

Department of Planning and Environment

Moorebank Precinct East Stage 2 – Subdivision | Additional information for the Commission

Purpose

- To respond to matters raised by the Commission during the meeting with the Department of Planning and Environment on 31 January 2019
- To respond to the issues raised letter submitted by Liverpool City Council and provided to the Department by the Commission for response on 5 February 2019 (noting also the Applicant's response published on the Commission's website)
- To address to the amended subdivision plan as submitted by the Applicant and provided to the Department by the Commission on 12 February 2019 (noting also the supplementary memorandum provided by the Applicant to the Department and the Commission on 13 February 2019).

Partial development consent

The Commission may determine the subdivision proposal by granting a stand-alone consent to it as part of SSD 7628.

The Department notes that the Commission, in its meeting with the Department on 31 January 2019, and Council, in the Cardno letter dated 30 January 2019, have raised the process for determination of the subdivision proposal.

As detailed in the Department's 21 December 2018 recommendation, the consent authority may grant a partial development consent under section 4.16 (4)-(5) of the *Environmental Planning and Assessment Act 1979*, which provides:

- (4) **Total or partial consent**
A development consent may be granted:
- ...
- (b) *for that development, except for a specified part or aspect of that development...*
- (5) *The consent authority is not required to refuse consent to any specified part or aspect of development for which development consent is not initially granted under subsection (4), but development consent may subsequently be granted for that part or aspect of the development.*

The Department considers that a stand-alone partial consent is clearly facilitated by section 4.16 (4)-(5), and there is no need for a separate modification application of any other development consent (contrary to that suggested by Council). The Department's recommended instrument is drafted to stand alone from the first partial development consent issued by the Commission on 31 January 2018. If this subdivision proposal is approved, the partial consent would govern the subdivision aspect of development application SSD 7628, and the 31 January 2018 would independently govern the remainder of SSD 7628.

Land to which the proposal applies

The MPE Stage 2 project site, which was defined in the development application for MPE Stage 2 and which is set out in Schedule 1 of the recommended partial development consent for the subdivision proposal, includes:

- Lot 1 DP 1048263
- Part Lot 1 DP 1197707
- Part Lot 2 DP 1197707
- Part Lot 4 DP 1197707.

The subdivision proposal seeks subdivision of Lot 1 DP 1048263 only, as described in **Table 1** below.

Table 1 | Subdivision and the MPE Stage 2 site

| Lots | Description | Is subdivision of this lot proposed? | Development on this lot |
|-----------------------|--|--------------------------------------|---|
| Lot 1 DP 1048263 | The warehousing and terminal site | Yes | Warehousing Estate works Terminal operations (under the SSD 6766) |
| Part Lot 1 DP 1197707 | Boat land (vegetated area east and south of Lot 1 DP1048263) | No | Biodiversity offset Use of the rail link on this site |
| Part Lot 2 DP 1197707 | Moorebank Avenue upgrade (west of Lot 1 DP1048263) | No | Works include Moorebank Avenue upgrade |
| Part Lot 4 DP 1197707 | Moorebank Precinct West site (west of Lot 1 DP1048263) | No | Works include Moorebank Avenue upgrade |

Amended subdivision plan

On 12 February 2019, the Applicant submitted an amended subdivision plan to the Commission. The Department understands that the Applicant now seeks approval for this amended subdivision plan, which supersedes the version that was submitted to the Department on 19 December 2018 and assessed as part of the Department's 21 December 2018 recommendation.

The Department notes that the amended subdivision plan ultimately proposes to create six lots. This subdivision may be achieved through a number of stages. The proposed Lot 24 that was described in the Department's 21 December 2018 recommendation would now be further subdivided into two lots (Lot 12 and Lot 13). A description of the newly proposed lots, updating Table 2 in the Department's recommendation to reflect the amended subdivision plan, is provided in **Table 2** below.

Table 2 | Proposed MPE Subdivision Lots — revised to reflect 13 February amended plans (additions in bold, deletions in strikethrough)

| Proposed lot | Lot size | Description | Key land uses |
|--------------------------|---------------------|---|---|
| Deposited Plan | | | |
| Lot 21 DP 1048263 | 12.72 ha | North-eastern corner of the Proposal Site | MPE Stage 2 Warehouse 2 Internal roads, services and drainage |
| Lot 22 DP 1048263 | 18.72 ha | Central portion of the Proposal site, excluding land within the Stage 1 intermodal terminal facility | MPE Stage 2 Warehouses 3, 4 and 5 Internal roads, services and drainage |
| Lot 23 DP 1048263 | 20.90 ha | Southern portion of the Proposal site, excluding land within the Stage 1 intermodal terminal facility | MPE Stage 2 Warehouses 6, 7 and 8 Internal roads, services and drainage |
| Lot 24 DP 1048263 | 11.33 ha | North-western corner of the Proposal site | MPE Stage 2 Warehouse 1 Site access via Moorebank Avenue Internal roads, services and drainage |
| Lot 12 DP 1048263 | 6.565 ha | North-western corner of the Proposal site | MPE Stage 2 Warehouse 1 Internal roads, services and drainage MPE Stage 2 freight village |
| Lot 13 DP 1048263 | 4.764 ha | North-western corner of the Proposal site (surrounding proposed Lot 12) | Site access via Moorebank Avenue Internal roads, services and drainage |
| Lot 25 DP 1048263 | 19.24 ha | South-western portion of the site, comprising the IMT facility (Terminal Lot) | MPE Stage 1 Intermodal rail terminal Site access via Moorebank Avenue Internal roads, services and drainage |

The Department notes that the smallest proposed lot size is now 4.764 ha. The Liverpool Local Environmental Plan 2008 prescribes a minimum lot size of 2,000 m² for the site. The proposal still complies with the minimum lot size requirement, as the smallest proposed lot size is 47,640 m².

The Department has further considered the amended plans in conjunction with its review of Council's comments on the proposal for subdivision (see below).

Council comments

On 5 February 2019, the Commission provided DPE with Council's comments on subdivision ('the 30 January 2019 letter').

As background, the Department notes that Council commented during exhibition on the MPE Stage 2 proposal, and recommended that 'subdivision application shall not be approved until an overall infrastructure plan is in place which determines contribution rates for developments on the site'. The Commission subsequently imposed a development contribution condition for the MPE Stage 2 project as a whole in the 31 January 2018 partial consent.

In its comments to the Commission in 12 January 2018, Council also noted that 'whilst the need for subdivision may be justified, the Intermodal as a whole should still function cohesively as a single entity.' The Department supports this comment, and considers that the 21 December 2018 recommendation in relation to the subdivision proposal would give effect to this arrangement.

In the 30 January 2019 letter, Council concludes that subdivision is 'premature' because:

- *servicing and road access arrangements for the entire site [have not been] finally designed*
- *[t]he submitted subdivision plan does not clearly show the locations of common land, access roads and services including drainage works*
- *[t]he proposed commitment to easements is premature at this time as the final location of the broader estate works have not been finalised and cannot be detailed on the plan of subdivision for which consent is being sought. This concern relates to outstanding resolution of the final drainage details and uncertainty regarding the final location of on-site detention (OSD) basin areas on site, and final drainage works to these OSD areas.*

These matters are addressed below.

Controlling fragmentation of the site, including limitations on sale

The Department has recommended that any subdivision of the site should be subject to controls requiring the site to be operated holistically as an intermodal.

The Department's 21 December 2018 recommendation includes requirements that would reduce the potential for fragmentation of the site, based on the updated information provided by the Applicant.

Broadly, the requirement to comply with the conditions of any consent (including those listed below, and conditions imposed in any consent granted by the Commission) apply to any carrying out of the development, and would run with the land.

It should be noted:

- the Concept plan includes a limit of approval (condition 1.12) requiring that:
warehousing and distribution facilities must only be used for activities associated with freight using the rail intermodal.
- the 31 January 2018 partial consent includes extensive controls on environmental and amenity impacts that will endure throughout operation of the site
- condition C5 of that consent vests 'overall responsibility of the development' in the 'entity responsible for the Precinct environmental management'.

In its 21 December 2018 recommendation for the subdivision proposal, the Department recommends the following conditions:

82. *Before granting any Subdivision Certificate, the Certifying Authority must be satisfied that the Applicant has complied with all conditions of this consent that are required to be complied with and the relevant estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) have been completed. [...]*

- B16. *Prior to issue of any Subdivision Certificate, a Precinct Operational Environmental Management Plan (OEMP) for the MPE Site must be prepared and submitted to the Secretary for approval. The OEMP must:*
- (a) specify that Qube, or another nominated single entity named in the OEMP, retains sole responsibility for delivery and ongoing maintenance of estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) across the entirety of the Site; and*
 - (b) prescribes the management and maintenance measures applicable to the estate works described at (a) above. [...]*
- B18. *The requirement to comply with the OEMP is to be registered on title.*

The requirement to comply with these conditions applies to the entirety of the site (that is, Lot 1 DP1048263, Part Lot 1 DP 1197707, Part Lot 2 DP 1197707, and Part Lot 4 DP 1197707), including that:

Qube, or another nominated single entity named in the OEMP, retains sole responsibility for delivery and ongoing maintenance of estate works ... across the entirety of the Site

In relation to the subdivision proposal, the Department also notes the Applicant's commitments that:

- a single entity (i.e. Qube) would be responsible for managing the site as head tenant or 'Project Delivery Company'
- registration of long term leases would also include:
 - registration of the requirement to comply with the approved OEMP on title
 - Qube as the entity responsible for delivery and ongoing maintenance of most site estate works and controls within the site (except, for instance, upkeep of buildings and compliance with hazardous good storage thresholds)
- whole of site easements would be established maintaining inter-lot access.

The Department notes that the final design of servicing and road access arrangements is subject to the finalisation of the final development layout plans, water sensitive urban design plans, stormwater and drainage systems and architectural plans required to be submitted under 31 January 2018 partial development consent.

The Department acknowledges that the Applicant intends to stage delivery of the OEMP and final plans. It is the Department's understanding that the Applicant will seek to submit:

- a staged OEMP that covers the first warehouse and associated estate works under the SSD 7628, combined with the OEMP for the intermodal terminal approved under MPE Stage 1
- the final layout plans for the first warehouse and associated estate works.

The Department considers that a staged approach is allowed for under the 31 January 2018 partial consent, and can be acceptable, provided that the Applicant complies with all conditions of consent that are required to be complied with before operation. This could entail delivery of part of the overall estate works, as long as sufficient access, drainage and other infrastructure (such as firefighting equipment) are provided to ensure operations can be effectively managed. If a staged approach is approved by the Department in accordance with the conditions of the 31 January 2018 partial consent, the overall road layout and drainage would need to be approved before future parts of the site become operational.

The Department considers that recommended condition B2 would require the Applicant to have final approval for the relevant designs, as it requires 'relevant estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) [to] have been completed' before a Subdivision Certificate is granted.

The Department acknowledges Council's concern that the Applicant's 'proposed commitment to easements is premature', but it is considered that it is appropriate that easements are allowed to be registered following completion of the design of the estate works. Recommended conditions B5 and B6 require the relevant drainage and access easements to reflect the final approved layouts, and condition B4 requires those easements to be displayed on the subdivision plan.

Conclusion

Noting the information provided above, the Department considers that the amended subdivision plan remains approvable.

Should the Commission require further information about this matter, please contact Dominic Crinnion at the Department on (02) 9274 6495.



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28/02/2019



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3/3/19

