

Comments on IPC's proposed changes to the Department's recommended conditions for the Elf Mushroom Farm

The Department takes care to ensure the recommendations of agencies and Council are reflected in the recommended instrument while ensuring they fit within the structure and style of the Department's conditions and any existing Project Approval/ Development Consent, that they are of relevance to the application and are enforceable conditions.

Amendment No. per modifying instrument	Department's Condition	IPC's Condition	Sydney Trains Condition	Department's Comment
-	Schedule 1	Amendments to delegate, modification description and land description		<ul style="list-style-type: none"> The Department has no significant comments with these changes. It is noted, however, the way in which the approval authority is referred to, both in instruments determined by the Department and by the IPC lack some consistency when projects are approved under delegation. The Department has noted two additional errors in Schedule 1 as this is still a project approval and modification under s75W and requests the IPC update this. <ol style="list-style-type: none"> "Modification Application" should instead read "Modification Request" "Consent Authority" should read "Approval Authority"
2 and 18	Use of the terms PCA and final occupation certificate – consistent with existing project approval	References to Principal Certifier and deletion of reference to a final OC		<ul style="list-style-type: none"> The Department's understanding is that for development consents (or Part 3A approvals) issued prior to the commencement of Part 6 of the EP&A Act on 1 December 2019, they continue to operate under the unamended Act (cl 18A of 2017 Regulation). It is recommended references to PCA and final OC remains (see condition 29 in particular).
13	<p>Proposed condition 17F</p> <p>The Proponent must ensure any structures approved under MOD 3 that are built below the 1 in 100 year ARI flood level, including the noise barrier and northern perimeter wall, are constructed from flood compatible building components</p>	<p>Proposed condition 17F</p> <p>Verbatim insertion of Council's condition</p>		<ul style="list-style-type: none"> The Department has sought to simplify Council's condition regarding building in the 1 in 100 year flood zone and it is considered it covers Council's requirements. The Department would agree to an amendment to the condition to provide some more specificity with the following words added in bold as follows: <p>"The Proponent must ensure any structures approved under MOD 3 that are built below the 1 in 100 year ARI flood level, including the noise barrier and northern perimeter wall, are constructed from flood compatible building components to ensure structural stability during a flood event."</p>

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				<ul style="list-style-type: none"> In issuing a CC, the certifying authority will need to be satisfied the Proponent has met this condition. Whether that is via an engineer's certificate, or some other means is at the certifier's discretion and it is not considered necessary to state in the condition.
15			<p>Proposed new condition 21B</p> <p>Requirement for a gate that provides acoustic attenuation to be provided in the eastern side of the Noise Barrier.</p>	<ul style="list-style-type: none"> The IPC has not provided justification for this proposed new condition. In its submission, the EPA raised no concerns with the proposed amendments to the noise wall. The Proponent's noise assessment also demonstrates it will comply with the noise limits set under the project approval. Further, the condition does not provide timing for when this gate should be installed – if the requisite evidence is not provided to the Secretary.
16			<p>Proposed new condition 24C</p> <p>Requirement to include screen planting immediately to the east of the eastern arm of the Noise Barrier</p>	<ul style="list-style-type: none"> The IPC has not provided justification for this proposed new condition.
17			<p>Amendments to proposed new conditions 27 and 28</p> <p>Changes to require prior to issue of a CC, nomination of a specific road to check for dilapidation.</p> <p>Further, a post-construction dilapidation report is requested</p>	<ul style="list-style-type: none"> The Department notes the IPC has made amendments to the Department's agreed standard conditions regarding dilapidation reports. These standard conditions were developed after a detailed process and the IPC was briefed on them. This should be reverted to the original wording. The Department does not agree to the amendment to reference a CC, nor does the Department agree to the inclusion of the first sentence in condition 28. It is not required as the condition already mandates repairs must be undertaken if there is any damage.
18	<p>Proposed condition 29.</p> <p>Before the issue of the final Occupation Certificate for the works associated with MOD 3, works-as-executed drawings signed by a registered surveyor demonstrating that the stormwater drainage and finished ground levels have been constructed as approved, must be submitted to the PCA and Sydney Trains.</p>	<p>Proposed new condition 29(b)</p> <p>Requirement for drawings to indicate there has been no encroachment on to Sydney Trains land or easements</p>	<p>Proposed condition 5</p> <p>Prior to the issuing of an Occupation Certificate the Applicant is to submit the as-built drawings to Sydney Trains and Council.</p> <p>The as-built drawings shall indicate that there has been no encroachment into RailCorp land or easements. The Certifying Authority is not to issue the Occupation Certificate until written confirmation has been</p>	<ul style="list-style-type: none"> The Department does not consider this condition is required. The Proponent is required to construct works proposed under MOD 3. in accordance with the plans approved by MOD 3 which show there will be no encroachment onto Sydney Trains' land. As per the Department's recommended conditions 29 and 30, no work is permitted within the corridor unless Sydney Trains agrees. Secondly, an OC cannot be issued unless the as-built structures are done in accordance with the approved plans. It is not

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			received from Sydney Trains confirming that this condition has been satisfied	<p>necessary to get Sydney Trains' further approval.</p> <ul style="list-style-type: none"> In the alternative, Sydney Trains has indicated in its submission (and reflected in the Department's recommended conditions), that encroachment could occur, subject to Sydney Trains' approval, so this condition would not be able to be satisfied if this occurred.
19			Proposed new condition 30	<p>Proposed conditions 1, 2 and 3.</p> <ul style="list-style-type: none"> As a general comment, the Department does not support the wholesale inclusion of Sydney Trains' condition in this location as it does not fit with the form and structure of the existing project approval. The Department has considered each of Sydney Trains' proposed conditions and incorporated these, where appropriate, in locations that are consistent with the structure and form of the overall approval. The Department drafts conditions so as to not be overly prescriptive and to allow for a degree of flexibility. The Department considers its current condition that states any changes to the outcomes specified in the condition are to obtain Sydney Trains' prior approval, ensures Sydney Trains will be satisfied with the outcome. The project approval is structured to refer to actions that must take place prior to the commencement of construction or operation, it is not drafted in terms prior to the issue of a CC or OC (with the exception of two recent conditions) as is often used for more urban projects. The Department considers its proposed new condition 30 should remain. Further comments on the IPC's proposed new condition 30 is provided below.
19	-	Proposed condition 30(a)(i) and (ii) Verbatim Sydney Trains' condition	Proposed condition 1a. and 1b. Provision of stormwater and drainage plans and Certification from Geotech and structural engineers	<ul style="list-style-type: none"> The IPC's inclusion of Sydney Trains' conditions 1a. and 1b. verbatim as new conditions 30 (a) i. and ii. is not supported as it is a duplication of the Department's recommended conditions 1B(d)(i) and (ii), which the IPC has not raised concern with.
19		Proposed condition 30(a)(iii) Verbatim Sydney Trains' condition	Proposed condition 1c. A Risk Assessment/Management Plan and detailed Safe Work Method Statements	<ul style="list-style-type: none"> The Department does not consider inclusion of this condition to be necessary. The Proponent is required to prepare a CEMP, in consultation with Sydney Trains. It

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			(SWMS) for the proposed works regarding any potential impacts on Rail Corridor.	is not proposed to encroach on Sydney Trains' assets.
19		Proposed condition 30(a)(iv)	<p>Proposed condition 1d.</p> <p>Future Maintenance Plans confirming how the proposed wall and the 400mm setback maintenance will be undertaken without reliance on or use of RailCorp land. No access or use of RailCorp land is permitted without entering into a formal Agreement</p>	<ul style="list-style-type: none"> The Proponent has already stated it will not be undertaking maintenance that relies on Sydney Trains' assets and as such, preparation of such a plan is not required. In the alternative, Sydney Trains' allows for a formal agreement to be entered into and such a plan could be required at this time. Further, the wall is now setback 1000mm from Sydney Trains' corridor. The Department's recommended condition 30(a) already covers the restriction on accessing Sydney Trains' land for maintenance.
19	<p>Proposed new condition 10(b)</p> <p>Requirement to ensure straw bales are separated from other buildings and that the outdoor bale storage area is readily accessible by fire crews</p>	<p>Proposed condition 30(a)(v)</p> <p>Verbatim Sydney Trains' condition 1(a)</p>	<p>Proposed condition 1e.</p> <p>Confirmation that there is no potential risks to the Rail Corridor and associated infrastructure in relation to any fire or flammable materials associated with the proximity of the hay bale storage area to the Rail Corridor Boundary. Consideration of the storage area layout, materials, proposed wall, accessibility and any preventative measures are to be included in the documentation.</p>	<ul style="list-style-type: none"> The Project Approval already has conditions requiring the Proponent to implement suitable measures to minimise the risk of fire. Additionally, the Department has proposed new condition 10(b) to address further fire management for the straw bale storage. The IPC has not commented upon this condition. Recommended condition 30(a)(v) is therefore not supported.
19	<p>Proposed condition 30(a):</p> <p>The Proponent must ensure:</p> <p>(a) no construction or maintenance works associated with MOD 3 occur within the Rail Corridor or its associated easements;</p> <p>.....</p> <p>except with the prior approval of Sydney Trains.</p>		<p>Proposed condition 2</p> <p>No work is permitted within the Rail Corridor, or its easements, at any time unless prior Approval or an Agreement has been entered into with Sydney Trains.</p> <p>Where the Applicant proposes to enter the Rail Corridor, the Certifying Authority shall not issue a Construction Certificate until written confirmation has been received from Sydney Trains confirming that its Approval or Agreement has been granted.</p>	<ul style="list-style-type: none"> The intent of Sydney Trains to not permit work within the Rail corridor without its prior approval is fulfilled by the Department's more succinct condition. The approval is structured to refer to actions that must take place prior to the commencement of construction or operation, it is not drafted in terms prior to the issue of a CC or OC (with the exception of two recent conditions) as is often used for more urban projects. The Department's recommended condition fits within the structure of the existing approval and the IPC's suggested conditions are not agreed to.
19	<p>Proposed condition 30(b)</p> <p>The Proponent must ensure:</p> <p>(a) ...;</p>	<p>Proposed condition 30(c)</p> <p>Verbatim Sydney Trains' condition</p>	<p>Proposed condition 3</p> <p>Given the development site's location next to the Rail Corridor, drainage from the development must be adequately managed/</p>	<ul style="list-style-type: none"> Sydney Train's proposed condition (and replicated by the IPC) is not drafted in terms that reflects the structure of the existing project approval. The Department has considered Sydney Trains' request and

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		<p>(b) stormwater drainage associated with MOD 3 is not discharged into the Rail Corridor; and</p> <p>(c) ...,</p> <p>except with the prior approval of Sydney Trains.</p>		<p>disposed of and not allowed to be discharged into the Rail Corridor (land and its easements) unless prior Approval has been obtained from Sydney Trains</p>	<p>considers the intent of the condition is to ensure drainage from the MOD 3 works is not discharged onto Sydney Trains' assets or easements.</p> <ul style="list-style-type: none"> The Department considers its recommended condition 30(b) adequately reflects this intent while fitting in with the existing project approval's structure.
19		<p>Proposed Condition 30(c)</p> <p>The Proponent must ensure:</p> <p>(a)...</p> <p>(b) ...; and</p> <p>(c) fill is not spread or stockpiled within the Rail Corridor or its associated easements,</p> <p>except with the prior approval of Sydney Trains.</p>	-	<p>Proposed condition 4</p> <p>Excess soil is not allowed to enter, be spread or stockpiled within the Rail Corridor (land and its easements) and must be adequately managed/ disposed of.</p>	<ul style="list-style-type: none"> The IPC does not appear to be including the Department's proposed condition 30(c) in its recommendation. The Department considers Sydney Trains' request is addressed in the Department's recommended condition 30(c) and should be retained.
19		<p>Proposed condition 31</p> <p>The Proponent must ensure that straw bales stacked immediately adjoining the southern section of the noise barrier (adjacent to the Rail corridor) do not exceed the height of the noise barrier.</p>	IPC has deleted the condition		<ul style="list-style-type: none"> It is unclear why the IPC has deleted this recommended condition. The Department considers it important to impose this condition to ensure bales can't potentially topple over the noise barrier and onto Sydney Trains land. It is recommended this condition be re-instated.