



4 November 2019

**Elf Mushroom Farm Project and Substrate Plant
(CP 08_0255 Mod 2 & MP 08_0255 MOD 2)**

1. INTRODUCTION

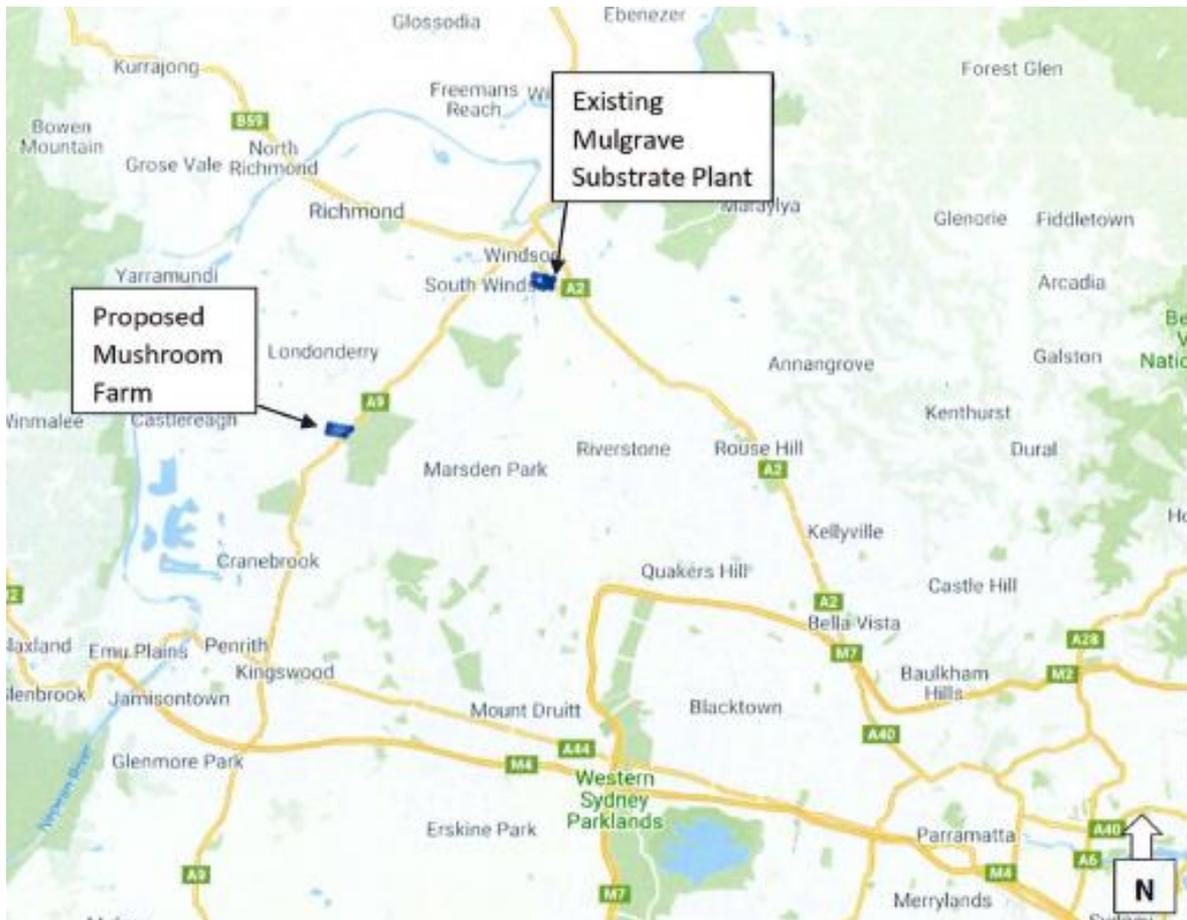
1. On 7 August 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) two State significant development modification applications (CP 08_0255 Mod 2 and MP 08_0255 Mod 2) (**Applications**) by Elf Farm Supplies and Elf Mushrooms (**Applicant**) seeking to modify the existing concept plan and major project (**Existing Development Consent**) for the Elf Mushroom Farm Project and Substrate Plant (**Project**) under the former section 75W of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, and transitional Part 3A provisions pursuant to Schedule 2 of the *EP&A (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation)*.
2. The Application seeks approval to change the design of the Mushroom Farm component of the approval. No changes are proposed to the approved Substrate Plant.
3. In accordance with Schedule 2 of the *ST&OP Regulation* the Applications (CP 08_0255 Mod 2 and MP 08_0255 Mod 2) are to be determined under the former section 75W of the EP&A Act as the Applications were previously approved under Part 3A of the EP&A Act. As the Applications were submitted before 1 March 2018 and the Secretary has not notified the Applicant that the Applications will not be dealt with under section 75W, the provisions of Schedule 2 of the *ST&OP Regulation* apply.
4. The Commission is a delegate of the Minister for Planning and Public Spaces (the Minister) in respect of transitional Part 3A Projects in accordance with the Minister's delegation dated 14 September 2011. Under the Minister's delegation, the Commission is required to determine the Applications because reportable political donations were made by the Applicant.
5. Professor Mary O'Kane AC, Chair of the Commission, nominated Professor Snow Barlow (Chair) to constitute the Commission determining the Application.

1.1 Site and locality

6. The Department's Assessment Report, dated August 2019 (**Department's Assessment Report**), stated that the Mushroom Farm (**Project Site**) is "located at 521 The Northern Road, Londonderry in the Penrith local government area (LGA). Its location in relation to the existing Substrate Plant is identified in Figure 1".
7. The Department's Assessment Report described the Project Site as "rectangular, 22.66 hectares (ha) in size, relatively flat, and primarily cleared". "There is remnant native vegetation at the western end of the property, which is largely excluded from the project's building footprint. The site is zoned RU4 Primary Production Small Lots under the Penrith Local Environmental Plan (LEP) 2010 and the approved use is permissible with consent. The site is currently used for grazing and was previously used as a piggery".
8. The context of the Project Site is shown in **Figure 2** and **Figure 3**.

9. The Department's Assessment Report also stated that the Project Site is "surrounded by a range of land uses including: the Castlereagh Nature Reserve to the east and rural-residential development to the north-east; bushland and rural residential uses are to the west; and a car wrecking yard and associated dwelling (referred to as R3) to the south. The closest residential dwellings are located approximately 150 and 170m from the northern boundary of the site".

Figure 1 – Site Context of the Project Site



Source: Department's Assessment Report

Figure 2: Aerial view of the Project Site and surrounds



Source: Department's Assessment Report

1.2 Background to the Application

10. The Department's Assessment Report stated that the Existing Development Consent was approved by the Department on 11 January 2012 and comprised of the expansion of the Substrate Plant at Mulgrave and the establishment of the Mushroom Farm at Londonderry. These approvals (CP 08_0255 and MP 08_0255) apply to both Project Site and permit:

“Concept Plan approval:

- *Facilitates the continued use of the Mulgrave site and its expansion given an anomaly in the then local environmental plan (Hawksbury Local Environmental Plan 1989 (LEP 1989)) which did not permit the Substrate Plant in the Rural Living Zone. The land use zonings applicable to the site have now been regularised and that portion of the Mulgrave site containing the Substrate Plant is zoned Light Industrial IN2 in the Hawksbury Local Environmental Plan 2011 (LEP 2011) and is permissible with consent.*

Major Project approval:

- *The expansion of the Substrate Plant included the extension of the pre-wet building; additional Phase 1 tunnels; additional storage shed for baled straw; an additional bale wetting area; a second Phase 2/3 tunnel building and a storage tunnel; a second bio-scrubber with chimney dedicated to treating exhaust air, and other miscellaneous alterations. The upgrade consisted of 3 stages: Stage 1 being an increase in the production from 1,000 to 1,600 tonnes (t) per week, and Stages 2 and 3 increases in production per week of 2,400 and then 3,200 t respectively.*

Mushroom Farm

The approval for the Mushroom Farm comprised:

- *The construction and operation of the Mushroom Farm with the capacity to produce up to 220 t of mushrooms per week and the processing of spent mushroom substrate into a fine-grained organic material suitable for turf topdressing*
- *A main building (400m by 79m by 9.8m) containing 50 growing rooms arranged to the north and south of a central corridor extending the full length of the building and ancillary*

- services
- A peat store, workshop, covered loading dock, spent substrate store, office/reception buildings
- A water storage dam; wash down water recycling system; sewerage treatment plant
- Internal roadways and parking for 55 cars
- A vegetated noise attenuation mound 2.5m high extending the length of the eastern and northern boundaries
- Bushfire protection in the form of 10m wide defensible spaces to the west, north and south of each building and a 24m APZ to the north, east and western aspects of the buildings
- Ember protection to the spent substrate store in the form of drencher sprays
- Vehicular access via a new Channelized Type intersection
- 24 hour operation, 7 days a week
- 165 operational workforce at full capacity
- The importation of 100,000m³ of fill
- Development of the project in 5 stages (**Figure 3**)

Staging of Development

Stage 1 was expected to produce some 85 tonnes of mushrooms per week, take approximately 78 weeks to construct, and would consist of:

- earthworks and erosion and sediment controls
- clearing and demolition
- construction of the main building including 18 growing rooms and common ancillary areas including packing, loading and storage areas, plant room, workshop and staff amenities
- landscaped noise mound and additional landscaping
- sewage treatment plant
- access construction

Stages 2, 3, 4 and 5 would involve construction of additional growing rooms and an expansion of the spent substrate store. Each stage was expected to take four months to construct and would increase production capacity to 110, 140, 165 and 220 t per week respectively.”

11. The Department’s Assessment Report stated that the Project has been modified on one occasion (MP 08_0255 Mod 1 and CP 08_0255 Mod 1). Modification 3 (MP 08_0255 Mod 3 and CP 08_0255 Mod 3) is currently under assessment. The modifications to the Existing Development Consent are set out in **Table 1**.

Table 1 – Modifications to Project

Project	Description	Determination
Mod 1	Amendments to the odour management system at the substrate plant	Approval 14/03/2016
Mod 3	Amendments to the substrate plant to enable the completion of a straw bale storage area as an open air storage, to modify the stormwater management system and retain existing corridor of trees planted to assist with visual screening of the plant	Under assessment

Sourced from: *The Department’s Assessment Report*

Figure 3: Project Site showing developable area and approved project layout

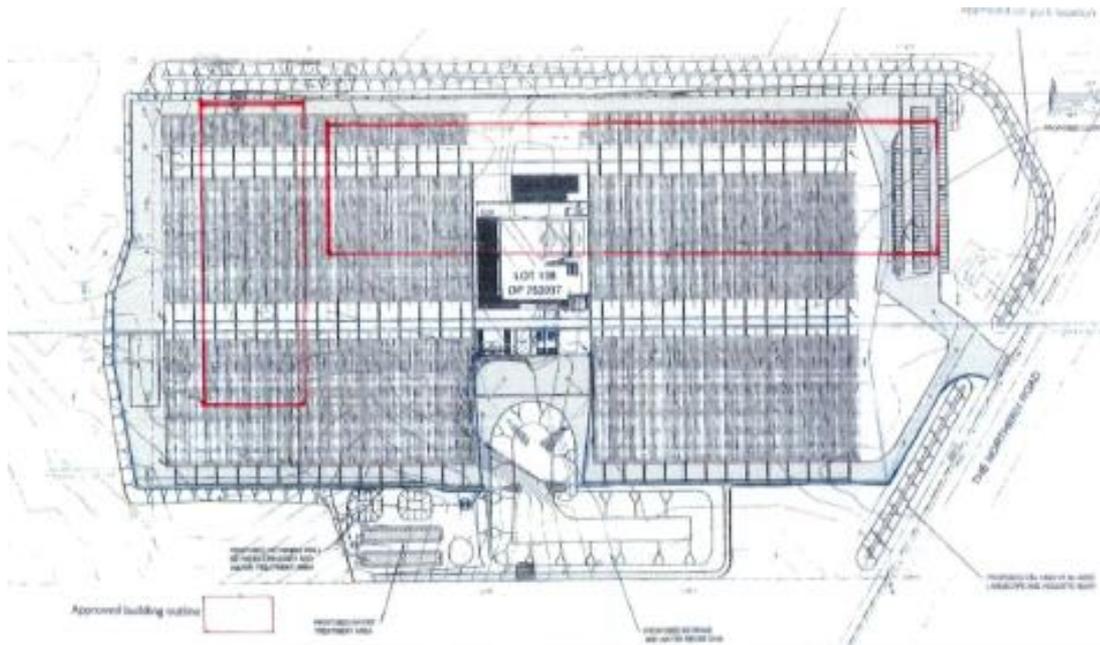


Sourced from: The Department's Assessment Report

1.3 Summary of the Application

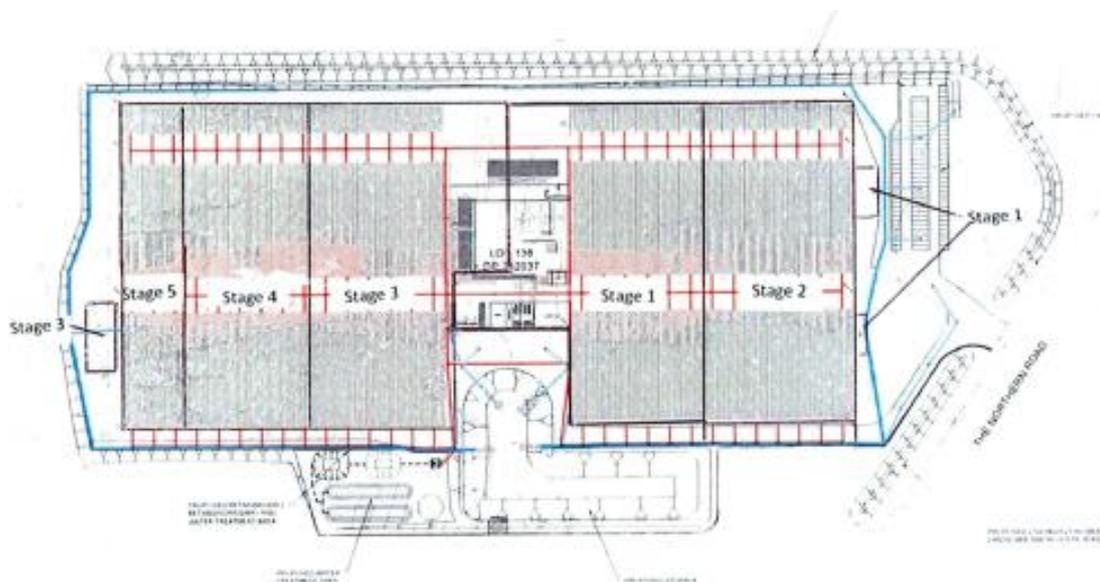
12. The Department's Assessment Report states that the modification application as revised in the Applicant's Response to Submissions (**RtS**) seeks to:
 - increase the main building footprint from 400m x 79m to 460m x 200m (total GFA 88,178m²);
 - increase the number of growing rooms from 55 to 66;
 - integrate the proposed workshop, loading dock, spent substrate store, office and reception and spent compost drying area into the reconfigured main building;
 - reduce the approved maximum building height by 0.455m from 9.94m to 9.485m;
 - increase on-site parking from 55 to 123 car spaces;
 - increase the amount of site fill from 100,000m² to 113,000m²; and
 - reduce the numbers of employees at full capacity from 165 to 113 (**Figures 4 and 5**).
13. The Department's Assessment Report states that "*the Proponent has confirmed that while the number of growing rooms will increase, there will be no increase in production*". According to the Department's Assessment report this is because the new machinery and growing processes "*reduce the cost per kilogram to harvest mushrooms rather than increase mushroom yield*".

Figure 4: Plan showing the approved building (in red) and amended building



Sourced from: The Department's Assessment Report

Figure 5: Plan showing the reconfigured staging



Sourced from: The Department's Assessment Report

1.4 Stated need for the Application

14. The Applicant advised in its Application that the Applications allow:
 - *“for the installation of new state-of-the-art picking and packing machines for the picking of mushrooms. Traditionally mushrooms are grown on shelves which are stacked vertically on top of each other”;*
 - *“The new machinery automatically picks and packs the mushrooms and allows for mushroom picking over a single level”;* and
 - *“The proposed modification involves extending the building footprint to the south and west to allow for the installation of new technologies”.*
15. The Department’s Assessment Report stated that *“the Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act as, it would remain a mushroom Farm, the height of the buildings have reduced, production limits would remain the same and traffic and employees numbers would not increase. Importantly, the Department is satisfied that the proposal would not result in any significant increase in impacts compared to the original approval. The Department is therefore satisfied that the proposal fits the scope of a modification request”.*
16. The Commission agrees with the Department’s findings, set out in paragraph 15, that the Application is categorised as a Modification within the scope of a section 75W of the EP&A Act and does not require a new DA to be lodged.

2. THE DEPARTMENT’S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department’s consideration of the Development Application

17. In April 2016, the Applicant submitted the Applications to the Department for assessment.
18. The Department exhibited the Applications from 6 May 2016 to 20 May 2016 to the Council, public authorities and adjoining landowners. The Application was also made publicly available on the Department’s website.
19. According to the Department’s Assessment Report, 15 submissions were received during exhibition. This included five submissions from public authorities and nine submissions from the public.
20. The public submissions received by the Department were objections to the Application.
21. In August 2018, the Applicant provided a RtS to the Department to address the issues raised during the exhibition period. According to the Department’s Assessment Report, given the time taken between the exhibition of the Application and the provision of the RtS, the Department placed the RtS on its website and notified all persons and organisations that had previously made submissions.
22. According to the Department’s Assessment Report, seven submissions were received in response to the RtS. This included five from public authorities (the Council, Environment, Energy & Science Group of the Department of Planning, Industry and Environment (**EESG**) and Roads and Maritime Services (**RMS**)) and two additional objections from the public. The Department’s Assessment Report summarised the key concerns raised in the public submissions to the RtS as:
 - *“reiterated concerns over size of proposal, noise including identification of sensitive receivers*
 - *inappropriate location for intensive farming*

- *lack of notification*
- *odour and noise concerns*
- *property devaluation”.*

23. The Department’s Assessment Report summarised the key concerns raised by the public authorities to the RtS as:

Council:

- recommended water quality conditions for stormwater management
- raised concern about DCP compliance, built form, noise exceedances and the proposed 3.5m acoustic wall
- supports the Integrated Bushfire and Vegetated Management Plan and the recommendations in the updated flora and fauna report
- recommended conditions relating to flora and fauna, catchment management, water quality and traffic

Regions, Industry, Agriculture and Resources Group of Department of Planning, Industry and Environment (RIAR):

- confirmed that a water licence is not required and raised no further issues with the proposed stormwater strategy

NSW Rural Fire Service (RFS):

- no additional comments subject to previously recommended conditions of consent

RMS:

- recommended consideration of a separate ingress/egress for heavy and light vehicles.

24. According to the Department’s Assessment Report, the Applicant submitted a supplementary RtS in February 2019, responding to issues raised by the Department regarding biodiversity impacts, traffic, stormwater and wastewater management, acoustics and further details regarding the nature of operations. The supplementary RtS was placed on the Department’s website.

2.2 The Department’s Assessment Report

25. The Department’s Assessment Report considered the key assessment issues to relate to:

- visual amenity;
- noise; and
- biodiversity.

The Commission notes water management and bushfire protection issues were considered in the Department’s Assessment Report within the ‘other issues’ section of the Department’s Assessment Report.

3. THE COMMISSION’S MEETINGS

26. As part of its determination, the Commission met with the Applicant and the Department.

3.1 Meeting with the Applicant

27. On 3 October 2019, the Commission met with the Applicant to discuss the Application. A copy of the transcript and material provided by the Applicant was made available on the Commission’s website.

3.2 Meeting with the Department

28. On 25 September 2019, the Commission met with the Department to discuss the Department's Assessment Report, the Application and the key issues identified by the Department as part of its assessment. A copy of the transcript and material provided by the Department was made available on the Commission's website.

4. THE COMMISSION'S CONSIDERATION

4.1 Material considered by the Commission

29. In its determination, the Commission has carefully considered the following material (the **Material**), including:
- the Secretary's Environment Assessment Requirements (SEARs), dated 2016;
 - the Applicant's modification Application, dated 12 April 2016, and all associated documentation;
 - the Applicant's RtS and associated documentation, dated March 2018;
 - the Applicant's supplementary RtS, dated August 2018;
 - the Applicant's supplementary RtS, dated February 2019;
 - the Department's Assessment Report, dated August 2019;
 - the Department's response to the Commission, dated 23 October 2019; and
 - the Applicant's comments on the Department's response to the Commission, dated 31 October 2019.

4.2 Relevant considerations

30. In determining the Applications, the Commission has taken into consideration the following relevant considerations and the requirements of Part 3A of the *EP&A Act 1979*:
- the provisions of all:
 - environmental planning instruments outlined below in Section 4.3; and
 - development control plans outlined below in Section 4.4; and
 - the former section 75W of the *Environmental Planning and Assessment Act 1979* and transitional Part 3A provisions pursuant to Schedule 2 of the *EP&A (Savings, Transitional and Other Provisions) Regulation 2017*;
 - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.

4.3 Relevant Environmental Planning Instruments

31. The Department identified the following Environmental Planning Instruments (**EPIs**) as relevant to the Applications:
- *State Environmental Planning Policy (Infrastructure) 2007*;
 - *State Environmental Planning Policy 33 – Hazardous and Offensive Development*;
 - *State Environmental Planning Policy 30 – Intensive Agriculture*;
 - *State Environmental Planning Policy No. 55 – Remediation of Land*;
 - *Sydney Regional Environmental Plan No.20 – Hawkesbury – Nepean River (No 2 – 1997)*; and
 - *Penrith Local Environmental Plan 2010*.
32. The Department considered the Applications in relation to the EPIs identified in paragraph 31 as considered in the original assessment of the Development. The Department's Assessment Report stated that "*the Department has considered the EPIs as part of this*

modification request and is satisfied that the modification is generally consistent with the EPIs”.

33. The Commission agrees with the findings of the Department’s consideration of relevant instruments, as set out in paragraphs 31 and 32, and finds that the Applications are consistent with the requirements of relevant EPIs because the Applications are in accordance with the relevant provisions of section 75W of the EP&A Act and will not result in adverse impacts.

4.4 Relevant Development Control Plan

34. The Department’s Assessment Report states that *“under the Government’s Major Development legislation the provisions of a DCP are not applicable and do not govern the merit assessment of an application”*. Despite this, the Department’s Assessment Report considered relevant provisions of the Penrith DCP 2014 (**PDCP 2014**) in response to concerns raised by the Council and residents in relation to the proposed built form and streetscape and DCP compliance. According to the Department’s Assessment Report, the Department finds that the proposal is consistent with the objectives of the Penrith Local Environmental Plan 2010 and the PDCP 2014.
35. The Commission agrees with the finding of the Department, as set out in paragraph 32, that DCPs do not apply to the Applications. The Commission also agrees with the finding of the Department, as set out in paragraph 34, that the proposal is consistent with the planning framework established for the site.

4.5 Associated Modifications

36. As set out in paragraph 14, the Applications are required to facilitate the Project as set out in Section 1.3.
37. As set out in paragraph 2, the Applications are to be determined under the former section 75W of the EP&A Act in accordance with the *ST&OP Regulation* transitional arrangements. As the Applications were made prior to 1 March 2018 under former section 75W of the EP&A Act and the Secretary has not notified the Applicant that the Applications will not be dealt with under section 75W, the Commission agrees that the Applications fall within the broad scope of section 75W and can be determined under section 75W, in accordance with Schedule 2 of the *ST&OP Regulation*.
38. According to the Department’s Assessment Report, the Department is *“satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application as:*
 - *it would remain a Mushroom Farm;*
 - *production limits would not increase;*
 - *the overall height of the buildings has reduced;*
 - *there would be no increase in traffic or employee numbers;*
 - *the proposal would not result in any significant increase in visual, environmental or amenity impacts”*.
39. According to the Department’s Assessment Report, the Department is *“satisfied that the modification request has addressed the SEARs issued for the proposal”*.
40. The Commission agrees with the findings of the Department, as outlined in paragraphs 38 and 39. The Commission finds that the Applications are within the broad scope of section 75W of the EP&A Act and have been prepared in accordance with the SEARs.

4.6 Likely impacts of the development on built environments

41. The Commission agrees with the Department's assessment that visual amenity, noise and biodiversity are the key issue relevant to the assessment and determination of the Application.

4.7 Visual amenity

Applicant's Consideration

42. The Applicant stated in its EIS that the Elf Mushroom Farm is visible from the Northern Road and neighbouring properties. Under the Existing Development Consent, landscaped earth mounds (mounds) are required to reduce visual and acoustic impacts of the building from the eastern boundary (Northern Road) and northern boundaries.
43. The Applicant advised in the RtS that the Applications include a building with a larger building footprint; however, the overall wall height and roof height of the building is proposed to be reduced as follows: *"2.415 metres roof height reduction (proposed building height 9.485 metres) and 5.795 metre wall height reduction respectively (proposed 4.005metre wall height)"*.
44. The Applicant's RtS includes the following visual mitigation and safeguard measures:
- *"landscaped earthen mound is retained along the northern and eastern boundaries*
 - *including planting of suitable plants and shrubs;*
 - *additional landscape planting within south-eastern portion of the site to screen the proposal from the south;*
 - *colours and finishes selection of building materials to reduce glare, consistent with the palette of the rural landscape"*.
45. The Applicant, in its comments on the Department's response to the Commission, dated 31 October 2019 stated that the installation of the solar panels on the roof of the Project are not part of the Application.

Department's Assessment

46. The Department's Assessment Report stated that the *"assessment of the approved development found that the visual impacts would be acceptable given that the site and surrounds were generally level and views of the Project from the majority of dwellings were screened by existing vegetation. It concluded these factors combined with the recommended conditions would ensure acceptable visual outcomes. Recommended management measures included:*
- *a 2.5m high landscaped mound along the site's northern and eastern boundaries*
 - *external building finishes and colours to reduce glare and minimise visual obtrusiveness*
 - *implementation of landscaping treatment at potentially affected properties to minimise the visibility of the operations from residences*
 - *a visual assessment to be undertaken during each stage of the development*
 - *the need to prepare a Landscape Management Plan"*.
47. The Department's Assessment Report acknowledges the Project will significantly expand the main structure: *"the footprint of the amended building would cover approximately 75% of the site increasing from 47,709m² to 88,178m². Most of the expanded footprint would occur to the south towards the car wrecking yard and the length of the building from the east to west would decrease by approximately 35m"*. Further, the Department's Assessment Report stated that:

- the approved setbacks would be maintained to the northern boundary, generally increased to the eastern boundary, significantly decreased to the southern boundary and marginally decreased to the western boundary.
 - in relation to building height, the proposal incorporates a reduction in the side elevations (as presented to the boundaries) from 9.8m to 4.62m and a decrease in overall height from 11.9m to 9.485m.
48. The Department's Assessment Report also notes that the approved 2.5m-high mound and associated landscape plantings along the eastern and northern boundaries. The Department's Assessment Report finds that:
- "the mound would reduce both potential visual and acoustic impacts of the proposed from The Northern Road and properties to the north, and to assist the site to blend in with the surrounding landscape"; and
 - "It is proposed that extensive landscaping along the mound would further reduce the visual impact of the structure".
49. The Department's Assessment Report acknowledged the objections in relation to the increased size of the building, from owners and occupiers of dwellings to the north and west of the Project Site: "To the north, the nearest residence is approximately 150m away. These residences have views south across open paddocks to the proposed structure" (refer to **Figure 6**). However, according to the Department's Assessment Report, the Department: "acknowledges the increase in size of the structure, the Department considers that there has not been a commensurate increase in impacts, particularly to the north and west".

Figure 6: Approved building setback showing residential viewing points



Source: Department's Assessment Report

50. The Department's Assessment Report stated that the external finishes are consistent with the approval, comprising "insulated panels, colourbond sheeting, and concrete panels or blockwork. The pitched roof would be steel (zincalume) with a series of hooded box ducts erected along the ridge".
51. The Department's Assessment Report concluded that "the Department accepts that the amended design of the building as proposed in the modification represents a significant

increase in site coverage. However, the increase in size does not result in any unreasonable visual impacts given that:

- the overall height of the structure as approved has been reduced from 11.9m to 9.485m with the building presenting itself from the north and east as a low-lying structure behind a 2.5m high mound with significant landscaping
- the majority of new floorspace is located towards the southern part of the site, and to a lesser extent the east where viewing opportunities are either limited or would be suitably mitigated by the proposed earth mound and landscaping
- viewing opportunities to the west are limited due to the distance of separation and intervening vegetation
- the visual impacts associated with passing traffic on The Northern Road would be brief and mitigated by the earth mound, landscaping and the proposed setback ranging from 60m to 180m
- the visual impacts associated with dwellings in the north will essentially remain the same as those identified during the original assessment
- the overall visual impacts are not unreasonable having regard to the environmental planning provisions governing the site.

The Department considers additional conditions are not required to mitigate the visual impacts of the proposal, but to add strength to the existing conditions, it is recommended that the required Landscape Plan must specifically provide for the early planting of advanced plants and trees along the northern and eastern boundaries to help screen and soften the expanse of the main structure.”

“While the size of the proposed buildings would increase, the proposal would not result in any significant increase in visual, environmental or amenity impacts compared to the original approval”.

52. The Department, in its response to the Commission dated 23 October 2019, stated that *“details concerning the placement of solar panels on the roof of the proposed building have not been submitted with the current application”.*

Commission’s Findings

53. Following the meetings with the Applicant and the Department, the Commission further considered the potential impacts of reflection impacts on surrounding properties. The Commission notes that the size of the main structure will significantly expand, as outlined by the Department in paragraph 48. The Commission accepts the statements from the Applicant and Department, in paragraphs 45 and 52, that the installation of solar panels on the roof of the Project does not form part of the Application before the Commission for determination.
54. The Commission acknowledges the concerns and objections raised in relation to the increased size of the building by owners and occupiers of dwellings to the north and west of the Project Site, as set out in paragraph 49. However, the Commission agrees with the findings of the Department, as set out in paragraphs 50 and 51, that the proposed increase in size does not result in any unreasonable visual impacts. The Commission finds that the Project, whilst increasing in the building footprint, is appropriate as it has reduced in overall height and will be screened by earth mounds and landscaping from the surrounding residential properties.
55. The Commission agrees with the Department that the expanded built form would not result in unreasonable visual impacts for the reasons set out in paragraph 51.
56. The Commission notes the Department’s Assessment Report finds that with the exception

of a Landscape Plan: “*additional conditions are not required to mitigate the visual impacts of the proposal*”, as set out in paragraph 51. To add strength to the existing statement of commitments, the Commission finds that an additional condition, to mitigate any potential visual impacts as a result of reflectivity, is necessary. The Commission proposes the inclusion of the following condition:

VISUAL AMENITY

C22B: *Prior to the commencement of construction works of the main building, the Proponent shall prepare a schedule of materials and finishes. To reduce glare and minimise visual intrusiveness, the visible light reflectivity from the materials and finishes must not exceed 20% reflectivity. The schedule of materials and finishes and evidence that these are consistent with the 20% reflectivity maximum must be submitted to and endorsed by the Secretary prior to the issue of the relevant Construction Certificate.*

57. The Commission accepts the Department’s conclusion regarding the visual impacts for the reasons set out at paragraphs 51 to 56. The Commission finds that the additional condition set out in paragraph 56 will further assist in minimising the Project’s potential visual impacts and the impacts of reflectivity.

4.8 Construction Noise

Applicant’s Consideration

58. An Acoustic Review Report prepared by Atkins Acoustics and dated 5 April 2016 (Acoustic Review Report) was submitted with the Applications. The Acoustic Review Report assessed the predicted construction and traffic noise impacts on surrounding properties, in particular, residential receiver R1 (1 Thomas Road) (**Figure 7**).
59. The Acoustic Review Report confirms it relied on the assumptions and recommendations contained in *Construction and Operational Noise Impact Assessment, Mushroom Growing Facility, Londonderry Report No. 40.6411. R2: CFD4 Rev07 dated June 2010* for the residential receivers to the north and west.
60. According to the Acoustic Review Report, the construction noise goals were developed for the proposed development based on standard hours in accordance with the *NSW Interim Construction Noise Guideline (ICNG)*. According to the Acoustic Review Report modelled several construction stages scenarios. The Acoustic Review Report found that the internal fit-out and commissioning of the Applications “*comply with construction noise goals and unlikely to result in significant noise impacts on residential properties*”.
61. In relation to the modelling results for the main stages of construction, the Acoustic Review Report, states that “*the construction noise goals are predicted to be exceeded at a number of receivers under different construction scenarios*”. The Acoustic Review Report finds that “*the development of the northern boundary acoustic mound early in the construction program, could reduce construction noise levels at residential receivers to the north (R1 and R2) by 5-8dB whilst with 50% plant operation would provide a further 3dB noise reduction*”.

Department’s Assessment

62. The Department’s Assessment Report states that “*additional acoustic modelling was conducted noting that the proposed methods of construction are not expected to change, but the duration of construction activities is expected to be longer, and distances between works and receivers, primarily to the south, shorter*”.

63. The Department's Assessment Report states that for the main stages of construction the "construction noise goals are predicted to be exceeded at a number of receivers under different construction scenarios, particularly the south and to a lesser degree the north". The receiver locations are identified in **Figure 7**.

Figure 7: Receiver locations and the outline of the Project Site in blue



Source: Department's Assessment Report

64. The Department's Assessment Report notes that "the modelling identified a number of exceedances of the construction noise goals". The Department also notes that "It is recommended that the construction noise criteria in the approval be maintained (noting that they do not apply to the construction of the northern bund) to ensure construction noise impacts are appropriately mitigated".
65. According to the Department's Assessment Report the "development of the northern acoustic mound early in the construction program would reduce construction noise levels at R1 and R2 by 5-8 dB. The report also recommends that a range of other management measures should be adopted to assist in ensuring that construction works meet the construction noise criteria adopted in the approval, particularly at R3 (Northern Auto Wreckers)".
66. The Department's Assessment Report notes that additional measures will be required to supplement the northern bund to mitigate and manage the construction impacts and include as outlined in the Acoustic Review Report. The Department's Assessment Report recommends that these measures are incorporated into the required Construction Noise and Vibration Plan to "ensure compliance with the noise goals to appropriately mitigate and manage construction noise impacts associated with the proposal".

Commission's Findings

67. The Commission agrees with the Department's findings, as set out in paragraphs 64 and 65, that the construction noise criteria in the Existing Development Consent be maintained to ensure the potential impacts of construction noise is appropriately managed.
68. The Commission agrees with the Department's findings, in paragraph 66, that the construction of the Project can be undertaken to comply with the construction noise criteria within the Project Approval.

4.9 Operational Noise

Applicant's Consideration

69. In response to the Department's request, the Applicant provided an additional Acoustic Report to the Department prepared by Acoustic Consulting Engineers (the Acoustic Report), dated February 2019, which supplements the previous acoustic reports. The Acoustic Report also addressed project noise trigger levels as outlined in the NSW Noise Policy for Industry (**NPfi**) dated October 2017.
70. The Acoustic Report identified the noise receiver locations potentially affected by the Applications (refer to **Figure 4**). In the relation to the Mushroom Farm (MP 08_0255), the Acoustic Report stated that "Condition 16 states: The proponent shall ensure that the operational noise generated by the Mushroom Farm site does not exceed the criteria in Table 5" reproduced in **Table 2**.
71. According to the Acoustic Report, "the operational noise criteria imposed by DoP utilised predicted levels from the Atkins Acoustics' noise assessment of the original design proposal and information available at that time, rather than the project specific noise goals (PSNG), determined accordance the EPA Industrial Noise Policy (INP)".

Table 2: Operational Noise Impact Assessment Criteria, dB(A)

Receiver / Location	Shoulder period (5-7am) $L_{Aeq,15min}$	Day $L_{Aeq,15min}$	Evening/ Night $L_{Aeq,15min}$	Sleep disturbance $L_{A1,1min}$	
				Night	Shoulder period (5-7am)
Receiver 1 – 503 The Northern Road, Londonderry	44	35	35	45	48
Receiver 2 – 509 The Northern Road, Londonderry	40	35	35	45	46
Receiver 3 – 1 Thomas Road, Londonderry	44	45	37	49	51
Receiver 4 – 8-16 Timothy Road, Londonderry	38	39	35	45	41

Notes: Noise generated by the Project is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.

Source: Applicant's Acoustic Report, February 2019

72. According to the Acoustic Report, "the (EPA) Industrial Noise Policy (INP, January 2000) has been replaced by the recently released Noise Policy for Industry (NPfi, October 2017). The EPA: NPfi is not intended for use as a mandatory requirement. Rather, it is designed to establish project noise trigger levels as a benchmark for assessing and managing noise from large industrial and agricultural sources".
73. The Acoustic Report confirms that all proposed activities during the operation of the Applications were considered in its modelling. This included the use of air cooled

reciprocating engines for moving floor trailers and winching activities which were previously not modelled in the previous noise assessments.

74. According to the Acoustic Report *“The modelling scenarios represent a range of activities, situations and noise levels likely to be emitted from the site. The modelling has assumed plant and equipment operating simultaneously and typical operations consistent for 5am-7am morning fringe period, day, evening and night operations. Whilst these situations would not occur all of the time, the noise modelling represents the likely worst-case operating scenarios”*.

75. According to the Acoustic Report, in response to operational noise:

“The modelling results show that the predicted LAeq,15min operational noise level is at the reference receiver locations:

- *R1, R2 and R4 achieve the PNTL (Project Noise Trigger Levels) under calm and adverse meteorological conditions; and*
- *R3 (1 Thomas Road) exceed the assessment objectives by up to 5dB as a result of cumulative noise from winching/‘tip out’ activities and truck movements for growing rooms on the south-east portion of building (east of loading dock area) without additional noise controls.*

The noise prediction has adopted a 3.5m high acoustic mound or wall on the western side of the spent substrate and the front end loader (FEL) working area (day only) as depicted in Appendix 2. Mitigation measures will be required to control operational noise levels at the reference receiver R3 (1 Thomas Road).”

76. In relation to transient noise, the Acoustic Report states that *“intermittent noise from night-time transient activities principally relates to truck movements along the northern and southern sides of building and air brake release at the loading area. The predicted LAF,max noise levels from transient activities:*

- *satisfy the NPfI project noise target levels at reference receiver locations R1, R2 and R4 for trucks utilising the loading dock area and truck movements on northern, western and southern aprons; and*
- *exceed the NPfI project noise target levels at reference receiver location R3 (1 Thomas Road) by up to 11dB for truck pass-by and airbrake release in loading dock”*.

77. To address noise exceedances, the Acoustic Report includes recommendations which: *“outlines noise control measures, specifications and site operational management measures in order to satisfy the PNTL for all reference receiver locations”*.

78. The Acoustic Report notes in relation to receiver R3 (1 Thomas Road) that *“It is recommended that as part of the design development, plant/equipment selections, operational scenarios, facility management, building design and noise attenuation requirements be reviewed to address the PNTL’s and pending amended conditions proposed as part of the Consent. In light of the amended building design and operational management and the recently published EPA, NSW Noise Policy for Industry dated October 2017, it is recommended that the DoP review the Noise Limits imposed on the development to reflect current assessment procedures.”*

Department's Assessment

79. According to the Department's Assessment Report, the updated Acoustic Report states that *"the modelling predicted that project noise trigger levels (PNTLs) would be comfortably met at R1, R2 and R4 under both calm and adverse meteorological conditions. However, it also found that, without additional mitigation, noise at R3 located near the southern boundary would exceed the PNTLs by up to 5 db primarily because of cumulative operational noise, in particular noise from winching/tip out activities and truck movements for the growing rooms in the south-east portion of the building."*
80. The Department's Assessment Report identifies that the modelling also considered intermittent noise, occurring primarily at night, due to activities associated with truck movements along the northern and southern sides of the building and the air brake release at the loading area. The Department's Assessment Report notes that the predicted noise levels comply with the project noise target levels at R1, R2 and R4 and that the noise level would exceed the noise target levels at R3 by up to 11dB for truck pass-by and airbrake release.
81. The Department's Assessment Report stated that in order *"to address both the predicted operational and transient project noise exceedances, particularly at R3, a range of noise controls, specifications and site operational management measures have been recommended"*. *"The modelling further predicted that with the implementation of the additional mitigation and management measures that the PNTLs at R3 would be met for both operational and intermittent noise"*.
82. Despite the findings provided, outlined in paragraph 80, the Department's Assessment Report states the Department remained *"concerned with the breadth of operational measures required to maintain compliance, and their sustainability in the long term noting the potential for ongoing regulatory compliance issues. The Department sought assurances from the Proponent that it had negotiated with the owner of R3 the acquisition of the property on the basis that it would provide a long term and practical solution to potential noise impacts."*
83. The Department's Assessment Report notes that in response to the Department's concerns, the Applicant submitted correspondence from the owner of R3 (1 Thomas Road, Northern Auto Wreckers) confirming:
- the Applicant had sought to acquire the site and this offer was not accepted;
 - the residence at the Northern Auto Wreckers site is used by an employee who provides a security function for the car wrecking yard; and
 - the mitigation measures outlined in the acoustic report should be implemented with the exception of the acoustic barrier which should be retained as a contingency in the event of noise disturbances at the Northern Auto Wreckers site.
84. The Department's Assessment Report notes that the Applicant, in response to the Department's concerns, submitted an updated acoustic assessment (prepared by Acoustic Consulting Engineers and dated 5 February 2019), prepared in accordance with the NPfI. According to the Department's Assessment Report, the updated acoustic assessment confirms compliance with the PNTLs would be achieved at receivers R1, R2 and R4 and compliance could also be achieved at R3 subject to the identified additional mitigation measures. The Department's Assessment Report also stated that *"under the NPfI a caretaker's quarters is not considered a residence and amenity criteria used is less restrictive because the residence relates directly to the operation of the car wrecking yard. Therefore, a residence in this situation is not afforded the same acoustic amenity as a rural residential receiver"*. As such, the Department's Assessment Report recommends minor amendments to the noise limits within the consent.

85. The Department's Assessment Report finds that *"the modified proposal would not result in any significant noise impacts to properties located to the north of the site as the modelling confirms the PNTLs would be comfortably met at R1, R2 and R4. While operational noise levels at the closest receiver (R3) would increase, the PTNLs could be met subject to a range of additional operational and mitigation measures including the construction of an acoustic wall, which have been developed in consultation with the owner."*
86. The Department's Assessment Report recommends that the operational noise criteria within the Project Approval is revised to reflect the acoustic outcomes relevant to R1, R2, R3 and R4 derived from the Applicant's updated acoustic assessment.

Commission's Findings

87. For the reasons set out at paragraphs 84, 85 and 86, the Commission agrees with the conclusion made by the Department that the operation of the proposal can be undertaken to comply within appropriate noise criteria as amended by the Applications.
88. The Commission agrees with the Department's findings, as set out in paragraphs 84 to 86, that with mitigation measures in place, the operation of the proposal would have acceptable noise impacts on receivers. The Commission notes that under the conditions on the approval of the Project, the final mitigation measures required to minimise noise impacts on receiver R3 will be developed in consultation with the owner of Northern Auto Wreckers.

4.10 Biodiversity

Applicant's Consideration

89. As part of its response to the Department's information request, the Applicant provided an addendum to the Flora and Fauna Report, prepared by Fraser Ecological Consulting and dated 19 March 2019 (the **Addendum Report**). The Addendum Report addresses concerns raised by the EESG relating to potential impacts of the 25m asset protection zone (APZ), acoustic wall and general construction impacts.
90. According to the Addendum Report, the majority of the Project Site comprises cleared land with remnant Castlereagh Scribbly Gum Woodland and Castlereagh Swamp Woodland trees which are listed as an Endangered Ecological Community (EEC) under the *NSW Biodiversity Conservation Act 2016*. The Addendum Report finds that *"the areas of native vegetation proposed for removal are considered to be in poor condition. Intact and better quality Castlereagh Woodland will be retained and conserved within the property but outside the development footprint."*
91. The Addendum Report included flora and fauna surveys to inform the assessment of the impacts of the 25m APZ, acoustic wall and general construction impacts. According to the Addendum Report, *"threatened plant species recorded in this area included Dillwynia tenuifolia and Persoonia nutans which are both listed under the NSW Biodiversity Conservation 2016"*. The Addendum Report includes recommendations for the establishment of the APZ without the removal of the threatened species.
92. The Addendum Report recommends that *"an 'Integrated Bushfire and Vegetation Management Plan' could be prepared to ensure that the threatened plants and their potential habitat are protected in perpetuity whilst ensuring the APZ complies with Inner Protection Area requirements of Planning for Bushfire Protection 2006. The plan would be prepared by an ecological restoration consultant in conjunction with a bushfire consultant to ensure compliance with the Rural Fire Service's GTAs."*

The Addendum Report concludes that *“the proposed works are unlikely to result in a significant impact on any listed species or communities”*.

Department’s Consideration

93. The Department’s Assessment Report considered the Addendum Report which confirmed that most of the Project Site comprises cleared land with remnant EEC.
94. According to the Department’s Assessment Report, the Addendum Report found the:
 - native vegetation proposed to be removed to be in poor condition;
 - the *Persoonia nutans* (Nodding Geebung) listed as Endangered under the *Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999* were recorded *“outside of the proposed development area and will not be impacted by the proposal”*; and
 - *“proposed works are unlikely to result in a significant impact on any listed species or communities”*.
95. The Department’s Assessment Report notes that the EESG raised the following concerns:
 - *“the assessment predating the modification request and does not specifically consider impacts relating to increased site layout, APZs and the acoustic bund;*
 - *the spent compost store, acoustic wall and APZ encroaching upon the vegetation to the west;*
 - *the Flora and Fauna Report does not consider the impact of the acoustic wall or the Bushfire Hazard Assessment Report. The impacts of the proposed APZ must be considered when confirming the biodiversity impacts of the proposal”*.
96. The Department’s Assessment Report notes the Addendum Report confirms:
 - *“targeted flora and fauna surveys were undertaken to ensure a more informed assessment of the potential impacts of the 25m APZ, acoustic wall and general construction impacts. Threatened plant species recorded in this area included *Dillwynia tenuifolia* and *Persoonia nutans* which are both listed under the NSW Biodiversity Conservation Act 2016;*
 - *recommendations for APZ establishment have been made that will ensure the APZ would be established without requiring the removal of any of these plants and the retention of a hollow-bearing tree;*
 - *the low-lying threatened plants occur within the drip zone of smooth-barked ‘Hard-leaved Scribbly Gum’ (*Eucalyptus scolorophylla*) trees that are considered ideal to retain within an APZ compared to rough-barked species when retained with a discontinuous canopy;*
 - *a recommendation that an ‘Integrated Bushfire and Vegetation Management Plan’ be prepared to ensure that the threatened plants and their potential habitat are protected in perpetuity whilst ensuring the APZ complies with Inner Protection Area requirements of Planning for Bushfire Protection 2006.”*
97. The Department’s Assessment Report stated that the Applicant, *“in its submission on the RtS, EESG and Council supported the recommendations of the Flora and Fauna Report (Addendum Report) and their inclusion as a recommendation of consent. EESG noted that the Addendum Report concludes that the proposal will not involve the removal of *Persoonia nutans* from the site for the construction of the APZ and is satisfied with this as it supports the retention of these plants. The Proponent also confirmed no trees are to be removed for the acoustic mound/wall and corrected the conclusions in an updated Addendum Report dated 19 March 2019.”*
98. According to the Department’s Assessment Report *“the Department is satisfied that the proposal would not result in any significant biodiversity impacts. The development will mainly occur on cleared lands and minimal clearing would be required to establish the*

development”.

99. The Department’s Assessment Report states that the conditions have been recommended by the Department including:
- *“the Integrated Bushfire and vegetation Management Plan to appropriately protect the Dillwynia tenuifolia within the APZ consistent with the recommendations of the Addendum Flora and Fauna Assessment;*
 - *the recommendations of the Addendum Report to be implemented;*
 - *the relocation of trees under the guidance of an appropriately qualified ecologist;*
 - *a resident fauna inspection prior to the removal of any trees associated with the approval.*

Subject to the recommended conditions the Department is satisfied the proposal would not result in any significant biodiversity impacts compared to the original approval”.

Commission’s Findings

100. The Commission agrees with the Department’s conclusion, set out at paragraphs 97 and 99, that the Application, subject to the Department’s recommended conditions, will not result in any significant biodiversity impacts.

4.11 Other considerations

101. Odour impacts were considered in the Department’s Assessment Report. According to the Department’s Assessment Report, a level 3 odour assessment was undertaken to support the Applications which found:
- the odour concentrates at both sensitive receivers and the Project Site boundary were less than 1 odour unit;
 - the odour criteria of 3 odour units at sensitive receivers could have been adopted based on the number of people potentially impacted;
 - the predicted odour impacts are considered to be negligible; and
 - Applications comply with the NSW EPA criteria of 2 odour units at sensitive receivers.
102. The Department’s Assessment Report finds that *“based on the findings of the odour assessment, the Department is satisfied that the modification would not result in any significant odour impacts”* and *“no additional conditions or amendments necessary”*.
103. At its meetings with the Applicant and the Department, the Commission also considered the advice provided to the Commission in relation to odour as outlined in paragraphs 27 and 28. The Commission agrees with the Department’s findings as outlined in paragraph 102. The Commission finds that as the predicted odour units at sensitive receivers are below that specified in the NSW EPA criteria, the predicted odour impacts are acceptable. The Commission does not consider that additional conditions are required.

5. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

104. The views of the community were expressed through the public submissions that were received during the notification period, as discussed and summarised through **section 4**.
105. The Commission carefully considered all of these views as part its decision-making process. The way in which these concerns were considered by the Commission is set out in **section 4** above.

5.1 Scope of section 75W of the EP&A Act

106. The Commission finds that the proposed changes are within the scope of section 75W of the EP&A Act as it is consistent with the approved use, the building height is reduced and production limits are unchanged.

5.2 The public interest consideration for Part 3A projects

107. The Commission finds that the Applications are in the public interest because the:
 - potential impacts do not result in impacts beyond those already assessed and approved; and
 - potential impacts can be appropriately addressed through conditions of consent
108. The Commission accepts the findings of the Department that the impacts of the development are acceptable and can be appropriately mitigated through the implementation of the recommended conditions of consent.

6. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

109. The Commission has carefully considered the Material before it, including the community's views.
110. The Commission has determined to grant consent to the Application, subject to conditions of consent, for the following reasons set out in paragraphs 111 to 115 below.
111. For the reasons set out at paragraphs 54 to 57, despite the expanded built form, the Commission finds that the Application will not introduce any additional impacts that have not been previously assessed, and subsequently found to be acceptable by the Department, in its determination of the original applications (CP 08_0255 Mod 2 and MP 08_0255 Mod 2).
112. The Commission agrees with the Department's findings that the proposal would not result in any significant increase in visual, environmental or amenity impacts compared to the original approval.
113. For the reasons set out in paragraphs 56 and 57, the Commission finds with an additional condition in place to reinforce the statement of commitments, the Applications would result in acceptable impacts.
114. The Commission has determined to grant consent to Applications (CP 08_0255 Mod 2 and MP 08_0255 Mod 2) subject to the Department's recommended conditions and the additional condition imposed by the Commission on MP 08_0255 set out in paragraph 56.
115. For the reasons set out at paragraphs 106 and 107, the Commission finds that the Application will have minimal environmental impact and is within the scope of section 75W of the EP&A Act.
116. The reasons for the Decision are given in this Statement of Reasons for Decision, dated 4 November 2019.



Professor Snow Barlow (Chair)
Member of the Commission