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Ms Carolyn McNally
Secretary
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

By online submission via www.planning.nsw.gov.au

Dear Carolyn

Letter of objection to the proposed amendment to SEPP (Western Sydney Employment Area) 2009 and Penrith LEP 2010 – Lot A Burley Road, Horsley Park

We refer to the above proposal. We confirm that this submission to the NSW Department of Planning and Environment (**Department**) in relation to the draft plan to rezone 35 hectares of land at Lot A Burley Road, Horsley Park (**Jacfin land**) is made on behalf of CSR Building Products Limited (**CSR**), the registered proprietor of the adjoining property at 327-335 Burley Road, Horsley Park NSW (**CSR land**).

The proposed draft plan has the potential to significantly impact on the CSR land. This submission sets out a number of fundamental objections to the proposal.

1. The CSR land and development consent

The total area of the CSR land is 72.28 hectares. An operational extractive industry (clay/shale quarry) and brick making factory are located on the land with associated works, including several dams and quarry voids to the south and west of the existing factory buildings within the site. The land has been used by CSR for brick manufacturing purposes since the 1970s.

The site is zoned part IN1 General Industrial and part E2 Environmental Conservation under the provisions of *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (SEPP (WSEA) 2009)*. The site is within precinct 8 (South of Sydney Catchment Authority Warragamba Pipelines) under SEPP (WSEA) 2009. An existing landfill (the 'Camide landfill') is located on the south western portion of the site. The landfill is subject to an EPA licence and ongoing monitoring. A large earth bund sits along a large portion of the southern boundary.

On 19 December 2013, CSR lodged Development Application No. 893.1/2013 with Fairfield City Council (**DA**). The DA sought consent for subdivision in three stages to create 14 industrial lots, an environmental conservation lot and new roads with associated drainage. The proposed lots range from 1.5 hectares to 13 hectares with vehicle access via an internal loop road. The subdivision of the site is proposed in three stages, while permitting the continued operation of the existing brick factory. The DA was recently approved by the Land and Environment Court subject to conditions.

CSR has prepared a site specific Development Control Plan pursuant to Clause 18 and Schedule 4 of SEPP (WSEA) 2009 in relation to the CSR land. This DCP is awaiting finalisation by the Department.

The CSR subdivision is based on the existing land use zoning of IN1 under SEPP (WSEA) 2009, and the approved design takes into account its relationship with the IN1 zone for the Jacfin land, as well as residential land on Greenway Place. The approved subdivision includes the construction of a bund and vegetated retaining wall along a portion of the southern boundary of the CSR land (on the eastern portion) and a vegetated buffer (on the western portion). The works for the development will include a long period of significant earthworks, including replacing and removing the existing bund on the southern boundary, filling existing large quarry voids/dams, remediation of contamination, compacting and levelling the land.

2. The proposed rezoning of the Jacfin land

The proposal seeks to rezone 35 hectares of the Jacfin land from IN1 General Industrial to RU4 Primary Production Small Lots. This area is directly adjacent to the CSR land.

On page three of the draft Planning Report prepared by the Department titled 'Lot A Burley Road Horsley Park Interface Area' dated May 2015 (**Report**), it states that:

The Department considers that the rezoning of this land, along with restriction on minimum lot size will provide an adequate buffer between Jacfin's proposed employment lands and existing rural residential dwellings and satisfactorily mitigate amenity impacts on adjoining properties.

The Report does not consider in any detail the interface of the proposed rural residential lots with the CSR land, and focuses primarily on the interface between the adjoining existing rural residential properties and the remainder of the Jacfin land (and associated concept approval). Further, we note that CSR has not been directly consulted in relation to the preparation of this planning amendment contrary to the impression provided in the Report.

Further, pursuant to Section 117(2) of the *Environmental Planning and Assessment Act 1979* (NSW), the relevant planning authority, when exercising its plan-making functions, that is, when preparing planning proposals to be lodged with the Department, must follow the directions issued by the Minister for Planning.

Direction 1 issued by the Minister concerns Employment and Resources and Direction 1.1 relates to Business and Industrial Zones. The objectives of Direction 1.1 are to:

- a) encourage employment growth in suitable locations;
- b) protect employment land in business and industrial zones; and
- c) support the viability of identified strategic centres.

Further, in accordance with Direction 1.1, a planning proposal must:

- a) give effect to the objectives of this direction;
- b) retain the areas and locations of existing business and industrial zones;
- c) not reduce the total potential floor space area for employment uses and related public services in business zones;
- d) not reduce the total potential floor space area for industrial uses in industrial zones; and
- e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

Despite what the Report states in this regard, we are of the view that the current planning proposal has not adequately addressed the above criteria and is inconsistent with the terms of Direction 1.1.

3. Impact of additional dwellings near/adjacent to the CSR land

a) Future development of the CSR land

The final land levels of the approved development of the CSR land will be at a higher RL than the Jacfin land. The relationship between the southern property boundary of the CSR land and the Jacfin land is that the CSR land and the industrial building pads will be situated some 6 – 8 metres

above the portion of the Jacfin land which is proposed as rural residential. **Enclosed** is a report titled 'Visual Impact Assessment Horsley Park Industrial Development' prepared by Group GSA Pty Ltd on behalf of CSR (dated 6 March 2015) which illustrates this.

The approved development on the CSR land, including the vegetated buffer and bund design, as well as the construction methods required, has taken into consideration the impact of the proposed industrial subdivision development on the existing residences in the neighbouring Greenway Place. The bund and planting are specifically designed to protect existing residences from visual impact of the industrial development on the CSR land. The significant landscaping strip on the southern boundary, coupled with the existing environmental conservation land on the southern and eastern boundaries provide a generous 'green strip' and visual buffer, at CSR's expense. The proposal to place additional residential properties adjacent to and within the visual catchment of the CSR land will effectively place further restraints on industrial development on that land in accordance with clauses 21 and 23 of the SEPP (WSEA) 2009.

Placing additional dwellings adjacent to and in close proximity (and within visible distance of) the CSR land will give rise to limitations on industrial development on the CSR land. In effect, the proposed planning amendment will unnecessarily create a conflict of uses between the new residential uses and the CSR industrial (or the current quarry and brickmaking) use.

We note that an objective of the proposed RU4 zone is *'to minimise conflict between land uses within this zone and land uses within adjoining zones'*. Accordingly, we are of the view that the proposed rezoning is inconsistent with the zone objectives of the RU4 zone.

Specifically, introduction of more dwellings in the proposed location of the rezoning adjacent to the CSR land is highly likely to result in exactly the same concerns that existing residents have voiced regarding the Jacfin proposal. New residents of the rezoned land may seek limitations on the future industrial land uses of the CSR land such as:

- locations and height of buildings;
- hours of operation;
- location of loading docks; and
- location of security lighting/evening operational lighting.

The assumption behind the proposed rezoning is that new residents buying into the land would accept the relationship between their residential land and the adjacent industrial land. Those residents would however have a right to object to any development application lodged for the industrial development on the CSR land, or (if the industrial development is approved before the residential land sells) to complain about construction or operational impacts. The fact is that although the proposal effectively moves the Jacfin industrial development slightly further away from existing residences (lessening the impact of that development on them), it will actually create a similar new conflict of use between the new residential properties and the CSR land, simply pushing the problem closer to the CSR land.

b) Visual Impact

CSR has met its obligations under the SEPP (WSEA) 2009 to prepare a site specific DCP which has had regard to adjoining land uses especially along the southern property boundary. This DCP has referenced the Jacfin land as IN1 employment land and has provided a landscape setback of some 10 metres.

In preparing the site specific DCP, in conjunction with both Fairfield City Council and the Department, the visual impact of the DA to the adjoining rural residential properties was paramount and as a result, the DA has sought to mitigate any visual impacts on the existing residents. This was dealt with at length with expert evidence in the Land & Environment Court proceedings for the DA. The outcome of those proceedings is that a 10m to 14m landscape setback is to be implemented along the western portion of the southern boundary of the CSR land.

In 2013, the Planning Assessment Commission (**PAC**) determined the concept plan for the Jacfin land and recognised that Stages 3B, 4 and 5 of the concept plan proposal posed potential visual amenity issues for adjoining residents. This PAC report examined a visual impact assessment report that recommended landscape bunds/mounds as outlined in Figure 2 (O'Hanlon Design) as an appropriate mechanism to address the visual amenity of the adjoining rural residential properties.

The proposed planning amendment for the Jacfin land does not address the findings of that PAC report and no bund / landscape mound or visual barrier of any form (not even landscape planting) has been proposed in design guidelines for the proposed planning amendment. In fact, no buffer between the land proposed to be rezoned residential and the CSR land is proposed at all.

Accordingly, any rezoned portion of the Jacfin land should have a much greater setback to the CSR land. The suggested minimum lot size of 2 hectares is totally insufficient in this regard, because the (rural) residential zoning still gives rise to an expectation from an owner that the land may be wholly used for those purposes. No land directly adjacent to the CSR industrial land should be rezoned for residential use. We also recommend the following:

- The residential land should be provided with a 15 – 20 metre landscape buffer around the entire subdivision as a visual interface between the rural land and the IN1 land.
- Design guidelines in the form of a DCP should be provided to accompany this planning amendment which highlights the special requirements for a landscape buffer (15-20m) around the perimeter of the proposed rural zone as well as the location for future dwelling platforms.

c) Minimum lot size of 2 hectares

We note that the most recent proposal prepared by Jacfin concerning the Jacfin land dated March 2015 proposes a range of lot sizes ranging from 1 to 2 hectares. This does not support the proposed planning amendment which recommends a minimum lot size of 2 hectares.

As state above, the proposed planning amendment recommends a minimum lot size of 2 hectares. These lot sizes are smaller than the existing adjacent rural residential lots. This effectively intensifies the rural residential use, and also the likelihood of conflict between the existing and approved industrial uses.

d) Noise Impact

Appendix C of the Report is a Revised Noise and Vibration Impact Assessment prepared by Wilkinson Murray titled 'Horsley Park Employment Precinct Revision' dated 2 March 2015. This noise assessment makes findings about acoustic compatibility based on assumed locations of loading docks on the CSR land. On page 9 of the noise assessment, it states that the *"loading docks on the two CSR buildings are on the northern and western sides of the western and eastern buildings, respectively"*. This seems to refer to loading docks on the approved industrial subdivision, where there are as yet no buildings proposed. The noise impact assessment should consider the maximum building footprint permissible, or closest possible loading dock locations on the CSR land as benchmark scenarios. In this regard, and to the extent the report is plainly incorrect, it is inadequate.

4. Conclusion

While the concept of a planning amendment to provide an interface for the Jacfin land is supported in principle by our client, this submission demonstrates that a number of issues still remain to be addressed by the Department with respect to the current proposal.

As it stands, the proposal simply shifts the existing problem (anticipated by the existing residents) further north and west, setting up the same conflict of use between the new residential land and the CSR industrial land.

Accordingly, no part of the Jacfin land adjacent to the CSR land should be rezoned for residential use (of any type), as to do so will create an even greater length of interface between the industrial and residential zones, and a conflict of uses. Any rezoning of a portion of the Jacfin land to residential must provide visual and acoustic treatment (whether landscaped buffer or similar) between that land and the CSR land, to address the issues that are likely to arise at the zone interface.

In circumstances where the proposal will result in such poor planning outcomes, we ask the Department to re-consider the current proposal.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

Jodie Wauchope
Director

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