

MOOREBANK INTERMODAL TERMINAL FACILITY COMMONWEALTH COMPLIANCE REPORT

EPBC Approval No. 2011/6229

Reporting Period: 23 June 2018 to 22 June 2019

05 SEPTEMBER 2019

A large, solid orange geometric shape, resembling a right-angled triangle or a trapezoid, is positioned in the bottom right corner of the page. It is oriented with its hypotenuse facing upwards and to the right. A thin white diagonal line runs from the bottom-left corner of the shape towards the top-right corner. A thin white horizontal line is also visible, intersecting the shape near its base.

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QUBE HOLDINGS LIMITED
MOOREBANK INTERMODAL
TERMINAL FACILITY
COMMONWEALTH COMPLIANCE
REPORT

EPBC Approval No. 2011/6229

Author	[Redacted]	[Redacted]
Checker	[Redacted]	[Redacted]
Approver	[Redacted]	[Redacted]
Report No	ARC-EN-RPT-COMM-MPE-002	
Date	5/09/2019	
Revision Text	003	

This report has been prepared for Tactical Group in accordance with the terms and conditions of appointment for Moorebank Precinct East Stage 1 and Stage 2 dated 7 October 2016. Arcadis Australia Pacific Pty Limited (ABN 76 104 485 289) cannot accept any responsibility for any use of or reliance on the contents of this report by any third party

Declaration of Accuracy

In making this declaration, I am aware that sections 490 and 491 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents. The offence is punishable on conviction by imprisonment or a fine, or both. I declare that all the information and documentation supporting this compliance report is true and correct in every particular. I am authorised to bind the approval holder to this declaration and that I have no knowledge of that authorisation being revoked at the time of making this declaration.

Signed _____

Full name (please print) Position (please print) _____

Organisation (please print including ABN/ACN if applicable):

Qube Holdings Limited (ACN: 149 723 053)

Date 10/9/2019

Revisions

Revision	Date	Description	Prepared by	Approved by
001	31/07/2019	Draft for Client Review	_____	_____
002	16/08/2019	Update following Client comments	_____	_____
003	5/09/2019	Update following additional Client comments	_____	_____

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1 INTRODUCTION

1.1 Description of Activities

EPBC number	2011/6229
Project name	SIMTA Moorebank Intermodal Terminal Facility
Person to whom the approval is granted	Sydney Intermodal Terminal Alliance comprising: <ul style="list-style-type: none"> • Qube Holdings Limited (ACN: 149 723 053); and • Aurizon Holdings Limited (ACN: 146 335 622)
Approved Action:	To construct and operate the SIMTA Moorebank Intermodal Terminal Facility and associated rail infrastructure, including a rail link to the Southern Sydney Freight Line, approximately 27 km south-west of Sydney's CBD [See EPBC Act referral 2011/6229 and 'Notification of variation of proposal to take action' dated 13 November 2012].
Location of the Project	Sydney, NSW
Person accepting responsibility for the report	Qube Holdings Limited (ACN: 149 723 053)
Reporting Period	23 June 2018 to 22 June 2019
Report date	5 September 2019

1.2 Purpose of this Report

The Moorebank Intermodal Terminal (MIT) Facility was approved on 6 March 2014 under Sections 18, 18A, 26 and 27A of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Compliance tracking and reporting requirements are specified in Condition of Approval (CoA) *Administrative Conditions* C12. The Condition states:

Within three months of every 12 month anniversary of the commencement of the action, the person taking the action must publish a report (the Compliance Report) on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans or agreements as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the Department at the same time as the Compliance Report is published. The person taking the action must continue to annually publish the Compliance Report until such time as agreed in writing by the Minister.

Construction of the MIT commenced on 22 June 2017 and this report summarises construction progress and compliance against the relevant CoA for the reporting period 23 June 2018 to 22 June 2019. Compliance with the CoA is provided in Appendix B.

This report has been prepared by Arcadis with input from SIMTA and the construction contractors that are presented in Table 1.

2 PROJECT DESCRIPTION

2.1 Precinct Overview

SIMTA and Moorebank Intermodal Company (MIC) entered into an agreement to develop the MIT Facility. When completed, the MIT will move 1.5 million shipping containers annually by rail instead of road. It will also feature Australia's largest purpose-built warehouse and distribution precinct serviced by the latest automated technology which will see driverless shuttle carriers collect and transport containers around the precinct to be processed, unpacked and stored on site or distributed in smaller consignments.

The MIT Facility comprises the Moorebank Precinct East (MPE) and Moorebank Precinct West (MPW). The works approved under EPBC 2011/6229 are located within MPE, as shown in Annexure B of the Approval.

Contractors have been appointed to undertake three packages of works under the current approvals across MPE.

The works within MPE are broken down into the following works packages:

- MPE Stage 1, Package 1 – construction of the rail link (RALP)
- MPE Stage 1, Package 2 – construction of the import-export terminal (IMEX)
- MPE Stage 2 – construction of warehousing and associated infrastructure and Moorebank Avenue upgrade works.

Details of the scope of works for each package is provided in Section 2.3.

2.2 Site Location

The MIT Facility is located approximately 27 km south-west of the Sydney Central Business District (CBD) and approximately 26 km west of Port Botany within the Liverpool Local Government Area in Sydney's South West Sub-Region, approximately 2.5 km from the Liverpool City Centre.

The MPE site is generally bounded to the west by Moorebank Avenue, the East Hills Railway Line to the south, and the former Defence National Storage and Distribution Centre to the north and east. The site was previously developed and comprised low-rise buildings, including warehouses and administrative offices with direct frontage to Moorebank Avenue. The site is situated on relatively flat topography.

2.3 MPE Works Packages

The key components for the works within MPE are described in the following sections.

2.3.1 MPE Stage 1 Package 1: RALP

MPE Stage 1 Package 1 includes the following key components:

- A northbound connection and a southbound connection to the South Sydney Freight Line (SSFL)
- Civil and earthworks, including remediation works and benching
- A reinforced earth wall (REW) and soil nail embankments within the Glenfield Waste Services (GWS) landfill site
- A bridge over the Georges River
- A culvert crossing over Anzac Creek
- Installation of new Moorebank Avenue overbridge
- Service relocation and protection

- Track work
- Signalling systems
- Security fencing.

2.3.2 MPE Stage 1 Package 2: IMEX

MPE Stage 1 Package 2 IMEX includes the following key components:

- Truck processing, holding and loading areas - entrance and exit from Moorebank Avenue
- Rail loading and container storage areas – installation of four rail sidings with adjacent container storage area serviced by manual handling equipment initially and overhead gantry cranes progressively
- Administration facility and associated car parking – light vehicle access from Moorebank Avenue.

2.3.3 MPE Stage 2

MPE Stage 2 includes the following key components:

- Warehousing and distribution facilities, including a freight village for ancillary retail, commercial and light industrial land uses
- Internal road network and hardstand across the site
- Ancillary supporting infrastructure within the site
- Moorebank Avenue upgrade
- Intersection upgrades along Moorebank Avenue.

3 SCOPE OF REPORTING

The physical works that have been undertaken during the 23 June 2018 to 22 June 2019 reporting period are outlined below.

3.1.1 MPE Stage 1 Package 1 (RALP)

The following works have been undertaken during the reporting period:

- Rail West Compound (GWS Compound) Establishment (clearing, fencing, screening and 1:4 batters where required)
- Construction of Georges River Bridge piers 3, 4 and 5 completed
- Georges River piling works
- ARTC track possessions
- Installation of culverts at Anzac Creek
- Removal of lead contaminated soils
- Liner and shotcrete works in surcharge area of GWS site
- Commencement of Cell.X/X1 works on GWS site
- Asphalt works on Moorebank Avenue commenced in preparation for traffic switch
- Commencement of Moorebank underpass and tunnelling works
- Commencement of piling works at the eastern side of Georges River.

3.1.2 MPE Stage 1 Package 2 (IMEX)

The following works have been undertaken during the reporting period:

- Ongoing earthworks including commencement of the auto phase of earthworks
- Installation of internal and lead-in services
- Placement of heavily bound pavement
- Completion of administration building
- Handover rail corridor to CPB for the placement of rail line associated with the IMEX
- Independent fill verification.

3.1.3 MPE Stage 2

The following works have been undertaken during the reporting period:

- Bulk earthworks including importation of clean general fill and engineered fill and vegetation clearing
- Remediation, heritage salvage and demolition of existing onsite buildings
- Establishment of a site access point at the existing MPE site northern access
- Establishment of temporary site fencing, a site compound(s) and temporary car parking areas
- Installation of hardstand and internal road furniture
- Installation of on-site detention (OSD) and drainage infrastructure
- Partial removal of disused rail spur at the southern end of the site
- Construction and internal fit-out of Warehouse 1
- Landscaping around Warehouse 1
- Independent fill verification.

3.2 Contractors

Contractors on-site during the reporting period are shown in Table 1, indicating the start and finish date and key activities.

Table 1 – Details of contractors working on MPE site

Contractor	Package	Start date	Finish date	Key activities
Liberty Industrial	IMEX No.1	05/07/17	25/11/17	Demolition of existing warehouses and hardstands to clear the site.
	Stage 2	05/07/17	TBC	Site remediation and vegetation removal
Fulton Hogan	IMEX No.1	15/09/17	TBC	Bulk earthworks (including placement of imported fill and undertaking cut to fill), installation of drainage and utilities and pavement works.
	Stage 2	23/07/18	TBC	
CPB	RALP No. 1	10/07/17	TBC	Rail West Compound (GWS Compound) set-up, bulk earthworks, construction of rail link (including within IMEX No. 1).
CARAS	IMEX No.1/ RALP No.1	08/05/17	TBC	Site safety audits and independent material verification.
Elton Consulting	Whole precinct	30/06/16	TBC	Community consultation
Hansen Yuncken	W1P	7/05/18	TBC	Warehouse 1 construction and fitout.

4 NEWLY IDENTIFIED ENVIRONMENTAL RISKS

4.1 Unexpected Finds

Unexpected asbestos finds have been identified across the site, as well as in anthropogenic fill, and buried services constructed out of asbestos containing material (ACM).

The unexpected contamination finds were managed in accordance with Remediation Action Plan (RAP), that is, works stopped immediately and the area delineated and signposted. An asbestos hygienist was notified to inspect the find and remove the asbestos under restricted access and conditions with correct asbestos removal personal protective equipment. The ACM was then classified and removed and disposed of by licensed and approved contractors. The hygienist provided clearance and validation of contaminated areas and will include the unexpected finds in the final validation reports to be presented to the NSW EPA Accredited Site Auditor in accordance with the Contaminated Land Management Act (1997).

The risk of asbestos finds and appropriate management of asbestos is outlined within the induction and site staff were reminded of the requirements during pre-starts when necessary as general awareness and prior to ground disturbance activities.

5 COMPLIANCE SUMMARY

5.1 Potential Breach Allegations

The Commonwealth Department of the Environment and Energy (DotEE) submitted a Potential Breach Letter to Qube Holdings (Qube), dated 11 February 2019 inviting Qube to respond to several allegations as to possible contraventions of conditions of EPBC 2011/6229. Further correspondence was provided by DotEE dated 22 and 25 February 2019 clarifying the allegations and extending the period for a response. A response to these allegations was submitted to the DotEE on behalf of Qube by its legal representatives on 11 March 2019.

The DotEE was concerned that there may have been a contravention of the following Conditions of Approval:

- **Condition 17** – Flora and Flora Management Plan for MPE Stage 1 – RALP (paragraph (a) of Potential Breach Letter)
- **Condition 17** – Flora and Flora Management Plan for MPE Stage 1 – IMEX (paragraph (b) of Potential Breach Letter)
- **Condition 7** – Construction Environmental Management Plan for MPE Stage 2 (paragraph (c) of Potential Breach Letter)
- **Condition 12** – Construction Environmental Management Plan for MPE Stage 2 (paragraph (d) of Potential Breach Letter).

The Potential Breach Letter and subsequent correspondence from the DotEE together with Qube's response are presented in Appendix A.

This matter is still being considered by DotEE at the time of writing this report. The resolution of this matter will be reported in the subsequent reporting period once a final determination has been received.

5.2 Conclusion

Other than as disclosed at Section 5.1 above, at the completion of this compliance reporting period, it has been deemed that there are no outstanding non-compliance issues identified and works were undertaken in accordance with the Commonwealth Conditions of Approval as demonstrated by the Compliance Tables located in Appendix B.

APPENDIX A

Potential Breach Letter – EPBC 2011/6229



Contact Officer: Thomas Long
Telephone: (02) 6275 9492

Our reference: CAS3342
Email: EPBCmonitoring@environment.gov.au

Qube Holdings Limited

Care of:

[REDACTED]

Tactical Group

Level 15, 124 Walker Street

NORTH SYDNEY NSW 2060

Dear Mr [REDACTED]

Potential Breach of Approval Conditions Attached to EPBC 2011/6229

I am writing to you in relation to the SIMTA Intermodal Terminal Facility, Moorebank, NSW which was approved on 6 March 2014 under the *Environment Protection and Biodiversity Conservation Act 1999*¹ (EPBC Act), with 17 conditions (EPBC 2011/6229).

The Department of the Environment and Energy (the Department) is concerned that up to 2 of the conditions may have been contravened, in that:

- a. Condition 5 requires the preparation and implementation of a Flora and Fauna Management Plan (FFMP), and condition 12 requires all approved management plans to be published on the internet. The FFMP for Moorebank Precinct East (MPE) Stage 1 – RALP No.1 (Revision J) dated 26 April 2017 was approved by the Department on 24 May 2017. However, this is not the plan that is published on the Moorebank Intermodal Company website. The Construction FFMP – RALP (Revision 6) dated 13 October 2018 (which has not been approved by the Minister) is published on the website.
- b. Additionally, the approved FFMP for Moorebank Precinct East Stage 2 (Revision 5) dated 11 May 2017 was approved by the department on 24 May 2017. However, this is not the plan that is published on the website. The Construction FFMP – IMEX (Revision 12) dated 2 October 2018 (which has not been approved by the Minister) is published on the website.
- c. Condition 7 requires the preparation and implementation of a Construction Environment Management Plan (CEMP) which must include a) details on the timing of construction works (accompanied by current and detailed maps). CEMP Moorebank Precinct East Stage 2, includes a map (figure 1-1: Site Location), which details the project footprint. This footprint is different to the footprint of the action that was referred and approved.
- d. As discussed above, condition 12 requires all approved management plans to be published on the internet. The CEMP (Revision 11) dated 27 September 2017 (which has not been approved by the Minister) is published on the website.

Consistent with the EPBC Act and the Department's *Compliance & Enforcement Policy*², we request that you, as the representative of the approval holder, provide: a response to the

¹ The EPBC Act is available on line at: <http://www.environment.gov.au/epbc/about/index.html>.

² The policy is available at <http://www.environment.gov.au/resource/compliance-and-enforcement-policy-environment-protection-and-biodiversity-conservation-act>

allegation described above, including if and how you consider your actions are consistent with the approval conditions.

Section 142 of the EPBC Act requires an approval holder to comply with conditions attached to an approval. The Department may decide to issue Infringement Notices of up to \$12,600 for each contravention of approval conditions. Other enforcement powers available to the Department following a contravention of approval conditions include a directed variation to conditions or a directed audit, under sections 143(1)(a) and 458 of the EPBC Act respectively.

The information supplied to the Department will be used to assist the Office of Compliance in determining if the approval conditions have been met, and what enforcement measures may apply if necessary. Please be aware that the EPBC Act places a duty upon persons to provide accurate information in response to a requirement attached to an approval condition (section 490) or to any officer of the Department carrying out a function under the EPBC Act (section 491).

Please note that if a contravention of conditions has occurred, or offence under the EPBC Act has been committed, any information supplied may be used as evidence. You may choose not to supply information. You may also elect to obtain independent legal advice in relation to any concerns you may have relating to potential breaches of national environmental law.

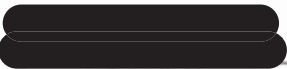
The Department has a responsibility to respond to potential contravention of the EPBC Act in a timely manner. It would be appreciated if you could provide a written response to the matters raised in this letter by email to EPBCmonitoring@environment.gov.au within two weeks of the date of this letter.

Please contact Thomas Long (details above) if you have any questions regarding this letter.

Yours sincerely


Assistant Director (a/g)
Environmental Audit Section
Office of Compliance

11 February 2019



³ This Officer is delegated as an Authorised Officer pursuant to section 396 of the EPBC Act.

Potential Breach Letter – Clarification Email

From: [REDACTED]
Subject: FW: SIMTA Moorebank Intermodal Terminal Facility, Sydney, EPBC 2011/6229 [SEC=UNCLASSIFIED]
Date: Monday, 25 February 2019 4:56:37 PM

FYI below as noted this morning.

Regards,

[REDACTED]

DIRECTOR



LEVEL 15 | 124 WALKER STREET | NORTH SYDNEY | NSW | 2060

M [REDACTED]

E [REDACTED]

W www.tacticalgroup.com.au

CPQVRT



Before printing this document, please consider the environment.

From: EPBC Monitoring <EPBCMonitoring@environment.gov.au>

Sent: Monday, 25 February 2019 4:56 PM

To: [REDACTED]

Cc: [REDACTED]

[REDACTED]

[REDACTED]

Subject: SIMTA Moorebank Intermodal Terminal Facility, Sydney, EPBC 2011/6229
[SEC=UNCLASSIFIED]

Hello [REDACTED]

As discussed during our phone conversation on 25 February 2019, I provide the following clarification.

The following plans have been approved by the Department:

- Construction Environmental Management Plan, Moorebank Precinct East Stage 1, Package 2 (revision 6)
- Construction Environmental Management Plan, Moorebank Precinct East Stage 1, RALP No.1 (revision K)

The following plan which is published on the SIMTA website has not been approved by the Department:

- Construction Environmental Management Plan, Moorebank Precinct East Stage 2 dated 27 September 2018 (revision 5)

Kind regards

Tom
Office of Compliance

Response to Potential Breach Letter – EPBC 2011/6229

Allens

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11 March 2019

Dwaine McMaugh
Director (a/g)
Environmental Audit Section
Office of Compliance
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

ATTN: Thomas Long

By email: EPBCmonitoring@environment.gov.au

Dear Mr McMaugh

Response to Potential Breaches - EPBC 2011/6229

We refer to:

- 1 the letter from the Department of the Environment and Energy (the **Department**) to Qube Holdings Limited (**Qube**) dated 11 February 2019 inviting Qube to respond to a number of allegations as to possible contraventions of conditions of EPBC approval 2011/6229 (**EPBC Approval**) (the **Potential Breach Letter**);
- 2 the letter from the Department to our office dated 22 February 2019 clarifying the allegations contained in the Potential Breach Letter and extending the time for a response until 11 March 2019; and
- 3 the email from your Thomas Long to our Dennis Smith on 25 February 2019, further clarifying the allegations contained in the Potential Breach Letter.

We are instructed to provide the following response to the allegations made by the Department in the Potential Breach Letter (as clarified by subsequent correspondence).

At the outset, before responding in detail to the Potential Breach Letter, we are instructed to emphasise that our client Qube takes very seriously its obligations to comply with all environmental laws applicable to the Moorebank Intermodal Terminal project, including the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. Therefore our client has examined carefully the matters set out in the Potential Breach Letter and has instructed us to provide a detailed response to it. Our client looks forward to continuing to cooperate with the Department in relation to this matter.

Our Ref FXRS:DHSS:120744017
DHSS 503927501v3 120744017 11.3.2019

Your Ref CAS3342

1 **Alleged Breach of Condition 17 – Flora and Fauna Management Plan for Moorebank Precinct East Stage 1 – RALP No 1 (in response to paragraph (a) of the Potential Breach Letter)**

In or around May 2017, the Minister approved revision K of the Flora and Fauna Management Plan for Moorebank Precinct East State 1 – RALP No 1 (the **RALP FFMP**).

The Department alleges that Qube is in breach of condition 17 of EPBC 2011/6229 because it has not published this revision of the plan on its website.

Revision 6 of the RALP Construction Flora and Fauna Management Plan (**CFFMP**) (which supersedes revision K) is published on Qube's website. That published CFFMP is the most recent version of the CFFMP approved for the MPE project pursuant to the applicable NSW planning approvals for the MPE project (as described in more detail below).

Qube has submitted revision 6 of the RALP CFFMP for the Minister's approval. So as not to confuse the public, pending the Minister's consideration and approval of this revision of the FFMP, Qube does not propose to place the superseded revision K of the RALP FFMP on its website.

We are further instructed that:

- (a) the environmental controls that were described in revision K of the RALP FFMP and approved by the Minister continue to apply as part of revision 6 of the RALP CFFMP. Compared to revision K, Revision 6 contains additional specificity about the works that Qube will be carrying out under the plan and the environmental controls and mitigation measures that Qube will implement. Therefore, in all material respects, Qube is still implementing the environmental controls approved by the Minister as part of revision K;
- (b) in all material respects the revisions of the RALP flora and fauna management plans subsequent to revision K do not change the scope or footprint of any works that may impact upon EPBC listed flora (as defined in the EPBC Approval). Nor do they change the mitigation measures that Qube will implement in respect of EPBC listed flora. In this regard we note that Condition 5 of the EPBC Approval says that the purpose of the FFMP is '*the better protection of EPBC listed flora & the environment on Commonwealth land*', Further, the specific requirements in condition 5 for the contents of the FFMP relate to protection of EPBC listed flora;
- (c) Appendix C of revision K of the RALP FFMP specifies the construction footprint and nominates a number of 'Ecology No-Go Areas'. We are instructed that these no go areas have remained virtually unchanged in subsequent revisions of the RALP flora and fauna management plan. In fact, some additional areas have been designated as no go zones; and
- (d) each of the subsequent revisions to the RALP flora and fauna management plan that Qube has adopted since the Minister approved revision K have been assessed and approved in accordance with condition E34(d) of development consent SSD-6766 granted by the NSW Land and Environment Court on 13 March 2018, either by the Department of Planning and Environment or by the Environmental Representative appointed in accordance with condition E4 of SSD 6766. where the amendments were minor.

2 **Alleged Breach of Condition 17 – Flora and Fauna Management Plan for Moorebank Precinct East Stage 1 Package 2 (in response to paragraph (b) of the Potential Breach Letter)**

On 24 May 2017, the Minister approved revision 5, dated 11 May 2017, of the Flora and Fauna Management Plan for Moorebank Precinct East State 1 – Package 2 (the **IMEX FFMP**).

The Department alleges that Qube is in breach of condition 17 of EPBC 2011/6229 because it has not published this revision of the plan on its website.

Revision 12 of the IMEX construction flora and fauna management plan (**CFFMP**) (which supersedes the IMEX FFMP) was published on Qube's website. That published CFFMP is the most recent version of the CFFMP approved for the MPE project pursuant to the applicable NSW planning approvals for the MPE project (as described in more detail below).

Qube has submitted revision 12 of the IMEX CFFMP for the Minister's approval. So as not to confuse the public, pending the Minister's consideration and approval of this revision of the FFMP, Qube does not propose to place the superseded revision 5 of the IMEX FFMP on its website.

We are further instructed that:

- (a) the environmental controls that were described in revision 5 of the IMEX FFMP and approved by the Minister continue to apply as part of revision 12 of the IMEX CFFMP. Compared to revision 5, Revision 12 contains additional specificity about the works that Qube will be carrying out under the plan and the environmental controls and mitigation measures that Qube will implement. Therefore, in all material respects, Qube is still implementing the environmental controls approved by the Minister as part of revision 5;
- (b) in all material respects, the revisions to the IMEX FFMP subsequent to version 5 do not change the scope or footprint of any works that may impact upon EPBC listed flora (as defined in the EPBC Approval). Nor do they change the mitigation measures that Qube will implement in respect of EPBC listed flora. In this regard we note that Condition 5 says that the purpose of the CFFMP is '*the better protection of EPBC listed flora & the environment on Commonwealth land*'. Further, the specific requirements in condition 5 for the contents of the FFMP relate to protection of EPBC listed flora;
- (c) all amendments to the construction footprint between revisions 5 and 12 of the IMEX flora and fauna management plan concern land that is within the MPE terminal site (Lot 1 in DP 1048263) which is not Commonwealth land. There are no changes to the footprint of any construction activities on Commonwealth land; and
- (d) each of the subsequent revisions to the IMEX flora and fauna management plans that Qube has adopted since the Minister approved revision 5 have been assessed and approved in accordance with condition E34(d) of development consent SSD-6766 granted by the NSW Land and Environment Court on 13 March 2018, either by the Department of Planning and Environment or by the Environmental Representative where the amendments were minor.

3 Alleged Breach of Condition 7 – Construction Environment Management Plan for Moorebank Precinct East Stage 2 (in response to paragraph (c) of the Potential Breach Letter)

The Department alleges that revision 5 of the Construction Environment Management Plan for Moorebank Precinct East Stage 2 (the **MPE2 CEMP**) includes a map (figure 1-1) which details a project footprint that is different to the footprint of the action that was referred and approved by the Minister under the EPBC Act.

Qube acknowledges that the footprint shown on figure 1-1 of the MPE2 CEMP includes part of Lot 2 in DP 1197707 (**Lot 2**) which is owned by the Commonwealth. While this land was not included within the footprint of Figure 1 of the 'Referral of Proposed Action for the SIMTA Moorebank Intermodal Terminal Facility', it is land identified in the application and EPBC Approval for road upgrade works.

Specifically, Lot 2 is land identified as the location of upgrade works to Moorebank Avenue and road improvements proposed to be carried out by the proponent concurrently with the proposed action, which are specifically referred to:

- (a) in the proponent's EPBC EIS;
- (b) in the EPBC Recommendation Report for the project at paragraphs 255 and following, in respect of which the Recommendation Report concludes at paragraph 268:

Provided that the proponent adheres to the proposed conditions of approval, any traffic-related impacts to the environment as defined in paragraphs 138 and 139 of this Report will be acceptable under the EPBC Act. These recommendations are reflected in the proposed conditions of [EPBC] approval...(see conditions 7, 8 and 9); and

- (c) in Annexure A to the EPBC Approval which summarises the proponent's mitigation measures, in the part of Annexure A referring to traffic, which in turn is incorporated into condition 7(d) of the EPBC Approval.

Contrary to the assertion in the Potential Breach Letter, we are instructed that Qube has not commenced the works that the MPE2 CEMP identifies will be carried out on Lot 2. Qube will not commence these works until it has obtained any approvals required under the EPBC Act for those works (as to which see section 4 of this letter).

4 Alleged Breach of Condition 12 – Construction Environment Management Plan for Moorebank Precinct East Stage 2 (in response to paragraph (d) of the Potential Breach Letter)

The Department alleges that Qube has published revision 5 of the MPE2 CEMP on its website. The Department further alleges that this revision of the MPE2 CEMP has not been approved by the Minister.

On 19 February 2019, Tactical Group wrote to the Department on behalf of Qube to seek the Minister's approval of revision 6 of the MPE2 CEMP.

Once the Minister approves revision 6 of the MPE2 CEMP, Qube will publish this version on its website. Qube trusts that this will address the Department's concerns.

As explained in section 3 of this letter, Qube has not commenced any works in accordance with the MPE2 CEMP that are on Lot 2. It is also not commenced any works that may impact upon EPBC listed flora.

Qube will not commence any works on Commonwealth Land or works that may impact upon EPBC listed flora until the Minister has approved the most current version of the MPE2 CEMP.

We trust that the response set out in this letter resolves the concerns set out in the Potential Breach Letter and that no further investigative action or other measures are warranted.

Please contact us if you would like to discuss any of these issues.

Yours sincerely

Partner
Allens





Senior Associate
Allens



APPENDIX B

Compliance Tracking – Commonwealth Conditions of Consent

No.	High Level Timing	MPE Stage 1: Package 1: Import/Export			MPE Stage 2: Package 2: Bulk			MPE Stage 3: Package 3: Bulk	Compliance Status	Milestone / Comments	Work Phase		Compliance Status	Milestone / Comments
		MPEY - Construction	MPEY - Operations	MPEY - Transport	MPEY - Construction	MPEY - Operation	Construction				Operation			
	Construction													
4	Pre construction	Y	N		Addressed by management measure F12.1.3 in Table 31 of the CFMP (Rev 13). Also addressed by sub-section 3.4 of the CFMP (Rev 13). Construction activities should be undertaken to minimise impact to native vegetation.	Y	N	Y	Compliant	Addressed by management measure F12.1.3 in Table 31 of the CFMP (Rev 13). Also addressed by sub-section 3.4 of the CFMP (Rev 13). Construction activities should be undertaken to minimise impact to native vegetation.	Y	N	Compliant	Addressed by management measure F12.1.3 in Table 31 of the CFMP (Rev 13). Also addressed by sub-section 3.4 of the CFMP (Rev 13). Construction activities should be undertaken to minimise impact to native vegetation.
5	Pre construction	Y	N		Management measures are listed in Table 31 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31 of the CFMP (Rev 13).	Y	N	Compliant	Construction impacts to native vegetation are outlined in Table 31.2 of the CFMP. Section 3.1.2 of the CFMP (Rev 13) outlines the measures to be undertaken to ensure that the proposed construction works do not result in a net loss of native vegetation.
6	Pre construction	Y	N		Results of the targeted herbicide from species surveys are outlined in Section 3.3 of the CFMP (Rev 13). No targeted herbicide from species surveys is undertaken on the project site to date.	Y	N	Y	Compliant	Results of the targeted herbicide from species surveys are outlined in Section 3.3 of the CFMP (Rev 13). No targeted herbicide from species surveys is undertaken on the project site to date.	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP. Section 3.1.2 of the CFMP (Rev 13) outlines the measures to be undertaken to ensure that the proposed construction works do not result in a net loss of native vegetation.
7	Pre construction	Y	N		Once the site, a precautionary approach has been adopted for clearing pre-clearing surveys will be undertaken by an ecologist prior to any clearing on the site with the following objectives: - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site.	Y	N	Y	Compliant	Once the site, a precautionary approach has been adopted for clearing pre-clearing surveys will be undertaken by an ecologist prior to any clearing on the site with the following objectives: - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site. - To identify and map any native vegetation on the site.	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP. Section 3.1.2 of the CFMP (Rev 13) outlines the measures to be undertaken to ensure that the proposed construction works do not result in a net loss of native vegetation.
8	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
9	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
10	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
11	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
12	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
13	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
14	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
15	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
16	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
17	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
18	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
19	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).
20	Pre construction	Y	N		Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Y	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).	Y	N	Compliant	Management measures are listed in Table 31.2 of the CFMP (Rev 13).

Morehead Intermediate Terminal Project - MPE (EPIC 2011/629)
 Next 167 Variations of Conditions of Approval dated 28 August 2023 under 147A of the EPIC Act 1999

No.	Condition	High Level Timing	MPE Stage 1: Package 1 - Import Export Terminal		Compliance Status	Evidence / Comments	MPE Stage 5: Package 5 - Bulkout		Compliance Status	Evidence / Comments	Work Items		MPE Stage 7
			IMP - Construction	IMP - Operation			IMP - Construction	IMP - Operation			Construction	Operation	
16	If at any time after five years from the date of this approval, the person taking the action has not taken the action within the period of time specified in the conditions of approval, the person must publish and submit to the Secretary of the Ministry of the Environment, Conservation and Forestry a statement of the reasons why the action has not been taken and a plan of action for the action to be taken. Each management plan must be published on the website within one month of being approved.	Continuous	Y	N	Compliant	Notes: Construction commenced on 22/04/2017. Management Plans are available on the SMFA website (https://smfa.com.au). The Commonwealth Department of the Environment and Energy (DoEE) submitted a Potential Breach Letter to Cobe Holdings (Cobe) dated 13 February 2019 requiring Cobe to respond to the breach letter by 28 February 2019. Cobe did not respond to the breach letter. The breach letter included allegations that Cobe was in breach of Condition 17 as it did not publish a revision of the CRMP on its website. Further correspondence was provided by DoEE dated 22 and 25 February 2019. Cobe did not respond to the breach letter. Further correspondence was provided by DoEE dated 11 March 2019. This matter is still being considered by DoEE.	Y	N	Compliant	The Commonwealth Department of the Environment and Energy (DoEE) submitted a Potential Breach Letter to Cobe Holdings (Cobe) dated 13 February 2019 requiring Cobe to respond to the breach letter by 28 February 2019. Cobe did not respond to the breach letter. The breach letter included allegations that Cobe was in breach of Condition 17 as it did not publish a revision of the CRMP on its website. Further correspondence was provided by DoEE dated 22 and 25 February 2019. Cobe did not respond to the breach letter. Further correspondence was provided by DoEE dated 11 March 2019. This matter is still being considered by DoEE.	Y	N	Notes: Construction commenced on 22/04/2017.
17	Unless otherwise agreed to in writing by the Minister, the person taking the action must publish and submit to the Secretary of the Ministry of the Environment, Conservation and Forestry a statement of the reasons why the action has not been taken and a plan of action for the action to be taken. Each management plan must be published on the website within one month of being approved.	All	Y	Y	Compliant	The revision of the plan available on the SMFA website was Revision 12 (which incorporated the requirements of the applicable NSW planning approvals for the MPE project) pursuant to the applicable NSW planning approvals for the MPE project.	Y	Y	Compliant	The revision of the plan available on the SMFA website was Revision 12 (which incorporated the requirements of the applicable NSW planning approvals for the MPE project) pursuant to the applicable NSW planning approvals for the MPE project.	Y	Y	Further correspondence was provided by DoEE dated 22 and 25 February 2019 clarifying the requirements for the SMFA website. Further correspondence was provided by DoEE dated 11 March 2019. This matter is still being considered by DoEE.

