



**B9 Paper Mill**

Orora

**Submission Report - Modification #5**

Final

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## Executive Summary

In response to the exhibition of Modification #5 - Demolition of B7 Building and other minor works, a total of 6 submissions were received. Five submissions were from government agencies, of which 3 raised no issues in regard to the proposed modification.

The submission from the EPA raised concerns about the period between the demolition of the B7 Building and the implementation of final noise mitigation measures – and also about the form of the final noise mitigation measures including the impacts of road and port noise on sensitive receivers.

The Randwick City Council (RCC) raised concerns about:

- The approval of the proposed McCauley Street precinct development.
- Overland flooding issues that have yet to be resolved.
- Various traffic management measures including heavy vehicle movements and parking.
- Upgrades of McCauley Street and services.

There was one community submission which raised concerns about noise and dust from demolition activities and short and medium term noise mitigation.

Responses to all the issues raised are detailed in this report.

The responses to key issues raised include:

- Orora does not believe that linking this modification to unrelated matters such as overland flooding and approval of the proposed McCauley Street development is appropriate or can be legally justified.
- Some of the infrastructure and services upgrades requested by RCC are not justified.
- An interim noise mitigation solution has been developed to provide mitigation for sensitive receivers during the demolition of the B7 building and before the final noise mitigation solution is implemented.
- A final noise mitigation solution has been developed that will ensure that Orora meets its operational noise criteria.

## 1. Introduction

### 1.1 Background

Orora (formerly AMCOR Packaging) obtained project approval under Part 3A of the *Environmental Planning and Assessment Act 1979* in 2007 (Application No. 05\_120) for the construction and operation of the B9 Paper Mill at its site in Matraville, Sydney. The Paper Mill has been built and commenced full production in early 2013.

The B9 Paper Mill replaced two older paper machines (B7 and B8) which were located in two large brick buildings along the northern boundary of the site (See Figure 1). These paper machines are no longer operational and have been partially decommissioned.

In December 2013, a fire occurred in the B7 building causing significant structural damage to the building. As a consequence the B7 building has become structurally unsound and requires demolition to ensure the safety of the site.

Also as part of a previous modification (#2), Orora obtained approval to subdivide the site to enable the sale of excess land. Subdivision boundaries were identified in the modification application, however, Orora wishes to modify one of the boundaries of the McCauley Street precinct (Lot 2014) slightly to better align with the final internal road alignments and relocate an existing access gate.

The Department of Planning & Environment (DP&E) were consulted on the proposed works and the change to the subdivision boundary and specified that a modification to the existing Part 3A approval was required. Orora formally applied to the DP&E for a modification to the existing Project Approval to demolish the B7 building and for the minor change to the subdivision boundary of the McCauley Street precinct. DP&E provided Secretary's environmental assessment requirements (SEARs) to Orora on the 27 June 2014.

A modification report was prepared by Orora to address the SEARs and the report was exhibited by DP&E between 27 February 2014 and 12 March 2014.

As a result of the exhibition, 6 submissions were received from government agencies and the community. This report contains responses to issues raised by those submissions and details any additional mitigation measures required to address concerns.

### 1.2 Submissions received

Submitter/Issues	Response/Where addressed
<p><b>NSW Office of Water</b></p> <p>The NSW Office of Water (NOW) has reviewed the Modification Report. The NSW Office of Water notes the following:</p> <ul style="list-style-type: none"> <li>- That there will be no impact to groundwater sources as the building slabs will remain in place and all exposed areas will be sealed immediately.</li> <li>- That a Surface Water Management Plan will be developed to minimise the risks of possibly polluted surface water reaching Botany Bay.</li> </ul> <p>It is noted that Orora has water access licences and approvals for extraction of groundwater to feed Mill 9.</p> <p>There are no further issues with the modification as presented.</p>	<p>No additional response required</p>

Submitter/Issues	Response/Where addressed
<b>New South Wales Department of Trade and Investment – Geological Survey</b>	
The GSNSW have no resource issues to raise concerning: Orora (formerly AMCOR) New Paper Mill Project, Matraville Proposed Modification - Additional Demolition Works.	No additional response required
<b>Office of Environment and Heritage</b>	
The Greater Sydney Planning Team in the Office of Environment and Heritage has reviewed the relevant documents and has no interest in this matter and no further need to be involved in the assessment of this project.	No additional response required
<b>EPA</b>	
<p><b>Operational Noise</b> Modelling of predicted operational noise levels following the removal of the B7 building has shown that the addition of an 8 metre noise wall reduces the noise levels at many of the locations. However, it is noted that the location and finished height of the modelled wall is only indicative at this time and would be subject to the survey and feasibility constraints for the site once B7 is removed. It is further noted that even with an 8 metre noise wall, it is expected that there will be marginal exceedances of the noise limits at some locations. Demolition of the B7 building will remove a significant source of shielding from Orora's operations, the surrounding roads and the Port Botany Precinct. The EPA is concerned that there is insufficient certainty that operational noise levels will meet the current noise levels following removal of the B7 building. Consideration must also be given to what additional noise mitigation and management measures may be available if the proposed noise barrier is unable to reduce noise levels to the meet the current noise limits for the site.</p>	Section 4 – Noise
<p>Additionally, the EPA is concerned that the community will be subject to elevated noise levels during the period between removal of the B7 building and completion of the noise wall (if this is found to be feasible). Accordingly, the EPA requests that a clear timeframe is provided for the noise wall survey and feasibility studies, additional noise monitoring and Noise Barrier Design Plan</p>	Section 4 - Noise
<b>Community #1</b>	
Requests that the noise wall be constructed before the demolition of B7 building commences to mitigate demolition noise and dust – as well as providing operational noise mitigation.	Section 4 - Noise
Requests that the existing noise wall be extended along the boundary of the site from Australia to Botany Road	Section 4 – Noise
Requests that the brick wall along Purcell Park be rebuilt as soon as possible to mitigate visual impacts	Section 5 – Visual

Submitter/Issues	Response/Where addressed
<b>Randwick City Council</b>	
<p><b>Overland flows &amp; stormwater</b></p> <p>Amcor / Orora have submitted a number of overland flow management reports for the western area, the most recent being Version H dated October 2014. None of the flow management reports submitted to date comply with Council's requirements. The plan of subdivision registered in October 2014 creates easements for floodway (i.e. overland flow) that reflect the Version H report. The management of overland flow in accordance with the Version H report produces increases in the flood level within McCauley Street for a range of storm events and makes recommendations for altering levels within a number of properties on the western side of McCauley Street to protect them from stormwater inundation during major storm events. The Version H report is therefore unsatisfactory to Council, increases flood levels in areas outside the development site and is not in accordance with many of the accepted principles of flood / floodplain management. Alternate drainage conditions have been included in this submission to address these concerns.</p>	<b>Section 2 - Flooding</b>
<p><b>Legality of approval</b></p> <p>Following on from the registration of a plan of subdivision in October 2014 a Complying Development Certificate (CDC) was issued 3 February 2015 for development on Lot 2014 DP 1195903 (Lot 2014). The CDC was issued by Blackett Maguire Goldsmith Pty Ltd without consultation with Council and without the required written consent of Council as the relevant Roads Authority under Section 138 of the Roads Act 1993 which is a prerequisite to the issuing of a CDC. The proposed modification to the site access directly relates to the subject CDC and in effect is seeking to remedy a potentially invalid consent. The design of the vehicular access and the entire traffic report submitted with the modification relates to the development approved under the CDC. Council's objects to the vehicular access off McCauley Street for Lot 2014 and access to this allotment should be provided via the internal road network within Lot 2015 DP1195903 with the creation of appropriate rights of carriageway.</p>	Section 3.1
<p><b>Parking</b></p> <p>The section of McCauley Street immediately in front of Lot 2014 provides informal unrestricted 90 degree parking for a number of vehicles. The installation of kerb and gutter and the proposed vehicular crossing, (together with parking restriction of the area south of the vehicular crossing) will remove a significant amount of on street parking. Every effort needs to be made in the design phase to minimise the loss of on street parking. Council is concerned that vehicles unable to park in this section of McCauley Street will filter into the surrounding road network.</p>	Section 3.4
<p><b>Upgrade of McCauley St</b></p> <p>The recently completed upgrade of McCauley Street has been limited to the section of McCauley Street between Botany Road and Raymond Avenue. Apart from construction of a new concrete footpath no civil works have been carried out in front of Lot 2014.</p> <p>Council requires extensive civil works within McCauley Street to facilitate the development of Lot 2014 and as such detailed civil works requirements have been included within this submission.</p>	Section 3.2

Submitter/Issues	Response/Where addressed
<p><b>Landscaping</b></p> <p>As part of the general upgrade of McCauley Street the applicant should be required to undertake suitable street tree planting along the McCauley Street site frontage of Lot 2014 DP 1195903. Given that a CDC has been issued for Lot 2014 additional landscape comments have not been provided within this report.</p>	Section 3.2
<p><b>Services</b></p> <p>The applicant should be required to meet the full cost for the overhead power lines and telecommunication cables located along the McCauley Street frontage of Lot 2014 to be relocated underground. The applicant should liaise directly with the relevant service utility authorities to organise for the cables to be relocated. All cables must be relocated underground to the satisfaction of the relevant service utility authority prior to the issuing of an occupation certificate for the development.</p> <p>A Public Utility Impact Assessment should be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p>	Section 3.3
<p><b>Traffic Management</b></p> <p>Any proposed McCauley Street entry / exit driveway must be designed as right turn in / left turn out. No B-Double access shall be provided for Lot 2014 DP 11950931.</p> <p>All heavy vehicle access to and from Lot 2014 DP 1195903 shall be via McCauley Street and Botany Road. There must be no heavy vehicle movements associated with the development of Lot 2014 using local roads.</p> <p>Heavy vehicles routes to and from Lot 2014 DP 1195903 shall not utilise the residential streets through Matraville town centre, in particular Bunnerong Road, (between Beauchamp Road and Perry Street), and Perry Street should not be used by heavy vehicles accessing the site. Heavy vehicles routes shall include Foreshore Road, Botany Road, Beauchamp Road and Denison Street.</p> <p>Prior to the issuing of an Occupation Certificate for any development within Lot 2014 DP 1195903 the applicant must arrange letters of agreement, to be signed by the applicant and its major transport carrier/s, to use the approved truck routes.</p> <p>Prior to the issuing of an Occupation Certificate copies of the signed agreement/s between the applicant and its major transport carrier/s must be forwarded to Randwick City Council for its information and records.</p> <p>All costs of traffic management measures associated with the development shall be borne by the developer.</p>	Section 3.5

## **2. Flooding and stormwater**

### **2.1 Flooding**

RCC have linked the minor change in the subdivision boundary of Lot 2014 with the ongoing resolution of overland flooding issues associated with the B9 Paper Mill. This link can not be justified and the overland flooding resolution is a separate issue to the minor change in the subdivision boundary of Lot 2014 and to the relocation of the driveway. The developer of the McCauley Street has obtained legal advice regarding this issue and it is included in Appendix A.

An easement for a 12m wide stormwater channel which cannot be built upon, has been allowed around the boundary of the site along the Australia Avenue and McCauley Street frontages. RCC have not raised any issues with the capacity of the 12m wide stormwater channel, rather the issue is where the overland flow ends up after being discharged from the stormwater channel.

Version H of the Overland Flow Management Report is the culmination of over three years of options assessment and consultation with RCC. The report includes a detailed summary of the various options assessed to potentially manage overland flows – and concludes that the only viable option is the scheme described in Version H. Any other options such as sending the flows east are not viable due to the land elevations and existing infrastructure. Therefore a stormwater channel in the location and dimensions detailed in Version H would be part of any solution of managing overland flows.

Orora is committed to resolving the issue of overland flow management – however in a process outside this modification application. Therefore the conditions proposed by RCC in relation to overland flows are not relevant for the modification application and should not be included in any modified project approval.

### **2.2 Stormwater**

RCC has specified a number of conditions in relation to stormwater management on the site. At this stage Orora or the developer of the Lot 2014 do not intend to provide any additional information above which is already available. This includes the stormwater management plan and design for the new development and the Water Management Plan (which included a Stormwater Management Scheme) submitted to DP&E as part of B9 Project.

When the stormwater system was designed and constructed for the B9 Project, capacity in the Orora site stormwater system was provided to allow stormwater from Lot 2014 to be managed. The stormwater system in this area of the site drains to a pipeline owned by Orora. This pipeline discharges into Long Dam – which again is owned by Orora.

The information requested in the proposed approval conditions relating to stormwater management on Lot 2014 is already available and approval for stormwater management has already been granted through the CDC process and by DP&E. Therefore the conditions proposed by RCC in relation to stormwater management are not relevant for the modification application and should not be included in any modified project approval.

### **3. Relocation of Access**

#### **3.1 Objection to relocated access**

RCC has objected to the relocation of the access on McCauley Street, citing that the proposal to relocate the access is primarily a means of addressing issues associated with a Complying Development Certificate issued for the proposed redevelopment of Lot 2014. RCC state the CDC has been issued illegally as a Section 138 approval under the Roads Act for the relocated access had not been obtained before the issue of the CDC.

Orora has sought the relocation of the access for operational reasons— rather than to remedy any issues with a planning approval. The developer of the McCauley Street precinct has obtained legal advice regarding this issue and it is included in Appendix A.

Orora also notes that there has been appropriate interaction between the certifier and RCC – and between consultants employed by the owner and RCC. This includes:

- Emails and telephone calls regarding the relocated access in September 2014
- Consultation with RCC council staff by the certifier on development standards and other matter relating to the development.

RCC have been informed and aware of the proposed development of the land – including the relocation of the access and have never raised any concerns previously about the proposal.

It is noted that RCC have not presented any reasons why the relocation should be rejected because of traffic concerns – and have in following sections of their submission proposed approval conditions should DP&E decide to approve the relocation.

RCC have also stated that the Orora's main McCauley Street access should be used to access to Lot 2014. While this was originally intended, the nature of the proposed new development of Lot 2014 poses significant issues. This includes:

- the Orora access is currently one-way (ie exiting site on to McCauley Street). Considerable works would be required to make the access two-way especially to allow for semi-trailer movements to and from Lot 2014.
- The traffic from Orora's site using the McCauley Street exit road is all heavy vehicle traffic including B-Doubles – whereas the traffic accessing Lot 2014 will be predominately cars and light vehicles. This would present a significant road safety risk at the intersection of the two site exit/entry locations on the potential shared access. From a road safety perspective it would be preferable to separate the two sources of traffic.
- With a shared access site security for Orora would be substantially harder to maintain. The existing security gates and fencing would need to be relocated and there would be a greater risk of non-Orora vehicles and personnel entering Orora's site due to the proximity of the two accesses.

Consequently having a shared access for the Orora and the new development on Lot 2014 is not practical and may result in additional road safety issues.

#### **3.2 Upgrade of McCauley Street**

RCC have requested that McCauley Street be upgraded – however have not specified which section of the road to be upgraded. They have requested a full reconstruction of the south bound lane and resheeting of the northbound lane.

Orora do not believe that a full reconstruction or upgrade of McCauley Street is required as:

- Orora have already upgraded McCauley Street between Botany Road and Raymond Avenue as part of the B9 project. The upgrade was above and beyond RCC's initial request and cost Orora approximately \$3 million. Orora undertook this upgrade in recognition that RCC did not receive Section 94 contributions because the project was approved under Part 3A - and also that heavy vehicles from the B9 Project would be using McCauley Street
- The proposed new development would not generate anywhere near the number of heavy vehicles compared with the B9 Project – and therefore substantial upgrade of McCauley Street is not required. As noted in the traffic assessment the proposed development could generate up to 86 peak hour vehicle trips. The vast majority of these will be light vehicles with very few heavy vehicles. This is due to the nature of the proposed development – which consists of small industrial units with associated offices. The office component of the development would generate about 50% of the vehicle movements (ie. cars and vans) – while the light industrial component would generate a mix of cars, light trucks/vans and an occasional semi-trailer.
- RCC will receive Section 94 contributions from the proposed new development (\$129,090.84) – and these could be used to upgrade the road if RCC desires. It should be noted that because the proposed development would discharge to Orora's stormwater system – which in this area of the site is a private pipeline that discharges to Long Dam, RCC would not be required to fund any upgrades or maintenance of stormwater systems for the proposed development.
- The requirement to fully upgrade McCauley Street would be so costly to make the sale and redevelopment of the land unviable.

RCC have requested a number of other works associated with McCauley Street. These are further discussed in the table below.

Works	Response
Removal of all redundant vehicular crossings and reinstatement of the areas to Council's specification;	Developer of Lot 2014 will remove all redundant vehicular crossings and will reinstatement the areas to Council's specification. This has already been allowed for in the approved plans for the site.
Construction of kerb and gutter for the full site frontage of Lot 2014 DP 1195903, (linking up with Australia Avenue), except opposite any vehicular entry and exit points.	Developer of Lot 2014 will construct of kerb and gutter for the full site frontage of Lot 2014 DP 1195903, (linking up with Australia Avenue), except opposite any vehicular entry and exit points. This has already been allowed for in the approved plans for the site.
Full reconstruction of the southbound pavement of McCauley Street, going from the new kerb and gutter referenced above to the existing centreline of McCauley Street. Note the design, extent and depth of the reconstruction shall be to Council's specification;	This is not considered warranted based upon the traffic demand of the proposed development and is discussed above.
Profiling of the existing northbound pavement of McCauley Street and to re-sheet the northbound pavement to Council's specification. The depth of the re-sheet will be determined by Council.	This is not considered warranted based upon the traffic demand of the proposed development and is discussed above.
Construction of a vehicular crossing in McCauley Street as / if required. Any reconstructed vehicular crossing shall be a full width industrial crossing and layback at kerb.	Developer of Lot 2014 will construct a vehicular crossing in McCauley Street. Any reconstructed vehicular crossing shall be a full width industrial crossing and layback at kerb.  This has already been allowed for in the approved plans for the site.

Works	Response
Construction / installation of traffic facilities as required restricting the movement of heavy vehicles exiting the site to southbound movements only. Heavy vehicles exiting the site into McCauley Street must only use the southbound pavement and travel towards Botany Road.	Developer of Lot 2014 will construct/ install traffic facilities as required restricting the movement of heavy vehicles exiting the site to southbound movements only
Drainage construction works as required across the McCauley Street site frontage.	Only kerb and guttering has been allowed for. As the proposed development will drain to Orora's stormwater system and will not discharge off-site, this is not required
Proposed line marking and signage.	Developer of Lot 2014 will undertake line marking and provide and install signage
Street tree planting along the McCauley Street site frontage of Lot 2014 DP 1195903 in accordance with Council's Street Tree Masterplan.	Landscaping plans are part of the CDC approved for the site – and would conform to RCC requirements

### 3.3 Services

RCC have requested that all overhead power and telecommunications cable to be placed underground as part of the works. The costs of this far outweigh any benefits of undertaking these works. It should be recognised that one of the major causes of the delays in the upgrade of McCauley Street by Orora in 2012/2013 was undergrounding services. There are a significant number of services along McCauley Street and the locations of many services are poorly defined or unknown.

Also underneath Australia Avenue is a major Ausgrid cable easement which contains a number of 330 kV and lower voltage cables. The cables in this easement supply power to Port Botany and the surrounding industrial and residential area. Attempting to underground power and telecommunications in this area is likely to be difficult and costly - and pose significant safety and risk issues.

The benefits of undergrounding the cables are marginal. This includes a minor improvement in visual appearance – however the majority of visual receptors are commercial and industrial premises so their sensitivity to visual impacts is low. It would also include a minor improvement in safety and a decrease in risk – however given the relatively short length of cables that would be relocated these benefits are marginal.

Any other services that would be directly impacted as a result of the new development would be relocated at the developer's expense.

### 3.4 Parking

The relocation of the access would result in the loss of informal parking along the front of the site on McCauley Street. Vehicles currently park on the unmarked and unpaved road reserve. With the kerb and guttering of the street frontage and the new access, this parking would no longer be available, however there would be the opportunity to create some formalised on-street parking. Overall the loss of parking would be relatively minor.

The proposed new development would provide car parking in excess of the number required under the relevant development code so would not cause additional demand on parking resources in the area.

### 3.5 Other traffic conditions

RCC also suggested a number of additional conditions associated with heavy vehicles movements. These are discussed in the table below.

Condition	Response
Any proposed McCauley Street entry / exit driveway must be designed as right turn in / left turn out. No B-Double access shall be provided for Lot 2014 DP 11950931.	The proposed access has been designed as a right turn in and left turn out. No B-Double access is proposed to the Lot 2014.
All heavy vehicle access to and from Lot 2014 DP 1195903 shall be via McCauley Street and Botany Road. There must be no heavy vehicle movements associated with the development of Lot 2014 using local roads.	Appropriate signage would be provided at the site exit and all unit owners/occupiers would be informed of this requirement. As the new development is small industrial units, this is the only reasonable and feasible way to implement this condition.
Heavy vehicles routes to and from Lot 2014 DP 1195903 shall not utilise the residential streets through Matraville town centre, in particular Bunnerong Road, (between Beauchamp Road and Perry Street), and Perry Street should not be used by heavy vehicles accessing the site. Heavy vehicles routes shall include Foreshore Road, Botany Road, Beauchamp Road and Denison Street.	Appropriate signage would be provided at the site exit and all unit owners/occupiers would be informed of this requirement. As the new development is small industrial units, this is the only reasonable and feasible way to implement this condition.
Prior to the issuing of an Occupation Certificate for any development within Lot 2014 DP 1195903 the applicant must arrange letters of agreement, to be signed by the applicant and its major transport carrier/s, to use the approved truck routes.	The proposed development will consist of small industrial units – which will have different occupiers/owners. Consequently there would not be a single entity controlling vehicle movements. This request would be dealt with as each user/ occupant makes a development application for use. There are also unlikely to be major transport carriers regularly servicing specific units on sites. This condition is not relevant for this type of development.
All costs of traffic management measures associated with the development shall be borne by the developer.	Noted.

## 4. Noise

### 4.1 Introduction

Orora understands that there are concerns from both the community and the EPA regarding:

- 1) Noise impacts from the demolition of the B7 building
- 2) Noise impacts during the period between the demolition of B7 building and the construction of final noise walls
- 3) Exposure of sensitive receivers to road and port noise with the removal of the B7 building.

It is recognised that the size and bulk of the B7 building has provided effective noise mitigation from road and port noise for many sensitive receivers. However, Orora is not ultimately responsible for the generation and mitigation of noise from other sources such as the port and the surrounding road network. The permanent noise mitigation solution proposed below may provide some noise mitigation from road and port noise for some sensitive receivers, however has been developed primarily to mitigate noise impacts from Orora's operations.

### 4.2 Future development of excess land

To ensure that a long term and cost effective solution to noise mitigation is implemented, Orora has considered the potential future redevelopment of excess land at the site. This has influenced the possible locations for noise walls and the timing for their construction.

Orora's current plans are to retain most of the excess land in the eastern precinct. This is to support the operation of the B9 Paper Mill and for potential future Orora developments. Consequently any noise walls must be located in areas that would not restrict the future development of the excess land or would not require re-location in the future.

The only land in the eastern precinct that would not be retained by Orora is the "Hanger Block" – an irregular shaped area of land to the north of the major Ausgrid easement. Orora is currently in the process of selling this land – with a likely purchaser and developer already identified. The most likely development would be an industrial park – consisting of small light industrial units – similar to the redevelopment of the McCauley Street precinct. Typically these units are constructed of pre-cast concrete walls of 10-12 metres in height. This type of construction would function as a defacto noise wall – and potentially provide better noise mitigation than a 8m noise wall for some locations. The sale of the land is likely to be completed before demolition commences and it is likely that plans for the development would be available before demolition of the B7 has been completed.

Once the sale of the land is complete and plans for the redevelopment of the Hanger Block are available, Orora would consult with the developer to identify alternative noise wall designs which may provide additional noise mitigation to sensitive receivers. A possible alternative design would be a noise wall located along the boundary of the Hanger Block and residential areas which would provide noise mitigation for sensitive receivers from Orora, the new development and port/road noise.

### 4.3 Noise modelling

To address the EPA's concern that there is insufficient certainty that operational noise emissions from Orora will meet their operational noise criteria after removal of the B7 building, Orora has undertaken extensive modelling scenarios that consider various options for mitigation.

The determination of potential impacts following the removal of B7 and the noise mitigation measures required to achieve the noise goals at the most affected receivers in Partanna and Moorina Avenues include an interim and a final noise mitigation solution.

The level of additional road and port noise that sensitive receivers would be exposed to with the removal of the B7 building is difficult to estimate given the extent and complexity of the port operations. To model port

operations would be an extremely difficult and expensive endeavor – and clearly beyond the scope of Orora's noise assessment requirements.

#### **4.4 Interim noise mitigation**

To mitigate the impacts of demolition noise and to provide noise mitigation for sensitive receivers between the removal of the B7 building and the construction of the final noise walls, Orora is proposing an interim solution.

Orora have already constructed earthen noise mounds on the Hanger Block as barriers behind residences in Partanna and Moorina Avenue. These mounds currently extend behind several residences at the western end of Partanna Avenue and the north-western end of Moorina Avenue. The extent and location of these earth mounds are currently limited by the existing topography and the existing services/water course through the Hanger Block.

To further reduce the direct noise emissions from the Orora site, additional container walls would be installed on the Hanger Block, adjacent to the Ausgrid easement. The positioning of the containers in this location indicates a direct reduction of operational noise from within the site.

The container wall is also expected to provide some mitigation from demolition noise however, in practice the scale of the demolition works cannot be fully shielded from the nearest receiver locations.

The combination of noise mounds and container wall would be an interim solution until the final noise wall is constructed. The interim solution would not achieve Orora's noise criteria at all sensitive receivers, however, would provide significantly better noise mitigation than no interim noise mitigation as was proposed in the Modification Report. Predicted noise levels at relevant sensitive receivers are presented in Appendix B – Stage 1.

#### **4.5 Final noise mitigation**

The permanent noise mitigation solution has considered the location and height of noise walls and mounds required to meet Orora's operational noise criteria.

The final noise mitigation would consist of an up to 15 m high noise wall on the boundary of Orora site with the Ausgrid easement and retention of the noise mounds (or a similar structure) on the Hanger Block. The 15m noise wall would generally be located in the gap created by the B7 buildings operation. Further modelling would be undertaken to determine the optimal noise wall height once the extent of impacts can be confirmed. Due to the close proximity of the noise wall to the B7 building and the associated risk of damage during demolition, it would not be possible to construct the noise wall before demolition commences.

As discussed above, if the Hanger Block is sold and redeveloped this may result in the modification or removal of the noise mounds. Orora would work with the developer to ensure that the final design of redeveloped site includes buildings, noise walls and/or noise mounds that provide the same level of noise mitigation as the current noise mounds.

The final noise mitigation solution proposed would mitigate some port and road noise for some sensitive receivers especially those in Partanna and Moorina Avenue. However it should be recognised that some sensitive receivers are likely to experience increased road and port noise even with the implementation of the proposed final noise mitigation solution.

Further works needs to be undertaken before the noise wall can be constructed including:

- Determination of the final height and extent of the noise wall
- Additional noise monitoring to confirm Orora's contribution to the noise environment and to confirm the modelling
- Geotechnical investigations and the design of the noise wall
- Consultation with RCC and preparation of a Stage 2 Noise Barrier Design Plan as required by the project approval.

## 4.6 Timing

To support the implementation of the final mitigation option, Orora has committed to undertake the following activities within the nominated timeframes.

Table 1 Timing of mitigation milestones

Issue	Timing
Initial modelling of noise wall options	Completed
Implementation of the interim noise wall	Currently underway. Earth mounds completed, container wall finalised prior to demolition commencing.
Permanent noise mitigation options survey and feasibility studies including community consultation.	Targeted noise monitoring studies are to be undertaken prior to, during and after demolition of B7. Feasibility studies to be commenced when final monitoring surveys are completed.
Development of a site Noise Barrier Design Plan	Within six months of completing demolition, a Stage 2 Noise Barrier Design Plan would be submitted to EPA/DP&E for approval.
Construction of final noise wall	Within three months of approval of the Stage 2 Noise Barrier Design Plan construction of the noise wall would commence.

## 5. Visual impacts

One submission requested that the brick wall along Purcell Park that was damaged by the fire be rebuilt immediately to reduce visual impacts. The proposed new noise wall would replace the damaged brick wall – and would be suitably treated to minimise its visual impact.

## Appendix A. Legal Advice

# MinterEllison

13 May 2015

**BY EMAIL [froncolato@ramsavpropoerty.com.au](mailto:froncolato@ramsavpropoerty.com.au)**

Mr Flavio Roncolato  
RPG Southern Pty Ltd

Dear Sirs

## **Section 75W Modification of MP05\_0120-Orora Paper Mill Project**

1. Reference is made to the application lodged with the Department of Planning for a modification to the project approval for the construction and operation of the B9 Paper Mill by Orora at Matraville.
2. The modification application seeks to modify subdivision boundaries and to move an existing access to McCauley Street 30 metres to the south to avoid residential areas.
3. The proposed new access to McCauley Street is located on land owned by RPG Southern Pty Ltd in respect of which Orora has the benefit of an easement for access.
4. We act for RPG Southern Pty Ltd.
5. Randwick City Council has lodged an objection to the modification by letter dated 13 April 2015. This letter states "The proposed modification to the site access directly relates to the subject CDC (i.e. the Complying Development Certificate issued on 3 February 2015 for development on Lot 2014 DP 1195903) and in effect is seeking to remedy a potentially invalid consent. The design of the vehicular access and the entire traffic report submitted with the modification relates to the development approved under the CDC. Council objects to the vehicular access off McCauley Street for Lot 2014 and access to this allotment should be provided via the internal road network with Lot 2015 DP 1195903 with the creation of appropriate rights of carriageway."
6. Council in its submission then requests the Department to impose conditions on any approval that may be granted by the Department which would enable Council to block the development.
7. It appears that Council has taken umbrage at the project approval granted by the Department to Orora and also the CDC for my client on Lot 2014, with the former based upon the fact that the Department did not include the conditions sought by Council in relation to flooding and stormwater and with the latter based upon claims of alleged unlawfulness of the CDC.



8. The issues raised by Council appear to be irrelevant and unrelated to the modification application being considered by the Department.
9. The key requirements for the Department's consideration of the modification application are:
  - (a) The Department's consideration is limited to the planning merits of the development proposal in the modification application.
  - (b) The Department's consideration should not include the planning merits of the already approved Project Approval and the approved Complying Development Certificate for Lot 2014, including any complaints by the Council regarding the planning merits of the two existing approvals. Any consideration of these matters by the Department would be unlawful.
  - (c) The Department cannot impose any conditions on the modification application that are not related to the development the subject of the modification application.
  - (d) The Department cannot consider any allegations of unlawfulness of other approvals, including the Complying Development Certificate for Lot 104. Such matters are irrelevant considerations. If a person considers an approval granted under the *Environmental Planning and Assessment Act 1979* may have been granted in breach of that Act, that approval is presumed to be valid until a court declares it to be invalid. Otherwise the approval remains in force and the presumption of regularity operates.
  - (e) The Department cannot consider matters relating to the Applicant or nearby landowners. A planning approval is not personal but runs with the land, and hence issues as to whether the Council likes or dislikes the applicant or neighbouring developers are irrelevant.
10. The conclusions in (a) and (b) above are amply supported by Lord Widgery CJ in *Pilkington v Secretary of State for the Environment* [1974] 1 A11 ER 283 at pg 286-287:

*'There is, perhaps surprisingly, not very much authority on this point which one would think could often arise in practice, so I venture to start at the beginning with the more elementary principles which arise. In the first place I have no doubt that a landowner is entitled to make any number of applications for planning permission which his fancy dictates, even though the development referred to is quite different when one compares one application to another. It is open to a landowner to test the market by putting in a number of applications and seeing what the attitude of the planning authority is to his proposals.*

*Equally it seems to me that a planning authority receiving a number of planning applications in respect of the same land is required to deal with them, and to deal with them even though they are mutually inconsistent one with the other. Of course, special cases will arise where one application deliberately and expressly refers to or incorporates another, but we are not concerned with that type of application in the present case.*

*In the absence of any such complication, I would regard it as the duty of the planning authority to regard each application as a proposal in itself, and to apply its mind to each application, asking itself whether the proposal there contained is*

*consistent with good planning in the factual background against which the application is made.*

*I do not regard it as part of the duty of the local authority itself to relate one planning application or one planning permission to another to see if they are contradictory. Indeed I think it would be unnecessary officiousness if a planning authority did such a thing. They should regard each application as proposed for a separate and independent development, and they should consider the merits of the application on that basis.'*

Lord Justice Widgery's description of a council emarking on frolics like Randwick Council suggests as 'unnecessary officiousness' appears rather apposite.

11. The conclusions in paragraphs (b) and (c) are supported by the following: The relevant considerations of a modification application are outlined by McClellan CJ in *1643 Pittwater Road Pty Ltd v Pittwater Council* [2004] NSWLEC 683. Although that case related to the power under s. 96 of the EPA which then relates back to the heads of consideration in s 79C, in the current instance the powers to modify a prospect approval under s 75W is not constrained by s.79C but is constrained by factors relevant to the EP&A Act. McClellan CJ held at para 52:

*'Ultimately the limits of the discretion which may be exercised by a consent authority will be defined by the matters raised for consideration by the application. Accordingly, when an application to modify one aspect of a development is lodged, the consent authority must consider the matters under s 79C(1) relevant to the aspects of the development to which the application relates. Accordingly, if an application is made to modify the height of a building, consideration of any matter which is either directly or indirectly related to height will arise for consideration. If an application is made to change the approved colour of a building, matters relevant to colour must be considered. This could, in an unusual case, extend to the apparent height or bulk of the building. However, an application to change the colour of a building could not provide a basis to reconsider the provision of car parking for the development. The matter of car parking simply does not arise. I do not understand the President to be suggesting otherwise.*

*It would follow that when an application is made to modify a consent by deleting or varying a condition of consent, the application must be evaluated as required by s 96(3) and relevant matters referred to in s 79C(1) must be considered. Provided there is a power to impose conditions in respect of a consent to a modification application, the consent authority must be able to determine the application by granting it and deleting the original condition, but also by imposing some other condition relating to the same planning matter.'*

12. The conclusion in para (d) is supported by the following: The Courts have consistently held that allegations of past unlawfulness are not relevant to the determination of a planning approval (*Kouflidis v Sainsbury City Corp* (1982) 29 SASR at p 323-324; 49 LGRA 17 at p 19-20; *Ireland v Cessnock City Council* (1999) 110 LGERA 311 at paragraph [38]; *Jonah Pty Ltd v Pittwater Council* [2006] NSWLEC 99 (*Jonah*) at paragraphs [19]-[34]. As Preston CJ held in *Jonah* at paragraphs [35] and [37]:

*'Hence, in undertaking the merit determination of whether to grant or modify a development consent, it is irrelevant to enquire as to who is the current owner/operator, or who might be the future owner/operator, or whether the present owner/operator has in the past acted or used the land unlawfully, or whether the future owner/occupier is likely in the future to act or carry out any approved use unlawfully.'*

In relation to the presumption of regularity in *Smith v East Elloe Rural District Council* [1956] AC 736, in the United Kingdom House of Lords, Lord Radcliffe, in relation to a challenge to the validity of a compulsory purchase order, held at p 769-770:

*'An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'*

This principle was cited with approval by Talbot J in the NSWLEC in *Swadling v Sutherland Shire Council* (1994) 82 LGERA 431 at 436.

13. The conclusion in paragraph (e) that the nature of the applicant or other parties is irrelevant in determining a planning application in support by the decision of Mason P (with Stein JA and Giles JA agreeing) in *House of Peace v Bankstown City Council* [2000] NSWCA 44 who held at paragraphs [22] and [24]; (2000) 4 NSWLR 498 at p 504:

*'Planning Law' is concerned with the use of land – not with the identity of the user': per Cripps J in Moslem Alawy Society Ltd v Canterbury Municipal Council (1983) 51 LGRA 79 at 82. This means that it is no part of the Court's function to seek as such to ensure that the pattern of worship adopted by the Presbyterians in 1954 continue [six]. Nor is it open to favour or disfavour any pattern of religious expression. Equality before the law required judicial agnosticism in this area.*

...

*Cripps J's statement that planning law is concerned with the use of land, not with the identity of the user also focuses attention upon the functions of environmental planning instruments and consents. They are concerned with physical use, environmental impact and amenity. In the present context, attention is directed away from 'church' as a body of believers to 'church' as a building where particular types of activity take place.'*

In conclusion, the majority of matters raised by Randwick City Council in its submission to the Department on the modification of MP 05\_0120 are both irrelevant and unlawful for the Department to consider. It appears that the Council has not raised any merit planning issues in relation to the relocated access way. The Department's consideration should be confined to the planning merits of the particular developments the subject of the modification application and not the irrelevancies raised by Council.

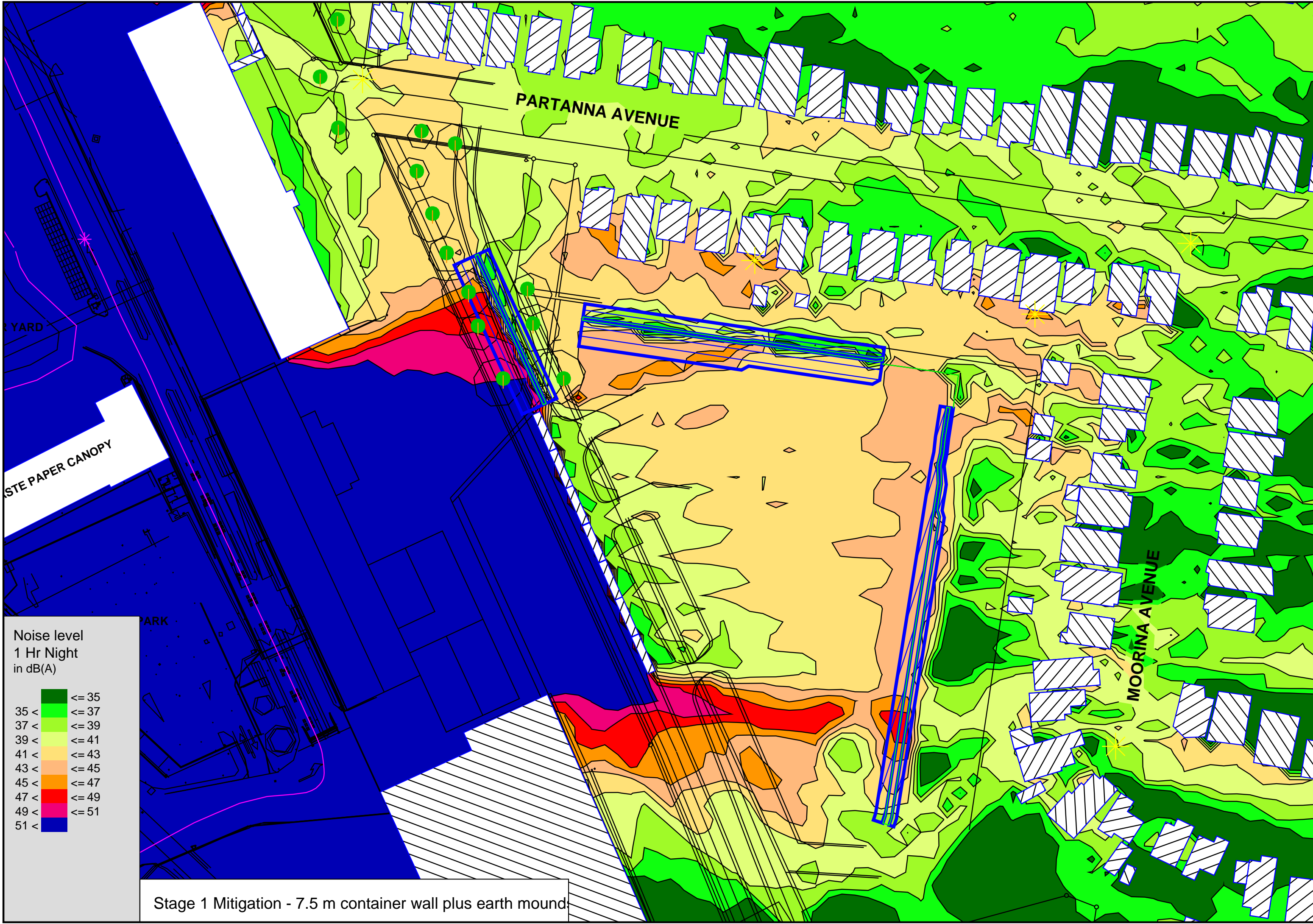
Yours sincerely



John Whitehouse

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OUR REF: JFW

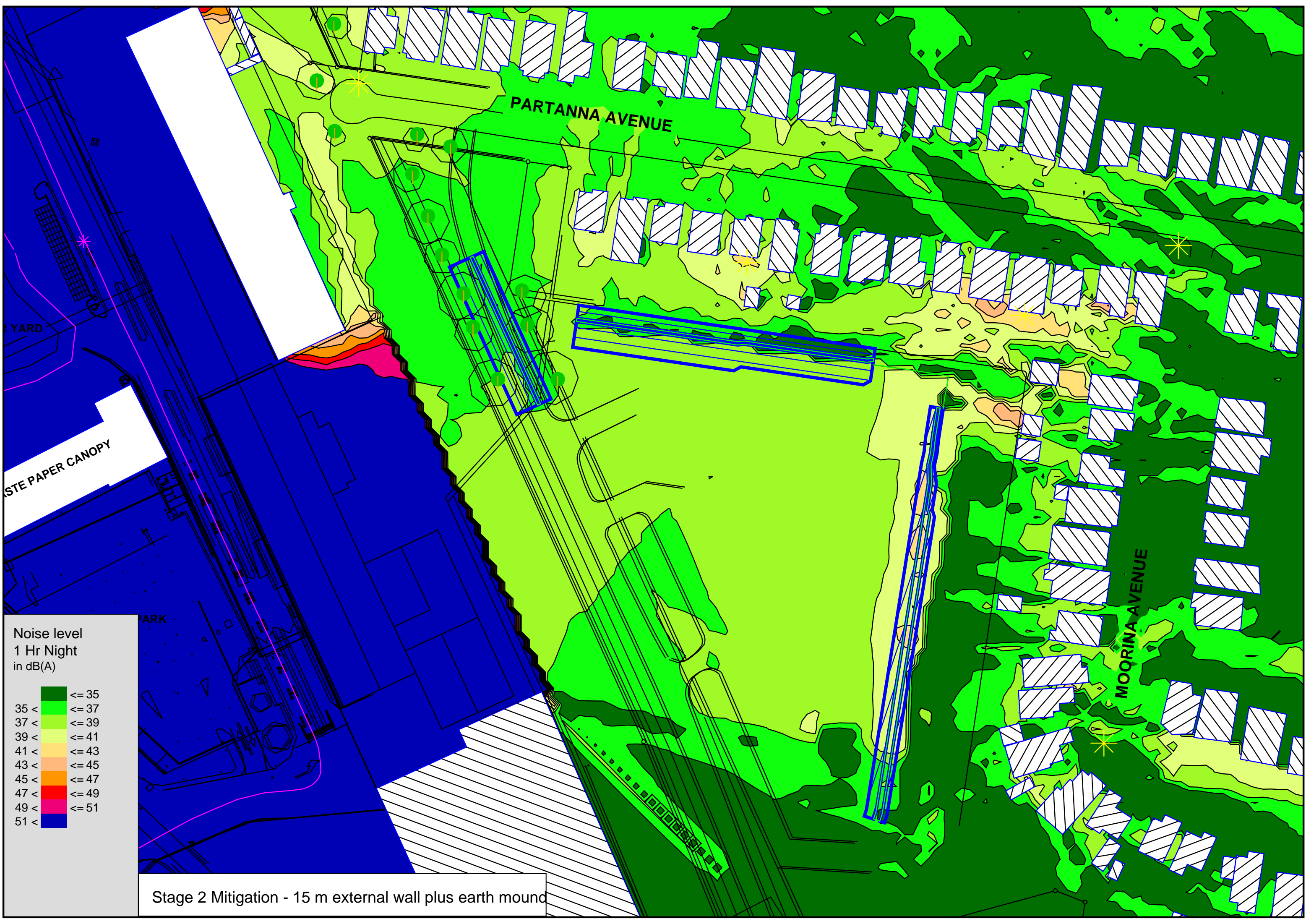
## Appendix B. Noise modelling



Noise level  
1 Hr Night  
in dB(A)

≤ 35	≤ 35
35 <	≤ 37
37 <	≤ 39
39 <	≤ 41
41 <	≤ 43
43 <	≤ 45
45 <	≤ 47
47 <	≤ 49
49 <	≤ 51
51 <	

Stage 1 Mitigation - 7.5 m container wall plus earth mound



Noise level  
1 Hr Night  
in dB(A)

≤ 35	≤ 35
35 <	≤ 37
37 <	≤ 39
39 <	≤ 41
41 <	≤ 43
43 <	≤ 45
45 <	≤ 47
47 <	≤ 49
49 <	≤ 51
51 <	

Stage 2 Mitigation - 15 m external wall plus earth mound