



Moorebank Intermodal Precinct West – Stage 2 Modification 2

Changes to construction related conditions
State Significant Development Modification Assessment
(SSD 7709 MOD 2)

September 2021

Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Moorebank Intermodal Precinct West – Stage 2 Modification 2

Subtitle: Changes to construction related conditions

© State of New South Wales through Department of Planning, Industry and Environment 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (September 2021) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
AHD	Australian Height Datum
CIV	Capital Investment Value
Council	Liverpool City Council
Department	Department of Planning, Industry and Environment
DJLU	Defence Joint Logistics Unit
EES	Environment, Energy and Science Group, Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EM	Environmental Manager
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
ER	Environmental Representative
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
MPE	Moorebank Precinct East
MPW	Moorebank Precinct West
NPfl	Noise Policy for Industry 2017
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RTS	Response to Submissions Report
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
SSD-5066-Mod-2	Moorebank Precinct West Concept Modification 2
SSD-7709-Mod-1	Moorebank Precinct West Stage 2 Modification 1
TfNSW	Transport for NSW

Contents

1	Introduction	5
1.1	Background	5
1.2	Approval history	7
1.3	Other relevant approvals	8
2	Proposed modification	13
2.1	Maintenance access track requirements	13
2.2	Stockpile slopes	14
2.3	Location of power services within the roadway	14
2.4	Recommendations of Koala Management Plan to be considered in road design requirements	15
2.5	Changes to OOHW Protocol requirements	15
3	Strategic context	17
4	Statutory context	18
4.1	Scope of modifications	18
4.2	Consent authority	18
4.3	Mandatory matters for consideration	18
5	Engagement	19
5.1	Department's engagement	19
5.2	Summary of submissions	19
5.3	Community Issues and Special Interest Groups	20
5.4	Response to submissions	21
6	Assessment	22
6.1	Changes to Out of Hours Work (OOHW) Protocol requirements	22
6.2	Location of power services within the roadway	27
6.3	Maintenance access track requirements	28
6.4	Stockpile slopes	30
6.5	Recommendations of Koala Management Plan to be considered in road design requirements	31
6.6	Other issues	31
7	Evaluation	33
8	Recommendation	34
9	Determination	35
	Appendices	36
	Appendix A – List of referenced documents	36
	Appendix B – Instrument of Modification	36
	Appendix C – Consolidated Consent	36

1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department) assessment of an application to modify the State significant development (**SSD**) consent for Moorebank Intermodal Precinct West (MPW) – Stage 2 (SSD 7709).

The modification application seeks approval to amend the MPW Stage 2 development consent to:

- provide flexibility in the provision of maintenance access tracks as required under condition B2(g)
- allow stockpiles to have slopes at an angle of repose if supported by recommendations from a suitably qualified geotechnical specialist under condition B43
- enable the location of power services within the roadway under condition B87
- enable recommendations and requirements of the Koala Management Plan (KMP), under condition B152, to be considered and applied in road design (under condition B88)
- change Out of Hours Works (OOHW) Protocol requirements under condition B135(g).

The application has been lodged by Aspect Environmental Pty Limited on behalf of Sydney Intermodal Terminal Alliance (SIMTA), as Qube Holdings Limited (the Applicant), under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

1.1 Background

The Moorebank Intermodal Precinct (also known as the Moorebank Intermodal Freight Precinct or Moorebank Logistics Park) is located at Moorebank Avenue, Moorebank. It is proposed to comprise an interstate, intrastate and port shuttle freight and logistics handling facility for the Sydney Metropolitan Area. The Precinct covers an area of approximately 303 hectares and extends from the M5 South Western Motorway and the Defence Joint Logistics Unit (DJLU) site in the north and north-east to the East Hills Rail Line in the south. It is divided into two: MPW and Moorebank Precinct East (MPE) (**Figure 1**).

Two separate concept approvals cover the MPW and MPE sites:

- concept consent for MPW: an import/export (IMEX) port shuttle freight terminal and separate interstate/intrastate freight terminal and associated warehousing and estate works (SSD 5066) — see **Section 1.3**.
- concept plan approval for MPE: an IMEX port shuttle freight terminal, rail link to the Southern Sydney Freight Line (SSFL) and associated warehousing and estate works (MP 10_0193) — see **Section 1.3**.

Works on the MPW site have commenced under three current and active development consents:

- MPW Stage 1 early works, which provides demolition, rehabilitation, remediation of contaminated land, and the establishment of construction facilities and access, including site security (as part of the SSD-5066 consent) — see **Section 1.3**

- MPW Stage 2, which provides for the construction and 24/7 operation of an intermodal facility and associated warehousing (SSD-7709) — see **Section 1.2**.
- MPW Stage 3 provides for subdivision of the MPW site into 9 allotments, importation of clean fill material, the establishment of a temporary construction compound area, and associated ancillary works (SSD-10431) – see **Section 1.3**.

1.1.1 The site and surroundings

The MPW site is located on the western side of Moorebank Avenue and forms the western section of the Moorebank Intermodal Precinct (**Figure 1**).

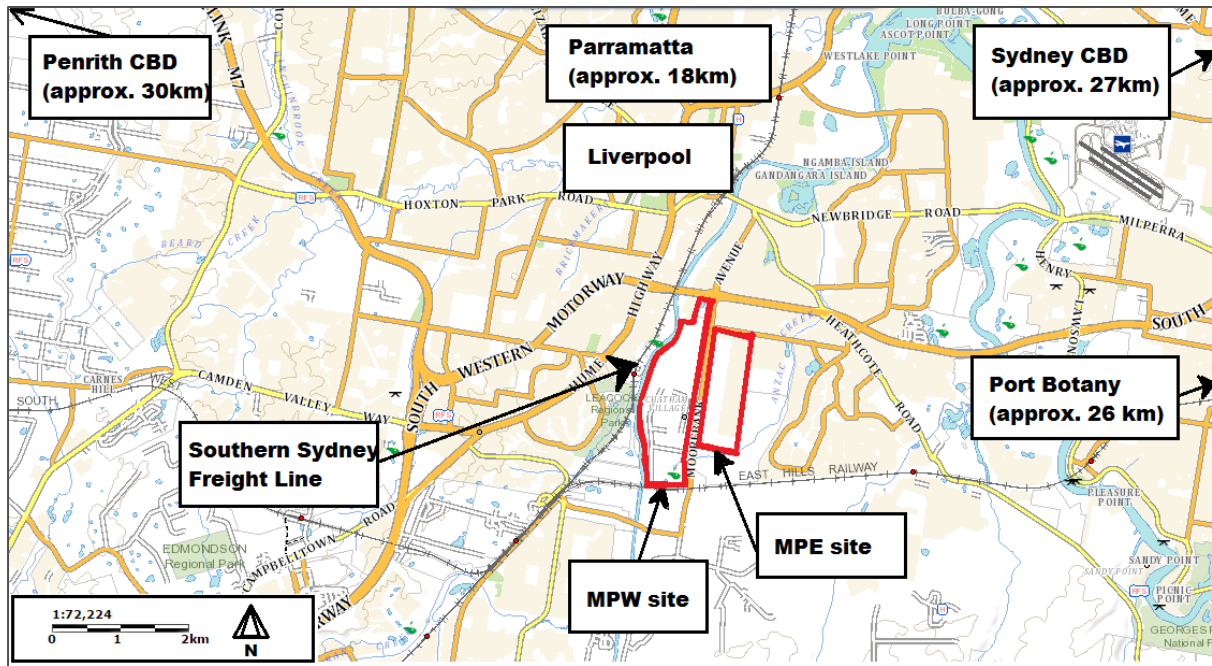


Figure 1 | Site location (outlined red) (Base source: SIX Maps)

The MPW site is irregular in shape, approximately 3 km from north to south and 960 m from east to west at its widest point, and covers approximately 220 ha. It is situated between the Georges River to the west (with the SSFL running north-south to the west of the river); and Moorebank Avenue, the MPE site, densely vegetated Commonwealth Land (known as the 'Boot Land') and the DJLU site to the east. The Holsworthy Military Reserve is located south of the East Hills line.

The area surrounding the MPW site comprises several different land uses. To the north of the site is a 200 ha industrial precinct, which supports a range of uses, including freight and logistics, heavy and light manufacturing, office and business park developments.

The closest residential properties to the site are in Casula to the west (approximately 200 m), Wattle Grove North to the north-east (approximately 650 m), Glenfield to the south-west (approximately 800 m) and Wattle Grove to the east (approximately 1 km). Surrounding land uses are shown in **Figure 2**.

The M5 South Western Motorway is located north of the site, and the SSFL is located approximately 1 km west. The East Hills line is located to the south of the site.

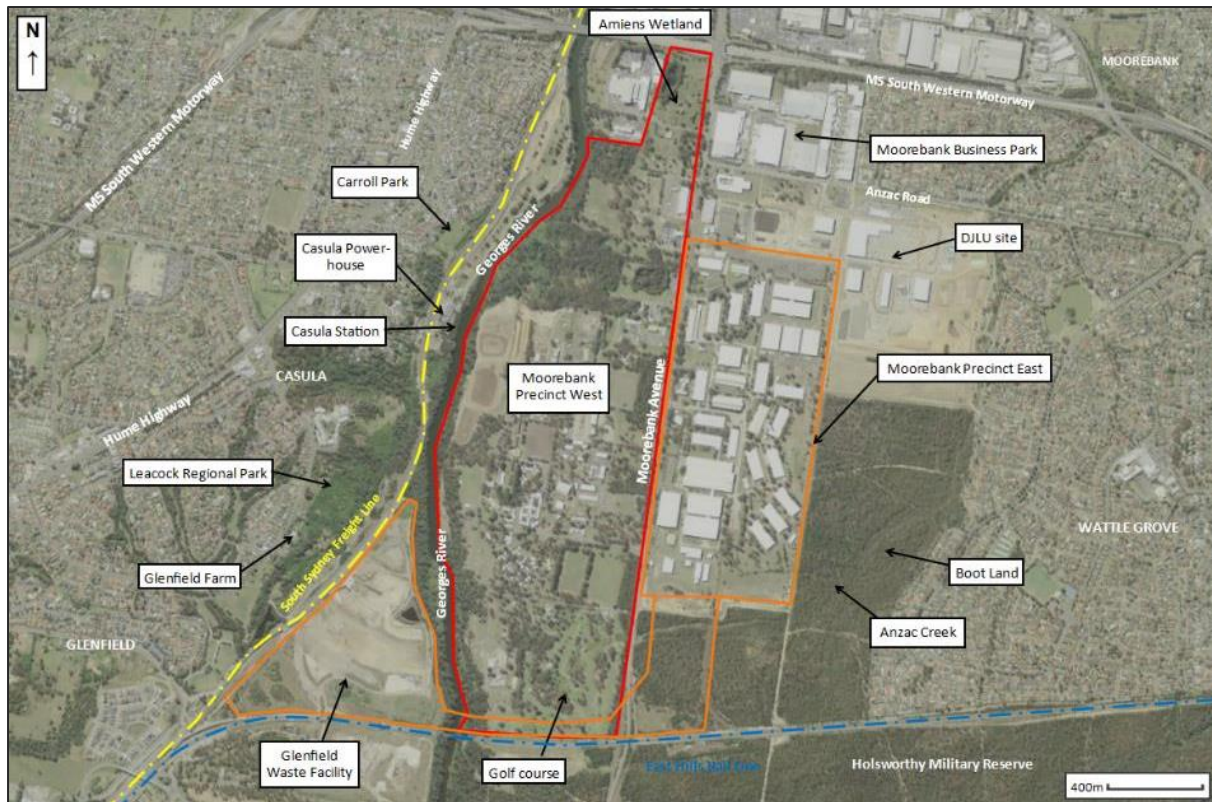


Figure 2 | Surrounding Land Uses (Base source: Nearmap)

1.2 Approval history

On 12 November 2019, development consent was granted by the Independent Planning Commission for the MPW Stage 2 development (SSD 7709) to permit:

- the importation, temporary stockpiling and placement of 1,600,000 m³ of clean fill over the entire site and construction of temporary ancillary facilities, including for material crushing
- construction and 24/7 operation of an IMT facility to support a container freight throughput volume of 500,000 twenty-foot equivalent units (TEUs) per annum
- operation of the rail link to the SSFL (constructed under MPE Stage 1) and container freight movements by truck between the MPE IMT and MPW warehouses
- construction and 24/7 operation of a warehouse estate (215,000 m² GFA) on the northern part of the site
- intersection upgrades on Moorebank Avenue at Anzac Road and Bapaume Road
- construction and operation of on-site detention basins and bioretention/ biofiltration systems, and trunk stormwater drainage on the northern part of the site.

The MPW Stage 2 consent was granted following the Planning Secretary's certification that a voluntary planning agreement would be entered into between the Applicant and Transport for NSW (Roads and Maritimes Services (RMS)) providing satisfactory arrangements for the provision of relevant State public infrastructure. Consequently, the Applicant made an offer to RMS, as a planning authority, to enter into a planning agreement, under which the Applicant proposed to:

- make a cash contribution of \$48 million to regional road upgrades
- upgrade Moorebank Avenue south of the entrance to MPE freight terminal, or
- if an environmental impact assessment is completed and a separate planning approval is granted at a later date, relocate Moorebank Avenue to the east of the MPE site (known as the Moorebank Avenue Realignment).

The planning agreement was executed on 25 March 2019, following exhibition between 1 November 2018 and 29 November 2018. On 23 April 2019, the Acting Deputy Secretary, under delegation of the Planning Secretary, certified in writing to the consent authority that satisfactory arrangements had been made.

The development consent has been previously modified on one occasion to:

- amend the southern operational boundary
- construct and operate the “Janus Regional” and “Janus National” warehouses - two high bay warehouses to be located in the (adjusted) southern part of the MPW Stage 2 warehouse area
- amend the operation noise limits for the MPW Stage 2 development established under condition B131 of SSD-7709
- amend condition B176 to allow for dangerous goods to be stored on-site at relevant portions of the Site pertaining to Warehouses areas 5 & 6.

1.3 Other relevant approvals

MPW Concept consent (SSD 5066)

On 3 June 2016, development consent was granted by the then Planning Assessment Commission for the MPW Development SSD 5066. The development consent, which included conditions to be met for future development applications, is for:

- **Concept Proposal:** involving the use of the site as an intermodal facility, including a rail link to the SSFL, warehouse and distribution facilities, and associated works
- **Early Works (Stage 1):** involving the demolition of buildings, including services termination and diversion; rehabilitation of the excavation / earthmoving training area; remediation of contaminated land; removal of underground storage tanks; heritage impact remediation works; and the establishment of construction facilities and access, including site security.

On 30 October 2019, consent was granted by the Independent Planning Commission to modify the Concept Consent SSD 5066 (SSD 5066 MOD 1) to permit:

- importation of 1,600,000 m³ of fill for bulk earthworks
- amendment to the intermodal terminals (the development of a single terminal on-site and deletion of a southern terminal)
- reclassification of the northern intermodal terminal to handle interstate, intrastate and Port shuttle freight and the movement of freight between MPW warehouses and the MPE intermodal terminal

- amendments to warehousing, freight village, parking, building heights and the number of on-site detention basins
- consolidation of staging
- inclusion of the ability to subdivide the site under a future development application
- expansion of the site boundary to upgrade the Moorebank Avenue/Anzac Road intersection, affecting neighbouring land.

On 24 December 2020, the Department determined an application to modify the MPW Concept consent (SSD 5066 MOD 2) (**Figure 3**). The application modified the MPW Concept consent to permit:

- the adjustment of the southern operational boundary of the MPW Stage 2 warehouse area to partially encroach into the MPW Stage 2 construction area
- amend the building height established across warehouse areas 5 and 6 from approximately 21 m up to and including 45 m.

MPW Stage 3 consent (SSD 10431)

On 11 May 2021, development consent was granted by the Independent Planning Commission for the MPW Stage 3 development (SSD 10431), which included:

- staged subdivision of the MPW site into nine allotments
- importation of approximately 280,000m³ of unconsolidated clean fill for compaction up to final land level and approximately 540,000m³ of structural fill for warehouse pad completion
- establishment and use of a temporary construction work compound are in the southern portion of the MPW site
- associated ancillary works.

The consent also imposed limits on fill importation by way of a condition (A9) imposed by the IPC. This required a modification to the MPW Stage 2 (SSD 7709) and MPE Stage 2 (SSD 7628) consents. The Applicant submitted two Notice of Modification, made under clause 97(1) of the EP&A Regulation 2000, to Condition A9 of SSD 7709 (MPW Stage 2), and Condition B56 (a) of SSD 7628 (MPE Stage 2). This was received by the Department on 19 July 2021, effective immediately.

Administratively, this change will be incorporated into the consolidated consent for MPW Staged 2 in parallel to the modification. Similarly, the development consent for MPE Stage 2 will be updated to reflect this change at an appropriate future time.

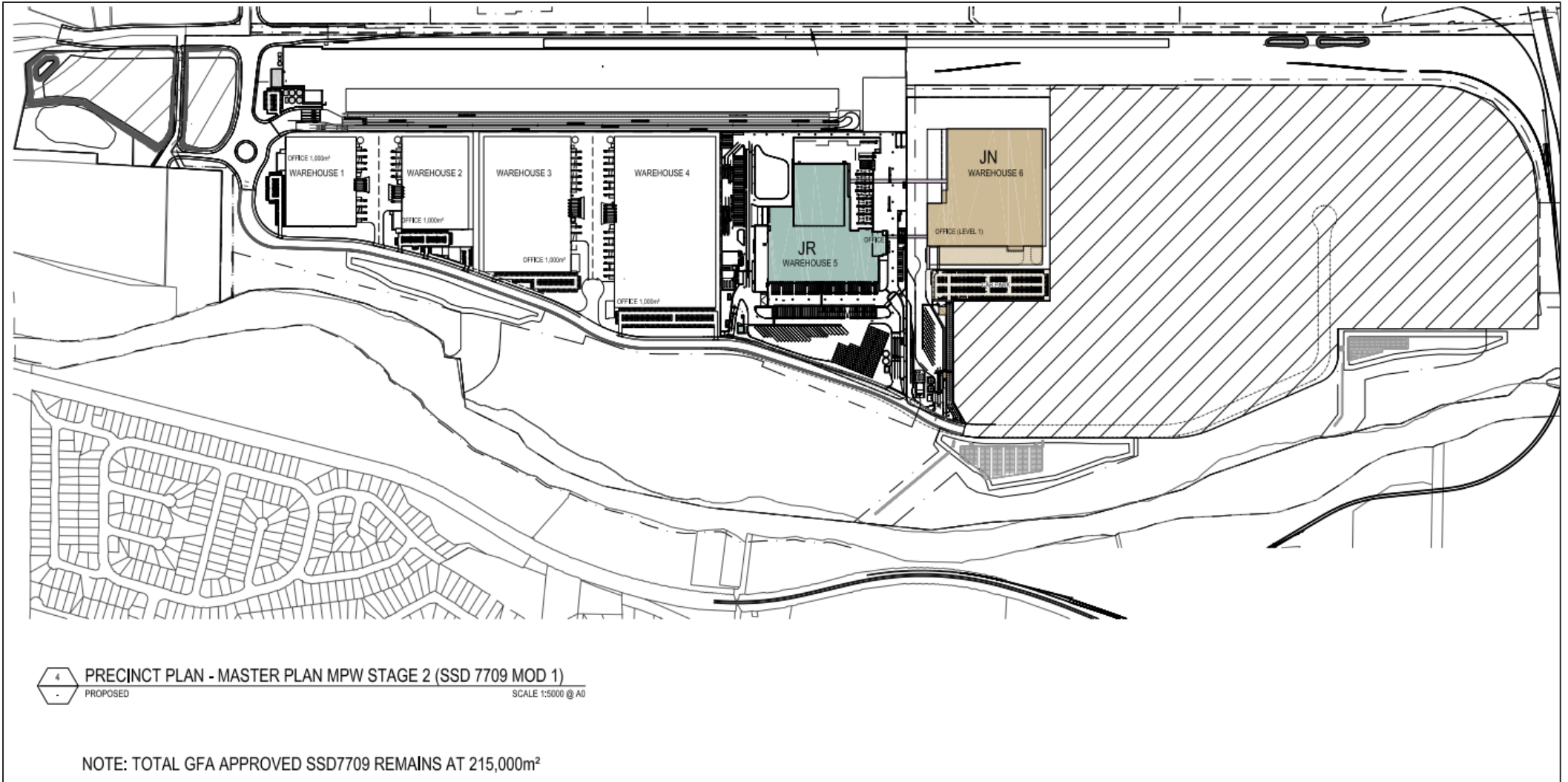


Figure 3 | Amended Precinct Plan approved under SSD 5066 MOD 2 and SSD 7709 MOD 1 (Sources: Applicant's SSD 5066 MOD 2 report)

The Moorebank Intermodal Precinct includes the MPE development. A summary of consents and modifications for the MPE site is provided in **Table 1**.

Table 1 | Summary of MPE consents and modifications

Application (Application No.)	Development	Approval Date
MPE Concept Plan (MP 10_0193)	Use of the MPE site as an intermodal facility, which includes: <ul style="list-style-type: none"> • a rail link to the Southern Sydney Freight Line (SSFL) within an identified corridor • warehouse and distribution facilities • freight village (ancillary site and operational support services) • stormwater, landscaping, services and associated works. 	29 September 2014
MPE Concept Plan Modification 1 (MP 10_0193 MOD 1)	Revisions to the land description, voluntary planning agreement and statement of commitments.	12 December 2016
MPE Concept Plan Modification 2 (MP 10_0193 MOD 2)	Approval for: <ul style="list-style-type: none"> • increasing the MPE site area and amend the site boundary to include works on Moorebank Avenue and drainage works to the south and east of the site • upgrade works to Moorebank Avenue from the northern to the southern extent of the site • provision of a new and interim site access • reconfiguration of internal road layouts and use of all internal roads by both light and heavy vehicles • importation of approximately 600,000m³ of clean fill for bulk earthworks • revised warehousing and freight village locations and layouts • expansion of land-uses within the freight village • revision of the staging of the project. <p>The modification approval included provision for the concept of subdivision, subject to future staged development consent.</p>	31 January 2018
MPE Concept Plan Modification 3 (MP 10_0193 MOD 3)	Adjustment to the southern boundary of the MPE site to facilitate a revised drainage system layout and design for Onsite Stormwater Detention Basin (OSD) 2.	31 January 2020
MPE Stage 1 (SSD 7628)	Construction and operation of the following within the intermodal site: <ul style="list-style-type: none"> • intermodal facility operating 24 hours per day, seven days per week handling container freight with a volume of up to 250,000 TEU throughout per annum, including truck processing and loading area, rail loading and container storage areas, and an administration facility and associated car parking • a rail link running adjacent to the East Hills Rail Line, connecting to the southern end of the SSFL • associated works, including, rail sidings, vegetation clearing, remediation and levelling, and drainage and utility installation. <p>Construction works for the intermodal terminal have been completed on-site.</p>	12 December 2016

MPE Stage 2 (SSD 7628)	<p>Partial consent for the MPE Stage 2 intermodal warehousing development, comprising:</p> <ul style="list-style-type: none"> • earthworks including the importation of 600,000m³ of fill • 300,000m² GFA of warehousing • 8,000m² GFA freight village • establishment of internal roads, connection to the surrounding road network/site access • raising the level and upgrading Moorebank Avenue, upgrade of Moorebank Avenue intersections and the temporary diversion road • ancillary works including stormwater/flooding drainage infrastructure, utilities, vegetation clearing, landscaping, earthworks, remediation and signage. 	31 January 2018
MPE Stage 2 (SSD 7628 Partial Development Consent)	Partial consent for the staged subdivision of the MPE Stage 2 site.	4 April 2019
MPE Stage 2 Modification 1 (SSD 7628 MOD 1)	Change in the timing for road upgrade design approval and completion of road upgrade works.	Under assessment
MPE Stage 2 Modification 2 (SSD 7628 MOD 2)	<p>Approval for:</p> <ul style="list-style-type: none"> • adjustment to the southern boundary of the site to facilitate a revised drainage system layout and design for Onsite Stormwater Detention (OSD) basin number 2 • removal of the requirement for maximum batters of 1V:4H for OSD basin number 9. 	31 January 2020
MPE Stage 2 Modification 3 (SSD 7628 MOD 3)	<p>Approval for:</p> <ul style="list-style-type: none"> • amending the MPE Stage 2 subdivision development consent to include the subdivision of two additional lots (creating four lots) in the subdivision plan at Appendix 1 • changing the frequency for compliance reporting required under condition C21(c)(ii) from quarterly to six-monthly • revising controls relating to building signage as part of the Signage Sub Plan, set out in condition B141(f) of the consent • updating multiple conditions to correct referencing, avoid misinterpretation and facilitate effective compliance. 	18 December 2020
MPE Stage 2 Modification 4 (SSD 7628 MOD 4)	Exempt Area 1 (carparking adjacent to Warehouse 1) from the requirement to provide 2.5 m wide landscaped bays with every 6-8 car spaces incorporating canopy trees for shade.	19 January 2021

2 Proposed modification

On 17 May 2021, the Applicant lodged a modification application seeking approval to amend the MPW Stage 2 development consent.

The modification application seeks to amend the MPW Stage 2 development consent to:

- provide flexibility in the provision of maintenance access tracks as required under condition B2(g)
- allow stockpiles to have slopes at an angle of repose if supported by recommendations from a suitably qualified geotechnical specialist under condition B43
- enable the location of power services within the roadway under condition B87
- enable recommendations and requirements of the Koala Management Plan (KMP), required under condition B152, to be considered and applied in road design requirements under condition B88
- change Out of Hours Works (OOHW) Protocol requirements under condition B135(g).

2.1 Maintenance access track requirements

The proposal seeks to amend the extent of maintenance access track requirements under condition B2(g) to allow for a minimum 3 metre wide maintenance access only where required. The Applicant's proposed amendments are shown by the insertion of the **where required** words:

*(g) a minimum 3 m wide maintenance access has been provided **where required** between the fill slopes and the riparian corridor, the ABB site and at the southern end of the development area, for ongoing maintenance works.*

The Applicant contends that a maintenance access track is not required to be provided continuously along the entirety of the site's western boundary as it may lead to unnecessary track maintenance requirements and additional costs.

Consequently, the Applicant proposes to only construct maintenance access tracks along the site's western boundary where required, under an amended Precinct Master Plan, including:

- along Onsite Detention Basin (OSD) 5, 6 and 8 top batters
- along the boundary adjacent to ABB
- in the vicinity of the OSD outlet structure.

The Department's detailed assessment of the Applicant's proposed amendment to condition B2(g) is provided in **Section 6**.

2.2 Stockpile slopes

The proposal seeks to amend stockpile management requirements under condition B43 to allow stockpiles to have a maximum of 1V:3H slopes or at an angle of repose if supported by recommendations from a suitably qualified geotechnical specialist.

The Applicant's proposed amendments are shown by the insertion of the **bold and underlined** words:

B43. Stockpiles must:

- a) *not exceed 10 m in height;*
- b) *be benched over 4 m in height;*
- c) *have maximum of 1V:3H slopes **or at an angle of repose if supported by recommendations from a suitably qualified geotechnical specialist;** and*
- d) *be stabilised if not worked on for more than 10 days.*

The Applicant advised that certain materials stockpiled on the site have geotechnical characteristics that would allow those materials to be stockpiled at a slope greater than 1(v):3(h) or at an angle of repose. The Department understands the angle of repose to mean the steepest angle relative to the horizontal plane in which a material can be stockpiled without slumping.

The Applicant proposes to only stockpile material at an angle of repose if supported by a geotechnical specialist who can verify the nature of the material, the density, liquid content and friction coefficient.

The Department's detailed assessment of the proposed amendment to condition B43 is provided in **Section 6**.

2.3 Location of power services within the roadway

The proposal seeks to amend condition B87 to allow the provision of power services within the roadway to be considered by the relevant road authority. The Applicant's proposed amendments are shown by the insertion of the **bold and underlined** words and deletion of the **~~bold and struckout~~** words:

*B87: Existing and future utility and service infrastructure must be located outside the roadway being upgraded. The Applicant is to locate any drainage **and power** infrastructure to support the Stage 2 development entirely within the development site and not within the roadway, unless agreed by ~~RMS~~ **the relevant road authority**.*

The Applicant advised it is considering relocating an existing 33KV (high voltage) transmission line - currently running along the southern side of Anzac Road to Moorebank Avenue - to the northern side of the road and under the pavement within the roadway. The works would form part of the Moorebank Avenue and Anzac Road Interchange (MAAI) upgrade.

The Applicant clarified that the proposed amendment to condition B87 does not seek to approve the location or relocation of power or any utility infrastructure within the roadway but instead allows the relevant road authority to approve the relocation of services within the roadway, at a later date. The Department's detailed assessment of the proposed amendment to condition B87 is provided in **Section 6**.

2.4 Recommendations of Koala Management Plan to be considered in road design requirements

The proposal seeks to amend road design requirements under condition B88. The Applicant's proposed amendments are shown by the insertion of the **bold and underlined** words:

*B88. Road design must incorporate **any** structures for fauna movement between the Georges River riparian corridor and the Boot land, either under or below the road, **that have been identified as required by the Management Plan required under Condition B152.***

Note: see also Condition B2(i) and B152(d)

The Applicant asserts that the Koala Management Plan (KMP) – required under condition B152 and approved by the Department on 4 May 2020 – does not include recommendations or requirements for fauna movement structure(s) to be included in road design for MPW Stage 2. The KMP notes that as the MPE and MPW sites would comprise highly developed areas, fauna usage of the sites, once developed, is likely to be low due to a lack of habitat. The KMP recommends that the movement of fauna within the site, including Koalas, should be discouraged to reduce the risk of fauna strike.

Consequently, the Applicant seeks to amend the requirements of condition B88 to enable the recommendations and findings of the KMP to be considered and applied in road design, as relevant.

However, as part of the KMP, the Applicant outlined several mitigation measures to enhance existing connectivity to Koala habitats south of the Moorebank Precinct, including:

- retrofitting existing culverts to improve and encourage Koala movement, where suitable
- installation of Koala bridges under the East Hills Rail Bridge
- habitat restoration
- cyclone and palisade fencing to ensure koalas are unable to access hazardous areas of the site
- use of Koala grids to discourage movement on vehicular access tracks.

The Department's detailed assessment of the proposed amendment to condition B88 is provided in **Section 6**.

2.5 Changes to OOHW Protocol requirements

The proposal seeks to amend Out of Hours Work (OOHW) Protocol requirements under condition B135(g). The Applicant's proposed amendments are shown by the insertion of the **bold and underlined** words and deletion of the ~~**bold and struckout**~~ words:

*g) an Out-of-Hours Work Protocol for the assessment, management and approval of works ~~associated with the Moorebank Avenue/Anzac Road upgrade, the delivery of the rail link connection, and works required to be undertaken during rail corridor possessions,~~ outside of the hours identified in Condition B125 **or outside the circumstances specified under condition B127.** The Out-of-Hours Protocol must:*

- (i) detail an assessment of out-of-hours works against the relevant NMLs and vibration criteria,*

(ii) provide detailed mitigation measures for any residual impacts (that is, additional to general mitigation measures), including extent of at-receiver treatments, and

(iii) include proposed notification arrangements.

The Applicant proposes to extend OOHW Protocol requirements under condition B135(g) to apply to any construction works for MPW Stage 2. Examples of likely out of hours construction works include:

- importation of fill material
- services and utility works
- concrete slab pours
- dewatering works.

The Applicant contends the proposed amendment is consistent with the OOHW Protocol approved for the adjacent MPE Stage 2 site, whereby the OOHW Protocol applies to any proposed construction works outside regular construction hours.

The Department's detailed assessment of the proposed amendment to condition B135(g) is provided in **Section 6**.

3 Strategic context

The Moorebank Intermodal Precinct is identified as an 'important freight and logistics precinct' in *Building Momentum: State Infrastructure Strategy 2018-2038* (INSW 2018). The Strategy indicates that the terminal is one of the 'highest priority investments necessary to achieve a target of carrying 40 per cent of containerised traffic on the rail to and from Port Botany' to alleviate existing congestion on the road network around the site.

The *Future Transport Strategy 2056* (NSW Government 2018) emphasises the need for safe, efficient, and sustainable freight movement. It sets a series of future directions for investigation, including expanding intermodal rail capacity in Western Sydney. The *NSW Freight and Ports Plan* (NSW Government 2018) concludes that intermodal terminals within Greater Sydney are 'critical for increasing the utilisation of the rail freight network, particularly containers to and from Port Botany'.

The Greater Sydney Commission's (GSC) *Greater Sydney Regional Plan – A Metropolis of Three Cities* (2018) notes that freight volumes are forecast to 'almost double in the next 40 years'. There will also be an 'increasing importance placed on 24/7 supply chain operations to maintain Greater Sydney's global competitiveness.' In addition, the Plan notes that 'substantial future industrial land supply', including the Moorebank Intermodal, 'will support large-scale logistics growth'.

The development is identified in the GSC's *Western City District Plan* (2018), which states that:

Investment in potential dedicated freight corridors will allow a more efficient freight and logistics network. Moorebank Intermodal Terminal is currently under construction in western Sydney, and will provide an integrated service including interstate terminals, warehousing, retail and service offerings, and rail connection to the Southern Sydney Freight Line, which also provides dedicated freight rail access all the way to Port Botany. Transport for NSW and the Australian Government are committed to supporting efficient movement of goods close to the Moorebank Intermodal Terminal by facilitating freight rail and road access.

4 Statutory context

4.1 Scope of modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved.

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

4.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 26 April 2021, the Director, Infrastructure Management may determine the application as:

- the relevant council has not made an objection
- a political disclosure statement has not been made
- there are less than 10 public submissions in the nature of objection.

4.3 Mandatory matters for consideration

The following environmental planning instruments (EPIs) apply to the site:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 44 – Koala Habitat Protection
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 64 – Advertising and Signage
- Draft State Environmental Planning Policy (Remediation of Land)
- Draft State Environmental Planning Policy (Environment)
- Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment
- Liverpool Local Environment Plan (LLEP) 2008.

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of SSD 7709. Therefore, the Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

5 Engagement

5.1 Department's engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact. However, the Department considered it appropriate to exhibit the application on its website for 14 days from 28 May 2021 to 10 June 2021.

The application was referred for comment to Liverpool City Council and the following government agencies:

- Environment Protection Authority (EPA)
- Transport for NSW (TfNSW)
- Environment, Energy and Science Group (EESG) of the Department
- Sydney Water
- Endeavour Energy.

5.2 Summary of submissions

During the exhibition period, the Department received a total of ten submissions, comprising one submission from Liverpool City Council, six submissions from Government agencies, one submission from a special interest group - Residents Against Intermodal Development Moorebank - and two public submissions. One submission supported the proposal, three submissions objected to the proposal and six provided comments only. A summary of submissions received from Council and Government agencies is provided in **Table 2**.

Table 2 | Summary of Council and Government agency submissions

Council

Liverpool City Council advised that after reviewing the application, it does not have any comments.

EPA

EPA provided the following comments relating to the proposed modification of condition B135(g):

- the justification provided in the modification report is insufficient to provide a blanket allowance for any works to occur outside standard hours within an Out of Hours Works Protocol
- the justification provided in the modification report is insufficient to protect the amenity of residents from noise impacts from out of hours works on the MPW Stage 2 site
- the EPA does not support the proposed change to condition B135(g).

TfNSW (RMS)

TfNSW (RMS) objected to the proposal and provided the following comments:

- the Applicant has not provided adequate justification for the proposed relocation of the overhead transmission line, including reasons why the transmission line needs to be within the roadway and not behind the back of the kerb
- the Applicant has not provided a plan or map that clearly shows the land or road impacted by the proposed relocation of utilities

- the proposed relocation of the existing overhead 33KV transmission line on Anzac Road is outside the scope and area the subject of the MPW Stage 2 consent
- if the proposed land and road to be impacted is outside the scope and area of the MPW Stage 2 consent, TfNSW considers that the proposed modification application is not considered to be of minimal environmental impact under section 4.55(1A) of the EP&A Act
- the Applicant should provide evidence that Liverpool City Council has given written support to the relocation of the existing overhead 33KV transmission line on Anzac Road
- the plan provided in Appendix B – Updated MPW Masterplan entitled ‘Access Master plan’ dated April 2021 does not appear to form part of this application, has not been assessed and is therefore irrelevant and should be disregarded.

TfNSW

TfNSW advised that their response would be provided as part of a consolidated TfNSW cluster agency submission. Refer to TfNSW (RMS) comments above.

EESG

EESG advised that after reviewing the application it has no objections or comments on the proposed modification.

Sydney Water

Sydney Water advised that after reviewing the application, it has no comments.

Endeavour Energy

Endeavour Energy did not object to the proposal and provided technical guidance and supporting material. Endeavour Energy’s Asset Planning and Performance team provided the following advice:

- the Moorebank Logistics Park was given a method of supply (MOS) to obtain an N-2 security 33 kV network connection by reconfiguring existing nearby 33kV feeders supplying Anzac Village Substation and Holsworthy Defence Base, including the subject 33kV overhead feeder along Anzac Road
- the customer is currently working on designs to execute the MOS
- Asset Planning and Performance have no further comments on the proposal.

5.3 Community Issues and Special Interest Groups

A total of three community submissions were received, including one public submission in support of the proposal, which identified the overall benefit of the intermodal site on the movement of freight and employment. Two public submissions objected to the proposal, one expressing general opposition to the development, highlighting issues related to the site's location, traffic impacts and noise impacts. An objection was also received from Residents Against Intermodal Development (RAID) Moorebank. RAID Moorebank considered the exhibition finishing date inappropriate as it coincided with a pre-trial hearing case for MPW Stage 2 and noted that they remain generally opposed to the development. In addition, the group raised traffic and pollution from the development as key matters of concern and requested a re-think for plans of the area.

Copies of all submissions may be viewed in **Appendix A**.

5.4 Response to submissions

Following the exhibition of the modification application, the Department placed copies of all submissions on its website and requested the Applicant respond to all issues raised.

On 19 July 2021, the Applicant submitted a Response to Submissions (RtS) report (**Appendix A**) to address the issues raised during the exhibition. The RtS was made publicly available on the Department's website. The RtS was forwarded to the EPA and TfNSW for comment and their responses are summarised below.

Table 3 | Summary of public authority submissions on RtS

EPA

The EPA maintained its position outlined in its submission to the modification that sufficient justification has not been provided to approve all out-of-hours work using an Out of Hours Work Protocol.

TfNSW

TfNSW advised that the Applicant has not provided adequate justification to address TfNSW's concerns. Accordingly, comments provided in TfNSW's response dated 10 June 2021 remain applicable. It is recommended that power and drainage infrastructure are to be located to the back of the kerb on Moorebank Avenue. TfNSW advised that Liverpool City Council, as the roads authority for Anzac Road, needs to provide conditions of consent for any power and drainage infrastructure relocation works on Anzac Road.

6 Assessment

The Department has considered the modification application, the matters raised in submissions and the Applicant's RtS in its assessment of the proposal. The key issues identified are discussed in detail below under the main elements of the proposed modification.

Other issues considered during the assessment are discussed in **Section 6.6**.

6.1 Changes to Out of Hours Work (OOHW) Protocol requirements

Background

The proposal seeks to amend the Out of Hours Work (OOHW) Protocol requirements to expand the applicability of an approved protocol to all construction activities on the site.

Under the existing consent construction activities are required to be carried out during standard construction hours of 7 am to 6 pm Monday to Friday, and 8 am to 1 pm Saturdays, except under the following circumstances as permitted by condition B127:

- (a) *works that are inaudible at the nearest sensitive receivers*
- (b) *where a negotiated agreement has been arranged with affected receivers*
- (c) *works agreed to in writing by the Planning Secretary*
- (d) *for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons*
- (e) *where it is required in an emergency to avoid the loss of lives, property or to prevent environmental harm; or*
- (f) *where they are undertaken in accordance with an **Out-of-Hours Work Protocol** under **Condition B135**.*

In turn, Condition B135 requires the preparation of a Construction Noise and Vibration Management Plan (CNVMP) to be submitted to the Planning Secretary for approval. The CNVMP provides for an OOWP for specific construction works on the site. The works currently permitted under the OOWP relate to road upgrades, and rail link works.

The CNVMP and OOWP were approved by the Planning Secretary's delegate on 8 February 2020. A copy of the approved OOWP can be found in **Appendix A**. The approved OOWP provides a framework to:

- assess the need for out of hours construction activities,
- assess the risk and impacts associated with the activities (particularly noise and vibration impacts)
- identify an appropriate approval pathway based on the assessment of impacts,
- incorporate mitigation measures to reduce impacts, and
- undertake monitoring to confirm the level of impact is as assessed

Proposed Modification

The proposal seeks to amend condition B135(g) to allow the OOHW Protocol requirements to be applied to all construction works on the site, rather than restricted to just the road and rail works, and to clarify that the Protocol is not relevant to the out of hours works already permitted under B127:

g) an Out-of-Hours Work Protocol for the assessment, management and approval of works ~~associated with the Moorebank Avenue/Anzac Road upgrade, the delivery of the rail link connection, and works required to be undertaken during rail corridor possessions,~~ outside of the hours identified in Condition B125 or outside the circumstances specified under condition B127. The Out-of-Hours Protocol must:

- (i) detail an assessment of out-of-hours works against the relevant NMLs and vibration criteria,*
- (ii) provide detailed mitigation measures for any residual impacts (that is, additional to general mitigation measures), including extent of at-receiver treatments, and*
- (iii) include proposed notification arrangements.*

The Applicant advised that examples of likely out of hours construction works include:

- importation of fill material
- services and utility works
- concrete slab pours
- dewatering works.

The Applicant considers the proposed amendment is consistent with the OOHW Protocol approved for the adjacent MPE Stage 2 site, which it considers to apply to any proposed construction works outside regular construction hours. The Applicant also advises that the proposed change to OOHW would allow for the efficient progression of construction works and remove an unnecessary degree of approval requirements with DPIE, which could otherwise be satisfied by the Environmental Manager (EM).

In particular, the Applicant advises that securing a supply of imported fill is dependent on the source/provider requirements and may necessitate delivery out of hours. However, the existing requirement of obtaining consent of the Planning Secretary is inefficient and has compromised the number of sources of fill being available to the site. It also emphasises that the proposed change to the condition does not allow for additional OOHW to be undertaken. It merely provides a more efficient mechanism for the assessment, justification, monitoring and documentation of some OOHW.

The Applicant also notes the potential traffic related benefits of OOHW, as distribution of vehicle movements outside of peak periods would positively affect the local and regional road network.

Agency Concerns

The EPA advised it does not support the proposed change to condition B135(g) citing insufficient justification to support OOHW.

The EPA referred to the Department's original recommendation and IPC's consideration of noise impacts on the site. The EPA notes at the time of the initial assessment, the Department did not support extended construction hours for the importation of fill but did acknowledge that such works could be approved under an OOHW Protocol if further justification was provided. However, in this

case, the EPA does not consider sufficient justification has been provided to enable a blanket allowance for any works to occur outside standard hours within an Out of Hours Works Protocol. The EPA also does not consider project delays (including a need to import fill outside of standard construction hours to meet project deadlines) to be sufficient justification for OOHW.

The Department met with the Applicant and the EPA on 16 August to clarify the EPA's concerns with OOHW Protocol arrangements. The EPA advised that if the Applicant wishes to defer consideration of OOHW to a Protocol, then the conditions for the Protocol must be more prescriptive than the existing conditions to ensure the protection of the community and to avoid the Protocol being amended or adjusted at a later date with potential adverse impacts for the community. Accordingly, several draft conditions were provided by the EPA for the Department's consideration.

The Department's Assessment

The Department notes that part of the Applicant's justification for the modification is consistency with the approved OOHW Protocol for the MPE Stage 2. However, the Department does not consider the OOHW protocol arrangements for MPE Stage 2 to provide a justification or precedent for OOHW on the subject site. This is due to construction works associated with MPE Stage 2 being located further from residential areas, resulting in fewer noise impacts than works on the MPW Stage 2 site.

Additionally, the Department considers OOHW permitted under MPE Stage 2 to be significantly restricted by conditions of consent. Therefore, the proposed modification would not result in consistency with MPE Stage 2 arrangements in any case. The Department, consequently, has given no weight to the arrangements on the MPE Stage 2 site.

Instead, the Department considers the only matter for consideration, in this case, is the protection of the amenity of the surrounding receivers. OOHW could be assessed and approved under a protocol that would improve the efficiency of construction on the site if it does not result in material adverse impacts to any surrounding receivers. The Department considers it is appropriate and efficient to enable those works to proceed under the Protocol.

After examining the approved OOHW Protocol, the Department is satisfied that the application of the Protocol to all construction works on the site, rather than just road and rail works, would not result in any significant adverse noise impacts to surrounding residential receivers beyond that already anticipated by the existing conditions of consent. The approved Protocol involves several steps, summarised as follows:

1. Identify the out of hours works and provide justification for the works.
2. Assess alternative options that may allow the works to be carried out within approved hours.
3. If alternative options are not possible, undertake an assessment of the noise and vibration impacts of the works in a Construction Noise and Vibration Impact Statement (CNVIS). This includes consideration of cumulative impacts from other works within the Precinct, and necessary mitigation and management measures. Based on that assessment, classify works as either 'low', 'medium' or 'high' impact works. The criteria for classification are set out in **Table 4** below.
4. Follow the relevant approval pathway depending on the classification (refer to **Table 4** below).
5. Once approved, carry out the works under the relevant approval. Provide community notification to all potentially affected receivers at least 14 days prior to the commencement of the works and undertake noise monitoring during the works to verify noise levels comply with predicted noise levels.

Table 4 | Categorisation of OOHW under the approved OOHW protocol

Classification	Required Actions	Department's Assessment
<p>Low Impact Works</p> <p>These are works that will not generate noise levels above 10dBA below background noise levels: that is, they would be inaudible at any receiver. Vibration levels also would be low and would not affect receivers</p>	<p>The Environmental Representative (ER) will be provided with the OOHW review for information. Then, the works will be able to proceed without further action.</p>	<p>This is consistent with existing condition B127 (a), which permits out of hours works that are inaudible at the nearest sensitive receivers without the need for any further approval. Therefore, this category does not result in any change to outcomes anticipated by the existing approval.</p>
<p>Medium Impact Works</p> <p>These are works where noise levels are above Low Impact levels, but not more than 5dBA above background noise levels and also will comply with the established Noise Management Level (NML) and Vibration Management Level (VML)</p>	<p>The Contractor must demonstrate the requirement for the activities to be conducted out of hours, summarise the CNVIS, detail mitigation measures. The Contractor's Environmental Manager (EM) is to review and if considered acceptable, will approve the works. The ER will be provided with a copy of the assessment and review.</p>	<p>This creates a new category for approval of out of hours works on the site. The potential impacts and mitigation are considered in detail below.</p>
<p>High Impact Works – Negotiated Agreements</p> <p>Works would exceed the NML / and or VML, but a negotiated agreement has been reached with the affected receivers</p>	<p>The Contractor must demonstrate the requirement for the activities to be conducted out of hours, summarise the CNVIS, detail mitigation measures, detail the negotiated agreement. The EM is to review and if considered acceptable, will approve the works. The ER will be provided with a copy of the assessment and review.</p>	<p>This is consistent with existing condition B127 (b), which permits OOHW where a negotiated agreement has been arranged with affected receivers without the need for any further approval. This category, therefore, does not result in any change to outcomes anticipated by the existing approval.</p>
<p>Other High Impact Works</p> <p>Works would exceed the NML / and or VML, and there is no agreement reached with the affected receivers</p>	<p>The Contractor must demonstrate the requirement for the activities to be conducted out of hours, summarise the CNVIS, detail mitigation measures, detail why negotiated agreements were not reached.</p> <p>The request for OOHW is to be referred to the Department for review and approval.</p>	<p>This is consistent with existing condition B127 (c), which permits works agreed to by the Planning Secretary. This category, therefore, does not result in any change to outcomes anticipated by the existing approval. Accordingly, the Department would continue to apply the same processes it applies to requests under B127 (c) to requests under this Protocol.</p>

As demonstrated in **Table 4**, if the approved OOHW Protocol was to be applied to all construction works on the site, it would not change the existing ability to carry out OOHW, except for ‘Medium Impact Works’. Under the Protocol, works assessed as medium impact could be approved by the EM and would not require Planning Secretary approval, as is currently the case. Therefore, the key issue in this case is whether approval of Medium Impact Works under the Protocol would result in material or unacceptable amenity impacts for nearby receivers. The Department has reviewed the Protocol and is satisfied that approval of ‘Medium Impact Works’ under the Protocol would be unlikely to result in unacceptable amenity impacts for nearby receivers as:

- To be categorised as ‘medium impact’, the works must not exceed background + 5dBA at the most affected receivers. This is consistent with NMLs recommended by the Interim Construction Noise Guideline. Further, background + 5dBA is generally not considered to result in material amenity impacts at receivers. The EPA advised the Department that it considers works with noise levels up to ‘background + 5dBA’ could be carried out on the site without the need for further approval.
- To be categorised as ‘medium impact’, the works must also not exceed the established NML and VML. The OOHW Protocol forms part of the CNVMP, which establishes NMLs and VMLs for the construction work. Specifically, Table 19 shown in **Figure 4** establishes the NMLs for OOHW. These are also based on 5dBA above background levels. However, the CNVMP only anticipates and provides for NMLs during shoulder periods (between 6.00 am to 10.00 pm on weekdays and 6.00 am to 9.00 pm on Saturdays). Therefore to comply with the established NML and, in turn, be categorised as ‘medium impact’, the works must only be carried out during these shoulder periods. They cannot occur in the middle of the night, when noise levels above background have the most significant potential to result in sleep disturbance.
- Prior to approval, the Contractor must demonstrate the requirement for the activities to be conducted out of hours. A genuine need for the out of hours works must be established and the protocol does not allow for a blanket approval of all out of hours works that meet NMLs
- Prior to approval, the Contractor must detail mitigation and management measures and must implement those measures during the works
- Two weeks prior to carrying out the medium impact works, the ER and all potentially affected receivers must be notified of the works. This provides the ER and affected parties sufficient time to review the proposed works and take action if there are concerns that the works would not meet the requirements of the Protocol.

Receiver	OOHW 1	OOHW 2	OOHW 3	OOHW 4	OOHW 5	OOHW 6
	6am – 7am (Mon – Fri)	6pm – 10pm (Mon – Fri)	6am – 7am (Saturday)	7am – 8am (Saturday)	1pm – 6pm (Saturday)	6pm – 9pm (Saturday)
Wattle Grove	42	42	42	47	47	42
Wattle Grove North	41	41	41	41	41	41
Casula	39	42	39	46	46	42
Glenfield	42	49	42	49	49	49
S1, S2	55	55	55	55	55	55
I1, I2, I3	75	75	75	75	75	75

Notes: The NMLs listed in this table are applicable for works undertaken in accordance with the OOHW Protocol (Appendix A) and excludes works allowed to occur outside of standard hours by CoC B127 (a) to (e)

Figure 4 | Table 19 of CNVMP: Construction NMLs by OOHW Period (Base source: CNVMP)

The Department notes the assessment of Medium Impact works by the EM under the Protocol may result in improved efficiencies for the Applicant. This includes improved construction timetabling while incorporating sufficient safeguards to limit the extent of works and the extent of impacts to surrounding residential and other receivers. The Department is therefore supportive of applying the approved Protocol to all construction works on the site.

Regarding the matters raised by the EPA, the Department considers the approved Protocol has sufficient built-in measures to require the contractor to appropriately justify the need for the works be carried outside of standard hours relative to the level of risk or impact. The Department notes that high impact works require the Department / Secretary approval would be subject to much higher levels of scrutiny and justification, as is currently the case with all requests to the Secretary for OOHW.

The Department acknowledges the EPA's concern that the proposed modification may enable the Applicant to seek a change to the OOHW Protocol in the future without that change being subject to community input through the statutory assessment process and with potential adverse impacts for the amenity of the community. However, the Department notes that any change to the OOHW Protocol would require the Planning Secretary's approval as this document forms part of the Construction Noise and Vibration Management Plan (CNVMP). Therefore, the OOHW Protocol would be subject to the same level of assessment as any other related CEMP sub plan or report.

The Department considers that the recommended conditions by the EPA are not necessary in this case. The proposed conditions are predominantly aimed at mitigating impacts for high noise activities (i.e. above 5dBA above background) and for activities being carried out during the middle of the night, where these works could be approved under the current OOHW Protocol.

Further, condition B135 (c) relating to any activities not covered by the OOHW Protocol to be approved by the Planning Secretary is now redundant and should be deleted, as the limitation on activities that can approved under the protocol has been removed.

6.2 Location of power services within the roadway

Condition B87 requires infrastructure to be located outside of the roadway being upgraded (the intersection of Moorebank Avenue and Anzac Road and road widening works), unless agreed to by RMS (TfNSW). The Applicant seeks to modify the condition to allow the provision of power services within the roadway to be considered by the relevant roads authority. The Applicant's proposed amendments as initially lodged are as follows:

*B87: Existing and future utility and service infrastructure must be located outside the roadway being upgraded. The Applicant is to locate any drainage **and power** infrastructure to support the Stage 2 development entirely within the development site and not within the roadway, unless agreed by **RMS the relevant road authority**.*

The Applicant advises the modification is sought to enable consideration to relocate an existing high voltage transmission line currently running along the southern side of Anzac Road to Moorebank Avenue to the northern side of the road with the infrastructure to run under the pavement within the roadway. The works would form part of the upgrade works to the Moorebank Avenue and Anzac Road Interchange. Under the existing condition, the infrastructure could not be relocated, even if the relocation was supported by the Roads Authority (in this case, Liverpool City Council).

Council did not raise any concerns with the proposed modification. Endeavour Energy confirmed the relocation of the high voltage transmission line was being considered and did not raise any objection to the proposed modification. However, TfNSW initially raised concerns that the Applicant has not provided adequate justification for relocation of services into the roadway, and that Liverpool City Council, as the roads authority for Anzac Road, would need to provide conditions of consent for any infrastructure relocation works on Anzac Road.

The Applicant clarified the proposed amendment does not specifically seek to approve the location or relocation of any power or utility infrastructure within the roadway. Instead, it aims to enable the relevant roads authority to consider and, where appropriate, approve the relocation of services within the roadway at a later date.

The Department met with the Applicant and TfNSW on 16 August to clarify TfNSW's requirements regarding infrastructure provision in the roadway. The Applicant suggested an alternative wording to the condition to address TfNSW concerns. TfNSW subsequently advised that, Condition B87 could be redrafted in the following terms to permit infrastructure provision within the roadway subject to the relevant Roads Authority approval:

B87:

The Applicant is to locate any drainage infrastructure to support the Stage 2 development entirely within the development site and not within the roadway, unless agreed by TfNSW and / or Liverpool City Council.

The location of other existing and future utility and service infrastructure must be located outside the roadway being upgraded unless provision within the roadway is agreed by TfNSW and / or Liverpool City Council with relevant Roads Act 1993 approval.

Council confirmed it has no concerns with the revised proposed wording of the condition.

The Department notes that infrastructure services are often required to be located within the roadway or to traverse a roadway. The Roads Act 1993 enables the relevant Roads Authority to approve the location of those services within the road.

The Department supports the proposed modified condition as it reflects the ability of the relevant authority to give approval to the location of services and infrastructure within the roadway and removes a restriction that otherwise may prevent service infrastructure provision consistent with Roads Authority approval.

The condition is therefore recommended to be modified consistent with the advice of both Roads Authorities.

6.3 Maintenance access track requirements

Condition B2 requires the provision of updated development layout drawings to be approved by the Planning Secretary to satisfy a range of requirements, many of which aim to ensure the provision and protection of the riparian corridor along the western edge of the site. One requirement is for provision of maintenance access tracks between the fill slopes and the riparian corridor / adjoining sites.

The proposal seeks to amend condition B2(g), as follows:

*(g) a minimum 3 m wide maintenance access has been provided **where required** between the fill slopes and the riparian corridor, the ABB site and at the southern end of the development area, for ongoing maintenance works.*

The modification is sought to carry out maintenance works without the need for a separate access track. Further, the Applicant advises access tracks may lead to unnecessary track maintenance requirements, additional costs, unnecessary additional urban heat island effects and stormwater runoff effects.

The Applicant advises that following approval of this modification, a new development layout drawing would be submitted to the Secretary for approval which only includes maintenance access tracks where necessary. Specifically, this is likely to be limited to along Onsite Detention Basin (OSD) 5, 6 and 8 top batters, along the boundary adjacent to ABB, and in the vicinity of OSD outlet structure. An indicative plan showing the likely location of future access tracks was included with the application (**Figure 5**). Still, the Applicant notes this plan may be subject to additional changes before being submitted to the Secretary for approval.

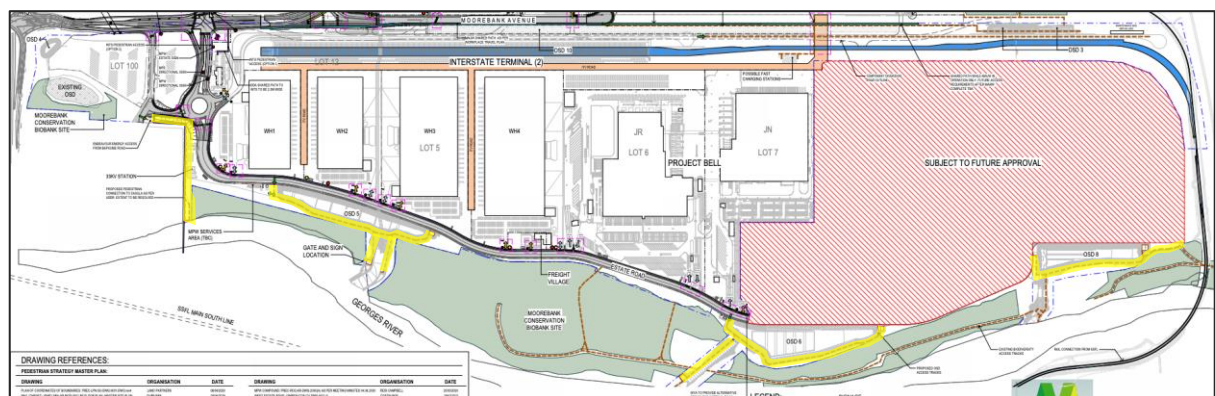


Figure 5 | Indicative location of maintenance tracks (highlighted yellow) (Base source: MOD 2 Application)

The Department notes Condition B2 (g) was imposed based on the Department's original assessment, which identified the need to address edge effects and ensure the design of the fill batters provides stability, mitigates visual impacts, provide for maintenance activities and does not impact on adjacent lands, including biodiversity offset areas and the riparian corridor.

The Department is satisfied that necessary maintenance activities can be carried out as long as there are no impacts to the adjacent riparian corridor. Therefore, there is no need to provide a separate maintenance access track and the Department agrees with the Applicant that unnecessary tracks may lead to additional unnecessary impacts. However, the exact extent of the necessary access tracks will be a matter for determination at the time of submitting the amended development layout drawings.

To ensure the intention of the original condition is maintained, the Department recommends the condition be amended as follows.

*(g) a minimum 3 m wide maintenance access has been provided between the fill slopes and the riparian corridor, the ABB site and at the southern end of the development area, ~~for ongoing maintenance works~~ **where necessary to ensure ongoing maintenance works can be carried out without impacting on the riparian corridor or adjoining sites***

The Department considers the above condition provides the Applicant with flexibility to only provide tracks where necessary and clarifies that the provision of the tracks is to be determined based on the need to protect the riparian corridors and adjoining sites.

The Department also notes no concerns were raised in submissions in relation to the proposed modification.

However, TfNSW noted that the indicative Masterplan submitted with the modification showing the access tracks (shown in Figure 5) does not appear to form part of this application, and therefore it has not been assessed and should be disregarded. The Department agrees, noting the Applicant has advised that this plan is indicative only, and that further changes may be made to the plan prior to it being submitted in accordance with Condition B2. The Department has not assessed the plan as part of this modification and recommends a condition clarifying that the indicative plan does not form part of the modification approval.

6.4 Stockpile slopes

The Applicant seeks to amended condition B43, to allow flexibility to the slopes of stockpiles on the site as follows:

B43. Stockpiles must:

- a) *not exceed 10 m in height;*
- b) *be benched over 4 m in height;*
- c) *have maximum of 1V:3H slopes **or at an angle of repose if supported by recommendations from a suitably qualified geotechnical specialist;** and*
- d) *be stabilised if not worked on for more than 10 days.*

The proposed modification is sought as certain materials stockpiled on the site have geotechnical characteristics that would allow those materials to be stockpiled at a slope greater than 1(v):3(h).

The Department notes that no submissions raising concerns with this modification were received.

The Department agrees that as different materials have different geotechnical properties, it is possible to store some materials in stockpiles with slopes steeper than 1V:3H without any adverse impacts occurring. However, the Department also notes that the angle of repose is the steepest angle, relative to the horizontal plane which a material can be stockpiled without slumping, but at this angle, the material on the face is on the verge of sliding. Therefore, the Department considers applying the angle of repose as the measure for stockpile slope has the potential to result in failure of the stockpile due to margins of error or environmental factors.

To provide the Applicant with a greater level of flexibility but also to ensure safety and environmental risks are addressed, the Department recommends the proposed condition be modified to remove the reference to the angle of repose and require the geotechnical engineer to certify the proposed slope as follows:

- c) *have maximum of 1V:3H slopes **or a steeper slope where certified by a suitably qualified geotechnical specialist.***

The Department considers the above condition provides the requested flexibility and ensures the intent of the original condition is maintained.

6.5 Recommendations of Koala Management Plan to be considered in road design requirements

The proposal seeks to amend road design requirements under condition B88 as follows:

*B88. Road design must incorporate **any** structures for fauna movement between the Georges River riparian corridor and the Boot land, either under or below the road, **that have been identified as required by the Management Plan required under Condition B152.***

Note: see also Condition B2(i) and B152(d)

Fauna connectivity was a matter for consideration in the original assessment of the application, with concerns relating to the only affected threatened fauna species – being the Koala. The original assessment assumed there would be some fauna connectivity through the site. However, a Koala Management Plan (KMP) required under condition B152 and approved by the Department on 4 May 2020 subsequently determined that fauna usage of the site, once developed, is likely to be low due to a lack of habitat, and recommends that use of the site by fauna, including Koalas, should be discouraged to reduce the risk of fauna strike. The approved KMP includes several other mitigation measures to enhance existing connectivity to koala habitats south of the Moorebank Precinct. Still, these do not affect the design of any roadway under condition B88.

The Department considers the approved KMP to be the leading document for management of koalas on the site. Therefore, it is appropriate that the need for any structures for koala movement be determined according to the KMP. The Department is also satisfied there are no other threatened fauna species affected by the development that would require fauna connectivity measures in the road design.

Accordingly, the proposed modification to condition B88 to reflect the requirements of the KMP is supported.

6.6 Other issues

Issue	Findings	Recommendations
Traffic	<p>Two submissions raised concerns with the traffic impacts of the intermodal terminal generally. No specific concerns were raised in relation to traffic impacts associated with the modification.</p> <p>The Department is satisfied that the proposed modification to construction related conditions would not result any additional or material traffic related impacts. Rather, the potential to allow some activities, including deliveries of fill to occur outside of standard construction hours, may result in reduced traffic movements during peak traffic times, resulting in improvements for traffic outcomes during the construction phase.</p>	No additional conditions or modifications are recommended

Intermodal terminal capabilities One public submission raised a concern that the intermodal terminal should be able to accommodate double-stacker trains and questioned if container ships could operate at the terminal. No additional conditions or modifications are recommended

The capabilities of the Intermodal terminal are matters that are beyond the scope of this application which relates only to construction related conditions and will not affect the operation of the terminal.

Timing of Exhibition One public submission raised a concern that the exhibition of the modification was inappropriate as it coincided with a pre-trial hearing for an appeal against the approval. No additional conditions or modifications are recommended

The Department is satisfied that the exhibition was carried out appropriately, noting the Department exhibited the application entirely in accordance with the Department's standard practice, even though there is no statutory requirement for any exhibition of this modification application (refer **Section 5.1**).

7 Evaluation

The Department has reviewed the proposed modification and RtS and assessed the merits of the modified proposal. The Department is satisfied that with the recommended conditions, the proposed changes will be of minimal environmental impact and the project remains substantially the same development as per the original approval.

The Department concludes the following:

- the Department has assessed the application and followed relevant procedures in accordance with the EP&A Act and the Regulations
- the proposed modification does not change the use of the site
- the proposal is in the public interest.

The Department's assessment concludes that the proposed modification is appropriate. This conclusion is based on the fact the proposal is substantially the same as originally approved, the condition changes proposed do not change the use of the site, and the impacts are minor and subject to acceptable measures, including the development of additional management procedures.

Consequently, the Department considers the proposed modification to be approvable with conditions.

8 Recommendation

It is recommended that the Director, Infrastructure Management, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application (SSD 7709 MOD 2) falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under section 7.17(2)(c) of the *Biodiversity Conservation Act 2016* that a biodiversity assessment report is not required to be submitted with this application as the modification will not increase the impact on biodiversity values of the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision
- **modify** the consent SSD 7709
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



Lee McCourt
A/Team Leader
Infrastructure Management

9 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, appearing to read 'Jake Shackleton', written in a cursive style.

Jake Shackleton
Director
Infrastructure Management

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

1. Modification Report

<https://www.planningportal.nsw.gov.au/major-projects/project/40941>

2. Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/40941>

3. Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/40941>

Appendix B – Instrument of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/40941>

Appendix C – Consolidated Consent

<https://www.planningportal.nsw.gov.au/major-projects/project/40941>