

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0303
Proposed development:	Torrens Title Subdivision x 10 Lots including Stratum Subdivision & Excision of Land (Proposed Lot 2) for Western Sydney Employment Area (WSEA) Western North-South Link Road (WNSLR)
Property address:	2 - 18 Aldington Road, KEMPS CREEK NSW 2178 650 c Mamre Road, KEMPS CREEK NSW 2178 650 e Mamre Road, KEMPS CREEK NSW 2178 71 - 79 Grady Crescent, ERSKINE PARK NSW 2759 1 - 21 Grady Crescent, ERSKINE PARK NSW 2759 57 a Lockwood Road, ERSKINE PARK NSW 2759
Property description:	Lot 3 DP 85393 Lot 2 DP 84578 Lot 6 DP 229784 Lot 1 DP 663937 Lot 2 DP 1253870 Lot 4 DP 1253870 Lot 10 DP 1261029 Lot 11 DP 1178389
Date received:	1 June 2020
Assessing officer	Kathryn Saunders
Zoning:	SEPP - (WSEA) 2009 - ZONE IN1 SEPP - (WSEA) 2009 - ZONES IN1 + E2 ZONE NO 1(A)(RURAL A ZONE - GEN) (LEP 201) SP2 Infrastructure - Water Supply System- LEP 2010 SP2 Infrastructure - Classified Road - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application which seeks consent for the subdivision of 10 Lots. Included within the subdivision is a vertical stratum arrangement for a bridge which extends a future road known as the Western North-South Link Road (WNSLR) over the Water NSW corridor which contains the Warragamba water pipelines and which will allow for future east-west freight railway infrastructure.

The subdivision also amends lots impacted by design alterations at the Lenore Drive intersection and indicates the extension of Lockwood Road east, past its future intersection with the WNSLR ending in a temporary cul-de-sac turning head (as approved under DA18/0549 (as amended)). Existing current Lot 3 in DP 1253870 known generally as the Fitzpatrick lands, is proposed to be split into 2 Part Lots being 44.77ha and 17.33ha (total 62.10ha) with the WNSLR identified as PT 2 in three parts totaling 4.901ha.

The WNSLR road corridor Lot is shown in the 'Plan of Subdivision' in different portions as Part Lot 2 and will be created by the subdivision of the following lots:

- Lots 2 & 4 in DP 1253870

- Lot 11 in DP 1178389

- Lot 3 in DP 85393
- Lot 6 in DP 229784 (in stratum)
- Lot 2 in DP 84578 (in stratum)
- Lot 10 in DP 1261029
- Lot 10 in DP 1261354 (unregistered Plan preceding this Subdivision, relating to Lot 1 DP 663937)

The application identifies that the subject site includes the following allotments: Lots 2 and 4 in DP 1253870, Lot 11 in DP 1178389, Lot 3 in DP 85393, Lot 6 in DP 229784, Lot 2 in DP 84578, Lot 10 in DP 1261029 and Lot 10 in DP 1261354 (being a subdivision of Lot 1 DP 663937). The Site is also known as 57a Lockwood Road, Erskine Park; 2-18 Aldington Road, Kemps Creek; 650c and 650e Mamre Road, Kemps Creek; and 1-21 and 71-79 Grady Crescent, Erskine Park.

No physical works are proposed as part of the subdivision application and road dedication is not proposed at this time.

A portion of the proposed Lot which will become the WNSLR is within lands that were the subject of a State Significant Development (SSD) approval under consent no. SSD 7348. SSD 7348 has been the subject of four Modification applications approved by the Department. The last approved modification MOD 4, which was approved on 21 April 2020, comprised of the inclusion of Lot 9 in DP 1157476 as part of the subject lands and also approved alterations to a carpark and approved construction works associated with the WNSLR, located partly within the additional lot.

The Department is currently considering another modification known as MOD 5 to SSD 7348, which seeks approval for various alterations to an approved warehouse layout and general arrangements, alterations to the setback provided to a future road known as the Southern Link Road (SLR) and various other alterations which do not impact the subject proposal.

The application was referred to Water NSW as an adjacent land owner (Warrigamba Water pipeline), and conditions of consent have been provided. The application was also referred to TransGrid, and in advice received 2 July 2020, TransGrid have provided advice and requested that a condition be imposed which requires the applicant to provide evidence that TransGrid have reviewed the proposal no later than 3 months prior to the lodgement of any application for a Subdivision Certificate, to ensure that the proposed easements for high voltage power lines are supported. This is owing the fast moving planning changes in the area attributed to approvals related to the Snowy Hydro II, Aerotropolis and related corridors.

The application has been referred to TfNSW who originally raised concerns related to the WNSLR and Lenore Drive intersection. Matters raised have since been resolved and in letter dated 9 September 2020, TfNSW confirm that the additional documentation requested and subsequently provided by the applicant, satisfies their concerns.

The application has been referred to Council's internal sections of Council including engineering, traffic and environment units, with no issues raised subject to the inclusion of standard conditions of consent.

The application was not required to be notified as per Council's notification policy and the Regulations.

State Environmental Planning Policy (Western Sydney Employment Area) 2009 [SEPP WSEA]

The subject lots are identified as being within Areas 7 and 8 which are the Erskine Park Employment Lands, and the South of Sydney Catchment Authority Warragamba Pipelines area respectively, on the Land Application Map under SEPP WSEA. The site and the greater area of the Oakdale West Industrial Estate (OWE) is zoned IN1 General Industrial under SEPP WSEA with some areas of E2 Environmental Conservation. The proposed subdivision is permissible with consent within the zoning under this Plan. Penrith Local Environmental Plan 2010 does not apply.

Oakdale West Estate & Fitzpatrick State Planning Agreements

The Oakdale West Estate Planning Agreement between the Minister for Planning and Public Spaces, Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Ltd as trustee for the BGMG 1 Oakdale West Trust, applies to the subject site and has been executed. The State Planning Agreement applies to lots being the subject of the application. The Planning Agreement has also been made in satisfaction of Clause 29 of WSEA SEPP, which requires the Minister to be satisfied that provision has been made for essential infrastructure in support of the development and a Satisfactory Arrangement Certificate (SAC) for the DA has been issued by the Department, under this clause. In addition, the Department has confirmed in writing that the proposal is satisfactory, and that

there are no objections raised under clause 26 of the SEPP WSEA, which relates to the protection of future identified transport corridors, subject to TfNSW being satisfied of the proposal and issuing their concurrence.

An executed State Planning Agreement also applies to lands known as Lot 3 in DP 1253870 (Fitzpatrick) and includes the offer to construct a portion of the WNSLR. Sheet 1 of 9 of the plan of subdivision, submitted as part of this DA nominates the affected land as PT1 and PT2, PT9 being 9.17ha, Lot 1 in DP 1253870, Lot 10 being 12.81ha, Lot 4 being 264.5sqm (area as amended by Sheet 5 of 9) and Lot 3 being 322.7sqm (area as amended by Sheet 5 of 9).

State Significant Development Approval (SSD) - Relevant History

On 13 September 2019, the then Executive Director, Compliance, Industry and Key Sites as delegate of the Minister for Planning and Public Spaces granted development consent (SSD 7348) to develop the OWE at Kemps Creek in the Penrith City Local Government Area. The approved OWE includes:

- a Concept Proposal of 22 warehouses, offices and associated infrastructure built over 5 stages,
- Stage 1 development of 3 warehouses and the site access road requirements for future Stages 2 to 5 developments, and
- Construction of the Western North-South Link Road (WNSLR).

Key issues identified for the proposed development and site include:

- Alignment of the proposal with the SSD approval, and
- The impact of the proposed plan of subdivision on the SLR, WNSLR and Western Sydney Freight Line (WSFL).

Matters related to the consistency of the proposal with the SSD are resolved by the approval of MOD4 of SSD 7348 by the Department, and amended plans were received which satisfy the issues related to land provision for intersections and the width of the WNSLR.

This application is to be determined under delegated authority by Council.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for Approval subject to recommended conditions attached.

Site & Surrounds

The Site

The subject site is made up of lands known as 57a Lockwood Road, Erskine Park; 2-18 Aldington Road, Kemps Creek; 650c and 650e Mamre Road, Kemps Creek; and 1-21 and 71-79 Grady Crescent, Erskine Park. The lots being the subject of the application, are legally described as the following Lots:

- Lots 2 & 4 in DP 1253870
- Lot 11 in DP 1178389
- Lot 3 in DP 85393
- Lot 6 in DP 229784 (in stratum)
- Lot 2 in DP 84578 (in stratum)
- Lot 10 in DP 1261029
- Lot 10 in DP 1261354 (unregistered Plan preceding this Subdivision, relating to Lot 1 DP 663937)

State Environmental Planning Policy (Western Sydney Employment Area) 2009

The subject lots are identified as being within Areas 7 and 8 which are the Erskine Park Employment Lands, and the South of Sydney Catchment Authority Warragamba Pipelines area, respectively, on the Land Application Map under State Environmental Planning Policy (Western Sydney Employment Area) 2009 [SEPP WSEA]. The site and the greater area of the Oakdale West Industrial Estate (OWE) is zoned IN1 under SEPP WSEA with some areas of E2.

Oakdale West Industrial Estate (OWE)

The portion of the proposed Lot which will become the WNSLR and which is located south of the Water NSW pipeline, is located within the broader Oakdale West Industrial Estate (OWE). The OWE has an area of 154.12ha and is bound to the north by the Water NSW Pipeline, to the east by the Ropes Creek riparian corridor and to the south and west by rural lands. The OWE is located on cleared lands which were formally used for rural

agricultural purposes. Some instances of remnant vegetation remains within the OWE area.

State Significant Development

SSD 7348 applies to the following lots: Lot 1 DP 663937, Lot 2 DP 1215268, Lot 6 DP 229784, Lot 2 DP 84578, Lot 3 DP 85393, Lot 11 DP 1178389, and Lot 9 DP 1157476 which are also known as 2 Aldington Road, Kemps Creek and 57-87 Lockwood Road, Erskine Park.

The SSD approved the following:

A Concept Proposal including:

- Concept layout of 22 warehouse buildings inclusive of dock offices and ancillary offices providing 479,000sqm of gross lettable area, built over five development stages;
- Concept layout of development lots, internal roads, drainage;
- Landscaping, noise walls, basins and biodiversity offsets; and
- Development controls.

and

A Stage 1 Development including:

- Bulk earthworks across all 5 stages including retaining walls and noise walls;
- Lead in services including drainage, power, sewer, water and telecommunications;
- Service infrastructure to Precinct 1, including drainage, power, sewer, water and telecommunications;
- Construction and operation of three warehouse buildings inclusive of dock offices and ancillary offices in Precinct 1 (1A, 1B and 1C);
- Western North-South Link Road and associated subdivision, basins and drainage;
- Estate roads 1, 2 and 6 and eastern part of road 7;
- Landscaping of Stage 1, the western boundary, Western North-South Link Road, estate roads 1, 2 and 6 and the eastern part of road 7, detention basins and the amenity lot;
- Stormwater drainage infrastructure for Lots 2A and 2B and all basins;
- Temporary works to facilitate construction including but not limited to swales, haul road (construction access), landscaping and basins;
- Works including construction of traffic signals at Lenore Drive/Grady Crescent/WNSLR intersection; and
- Works within Lot 9 DP 1157476 including reconfiguration of car park, relocation of car park access on Lockwood Road, infrastructure, landscaping and all works associated with the WNSLR.

Condition D63 of SSD 7348 requires that 'Following completion of construction of the WNSLR to the satisfaction of the relevant roads authority, the Applicant must dedicate the WNSLR and its associated land owned by Water NSW and BGMG 11 Pty Limited as trustee for the BGMG 1 Oakdale West Trust, to the relevant roads authority in accordance with the requirements of the Planning Agreement'.

Proposal

The proposal seeks consent for the subdivision of 10 Lots. Included within the subdivision is a stratum arrangement for a bridge and a lot which will extend a future road known as the Western North-South Link Road (WNSLR) over the Water NSW corridor which contains the Warragamba water pipelines and will allow for future freight railway lines. The subdivision also amends lots impacted by design alterations at the Lenore Drive intersection. The road corridor Lot is shown in the 'Plan of Subdivision' in different portions as Part Lot 2 and will be created by the subdivision of the following lots:

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No works or road dedication is proposed as part of the subdivision application.

Plans that apply

- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

Assessment of the Staged development approved under SSD 7348 has considered the relevant matters under this Act.

The application was accompanied by a Biodiversity Offset Strategy (BOS) prepared by Cumberland Ecology, dated March 2017, and a Biodiversity Assessment Report (BAR) also prepared by Cumberland Ecology, dated March 2017.

The Biodiversity Offset Strategy details that the BOS and BAR each were prepared and formed part of the Environmental Impact Assessment for the proposal approved under SSD 7348 and in response to the SEARs for the project, which state that the impacts of the Project must be assessed in accordance with the NSW Office of Environment and Heritage Framework for Biodiversity Assessment under the NSW Biodiversity Offsets Policy for Major Projects.

The BOS proposes to establish on and off site offset areas to be secured under a BioBanking Agreement (the Oakdale West Offset Site) in accordance with the NSW Biodiversity Offsets Policy for Major Projects. Further, the BOS states that the Oakdale West Offset Site *'will be secured in perpetuity by preparing a BioBanking Assessment Methodology (BBAM) BAR and BioBanking Agreement Application for the site following approval of the Oakdale West Estate development'*.

As this development application is for subdivision only and no works are proposed, in the context of the approved SSD, the proposal is considered to be acceptable.

It is also noted that the Fitzpatrick Estate has been the subject of a Biodiversity Management Plan, prepared by Kevin Mills and Associates and a State Voluntary Planning Agreement which has resulted in the Erskine Park Biodiversity Corridor. This is in place to offset the losses in biodiversity from the development of the Estate (excluding Oakdale West Industrial Estate), and forms part of the Ropes Creek riparian corridor.

- **Section 4.14 - Bushfire prone land assessment**

The WNSLR was approved as part of SSD 7348 and was referred to the NSW RFS as part of the Department's assessment. The Department's Assessment Report states that the RFS raised no objection to the development proposal subject to compliance with the submitted Bush Fire Report prepared by Australian BushFire Protection Planners. Related conditions are also included in the consent issued by the Department.

The development has been assessed in accordance with the matters for consideration under Section 4.14 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the proposal is supportable. A condition is recommended to require the proposal to be carried out in compliance with the consent for SSD 7348.

- **Section 4.15 - Evaluation**

The proposed development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

An assessment has been undertaken of the application against relevant criteria within State Environmental Planning Policy (Infrastructure) 2007 and the application is satisfactory.

Subdivision of land for industrial purposes (less than 200/50 lots) is not included in Schedule 3 Traffic-generating development to be referred to TfNSW. Notwithstanding, a referral was sent to TfNSW as a matter of courtesy, noting that TfNSW has not objected to SSD 7348 or to MOD 4 of SSD 7348. Refer to discussions elsewhere within this report related to requirements for road construction under State Significant Development approval SSD 7348 and State Environmental Planning Policy (Major Corridors) 2020.

The referral was issued to TfNSW as details of who will be the road authority for the WNSLR and the SLR are not finalised and in this respect the SEPP applies.

With regard to road infrastructure, and in particular with regard to the Western North-South Link Road (WNSLR), the Department of Planning, Infrastructure and Environment (DPIE), in its assessment report related to the approved SSD 7348 states that:

"During consultation with the Applicant, TfNSW and Council, it was unclear which agency would take final ownership of the WNSLR. At the time of completing this report, the road ownership issue was still unresolved. The Applicant proposes to design and construct the WNSLR including the intersection with Lockwood Road and Estate Road 1, in accordance with the requirements of Council. The Lenore Drive intersection works would be designed to TfNSW requirements and in accordance with a works authorisation deed (WAD). In order to finalise its assessment of the SSD application in a timely manner, the Department has developed conditions requiring the Applicant to construct the WNSLR in accordance with the requirements of the relevant roads authority. The Department acknowledges the relevant roads authority will need to be established before detailed design can be undertaken and before road construction commences. This is a matter for the Department, TfNSW and Council to resolve and should not impede the Applicant from obtaining development consent and can be dealt with post determination..."

In correspondence dated 9 September 2020, TfNSW confirm that the amended plans provided, as a result of their request for additional information, are suitable and that no further objection is raised. The proposal is considered to be satisfactory having regard to the Policy.

State Environmental Planning Policy (Vegetation in non-rural areas) 2017

An assessment has been undertaken of the application against relevant criteria within State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and the application is satisfactory subject to recommended conditions of consent.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

Clause 3 Aims of the Policy

The proposal is considered to align with the aims of the policy which include to provide for the co-ordinated planning and development of land in the Western Sydney Employment Area.

Clause 11 Zone objectives and land use table

The subject lands are identified as being subject to State Environmental Planning Policy (Western Sydney Employment Area) 2009. The subject allotments are largely zoned IN1 General Industrial. The objectives of the IN1 zone include:

- To facilitate a wide range of employment-generating development including industrial, manufacturing, warehousing, storage and research uses and ancillary office space.
- To minimise any adverse effect of industry on other land uses.
- To encourage a high standard of development that does not prejudice the sustainability of other enterprises or the environment.
- To provide for small-scale local services such as commercial, retail and community facilities (including child care facilities) that service or support the needs of employment-generating uses in the zone.

The proposal has been assessed to meet the objectives of the IN1 General Industrial zone, including those listed above. A narrow section of part of the subject lots is identified as being zoned E2 Environmental Conservation. The proposal is not in opposition to the objectives of the E2 zoning.

Clause 14 Subdivision - consent requirements

The application proposes a Torrens title subdivision and in this respect, the clause confirms that consent is required and that the proposal cannot be undertaken without consent.

Clause 18 Requirement for development control plans

The clause requires that the consent authority must not grant consent to development on any land to which this Policy applies unless a development control plan has been prepared for that land. Subclause (6) states that for the purposes of this clause, a development control plan is taken to have been prepared for so much of the land to which this Policy applies as is identified as the "Erskine Park Employment Area" under the Penrith Development Control Plan 2006 (approved 21 August 2006 and as in force on 15 December 2006).

The above plan is now known as the Penrith Development Control Plan 2014 and includes Section E6 Erskine Business Park which applies to the Oakdale South Industrial Estate and also includes the lands to the west of this area now known as Oakdale West Industrial Estate (OWE). A development control plan has been prepared for that land and the clause is satisfied.

Part 5 Principal development standards

Clauses 20-27 set out principal development standards for consideration. Clause 24 *Development involving subdivision*, relates to the subject proposal and states at (1) '*The consent authority must not grant consent to the carrying out of development involving the subdivision of land unless it has considered the following:*

- (a) the implications of the fragmentation of large lots of land,*
- (b) whether the subdivision will affect the supply of land for employment purpose, and*
- (c) whether the subdivision will preclude other lots of land to which this Policy applies from having reasonable access to roads and services.'*

The proposal includes the creation of a lot for the future WNSLR and is found to be satisfactory having regard to clause 24.

The proposal is satisfactory having regard to clause 25 *Public utility infrastructure*, in that the allotment can be adequately serviced, noting that consideration of these factors has also been undertaken as part of the assessment of the related Major Project (SSD 7348), and noting that no works or warehouse construction is proposed as part of this application.

Clause 26 *Development on or in vicinity of proposed transport infrastructure routes*, states that the clause applies to land that is situated on or in the vicinity of a proposed transport infrastructure route as show on the Policy's Transport and Arterial Road Infrastructure Plan Map. The site is within the vicinity of Lenore Drive and will facilitate the Western North South Link Road and as such, the clause applies.

The proposal was referred to the Department for their consideration and comment and in emailed correspondence dated 29.06.2020 no objections were raised.

Part 6 Miscellaneous provisions

Clause 29 *Industrial Release Area - satisfactory arrangements for the provision of regional transport infrastructure and services*, requires that the consent authority must not, under subclause (3), consent to development on land to which this clause applies unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in relation to the land to which this Policy applies.

Subclause (4) states that subclause (3) only applies if the land that is the subject of the application for development consent was not being used for industrial purposes immediately before the application was made. The zoning of the land is IN1 General Industrial under SEPP WSEA. State Significant Development (SSD) 7348 (as modified) approved bulk earthworks across all five stages including the installation of noise walls and retaining walls, services, the construction of the Western North-South Link Road and associated subdivision, basins and drainage, landscaping, estate roads 1, 2 and 6 and part of road 7 within Stage 1 and on various other parts of the Oakdale West Industrial Area Estate; the land use prior was not for industrial purposes.

The application was referred to DPIE. No objections were received in response to the referral to the Department under clause 29, and a Satisfactory Arrangements Certificate (IRF20/2647) was provided, dated 23 June 2020.

Clauses 31, 34 and 33H

The proposal is considered to be acceptable having regard to Clause 31 *Design principles*, Clause 34 *Preservation of trees and vegetation* and Clause 33H *Earthworks*, noting the concept was approved under the related SSD and no physical works are proposed in this application.

State Environmental Planning Policy No 55—Remediation of Land

Aims of the Policy include to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- (a) by specifying when consent is required, and when it is not required, for a remediation work, and*
- (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
- (c) by requiring that a remediation work meet certain standards and notification requirements.*

The Policy applies to the State.

Clause 7 *Contamination and remediation to be considered in determining development application*, states under sub clause (1) that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

With regard to (a), (b) and (c) above, the NSW Government has issued an approval under SSD 7348 which has considered whether the land is contaminated and whether it can be made suitable for the future industrial use. The assessment report related to SSD 7348 states that "The RtS included a Remediation Report prepared by AECOM (dated August 2017) which validated previous remediation works undertaken at the site". The report concludes that the site is suitable for commercial/industrial land use and recommended an unexpected finds protocol to be implemented during construction. Works related to the state significant approval have begun and include site preparation, earthworks and servicing related to the entire lot and all five future stages.

It is concluded that the site can be made suitable for the proposed future use, noting that this application does not propose any physical works or use at the site. The proposal is considered to be satisfactory having regard to the Policy.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River (No. 2 - 1997) and the application is considered to be satisfactory subject to recommended conditions of consent, noting that development of the Oakdale West Industrial Estate has been approved under SSD 7348 (as modified) and that this subdivision application does not include any physical works.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Mamre Road Precinct in the Western Sydney Employment Area

The Draft Mamre Road Precinct rezoning package was on exhibition between 20 November and 18 December 2019. This included a draft structure plan, discussion paper and draft zoning maps. The draft rezoning package outlined changes to State Environmental Planning Policy (Western Sydney Employment Area) 2009 [SEPP WSEA) that would facilitate industrial development in the Mamre Road Precinct.

The Department received submissions in response to the draft rezoning package and exhibition period and addressed issues raised in submissions before finalising a plan for the precinct. The Mamre Precinct is located in the WSEA, approximately 40km west of the Sydney CBD and 12kms southeast of Penrith CBD. The Precinct is located within the Aerotropolis and covers an area of approximately 972 hectares. The Precinct is directly south of the Erskine Park industrial Estate and adjoins the Oakdale West Precinct.

The OWE and subject site are not included in the Mamre Road Precinct although shares its western and southern boundary with this area. Changes to the WSEA boundary which result in the area of land covered by the SEPP WSEA being reduced, do not impact the subject site, which will remain identified as being subject to the SEPP WSEA.

Changes to the SEPP WSEA, including to Clause 26 which deals with "Development on or in vicinity of proposed transport infrastructure routes", include amendments to replace the referral required to the Department, with a referral requirement to the relevant Government agency responsible for the transport infrastructure. New clauses are also provided which require consultation with TfNSW and which require consideration of ANEF/ANEC contours, SEPP 55 considerations, water use, earthworks, waterways and flooding impacts.

The subject application is not considered to be in conflict with any of these requirements and will not fetter the ability of development within the area affected by the plan to achieve compliance through its relationship with, or proximity to, the Precinct.

Western Sydney Aerotropolis Planning Package and the Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan Stage 1 (LUIIP) 2018

Aerotropolis documents were on exhibition until 13 March 2020 and included:

- Draft Western Sydney Aerotropolis Plan
- Western Sydney Aerotropolis Discussion Paper on the proposed State Environmental Planning Policy
- Draft Western Sydney Aerotropolis Development Control Plan Phase 1

The LUIIP illustrates the strategic vision for delivery of development within the Aerotropolis. The subject site is not identified as being located within the Aerotropolis Precinct. However, the most western and southern boundary of the subject site is a shared boundary with the Aerotropolis 'flexible employment' lands and areas identified for 'Environment and Recreation' zones. Importantly, the subject application makes provision for major transport corridors which provide connection through into Aerotropolis lands directly, and is not assessed to prohibit or obstruct the carrying out of uses, activities or planned development of the Aerotropolis Precinct.

Note: The Environmental Planning and Assessment Amendment (Western Sydney Aerotropolis) Regulation 2020 is now Gazetted (published LW 11 September 2020 (2020 No. 536) and commences 1 October 2020. State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 has also been Gazetted (published LW 11 September 2020 (2020 No. 545) and comes into force on 1 October 2020.

Draft State Environmental Planning Policy No. 55 - Remediation of Land

Amendments to SEPP Remediation of Land were exhibited between 25 January and 13 April 2018. The proposal has been considered against the Draft Contaminated Land Planning Guidelines and the SEPP amendments and is considered to be acceptable.

Draft Environment SEPP

The NSW government is working towards developing a new State Environmental Planning Policy (SEPP) for the protection and management of our natural environment. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. The consolidated SEPP was on exhibition from 31 October 2017 to 31 January 2018. Proposed changes include the consolidation of the following seven SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 9.1 Local Planning Directions where appropriate.

The subject application has been considered against the draft Environment SEPP and is not considered to be in conflict with the provisions within.

Planning Proposal - Phase 1 Review of Penrith LEP 2010

The Phase 1 amendments to the Penrith LEP were on exhibition from 1 May - 29 May 2020 and included alterations to lot sizes in residential zones, alterations to permissible uses in identified areas, changes in the zoning of particular allotments and minor housekeeping amendments. The amendments sought do not impact the subject site.

Housekeeping Amendments to the Penrith DCP 2014

House keeping amendments include amendments to the vegetation management, boarding house, site planning and design principles, and outdoor dining and trading sections of the DCP and do not impact the subject proposal. The Draft amendments to the DCP were on exhibition from 1 May - 29 May 2020.

Note: These amendments are now in force.

Draft Section 7.12 Citywide Development Contributions Plan for Non-Residential Development

Council has prepared a Draft Section 7.12 Development Contributions Plan. The Draft Plan was on exhibition from 1 May - 29 May 2020 and will require the payment of a levy for works over a value of \$100,000 and under \$200,001 of 0.5%. Development with a cost of works being \$200,001 or greater will attract a levy of 1%.

Note: This plan is now in force and was effective from 24 August 2020.

The Plan will apply to all works in the Penrith Local Government Area outside of the City Centre, involving non-residential development that have a cost of works over \$100,000. This will include new buildings, additions and expansions, change of use and renovations. The Draft plan will not apply to the proposed development as the cost of works is less than \$100,000.

State Environmental Planning Policy (Major Infrastructure Corridors) 2020

State Environmental Planning Policy (Major Infrastructure Corridors) 2020 is now in force and at the time of this assessment Council's systems were unable to include this Policy under the correct heading within the report structure. An assessment has been made of the development against the applicable provisions of the Policy and the proposal is considered to be acceptable. Clause 10 of the Policy permits subdivision for the purpose of roads, with consent.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	Complies
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Complies
E6 Erskine Business Park controls	Complies - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

The Oakdale West Estate State Planning Agreement

Particular lots being the subject of this application are the subject of a State Significant Development approval being SSD 7348. The Oakdale West Estate Planning Agreement between the Minister for Planning and Public Spaces, Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Ltd as trustee for the BGMG 1 Oakdale West Trust, applies to the site and has been executed.

The Agreement requires that a contribution be made at certain trigger events which are noted as being each time (i) a Subdivision Certificate is issued; (ii) a Construction Certificate is issued; or (iii) if any part of the Development may be carried out without the need for a Subdivision Certificate or a Construction Certificate, then on the earlier of the following:

- A. Commencement of that part of the Development; or
- B. The issue of a Complying Development Certificate in respect of that part of the Development.

The Planning Agreement contains requirements for the provision of monetary contributions which are also aligned to trigger points and the issuance of the relevant Construction or Subdivision Certificate respectively. In this regard, it is recommended that a condition be imposed as follows:

The onus is on the landowner to ensure that all obligations of the applicable State Planning Agreement which applies to particular Lots being the subject of this consent, are met. This development consent is not to be construed as allowing any contravention of the relevant Planning Agreement with the Minister for Planning.

The State Planning Agreement is to be noted on the title of any related Lot(s).

It is also recommended that a consent condition be imposed requiring that the proponent in the carrying out of the development for which this consent is sought, remain compliant with the conditions of the approval of SSD 7348, as they may apply.

Fitzpatrick Lands State Planning Agreement

Planning Agreement (VPA2017/8407) applies to areas within Lot 2 DP 1215268 and includes the Auto Nexus site east of Grady Crescent with a total area of 94.64ha, and lands known as Pelikan Artline and the Ropes Creek Conservation Area including transmission lines and Western North-South Link Road (also known as Lot 30 in DP1168407).

This State Planning Agreement between the Minister for Planning and Fitzpatrick Investments Pty Ltd has been executed and is dated 30 August 2018. The Planning Agreement includes that *'The Developer has offered to enter into this deed with the Minister to secure the Development Contributions in order to enable the Secretary to provide the certification required by clause 29 of the WSEA SEPP...'* (certifying that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services). In this regard, the recommended consent condition outlined above in relation to the Oakdale West Estate State Planning Agreement will also address the Fitzpatrick Lands State Planning Agreement.

Section 4.15(1)(a)(iv) The provisions of the regulations

The development is assessed to comply with the relevant requirements of the Environmental Planning and Assessment Regulation 2000, subject to the recommended conditions of consent.

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

Likely impacts of the proposed development can be managed through the recommended conditions of consent which will require compliance with the major projects approval, and the State planning agreement.

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

The site is assessed to be suitable for the proposed subdivision and the proposal is consistent with that which was approved under State Significant Development number SSD 7348 and the associated executed State Planning Agreement.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made. In accordance with Council's notification requirements, the proposed development was not required to be notified.

Other Referral Advice

Department of Planning, Industry and Environment (DPIE)

The development application was referred to the Department of Planning, Industry and Environment (DPIE) as is required under State Environmental Planning Policy (Western Sydney Employment Area) 2009. In correspondence received 23 June and 29 June 2020, the Department has confirmed that Satisfactory Arrangements are in place to contribute to the provision of designated State public infrastructure relating to the site, and has issued a satisfactory arrangements certificate; and has confirmed that the proposed subdivision is satisfactory having regard to Clause 26 of WSEA SEPP and the proximity of the site to transport corridors.

Transport for NSW (TfNSW)

The development application was referred to TfNSW who stated in correspondence dated 10 August 2020 that further information and amended plans were to be submitted and included the following comments:

"On 3 July 2020, the Western Sydney Freight Line (WSFL) (Stage 1) was gazetted in the Major Infrastructure Corridors State Environmental Planning Policy (Corridors SEPP). The WSFL borders the northern edge of the OWE and is traversed by the WNSLR as it crosses the Water NSW pipeline. The proposed subdivision under DA20/0303 affects the future WSFL. To avoid future realignments, consultation with the Corridor Preservation team within TfNSW should be undertaken.

State Significant Development - Oakdale West Industrial Estate (SSD 7248) was recently approved and includes a requirement that the applicant (Goodman) provide evidence demonstrating the design for the WNSLR and bridge crossing have been agreed with TfNSW. It is noted that the concept design of the WNSLR and bridge crossing have been agreed with TfNSW. It is noted that the concept design report at Appendix D in the Civil Plans is not the most recent design. TfNSW request the report be updated and be replaced with the most recent design iteration, including the drawing referred to as Dwg WNSLR-BGE-DRG-ST-0012.

Confirmation is required that the proposed Part Lot 2 accommodates the ultimate signalised intersection footprint at the Lenore Drive/WNSLR/Grady Crescent intersection (shown in red in Attachment A on Drawing No. SKC18 Project No. 15-272 Issue P1) and the latest TfNSW design for the WNSLR/Southern Link Road intersection. TfNSW requests that the design plans for these signalised intersection designs are overlaid on the subdivision plan to confirm that adequate land is preserved for these intersections".

In a response email dated 20 August 2020, Goodman outlined their response to the above points and provided an overlay of the intersections for review, a Road Design Report Addendum and an Intersection Plan (Sheet 5). The information was provided to TfNSW who in correspondence dated 9 September 2020 confirmed that the information included an *..."updated bridge design for the Western North South Link Road (WNSLR) over the Western Sydney Freight Line; and confirmation of the signalised intersection plan at the Lenore Drive/WNSLR/Grady Crescent"*.

TfNSW confirmed that they were satisfied that the submitted Road Design Report Addendum and Intersection Plan satisfied their concerns. It is recommended that these new documents form part of the stamped approved plans set.

TransGrid

The application was also referred to TransGrid who have not raised any objections to the proposal subject to compliance with the conditions imposed under SSD 7348.

Water NSW

The application was referred to Water NSW owing to the stratum subdivision over their asset, being the Warragamba Water Pipeline. Water NSW raises that they are to be contacted by the proponent for future subdivisions in the Oakdale West Industrial Estate, which may impact their asset, being the Warragamba

Water Pipeline. The advice of Water NSW has been provided to the applicant and a condition of consent has been added to require compliance with the correspondence from Water NSW which also includes detail on asset protection.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Development Engineer	No objections
Environmental - Environmental management	No objections
Traffic Engineer	No objection

Section 4.15(1)(e)The public interest

The proposed development is found to be compliant with the key aims, objectives and controls of the relevant State and local planning controls. The proposed subdivision is consistent with State significant development approval number SSD 7348 and the associated State Planning Agreement, and is not contrary to the public interest.

Section 94 - Developer Contributions Plans

The site is the subject of a State Significant Development approval SSD 7348.

The Oakdale West Estate Planning Agreement between the Minister for Planning and Public Spaces, Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Ltd as trustee for the BGMG 1 Oakdale West Trust, applies and has been executed. Schedule 3 within the Planning Agreement confirms that the agreement applies to Lots 11 and 1 in DP 1178389 and DP 663937 respectively.

Conditions are recommended (as discussed elsewhere in this report) that the onus is on the landowner to ensure that all obligations of the applicable State Planning Agreement which applies to particular Lots are met and that the State Planning Agreement(s) is to be noted on the title of any related Lot(s).

The Planning Agreement does not have the effect such that contributions which may be levied under Section 7.11 and 7.12 of the Act do not apply. Notwithstanding, Penrith City Council does not have a contributions plan in place, which applies to the subject development or land, and as such no Section 7.11 contributions are owing.

Council's Section 7.12 Citywide Development Contributions Plan for Non-Residential Development is now in force and effective from 24 August 2020. The plan does not apply to development applications, such as the subject application which have a cost of works less than \$100,000. The proposal is not subject to any other of Council's development contributions plans.

Conclusion

In assessing this application against the relevant environmental planning policies, draft environmental planning policies and having regard to the Oakdale West Estate Planning Agreement and other applicable plans and policies, the proposal is found to be satisfactory. Approval of the proposed subdivision will not fetter the functions of the executed Planning Agreement and will not impact the ability of the Mamre Road Precinct, construction or connection of future transport corridors under State Environmental Planning Policy (Western Sydney Employment Area) 2009, SEPP (Major Corridors) or Aerotropolis plans and policies from achieving their expressed aims and outcomes.

The proposed subdivision adequately aligns with the approved Masterplan for the site under State Significant Development approval no. SSD 7348 (as modified), and is not contrary to the public interest. The conditions and comments of the relevant State agencies have been considered and are incorporated. The application is worthy of support, subject to recommended conditions.

Recommendation

That DA20/0303 for a 10 lot Torrens title subdivision including stratum subdivision at 57a Lockwood Road, Erskine Park; 2-18 Aldington Road, Kemps Creek; 650c and 650e Mamre Road, Kemps Creek; and 1-21 and 71-79 Grady Crescent, Erskine Park, be approved subject to the following conditions.

General

1 [A001 - Approved plans table](#)

The development must be consistent with the following plans as stamped approved by Council, except as may be amended in red on the approved plans and by the following conditions.

Subdivision plans prepared by Surveyor Richard McClenahan as follows:

(i). Plan of Subdivision of Lots 2 & 4 in DP 1253879, Lot 10 in DP 1261254, Lot 11 in DP 1178389, Lot 3 in DP 85393, Lot 6 in DP 229784, and Lot 2 in DP 84578, Lot 1 in DP 663937 and Lot 10 in DP 1261029, date of survey 11-12-2019 and 28-04-2020, Reference 50277 001DP, sheet references -

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AND

(ii). Oakdale West Development Kemps Creek - North-South Link Road - Road Design Report Addendum - CODE/15-272-R002-03 prepared by AT&L, dated August 2020, Issue 03 18-08-20.

(iii). Plan of Subdivision of Lots 2 & 4 in DP 1253879, Lot 10 in DP 1261254, Lot 11 in DP 1178389, Lot 3 in DP 85393, Lot 6 in DP 229784, and Lot 2 in DP 84578, Lot 1 in DP 663937 and Lot 10 in DP 1261029, date of survey 11-12-2019 and 28-04-2020, Reference 50277 001DP ROAD DES, Sheet 5 of 9.

2 [A001a - Water NSW](#)

The proponent is to ensure that the development remains compliant with the requirements of WaterNSW correspondence dated 6 August 2020, reference no. D2020/83158, as outlined below:

(a). The proponent is to ensure that the development on and adjacent to WaterNSW land remains compliant with WaterNSW's advice and approvals.

(b). Prior to lodgement of a Subdivision Certificate, the proponent must obtain an independent surveyor's report, to the satisfaction and benefit of WaterNSW, that confirms the 'as built' plans are consistent with subdivision plans, that WaterNSW access requirements to the pipelines and corridor are maintained, and that WaterNSW retains full access following the subdivision.

(c). Prior to lodgement of a Subdivision Certificate, the proponent is required to provide evidence that WaterNSW has been consulted with in relation to the plan of subdivision by the provision of written evidence attached to any application for a Subdivision Certificate for the subject land. The written evidence is to be dated no later than 3 months prior to the lodgement of any Subdivision Certificate application for the land.

3 [A001b - TransGrid](#)

The proponent is to ensure that the development remains compliant with TransGrid's Easement Guidelines - Living and Working with Electricity Transmission Lines.

In accordance with TransGrid requirements, the proponent is required to provide evidence that TransGrid has been consulted with in relation to the plan of subdivision by the provision of written evidence attached to any application for a Subdivision Certificate for the subject land. The written evidence is to be dated no later than 3 months prior to the lodgement of any Subdivision Certificate application for the land.

Advisory Note:

TransGrid contact: Michael Platt, Development Assessment and Control Officer, Network Planning and Operations - Reference Number - 2020-273.

4 [A002 - State Planning Agreement](#)

The Oakdale West Estate Planning Agreement between the Minister for Planning and Public Spaces, Goodman Property Services (Aust) Pty Ltd and BGMG 11 Pty Ltd as trustee for the BGMG 1 Oakdale West Trust, and the State Planning Agreement between the Minister and Fitzpatrick Investments Pty Ltd (30 August 2018 - VPA2017/8408) each apply to particular Lots being the subject of this subdivision consent and each have been executed.

The onus is on the landowner to ensure that all obligations of the applicable State Planning Agreement which applies to particular Lots being the subject of this consent, are met. This development consent is not to be construed as allowing any contravention of the relevant Planning Agreement with the Minister for Planning.

The State Planning Agreement (as either may apply) is to be noted on the title of any related Lot(s).

5 [A01S - Approved Major Project Compliance](#)

The development must be implemented substantially in accordance with State Significant Development (SSD) approval number SSD 7348 (as amended) and the associated conditions of that approval. Those acting on this consent are to ensure that compliance with SSD 7348 (as amended) is achieved.

Advisory Notes:

(i). In accordance with Condition D6 of SSD 7348, a minimum 60m wide corridor along the northern side boundary shall not be developed and shall be maintained and preserved for the future WSFL corridor, in accordance with the requirements of TfNSW.

(ii). Attention is drawn to the requirements of Staging Plan Conditions B15, B16 and B17 of the SSD 7348 which require the submission and endorsement of a Staging Plan which includes conceptual design of the provision of services, utilities and infrastructure to the site, prior to the commencement of any stage of the Concept Proposal.

(iii). The proponent acting on the consent is to ensure that the development complies with the requirements of Transgrid, Endeavor Energy and Water NSW, and related conditions of consent attached to SSD 7348 including B21, B22, B23, C13, C14, C15 and C16 (or as may be amended).

Subdivision

6 [M008 - Subdivision Certificate requirements](#)

Prior to the issue of a Subdivision Certificate, an original final plan of subdivision and two (2) copies of the plan is to be submitted. The plan of subdivision must indicate, where relevant:

- All drainage easements, rights of way, restrictions and covenants.
- All proposed dedications of roads/drainage/public reserve, which are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

Prior to lodgement of the Subdivision Certificate application, street address numbering must be obtained/approved by Penrith City Council's Rates Team. Proposed street addresses can be forwarded to council@penrith.city for approval.

Certification

7 [Q008 - Subdivision Certificate](#)

A Subdivision Certificate is to be obtained prior to the release of the final plan of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

E6 Erskine Business Park

Part E6 Erskine Business Park of the Penrith DCP 2014 applies to the subject development. The proposal is considered to be suitably consistent with Part E6 and as such the proposal is supportable. An assessment against the relevant sections is provided below.

Clause 6.2 Subdivision

With the exception of allotments associated with the future delivery of roads, the proposed lots comply with the minimum allotment size schedules in Table E6.1, which is 1 hectare or 10,000sqm. The lots comply with the minimum frontage requirement of 60 metres.

Clause 6.3.8 Services

Services connections were approved under the related SSD consent.

Clause 6.3.9 Transmission Line Easement

The transmission line easement is not impacted by the proposal.

Clause 6.5 Drainage

A masterplan for the site's drainage has been prepared for the site and was assessed as suitable under SSD 7348. No works are proposed as part of this application. Future development of the WNSLR will require the submission of detailed drainage plans which indicate how the lot will drain to the nominated detention area, or reticulated drainage system.

Clause 6.6 Transport Network

The proposed subdivision is consistent with the objectives and controls of this clause.

Clause 6.7 Biodiversity

Refer to discussion with regard to approved biodiversity offset areas elsewhere in this report.