

# Notice of decision

## Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

<b>Application type</b>	State significant development
<b>Application number and project name</b>	SSD-9138102 Westlink Industrial Estate - Stage 1
<b>Applicant</b>	ESR Developments (Australia) Pty Ltd
<b>Consent Authority</b>	Minister for Planning and Public Spaces

### Decision

The Director, Industry Assessments, under delegation from the Minister for Planning and Public Spaces has, under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**the Act**) granted consent to the development application subject to the recommended conditions (and additional conditions to those recommended).

A copy of the development consent and conditions is available [here](#).

A copy of the Department of Planning and Environment's assessment report is available [here](#).

### Date of decision

21 April 2023

### Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's assessment report;
- the prescribed matters under the Environmental Planning and Assessment Regulation 2000;
- the objects of the Act;
- all information submitted to the Department during the assessment of the development application;
- the findings and recommendations in the Department's assessment report;
- the views of the community about the development (see **Attachment 1**).

The findings and recommendations set out in the Department's assessment report were accepted and adopted as the reasons for making this decision. The assessment report also includes additional reasons for making the decision which respond to representations made after the recommendation was made public (as also outlined in Attachment 1).

The key reasons for granting consent to the development application are as follows:

- the development would provide a range of benefits for the region and the State as a whole, including a capital investment value of \$128 million and generation of 160 full-time equivalent construction jobs and 212 operational jobs;
- the development is permissible with development consent under State Environmental Planning Policy (Industry and Employment) 2021
- the development is consistent with NSW Government policies including the Greater Sydney Region Plan – A Metropolis of Three Cities, the Western City District Plan, and the Mamre Road Precinct Structure Plan
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the development and the conditions of consent
- weighing all relevant considerations, the development is in the public interest.

## Attachment 1 – Consideration of Community Views

The applicant engaged with the community during the preparation of the environmental impact statement (EIS) as a requirement of the Secretary's environmental assessment requirements. The EIS detailed the findings of the engagement and how it influenced the scope and design of the development.

Once the EIS was submitted to the Department it was placed on exhibition from Tuesday 22 June 2021 to Monday 19 July 2021 (28 days).

During the exhibition period, the Department received seven submissions from the public (four individuals and three special interest groups). Of these submissions, one objected (and requested that the submission remain anonymous and not be made public), one supported and five provided comments. The Department also received advice from Penrith City Council and seven other Government agencies.

The key issues raised by the community (including in submissions) and considered in the Department's assessment report and by the decision maker include noise, visual impacts and impacts from construction works. Other issues are addressed in detail in the Department's assessment report.

The Department also placed its assessment report and recommended conditions on its website for seven days. One member of the public provided additional comments on the Department's assessment report and recommended conditions, which were considered in the final determination as outlined at the last item of the below table.

<i>Issue</i>	<i>Consideration</i>
<p><i>Operational Noise</i></p> <ul style="list-style-type: none"> <li>• Concerns relating to increase in noise levels as a result of industrial activities once operation commences</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• The Department conducted a detailed assessment of the noise impacts from the development and considered potential noise levels from other proposed developments across the Mamre Road Precinct (MRP).</li> <li>• The Department required the Applicant to undertake further assessment of noise impacts, including consideration of existing receivers in the MRP, cumulative noise impacts to residential zoned areas, detailed consideration of noise sources and mitigation measures.</li> <li>• This approach to considering cumulative noise has been adopted to ensure that development across the precinct does not result in unacceptable impacts in residential areas.</li> <li>• The Department's assessment is consistent with the Environment Protection Authority's Noise Policy for Industry which sets a level of 43 decibels (dBA) for the night time period at residential receivers in Mount Vernon and Luddenham.</li> <li>• The Department has set a noise limit for the Stage 1 development of 27 dBA, to manage noise levels from the development and to manage potential future cumulative noise from other developments in the precinct.</li> </ul> <p><i>Conditions</i></p> <ul style="list-style-type: none"> <li>• The Department has set strict noise limits for the development to meet.</li> <li>• The Department has recommended the Applicant prepare a detailed design noise verification report which sets out the specific measures the Applicant will implement to ensure it can achieve the stringent night time noise limit of 27 dBA. This report must be approved by the Planning Secretary prior to construction.</li> <li>• The Department has also recommended conditions requiring the Applicant prepare an Operational Noise Monitoring Plan to verify the operational performance of the development and undertake noise verification within three months of commencing operation to the satisfaction of the Planning Secretary. This verification process also requires additional contingency measures be implemented should exceedances be identified.</li> <li>• For existing residences in the rezoned areas of the MRP, the Applicant will be required to enter into noise agreements with eligible receivers prior to the commencement of operation of the development.</li> </ul>
<p><i>Visual Impacts</i></p> <ul style="list-style-type: none"> <li>• Concerns regarding the changes in views of the site from adjoining residential receivers, including building heights</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• The development would alter views of the site as the land has been rezoned from rural to industrial. The Department considered the visual impacts of the Stage 1 development, noting the residential area of Mount Vernon is elevated above the site providing views across parts of the MRP for some properties.</li> <li>• The development would be visible from parts of Mount Vernon, but given the sloping topography, the roofline would be lower in elevation than the residences, reducing the bulk and scale when viewed from the residential area. The buildings</li> </ul>

	<p>are also located 400 metres from the closest residences to the east in Mount Vernon and would include landscaped elements that would ultimately provide some visual screening once it matures.</p> <ul style="list-style-type: none"> <li>• The development will also be visible from parts of the rezoned industrial land within the MRP, including existing residences on adjacent properties that will likely be subject to redevelopment over time.</li> <li>• The Department and Council previously raised concerns with the development design, in particular presentation of retaining walls to Abbots Road and Aldington Road. The Applicant has provided updated retaining wall and landscape designs that reduce the bulk and height of walls directly adjacent to the street frontage and allow for increased landscape density and size that can help screen the larger wall and building elements, which have also been set back further into the site</li> <li>• The Department considers the visual impact of the Stage 1 development would be moderate, with these impacts minimised over time as landscaping matures.</li> </ul> <p><i>Conditions</i></p> <ul style="list-style-type: none"> <li>• The Department has recommended conditions for establishing and maintaining landscaping and constructing building facades and roofs with non-reflective building materials in neutral colours to minimise the visual impacts.</li> <li>• The Applicant will also be required to ensure that lighting installed does not create a nuisance to surrounding properties and complies with the relevant Australian standard.</li> </ul>
<p><i>Construction Impacts</i></p> <ul style="list-style-type: none"> <li>• Concerns regarding impacts associated with construction and road works on adjoining residential properties</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• Construction impacts would be managed via a Construction Environmental Management Plan (CEMP) for the site and road works. The CEMP is made up of sub-management plans, including a: <ul style="list-style-type: none"> <li>○ Construction Traffic Management Plan (CTMP)</li> <li>○ Construction Noise and Vibration Management Plan (CNVMP)</li> <li>○ Construction Air Quality Management Plan (CAQMP).</li> </ul> </li> <li>• The above management plans are required to be submitted to the Planning Secretary for approval prior to the commencement of earthworks/construction.</li> <li>• The Applicant has committed to join the Mamre Road Precinct Working Group. This Group includes other Applicants in the MRP that have a development approved and has been established to assist with the coordination and management of potential cumulative construction impacts (air, noise, traffic) within the precinct.</li> <li>• Regarding adjoining neighbours directly impacted by construction works, the Applicant has committed to installing privacy fencing for a property to the north of the site and maintain regular dust monitoring and suppression measures.</li> </ul> <p><i>Conditions</i></p> <ul style="list-style-type: none"> <li>• The Department has recommended conditions requiring the Applicant to prepare and implement a CEMP, to manage and monitor impacts during construction. This includes installing dust deposition gauges at neighbouring properties, or otherwise on the site boundary, and entering into an agreement with a neighbouring landowner (which may involve, but is not limited to, at-property treatment) if a complaint is received from a landowner and an exceedance of the air quality criteria has been recorded. The air quality criteria and number and location of the dust monitoring locations will be determined as part of the CAQMP which needs to be prepared to the satisfaction of the Planning Secretary.</li> <li>• A condition is recommended requiring the development be constructed to achieve the construction noise management levels detailed in the NSW Interim Construction Noise Guideline, and detail procedures for achieving these levels as part of the CNVMP.</li> <li>• The Department has recommended standard work hours for construction activities of 7 am to 6 pm Monday-Friday and 8 am to 1 pm on Saturday. These hours are consistent with the NSW Interim Construction Noise Guideline and have also been applied to other developments in the MRP.</li> <li>• The Applicant is also required to join the MRP Working Group and engage an Environmental Representative to oversee construction works and manage cumulative impacts with consideration of other development in the precinct. The Environmental Representative will be required to recommend to the Applicant any improvements that may be made to work practices to avoid or minimise adverse impacts, monitor the implementation of the CEMP, undertake audits or assist in resolution of community complaints as requested by the Planning Secretary and submit quarterly reports to the Planning Secretary.</li> </ul>
<p><i>Earthworks</i></p> <ul style="list-style-type: none"> <li>• Concerns relating to proposed earthworks on</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• The Applicant has proposed a balanced level of cut and fill across the Stage 1 development area by undertaking fill on residual parts of the site that will be</li> </ul>

<p>the site boundary, impacts of cut on adjoining properties and delivery of roads, and use of fill material from within the Mamre Road Precinct.</p>	<p>utilised as part of future development applications, which limits the need for importing or exporting material.</p> <ul style="list-style-type: none"> <li>• Earthworks proposed as part of the development are contained within the development site. Aside from the retaining wall on the southwest of Lot 4, all retaining walls are setback from the property boundary within the site.</li> <li>• The application has demonstrated that roads to be constructed as part of the development, which provide road access to adjoining sites, are set at a level that allows connection from future development. Other development along the existing road network will need to consider the levels in the road upgrade design adopted by Penrith City Council when proposing access to Aldington Road or Abbots Road.</li> </ul> <p><i>Conditions</i></p> <ul style="list-style-type: none"> <li>• The Department has recommended conditions requiring the Applicant to offer to prepare a preconstruction dilapidation report for adjoining properties and, if requested by the property owner, the Applicant must repair, or pay the full costs associated with repairing, any damage to adjoining properties caused by carrying out the development.</li> <li>• Conditions are recommended requiring the Applicant to ensure that only VENM, ENM, or other material approved in writing by EPA is brought onto the site and keep accurate records of the volume and type of fill to be used (if required).</li> </ul>
<p><i>Café</i></p> <ul style="list-style-type: none"> <li>• Concern that the proposed café is not consistent with the Employment Service Hubs identified in the Mamre Road Precinct Structure Plan.</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• The café was removed from the proposed development as part of the amendments to the application.</li> </ul>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> <li>• Concern about engagement activities undertaken by the Applicant when preparing the EIS, and notification of neighbouring properties of amendments to the development.</li> </ul>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> <li>• The application outlined engagement activities undertaken by the Applicant during preparation of the EIS. The Department requested the Applicant clarify whether landowners to the north of the site were included in this engagement. As part of the Response to Submissions Report, the Applicant identified that an error was made in a figure in the EIS Consultation Outcomes Report, and confirmed that the distribution of factsheets on the development undertaken during preparation of the EIS did include properties north of the site on Aldington Road.</li> <li>• The development was amended by the Applicant in October 2022. The Department did not re-exhibit the amended development on the basis that the changes resulted in a reduction to the overall scale of the proposal (being seven buildings reduced to two and reduction in gross floor area by around 50%), and the reduction in predicted impacts to neighbouring properties. The amendment resulted in reduced traffic generation, lower predicted noise emissions, and removal of buildings on the eastern side of the site adjoining residential receivers in Mount Vernon. While levels of earthworks within the site changed under the amended development, the entire site under the original application was subject to cut or fill and in similar locations. It is noted that the areas of the site where future buildings may be proposed, not including the two proposed warehouses under this application, will be subject to assessment under separate development applications. The amended development report and other additional information submitted by the Applicant was made available on the Department's website when it was received, including the amendment report in October 2022.</li> <li>• The Department considers that the issues raised in the submissions made on the original application remain relevant to the amended development, and have been considered and addressed as part of the assessment of the application.</li> <li>• While further development applications within the site may be submitted in future, the consent authority for any such proposal would be required to assess the acceptability of those future stages and any potential impacts, as well as publicly notify separate applications should they be made.</li> <li>• The Department's assessment report and recommended conditions were made available on the Department's website for review. The conditions have addressed community concerns and are considered appropriate for the development as amended.</li> </ul>
<p><i>Additional issues raised in public submissions on the Department's assessment report and recommended conditions</i></p>	<p>A member of the public provided further submissions that raised the following issues:</p> <ul style="list-style-type: none"> <li>• Height of retaining walls on the property boundary</li> <li>• Impacts of retaining walls and earthworks on future development of adjoining properties</li> <li>• Appropriateness of dust, noise and vibration limits and management measures</li> <li>• Requested shortened construction hours</li> <li>• Consultation and differences between the original proposal and the amended development</li> </ul>

- The need for independent oversight regarding compliance with management plans and conditions of consent

#### *Consideration*

- The Department sought confirmation from the Applicant that the proposed earthworks and retaining walls are contained within the development site and will not impede or add additional cost to future development on adjoining land. Further information, supported by advice from civil and geotechnical engineers, was provided that confirmed that existing ground levels are maintained at the property boundary and all retaining wall elements are located within the site. It was also confirmed that the proposed earthworks will not impede future development on surrounding properties or require any additional works or footings because of the retaining wall location. Specifically regarding the largest retaining wall proposed, the setback of the face of this wall along the northern boundary increases from the property boundary as the height of the wall increases, which allows structural elements to be located within the site boundary.

To provide certainty on this point, an additional condition of consent has been imposed requiring that all earthworks and retaining walls be located within the site boundary and not cause any constraint on development on any adjoining properties in accordance with the information provided.

- In relation to dust and air quality during construction, the key criteria and monitoring methodology will be confirmed as part of the CAQMP to be approved by the Planning Secretary prior to the commencement of earthworks. In response to comments received on the recommended conditions, additional provisions have been included requiring consultation with adjoining landowners during preparation of the CAQMP, and requiring details of any issues raised and how the plan responds to those issues to be documented in the CAQMP.
- Similarly, in relation to construction noise and vibration, additional conditions have been included from those recommended to include further requirements for consultation with adjoining residential properties in the preparation of the CNVMP, including evidence of this consultation and how the plan has responded to any issues raised during consultation. The CNVMP is required to detail procedures for meeting the construction noise management levels detailed in the NSW Interim Construction Noise Guideline.
- The recommended conditions include requirements for the Applicant to enter into noise agreements with eligible receivers within the MRP prior to the commencement of operations. Similarly, the Applicant must enter into an agreement with a neighbouring landowner, which may involve at-property treatment, if a complaint is received from that landowner and a non-compliance is confirmed by dust monitoring during construction works.
- As outlined above, the Department has recommended standard work hours for construction activities, which are consistent with the *NSW Interim Construction Noise Guideline* and have also been applied to other developments in the MRP.
- As stated above, the Department did not re-exhibit the amended development on the basis that the changes resulted in a reduction to the overall scale of the proposal (being seven buildings reduced to two and reduction in gross floor area by around 50%), and the reduction in predicted impacts to neighbouring properties. The amendment resulted in reduced traffic generation, lower predicted noise emissions, and removal of buildings on the eastern side of the site adjoining residential receivers in Mount Vernon. While levels of earthworks within the site changed under the amended development, the entire site under the original application was subject to cut or fill and in similar locations. It is noted that the areas of the site where future buildings may be proposed, not including the two warehouses proposed under this application, will be subject to assessment under separate development applications
- The requirement to engage an Environmental Representative (ER) is intended ensure construction activities are overseen by a suitably qualified and experienced person that is independent from the design and construction personnel for the development, as outlined in the *Environmental Representative Protocol* (DPE 2018). Their appointment is to be approved by the Planning Secretary and the Planning Secretary may commission an audit of the ER's exercise of its functions at any time. The Department also has a Compliance Team which will have a role in enforcing any non-compliances with the consent and considering any complaints with regard to the consent and management plans. The Compliance Team also have a broad range of enforcement powers.