural gully located in the south-eastern part of the site. This overland flow path drains a 33 ha upstream residential catchment located to the south of the site (refer to **Figure 5**).



Figure 5 | Pre-development drainage flow path in the south-eastern corner of the site

In a larger storm event (up to the 100 year ARI), overland flow would overtop the kerb on Kurrajong Road and join stormwater piped from the catchment before being directed across the site toward Bernera Road. Underneath Bernera Road, three box culverts conveyed stormwater flows eastward.

### Approved Design of the Stormwater Infrastructure

To manage stormwater flows along this overland flow path during larger storm events, the development consent for SSD 7155 approved specific stormwater infrastructure and an overland flow channel. The overland flow channel (shaded in blue in **Figure 6**) would allow for lower volume flows to pass through the car parking area while larger volumes of stormwater would pass through a box culvert system (in yellow in **Figure 6**). The stormwater infrastructure and overland flow path would be directed from Kurrajong Road (refer to **Figure 7** and **Figure 8**) through the site where, once downstream of the car park, the full volume of stormwater would be conveyed between Warehouse 3C and Warehouse 4 as an open channel to the existing culvert on Bernera Road. The approved stormwater infrastructure was required to convey the overland flow through the site in a controlled manner and to ensure that flood levels, velocities and the extent of flooding in the downstream catchment was maintained at the pre-development scenario.

Under MOD 2, the stormwater infrastructure design was revised slightly to incorporate box culverts adjacent to Bernera Road. The box culverts were required to facilitate vehicle access over the overland flow path from Warehouse 3 to Bernera Road.

The Liverpool Contributions Plan 2009 (the Contributions Plan) identifies in its schedule of works that the construction of a box culvert is required through the site and along Bernera Road, between the points identified as F7 to F9 in **Figure 9**.

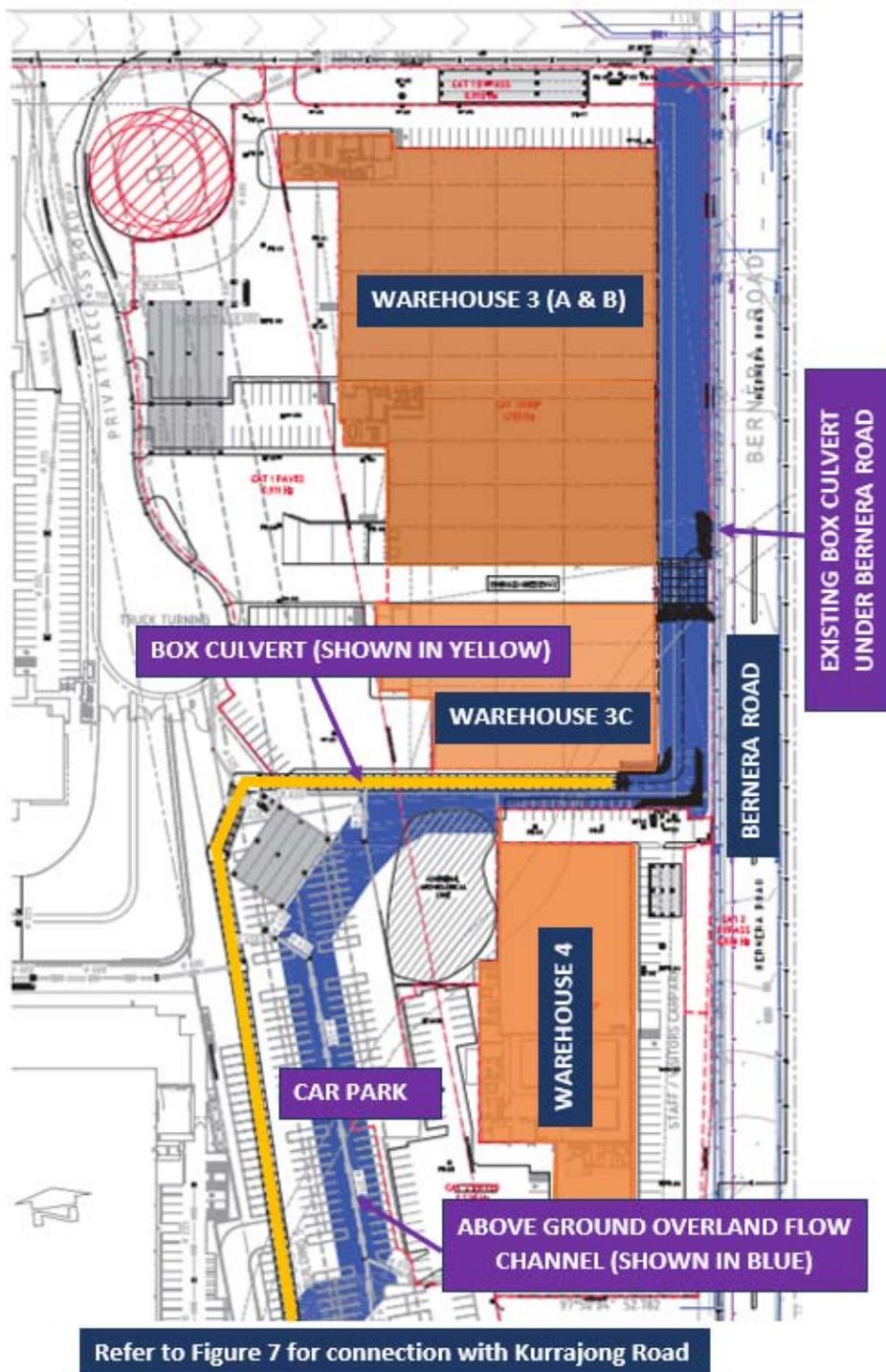
However, prior to the determination of the Prestons Industrial Estate, Council commissioned the ‘Prestons Trunk Drainage Flooding and Drainage Assessment’, prepared by John Wyndham Prince Pty Ltd dated August 2014 (the JWP Report). The JWP Report identified that the stormwater infrastructure planned along Bernera Road under Council’s Contributions Plan may conflict with existing services and result in large infrastructure costs. As such, the JWP Report presented an interim and final drainage strategy to improve potential flooding issues on industrial zoned lots in Prestons and to provide a more cost-effective solution for Council and developers from that outlined in the Contributions Plan. However, Council’s Contributions Plan was not updated to reflect the drainage strategy presented in the JWP Report.

Given the above, the design of the approved stormwater infrastructure for the Prestons Industrial Estate differed from the design outlined in the Contributions Plan in the following ways (see **Table 2**):

**Table 2** | Key Differences in Stormwater Infrastructure (Approved vs Contributions Plan)

Stormwater Infrastructure	As Approved	Contributions Plan
Box Culvert – Size (as shown in <b>Figure 7</b> and <b>Figure 8</b> )	two cells of 1.8 m wide by 1.5 m deep	3 m wide by 1.2m deep
Box Culvert - Length	260 m to transport stormwater underneath Bernera Road	475 m to convey stormwater north towards Yarrunga Street Street (the full construction of F7 to F8, as shown in <b>Figure 9</b> , was not required)
Design	Incorporated an open channel/ swale design adjacent to Bernera Road	Box culvert adjacent to Bernera Road (identified as part of F7-F8 in <b>Figure 9</b> )
Alignment	Box culvert as shown in <b>Figure 6</b>	Box culvert as shown in <b>Figure 9</b>

The Applicant noted the approved larger box culvert design and reduced length of the infrastructure reflects the interim drainage strategy in the JWP Report, as required by Council. However, the Applicant also sought to revise the alignment of the box culvert from that identified in the Contributions Plan to maximise the development potential of the site and to enable a more appropriate site layout.



**Figure 6** | Overland Flow Infrastructure (approved under SSD 7155)

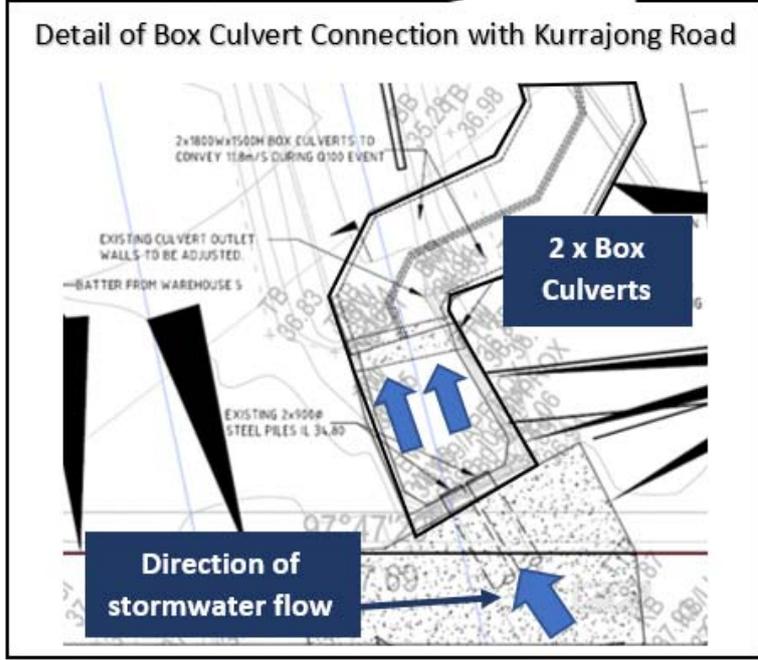
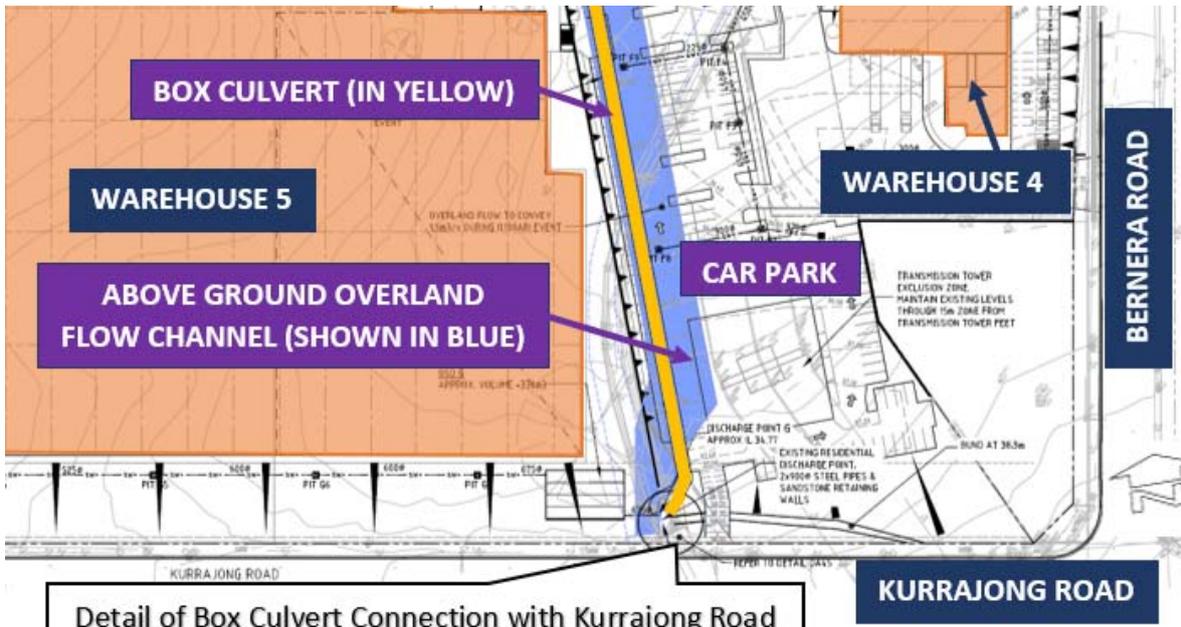


Figure 7 | Kurrajong Road Culvert Connection Plan

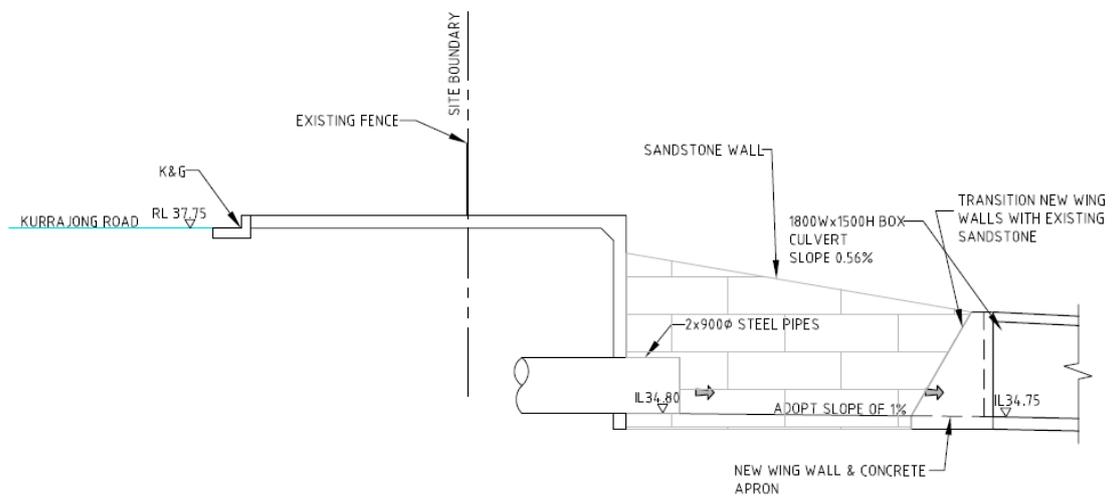
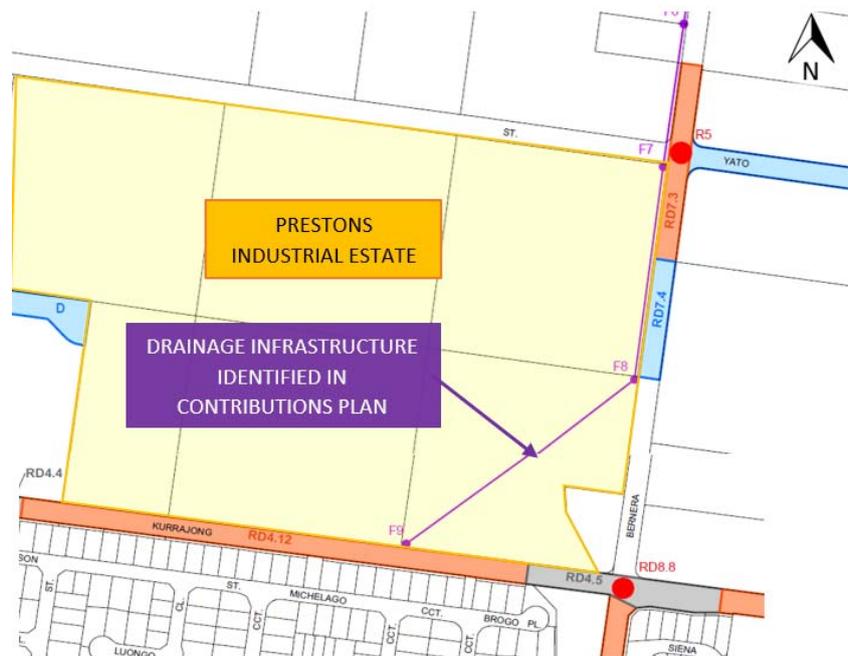


Figure 8 | Section of Box Culvert Connection with Kurrajong Road



**Figure 9** | Alignment of overland flow infrastructure identified in Liverpool Contributions Plan 2009

### **The Department’s Consideration of the Stormwater Infrastructure**

During the assessment of the original application, Council noted the works differed from the design in the Contributions Plan and that any difference in the costs associated with the altered alignment and design of the drainage works (outside of what is identified in the Contributions Plan) would need to be paid by the Applicant. In this regard, Council advised that any works in-kind agreement made between Council and the Applicant would only cover the cost of the drainage works built according to the Contributions Plan and only up to the amount allowed for in the Contributions Plan for the item.

The Applicant considered the costs identified in the Contributions Plan for the base drainage was inadequate and that any shortfall should not be borne by the Applicant. The Applicant ultimately agreed that the actual cost of the alignment, as shown on Council’s Contributions Plan, would be independently reviewed by a quantity surveyor and an amount would need to be settled with Council.

At the time of assessment, the Department sought to address this dispute through the implementation of Conditions C15 and C16. These conditions require the Applicant to appoint an independent quantity surveyor to cost the drainage design and provide evidence to the Secretary demonstrating that an agreement had been reached with Council for the construction and payment of the infrastructure, within 6 months of the date of consent.

SSD 7155 also includes the following stormwater drainage conditions of relevance to this modification application:

- Condition C14 requires the Applicant to submit for the approval of Council, a final Stormwater Drainage Plan for the development prepared in accordance with the Liverpool Development Control Plan 2008 (DCP 2008) and the Prestons Trunk Drainage Strategy. The final Stormwater Drainage Plan must be approved by Council prior to the issue of the first construction certificate for the development.
- Condition C17 states that if the carrying out of works to provide the stormwater infrastructure set out in the Contributions Plan is accepted in part or in full satisfaction of the development contributions (required by Condition B23), the drainage works would be subject to a works in-kind agreement executed in accordance with the provisions of the Contributions Plan and Council’s Developer Contributions Works in Kind Policy 2012 (WIK Policy).

## Post Determination - Discussions on Stormwater Infrastructure

Since the determination of the Prestons Industrial Estate in June 2016, the Applicant:

- received approval from Council for the final Stormwater Drainage Plan on 30 June 2016, in accordance with Condition C14
- on 2 August 2016, agreed with Council on the appointment of an independent quantity surveyor to cost the drainage works in accordance with Condition C15.

On 16 February 2017, the Applicant wrote to the Department advising that, despite regular meetings and contact with Council, it had not been able to enter into an agreement with Council on the payment of the stormwater infrastructure, as required under Condition C16. In this correspondence, the Applicant advised that the independent quantity surveyor had estimated the costs of the drainage works based on the length and path of the box culverts identified in the Contributions Plan and the sizing of the approved box culverts. However, because there would be around a \$572,000 difference between the costs of the works and what Council would offer as an offset (\$970,029 at March 2017 rates) through a works in-kind agreement, the Applicant maintained the drainage works were not appropriately costed by the Contributions Plan.

The Department contacted Council to understand its position on this matter. Council advised its position has not changed from the original application.

The Applicant has advised that the approved drainage works were completed at the end of May 2017 to meet construction and project delivery timeframes.

The Applicant also sought to address this ongoing issue through previous modification applications.

Through this modification application, the Applicant is seeking to delete Condition C16 and to amend C17 to resolve the ongoing dispute with Council regarding the payment of the stormwater infrastructure. No changes are sought to Conditions C14 or C15.

### 1.5 Site History - Development Contributions Issues

Condition B23 of SSD 7155 requires the Applicant to pay to Council, development contributions in accordance with Council's Contributions Plan, within six months of the date of the consent (being by 24 December 2016) and prior to the issue of the Occupation Certificate.

Sections 2 and 3.7.6 of Council's Contributions Plan outlines that development contributions are adjusted at the time that the contribution is to be paid in accordance with the 'monetary contribution rates' outlined in the Contributions Plan. These monetary contribution rates are updated quarterly to reflect variations in the Consumer Price Index (CPI) and land values since the date the consent was granted.

Council confirmed that the contributions for the full site area of the Prestons Industrial Estate total \$5,498,184, based on the December 2015 rates, and without accounting for any offset to the development contributions for drainage works.

On 16 February 2017, the Applicant wrote to the Department and advised it had been working with Council to finalise the detailed design and pricing of the stormwater infrastructure. The Applicant advised that, because of the delay in reaching an agreement with Council on the design and payment of drainage works (as required under Condition C17), the CPI and land value indexation of the development contributions had significantly increased. Nonetheless, the Applicant proceeded to complete the stormwater infrastructure works despite the ongoing dispute with Council. The Applicant has requested the development contributions be 'frozen' to waive any increase in the development contributions from indexation particularly as the stormwater infrastructure works were completed in 2017.

Payment of the development contributions required under Condition B23 remains outstanding due to the ongoing dispute with Council on the pricing for the drainage works.

Therefore, the Applicant is seeking, through this modification application, to amend Condition B23 to restrict the indexation of contributions and to offset the costs of the drainage works.



## 2. Proposed Modification

### 2.1 Summary of Proposal

The Applicant has lodged a modification application under section 4.55(1A) of the EP&A Act to modify the development consent SSD 7155 to make amendments to the conditions of consent of the Prestons Industrial Estate at Yarrunga Street, Prestons. The proposed modifications are outlined in **Table 3**.

The modification is described in full in the Statement of Environmental Effects (SEE report) included in **Appendix A** and is discussed in detail below in **Section 2.2**.

**Table 3** | Proposed Modification

Condition	Description of Proposal
<b>Condition C16</b> <ul style="list-style-type: none"><li>Requires the Applicant to provide written evidence to the Planning Secretary demonstrating an agreement has been made with Council for the construction and payment of the stormwater infrastructure (refer <b>Section 1.3</b>)</li></ul>	<ul style="list-style-type: none"><li>Delete Condition C16</li></ul>
<b>Condition C17</b> <ul style="list-style-type: none"><li>Allows for a works-in-kind agreement to be executed for the stormwater infrastructure in part or full satisfaction of the development contributions payable under Condition B23</li></ul>	<ul style="list-style-type: none"><li>Modify Condition C17 to offset costs, amounting to \$1,256,008 (refer <b>Table 5</b>), for stormwater infrastructure against the total development contributions payable under Condition B23</li></ul>
<b>Condition B23</b> <ul style="list-style-type: none"><li>requires the Applicant to pay to Council, development contributions in accordance with Council's Contributions Plan, within six months of the date of the original consent and prior to the issue of the Occupation Certificate</li></ul>	<ul style="list-style-type: none"><li>Modify Condition B23 to specify a fixed development contribution amount payable to Council (amounting to \$5,019,522) for the original development. This development contribution amount would account for:<ul style="list-style-type: none"><li>\$1,256,008 in offsets for drainage works (under Condition C17)</li><li>indexation of contributions up to March 2017</li></ul></li></ul>

### 2.2 Detailed Description of Proposal

#### Drainage Conditions

To support the proposed amendment to the conditions, the Applicant submitted an independent quantity surveyor (QS) report with the SEE. This report estimates the net cost for the drainage works (F7 - F9 identified in the Contributions Plan) is \$1,361,988 (excluding GST), which is shown in **Table 4**.

SSD 7155 approved an open channel/swale design instead of a box culvert, as originally planned in the Contributions Plan (as discussed in **Section 1.4**), which required the construction of a retaining wall along Building 3. The cost of the retaining wall was an additional \$180,000 on top of the initial QS estimate, resulting in a total cost estimate of \$1,541,988.

**Table 4** | Cost of the Stormwater Works

Description of Stormwater Works	Amount	Comment	
Independent QS Estimate at 17 January 2017	Stormwater Drainage Culvert Construction	\$1,834,932	The QS cost estimate is based on the length and path of the culverts as per the Contributions Plan (F8 to F9) and the detailed design and sizing of Costin Roe Consulting DA approved drawings
	Swale and retaining wall structure works	+ \$180,643	
	Credit to Council for 825mm pipe through greenfield site per Council S.94 Plan	- \$653,587	
	<b>QS estimate</b>	<b>\$1,361,988</b>	-
Retaining Walls along Bernera Rd to create drainage swale	+ \$180,000	Council agreed the cost of the retaining wall could be added to the QS estimate	
<b>Revised Total QS Estimate</b>	<b>\$1,541,988</b>	-	

Council has offered a contribution offset of \$970,029 in accordance with the Contributions Plan, which is a \$574,811 difference from the cost of the drainage works established by the quantity surveyor (refer **Table 5**). To account for this difference, the Applicant has sought to modify Condition C17 to allow a \$1,256,008 offset for the drainage works against the total development contributions payable, as required under Condition B23 (refer **Table 5**). This would effectively split, 50/50, the \$574,811 difference in costs between the costs for the drainage works, as priced by the quantity surveyor, and the contribution offset offered by Council.

**Table 5** | Offset/credit sought by Applicant for drainage works

Description	Calculation	Comment
Difference between Council credit and QS estimate	$\$1,541,988 - \$970,029 = \$571,959$	Council confirmed \$970,029 (at March 2017) rates would be available to offset the drainage works as per the Contributions Plan
50% of the difference between Council credit and QS estimate	$\$571,959 \div 2 = \$285,980$	Applicant proposes to split the difference amount with Council
Amount sought to offset Development Contributions	$\$1,541,988 - \$285,980 =$ <b>\$1,256,008</b>	Calculated by subtracting the 50% difference from the revised total QS estimate

### Development Contribution Condition

The Applicant proposes that Condition B23 is modified to specify a fixed development contribution amount and due date for the payment of contributions to Council. This figure is based on the offset for drainage works and indexation up to March 2017, which is the date upon which the quantity surveyor's report was provided to the Department. The contribution is calculated as \$5,019,522, as outlined in **Table 6**.

**Table 6** | Proposed Modification to Development Contribution Amount

Stage	Contribution Payable	Due Date
SSD 7155 (original consent)	\$6,275,530 – \$1,256,008 = <b>\$5,019,522</b> (original DA contribution rate plus indexation to March 2017, less drainage offset works)	Within two months of the date of consent for this modification application



## 3. Strategic Context

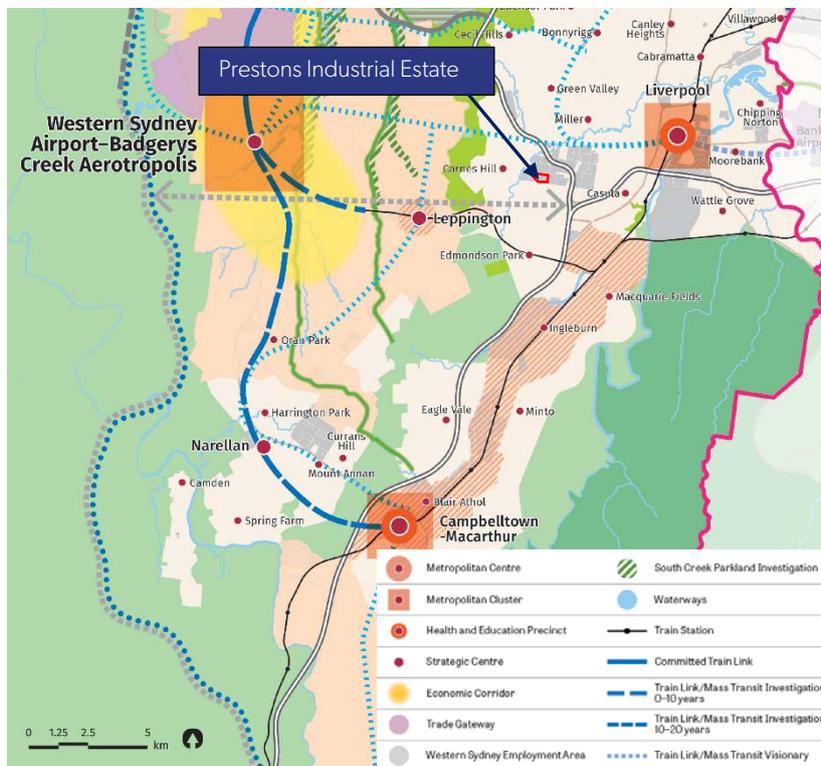
The Department has considered the strategic context of the site and is satisfied the proposed modification is consistent with relevant strategic planning documents, including 'A Metropolis of Three Cities - the Greater Sydney Region Plan' (the Greater Sydney Region Plan) and the Western City District Plan.

### 3.1 Greater Sydney Region Plan

The vision of the Greater Sydney Region Plan seeks to meet the needs of a growing population by transforming Greater Sydney into 'a metropolis of three cities – the Western Parkland City, the Central River City and the Eastern Harbour City. The vision of the Greater Sydney Region Plan recognises that the city will include 'expansive industrial and urban services lands to the north and east of the Western Sydney Airport' and strategically identifies the site for industrial development (refer **Figure 10**).

The Prestons Industrial Estate development is consistent with the goals, directions and actions of the Greater Sydney Region Plan. In accordance with Objective 23, the development will provide growth and investment in an identified industrial precinct, which is well connected to critical infrastructure (e.g. the M7 motorway). As a State significant development, the Prestons Industrial Estate represents around \$149 million capital investment in industrial development in western Sydney.

Objective 14 of the Greater Sydney Region Plan seeks to deliver a well-connected 30-minute city by providing additional jobs closer to where people live. The development is consistent with Objective 14 as it is expected to generate 500 new construction jobs and up to 375 operational jobs on land located directly to the north of an established residential area.



**Figure 10** | Extract from Greater Sydney Region Plan

### 3.2 Western City District Plan

The Western City District Plan (District Plan) is a 20-year plan to manage growth in Western Sydney and acts as a bridge between regional and local planning. The District Plan also guides the implementation of the Greater Sydney Region Plan. The development of the Prestons Industrial Estate is supported at a strategic level by the Western City District Plan and meets the goal of Planning Priority W10 of 'maximising freight and logistics opportunities and planning and managing industrial and urban services land'. The development of the Prestons Industrial Estate would ensure industrial zoned land is retained and developed for industrial purposes and significantly contributes to the Greater Sydney economy.



## 4. Statutory Context

### 4.1 Scope of Modifications

The Department has reviewed the scope of the modification application and is satisfied the proposed modification application would result in minimal environmental impacts, and relates to substantially the same development as the original development consent on the basis that:

- the proposed modification would not significantly increase the environmental impacts of the development as approved
- the primary function and purpose of the approved development would not change as a result of the proposed modification
- the proposed modification is substantially the same development as originally approved
- the proposed modification relates to the payment of infrastructure and development contributions and would not involve any further disturbance outside the already approved area of the development.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 4.2 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 14 September 2011, the Commission may determine the application under delegation as Council objected to the modification application.

### 4.3 Consideration of Section 7.13 of EP&A Act

In determining this application, the Department has had regard to section 7.13(2) of the EP&A Act. This section allows the Minister for Planning and Public Spaces, as the consent authority, to impose a condition under section 7.11 (relating to the payment of a monetary contribution) even though it is not authorised by or determined in accordance with a contributions plan. In accordance with section 7.13(2)(b) of the EP&A Act, the Department has had regard to the Contributions Plan in determining this modification application.

Under section 7.11(6) of the EP&A Act, the Department has also taken into consideration the material public benefit the Applicant has provided on site, in the form of the drainage works and other public infrastructure. This is discussed further in **Section 6**.



## 5. Engagement

### 5.1 Department's Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to State significant development. Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department's website on 6 December 2018 and was referred to Council for comment.

On 24 October 2018, prior to the lodgement of the modification application, the Department met with Council and the Applicant to discuss the ongoing dispute between the Applicant and Council on the payment of the drainage works and the outstanding development contributions. Council re-iterated its position on this matter, as described in **Section 1.4** and **Section 1.5**.

### 5.2 Submissions

A total of two submissions were received on the proposed development, including an objection from Council and comments from Milestone (AUST) Pty Ltd (Milestone) on behalf of Aldi Stores. A summary of the issues raised in these submissions is provided below, with a copy of each submission included in **Appendix A**.

**Council** objected to the proposed modification advising it has offered to enter into a works in-kind agreement with the Applicant for the drainage works and to credit the amount of \$970,029 (March 2017 rates), with indexation. Council objected to the proposal on the following grounds:

- Council's offer for the drainage works is based on reasonable considerations, including:
  - the budget of Council funds set aside in the Contributions Plan for the works
  - the financial implications for Council should an amount which is greater than that specified in the Contributions Plan be refunded. Council advised the Applicant's proposal for Council to offset an additional \$285,980 would be \$285,980 less that Council could spend on local infrastructure requirements elsewhere
- the Applicant stands in breach of Condition B23 and incorrectly asserts that delays in the payment of the contributions has been caused by Council's failure to comply with Condition C17. In this regard, Council notes it is not the consent authority and therefore has no responsibility to comply with conditions of consent to which it is not a party to
- Council should not be made financially liable for the Applicant's unwillingness to pay the development contributions in a timely manner
- the modification would encourage other developers to seek similar increases for credits through a works in-kind agreement or to challenge the authority of Council to index unpaid contributions in accordance with Council's Contributions Plan.

**Milestone** on behalf of Aldi Stores commenting on the modification application. Aldi Stores operate the Prestons Distribution Centre located approximately 350 m to the north east of the site (refer **Figure 2**). The submission expressed concern that:

- the Applicant has not commenced upgrade works to the Yarrunga Street / Bernera Road intersection which are required to be completed by the Applicant under the conditions of the development consent for the

Prestons Industrial Estate. Milestone consider the intersection upgrade works are important to maintain the safety and operational efficiency of Aldi's Prestons Distribution Centre.

- Milestone request that the Department does not approve any reduction to the development contributions for the Prestons Industrial Estate where such funds involve the upgrade of any roads and intersections within the Prestons industrial precinct.

### 5.3 Response to Submissions

The Applicant provided a Response to Submissions (RTS) on the issues raised during the exhibition of the development (see **Appendix A**).

The RTS included further justification for the proposed amendments to the conditions, advising that the drainage works provide a material public benefit.

The Department made the RTS publicly available on its website in April 2019.



## 6. Assessment

The Department has considered the Applicant's SEE, the issues raised in the submissions and the Applicant's RTS in its assessment of the modification application. The Department considers the key assessment issues are the:

- drainage works
- amendment to Condition B23 – Development Contributions.

### 6.1 Drainage Works

#### **Applicant's request to amend Condition C16 and C17**

The Applicant proposes, through this modification application, to delete Condition C16 to remove the requirement for the Applicant to enter into an agreement with Council and to amend Condition C17 to allow for a credit/offset of approximately \$1.2 million for the drainage works described in **Section 1.4**.

The modifications to Conditions C16 and C17 may have financial implications for Council's local infrastructure program and would reduce the amount available for Council to spend on local infrastructure within the Liverpool LGA by approximately \$286,000 (as shown in **Table 5**).

As described in **Section 2.2**, the Applicant submitted with the SEE a cost breakdown of the drainage works prepared by an independent quantity surveyor. The Applicant has advised the scope, methodology and costing of the quantity surveyor has been agreed to by Council. The cost of the retaining wall along Bernera Road, adjacent to Warehouse 3 was costed following this original report, however, the Applicant states Council did not disagree with this amount.

The Applicant considers the additional stormwater infrastructure (the larger box culverts and retaining wall) provide a material public benefit as the works manage 'high hazard' stormwater flow from the adjacent, upstream residential zone, which is prone to flooding. The Applicant advises the stormwater infrastructure was in addition to any works required by the development of the Prestons Industrial Estate. As such, the Applicant requested a \$1.2 million credit or offset for the works under Condition C17. This is around \$286,000 more than what Council has offered and is allocated in the Contributions Plan.

The Applicant notes Council has not updated its Contributions Plan, which became effective in December 2009. As such, the Applicant is of the view the Contributions Plan has not appropriately accounted for the real costs of upgrading the rural standard drainage systems in Prestons to manage stormwater flow from the adjacent residential zone.

In its RTS, the Applicant advised that, had it waited for the dispute with Council to be resolved, the matter would have stalled the development of the Prestons Industrial Estate. The Applicant also considered the completion of the stormwater management works in May 2017 necessary, to ensure flooding impacts are minimised and appropriately managed.

The Applicant further requests that consideration be given to the \$5 million incurred by the Applicant for the construction of additional infrastructure, including the half road construction of Yarrunga Street and widening of Bernera Road, for which no credit is being sought.

Council noted certain drainage works identified in the Contributions Plan have been undertaken by the Applicant and that the Applicant chose to undertake the works without a works in-kind agreement being executed. Council

further notes Condition C17 gives Council the flexibility to accept the drainage works as a part or full payment for development contributions in accordance with the WIK Policy. In assessing an application to reduce development contributions, the WIK Policy requires Council to consider the financial implications for Council. In this regard, Council expressed concern that, should an amount which is greater than that specified in the Contributions Plan be refunded, it would have financial implications for Council and its budget for local infrastructure works.

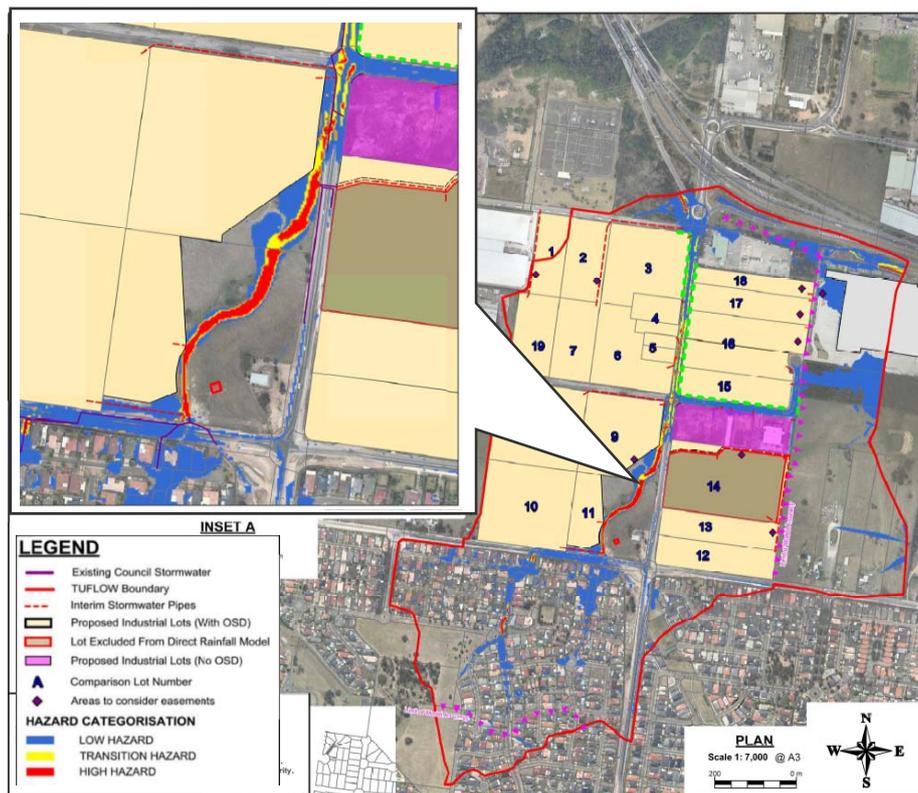
### **Department's consideration**

The Department has considered the potential financial implications for Council at length and acknowledges the modification would result in a \$286,000 loss in funds available to Council for local infrastructure provision. The Department acknowledges that Council's Contributions Plan identifies that, where a developer undertakes the stormwater infrastructure works as part of a development, they should receive full credit for the works as shown in the Contributions Plan. The Contributions Plan allows for a \$970,029 (as at March 2017 rates) credit, as offered by Council.

The Department considers the Applicant's request is reasonable for several reasons. The works provide a material public benefit as it corrected historical stormwater flow issues through the site which was caused by the residential upstream catchment adjoining the site. The drainage works were necessary to adequately control the 'high hazard' stormwater flows through the site and to downstream catchments (as shown in **Figure 11**). By installing the approved stormwater infrastructure, the Applicant has minimised the potential for environmental harm. In this regard, Council's WIK Policy requires Council to consider the overall benefit of the works to the current and future development in the area. It is not clear whether Council, in making its offer, has considered the overall benefits of the works in accordance with the WIK Policy.

The Department also acknowledges that had the Applicant ceased construction until the dispute with Council was resolved, the Applicant may have breached contractual deadlines with the prospective tenant, Toll, and jeopardised the viability of the project. Ceasing construction works would have also delayed the installation of necessary stormwater drainage works to manage the high hazard stormwater flows through the site. The Department considers the Applicant made reasonable attempts to resolve the dispute with Council prior to completing the drainage works.

The Department notes Council has not questioned the costings of the independent quantity surveyor which reflect the interim drainage strategy adopted by Council. The Department does not consider it reasonable for the Applicant to incur additional costs because a revised stormwater design was required by Council, which is not included in Council's Contributions Plan.



**Figure 11** | Extract of the JWP Report showing modelling of the Interim Flood Hazard for a 1% AEP event

The Applicant has offered to split the difference 50/50 in the shortfall between the Contributions Plan and the costs for the stormwater infrastructure and has not sought credit for over \$5 million worth of infrastructure which provide a material public benefit, such as the Yarrunga Street and Bernera Road roadworks and relocation of telecommunications and gas services in Yarrunga Street. The Department considers other industrial developments in the Prestons area (marked with a blue cross in **Figure 12**), which have been approved or completed since the approval of the Prestons Industrial Estate, have benefited or will benefit directly from the provision of this infrastructure.

On balance, the Department concludes the Applicant's offer is fair and reasonable and is of the view the Applicant has used its best endeavours to resolve the dispute with Council. The Department agrees that a \$1.2 million offset for the drainage works should be applied against the total contribution payable required under Condition B23. As the Minister for Planning and Public Spaces can impose a condition under section 7.13 relating to the payment of development contributions, the Department has recommended this offset be applied to the overall contributions amount required under the Plan (see **Section 6.2**). Further, as a works in-kind agreement has not been made under Conditions C16 and C17, the Department recommends these conditions be deleted.

The Department's assessment concludes the drainage works provide a broader public benefit and the costs of the drainage works should be appropriately shared by the Applicant and Council.



**Figure 12** | Nearby industrial developments constructed over the last two years or recently approved

## 6.2 Amendment to Condition B23 – Development Contributions

At the date of the original approval, the Applicant was required to pay a contribution amount of around \$5.5 million at 2016 rates (Condition B23). The Applicant is yet to pay the contribution amount, which is now around \$7.4 million when adjusted for CPI at current rates. The Applicant seeks to amend Condition B23 to reflect the approximately \$1.2 million offset for drainage works and to cap the contributions at March 2017 rates rather than the rate which would apply when the development contributions must be paid.

The proposed modification to Condition B23 may have financial implications for Council and its budget for local infrastructure. The Applicant has advised that payment of the contribution has been delayed by the ongoing discussions with Council regarding the stormwater drainage infrastructure and insists that indexation is unreasonable in the circumstances. The Applicant considers reasonable and persistent attempts to reach an agreement on the pricing of the drainage infrastructure have been made. On 16 February 2017, the Applicant wrote to the Department requesting the Department resolve the dispute. The Applicant has offered to pay for indexation up to March 2017 rates, when this matter was first raised with the Department.

Upon receipt of the Applicant's request for dispute resolution, the Department contacted Council to understand its position on this matter. Council's position has not changed and considers the Applicant stands in breach of Condition B23. Council does not agree that it should be made financially liable for the Applicant's unwillingness to pay the development contributions in a timely manner. The Department also met with the Applicant and Council in October 2018. Council advised that, with increases in indexation since the development was approved in June 2016, development contributions have increased by \$2 million and would continue to increase quarterly until paid by the Applicant.

The Department has weighed up the views of the Applicant and Council's final position. The Department considers that reasonable attempts have been made by the Applicant through multiple meetings and separate discussions to resolve the matter with Council since it was originally raised in March 2017. In addition, the Applicant completed the drainage infrastructure works in 2017 to meet contractual obligations with one of its prospective tenants.

As it stands, the Applicant advised it would have to pay close to \$13 million for infrastructure works which has indirectly benefited the adjoining industrial developments. This amount includes the development contributions amount and other public infrastructure works (for which it has not sought credit for) such as the Yarrunga Street and Bernera Road construction works and relocation of telecommunication and gas services. The Department notes this amount is almost 10% of the capital investment value of the Prestons Industrial Estate of \$149 million and significantly exceeds any other development contributions paid by other developments in the locality and the proportion of contributions payable compared to the overall CIV of other nearby developments.

The Department has considered all the facts put forward by the Applicant and Council and is of the view that directing the Applicant to pay the contribution amount sought by Council at current CPI rates would be manifestly unreasonable and agrees the contribution should be capped at March 2017. Further, as discussed in **Section 6.1**, the Department has taken into consideration the material public benefit provided by the Applicant and has formed the view that the drainage works are necessary to manage the stormwater generated by the adjoining residential development.

As such, the Department has recommended that Condition B23 be amended to require the Applicant to pay contributions to Council indexed at March 2017 rates as proposed in **Table 6**. The new development contribution includes the offset amount of \$1,256,008 associated with the stormwater drainage works. In making its recommendation, the Department has had regard to section 7.13 of the EP&A Act, which allows the Minister for Planning and Public Spaces, as the consent authority, to impose a condition under section 7.11 relating to the payment of a monetary contribution. For the reasons set out in this report, the Department recommends the Minister (or his delegate) adopt the Department's suggested contribution amount of \$5,019,522 and impose a condition to this effect.

The Department's assessment concludes the new development contribution amount required to be paid by the Applicant is reasonable and appropriate as it will still allow the Applicant to contribute over \$5 million towards public infrastructure projects located in the Liverpool LGA.



## 7. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. On balance, the Department considers the proposed modification is appropriate on the basis that the:

- proposed modification will result in minimal impact beyond the approved development
- material public cost of the drainage works to be shared by the Applicant and Council is considered reasonable and appropriate given the works provide material benefit by managing high hazardous stormwater flowing through the site from the upstream residential catchment
- Applicant will still contribute over \$5 million in development contributions towards public infrastructure projects located in the Liverpool LGA in addition to the additional infrastructure works the Applicant has already provided for the site
- the infrastructure works carried out by the Applicant to date has provided a broader public benefit to adjoining residential areas and nearby industrial developments
- modification would retain jobs and investment in Western Sydney and would continue to facilitate industrial development on industrial zoned land.

The Department concludes the proposed modification is in the public interest and the application is approvable, subject to conditions (refer to **Appendix C**). This assessment report is hereby presented to the Commission for determination.

Prepared by:  
Chloe Dunlop and Pamela Morales  
Industry Assessments

Endorsed by:

  
Chris Ritchie 3/7/19.  
**Director**  
**Industry Assessments**

Endorsed by:

  
Anthea Sargeant 3/7/19  
**Executive Director**  
**Key Sites and Industry Assessments**



# Appendices

## Appendix A – List of Documents

- Statement of Environmental Effects  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9565](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9565)
- Submissions  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9565](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9565)
- Response to Submissions Report  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9565](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9565)

**Appendix B – Consolidated Consent**

**Appendix C – Instrument of Modification**

