



New South Wales Government
Independent Planning Commission

Moorebank Intermodal Precinct West – Stage 3 SSD-10431

Statement of Reasons for Decision

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Professor Richard Mackay AM

11 May 2021

Moorebank Intermodal Precinct West – Stage 3 SSD-10431 Final Report ©
State of New South Wales through the Independent Planning Commission 2021

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EXECUTIVE SUMMARY

This Statement of Reasons has been prepared by the Independent Planning Commission (**Commission**) in its determination of the application for Moorebank Intermodal Precinct West – Stage 3 (**Application**) located within the Liverpool City Council (**Council**) Local Government Area (**LGA**).

The Commission is the consent authority in respect of the Application under section 4.5(a) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and clause 8A of the State Environmental Planning Policy (State and Regional Development) 2011 (**SRD SEPP**).

The proposal includes staged subdivision of the Moorebank Precinct West (**MPW**) site, importation of additional fill, temporary construction compounds and ancillary works (**Project**). The proposal would provide a range of public benefits, including a Capital Investment Value (**CIV**) of \$38,061,404 and would generate 60 construction jobs.

The suitability of the MPW site for use as an intermodal facility, including rail terminal, rail link to the Southern Sydney Freight Line and a warehouse estate with associated road intersection upgrades, site clearance, remediation and importation of fill has already been considered through assessment of MPW Concept Plan and Stage 1 Early Works (SSD 5066) (**MPW Concept plan**) consent and MPW Stage 2 (SSD 7709) consent.

In making its determination the Commission relied on a range of material including the whole-of-government assessment conducted by the Department of Planning, Industry and Environment (**Department**), provided by the MPW Stage 3 State Significant Assessment Report (SSD-10431). The Commission is satisfied that this assessment was undertaken in line with relevant legislation and guidelines, was informed by appropriate expertise and addressed mandatory relevant considerations under s4.15 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

The Commission agrees with the Department's finding that works proposed under the MPW Stage 3 Project generally fall under the scope of bulk earthworks, drainage and utilities as described and approved under the MPW Stage 2 consent.

The Commission has identified and assessed issues and potential impacts, including: consistency with the MPW Concept Plan approval; the proposed subdivision and holistic operation and management of the final development; the importation of additional fill material; construction traffic and access; construction noise, other potential amenity impacts; construction soil and water management; contamination risks; air quality; visual effects; and heritage.

The Commission has found that when weighed against EP&A Act and ecologically sustainable development (ESD) principles, the relevant policy framework, and public benefits, the impacts associated with the Project are acceptable and the Project is in the public interest. The Commission agrees with the Department's finding that variation from the minimum subdivision lot size development is acceptable, subject to the proposed management arrangements and conditions that require holistic management of the site.

For the reasons set out in this Statement of Reasons, the Commission has granted development consent to the Application, subject to conditions. In reaching its decision, the Commission carefully considered the Application, the Department's Assessment report dated 15 March 2021, other Material defined in this Statement of Reasons, including submissions from relevant government agencies, Council and interested individuals and organisations made in writing and at the Public Meeting, in accordance with the EP&A Act.

The Commission has imposed the Department's recommended conditions with some amendments and additional conditions of its own. The amendments made to the proposed conditions strengthen site monitoring and auditing requirements; increase measures for engagement with the Community Consultative Committee (**CCC**); reduce construction traffic

limits; reinforce the already-approved Long Term Environmental Management Plan (**LTEMP**) measures (in particular relating to Per- and Polyfluoroalkyl Substances contamination risks) and confirm operational management measures.

The conditions require the Project to comply with the relevant criteria and standards, reflect the relevant conditions and limitations of the MPW Concept Plan consent and MPW Stage 2 consent and seek to ensure that impacts are appropriately controlled and adequately mitigated.

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DEFINED TERMS

ABBREVIATION	DEFINITION
AHD	Australian Height Datum
Applicant	Aspect Environmental Pty Ltd on behalf of Sydney Intermodal Terminal Alliance (SIMTA), as Qube Holdings Limited
Application	Moorebank Intermodal Precinct West – Stage 3 (SSD-10431)
Commission	NSW Independent Planning Commission
Concept approval	Moorebank Precinct West Concept Plan and Stage 1 Early Works – SSD 5066, as modified
Council	Liverpool City Council
CNVMS	Construction Noise and Vibration Management Sub-Plan
CSWMS	Construction Soil and Waste Management Sub-Plan
CTAMP	Construction Traffic and Access Management Plan
DCP	Development Control Plan
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report dated 15 March 2021
EIS	Environmental Impact Statement prepared by Aspect Environmental, dated 24 April 2020
ELPA	East Liverpool Progress Association
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
GREA	Georges River Environmental Alliance
GSC	Greater Sydney Commission
ICNG	Interim Construction Noise Guideline
IMEX	Import/export
LGA	Local Government Area
LLEP 2008	<i>Liverpool Local Environment Plan 2008</i>
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in Section 4.4 of this SoR
MPE Stage 1	Moorebank Precinct East Stage 1 – SSD 6766
MPE Stage 2	Moorebank Precinct East Stage 2 – SSD 7628
MPW Concept Plan	Moorebank Precinct West Concept Plan and Stage 1 Early Works – SSD 5066
MPW Concept Plan MOD 1	Moorebank Precinct West Concept Plan and Stage 1 Early Works Modification 1 – SSD 5066 MOD 1
MPW Concept Plan MOD 2	Moorebank Precinct West Concept Plan and Stage 1 Early Works Modification 2 – SSD 5066 MOD 2
MPW Stage 2	Moorebank Precinct West Stage 2 – SSD 7709
NML	Noise Management Level
OEMP	Operational Environmental Management Plan
OOHW	Out of Hours Work Protocol
Project	Moorebank Intermodal Precinct West – Stage 3, to include staged subdivision of the MPW site, importation of additional fill, temporary construction compounds and ancillary works
RAID	Residents Against Intermodal Development Moorebank
Relic	Has the same meaning as the definition of the term in Part 1 of the <i>Heritage Act 1977</i>

RtS	Response to Submissions
SEPP	State Environmental Planning Policy
Site	The Stage 3 area of Moorebank Intermodal Precinct located at Moorebank Avenue, Moorebank
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSFL	Southern Sydney Freight Line
TfNSW	Transport for NSW
VENM	Virgin Excavated Natural Material
WSUD	Water Sensitive Urban Design

1 INTRODUCTION

1. On 15 March 2021, the NSW Department of Planning, Industry and Environment (**Department**) referred a State significant development application (SSD 10431) (**Application**) from Aspect Environmental Pty Ltd on behalf of Sydney Intermodal Terminal Alliance (SIMTA), as Qube Holdings Limited (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application seeks approval for the Moorebank Intermodal Precinct West – Stage 3 (**Project**) located in the Liverpool Local Government Area (**LGA**).
2. The Commission is the consent authority in respect of the Application under section 4.5(a) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and clause 8A of the State Environmental Planning Policy (State and Regional Development) 2011 (**SRD SEPP**). This is because the development is declared to be SSD under the SRD SEPP and Liverpool City Council (**Council**) has objected to the proposed development.
3. Professor Mary O’Kane AC, Chair of the Commission, nominated Commissioners Dianne Leeson (Chair) and Professor Richard Mackay AM to constitute the Commission Panel determining the Application.

2 THE APPLICATION

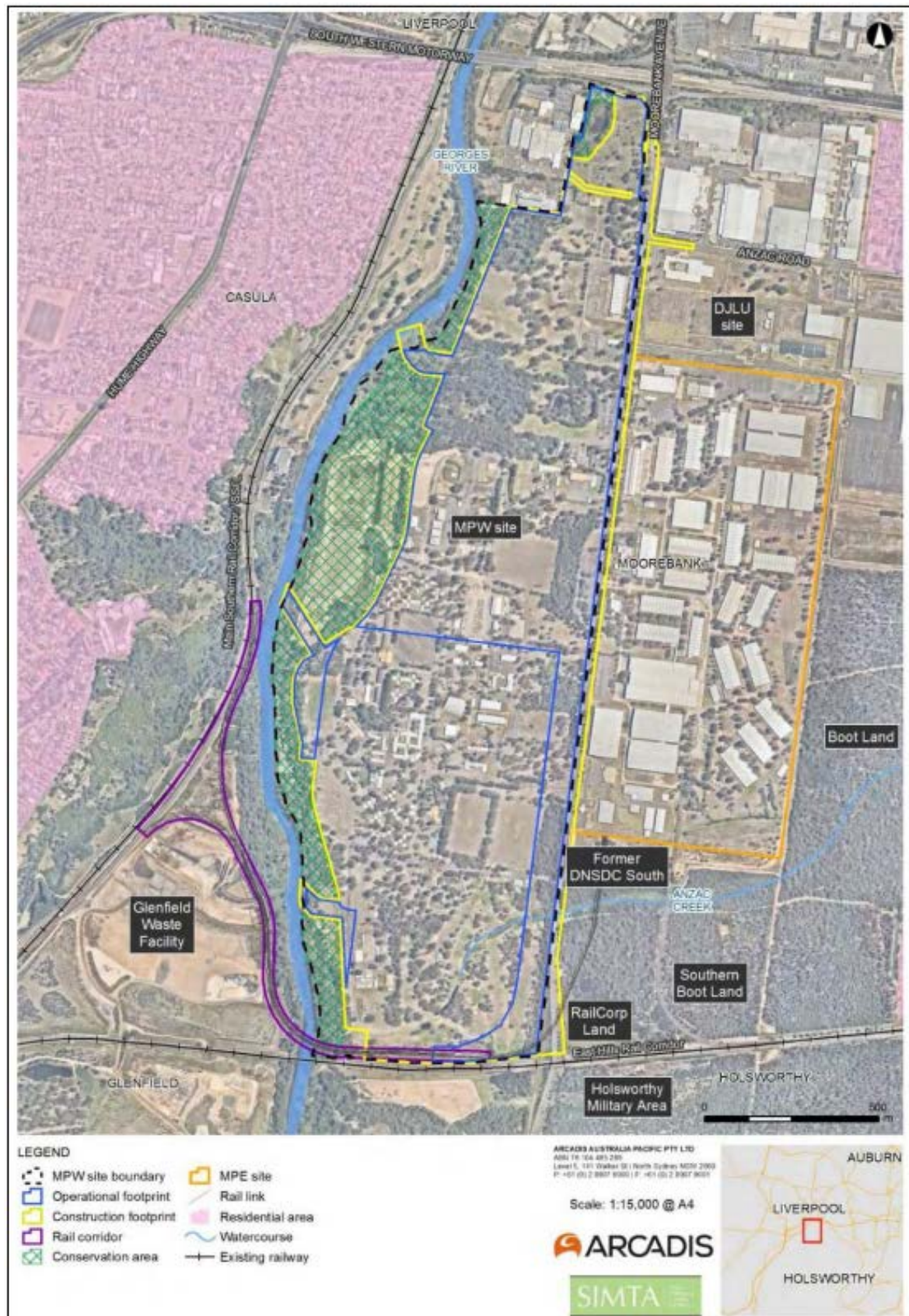
2.1 Site and Locality

4. Paragraph 1.2.1 of the Department’s Assessment Report (**Department’s AR**), dated 15 March 2021, describes the Moorebank Intermodal Precinct:

The Moorebank Intermodal Precinct (also referred to as the Moorebank Intermodal Freight Precinct or Moorebank Logistics Park) is located at Moorebank Avenue, Moorebank, and 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 303 hectares (ha) 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 sites: MPW and Moorebank Precinct East (MPE)

5. The Moorebank Precinct West (**MPW**) site is 2.5 kilometres from Liverpool city centre and located on the western side of Moorebank Avenue. It forms the western section of the Moorebank Intermodal Precinct. The location of MPW and Moorebank Precinct East (**MPE**) is illustrated in **Figure 1** below, taken from the Moorebank Precinct West – Stage 3 Environmental Impact Statement, prepared by Aspect Environmental, dated 24 April 2020 (**EIS**).
6. The ‘site’ for the purposes of this Statement of Reasons is defined as the Stage 3 operational area illustrated in **Figure 2** below (**Site**).
7. Section 1.4 and 1.5 of the Department’s AR provides an overview of the approval history for MPW and MPE.

Figure 1 – Moorebank Local Context (Source: Figure 2-2 of Applicant EIS)



2.2 The Project

8. The second paragraph of the Executive Summary of the Department's AR explains the background to MPW and the Application now before the Commission for determination.
9. Paragraph 1.1.2 of the AR describes the Application as follows:

The development is Stage 3 of the approved MPW Concept Plan proposal (SSD 5066). The proposal comprises:

 - *staged subdivision of the Moorebank Precinct West (MPW) site into nine allotments;*
 - *importation of approximately 280,000 m³ of unconsolidated clean fill for compaction up to final land level and approximately 540,000 m³ of structural fill for warehouse pad completion;*
 - *establishment and use of a temporary construction work compound area in the southern portion of the MPW site; and*
 - *associated ancillary works.*
10. The main components of the Project are set out at Table 2 of the AR. An extract of Table 2 is at **Appendix A** of this Statement of Reasons.
11. Figure 5 of the Department's AR illustrates the proposed MPW Stage 3 temporary works compound area. Figure 6 of the Department's AR illustrates an overlay of the subdivision and components of the Stage 3 works, including a temporary works compound in the southern portion of the Site. These figures are replicated as **Figure 2** and **Figure 3** below. The Applicant clarified during its meeting with the Commission on 30 March 2021 that the temporary 'shed' type buildings within the construction compound on proposed Lot 10 are required to house staff amenities, meeting and training rooms, staff kitchen and café facilities and will be single storey only (Transcript p-8, Line 45).

Figure 2 – Proposed MPW Stage 3 temporary works compound area
 (Source: Department's Response to the Commission dated 10 May 2021)

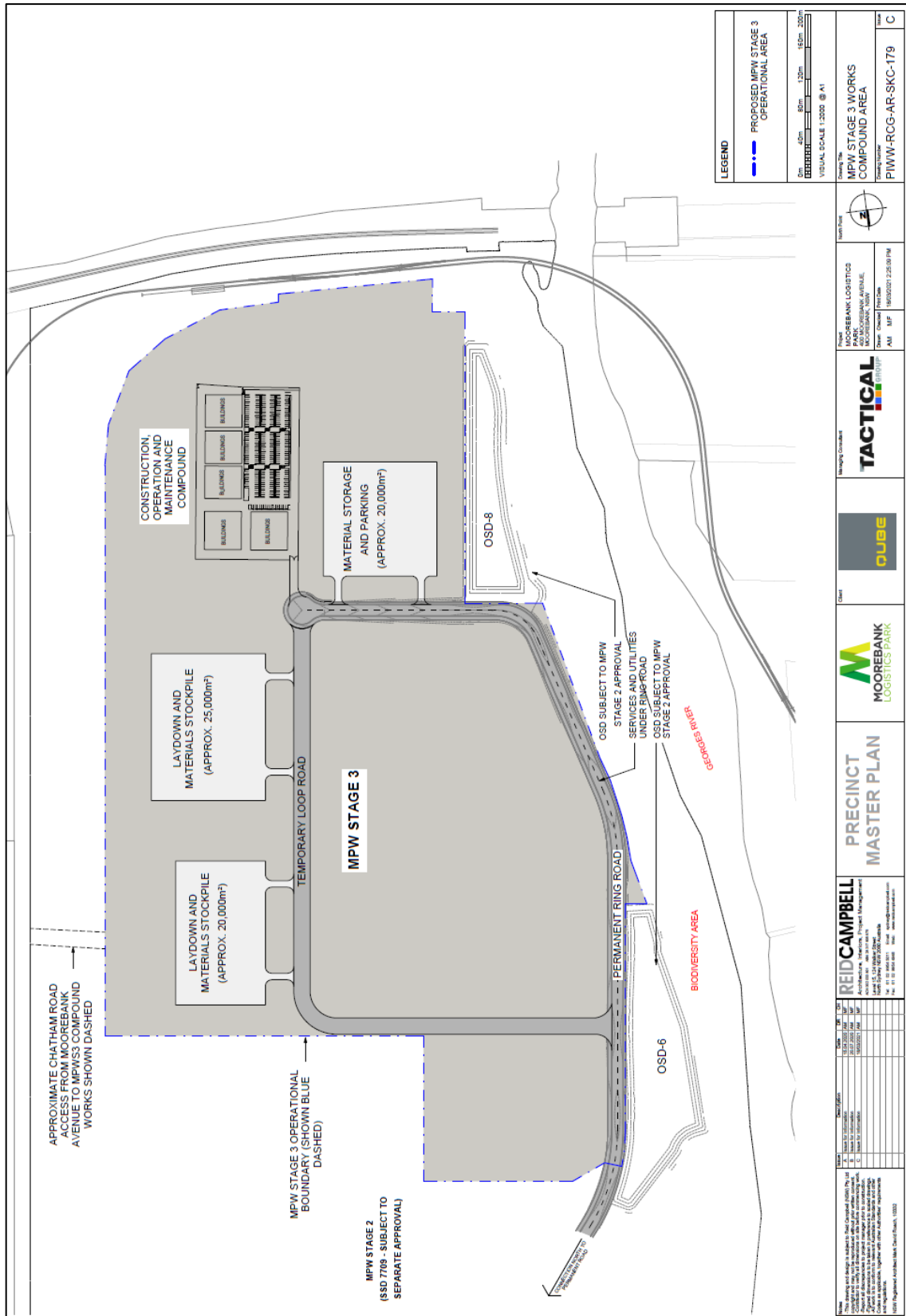
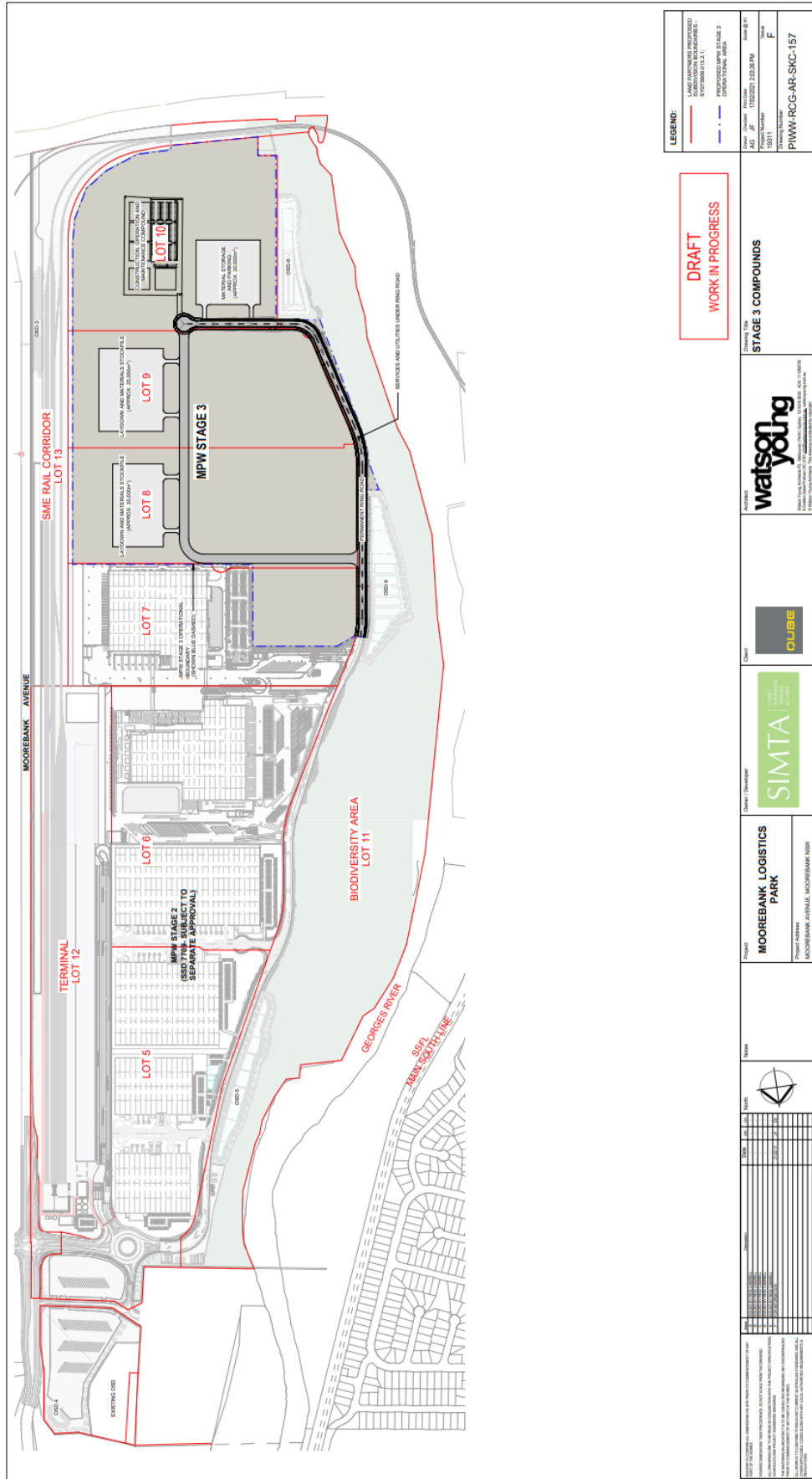


Figure 3 – Overlay of plan of subdivision and temporary works compound
(Source: Figure 6 of Department's AR)



12. Paragraphs 2.2.2 to 2.2.4 of the Department's AR state that the access arrangements proposed at MPW Stage 3 will include a temporary loop road and permanent ring road (see **Figure 2** above).
13. Section 2.3 of the Department's AR states that the timing of the proposed Stage 3 construction activities would occur over approximately 24 months and concurrently with the construction and operation of various stages of MPW Stage 2 and MPE.
14. Based on details provided by the Applicant, the Department's AR distinguishes between the permanent (operational) and temporary (construction) works at paragraphs 2.3.4 and 2.3.5. The Commission notes the Department's finding at paragraph 2.3.4 of the AR states: "*The Department acknowledges that construction works proposed under MPW Stage 3 generally fall under Works Period C (bulk earthworks, drainage and utilities), as described under the MPW Stage 2 consent*".
15. The Department's AR paragraph 2.3.6 states the standard construction work hours. An Out of Hours Work (**OOHW**) Protocol is referred to where certain construction works are proposed by the Applicant outside of standard hours. Table 4 under AR paragraph 2.3.7 states the OOHW period.
16. The Applicant has specified the scope of works which it proposes may be undertaken within the OOHW period. It has also requested (through its presentation to the Commission during its meeting on 30 March 2021, and in its supplementary letter to the Commission dated 23 April 2021 following the Public Meeting), revision to the proposed wording of draft condition of consent B20(i) (now B21(i)) regarding the limitations of the OOHW Protocol. This is addressed in Section 6.6 of the AR and also at 4.8.5 below.
17. Subdivision is a further component of the Project. The Applicant proposes to progressively subdivide the Site in a staged manner. Paragraphs 2.3.9 and 2.3.10 of the AR describe the intention of the Applicant to implement a Subdivision Staging Plan to identify each stage, the works proposed for that stage, and indicative timing.
18. On 25 August 2020, the Applicant provided a Response to Submissions (**RtS**) to the Department to respond to the issues raised in the submissions to the EIS. The RtS did not propose any amendments to the exhibited proposal. However, the RtS did include additional information and justification for the Project in response to issues raised in submissions. Sections 5.6 and 5.7 of the Department's AR summarise the submissions received by the Department on the RtS, and Applicant's supplementary information.

2.3 Strategic Context

19. Paragraphs 3.1.1 to 3.1.4 of the Department's AR provide an overview of the strategic context for the Moorebank Intermodal Precinct. Specific reference is given to Moorebank Intermodal Precinct "*as an 'important freight and logistics precinct' in Building Momentum: State Infrastructure Strategy 2018-2038 (NSW 2018)*" (AR paragraph 3.1.1). In addition, "*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'*" (AR paragraph 3.1.2).
20. Paragraph 3.1.3 of the AR references the Greater Sydney Commission's (**GSC**) *Greater Sydney Regional Plan – A Metropolis of Three Cities, 2018*. According to the AR, the Regional Plan notes:

...freight volumes are forecast to 'almost double in the next 40 years' and 'increasing importance [is] placed on 24/7 supply chain operations to maintain Greater Sydney's global competitiveness.' The Plan notes that 'substantial future industrial land supply', including the Moorebank Intermodal, 'will support large-scale logistics growth'.
21. The AR also highlights that the development is identified in the GSC's *Western City District Plan, 2018*, which states:

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.

3 COMMUNITY PARTICIPATION AND PUBLIC SUBMISSIONS

3.1 Community Group Attendance at the Site Inspection

22. On 9 April 2021, the Commission conducted an inspection of the Project Site with the Applicant. The Commission also invited representatives from community groups and Council to attend and observe at the Site inspection. The following groups were represented at the Site inspection:
- Residents Against Intermodal Development Moorebank (**RAID**);
 - Georges River Environmental Alliance (**GREA**); and
 - East Liverpool Progress Association (**ELPA**).
23. Site inspection notes and photographs taken by the Commission were made available on the Commission's website on 16 April 2021.

3.2 Public Meeting

24. The Commission conducted a Public Meeting on Monday 19 April 2021. The Public Meeting was held electronically with registered speakers presenting to the Commission Panel via telephone or video conference. The Public Meeting was also streamed live on the Commission's website.
25. The Commission heard from the Department, the Applicant, community group representatives and individual community members. A total of six community groups and individual speakers presented to the Commission during the Public Meeting, and copies of their presentations were published on the Commission's website on 23 April and 27 April 2021.
26. Presentations made at the Public Meeting have been considered by the Commission as submissions and are referenced below in **Section 3.3**.

3.3 Public Submissions

27. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission until 5pm on Monday 26 April 2021. An extension to this deadline was given on request to RAID to enable a written submission to be made before 5pm on 30 April 2021. However, no submission was received.
28. In addition to the verbal presentations and speakers' presentation materials received following the Public Meeting, the Commission received a total of six written submissions on the Application. All submissions were in objection to the Application. In addition, a written submission was received from Liverpool City Council, dated 22 April 2021. Further details of Council's submissions are provided in **Section 4** of this Statement of Reasons.
29. The main topics and concerns relating to the Project raised in the presentations and public submissions related to:
- consistency with the MPW Concept approval;
 - drainage solutions;
 - site contamination;

- visual impact;
- recommended conditions of consent;
- traffic impacts;
- air pollution impacts; and
- site suitability.

Comments made by members of the public and community groups have been summarised below.

Site Suitability and Section 4.15 of the EP&A Act

30. The Commission heard from ELPA in respect of previous submissions made by the Association to other applications for the Moorebank Intermodal development. The speaker referred specifically to issues of consideration for the 'public interest' criterion under section 4.15 of the EP&A Act. Reference was also made to the legal proceedings associated with MPW Stage 2.
31. One of the representatives of RAID also raised concerns regarding site suitability for an intermodal facility, stating *"that it is the wrong development in the wrong location at the wrong time, and it will and is in the process of copying and pasting all of the problems of Port Botany onto our doorstep, into the most congested nexus of south-west Sydney"*. Technical assessments relating to visual impact, traffic and air quality prepared by RAID Moorebank in respect of SSD 7099 Stage 2 and MPW Stage 2 MOD1 were referred to but not presented.

Consistency with the MPW Concept Approval

32. The Commission heard further concerns from a representative of RAID. The view was expressed that *"...essentially... the Application as it exists is not cumulative, it's not consistent and it's not compliant. For those reasons, there is no adequate baseline data upon which the Commission can approve the project as... it currently has been applied for"*.
33. The Commission also heard concerns from GREA that the masterplan for the Concept development in 2016 has 'morphed' into a changed scheme through a number of modifications to consents and details being approved for each phase of the MPW and MPE developments. The concerns of GREA included that this has led to additional cumulative impacts.
34. Similar concerns were raised in the presentation by RAID. However, no specific explanation was given as to how the Stage 3 MPW proposal is not consistent with the MPW Concept or Stage 2 approvals.

Drainage Solutions

35. The Commission also heard from the representative of GREA that the drainage design for the development overall is overly engineered by use of pits and pipes, does not deliver Water Sensitive Urban Design (**WSUD**) outcomes and would not provide effective management of water in a flood event.

Site Contamination

36. At the Public Meeting, the speaker representing GREA also raised a number of concerns relating to the robustness of monitoring and independent auditing, access to independent audit reports by the community and inadequate requirements for community consultation. GREA also raised concerns with respect to the risk associated with per- and polyfluoroalkyl substances (**PFAS**) present on the MPW site to external receptors, the Georges River and human health – and submitted that the Department's recommended conditions of consent are not sufficiently robust regarding control, monitoring and reporting on this issue.
37. The same speaker also explained that in the operational phase, landscape planting of trees may not be compatible with measures to contain PFAS substances on the MPW site.

Visual Impact

38. Concerns that the development of the MPW site will detract from local views with large roofscape and lighting impacts at night were raised by speakers representing GREA and RAID Moorebank.

Adequacy of the Department's Recommended Conditions

39. GREA made submissions noting that the wording of some of the Department's recommended conditions of consent are not sufficient or will not be effective; notably with regard to:
- A31. Monitoring and site auditing: Independent audit and then peer review should be required
 - C36. Site Audit Report and Audit Statement: Independent audit and peer review should be required;
 - C41. Use of independent auditors: The Audit report should be independently reviewed;
 - B25. PFAS Contamination: The remedy and community engagement if PFAS contamination risk arises to off-site receptors is inadequate;
 - C39. Long Term Environmental Management Plan. Agrees this must be implemented for the duration of the construction and operation of the development;
 - B20-B22. Noise mitigation strategies developed in consultation with the CCC should additionally apply to light spill, stormwater and flood emergency response procedures;
 - A14 and A15. Clarification required relating to control of works within the riparian corridor;
 - A32. Should require reports of Applicant non-compliances to be made public; and
 - B9-B13. Reporting of the Environmental Representative should include a report to each meeting of the CCC.

Moorebank Intermodal Traffic Network

40. Detailed submissions were made in presentations at the Public Meeting and in written comments by two representatives of Transport Modelling.
41. At the Public Meeting, one of the representatives stated that traffic congestion is expected due to the geographic location of MPW and MPE on 'an island' and gave details of studies identifying existing congestion and safety issues on the network. The location of Moorebank Intermodal Precinct was stated as being unsuitable in strategic terms – in relation to Port Botany and other freight and logistics developments. The representative also stated that intermodal developments and warehousing create additional handling of freight and congestion, such that cost/benefit analyses should be reviewed.
42. The Commission heard details of 'queuing theory' and concerns relating to the M5's capacity, congestion at intersections, issues with vehicle routing from Port Botany to Moorebank Precinct, the assessed split of vehicle movements into/out of the site and the adequacy of the Applicant's traffic modelling.
43. Following the Transport Modelling presentation, the Commission asked one of the speakers to clarify whether the presentation related to how the intermodal terminal would operate, rather than the construction traffic. The speaker confirmed that the concerns presented related to the operational phase.
44. The representative at the Public Meeting from ELPA requested that a proper evaluation be undertaken on traffic impacts, also emphasising that the Site is not suitable for an intermodal development, since a low proportion of containers will be moved by rail. In addition, the ELPA representative stated that the warehousing traffic had been underestimated in traffic modelling work. Following the Public Meeting, ELPA re-submitted its objection letter dated 27 May 2020 to the Commission. The concerns raised in the letter include *"Our objection to this specific Proposal rests on the fact that its advancement into the Construction phase includes a major traffic factor that exposes the public to danger, and further congestion"*.
45. The Commission also heard concerns from the speaker representing RAID with the expected mode-shift from road to rail, over-estimation of the benefits in terms of reduced truck movements from the road network overall and erosion of economic benefits as a result.

Traffic Noise and Air Pollution

46. One of the speakers representing RAID explained to the Commission that *"traffic noise pollution poses a massive risk to residents and wildlife alike in an area recognised as important in our environmental systems"*. Furthermore, concerns were raised relating to health of residents in the vicinity of the Site due to increased operational traffic, congestion and reduced air quality arising from the Moorebank Intermodal development by the same speaker. Planned local population increases were stated as likely leading to greater congestion – leading to added effects on wildlife such as koalas, and to humans. Concerns regarding increased air pollution and greenhouse gases were also raised by a representative of RAID.

4 THE COMMISSION'S CONSIDERATION

4.1 The Department's Assessment Report

47. The Department's AR was prepared to set out the Planning Secretary's whole-of-government assessment of the Application. As part of this assessment, the Planning Secretary, through the Department, considered details of the Application with regard to the relevant statutory obligations, supplementary information provided by the Applicant, public submissions and submissions by Council and Government agencies.
48. Paragraphs 7.1.5 to 7.1.9 of the Department's AR conclude:

The Department identified the application's consistency with the Concept approval, subdivision, importation of fill material, construction traffic and access, construction noise, and construction soil and water management as the key issues for assessment. The Department concluded that the:

- proposal is generally consistent with the recommended 'conditions to be met in future development applications', as set out under the MPW Concept approval.*
- staged subdivision of the MPW site is acceptable, provided that the Applicant provides a Subdivision Staging Plan to the Planning Secretary for approval, prior to the issue of the first Subdivision Certificate. The plan must clearly identify each stage of the subdivision and the relevant estate works that relate to each stage.*
- construction impacts associated with the importation of fill material can be actively managed through prescriptive conditions, including enforcement of an existing 22,000m³ cap on the total amount of fill imported across MPW and MPE per day.*
- construction traffic impacts can be actively managed through implementation of a Construction Traffic and Access Management Plan for the development, including a Heavy Vehicle Route Plan to manage heavy vehicle routes to and from the site, and Driver Code of Conduct, to minimise the impact of heavy vehicles on other road users.*
- construction noise impacts can be effectively managed through implementation of a Construction Noise and Vibration Management Plan, prepared in accordance with the procedures for managing construction noise under the Interim Construction Noise Guideline (ICNG). Construction of the development must comply with standard construction hours, with only certain extended works permissible under an out of hours works protocol.*
- soil and water impacts can be effectively managed by undertaking land disturbance and filling activities in a phased manner, impacting a maximum contiguous area of 65 hectares at any one time (equal to around one-third of the site area). No disturbance of another area of the site is permitted until defined triggers for stabilisation of the previous area have been met.*

The proposal is in the public interest and would provide a range of public benefits, including a Capital Investment Value (CIV) of \$38,061,404 and would generate 60 construction jobs.

The SSD application is referred to the Independent Planning Commission as Liverpool City Council objected to the proposed development during the exhibition period.

The impacts of the proposal have been addressed in the EIS, RtS and supplementary information provided to the Department. Conditions of consent are recommended to ensure that these impacts are managed appropriately.

The Department considers the proposal is approvable, subject to conditions of consent outlined within this report.

4.2 The Commission's Meetings

49. As part of its determination, the Commission met with various persons as set out in **Table 1**. All meeting and Site inspection notes were made available on the Commission's website.

Table 1 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Department	30 March 2021	7 April 2021
Applicant	30 March 2021	7 April 2021
Site Inspection	9 April 2021	16 April 2021
Public Meeting	19 April 2021	21 April 2021

4.2.1 Council Comments

50. Council declined invitations from the Commission to meet and to attend the site inspection. A letter from Council to the Commission, dated 25 March 2021, stated:

Council staff have reviewed the Department of Planning, Industry and Environment (DPIE) Assessment Report and Recommended Conditions of Consent. Council remain concerned about the proposed subdivision of the site as facilitated by the Clause 4.6 variation request, especially given the significance of the variation sought. As previously stated, Council expects the holistic operation and management of the MPW site in alignment with the original MPW Concept Plan (as amended), specifically condition E26.

It is noted that conditions D12, D13 and D14 provide requirements for the operational management of the development. While the requirement for a Precinct Operational Environmental Management Plan (OEMP) is welcomed, Council remain concerned about the creation of an industrial park or estate development devoid of holistic management and accountability.

4.3 Public Comments

51. The Commission has given consideration to the public submissions as identified in section 3 above. The issues raised in submissions have been considered by the Commission in **Section 4.8** below.

4.4 Material Considered by the Commission

52. In this determination, the Commission has carefully considered the following material (**Material**):
- the approved Moorebank Precinct West Concept Plan, including approved modifications and associated SSD Applications;
 - the Secretary's Environmental Assessment Requirements (SEARs), dated 20 March 2020;
 - the Applicant's EIS, dated 24 April 2020;
 - all public submissions on the EIS made to the Department during public exhibition;
 - all Government Agency comments on the EIS;
 - the following information provided by the Applicant to the Department:
 - the Applicant's RtS, dated 21 August 2020;
 - the Applicant's response to the Department, dated 8 October 2020;
 - the Applicant's response to the Department, dated 16 October 2020;
 - the Applicant's final compilation of mitigation measures (undated);
 - the Department's AR, dated 15 March 2021;

- the Department's recommended development consent, dated 15 March 2021;
- comments and presentation material at meetings with the Department and Applicant referenced above Table 1;
- the Department's response to the Commission, dated 7 April 2021;
- the Applicant's response to the Commission, dated 8 April 2021;
- all speaker comments and answers to questions offered to the Commission and all material presented at the Public Meeting;
- the Applicant's response to the Commission, dated 23 April 2021;
- the Department's response to the Commission, dated 26 April 2021;
- Council's response to the Commission, dated 22 April 2021;
- all written comments on the received by the Commission up until 5pm, Monday 26 April 2021; and
- the Department's response to the Commission, dated 10 May 2021.

4.5 Statutory Context

4.5.1 Permissibility and Variation to Development Standard

53. The Site is identified as being located within the IN1 General Industrial zone under the *Liverpool Local Environmental Plan 2008 (LLEP 2008)*. The Application is for the Stage 3 component of the Moorebank Intermodal Precinct West project. According to paragraph 1.1.2 of the Department's AR, in summary the Application comprises:
 - staged subdivision of the MPW site into nine allotments;
 - importation of approximately 280,000 m³ of unconsolidated clean fill for compaction and approximately 540,000 m³ of structural fill for warehouse pad completion;
 - establishment and use of a temporary construction work compound area in the southern portion of the MPW site; and
 - associated ancillary works.
54. The Commission notes that the components of the Project set out above are required to enable a 'freight transport facility' and 'warehouse or distribution centres', which are permissible with consent within the General Industrial zone. Therefore, the Commission may determine the carrying out of the development.
55. Various development standards apply to the proposal under the LLEP 2008. The Department has considered the proposal against these development standards at AR Appendix B and states at paragraph 4.3.3 of the AR that it *"is satisfied the proposal complies with all relevant standards, except the LLEP minimum subdivision lot size"*.
56. Paragraph 4.3.4 of the Department's AR states:

The Applicant seeks to vary the minimum subdivision lot size development standard, as summarised in Table 5. Clause 4.6 of the LLEP includes provisions that allow for exceptions to development standards in certain circumstances. In considering a variation to a development standard, the consent authority must have regard to the requirements of clause 4.6.
57. Furthermore, paragraph 4.3.5 of the Department's AR states:

The Department has considered the merits of the proposed variation to the development standard at Section 6.3 and the requirements of clause 4.6 in detail at Appendix C. In summary, the Department concludes the proposed variation to the minimum subdivision lot size is reasonable and justified.
58. The Commission's findings in relation to subdivision are set out in **Section 4.8** below.

4.5.2 Integrated and other NSW Approvals

59. As per Section 4.4 of the Department's AR, the Commission notes the Department consulted with the relevant government authorities that are responsible for integrated and other approvals, considered their advice in its assessment of the proposal, and included recommended conditions in the imposed conditions of consent.
60. The Commission acknowledges that the Applicant may require other approvals which are not integrated into the SSD process.

4.6 Mandatory Considerations

61. In determining this application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the following matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**):
- the provisions of:
 - any environmental planning instrument;
 - any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the Commission (unless the Planning Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - any development control plan;
 - any planning agreement that has been entered into under s 7.4 of the EP&A Act, and any draft planning agreement that a developer has offered to enter into under s 7.4;
 - the *Environmental Planning and Assessment Regulations 2000* (**Regulations**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act that apply to the land to which the Application relates;
 - the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - the suitability of the site for the development;
 - submissions made in accordance with the EP&A Act and Regulations; and
 - the public interest.
62. In accordance with s 4.15(1), the Commission has considered the Mandatory Considerations. They are addressed in the following sections.
63. The Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Project. To the extent that any of the Material does not fall within the Mandatory Considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

4.6.1 Relevant Environmental Planning Instruments

64. As described at Appendix B of the Department's AR, and to satisfy the requirements of section 4.15(a)(i) of the EP&A Act, relevant EPIs in the assessment of the Application are:
- SRD SEPP;
 - *State Environmental Planning Policy (Infrastructure) 2007* (**Infrastructure SEPP**);
 - *State Environmental Planning Policy No. 55 – Remediation of Land* (**SEPP 55**);
 - *State Environmental Planning Policy No. 64 – Advertising and Signage*;
 - *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*;
 - *Draft State Environmental Planning Policy (Remediation of Land)* (**Draft Remediation SEPP**);

- *Draft State Environmental Planning Policy (Environment)* (**Draft Environment SEPP**); and
- LLEP 2008.

65. The Commission agrees with the Department's assessment of EPIs set out in Appendix B of the Department's AR. The Commission therefore adopts the Department's assessment and has also further addressed relevant EPIs in **Section 4.8** below.

4.6.2 Relevant Proposed Instruments

66. There are no other relevant proposed instruments.

4.6.3 Relevant Development Control Plans

67. Clause 11 of the SRD SEPP states that development control plans (**DCPs**) do not apply to SSD.

4.6.4 Relevant Planning Agreements

68. During the assessment period for Moorebank Precinct West Stage 2 (SSD-7709), the Applicant entered into a voluntary planning agreement (**VPA**) with Transport for NSW (**TfNSW**) to make a cash contribution of \$48 million associated with operational traffic impacts – to regional road upgrades, upgrade to Moorebank Avenue south of the entrance to the MPE freight terminal or relocate Moorebank Avenue to the east of the MPE site (subject to a separate planning application).

4.6.5 Relevant Draft Planning Agreements

69. There are no Draft Planning Agreements relating to this Application.

4.6.6 Applicable Regulations

70. The Department's AR refers to the *Environmental Planning and Assessment Regulation 2000* at Section 4.7 and states: "*Subject to any other reference to compliance with the EP&A Regulation cited in this report, the requirements for Notification (Part 6, Division 6) and Fees (Part 15, Division 1AA) have been complied with*".

71. In addition, Section 4.9 the Department's AR identifies the matters for consideration under section 4.15(1) of the EP&A Act that apply to SSD. With regard to section 4.15(1)(a)(iv), the AR states: "*The application satisfactorily meets the relevant requirements of the EP&A Act Regulation, including procedures relating to applications (Part 6 of the EP&A Regulation), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to the EIS*".

4.6.7 NSW Dark Sky Planning Guideline

72. In accordance with clause 92 of the EP&A Regulation, the Commission is required to give consideration to the NSW Dark Sky Planning Guideline for "*State significant development ... on land less than 200 kilometres from the Siding Spring Observatory*". The Commission notes that the Project is located approximately 325km from the Siding Spring Observatory and therefore is not required to give consideration to this Guideline.

4.6.8 The Likely Impacts of the Development

73. The likely impacts of the Project have been considered in the consideration of key issues below.

4.6.9 The Suitability of the Site for Development

74. The Commission has considered the suitability of the Site for the Application. The conclusion of the Department in AR Table 20 is that the site is suitable for the proposed development, because:

The impacts of the development on the surrounding environment, including traffic and noise impacts, are considered acceptable, subject to the implementation of detailed mitigation measures set out under the MPW Stage 2 (SSD 7709) consent, MPW Concept Plan and Stage 1 Early Works (SSD 5066) consent and the conditions of this consent.

The suitability of the site for use as an intermodal terminal and warehousing was considered in detail as part of the Department's assessment of the MPW Concept Plan, MPW Stage 2 and this proposal, and is acceptable.

75. The Commission agrees with the Department and finds that the site is suitable for the Proposal, subject to the conditions of consent. The Commission has therefore imposed relevant conditions, as detailed in **Section 4.8**. Note that some numbering of the conditions has altered from the Department's recommended conditions of consent.

4.6.10 The Public Interest

76. The Commission has considered the public interest in **Section 4.8.10** of this report.

4.7 Additional Considerations

77. In determining this application, the Commission has also considered:
- *Conveyancing Act 1919;*
 - *National Parks and Wildlife Act 1974;*
 - *NSW Heritage Act, 1977;*
 - *Protection of the Environment Operations Act 1997 (POEO Act);*
 - *Managing Urban Stormwater: Soils and Construction (Landcom 2004);*
 - *Interim Construction Noise Guidelines (ICNG 2009);*
 - *Waste Classification Guidelines (EPA 2014);*
 - *Biodiversity Conservation Act 2016 (BC Act);*
 - *Building Momentum: State Infrastructure Strategy 2018-2038 (INSW 2018);*
 - *Future Transport Strategy 2056 (NSW Government 2018);*
 - *NSW Freight and Ports Plan (NSW Government 2018);*
 - *Greater Sydney Regional Plan – A Metropolis of Three Cities, 2018 (GSC);*
 - *Western City District Plan, 2018 (GSC); and*
 - *Planning for Bushfire Protection 2019.*

4.8 Key Issues

4.8.1 Consistency with Concept Plan Approval

78. The Commission acknowledges that the consistency of the Moorebank Precinct West – Stage 3 proposals with the approved Moorebank Precinct West Concept Plan and Stage 1 Early Works – SSD 5066, plus Moorebank Precinct East Stage 2 – SSD 7709, is a concern raised in written submissions and presentations to the Commission (see **Section 3.3** above).
79. Pertinent to the consideration of the consistency of the Stage 3 proposals with the Concept Plan approval, the Commission notes that the Consolidated Consent in place for Moorebank Precinct West – Concept and Stage 1 (SSD-5066) (as modified by SSD-5066 MOD1 and MOD2) describes the development as follows:

The Concept involves:

- *the use of the site as an intermodal facility for intrastate, interstate and port shuttle freight, including a rail terminal, rail link to the Southern Sydney Freight Line and warehouse estate (including a freight village) servicing the intermodal terminal facility. and distribution facilities and associated works.*
- *importation of up to 1.6 million cubic metres of uncompacted fill to raise the site by up to 3.6 metres.*

Early Works (Stage 1): involves:

- *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.*

80. The Commission further notes the Consolidated Consent in place for Moorebank Precinct West – Stage 2 (SSD-7709) (as modified by SSD-7709 MOD1) describes the development as follows:

Moorebank Precinct West Stage 2 (MPW Stage 2), comprising:

- *Construction and 24/7 operation of an intermodal terminal (IMT) facility to support a container freight throughput volume of 500,000 twenty-foot equivalent units (TEUs) per annum...*
- *Operation of the IMT facility includes operation of the rail link to the SSFL and container freight movements by truck to and from the Moorebank Precinct East (MPE) site.*
- *Construction and 24/7 operation of a warehousing estate on the northern part of the site servicing the IMT facility and including:*
 - *six warehouses with a total gross floor area (GFA) of 215,000 m2 and, for each warehouse, associated offices, staff amenities, hardstands and truck and light vehicle parking*
 - *800 m2 freight village (operating from 7am to 6pm, 7 days/ week) including staff/ visitor amenities*
 - *internal roads, noise wall, landscaping, lighting and signage.*
- *Intersection upgrades on Moorebank Avenue at:*
 - *Anzac Road providing site access*
 - *Bapaume Road for left turn only out of the site.*
- *Construction and operation of on-site detention basins, bioretention/ biofiltration systems and trunk stormwater drainage for the entire site.*
- *Construction works and temporary ancillary facilities, including:*
 - *vegetation clearing, top soil stripping and stockpiling and site earthworks and temporary on site detention*
 - *importation of up to 1,600,000 m3 of uncompacted fill, temporary stockpiling and placement over the entire site to raise existing ground levels by up to 3m*
 - *materials screening, crushing and washing facilities*
 - *importation and placement of engineering fill and rail line ballast*
 - *installation and use of a concrete batching plant*
 - *utilities installation/ connection.*

81. The Commission notes that a number of submissions related to the merits of the MPW development as already approved under SSD 5066 and SSD 7709. In addition, many of the concerns raised (for example those relating to traffic congestion, road safety, air quality, wildlife and public health) relate to the impacts arising from traffic generated in the operational phase.

82. The Stage 3 Application works comprise both permanent (operational) and temporary (construction) works. The permanent components proposed include subdivision of the MPW site, importation and placement of fill and a permanent perimeter road. Other works include establishment and use of a temporary construction work compound area in the southern portion of the MPW site. These are related to the construction phase.

83. The MPW Concept Plan approval (as modified) includes a number of conditions to be met in future development applications on the MPW site (including the present application for MPW Stage 3).
84. The Department assessed the MPW Stage 3 Application in respect of these conditions at Appendix D of the AR. Consistency with condition E26 (sub-division requirements under SSD-5066) is assessed in AR Section 6.3. The Commission notes that paragraph 6.2.3 of the Department's AR concluded: *"Overall, the Department considers the proposal is generally consistent with the conditions to be met in future development applications set out in the MPW Concept Plan approval"*.
85. Overall, the Commission agrees with the Department's assessment conclusion in the paragraph above.

4.8.2 Subdivision

86. The Applicant seeks to vary the minimum subdivision lot size development standard and to progressively subdivide the existing Lot 1 of DP 1197707 of the MPW site. This will create nine lots in a staged manner to enable long term leasing of discrete warehousing areas, while also subdividing the balance of the site into a biodiversity conservation area, an interstate/intrastate freight terminal and for part of the rail connection.
87. Clause 4.1 of the LLEP 2008 allows a minimum subdivision lot size on the site of no less than 120 hectares. Clause 4.6(2) of the LLEP 2008 permits the consent authority to consider a variation to a development standard imposed by an EPI.
88. The Commission notes that Council objected to the proposal on the basis of non-compliance with clause 4.1 of the LLEP 2008 and the reasoning in the Applicant's clause 4.6 Variation Request. Paragraph 6.3.20 of the Department's AR states:
In correspondence to the Department (dated 29 September 2020), Council advised that it maintained its objection to the proposal, particularly regarding the proposed subdivision of the site. Council reinforced its desire to safeguard the holistic operation and management of the MPW site and advised that further separation of distinct warehouse groups into individual lots is not supported.
89. The Department's consideration of the proposed subdivision of the Site, including concerns raised by Council, is at Section 6.3 of the Department's AR, with assessment of the Applicant's justification with reference to clause 4.6(3) presented in the Department's AR Appendix C.
90. The Commission notes that condition E26 of MPW Concept Plan MOD 1 sets out requirements that must be met in any future development application for subdivision of the MPW site. The Department's AR assesses compliance with minimum lot size condition E26(a) under MPW Concept Plan MOD 1 and the requirements of clause 4.6(3) at paragraphs 6.3.21 – 6.3.23. The conclusion of the Department is:
The Department acknowledges that subdivision of the MPW site is currently unachievable without contravention of the minimum subdivision lot size of 120 ha. The Department considers that contravention of the minimum subdivision lot size, to allow the proposed subdivision of the MPW site in Figure 7 is acceptable, for the reasons stated in paragraph 6.3.22.
91. The Commission notes that condition E26(c) of the MPW Concept Plan MOD 1 requires the Applicant to provide a subdivision plan showing completed estate works for any future development application for subdivision on the MPW site. To address this, paragraph 6.3.32 of the Department's AR states:

The Department therefore recommends that the plan of subdivision (for each relevant stage) not be registered until evidence of finalisation of these works and their location has been surveyed and verified. The final Subdivision Staging Plan (and any subsequent amendments) should be approved by the Planning Secretary before a subdivision certificate is issued by the Certifier.

92. The matters of coordinated maintenance and operational management following subdivision are assessed by the Department in paragraphs 6.3.33 – 6.3.38 of the AR.

93. Paragraph 6.3.34 of the Department's AR states:

In its determination of MPW Concept Plan MOD 1, the Commission imposed conditions E26(d) and E26(e), requiring that any future development application for subdivision must 'include a detailed management and maintenance program for estate infrastructure' and 'nominate a single entity responsible for implementation of the management and maintenance program'.

94. Paragraph 6.3.35 of the Department's AR states that the Applicant has nominated SIMTA and Qube to be responsible for overall management of the MPW site under the precinct management agreement included in the agreement for lease. Further, as tenancies are established for the warehouses, relevant terms and compliance requirements will extend to those lease documents.

95. In concluding this matter, paragraphs 6.3.37 to 6.3.38 of the Department's AR state:

The Department's assessment of subdivision has carefully considered concerns to avoid fragmentation of the site and enable holistic management of the site... The Department... recommends a condition requiring that, prior to the issue of any Subdivision Certificate, the Applicant must submit a Precinct OEMP to the Planning Secretary for approval.

The Department considers that staged subdivision is acceptable if the Applicant maintains a commitment to providing all relevant estate works before subdivision can occur, and has recommended conditions to that effect.

96. In response to questions from the Commission at the Public Meeting relating to measures for holistic operation and management and the practical implementation of the Operational Environmental Management Plan (OEMP), the Applicant, in correspondence dated 8 April 2021 (published on the Commission's website), stated that

SIMTA, as a single entity, and Qube, in its capacity as the Precinct Development Company (PDC) under the Development and Operations Deed (DOD) will be responsible for the overarching holistic operational management of the MPW Site following subdivision, and the delivery and ongoing maintenance within the MLP of site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design (WSUD) elements.

Management principles allocating operations and maintenance responsibilities between Qube and site tenants would be incorporated in lease documents which would outline management control and servicing of Precinct components and their respective interaction and interdependency requirements, for example access roads, common roads, and surface drainage infrastructure.

The Agreements for Lease (AfL) between Qube and sub-lessees would document common facilities including rights of access to and from any common facility as well as their maintenance, repair and operation (including cleaning and replacement of fixtures, fittings and any equipment, i.e. fire extinguishers).

Implementation and maintenance of environmental management controls and functions across the site are legally enforceable via compliance with conditions of consent and, specifically, the Operational Environmental Management Plan (OEMP) under Section 4.2 of the EP&A Act, and via the legal obligations attached to lease agreements binding PDC and subsequent lessees and tenants respectively.

97. Overall, with regard to the issue of subdivision, the Commission agrees with the conclusions of the Department in AR Sections 6.3 and 7, and Appendix C. The Commission finds that the proposed variation from the minimum subdivision lot size development standard to progressively subdivide the existing lot into nine lots in a staged manner is acceptable subject to the imposition of relevant conditions requiring:
- the Applicant to provide a Subdivision Staging Plan to the Planning Secretary for approval prior to the issue of the first Subdivision Certificate. The Subdivision Staging Plan must clearly identify each stage of the subdivision and the relevant estate works that relate to each stage (**conditions of consent, condition D1**);
 - the subdivision to be carried out in accordance with the Subdivision Staging Plan and other requirements (**conditions D2, D3 and D4 – D8**); and
 - the preparation and submission of a Precinct Operational Environmental Management Plan (**OEMP**) for approval by the Planning Secretary (**conditions D12, D13 and D14**).

4.8.3 Importation of Fill Material

98. The Commission notes that the Applicant seeks approval to import approximately 280,000m³ of unconsolidated clean fill and approximately 540,000m³ of structural fill for warehouse pad completion. The Applicant's EIS provides several references to this, including:
- *The works compound would be developed for servicing of the proposed allotments, for site monitoring, mitigation and maintenance activities, establishment of subdivision works and for progressive future warehouse construction. Additionally, clean fill material will be imported to the site to achieve the finished surface level of 16.6 m AHD. (EIS, page 7)*
 - *This EIS is seeking approval for Stage 3 of the MPW Development on the western side of Moorebank Avenue as a progression of the development from both SSD 5066 and SSD 7709 consents, and includes:*
 - *...importation and placement of clean fill material to achieve the finished surface level of 16.6 m AHD... (EIS, page 10).*
 - *The key components of the MPW Stage 3 (SSD 10431) Proposal are*
 - *importation of fill to achieve the 16.6 m AHD finished surface level... (EIS page 20)*
99. Page 246 (Section 18.3 Fill Material) of the Applicant's EIS states:
- Approximately 280,000 m³ of unconsolidated clean fill is proposed to be imported for compaction up to final land level (16.6 m AHD) and approximately 540,000 m³ of structural fill for warehouse pad completion.*
100. The Limits of Approval of the Concept Consent – SSD 5066 MOD 1, dated 30 October 2019 include Condition 19B, which states:
- 19B. The total volume of uncompacted fill to be imported must not exceed 1,600,000 m³ unless it can be demonstrated in a future Development Application that the proposed finished surface level of any filled section of the site does not exceed 16.6 m AHD.*

101. Paragraphs 6.4.3 – 6.4.8 of the Department’s AR state that during its assessment of the proposal, the Department and EPA requested further information from the Applicant to demonstrate compliance with condition 19B, above. In addition, the EPA recommended a series of conditions to manage the impacts associated with the importation of the fill material, consistent with the requirements for MPW Stage 2, which the Department has accepted and provided to the Commission.
102. The Department’s AR refers to supplementary advice on the proposed imported fill from Costin Roe Consulting on behalf of the Applicant (AR paragraphs 6.4.4 – 6.4.5). The Commission has reviewed the letter from Costin Roe Consulting, dated 8 October 2020 (appended to Applicant letter of the same date) in response to a Department RFI dated 7 September 2020. The Costin Roe letter states:
- We confirm that the importation of additional clean general fill conforms to the requirement of Condition 19B of SSD 5066 Mod1, that the compacted volume of soil will remain at approximately 1,600,000m³.*
- We also confirm that the additional structural fill generally meets the requirements of Condition 19B of SSD 5066 Mod1, when considering subsequent approvals contained in SSD 7709 on the land.*
103. The Commission notes that the conditions of consent for SSD 7709 do not specify a finished surface level for filled sections of the site (which might have otherwise amended the requirements of condition 19B).
104. The MPW Stage 3 application seeks approval for the importation and placement of additional fill material (280,000m³ of unconsolidated clean fill for compaction and 540,000 m³ of structural fill for warehouse pad completion) but does not seek a variation or exceedance of the previously approved finished surface level of 16.6m Australian Height Datum (**AHD**).
105. The Department accepts the reasons for the importation of additional fill (AR paragraph 6.4.13) but recommends **condition A14** in the MPW Stage 3 conditions of consent regarding the finished surface level for filled sections of the site.
106. The Commission agrees with the Department’s assessment and finds that the importation of additional fill material for Stage 3 is justified, that the associated construction impacts can be actively managed through prescriptive conditions, but that there is no basis to vary the previously approved finished surface level of 16.6m.
107. For clarity and to reflect the limits of the Concept Consent and the Stage 3 EIS and Application material, the Commission has imposed the following conditions. **Condition A10** limits the volume of additional uncompacted fill to be imported for compaction. **Condition A14** confirms that nothing in the consent enables the finished surface level of any filled section of the site to exceed 16.6 m AHD. The Commission agrees with the Department’s response to the Commission, dated 10 May 2021 and has imposed conditions A15 – A17 which require the Applicant to engage a suitably qualified and independent person to conduct an audit of fill prior to the commencement of fill importation or fill placement. Condition A18 requires the Applicant to prepare a Fill Importation Management Plan prior to the commencement of fill importation and to record all fill importation in the Imported Fill Tracking Register. Condition A19 imposed by the Commission requires the Applicant to engage an independent person to verify the Imported Fill Tracking Register on a weekly basis.
108. The Commission also agrees with the Department in respect of the imposition of other conditions associated with the importation and management of fill material, including the following (note that numbering of some of the Commission’s final conditions differs from that in the Department’s recommended conditions):
- **A7, C20:** only VENM, ENM or other imported material approved by the EPA to

- be placed on the site and records to be kept;
 - **A12, C22, C23, C24, C25:** volume, size and duration of stockpiles
 - **B17:** Construction Environmental Management Plan (cross-referencing **B20, B21, B22, B23**)
109. Two further **conditions A20** and **A21** limit works in the riparian corridor. The Commission considers submissions made at the Public Meeting merit revisions to the Department's wording. The Commission has imposed wording to prevent stockpiling or other earthworks taking place in the riparian corridor – and boundary fencing to be installed with signage to this effect.

4.8.4 Construction Traffic and Access

110. Section 6.5 of the Department's AR assesses construction traffic arising from the importation of fill material and temporary construction compound area, plus access routes to and into the site for heavy vehicles. The Commission also acknowledges that concerns were raised in submissions and at the Public Meeting regarding these matters.
111. Paragraph 6.5.1 of the AR summarises the background, as follows:
- The Applicant prepared a traffic assessment as part of the proposal, to assess construction traffic impacts associated with the import of fill material, and establishment and use of the temporary construction compound area. The traffic assessment found that no significant changes to construction traffic modelling previously undertaken as part of MPW Stage 2 are proposed and no changes to road upgrade works approved under MPW Stage 2 are sought.*
112. The Construction Traffic Impact Assessment (Construction TIA) prepared by the Applicant for the MPW Stage 3 Application assumes the same 22,000m³ daily cap on fill importation across MPE and MPW (MPW Stage 2 condition of consent A9) is in place and would not be exceeded.
113. The MPW Stage 3 TIA adopts the same predictions and assumptions for the construction phase as the MPW Stage 2 TIA, therefore the construction daily peak impacts are consistent. However, arising from the additional importation of fill (under the same 22,000m³ daily limit), the duration of the construction period (i.e. number of days) would necessarily be extended.
114. In response to questions raised by the Commission, the Applicant provided a response dated 23 April 2021 regarding the quantum of recorded daily fill material to MPE and MPW compared to the 22,000m³ daily limit. The Applicant advised that the combined daily average (MPE plus MPW) was 4,034m³, whereas the peak daily fill importation (MPE plus MPW) at that date had reached 12,426m³ (well below the permitted daily limit).
115. AR paragraph 6.5.7 states that: *"The Department notes that this proposal does not introduce any material change to construction or operational traffic volumes assessed and approved under MPW Stage 2 and does not propose any changes to intersection and road upgrades approved under MPW Stage 2".*
116. The Commission agrees with the Department's conclusions at AR paragraphs 6.5.8, 6.5.9 and 6.5.13 that construction traffic impacts can be actively managed through a combination of measures relating to the daily fill importation cap, fill and stockpile management, and implementation of a detailed Construction Traffic and Access Management Plan (**CTAMP**), and controlled through implementation of a number of measures. The Commission has therefore imposed conditions in line with the Department's recommended conditions of consent, including:
- **B17:** Submission to the Planning Secretary of a Construction Environmental Management Plan for approval
 - **B20:** Preparation of a Construction Traffic and Access Management Sub-Plan

- (CTAMSP), including Heavy Vehicle Route Plan
 - **B24:** Preparation of a Driver Code of Conduct
 - **B32, B33:** Roadworks and access
 - **B34:** Construction access arrangements
117. The Commission notes that at no stage has the quantum of recorded daily fill material to MPE and MPW exceeded 13,000 m³ despite the available 22,000m³ daily limit, and notwithstanding a significant period of operation, including the variable availability of suitable fill material to which the Applicant made reference during the meeting with the Commission and during the Public Meeting. The Commission further notes that traffic impacts were a significant issue raised in submissions and at the Public Meeting. The Commission finds that in the circumstances it would be reasonable to cap the allowable quantum of daily fill at a level representing the (rounded up) maximum actually carried out, so that the MPW Stage 3 approval does not exacerbate the worst traffic impact that has occurred to date. The Commission has accordingly amended **condition A8**. Further, the Commission agrees with the Department's response to the Commission, dated 10 May 2021 that **condition A8** could not operate effectively without corresponding changes to other consents relating to the Site and has consequently imposed **condition A9** which requires the Applicant to modify MPW Stage 2 (condition A9) and MPE Stage 2 (condition B56(a)) so that the 13,000m³ maximum daily fill imposed under **condition A8** for MPW Stage 3 is also reflected in the MPW Stage 2 and MPE Stage 2 consents.
118. Specifically with regard to site access, the Commission notes that the Department's AR paragraph 6.5.14 states that similar concerns were raised in the assessments undertaken previously for MPW Concept Plan and Stage 1, MPW Stage 2 and MPE Stage 2. To ensure consistency with previous MPW and MPE approvals, the Department recommended a condition reiterating the existing prohibition on heavy vehicles using Cambridge Avenue during both construction and operation (See Commission's **condition B34(h)**). The Commission agrees with this approach.

4.8.5 Construction Noise

119. The Commission has noted the concerns raised in submissions, including at and following the Public Meeting. Paragraph 6.6.1 of the Department's AR states that the nature of noise activities under this Application are as follows:
- The proposal involves noise generating activities during construction works, including:*
- *establishment and use of the temporary construction works compound area, associated laydown and stockpile locations*
 - *crushing activities and materials processing*
 - *heavy vehicle material deliveries*
 - *heavy vehicle movements on the surrounding and internal road networks to facilitate the importation of fill material*
120. As part of the noise and vibration assessment work undertaken by the Applicant for MPW Stage 2, the Applicant conducted background monitoring in locations in Casula, Glenfield and Wattle Grove to identify the most affected residential receivers in the vicinity of the MPW site. Noise catchment areas (NCAs) (as shown at AR Figure 17) were informed by the results of monitoring undertaken for MPW Stage 2. AR Appendix E provides the Applicant's details regarding the programmed timing for the construction activities.

121. Table 15 in the Department's AR provides details from the Applicant's Noise and Vibration Assessment of the key construction equipment and activities associated with the importation of fill, crushing, materials processing and use of the temporary construction works compound area. Table 16 of the AR presents the Applicant's predicted cumulative construction noise levels for both MPW Stage 2 and MPW Stage 3 construction works during standard hours, compared to Noise Management Levels (NMLs) derived in accordance with the ICNG.
122. At AR paragraph 6.6.8, the Department comments on the cumulative construction noise levels for both MPW Stage 2 and MPW Stage 3 during standard hours and states as follows:
- The Department notes that construction noise levels during standard hours are predicted to exceed the NML at Casula by 2dB(A), an increase of 1dB(A) compared to MPW Stage 2 construction levels... Consequently, the Applicant proposes to implement best practice management measures to minimise construction noise and vibration impacts during the noisiest periods (i.e. bulk earthworks, drainage and utilities). These measures would be enforced through an adaptive Construction Noise and Vibration Management Sub Plan (CNVMSP), which must be approved by the Planning Secretary prior the commencement of construction works.*
123. At Table 17 of the Department's AR, data is presented from the Applicant's noise modelling for the maximum potential and concurrent construction noise levels for MPW Stage 2, MPW Stage 3 and MPE Stage 2.
124. Paragraphs 6.6.12 and 6.6.13 of the AR provide the Department's comments on the findings, as follows:
- The Applicant's cumulative noise assessment found the highest increase in construction noise levels as a result of MPW Stage 2, MPW Stage 3 and MPE Stage 2 is 2 dB(A). The Applicant considered this difference is minor and manageable in accordance with proposed noise mitigation measures.*
- To manage construction noise impacts, the Department has recommended a condition requiring the Applicant prepare and implement a CNVMSP for the development....*
125. The Commission has therefore imposed **conditions C3 – C14** to control construction hours, and set construction noise limits and vibration criteria as per the Department's recommended conditions of consent.
126. In light of the cumulative noise assessment results, the Commission agrees with the Department above and finds that construction noise impacts can be effectively managed through implementation of a Construction Noise and Vibration Management Sub-Plan (CNVMSB), prepared in accordance with the ICNG. The Commission has therefore imposed **condition B21** (previously B20) as per the Department's conditions of consent which requires the Applicant to prepare the CNVMSB for the Stage 3 development in consultation with the CCC as part of the overarching CEMP (**Condition B17**). The Commission also imposes related conditions including **conditions C9, C10 and C11** with respect to construction noise limits.
127. A submission to the Commission from GREA requested a new condition similar to condition B20(d) (now **condition B21(d)**) but relating to light impacts (plus also stormwater impacts on the receiving watercourses and flood emergency) to facilitate greater engagement between the Applicant and the CCC. The Commission accepts this position and has added wording to **condition B8**: 'Community Communication Strategy' to this effect.

Out of Hours Work Protocol

128. Provision is included in the Commission's **condition B21(i)** for an Out of Hours Work (**OOHW**) protocol *"for the assessment, management and approval of works associated with the importation and placement of fill, outside the hours identified in condition C3"*.
129. Under the terms of **condition B21(i)** imposed by the Commission, the OOHW protocol must provide evidence of how feedback from the CCC has been incorporated to develop the protocol, and:
- specify what works are proposed out of hours;
 - provide details and clear justification for why the works must be done out of hours (reasons other than convenience must be provided);
 - detail an assessment of out-of-hours works against the relevant NMLs and vibration criteria;
 - provide detailed mitigation measures for any residual impacts (that is, additional to general mitigation measures), including extent of at-receiver treatments;
 - include proposed notification arrangements.
130. AR paragraph 6.6.18 states that the OOHW protocol must be approved by the Planning Secretary, as part of the Construction Noise and Vibration Management Sub-Plan (**CNVMS**P) for the development, prior to commencement of construction of the development.
131. At the meeting with the Commission on 30 March 2021, the Applicant proposed alterations to the wording of some of the recommended conditions of consent, including deletion of wording regarding the scope of works allowed through the OOHW under B20(i) (now **condition B21(i)**), shown struck out as follows: *"for the assessment, management and approval of works ~~associated with the importation and placement of fill,~~ outside the hours identified in condition C3"*.
132. The reasoning for the request was expanded by the Applicant in writing to the Commission on 8 April 2021, citing some examples where, for example, a worker safety benefit might arise. Other examples given (e.g. concrete pours) relate more to convenience. The Applicant's reasoning also included that the revision *"would standardise management of OOHW to the adjacent MPE Site OOHW"*. The Commission notes condition B135 under the MPE consent (SSD-7709) limits OOHW specifically *"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"*.
133. A main component of the works under the MPW Stage 3 Application is importation and placement of fill. The Applicant's noise assessment work shows that maximum cumulative construction noise levels during standard hours at residential receptors are predicted to exceed the NML. The Commission considers that the justification for OOHW should relate to community benefit or worker safety and that these considerations are adequately covered by the existing arrangements. For these reasons the Commission accepts the Department's reasons stated in its response to the Commission dated 26 April 2021. The Commission finds that the conditions listed above are necessary and appropriate and that **condition C4(e)** and the scope of the OOHW (now under **B21(i)**) should remain as per the wording in the conditions of consent.

4.8.6 Construction Soil and Water Management

134. As described by the Department in Section 6.7 of the AR:

...the Applicant's proposal envisages earthworks across the MPW site, to enable establishment and use of a construction works compound area, construct permanent and temporary access roads, import and stockpile fill material to establish a raised, level base for future development on the site, and install stormwater and drainage infrastructure. Due to the scale of the site and surrounding riparian context, controls to minimise soil erosion, maximise sediment retention onsite, and support improvements in urban water quality is a key consideration.

135. In addition: *"The Department notes that significant earthworks have already been undertaken on the site, as part of MPW Stage 1 Early Works and MPW Stage 2, and adjacent to the site as part of MPE Stage 1 and MPE Stage 2 works".*

136. The Department states at AR paragraph 6.7.4 that construction of the temporary construction works compound area would disturb and expose soil, increasing the risk of erosion and sedimentation on the site. Therefore, the Department recommends prescriptive conditions to manage potential impacts in the conditions of consent, including a requirement that the Applicant prepare and implement a Construction Soil and Water Management Sub Plan (CSWMSP).

137. The Commission has reviewed the Department's recommended conditions of consent (including B21 (now **B22 (Construction Soil and Water Management Sub-Plan))**, **B29, B30, C19 – C25 inclusive**) and finds that anticipated soil and water impacts can be effectively managed through compliance with those conditions as imposed – including by undertaking land disturbance and filling activities in a phased manner and limiting the maximum area affected at any one time.

4.8.7 Other Issues

138. Section 6.8 of the Department's AR gives consideration to other issues. A number of these were also raised in submissions from the public and organisations and at the Public Meeting.

139. Table 19 in Section 6.8 of the AR summarises the issues, provides an overview of findings and the role of conditions to mitigate or address the issue at hand.

140. The issues addressed in the table and other issues identified by the Commission are set out below.

Biodiversity

141. The Department states that *"The MPW Stage 3 proposal would not result in the loss of threatened or vulnerable species, populations, communities or significant habitats. No clearing will occur under the proposal, as all vegetation within the MPW development area (excluding the biodiversity area proposed in lot 11) was previously approved for removal under the MPW Stage 2 (SSD 7709) consent"*. Reference is given to AR Sections 4.10 and 6.8.

142. The Commission agrees with the Department and has included **condition A6** to confirm that no vegetation is permitted to be removed as part of the Project.

Operational Traffic

143. Submissions were made by the public and organisations regarding the matter of operational traffic associated with MPW and MPE. The Commission concurs with the findings of the Department that the Application does not seek approval for components that would generate operational traffic and the MPW site can be managed through compliance with operational traffic conditions in the MPW Stage 2 (SSD-7709), MPW Concept Plan and Stage 1 Early Works (SSD-5066) consents.

Air Quality

144. The Department considers air quality impacts at AR sections 6.4 and 6.7. The Commission notes that the EPA recommended several conditions to manage air quality impacts, including dust.
145. The Commission agrees with the Department that air quality impacts generated from establishment and use of the temporary construction works compound area (including proposed crushing plant), importation and placement of fill material and associated ancillary works are key considerations for this Application. Department AR section 6.8 states that the Application would not result in the introduction of any new or additional emission sources that have not been already assessed under the MPW Stage 2 or MPW Concept Plan and Stage 1 Early Works consents.
146. The Commission agrees with the Department above and finds that construction air quality impacts can be effectively managed through prescriptive conditions requiring the Applicant to undertake all reasonable steps to minimise dust generated during construction works.
147. The Commission has therefore imposed **conditions C15, C16 C17** relating to measures to minimise dust during the works under the conditions of consent. Dust control measures are also included under **condition B17(a)(iii)** (CEMP). These cover suppression of dust from exposed surfaces and stockpiles; ensuring that land stabilisation works are carried out progressively on the site; placing limits on dust emissions; and not permitting emission of offensive odours.

Operational noise

148. Page 58 (Table 19) of the Department's AR states that the EPA considered that operational noise impacts could be addressed through existing conditions of consent for MPW Stage 2. The Department states in Table 19 that it agrees with the EPA and considers that the Stage 3 proposal would not generate any additional operational noise emissions to those assessed under MPW Stage 2. Furthermore, noise emissions generated from operation of the MPW site can be appropriately managed through existing conditions of consent for MPW Stage 2, including construction of a five-metre noise wall along the entire length of the western internal road.
149. The Commission agrees with the Department and EPA and finds that additional conditions to control operational noise are not required in the consent for Stage 3.

Visual Impact

150. The Department refers to the Applicant's Visual Impact Assessment (VIA) in its consideration of potential additional visual impacts from those identified as part of MPW Stage 2. Table 19 of the Department AR states:

While construction equipment would be visible from Moorebank Avenue and residences in Casula, the VIA concluded that this proposal is unlikely to create additional visual impacts at these surrounding receivers, given the relatively low-rise nature of proposed construction works and existing landscaping screening at these receivers. Further, the Applicant considered that light spill produced by activities associated with the proposal is unlikely to be greater than that assessed and approved for MPW Stage 2.

151. Table 19 of the Department's AR states that improper management of stockpile areas on the site could negatively impact visual amenity. The Commission agrees with the Department's findings above and is of the view that visual impacts generated from the Project can be appropriately managed through the recommended conditions of consent. These include **conditions A12, C22, C23 and C25**. The Commission has also imposed conditions that require the Applicant to ensure that all external lighting must comply with AS 4282-2019 (control of obtrusive effects of outdoor lighting) – **conditions B15, B17(a)(vi) and C35**. **Condition B8** imposed by the Commission requires the Community Communication Strategy to set out mechanisms for community feedback to the Applicant and responses from the Applicant if issues arise during construction.
152. The Commission has considered visual impacts of the Application on Glenfield Farm in paragraphs 158-160 below. With respect to the Holsworthy Group the Commission finds that whilst some visual impacts arise from the Stage 3 works, they can be adequately mitigated by compliance with the conditions imposed by the Commission – for example those relating to stockpile management and lighting.
153. With regard to submissions raising concerns about lighting impact on wildlife, the conditions above relating to lighting will also control effects on existing wildlife and habitats adjacent to and in the vicinity of the Site.

Landscaping

154. Both the Department and Commission acknowledge the temporary nature of most activities proposed under this Application and that permanent landscaping is not a component of this Application. The Applicant prepared a Landscape Design Statement (LDS) as part of the VIA. The LDS provided an indicative planting schedule for the MPW site, seeking to utilise low-water-use native plant palettes throughout the precinct. In Table 19 the Department states that the Applicant committed to provide temporary landscaping as part of the proposal to enhance visual amenity, reduce erosion and sediment transport and assist management of stormwater flows.
155. The Commission finds that the temporary landscaping components to control erosion and sediment are within the scope of the requirements of **condition B22(c)** relating to the CSWMSP.

Non-Indigenous heritage

156. The Commission notes that the Applicant has undertaken a non-Indigenous heritage assessment. The assessment advised that most nearby heritage items are located outside of the MPW Stage 3 site and the proposal would not result in any known heritage impacts. It is noted that Heritage NSW considered that no historical archaeological resources would be impacted by the proposal and recommended an unexpected finds protocol be implemented to manage unexpected discovery of Relics.
157. The Department states refers to the submission from Heritage NSW dated 8 September 2020. In that letter Heritage NSW recommend a condition that:
A landscape area shall be developed along the site boundary within proximity of Glenfield Farm as a soft barrier to protect the SHR site and its setting. Landscaping shall include shrubs and trees capable of reaching and thus buffering the bulk, height and scale of new and future development. Plant species should be in keeping with those known to have existed in the past on the site or those appropriate to the soils and historic character in the vicinity.
158. The Commission finds that with respect to Glenfield Farm, which is listed on the NSW State Heritage Register, the existing boundary vegetation of the Site provides an appropriate foreground visual screen.

159. The Commission agrees with the Department (AR Table 19, page 59) and is of the view that works undertaken as part of this Project must comply with non-Indigenous heritage conditions set out under the MPW Concept Plan Stage 1 Early Works (SSD 5066) and MPW Stage 2 (SSD 7709) consents. The Commission imposes **condition B17(c)**, requiring the CEMP to include an unexpected finds protocol for Aboriginal and non-Aboriginal heritage, plus **conditions C28 and C29** which expand the requirements for these protocols.

Aboriginal Cultural Heritage

160. The Department states in AR Table 19 that the Applicant provided an Aboriginal heritage assessment as part of the proposal and the assessment indicated that the temporary construction works compound area is near four recorded sites. In addition, *“Of these, AHIMS ID 45-5-4273 and PAD2 are located directly adjacent to the proposal site. Both were identified under the MPW Stage 2 assessments as having been totally impacted by either MPW Stage 1 or the adjacent MPE project. This proposal would not result in any additional impacts to those items”*.
161. The Commission notes that EESG and Heritage NSW provided no comment in relation to Aboriginal heritage. The Department’s AR states that overall, the Applicant considers that the proposal is unlikely to result in impacts that are inconsistent with the MPW Stage 1, MPW Stage 2 and MPE approvals.
162. The Commission agrees with the Department above and is of the view that consent for the Project should be subject to the preparation and implementation of an unexpected finds protocol, to manage unexpected Aboriginal heritage finds. The Commission has therefore imposed **conditions B17(c) and C29**.

Contamination

163. A number of the submissions received by the Commission in writing and heard at the Public Meeting related to contamination and concerns that the Project would lead to release of contamination within the Site and present a risk to adjoining off-site receptors.
164. At Table 19, page 59 of the AR a summary is provided of the Applicant’s Geology, Soils and Contamination Impact Assessment submitted as part of the Application. The Assessment provided an overview of contamination works completed on the Site to date and concluded that remediation required to be undertaken in the Stage 3 area was completed in 2019, except for a soil stockpile in a restricted access location (the Golf Course).
165. Also in Table 19 of the AR, the Department references recommendations of the EPA for management of impacts during construction through conditions which cross-refer to the LTEMP approved under MPW Stage 2 (SSD 7709) (conditions B169, B171 and B172). The Department states at AR page 62 that it accepts the EPA’s recommendations.
166. Page 62 of the Department’s AR explains that *“Under Condition B169 of MPW Stage 2, a Site Audit Report (SAR) and Section A Site Audit Statement (SAS) are required to be prepared upon completion of the remediation required in relation to MPW Stage 1 and MPW Stage 2. The SAR and SAS required under Condition B169 has been finalised and was submitted to the Department in November 2020. The Department is satisfied that no further remediation of contaminated land is required under this proposal”*.
167. The Commission acknowledges concerns that the Application could result in release of contamination within the Site and present a risk to adjoining off-site receptors. The Commission also acknowledges the progress and auditing carried out under the MPW Stage 2 (SSD 7709) conditions. Accordingly, the Commission has imposed conditions including **A37 and C36 to C46**. In summary these conditions require:
- **A37:** Monitoring and Environmental Audits under Division 9.4 of Part 9 of the EP&A Act – including incident notification, reporting and response, non-

compliance notification, Site audit report and independent auditing. The Note under condition A31 defines “monitoring” which includes provision of data on compliance and “environmental audit” which includes a periodic or particular documented evaluation;

- **A38:** Access to information, specified documents to be made publicly available, including reporting of environmental performance, monitoring results, non-compliances, complaints and audit reports prepared as part of any independent audit of the development;
- **A47 – A50:** Compliance reporting;
- **B26:** Community consultation, notification and management of risk for off-site PFAS contamination;
- **B27:** Measures to be implemented to minimise the long term risk of PFAS contamination (e.g. to groundwater) arising from tree root penetration in contaminated ground;
- **C36 – C38:** Site Audit Statements, consistent with conditions under MPW Stage 2;
- **C39 – C40:** Implementation of LTEMP;
- **C41 – C46:** Independent Environmental Audit, where proposed independent auditors must be agreed in writing by the Planning Secretary; Independent Audits must be conducted and carried out in accordance with the Independent Audit Post Approval Requirements; the Applicant to review and respond to each Independent Audit Report; and Independent Audit Report and Applicant responses to be submitted to the Planning Secretary.

168. Submissions regarding the Department’s recommended conditions of consent were made by GREA, requesting wording to be added to conditions A31 and site auditing conditions including C36 and C41, as stated in the following paragraph. The Commission’s comments on the requests are provided in square brackets.

- The submissions by GREA requested the outcome of any site audit should result in an Audit report. [This is required already under the Note to condition A31];
- The audit report to be reviewed by an independent peer reviewer, selected by the DPIE, rather than the proponent. [The independent auditor must be agreed by the Planning Secretary, under **condition C41**].
- Further, any draft audit report, be presented to the Community Consultative Committee [The Commission has imposed new **condition B6** to require monitoring and audit reports to be presented to the CCC by the Applicant. The intent is to reinforce in the consent the Department’s *Community Consultative Committee Guidelines: State Significant Projects*. Reports are also to be made public under **conditions A38(iv) and (ix)**].

169. The submissions by GREA also requested additional requirements to be specified via new condition C39 for the LTEMP prepared under condition B172 of MPW Stage 2 (SSD 7709). The Commission found that these additional requirements are not necessary.

170. GREA also requested wording to be added to condition B25 (now **condition B26**) to define Long Term Environmental Management for groundwater PFAS contamination. As referenced at page 62 of the Department’s AR, the Department considers that this remediation has already been carried out. However, the Commission has amended the requirements relating to PFAS (now **conditions B26, B27**) to impose more specific requirements. Furthermore, the Commission has imposed conditions that the Contamination Management Plan (CMP) prepared under condition B164 and LTEMP prepared under condition B172 of MPW Stage 2 (SSD 7709) are implemented *for the duration of construction and operation of the development*. These are **conditions C39 and C40** in the conditions of consent for MPW Stage 3.

171. Further in relation to GREA submissions regarding release of contamination during Stage 3 works, **part (b) of condition B17** of the MPW Stage 3 conditions of consent requires *“an unexpected finds protocol for contamination and associated communications procedure to ensure that potentially contaminated material is appropriately managed”* is prepared as part of the CEMP prior commencement of construction. The CEMP is then required to be submitted by the Applicant to the Certifier and a copy provided to the Planning Secretary for approval. The Commission finds that in combination, the conditions of consent adequately address the concern.
172. Further in relation to PFAS, at the Site inspection the Commission asked the Applicant to comment on the potential penetration of tree roots (placed within the site as part of the Stage 2 or other later stages of works) to PFAS contamination levels within the Stage 3 site.
173. The Applicant responded in writing on 23 April 2021 to state that roots of trees located within the MPW developable site would be *“very unlikely to penetrate PFAS impacted areas”*, partly for reasons that a fill zone of approximately 3.6m generally overlays any potential remaining PFAS impacted soils on the Site.
174. The Commission notes that the MPW Stage 2 earthworks/fill diagram includes areas of both cut and fill. Fill areas vary in depth of fill from 0.00m to approximately 3.5m. Therefore, any residual PFAS material may be shallower than indicated.
175. The Commission notes that the LTEMP prepared and approved under Condition B172 of MPW Stage 2 (SSD 7709) refers at EMP12 and EMP13 to measures to manage and control landscape planting and root depths and penetration with regard to areas where PFAS soil is present. The Commission accepts the merits of imposing more prescriptive requirements to comply with these measures, as reflected in **condition B27** (and tied into the requirements of LTEMP **conditions C39 and C40**) as imposed by the Commission.

Applicant's suggested changes to recommended Condition A2

176. In its presentation to the Commission on 30 March, the Applicant requested additional wording to be added to condition A2(e) to increase flexibility by adding the word 'generally' to three of the criteria. The Commission has considered this request and finds that this would unduly expand the limits of the consent and increase uncertainty in relation to the final form of development, and the necessary management and mitigation measures proposed by the Applicant and imposed by conditions. Consequently, the Commission has not added the word 'generally' in imposing condition A2(e).

Environmental Management Plan

177. In correspondence with the Department following the Department's presentation to the Public Meeting, the Commission noted that some of the Department's recommended conditions in MPW Stage 3 are slightly broader than those in the MPW Stage 2 consent – notably in relation to Environmental Management Plans. In its letter dated 26 April, the Department explained that it had taken the opportunity to update the wording of conditions to reference and adopt the principles of the *Environmental Management Plan Guideline: Guideline for Infrastructure Projects* DPIE, April 2020). Furthermore, *“The Department considers this approach to condition-setting is consistent with other recently determined State Significant Development consents. Notwithstanding this, the Department considers that there is utility for the Applicant to update and expand on its existing management plans for the site to include relevant requirements for MPW Stage 3. Recommended condition B18 allows the Applicant to update versions of CEMP documents already approved by the Planning Secretary as part of the MPW Stage 2 consent, as relevant”*.
178. The Commission finds this approach acceptable in relation to the relevant conditions and as a consequence has imposed conditions of consent reflecting this approach.

Engagement with Community Consultative Committee

179. The Commission has noted requests from the public and organisations in submissions and at the Public Meeting for wording of conditions to require a greater level of engagement, notification, and consultation with the CCC, for example relating to incident reporting, contamination risks, non-compliance notification and reporting of findings of the Environmental Representative. In response, the changes imposed to the Department's recommended conditions include strengthening site monitoring and auditing requirements; increased measures for consultation with and notification of the CCC and reinforcement of already approved LTEMP measures (in particular relating to PFAS contamination risks) and operational management measures (for example at **conditions A38, B6, B8, B26, B27**).

4.8.8 Objects of the EP&A Act

180. In this determination, the Commission has carefully considered the Objects of the EP&A Act. The Commission agrees with the Department's assessment of the Application against the Objects of the EP&A Act provided at Appendix B of the AR (Statutory Considerations), which finds that the Application can be approved in a manner that is consistent with those Objects. The Commission adopts the Department's assessment and is of the view that the Application is in accordance with the Objects of the EP&A Act.

4.8.9 Ecologically Sustainable Development

181. The Department has considered the proposed development in relation to the ecologically sustainable development (**ESD**) principles at Section 4.6 of the AR. It states at AR paragraph 4.6.5 that *"The precautionary and inter-generational equity principles have been applied in the decision-making process via a thorough a rigorous assessment of the environmental impacts of the proposed development. The proposed development is consistent with ESD principles as described in section 17.5 of the EIS, which has been prepared in accordance with the requirements of Schedule 2 of the EP&A Regulation. The Department considers the application can promote ESD, subject to the recommended conditions"*. The Commission agrees with this finding.

4.8.10 Public Interest

182. The Department's AR states:

"The Department considers that the proposal is in the public interest and recommends the development be approved, subject to detailed conditions".

183. The Commission finds that on balance, and when weighed against the Objects of the EP&A Act, principles of ESD and benefits, the impacts are acceptable and capable of being appropriately mitigated through the measures required under the conditions of consent imposed by the Commission. The Commission is therefore of the view that the Project is in the public interest.

5 THE COMMISSION'S FINDINGS AND DETERMINATION

184. The Commission has carefully considered the Material before it as set out in **Section 4.4** of this report, including submissions from relevant government agencies, Council and interested individuals and organisations made in writing and at the Public Meeting.
185. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process), as well as in oral presentations to the Commission at the Public Meeting and written submissions following the Meeting. The Commission carefully considered all of these views and submission as part of making its decision and has made findings accordingly.
186. Based on its consideration of the Material, the Commission finds that weighed against EP&A Act and ESD principles, the relevant policy framework, and public benefits, the impacts associated with the Project are acceptable and the Project is in the public interest.
187. The Commission finds that the proposed variation from the minimum subdivision lot size development is acceptable, subject to the proposed management arrangements and conditions that require holistic management of the Site.
188. The Commission finds that construction traffic impacts can be actively managed through a combination of measures relating to the daily fill importation cap, fill and stockpile management, and implementation of a detailed CTAMP, and controlled through implementation of a number of measures. The Commission finds that it would be reasonable to cap the allowable quantum of daily fill at 13,000m³ which represents the (rounded up) maximum actually carried out to date, such that the MPW Stage 3 approval does not exacerbate the worst traffic impact that has occurred to date. The Applicant will also be required to modify MPW Stage 2 and MPE Stage 2 consents so that the 13,000m³ maximum daily fill imposed for MPW Stage 3 is also reflected in the MPW Stage 2 and MPE Stage 2 consents.
189. The Commission finds that the importation of additional fill material for Stage 3 is justified, that the associated construction impacts can be actively managed through prescriptive conditions, but that there is no basis to vary the previously approved finished surface level of 16.6m AHD.
190. The Commission finds that the Project should be **granted consent**, subject to the conditions of consent. More specifically, the conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts for the Stage 3 works;
 - set standards and performance measures for acceptable environmental performance during the construction and operation of the Stage 3 works;
 - require regular monitoring and reporting – and scope for close engagement between the Applicant and CCC; and
 - provide for holistic ongoing environmental management of the development.
191. The reasons for the Decision are given in this Statement of Reasons for Decision dated 11 May 2021.



Dianne Leeson (Chair)
Member of the Commission



Professor Richard Mackay, AM
Member of the Commission

APPENDIX A: MAIN COMPONENTS OF THE PROJECT

Source: Department Assessment Report, Table 2

Aspect	Description
Project summary	<p>The proposal comprises the following components:</p> <ul style="list-style-type: none"> staged subdivision of the MPW site into a total of 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 works compound area in the southern portion of the MPW site ancillary works to facilitate establishment, access and servicing of the works compound and subdivision
Subdivision	<p>The proposal for subdivision includes the following components:</p> <ul style="list-style-type: none"> proposed subdivision of existing Lot 1 DP1197707 into nine allotments for warehousing and distribution facilities, an interstate/intrastate freight terminal, School of Military Engineering (SME) rail connection corridor and a biodiversity area the subdivision may be staged where required subdivision of the MPW site would facilitate long term leasing of buildings and tenanting of individual warehouses easements are proposed for overhead powerlines, drainage, services (whole of lot) and access (whole of lot) subdivision area is 189.4 ha the smallest proposed lot is 12.28 ha (lot 13) and largest proposed lot is 44.82 ha (lot 11). All proposed lots are below the 120 ha minimum lot size development standard prescribed in the (LLEP)
Structures / uses	<p>The temporary construction works compound area includes:</p> <ul style="list-style-type: none"> main construction, operation and maintenance compound in eastern portion of proposed lot 10 (approximately 20,000m²) including staff amenities, meeting and training rooms, staff kitchen and café facilities hardstand, laydown and materials stockpile areas in eastern portion of proposed lot 8 (approximately 20,000m²) and proposed lot 9 (approximately 25,000m²) materials storage area and car parking (approximately 20,000m²) in western portion of proposed lot 10
Ancillary development	<p>Ancillary development, including:</p> <ul style="list-style-type: none"> temporary and permanent access roads earthworks fencing and preliminary establishment facilities utilities installation/connection stormwater and drainage infrastructure signage and landscaping
New internal access roads	<ul style="list-style-type: none"> Construction of a permanent perimeter road, continuing south from the access road near the MPW site's western boundary, to the southern portion of the MPW site A turnaround would be constructed at the end of the permanent perimeter road

	<ul style="list-style-type: none"> Construction of a temporary loop road from the permanent perimeter road, to provide access to the hardstand, laydown and materials stockpile area
Car parking	<ul style="list-style-type: none"> Provision of 250 temporary light vehicle car parking spaces adjacent to the proposed temporary works compound buildings on proposed lot 10 Temporary parking for heavy vehicles (and additional parking for light vehicles, as required) within the Material Storage and Parking area on proposed lot 10
Hours of construction	<ul style="list-style-type: none"> 7am to 6pm Monday to Friday 8am to 1pm Saturday no construction work on Sundays or public holidays. <p>The Applicant proposes to undertake certain construction works outside of standard construction hours under an Out-of-Hours Work Protocol (Section 6.6 of the Department's AR).</p>
Construction timeframe	<p>Use of the temporary construction works compound is required to support construction works on the broader MPW and MPE sites for an indicative 24 month period.</p> <p>Fill material is proposed to be imported to the site for an indicative 12 month period (Section 2.3 of the Department's AR).</p>
Capital Investment Value	\$38,061,404
Jobs	60 construction jobs