



# Tomago Industrial Estate Modification 3

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Machine Test and Demonstration Area  
State Significant Development Modification Assessment  
(MP07\_0086-Mod-3)

August 2021



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# Glossary

Abbreviation	Definition
<b>Council</b>	Port Stephens Council
<b>Department</b>	Department of Planning, Industry and Environment (DPIE)
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>Minister</b>	Minister for Planning and Public Spaces
<b>SEPP</b>	State Environmental Planning Policy

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# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Tomago Industrial Estate (MP07\_0086, as modified) (the development) located along Tomago Road, Tomago (the site), in the Port Stephens local government area (LGA) as shown in **Figure 1**.

The modification application (MP07\_0086-Mod-3) (modification) is seeking consent to permit temporary operations at the Westrac Facility which was approved and constructed under Stage One of the development. The modification intends to:

- permit the temporary use of an undeveloped portion of the site which has been approved for future building works (Building N), to operate as a machine test and demonstration area (MTDA)
- permit the temporary use of the approved existing MTDA as a storage area for machinery and associated parts and materials
- permit the temporary use of non-permanent stadium seating for machinery demonstration observers and up to four non-permanent worksite lighting machines at the temporary MTDA area when in use.

The temporary uses are to cease on the commencement of the future construction of Building N which is currently unknown.

The modification was lodged on 23 July 2021 by Westrac Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Department's assessment has considered all documentation submitted by the Applicant, including the Modification Report and advice received from Port Stephens Council (Council) who did not object to the modification. The Department's assessment has also considered the legislation and planning instruments relevant to the site and the previous assessments undertaken by the Department for the development.



**Figure 1 | Regional Context Map**

## 1.1 Background

The Applicant owns and operates the Westrac Facility, which is located at 1 Westrac Drive, Tomago, within the development. The Westrac Facility includes a manufacturing and maintenance facility for Caterpillar heavy machinery, equipment sales, staff training and serves as Westrac's NSW head office. Westrac is one of the largest Caterpillar dealers and service providers in the world, specialising in mining and construction equipment.

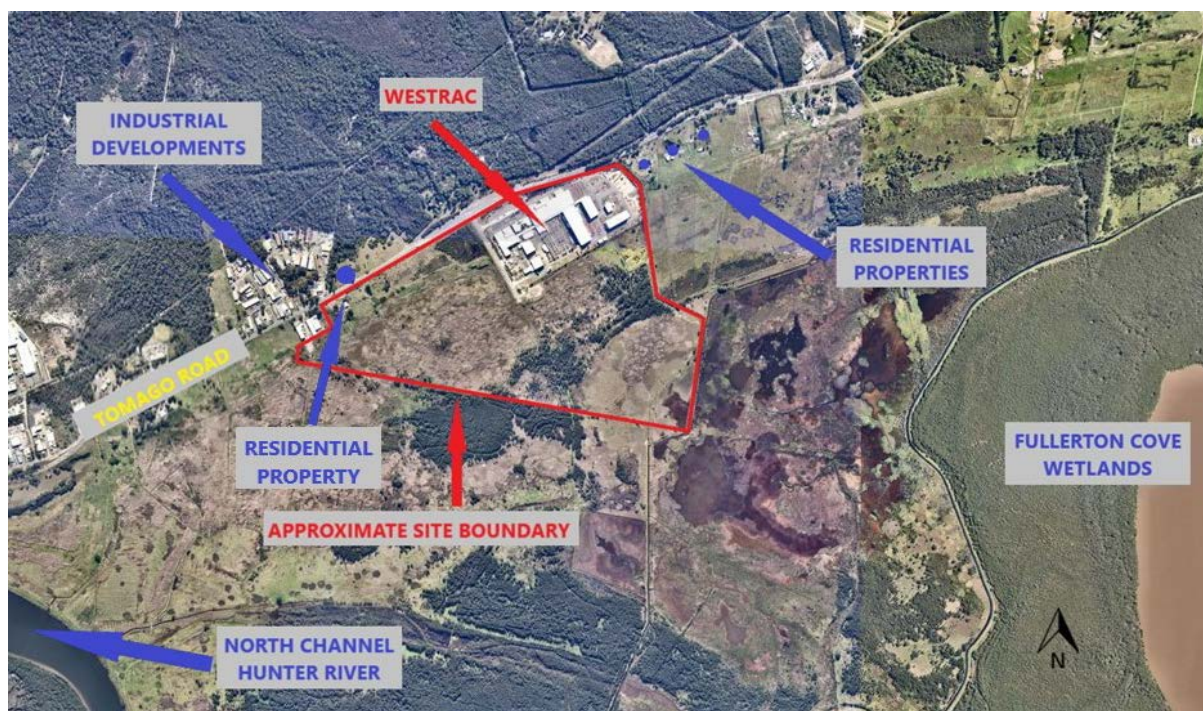
The Westrac Facility forms part of Stage 1 of the development, which combined, had a capital investment value of \$130 million and would employ between 400 – 600 (400 of these at Westrac). The site was formerly identified as a State significant site under the then State Environmental Planning Policy (Major Projects) 2005, and the development was subsequently classified as a major project under the former Part 3A of the EP&A Act. The development was approved by the former Minister for Planning on 7 August 2009. To date only Stage 1 of the approved development has been constructed.

The Westrac facility also includes an approved MTDA in the south east corner of the site to allow for on site equipment testing and machinery demonstrations. In April 2021, the Department became aware that the Applicant was temporarily operating the MTDA on an undeveloped area in the south western corner of the site originally approved for future buildings works (Building N). To ensure consistency with the consent, this modification application seeks to formalise this temporary arrangement until such time as Building N is constructed.

## 1.2 Site Description

The site comprises approximately 107 hectares (ha) of IN1 General Industrial zoned land located along Tomago Road, Tomago. The site remains predominately vacant with the exception of the Westrac Facility which was approved and constructed as part of the development approved in 2009 (see **Figure 2**). The site is generally level with a slight gradient running downhill from the north to the south. The site is particularly low lying and subject to inundation through tidal, groundwater and surface water influences.

The area surrounding the site consists of a diverse range of land uses including industrial, rural and rural residential developments. The nearest residential receivers to the Westrac Facility are located to the north-east, and are adjacent to the site with approximately 80 metres (m) separating the nearest residential receiver from the Westrac Facility boundary. To the west of the Westrac Facility boundary is another residential receiver which is approximately 600 m away. The site is also within proximity to the Tomago and Fullerton Cove Wetlands and the Ramsar listed Hunter Estuary Wetlands.

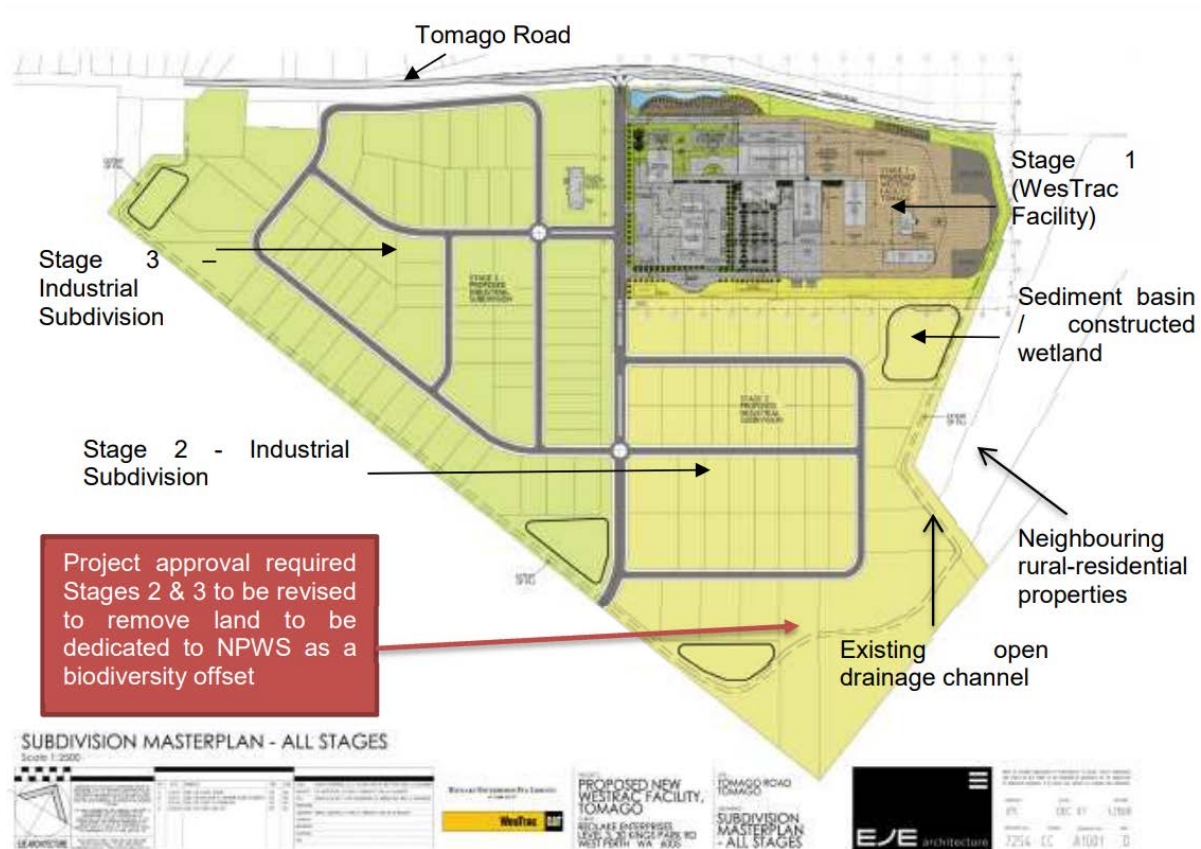


**Figure 2 | Local Context Map**

## 1.3 Approval History

The development was approved by the then Minister for Planning on 7 August 2009. The development has approval to subdivide the site for industrial purposes, undertake bulk earthworks across the site and to construct and operate the Westrac Facility and associated infrastructure (see **Figure 3**).

The approval also permitted the operation of a MTDA at the Westrac Facility (see **Figure 4**).



**Figure 3 | MP07\_0086 – Approved Development Layout**

The development consent has been modified on two occasions (see **Table 1**).

**Table 1 | Summary of Modifications**

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
<b>MOD 1</b>	Altering existing surface water discharge drain away from neighbouring properties to alleviate inundation impacts.	Director	s.75W	26 November 2015
<b>MOD 2</b>	Remove Conditions 13A and 13B relating to groundwater monitoring on the site.	Director	s.75W	20 June 2017

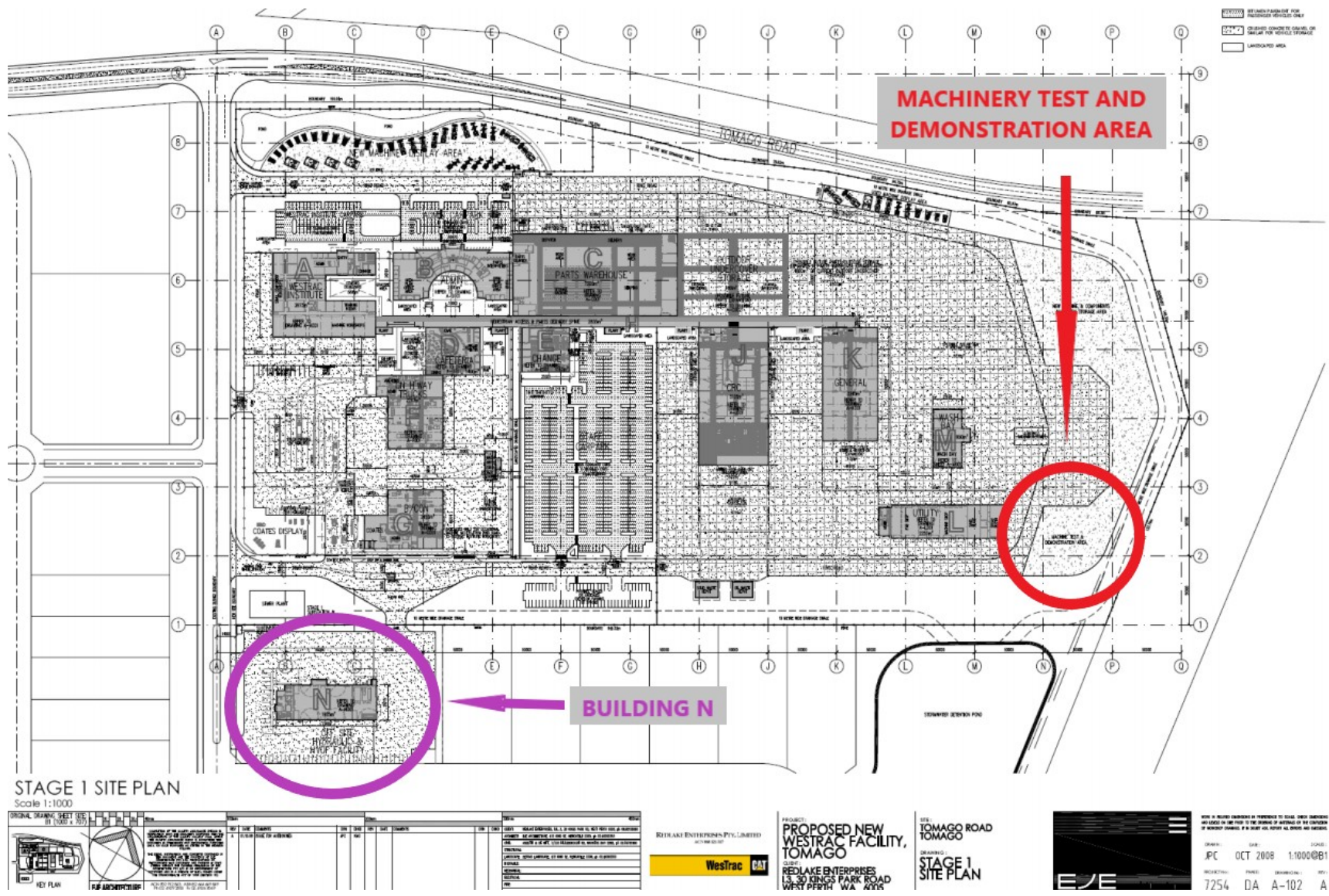


Figure 4 | MP07\_0086 – Approved Development Layout – Westrac Facility

## 2 Proposed Modification

### 2.1 Proposed Modification

The Applicant has lodged the modification under section 4.55(1A) of the EP&A Act to modify the existing development consent. The modification is described in full in the Modification Report included in **Appendix A**.

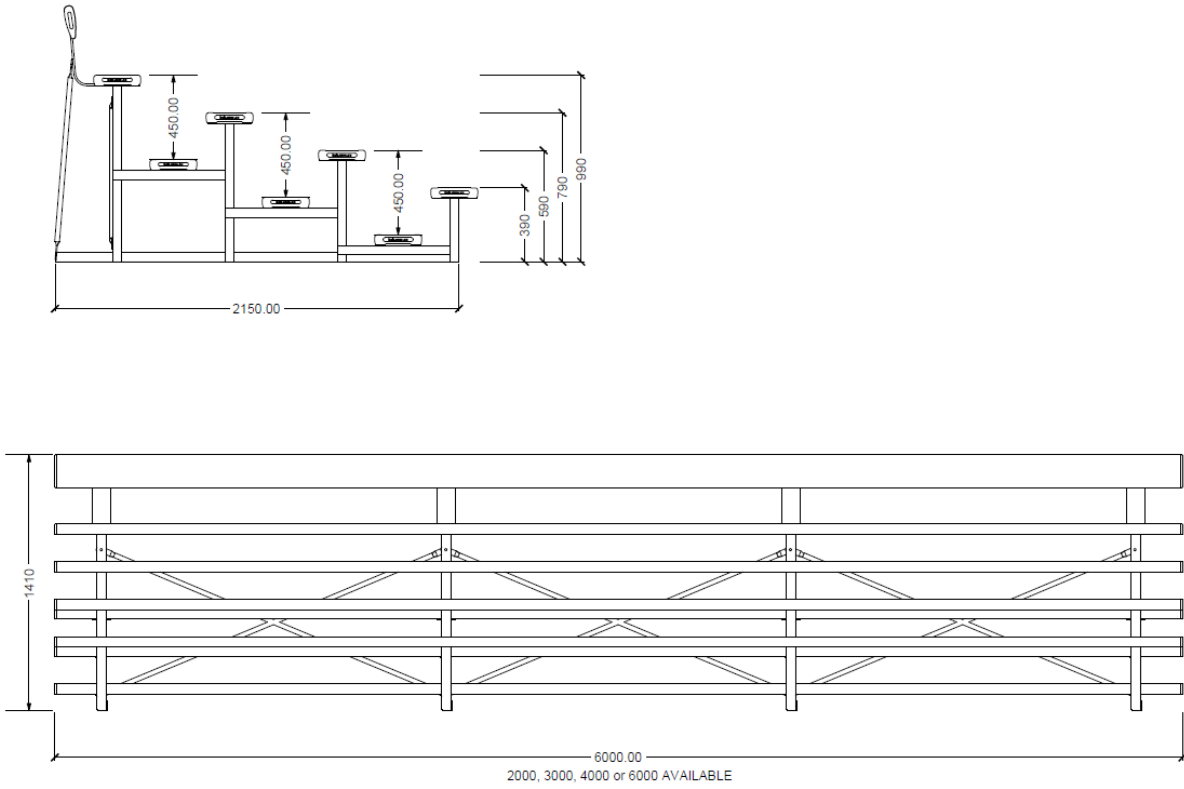
The modification seeks to:

- permit the temporary use of an undeveloped portion of the site which has been approved for future building works (Building N), to operate as a machine test and demonstration area (MTDA) (see **Figure 4**)
- permit the temporary use of the approved existing MTDA as a storage area for machinery and associated parts and materials (see **Figure 4**)
- permit the temporary use of non-permanent stadium seating (approximately 2.1 m deep, 6.0 m long and 1.5 m high) for machinery demonstration observers (see **Figure 5**) and up to four non-permanent worksite lighting machines (9.0 m adjustable light height) (see **Figure 6**) at the temporary MTDA area when in use.

This modification application does not propose any additional construction works to enable the site to operate as a temporary MTDA, however additional environmental controls in the form of sediment fencing and a perimeter irrigation sprinkler system would be installed at the site.

The area to be utilised for the temporary MTDA is located within the approved development footprint which has been approved for allotment filling up to 4.0 m (Australian Height Datum) AHD. Some earthen mounds may exceed this height for temporary periods for demonstration activities only.

The location of the MTDA will revert back to the originally approved arrangements once construction has commenced on Building N.



**Figure 5 | Proposed Temporary Seating (Indicative)**



**Figure 6 | Proposed Temporary Lighting (Indicative)**

## **2.2 Applicant's Justification for the Proposed Modification**

The Applicant has justified the modification on the following grounds:

- Building N has not been constructed and therefore that area of the site is under utilised
- the approved MTDA is adjacent to the machinery workshops and therefore better suited to being utilised for the storage of parts and equipment
- the temporary relocation of activities improves operations within the site.

## 3 Statutory Context

### 3.1 Scope of Proposed Modification

The Department has reviewed the scope of the modification and considers that it can be characterised as a modification involving minimal environmental impacts as the modification:

- would not increase the environmental impacts of the development as originally approved
- the primary function and purpose of the development would not change as a result of the modification
- the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act
- is substantially the same development as originally approved
- would not involve any further disturbance outside the already approved disturbance footprint for the development.

Therefore, the Department is satisfied that the modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the modification should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 3.2 Consent Authority

The Minister for Planning and Public Spaces (Minister) is the consent authority for the modification under section 4.5(a) of the EP&A Act. Under the Minister's delegation of 26 April 2021, the Team Leader, Industry Assessments, may determine the modification under delegation as:

- the modification has not been made by a person who has disclosed a reportable political donation under section 10.4 of the EP&A Act
- there are no public submissions in the nature of objections, and
- Council has not made a submission by way of objection under the mandatory requirements for community participation listed under Schedule 1 of the EP&A Act.

### 3.3 Part 3A transition to State Significant Development

The development was originally approved under the former section 75J of the EP&A Act and was a transitional Part 3A project under Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the associated EP&A (ST&OP) Regulation on 1 March 2018, the power to modify Part 3A project approvals under the former section 75W is no longer available for modifications submitted after 1 March 2018. In order to modify a transitional Part 3A project approval, the Minister can declare the development to be SSD by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made, the project approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant criteria.

On 23 June 2021 the Director – Industry Assessments (as delegate of the Minister), made an order under clause 6 of Schedule 2 to the EP&A (ST&OP) Regulation declaring the development the subject of the project approval to be SSD. The order was published in the NSW Government Gazette on 25 June 2021 and took effect from that date.

The effect of this order is that:

- the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development.

### **3.4 Biodiversity Conservation Act 2016**

Clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 specifies that if the determining authority is satisfied that a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (BDAR) is not required.

The Department is satisfied that there will be no additional clearing of native vegetation or habitat loss beyond that previously assessed and considered for the development as the activities to be undertaken as part of the modification occur in areas already cleared and approved for disturbance.

For the reasons discussed above, the Department's assessment concludes a BDAR is not necessary for the modification.

## 4 Engagement

### 4.1 Department's Engagement

Clause 117(4) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires a section 4.55(1A) modification application to be notified or advertised if specified by a community participation plan (CCP). The Department's CPP notes the exhibition requirements for such modifications are discretionary, and based on the urgency, scale and nature of the modification.

Given the modification would result in minimal environmental impacts (see **Section 5**), the modification was not notified or advertised. However, it was made publicly available on the Department's website on 26 July 2021 and was referred to Council for comment.

### 4.2 Council Advice

Advice was received from Council who noted that should the approved MTDA area be used for the temporary storage of hazardous materials this should be assessed in accordance with State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33), including the provision of appropriate conditions of consent if required. Council also recommended that conditions should be placed on the consent to ensure the modification is only operational for a temporary period.

Overall, Council confirmed it did not have any significant concerns with the modification and Council's comments have been addressed in **Section 5**.

## 5 Assessment

The Department has assessed the merits of the modification. During this assessment, the Department has considered the:

- the Modification Report provided to support the modification (see **Appendix A**)
- the documentation and Department’s assessment report for the original application and subsequent modifications (see **Appendix A**)
- advice from Council (**Appendix A**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department’s assessment of the key assessment issues is provided in **Table 2**:

**Table 2 | Assessment of Issues**

Issue	Findings	Recommendations
<b>Noise</b>	<ul style="list-style-type: none"> <li>• The use of the approved MTDA is a noise generating source from existing site operations, and the temporary relocation of the MTDA has the potential to influence and alter noise generated impacts from the site on the surrounding sensitive receivers.</li> <li>• Currently the approved location of the MTDA is approximately 180 m from the nearest residential receiver which is located to the north-east and 1,220 m from the residential receiver to the west.</li> <li>• Under the modification, the nearest residential receiver to the temporary MTDA will remain to the north-east, however the separation distance will increase from 180 m to approximately 650 m. The residential receiver to the west will be approximately 740 m away.</li> <li>• Condition 27 of the existing consent sets a fixed noise limit for Stage One of the development (Westrac Facility) at all residential receivers. The Applicant has not sought to amend Condition 27.</li> <li>• The Department notes that whilst the modification was not accompanied with a Noise Impact Assessment, it is not considered necessary given that the distance to the nearest residential receiver will increase from 180 m (existing MTDA) to 650 m (temporary MTDA) which will have the effect of reducing noise impacts on the eastern properties.</li> <li>• The Department considers that whilst the distance to the residential receiver to the west is reducing from</li> </ul>	No amendments required.

Issue	Findings	Recommendations
	<p>1,220 m to 740 m, this reduction in separation is unlikely to result in exceedances of Condition 27 as the distance remains significantly greater than the current minimum separation distance to a sensitive receiver of 180 m.</p> <ul style="list-style-type: none"> <li>The Department's assessment has concluded that, given the approximate separation distances between residential receivers and the temporary location of the MTDA, the retention of Condition 27 in its original form, and the Applicant's obligation to comply with these noise requirements, the modification is unlikely to generate non-compliant noise impacts on nearby sensitive receivers beyond those already approved.</li> </ul>	
<b>Lighting</b>	<ul style="list-style-type: none"> <li>The use of temporary lighting in support of the operation of the temporary MTDA has the potential to generate light emission nuisance on nearby sensitive receivers and road users of Tomago Road if not installed and operated correctly.</li> <li>Condition 39 of the existing consent requires the Applicant to ensure that any lighting associated with the development complies with the latest version of Australian Standard AS 4282 – <i>Control of the obtrusive effects of outdoor lighting</i>, and is "mounted, screened and directed in such a manner that it does not create a nuisance to surrounding properties, the public road network or the adjoining conservation area and wetlands".</li> <li>The Department notes the temporary MTDA will be approximately 650 m away from the nearest sensitive receiver.</li> <li>The Department's assessment has concluded that given the significant distance from the temporary MTDA to the nearest sensitive receiver, Condition 39 and the requirement to comply with AS 2482, the modification is unlikely to generate any additional lighting impacts on nearby sensitive receivers.</li> </ul>	No amendments required.
<b>Erosion &amp; Sediment Control &amp; Dust</b>	<ul style="list-style-type: none"> <li>The use of the temporary MTDA has the potential to generate erosion and sediment control issues and to generate dust impacts due to the unsealed nature of the temporary MTDA and the activity of machinery demonstrations.</li> </ul>	New condition to require the installation of sediment fencing and the perimeter irrigation system

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> <li>• Condition 32 of the existing consent requires the carrying out of <i>all reasonable and feasible measures to minimise dust generated by the project, ensuring that suitable control measures are implemented to manage dust generated from stockpiles of fill and filling activities.</i></li> <li>• Condition 10 requires the Applicant to prepare and implement an Erosion and Sediment Control Plan for the development.</li> <li>• The Department notes the temporary MTDA is unsealed which will permit rainfall permeation into the soil profile, with excess surface water reporting to the existing surface water management system on site.</li> <li>• The Applicant has also proposed to install sediment fencing around the south west corner of the temporary MTDA area to control any sediment laden runoff and install and operate a perimeter irrigation sprinkler system for dust management. This has been formalised as a recommended condition.</li> <li>• The Department's assessment has concluded that with the implementation of new conditions and continued compliance with existing conditions, the modification is unlikely to generate additional impacts pertaining to either erosion or dust generation.</li> </ul>	<p>prior to operations commencing at the temporary MTDA.</p>
<p><b>Council Comments</b></p>	<p><u>Hazardous Materials</u></p> <ul style="list-style-type: none"> <li>• Council requested further consideration of SEPP 33 if hazardous materials are proposed to be stored in the approved MTDA and if so, appropriate conditions of consent should be applied to the modification.</li> <li>• The Department notes the Applicant has not requested to store hazardous materials in the approved MTDA.</li> <li>• Notwithstanding this, the development was assessed against the provisions of SEPP 33 and the preliminary risk screening report provided with the development identified that hazardous materials would be stored at a level below that which would be classified as 'potentially hazardous'.</li> <li>• The Department further notes that the Applicant, in lieu of a request to change the operating parameters of the Westrac Facility, must comply with the original assessment with regard to the storage of hazardous materials.</li> </ul>	<p>No amendments required.</p>

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> <li>• Consequently, the Department concludes that further consideration of the storage of hazardous materials and SEPP 33 is not warranted.</li> </ul> <p><u>Temporary Occupation</u></p> <ul style="list-style-type: none"> <li>• Council requested conditions of consent to the modification so that the temporary activities would cease after a period of time.</li> <li>• The Department notes that the Applicant has not set a timeframe for the temporary activities, noting it is based on the future need for the construction and occupation of Building N. The MTDA will revert to its original approval location once construction of Building N has commenced.</li> <li>• Given that the modification is unlikely to generate additional negative impacts in relation to noise and lighting, and that appropriate conditions of consent already apply to the development to ensure impacts are appropriately regulated, the Department concludes that including a cessation timeframe for the temporary activities is not warranted.</li> </ul>	

## 6 Evaluation

The Department has assessed the modification in accordance with the relevant requirements of the EP&A Act.

The Applicant is proposing to modify the development consent to permit the temporary relocation of approved activities within the site, which includes relocating the MDTA to the site approved for the construction and operation of Building N, and to allow the storage of parts and equipment within the area currently approved to operate as the MDTA on the eastern side of the workshop building. This temporary arrangement is to revert back to the originally approved arrangements once construction has commenced on Building N.

The Department considers the modification is appropriate on the basis that:

- it is substantially the same development as that originally approved
- Council did not object
- the temporary relocation of the MDTA is to an area that is further away from existing sensitive receivers to the east of the site than the approved location, and continued compliance with the existing conditions of consent should not result in noise and lighting impacts beyond those already approved and consented for on sensitive receivers, and
- would not result in additional environmental impacts beyond those already assessed and approved.

Consequently, the Department is satisfied that the modification should be approved, subject to the recommended modifying conditions of consent.

## 7 Recommendation

It is recommended that the Team Leader – Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the modification MP07\_0086-Mod-3 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 that a BDAR is not required to be submitted with this modification as the modification will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent MP07\_0086
- **signs** the attached approval of the modification (**Appendix B**).

**Recommended by:**



**David Koppers**  
Senior Environmental Assessment Officer  
Industry Assessments

## 8 Determination

The recommendation is **Adopted** by:

 18 August 2021

**Joanna Bakopanos**  
Team Leader  
Industry Assessments

as delegate of the Minister for Planning and Public Spaces

# Appendices

## Appendix A – List of Documents

The Department has relied upon the following key documents during its assessment of the proposed development:

### Modification Application

- Modification Report prepared by JW Planning Pty Ltd dated 18 May 2021  
<https://www.planningportal.nsw.gov.au/major-projects/project/42301>

### Council Advice

- <https://www.planningportal.nsw.gov.au/major-projects/project/42301>

### Department's Assessment Report for MP07\_0086

- <https://www.planningportal.nsw.gov.au/major-projects/project/24356>

### Department's Assessment Report for MP07\_0086-Mod-1

- <https://www.planningportal.nsw.gov.au/major-projects/project/24361>

### Department's Assessment Report for MP07\_0086-Mod-2

- <https://www.planningportal.nsw.gov.au/major-projects/project/24366>

## Appendix B – Notice of Modification

## Appendix C – Consolidated Consent