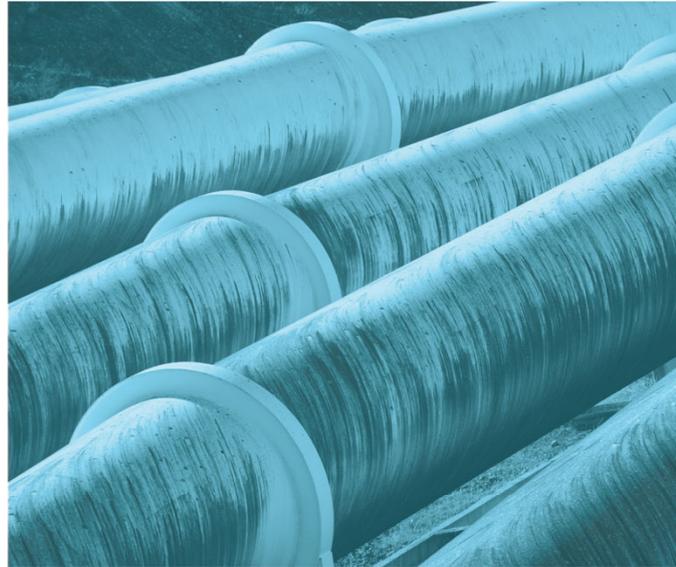




Moorebank Avenue Realignment Scoping Report

Prepared for Sydney Intermodal Terminal Alliance
May 2020





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Moorebank Avenue Realignment

Scoping Report

Report Number

J190486 RP11

Client

Sydney Intermodal Terminal Alliance

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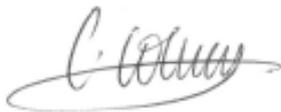
29 May 2020

Version

v2 Final

Prepared by

Approved by



Christopher Colusso
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29 May 2020



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29 May 2020

This report has been prepared in accordance with the brief provided by the client and has relied upon the information collected at the time and under the conditions specified in the report. All findings, conclusions or recommendations contained in the report are based on the aforementioned circumstances. The report is for the use of the client and no responsibility will be taken for its use by other parties. The client may, at its discretion, use the report to inform regulators and the public.

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Executive Summary

This Scoping Report has been prepared on behalf of the Proponent, the Sydney Intermodal Terminal Alliance (SIMTA), to identify and confirm the relevant environmental assessment requirements to inform the environmental assessment and consent application for the Moorebank Avenue Realignment proposal (the Proposal). Following the confirmation of Secretary's environmental assessment requirements (SEARs), an environmental impact statement (EIS) would be prepared for the Moorebank Avenue Realignment Proposal under Part 5.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Moorebank Realignment Proposal is identified as a requirement of the Planning Agreement (March 2019) completed under section 7.4 of the EP&A Act between the former NSW Roads and Maritime Service and Qube. The Planning Agreement was required to demonstrate that satisfactory arrangements in respect of development on the Moorebank Precinct West Site (MPW) are in place, in accordance with clause 7.36 of the *Liverpool Local Environmental Plan 2008* (Liverpool LEP).

The scope of works for the Proposal is defined in clause 1.1 Definitions of the Planning Agreement as:

The realignment of Moorebank Avenue, in the general location depicted in the plan at Annexure B, including the following, unless otherwise agreed or required by RMS in writing in its absolute discretion:

- a) *four (4) through lanes:*
 - i) *from where the realignment connects with Logistics Unit site (Lot 3 in DP 1197707) and Lot 1 in DP 1048263 including any associated tie in works; and*
 - ii) *along the northern and eastern boundaries of Lot 1 in DP 1048263 and to the south eastern boundary of that land, with the lanes generally being 3.5 metre wide central travel lanes;*
- b) *two (2) through lanes from the south eastern boundary of Lot 1 in DP 1048263 to the southern boundary of existing Moorebank Avenue (Lot 2 in DP 1197707) at the East Hills Rail line, including any associated tie in works to Moorebank Avenue (Lot 2 DP 1197707) in that location, and with the lanes generally being 3.5 metre wide central travel lanes;*
- c) *any required intersections, including any required traffic lights and turning lanes at intersections;*
- d) *4.2 metre wide kerbside travel lanes;*
- e) *a 3.5 metre verge along the northbound and south bound carriageways; and*
- f) *any road work or road related infrastructure required beyond the 3.5 metre verge.*

Moorebank Avenue Realignment Land is also defined in clause 1.1 of the Definitions of the Planning Agreement as:

- a) *A 21 m wide corridor for the length of the land comprising the Moorebank Avenue Realignment, unless RMS agrees in its absolute discretion to a reduced corridor width as part of any RMS approval of the Moorebank Avenue Realignment final design pursuant to a WAD;*
- b) *any additional land required by RMS at any intersections; and*
- c) *any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue Realignment.*

The Planning Agreement is included in Appendix A to this report.

In accordance with the Planning Agreement, the Moorebank Avenue Realignment works are to be undertaken as works in kind on behalf of Transport for NSW (TfNSW) (formerly NSW Roads and Maritime Services) and subsequent dedication.

The requirements of Schedule 3 to the Planning Agreement are that:

- The approvals required for the Moorebank Avenue Realignment are to be obtained by 31 December 2021; and
- the works completed and dedication of the Moorebank Avenue Realignment Land to be affected by 31 December 2023.

The Proposal Site has two distinct areas (northern and southern portions) along its alignment where the nature, scale and extent of likely impacts are discernibly different.

The northern portion of the Proposal Site from the Defence Joint Logistics Unit (DJLU) intersection and Moorebank Avenue tie-in through to the north of the Boot Land boundary east of the MPE Site comprises grassed and residual hardstand areas between DJLU land and the MPE Site. There are no significant stands of trees or established plant communities other than grassed areas. No indigenous or non-indigenous heritage items have been recorded in this area during earlier assessments. The main environmental issues associated with this portion of the Proposal during construction and operation are anticipated to be surface drainage and stormwater management, visual amenity, noise and air emissions, and consideration of construction and operation traffic.

The southern portion of the Proposal Site from the north western boundary of the Boot Land, adjacent to the eastern boundary of the MPE Site, through to the intersection and tie-in to Moorebank Avenue north of the East Hills Railway comprises cleared grass land, a utility easement, and vegetated areas comprising native plant communities and identified threatened species of flora. It also comprises an area of potential Koala habitat. The Proposal alignment through this area includes a requirement for a crossing of Anzac Creek. Isolated heritage finds have been previously identified in this area. The southern extent of the Boot Land is also the area in which the previously presumed extinct flora species *Hibbertia fumana* has been identified.

Preliminary assessment of the nature, scale, and extent of likely impacts of the Proposal indicate that there are not likely to be any significant environmental impacts associated with the northern portion of the Proposal. It further indicates that there is a potential for impacts in the southern portion of the Proposal Site, though significant impacts may be limited to biodiversity impacts.

The Proponent has requested an order from the Minister for Planning that the project be listed as a State significant infrastructure (SSI) project in *State Environmental Planning Policy (State and Regional Development) 2011*. An environmental impact assessment (EIS) would be prepared for the Proposal for assessment and determination by the Department of Planning, Infrastructure and Environment (DPIE).

All necessary approvals (including the SSI approval) are required under Schedule 3 to the Planning Agreement by 31 December 2021.

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Abbreviations

ABB	ABB Australia Pty Ltd
AHD	Australian height datum
ARI	annual recurrence interval
BAM	Biodiversity Assessment Method
BC Act	<i>Biodiversity Conservation Act 2016</i>
BOS	Biodiversity Offsets Scheme
CBD	central business district
CEMP	construction environmental management plan
CIV	capital investment value
CLM Act	<i>Contaminated Land Management Act 1997</i>
CUST	Cullen Universal Steel Truss
DAWE	Commonwealth Department of Agriculture, Water and the Environment
DA	development application
DEC	Former NSW Department of Environment and Conservation (now DPIE)
DECC	Former NSW Department of Environment and Climate Change (now DPIE)
DOD	Development and Operations Deed between Qube and MIC
DoEE	Former Commonwealth Department of the Environment and Energy (now DAWE)
DoP	Former NSW Department of Planning (now DPIE)
DJLU	Defence Joint Logistics Unit
DPIE	NSW Department of Planning, Industry and Environment
DPE	Former NSW Department of Planning and Environment (now DPIE)
EIS	environmental impact statement
ENM	excavated natural material
EPA	Environmental Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	environmental planning instrument
EPBC Act	Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i>
GFA	gross floor area
ha	hectare
IMEX	import-export terminal
IMT	intermodal terminal
IPC	Independent Planning Commission (formerly the Planning Assessment Commission)
km	kilometre

LALC	Local Aboriginal Land Council
LGA	local government area
Liverpool LEP	<i>Liverpool Local Environmental Plan 2008</i>
m	metre
m ²	square metre
m ³	cubic metre
MAR	Moorebank Avenue Realignment
MIC	Moorebank Intermodal Company
MLP	Moorebank Logistics Park
MNES	matters of national environmental significance
MPE	Moorebank Precinct East
MPW	Moorebank Precinct West
NCA	noise catchment area
PAC	Planning Assessment Commission (now the Independent Planning Commission)
Qube	Qube Property Management Services Pty Ltd
RAPs	registered Aboriginal parties
REP No 2	<i>Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment</i>
RL	reduced level
RMS	Roads and Maritime Services (now Transport for NSW)
SHR	State Heritage Register
SEARs	Secretary's environmental assessment requirements
SIMTA	Sydney Intermodal Terminal Alliance
SME	School of Military Engineering
SSD	State significant development
SSI	State significant infrastructure
SSFL	Southern Sydney Freight Line
TEU	twenty-foot equivalent units
TfNSW	Transport for NSW (including the former Roads and Maritime Services)
UXO	unexploded ordinance
VENM	virgin excavated natural material
WAD	works authorisation deed
XO	exploded ordinance

Glossary

alignment	the general route (eg of a roadway) in plan and elevation
Boot Land	the residual Commonwealth-owned land to the east of the MPE Site between the site boundary and the Wattle Grove residential area and to the south of the MPE Site between the boundary and the East Hills Railway
intersection	an intersection where carriageways cross at a common level (at-grade)
MPE Project	SIMTA Moorebank Intermodal Facility at Moorebank, as approved by the concept plan (MP10_0193)
MPE Site	includes the MPE Site and the Rail Corridor i.e. the entire site area which was approved under the concept plan approval (MP10_0193)
MPW Project	development of an intermodal facility, associated commercial infrastructure (warehousing) and a rail link, as approved by the concept plan (SSD 5066)
MPW Site	the former School of Military Engineering site to the west of the MPE Site, across Moorebank Avenue (ie the entire site area which was approved under the concept plan approval (SSD 5066))
the Proposal	realignment of a section of Moorebank Avenue generally around the Moorebank Logistic Park
the Proposal Site	land on which the Proposal is to be developed
WAD	the works authorisation deed is a formally executed common law agreement between TfNSW (formerly RMS) and the developer regarding the design, construction, completion, and dedication of road works by the developer

1 Introduction

1.1 Revised Scoping Report

This Scoping Report updates the previous Scoping Report prepared and submitted in 2019 by Aspect Environmental on behalf of Sydney Intermodal Terminal Alliance (SIMTA) for the Moorebank Avenue Realignment (the Proposal).

1.2 Description of the proposal

The Proposal involves the realignment and upgrade of the existing Moorebank Avenue from a point south of Anzac Road in the north to the East Hills Railway in the south, running predominantly to the east of the Moorebank Precinct East (MPE) Site. Moorebank Avenue currently divides the Moorebank Logistics Park (MLP), separating MPE (refer to Section 2.1) and Moorebank Precinct West (MPW) (refer to Section 2.4). The indicative Proposal alignment is shown in Figure 1.1. The final alignment and layout are subject to planning approval and detailed design.

Moorebank Avenue is currently a two-lane undivided road (one lane in each direction) between Cambridge Avenue and the M5 Motorway (adjacent to the Moorebank Precinct), and a four-lane undivided road (two-lane in each direction) north of the M5 Motorway.

Moorebank Avenue provides a north-south link between Liverpool and Glenfield and forms a grade-separated interchange with the M5 Motorway. Moorebank Avenue between the M5 Motorway and Anzac Road is predominantly owned and maintained by Liverpool City Council. Moorebank Avenue between Anzac Road and Cambridge Avenue is a private road on Commonwealth land, which is publicly accessible.

The realignment would ultimately provide two lanes in each direction adjacent to the MPE Site, plus auxiliary turning and slip lanes at each of the signalised intersections. The northernmost intersection at the DJLU site would provide access to both the DJLU site and the import-export terminal (IMEX) site. Signalised intersections would provide access into the Moorebank Precinct. The road would merge to provide one lane in each direction in the vicinity of the south-western corner of the MPE Site as indicated in Figure 1.1.

The Proposal would seek approval for the realignment of Moorebank Avenue, from its current alignment separating the MPW and MPE Sites, to the north and east of the MPE Site at the current intersection with the DJLU site.

The Proposal would comprise the following works:

- four lanes:
 - from where the realignment connects with DJLU site, Lot 3 in DP 1197707, and Lot 1 in DP 1048263 including any associated tie in works; and
 - along the northern and eastern boundaries of Lot 1 in DP 1048263 and to the south eastern boundary of that land, with the lanes generally being 3.5 m wide central travel lanes;
- two lanes from the south eastern boundary of Lot 1 in DP 1048263 to the southern boundary of existing Moorebank Avenue (Lot 2 in DP 1197707) at the East Hills Railway, including any associated tie in works to Moorebank Avenue (Lot 2 DP 1197707) in that location, and with the lanes generally being 3.5 m wide central travel lanes;
- any required intersections, including any required traffic lights and turning lanes at intersections;
- 4.2 m wide kerbside travel lanes; and
- 3.5 m verge along the northbound and south bound carriageways.

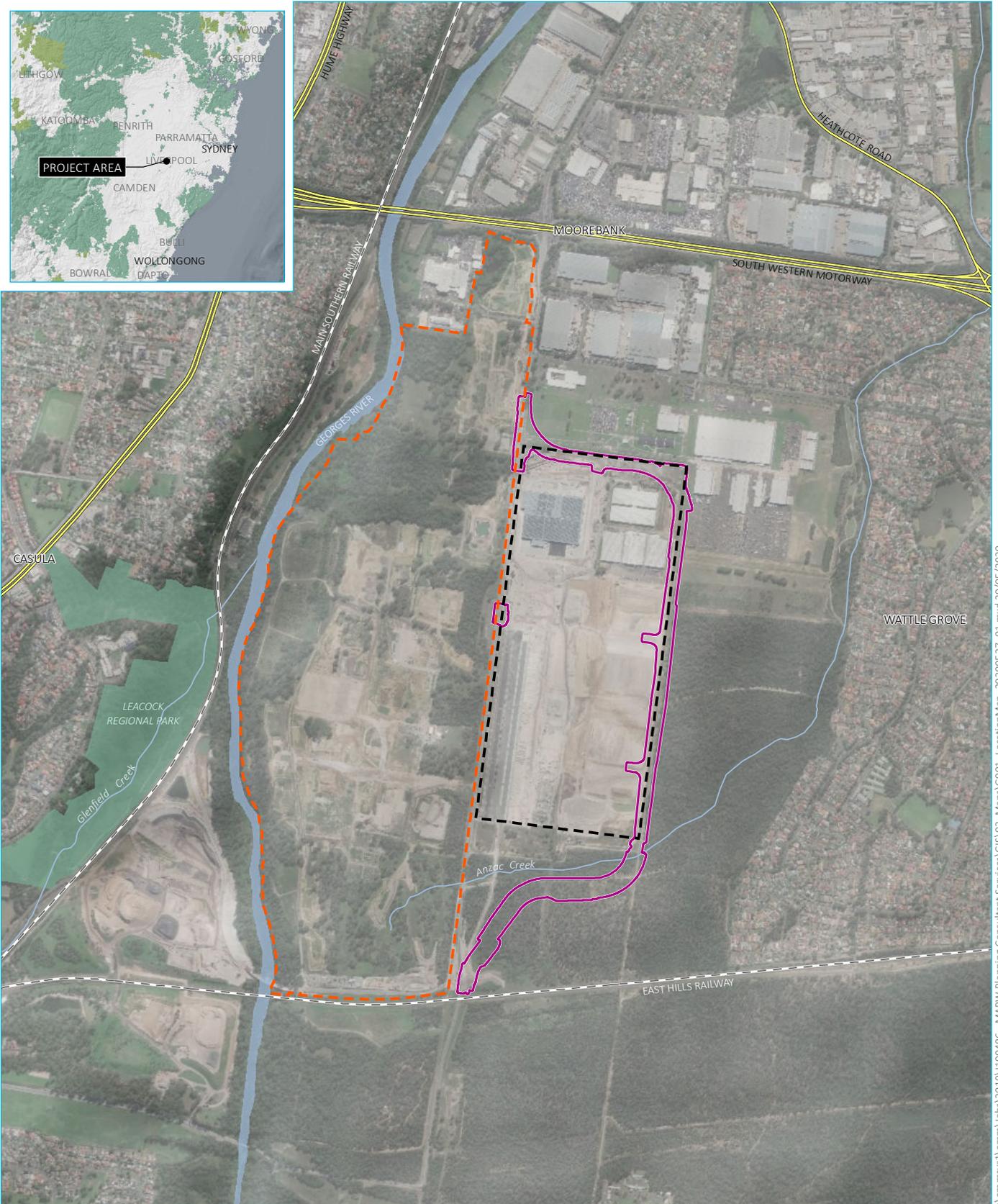
Moorebank Avenue Realignment Land is defined in clause 1.1 Definitions of the Planning Agreement as being:

- a 21 m wide corridor for the length of the land comprising the Moorebank Avenue Realignment, unless TfNSW agrees in its absolute discretion to a reduced corridor width as part of any TfNSW approval of the Moorebank Avenue Realignment final design pursuant to a WAD;
- any additional land required by RMS at any intersections; and
- any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue Realignment.

1.3 Construction activities and project phases

The following construction activities would be carried out as part of the Proposal:

- the allocation of an about 21 m corridor for the Moorebank Avenue Realignment with additional area being made available to facilitate construction works, including a construction compound, and satellite compounds for material storage, and plant laydown;
- enabling works, including temporary site fencing, demarcation of the work site, traffic management measures such as safety barriers, temporary environmental safeguards, property adjustment works; and adjustment and relocation of utilities;
- soil erosion and sediment control work;
- vegetation clearing and grubbing;
- strip, stockpile, and management of topsoil;
- importation and stockpiling of clean general fill (VENM/ENM), engineered fill materials, and other construction materials;
- construction of a new road section, about 3 km in length, incorporating:
 - a four-lane road commencing from a point about 130 m south of the Anzac Road/Moorebank Avenue, before merging to a two-lane road in the vicinity of the south-western corner of the MPE Site before re-joining the existing Moorebank Avenue alignment near the East Hills Railway;
 - construction of a signalised intersection with existing Moorebank Avenue at the existing intersection immediately north-west of the MPE Site, including tie-in works;
 - up to three signalised intersections providing access to the MPE Site;
 - formation of embankments;
 - construction of noise walls and retaining walls; and
 - construction of shared user path and road furniture.



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Source: EMM (2020); DFSI (2017); GA (2011); ASGC (2006)

KEY

- Project area
- Moorebank Precinct East
- Moorebank Precinct West
- Rail line
- Major road
- Watercourse
- Waterbody
- NPWS reserve
- State forest (see inset)

Moorebank Avenue realignment overview

Moorebank Avenue realignment works
Scoping report
Figure 1.1



- construction of temporary (for construction) and permanent (for operation) stormwater and drainage infrastructure, including adjustments to existing drainage structures;
- demolition, removal, adjustment, relocation and, installation of utilities;
- temporary construction compounds to be established internal to the MPE Site, including:
 - main site compound, incorporating site offices, sheds, workshops, storage, car parking, and access roads;
 - temporary hardstand areas;
 - stockpile sites for materials, temporary spoil storage, and mulch; and
 - security fencing, gates, signage, and temporary lighting.

Additional temporary stockpiling and equipment lay-down areas may also be made available along the realignment route. The specific location and size of these areas will be further defined during detailed design and following engagement of construction contractors. In progressively confirming these facilities, existing and nearby land uses, potential environmental impacts and amenity impacts on the surrounding community would be taken into account, having consideration for the criteria established for compound locations identified under the MPE Stage 2 State significant development consent (SSD 7628).

The construction period for the Proposal is anticipated to be about 13 months. Construction will be carried out in phases to enable site-related traffic to be moved off Moorebank Avenue at an early stage, to separate construction and operation traffic, and to avoid congestion and queuing along Moorebank Avenue while construction works continue and MPE operations commence.

The indicative construction sequencing and phase duration is outlined in Table 1.1. It should be noted that these phases would overlap.

Table 1.1 **Indicative construction sequence**

Phase	Construction phase	Approximate duration
Phase 1 – Enabling works	Preliminary enabling works.	3.5 months
Phase 2 – Construction of new road section	Demolition/vegetation grubbing	2 months
	Earthworks	6.5 months
	Pavement construction	6 months
Phase 3 – Finishing works	Finishing works	2.5 - 3 months
Total duration		13 months

1.4 Planning approval pathway overview

The MPW Stage 2 SSD 5066 application was lodged with the NSW Department of Planning, Industry and Environment (DPIE) in October 2016 (formerly Department of Planning and Environment).

In consideration of the assessment requirements for the MPW Stage 2 SSD 5066 application, clause 7.36 of the Liverpool LEP required demonstration that satisfactory arrangements were in place for the provision of relevant State public infrastructure before carrying out of the development.

Clause 7.36(4) of the Liverpool LEP requires the Secretary of the DPIE to certify to the consent authority, in this case the Independent Planning Commission (IPC), that satisfactory arrangements have been made.

A Planning Agreement between the then RMS (now TfNSW) and Qube was executed in March 2019. This Planning Agreement enabled the Secretary to provide certification to the IPC that satisfactory arrangements had been made in respect of the MPW Stage 2 SSD 5066 application.

The Planning Agreement is included in Appendix A. It requires that the proposed Moorebank Avenue Realignment be constructed and dedicated as works in kind to RMS.

Subject to the listing of the project as SSI, the Proposal would be undertaken under Part 5.2 of the EP&A Act as State significant infrastructure (SSI).

Preliminary assessment of the nature, scale, and extent of likely impacts of the proposal indicate that there is potential for biodiversity impacts where the realignment will pass through the Boot Lands.

1.5 Applicant for the proposal and capital investment value

The applicant for the Proposal is the Sydney Intermodal Terminal Alliance (SIMTA) on behalf of TfNSW. SIMTA has national experience in logistics delivery and property development and management.

SIMTA was the proponent for the Moorebank Precinct East (MPE) Concept Plan Approval (MP10_0193), MPE Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) Approval (2011/6229), MPE Stage 1 (SSD 6766) and MPE Stage 2 (SSD 7628) consents. SIMTA has entered into an agreement with the Commonwealth proponents to deliver the Moorebank Precinct West (MPW) Project, represented by Moorebank Intermodal Company (MIC), to be the project delivery company for both the MPE Project and MPW Project.

An estimate of the capital investment value (CIV) of the Proposal, for the purposes of this Scoping Report, is \$312 million AUD (excluding GST).

1.6 Purpose and structure of this report

This Scoping Report has been prepared to support an application under Part 5.2 of the EP&A Act and to assist in the confirmation of environmental assessment requirements by DPIE. This Scoping Report has been structured as follows:

- Section 1 – Introduction: provides a description of the Proposal, the site, the planning approval pathway, the applicant, CIV, and the purpose and structure of this report.
- Section 2 – Site context: provides an overview of the approvals relating to the Moorebank Logistics Park (MLP), including the MPE Project, and the MPW Project.
- Section 3 – The Proposal: a summary of the need and justification for the Proposal, and a description of the land ownership and consent.
- Section 4 – Statutory Framework: provides a summary and assessment of the Proposal having regard to relevant statutory legislation and plans at a Commonwealth, State and local government level.

- Section 5 – Consultation: provides a description of the consultation with government, private stakeholders, and the community that would be required for the Proposal.
- Section 6 – Key environmental issues: identifies the key environmental issues associated with the construction and operation of the Proposal, and alignment with previous environmental investigations undertaken for the MLP.
- Section 7 – Cumulative impacts: provides an overview of the potential cumulative impacts of the Proposal.
- Section 8 – Conclusion: provides a summary of the potential impacts associated with the Proposal and recommendations with respect to the planning pathway.

2 Proposal Site context and background

2.1 Regional context

The Proposal Site is located about 27 km south-west of the Sydney central business district (CBD) and about 26 km west of Port Botany (refer to Figure 2.1).

The Proposal Site is situated within the Liverpool local government area (LGA), in Sydney's South West Subregion, about 2.5 km from the Liverpool city centre.

The M5 Motorway provides the main road link between the Proposal Site and the key employment and industrial areas within the West and South Western Sydney Subregions. The M5 Motorway connects with the M7 Motorway to the west, providing access to the Greater Sydney Metropolitan Region and the NSW road network. Similarly, the M5 Motorway is the principal connection to Sydney's north and north-east via the Hume Highway.

The Proposal Site freight catchment area can be broadly defined as Sydney's Industrial West, Liverpool and South West, an area bordered by the M4 Motorway/Great Western Highway to the north; the Hume Highway to the east; and The Northern Road to the west.

2.2 Local context

The Proposal Site is located about 17 km south of the Parramatta CBD, 5 km east of the M5 Motorway/M7 Motorway Interchange, 2 km from the main north-south rail line and Southern Sydney Freight Line (SSFL), and 600 m from the M5 Motorway.

The majority of land surrounding the Proposal Site is owned by either the Commonwealth or SIMTA and comprises:

- the MPE Site, owned by SIMTA and previously operating as the Department of Defence National Storage and Distribution Centre. The Department of Defence vacated the site and relocated to the Defence Joint Logistics Unit (DJLU) (to the immediate north of the MPE Site);
- the MPW Site, formerly the School of Military Engineering (SME), on the western side of Moorebank Avenue directly adjacent to the MPE Site. The SME was relocated as part of the Moorebank Units Relocation Project into the Holsworthy Military Reserve to the south of the East Hills Railway;
- the Holsworthy Military Reserve, to the south of the MPE Site on the southern side of the East Hills Railway; and
- residual Commonwealth Land (known as the Boot Land), to the immediate east and south of the MPE Site between the site boundary and the Wattle Grove residential area and East Hills Railway respectively (Lot 4, DP 1199707).

A number of residential suburbs are located near the Proposal Site including:

- Wattle Grove – about 0.8 km to the east;
- Moorebank – about 2.5 km to the north-east;
- Casula – about 1.0 km to the west; and
- Glenfield – about 2.0 km to the south-west.

The Proposal Site is also located near a number of industrial precincts, including Moorebank (including but not limited to the Yulong, Amiens and ABB sites) and Warwick Farm to the north, Chipping Norton to the north-east, Prestons to the west and Glenfield and Ingleburn to the south-west.

The Moorebank Industrial Area is the closest industrial precinct, comprising around 200 ha of industrial development, the majority of which is located to the north of the M5 Motorway between Newbridge Road, the Georges River and Anzac Creek. The Moorebank Industrial Area supports a range of industrial and commercial uses, including freight and logistics, heavy and light manufacturing, offices, and business park developments (refer to Figure 2.2).

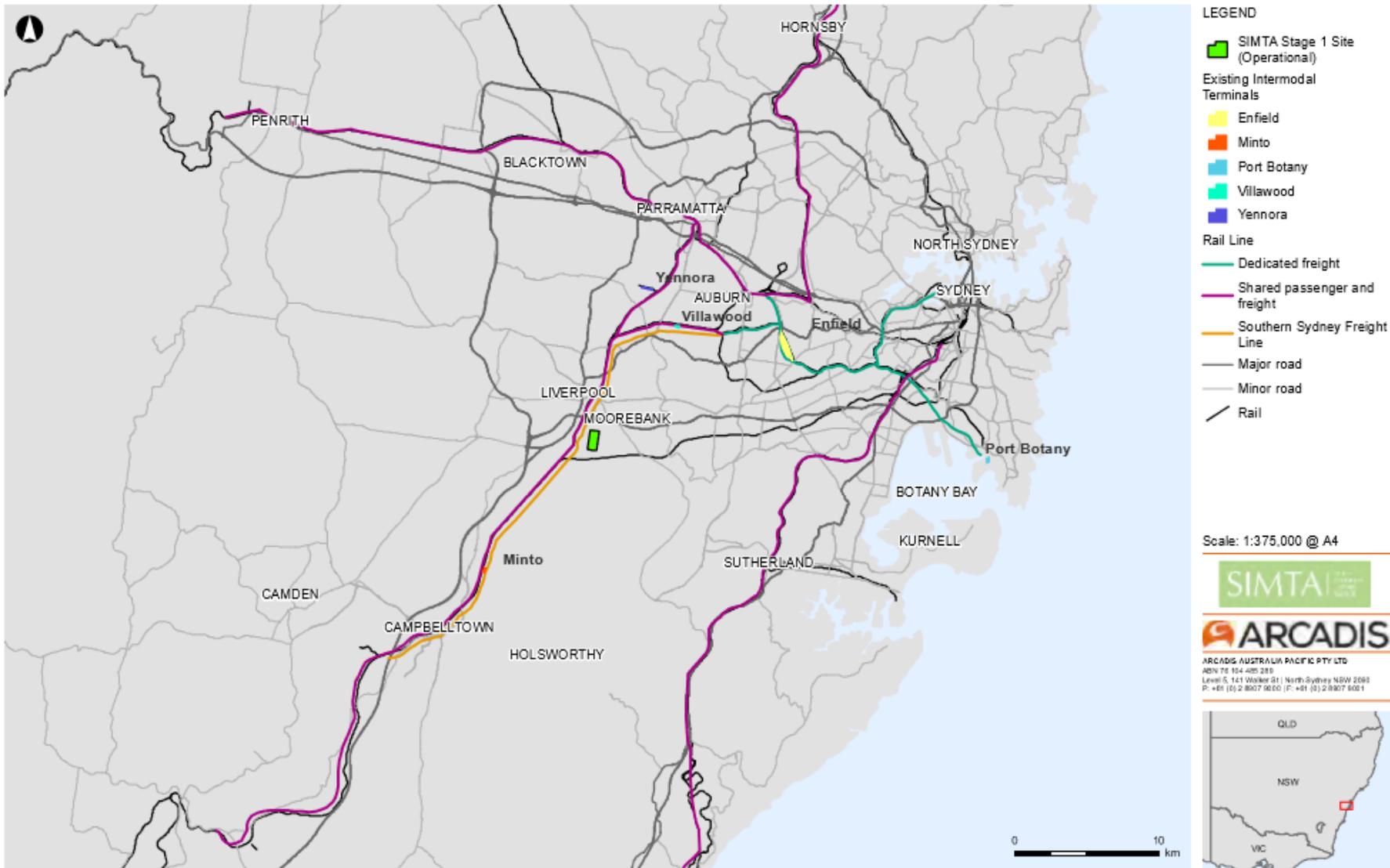
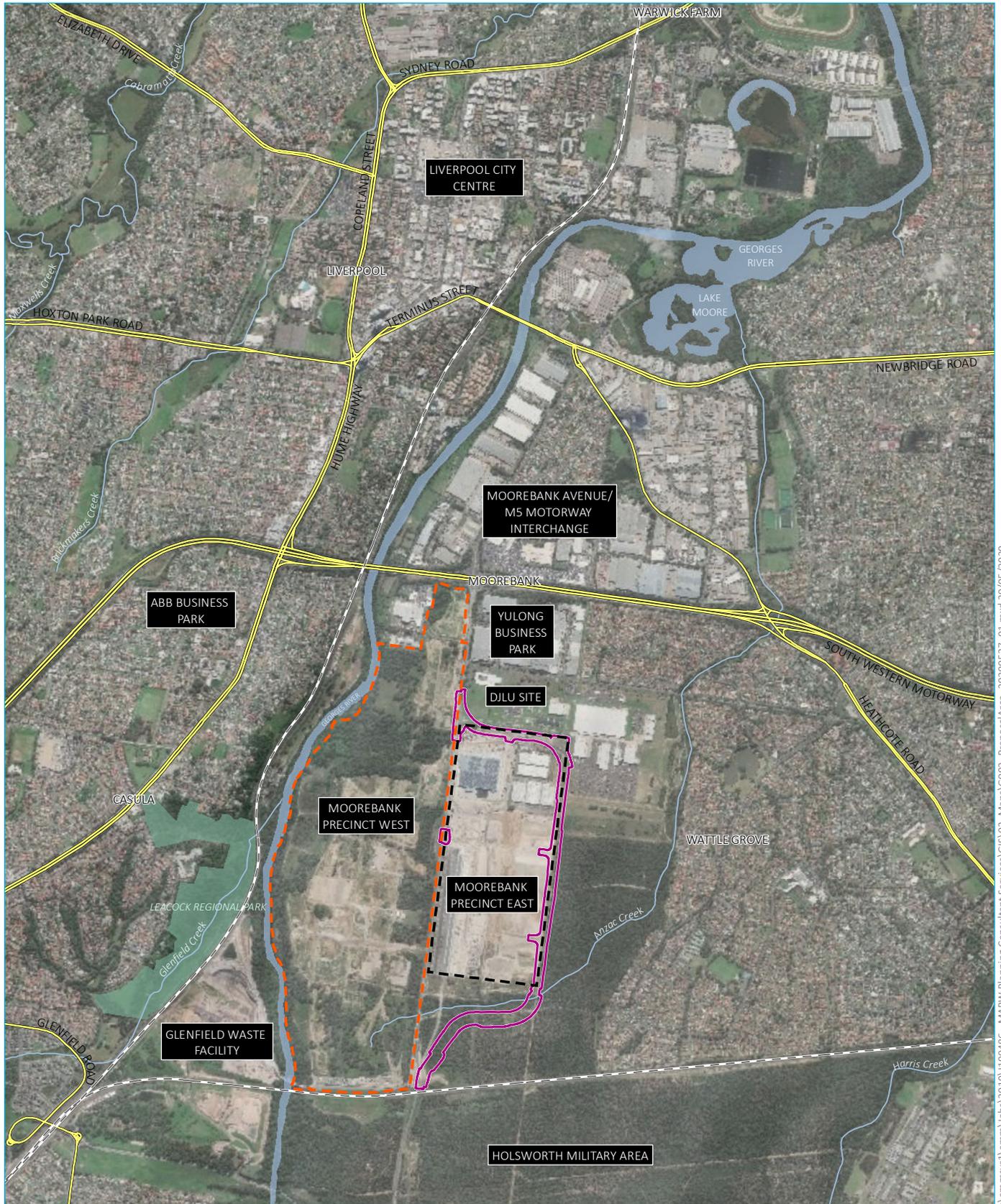


Figure 2.1 Regional context of the Proposal Site (Arcadis 2016)



Source: EMM (2020); DFSI (2017); GA (2011)

KEY

- Project area
- Moorebank Precinct East
- Moorebank Precinct West
- Rail line
- Major road
- Watercourse
- Waterbody
- NPWS reserve

Proposal area

Moorebank Avenue realignment works
Scoping report
Figure 2.2

\\emmsvr1\verm\lbb\2019\1190486 - MARW Planning Consultant Services\GIS\02_Maps\G002_ProposalArea_20200527_01.mxd 29/05/2020

2.3 Moorebank Precinct East

The MPE Project (formerly the SIMTA Project) involves the development of an intermodal terminal (IMT) on the eastern side of Moorebank Avenue, Moorebank. It includes a rail link to the SSFL, warehouse and distribution facilities with ancillary offices, a freight village (ancillary site and operational services), stormwater, landscaping, servicing, and associated works. The MPE Concept Plan (MP10_0193) was approved on 29 September 2014 by the DPIE.

The MPE Project is being developed in two key stages:

- Stage 1 – Construction and operation of the IMT and rail link (refer to MPE Stage 1 discussion at Section 2.3.1); and
- Stage 2 – Construction and operation of warehouse and distribution facilities and upgrade to Moorebank Avenue (refer to MPE Stage 2 discussion at Section 2.3.3).

Existing approvals issued to date relating to the MPE Project include:

- EPBC Act application (No. 2011/6229) – approved by the Commonwealth Minister for the Environment under the EPBC Act to SIMTA on 6 March 2014 for the carrying out of the MPE Project. The MPE Project was declared a controlled action due to its potential impacts on listed threatened species and communities (sections 18 and 18A of the EPBC Act) and Commonwealth land (sections 26 and 27A of the EPBC Act).
- Concept Plan application (MP 10_0193) – approved by the then NSW Planning Assessment Commission (PAC) as delegate of the Minister for Planning to SIMTA on 29 September 2014 under (the then) section 75W (Transitional Part 3A) provisions of the EP&A Act.
- Concept Plan Modification 1 application (MP10_0193-MOD1) – approved by the PAC as delegate of the Minister for Planning to SIMTA on 12 December 2016 under (the then) section 75W (Transitional Part 3A) of the EP&A Act.
- Stage 1 – Intermodal Facility application (SSD-6766) – approved by PAC as delegate of the Minister for Planning to SIMTA on 12 December 2016 under (the then) section 75W (Transitional Part 3A) of the EP&A Act.
- Stage 2 – Warehousing application (SSD-7628) – approved by PAC as delegate of the Minister for Planning to SIMTA on 31 January 2018 under (the then) section 75W (Transitional Part 3A) of the EP&A Act.

2.3.1 Moorebank Precinct East Stage 1 and Concept Plan Modification 1

The MPE Stage 1 application (SSD-6766) was approved on 12 December 2016. The MPE Stage 1 approval allows for the construction and operation of an IMT, including the necessary infrastructure to support a container freight road volume of 250,000 twenty-foot equivalent units (TEU) throughput per annum. Specifically, MPE Stage 1 includes the following key components, which together comprise the IMT facility:

- truck processing, holding and loading areas with an entrance and exit point from Moorebank Avenue;
- rail loading and container storage areas including the installation of four rail sidings with an adjacent container storage area serviced initially by manual handling equipment and progressive installation of overhead gantry cranes;
- an administration facility and associated car parking with light vehicle access from Moorebank Avenue;

- the Rail Link (including a connection to the IMT facility) traversing Moorebank Avenue, Anzac Creek and Georges River and connecting to the SSFL; and
- ancillary works including vegetation clearance, remediation, earth works, utilities installation/connection, signage and landscaping.

An application for the modification to the Concept Plan Approval (MP 10_0193) was submitted to DPIE concurrently with the EIS for the MPE Stage 1 Proposal. The modification application was approved on 12 December 2016. The modification amended the Concept Plan conditions of approval, including updating the description of the MPE Site and removing a condition relating to the preparation of Planning Agreements.

2.3.2 Moorebank Precinct East EPBC Act approval

The MPE Project was declared a controlled action by the Commonwealth Minister of the Environment due to the potential for the Project to impact on listed threatened species and communities.

An application for the MPE Project was approved by the Commonwealth Minister for the Environment on 6 March 2014 (No. 2011/6229). Subject to the implementation of the EPBC Act conditions of approval, no additional assessment or approval is required for MPE under the EPBC Act. Inclusion of additional footprint and works would require consultation with the Department of Agriculture, Water and the Environment (DAWE) to confirm requirements to update relevant management plans and/or obtain a variation to the existing approval.

2.3.3 Moorebank Precinct East Stage 2

An application for MPE Stage 2 (SSD-7628) was approved on 31 January 2018. MPE Stage 2 includes construction and operation of warehousing, distribution facilities and associated ancillary infrastructure. Key components of MPE Stage 2 include:

- warehousing comprising about 300,000 m² GFA and additional ancillary offices;
- establishment of internal site roads, and connection to the surrounding road network;
- freight village;
- ancillary supporting infrastructure, including:
 - stormwater, drainage, and flooding infrastructure;
 - utilities relocation and installation
 - vegetation clearing, remediation, earthworks, signage, and landscaping;
- subdivision of the MPE Site;
- activation of existing warehouses; and
- upgrades to Moorebank Avenue to facilitate site access and egress.

The proposed roadworks along the northern and eastern boundary of the MPE Site interface with the MPE Stage 2 site works, notably the construction and operation of internal roads that would ultimately form the two westernmost lanes of the final roadway.

2.4 Moorebank Precinct West

The MPW Project comprises the development of an IMT on the western side of Moorebank Avenue, Moorebank. It includes a rail link to Port Botany and the interstate and intrastate freight rail network, associated warehouse and logistics facilities, and a road entry and exit point to/from Moorebank Avenue.

The MPW Project is to be developed in three key stages, aligned to the approved Concept Plan:

- Stage 1 Early Works (approved as Stage 1 of the Concept Plan (SSD 5066));
- Stage 2 (SSD 16_7709) for earthworks, warehouses, freight village and intermodal terminals and access and intersection upgrade at Anzac Road; and
- Stage 3 (subject to application) comprising balance of warehousing and supporting site infrastructure to connect to terminals, access, utilities, and drainage.

2.4.1 MPW Concept Plan

An application for the MPW Concept Plan (SSD_5066) was approved on 3 June 2016 from the DPIE under the EP&A Act. A summary of the MPW (at full build) is as follows:

- IMEX freight terminal – maximum capacity of 550,000 TEU throughput per annum, servicing international IMEX freight movement between Port Botany and the MPW Site;
- interstate freight terminal – maximum capacity of 500,000 TEU throughput per annum, servicing trains travelling to, from and between Sydney, regional and interstate destinations;
- warehousing facilities – maximum of 300,000 m² GFA to service the IMEX and interstate terminals;
- rail link connection – between the MPW Site and the MPE rail link;
- conservation area – to maintain and enhance riparian vegetation on the western boundary of the site, along the Georges River; and
- Moorebank Avenue upgrade – widening of the road to four lanes between Anzac Road and the M5 Motorway.

2.4.2 MPW Stage 1 early works

The Early Works phase was approved as Stage 1 of the MPW Concept Plan (SSD 5066). The approved Early Works comprise the following:

- demolition of existing buildings and structures;
- service utility terminations and diversion/relocation;
- removal of hardstand/roads/pavements and infrastructure associated with existing buildings;
- rehabilitation of the excavation/earthmoving training area;
- remediation of contaminated land and hotspots, including areas known to contain asbestos, and the removal of:
 - underground storage tanks;
 - unexploded ordnance and explosive ordnance waste (if found); and
 - asbestos contaminated buildings;
- archaeological salvage of Aboriginal and European sites, including the Cullen Universal Steel Truss (CUST) Hut and STRARCH Hangar 1;
- establishment of a conservation area along the Georges River, including seed banking and planting;

- establishment of construction facilities (which may include a construction laydown area, site offices, hygiene units, kitchen facilities, wheel wash and staff parking) and access, including site security; and
- limited vegetation removal, including the relocation of hollow-bearing trees.

2.4.3 Moorebank Precinct West EPBC Act approval

Approval was sought for the MPW Project as a 'controlled action' under the EPBC Act in parallel with the MPW Concept Plan assessment under the EP&A Act. The construction and operation of the MPW Project as a controlled action under EPBC 2011/6086 was approved on 27 September 2016.

Consultation would be required with DAWE in respect of the application of the current EPBC approval for MPW to the proposed roadworks on the basis that the Satisfactory Arrangements provision requiring the Moorebank Avenue Realignment is a requirement within the MPW consent. Additionally, the proposed roadworks would have an interface with the Moorebank Ave/Anzac Road intersection which is part of the works to be undertaken under MPW Stage 2.

The result of this consultation may require an update to environmental management plans, a variation to the existing approval or a separate referral for the scope of works.

2.4.4 MPW Stage 2

MPW Stage 2 (SSD 16_7709) was approved by the IPC on 11 November 2019. This approval allows for the construction of an IMT facility, warehousing, and a rail link connection. Specifically, the approval comprises the following:

- an IMT facility, including:
 - infrastructure to support a container freight throughput volume of 500,000 TEUs per annum;
 - installation of nine rail sidings and associated locomotive shifter;
 - capacity to receive trains up to 1,800 m in length;
 - truck processing, holding areas, and loading areas;
 - container storage area serviced by manual handling equipment;
 - administration facility, engineer's workshop, and associated car parking;
- a rail link including:
 - construction of the rail link connection, which links the sidings within the IMT facility to the rail link (which would be constructed as part of MPE Stage 1); and
 - the operation of the rail link connection to the SSFL;
- warehousing area including construction of about 215,000 m² GFA of warehousing, plus ancillary offices, with associated warehouse access roads;
- upgrades to the Moorebank Avenue intersection, which would provide site access and egress and construction of an internal road; and
- ancillary works, including vegetation clearing, earthworks (including the importation of 1,600,000 m³ of fill), utilities installation/connection, signage, and landscaping.

2.4.5 MPW Stage 2 satisfactory arrangements

The objective of the Planning Agreement is to facilitate the provision of relevant State public infrastructure for MPW and the Moorebank Intermodal Precinct as a whole, namely regional roads, as referred to in clause 7.36 of the *Liverpool Local Environmental Plan 2008* (Liverpool LEP).

The Planning Agreement between Qube and the former RMS represents the agreed satisfactory arrangements in respect of the MPW Site. The Planning Agreement requires the Developer (Qube) to make Development Contributions in connection with the Proposed Development (MPW Stage 2) and the Moorebank Intermodal Precinct West Development as a whole for the purposes of the provision of relevant State public infrastructure within the meaning of clause 7.36 of the Liverpool LEP.

The Planning Agreement requires the carrying out of the Moorebank Avenue Realignment works and to obtain all approvals required for the Moorebank Avenue Realignment by 31 December 2021 (or such other date agreed by RMS). Where approvals for the Moorebank Avenue Realignment are not obtained by 31 December 2021, Qube is required to instead carry out the Moorebank Avenue South Upgrade.

Where all approvals required for the Moorebank Avenue Realignment are obtained by 31 December 2021, Qube is required to complete the realignment by 31 December 2023 (or such other date agreed by RMS).

Qube is also required to procure the dedication as a public road of the Moorebank Avenue Realignment Land (or the dedication as public road of the Moorebank Avenue South Upgrade Land, where applicable) by the above completion dates.

A Secretary's Certificate for Satisfactory Arrangements was issued for the project by the DPIE on 23 April 2019. The certificate certifies that satisfactory arrangements have been made to contribute to the provision of State public infrastructure in relation to SSD 7709. A copy of the certification is included in Appendix A (Planning Agreement).

2.5 Relationship between MPE and MPW

On 4 June 2015 MIC, with the approval of the Commonwealth Government, entered into an agreement with SIMTA, whereby SIMTA would be responsible for the delivery and operation of both the MPE and MPW projects. The approval documents for MPE and MPW however remain separate.

While the requirements for satisfactory arrangements are tied to the development consent requirements for the MPW Site, the Moorebank Avenue Realignment proposal would include access points from the MPE Site onto the realigned Moorebank Avenue.

3 The proposal

3.1 Proposal need and justification

The Proposal is identified as a requirement of the Planning Agreement (March 2019) under section 7.4 of the EP&A Act between the then RMS and Qube. The Planning Agreement was required to demonstrate satisfactory arrangements in respect of MPW are in place, in accordance with clause 7.36 of the Liverpool LEP.

The Planning Agreement requires the Moorebank Avenue Realignment construction and dedication as a works in kind contribution.

The realignment of Moorebank Avenue provides benefits to both the Moorebank Intermodal Precinct and the broader community. Community benefits are delivered through an upgraded connection along a multiple lane road from Cambridge Avenue to Anzac Road with an enhanced amenity where the road alignment runs parallel to the Boot Land site, while maintaining appropriate levels of service at local intersections.

The removal of a physical barrier between the two intermodal precincts (MPE and MPW) would enable additional freight handling efficiencies to be achieved through automation between terminal and warehouse facilities.

3.2 Legal description, ownership, and consent

The land to which the Proposal will directly impact is subject to the refinement of the Proposal design and will be confirmed and assessed in the EIS. A summary of potential lots affected by the Proposal is provided in Table 3.1.

Table 3.1 Properties potentially affected by the Proposal

Lot	Property description	Tenure
Lot 12 DP 1251885	MPE site	The Trust Company (Australia) Limited (SIMTA)
Lot 13 DP 1251885	MPE site	SIMTA
Lot 26 DP 1253673	MPE site	SIMTA
Lot 27 DP 1253673	MPE site	SIMTA
Lot 1 DP 1197707	MPW site	Commonwealth of Australia
Lot 2 DP 1197707	Moorebank Avenue (south of Anzac Road)	Commonwealth of Australia
Lot 3 DP 1197707	Defence Joint Logistics Unit (DJLU)	Commonwealth of Australia
Lot 4 DP 1197707	Boot Land	Commonwealth of Australia
Lot 3002 DP 1125930	DJLU	Commonwealth of Australia
Lot 1 DP 825352	Former Moorebank Railway Station site	RailCorp

Land owner's consents have been obtained for the MPE Site development. Land owner's consents would need to be reviewed for applicability to the Proposal and either confirmed as still applicable, updated to reflect the scope of the Proposal, or sought from the relevant land owner where absent. It is noted however that land owner's consent is not required prior to the lodgement of an application for SSI development.

4 Statutory and planning framework

This section provides the statutory and planning framework for the Proposal and considers the provisions of relevant Commonwealth and NSW legislation.

4.1 Commonwealth legislation

The Commonwealth EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, and heritage places (defined in the Act as matters of national environmental significance (MNES)) – as well as to govern actions undertaken on Commonwealth Land. The MNES that are protected under the EPBC Act are:

- World heritage properties;
- National heritage places;
- wetlands of international importance;
- listed threatened species and ecological communities;
- migratory species;
- Commonwealth marine areas;
- Great Barrier Reef National Park;
- nuclear actions (including uranium mines); and
- coal seam gas activities that pose a risk to water resources.

As outlined in Section 3.2, a portion of the Proposal Site is owned by the Commonwealth. In addition, the Proposal will traverse an area of bushland with threatened species and threatened ecological communities listed under the EPBC Act present.

Consultation with DAWE would be required to determine the applicability of the current EPBC approvals to the Proposal, and whether a separate referral under the EPBC Act is required.

4.2 State Environmental planning policies

4.2.1 State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) identifies development that is State significant development (SSD), State significant infrastructure (SSI), and critical State significant infrastructure.

Schedule 1 to the SRD SEPP lists classes of development that are deemed SSD under clause 8(1). Road projects are not listed under Schedule 1. Schedule 2 to the SRD SEPP lists specific identified sites that are deemed SSD under clause 8(1). The Proposal is not listed under Schedule 2. Accordingly, the Proposal is not considered SSD.

Schedule 3 of the SRD SEPP lists general classes of development that are deemed SSI under clause 14. Road projects are not listed under Schedule 3. Schedule 4 of the SRD SEPP lists specific identified development on specified land as being State significant infrastructure. The Proposal is not currently listed under Schedule 4. However, an SSI Order request is being made to seek amendment to Schedule 4 to include the Proposal as an SSI project within Schedule 4. If the order were made by the Minister, the Proposal will be listed under Schedule 4 and would be deemed SSI.

4.2.2 State Environmental Planning Policy No. 44 – Koala Habitat Protection

The aim of *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP 44) is to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The Proposal is within the Liverpool LGA to which SEPP 44 is applicable. A summary of the existing biodiversity characteristics of the Proposed alignment is provided in Section 6.4. Any further potential for koala habitat within the Proposal Site would be assessed as part of the assessment process.

4.2.3 State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides controls and guidelines for the remediation of contaminated land. It aims to promote the remediation of contaminated land to reduce the risk of harm to human health or any other aspect of the environment.

SEPP 55 imposes obligations on landholders to undertake any remediation work in accordance with relevant guidelines developed under the *Contaminated Land Management Act 1997* (discussed in Table 4.1) and to notify the relevant local council of certain matters in relation to any remediation work.

SEPP 55 establishes two categories of remediation. Projects classified as Category 1 require development consent, while projects classified as Category 2 do not require development consent. The Proposal would likely be considered Category 1 works, given the potential to encounter asbestos or other construction waste in the Boot Lands associated with former military activities on the site.

A summary of the investigations undertaken along the proposed alignment to date is provided in Section 6.6.

4.2.4 Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (REP No 2) (now a deemed SEPP) aims to maintain and improve the water quality and river flows of the Georges River and its catchment, and to establish a consistent and coordinated approach to environmental planning and assessment of land within the catchment.

The Proposal is located in the Georges River catchment and traverses Anzac Creek, a tributary of Georges River, as a result, the changes to site drainage and runoff associated with the Proposal may impact water quality and flooding of the Georges River Catchment. Changes to the drainage and flood regime of the MPE Site have been investigated as part of the previous approvals for that site and have been used to inform the summary provided in Section 6.5.

The EIS for the Proposal will further these investigations and provide an assessment of surface and groundwater flows and flooding impacts as part of the assessment documentation.

4.2.5 Local environmental plans

i Liverpool Local Environmental Plan 2008

The Proposal is within the Liverpool LGA, which is subject to the Liverpool LEP. The following land use zones apply to the site of the Proposal under the Liverpool LEP:

- IN1 – General Industrial;
- SP2 – Infrastructure (Defence); and
- SP2 – Infrastructure (Railway).

In all three zones, development for roads is permissible with consent under the Liverpool LEP. It is noted however that the SRD SEPP would supersede the Liverpool LEP (given the order of precedence of EPIs under the EP&A Act), and accordingly the Proposal would be considered SSI (not local development) following the Minister's order to the list the Proposal.

4.3 Other relevant NSW legislation

Other NSW legislation and its relevance to the Proposal is summarised in Table 4.1.

Table 4.1 Other relevant NSW legislation

Relevant legislation	Summary of relevant legislation	Applicability to the Proposal
<i>NSW Roads Act 1993</i>	Section 138 of the <i>Roads Act 1993</i> requires consent from the relevant roads authority (RMS) for the erection of a structure, or the carrying out of work in, on or over a public road, or the digging up or disturbance of the surface of a road.	The Proposal will be a classified road following completion and dedication to TfNSW.
<i>Protection of the Environment Operations Act 1997</i>	This Act regulates and controls pollution of land, air, water, and noise and provides for notices and offences. Scheduled activities (as defined in Schedule 1 to the Act) require an environment protection licence (EPL). Clause 19 of Schedule 1 to the Act states that any land-based extractive activity that involves the extraction, processing, or storage of more than 30,000 tonnes per year of extractive material is a scheduled activity that requires an EPL.	The Proposal is likely to require the import of more than 30,000 tonnes of extractive material and, as such, would be a scheduled activity under Schedule 1 and would require an EPL. There are, however, resource recovery exemptions available for certain waste types, including excavated spoil, raw mulch and reclaimed road pavement asphalt or aggregate, if it is shown the waste type is being beneficially re-used. Acceptable beneficial reuses on road projects include: <ul style="list-style-type: none"> • flattening of road batters; • rehabilitation of borrow pits; and • engineered fill. The resource recovery exemptions can negate the need for an EPL. This will be investigated as part of the assessment process.
<i>Water Management Act 2000</i>	This Act provides for the orderly, efficient and equitable sharing of water from water sources. The Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011 applies to the Proposal prepared in accordance with Part 3 Division 2 of the Act. Section 56 of this Act establishes access licences for the taking of water within a particular water management area within a water sharing plan.	Under section 18(1) of the Water Management (General) Regulation 2011 (Water Management Regulation), TfNSW, as a roads authority and on whose behalf the Proposal is being undertaken, is exempt from the need to obtain an access licence in relation to water required for road construction and road maintenance.

Table 4.1 Other relevant NSW legislation

Relevant legislation	Summary of relevant legislation	Applicability to the Proposal
<i>Biodiversity Conservation Act 2016</i>	<p>The purpose the <i>Biodiversity Conservation Act 2016</i> (BC Act) is to maintain a healthy, productive, and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development. This Act seeks to establish a framework for assessment and offsetting of development impacts as well as investment in biodiversity conservation, namely:</p> <ul style="list-style-type: none"> • The NSW Biodiversity Offsets Scheme (BOS) is established under Part 6 of the BC Act • The Biodiversity Assessment Method (BAM) is established under section 6.7 of the BC Act. The purpose of the BAM is to assess certain impacts on threatened species and threatened ecological communities (TECs), and their habitats, and the impact on biodiversity values, where required under the BC Act. 	<p>There are a number of threatened flora and fauna species and TECs in the vicinity of the Proposal.</p> <p>The impact of the Proposal on these threatened species and TECs would be considered as part of the assessment of the Proposal, which would include the preparation of a Biodiversity Assessment Report (BDAR) in accordance with the BAM requirements of the BC Act. The BDAR would include proposed biodiversity offsets under the NSW BOS, as required.</p> <p>A more detailed description of the biodiversity constraints of the Proposal is provided in Section 6.4.1.</p>
<i>Biosecurity Act 2015</i>	<p>The primary objective of the Act is to provide a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers, or potential carriers. Division 2 of the Act defines local control authorities for weeds and Schedule 1 outlines special provisions relating to weeds, including the duty of land occupiers to control and manage weeds.</p>	<p>The presence of weeds declared as priority for Greater Sydney under the <i>Biosecurity Act 2015</i> along the proposed alignment would be considered as part of the preparation of the BDAR.</p>
<i>National Parks and Wildlife Act 1974</i>	<p>The harming or desecrating of Aboriginal objects or places is an offence under section 86 of the <i>National Parks and Wildlife Act 1974</i> (NPW Act). Under section 90, an Aboriginal heritage impact permit may be issued in relation to a specified Aboriginal object, Aboriginal place, land, activity or specified types or classes of Aboriginal objects, Aboriginal places, land, activities or persons.</p>	<p>The Aboriginal heritage assessment completed for MPE Stage 2 (SSD 7628) (AMHS, 2015) identified five Aboriginal heritage sites and a potential archaeological deposit in the vicinity of the proposed alignment.</p> <p>The former RMS <i>Procedure for Aboriginal Cultural Heritage Consultation and Investigation</i> (PACHCI) (2011c) ensure that TfNSW projects likely to affect Aboriginal cultural heritage receive the appropriate level of assessment and community involvement and enable TfNSW to establish a due diligence defence for the strict liability offence of harming an Aboriginal object under the NPW Act. The assessment process outlined in the guidelines would be followed for this Proposal.</p>

Table 4.1 Other relevant NSW legislation

Relevant legislation	Summary of relevant legislation	Applicability to the Proposal
<i>Heritage Act 1977</i>	Approval must be obtained from the Heritage Council under this Act where a proposal would affect a place listed on the State Heritage Register (SHR), or where excavation may affect an archaeological relic.	Preliminary non-Aboriginal heritage assessments completed for the Proposal identified that the Proposal will traverse two items of local heritage significance listed in the Liverpool LEP, being the land currently and previously held by Defence. While potential impacts to non-Aboriginal heritage items would be considered as part of the assessment process, the Proposal will not require approval from the Heritage Council as there are no likely impacts on items listed in the SHR associated with the Proposal.
<i>Fisheries Management Act 1994</i>	This Act aims to conserve, develop, and share the fishery resources of NSW. A Part 7 permit is required when works require dredging or reclamation on waterfront land as defined in the <i>Water Management Act 2000</i> , or if the proposed work site is within or adjacent to a waterway that is considered Key Fish Habitat.	The watercourse that flows through the proposed alignment, Anzac Creek, is not mapped as Key Fish Habitat. The construction of culverts for the Proposal may affect waterfront land. Accordingly, DPIE (Fisheries) would be consulted as part of the preparation of the EIS and any of the requirements considered as part of the assessment.
<i>Contaminated Land Management Act 1997</i>	The general objective of the <i>Contaminated Land Management Act 1997</i> (CLM Act) is to establish a process for investigating and (where appropriate) remediating land that the EPA considers to be contaminated significantly enough to require regulation. Section 5 of the CLM Act defines ‘contamination’ of land as meaning: the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.	There have been numerous contamination investigations at the MPE Site and the Boot Land. There are no specific areas requiring direct remediation within the Proposal Site. However, various contamination aspects of potential concern could impact on the Proposal Site should they not be managed appropriately. The risk of encountering contamination and XO/UXO would be considered as part of the assessment process. The risk to users and the environment from potential contamination and XO/UXO once the Proposal is operational is considered to be low.

4.4 Confirmation of statutory position

In accordance with the Planning Agreement, the Proposal is required to be carried out and dedicated to TfNSW as a development contribution.

Preliminary assessment of the nature, scale and extent of likely impacts of the Proposal indicate that there are not likely to be any significant adverse environmental impacts associated with the northern portion of the Proposal. It further indicates that there is a potential for impacts in the southern portion of the Proposal, though significant impacts may be limited to biodiversity impacts, and mitigated through conditions of approval and biodiversity offsets.

Assessment requirements for the Proposal are to be confirmed in consultation with the DPIE and on receipt of the issued SEARs.

5 Consultation

It is proposed that a consultation process would commence once the assessment requirements have been confirmed and the impact assessment has commenced. This process is anticipated to include:

- public consultation workshops for residents of nearby areas including Wattle Grove, Casula and Glenfield;
- consultation with surrounding landowners, including:
 - Department of Defence;
 - Department of Industry and Regional Development;
 - ABB;
- Commonwealth, NSW, and local government authorities, including:
 - DAWE;
 - DPIE (Biodiversity Conservation Division);
 - DPIE (Water);
 - DPIE (Fisheries);
 - NSW Rural Fire Service;
 - Sydney Trains;
 - TfNSW (Roads); and
 - Liverpool City Council;
- servicing and infrastructure providers, including:
 - Sydney Water Corporation;
 - Endeavour Energy;
 - Jemena;
 - National Broadband Network Company;
 - Telstra;
 - AGL Upstream Investments Pty Ltd;
- registered Aboriginal parties (RAPs); and
- Special interest groups consulted as part of previous assessment at the Moorebank Intermodal Precinct.

6 Key environmental issues

A summary of the key environmental issues relating to the Proposal have been identified based on investigations and environmental assessment undertaken as part of the MPE and MPW projects, and the preliminary investigations undertaken to-date for the Proposal.

The outcome indicates the following key environmental issues will require further detailed assessment to assess the potential impact of the Proposal and may require specific impact mitigation measures:

- biodiversity;
- traffic and transport;
- noise and vibration;
- air quality;
- flooding and hydrology;
- Aboriginal heritage;
- non-Aboriginal heritage; and
- visual amenity, urban design, and landscaping.

Several other environmental issues have also been identified to be of lesser consequence in the context of the Proposal scope, the existing environment and the implementation of standard management and safeguard measures. These issues are outlined in Table 6.2. Although they are not key issues, the potential impact of these other environmental issues would still be considered as part of the assessment process for the Proposal.

6.1 Traffic and access

6.1.1 Overview

Moorebank Avenue is currently a two-lane undivided road (one lane in each direction) between Cambridge Avenue and the M5 Motorway (adjacent to the Moorebank Precinct) and a four-lane undivided road (two-lane in each direction) north of the M5 Motorway. Moorebank Avenue provides a north-south link between the suburbs of Liverpool and Glenfield and forms a grade separated interchange with the M5 Motorway.

Moorebank Avenue between the M5 Motorway and Anzac Road is owned and maintained by Liverpool City Council as a local road. Moorebank Avenue between Anzac Road and Cambridge Avenue is a private road on Commonwealth land which is publicly accessible.

The proposed realignment runs generally to the east of the Moorebank Precinct, with provision of two lanes in each direction plus auxiliary turning lanes at each of the four signalised intersections adjacent to the MPE Site, reverting to two lanes to the south of the MPE Site. The most northern intersection at the DJLU would provide access to both the DJLU site and the IMEX terminal site. The southern three signalised intersections would provide access into the Moorebank Precinct.

6.1.2 Potential impacts

i Construction

Two of the four proposed lanes are to the east of the current MPE Site through greenfield areas. The other two lanes currently exist as an unsealed access road for the MPE Project and form the MPE eastern boundary. Most construction works would occur offline from major arterial routes and therefore unlikely to cause disruption to the local road network. The current Moorebank Avenue would remain open whilst construction works are completed thereby minimising disruption and delays.

Construction works would require the use of heavy vehicles to deliver construction plant, equipment and materials, as well as for the removal of waste, including general construction waste and compound waste. Additional light vehicle movements would also occur during construction, associated with the construction workforce.

Construction works associated with the realignment of Moorebank Avenue would be carried out completely offline and have no impact on day to day traffic movements through the Precinct. Cumulative construction impacts associated with simultaneous construction of the MPE and MPW Projects are expected to be manageable under the existing construction vehicle movement allowances between the MPE and MPW Sites, representing a cap of 22,000 m³ per day.

Construction of the Proposal would require ancillary facilities which may include, but not be limited to construction compounds, stockpile areas, and equipment/plant laydown areas. The location of the Proposal in a greenfield area provides an opportunity for these facilities to be located away from public roads, thereby minimising traffic disruptions.

ii Operation

Realignment of Moorebank Avenue would provide the required transport network capacity (two-lane to four-lane) to accommodate the increase in local traffic associated with the progression of the MLP.

6.1.3 Further assessment

The assessment process for the Proposal would include a construction and operational traffic and transport impact assessment to identify and assess potential impacts of the Proposal on road network performance, and would propose management measures to avoid, minimise and manage these potential impacts where feasible and reasonable.

The assessment would:

- identify the existing road network, traffic conditions including volumes and intersection performance;
- describe how construction traffic would access the site, including ancillary facilities and any impacts on the surrounding road network;
- identify and assess construction impacts, including likely construction traffic volumes, peak volume periods, levels of service at proximate intersections, haulage routes, construction compound locations and access, and any temporary changes to access;
- provide an assessment of the existing and future traffic and transport environment for a range of operational scenarios including an assessment to the local and regional road network, speed environment, parking and access arrangements, provision for public transport and changes to pedestrian and cyclist facilities;
- an assessment of road safety; and
- identify feasible and reasonable mitigation measures for the construction and operational stages of the Proposal.

6.2 Noise and vibration

6.2.1 Overview

The noise characteristics of the area surrounding the Proposal are generally consistent with an urban, mixed use environment of residential, industrial, and open space. Noise levels are predominately influenced by:

- local road traffic noise;
- rail pass-by events on the East Hills Railway and Southern Sydney Freight Line;
- construction of the adjacent Moorebank Precinct development; and
- the M5 Motorway in Casula and Wattle Grove.

Topographic features may influence noise by the way they influence wind direction and speed, and attenuation of site generated noise and vibration. The main topographic feature that will influence potential noise and vibration impacts of the Proposal is the ground level rise to the east of the Proposal Site, coupled with medium to heavy density bushland to the east. These features contribute to attenuating the transmission of noise and vibration generated on the Proposal Site towards the closest residential receivers at Wattle Grove.

The MPE Site and surrounds have been extensively investigated as part of the previous Concept Plan and SSD applications for the site. A list of the previous noise and vibration investigations is provided below:

- Noise and Vibration Impact Assessment (Wilkinson Murray, 2013) as part of the EIS for the Concept Plan Approval;
- Noise and Vibration Impact Assessment (Wilkinson Murray, 2015) was prepared to support the EIS for the Stage 1 Proposal; and
- Noise and Vibration Impact Assessment (Wilkinson Murray, 2016) was prepared to support the EIS for the Stage 2 Proposal.

The following key characteristics relating to the existing noise environment at the MPE Site and within the surrounding area have been identified, based on the previous studies:

- The topography is moderately flat, with relative levels (RLs) predominantly ranging between 14 and 16 m Australian Height Datum (AHD). Along the eastern boundary of the MPE Site, the land rises from about RL 14 metres AHD at each end to a localised peak of RL 22 m AHD about midway along the length of this boundary. Topographic features may influence noise by the way they influence wind direction and speed, and attenuation of site generated noise and vibration. The main topographic feature that will influence potential noise and vibration impacts at the MPE Site is the ground level rise to the east, coupled with medium to heavy density bushland to the east, which contributes to minimising the transmission of noise and vibration generated on the site towards residential receivers at Wattle Grove.
- The following residential receiver noise catchment areas (NCAs) are located near the MPE Site:
 - NCA1 – 400 metres east of the MPE Site in Wattle Grove and south of Anzac Road;
 - NCA2 – 350 metres north of the MPE Site in Wattle Grove, north of Anzac Road;
 - NCA3 – 850 metres west of the MPE Site in Casula; and
 - NCA4 – more than 1.9 kilometres south-west of the MPE Site in Glenfield.

The location of these representative NCAs are shown in Figure 6.1.

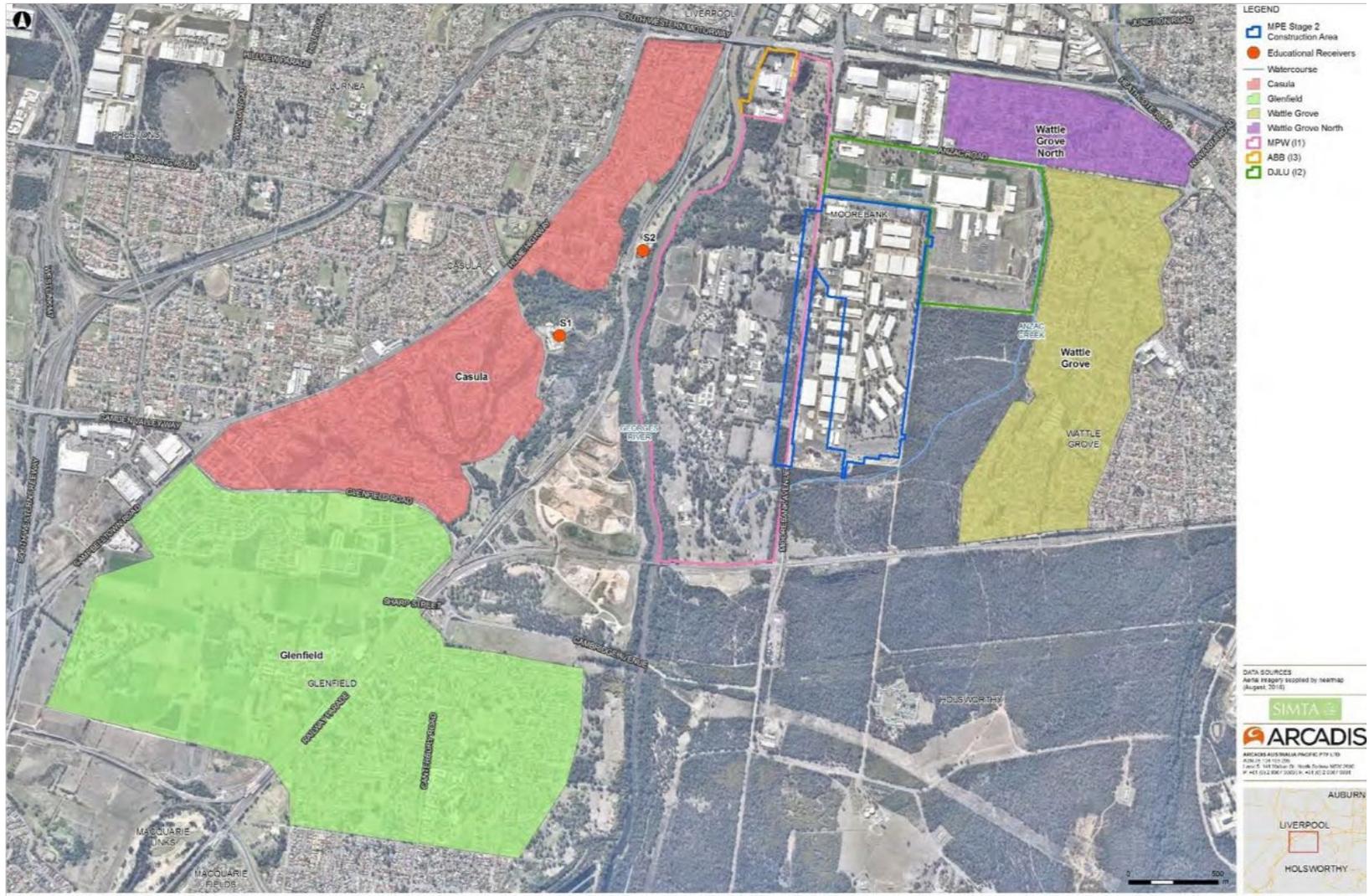


Figure 6.1 Noise sensitive receivers near the MPE Site (Arcadis 2016)

6.2.2 Potential impacts

i Construction

Construction works have the potential to result in the following impacts:

- construction traffic noise from the use of heavy vehicles and construction equipment;
- potential vibration impacts from construction equipment, causing annoyance and potentially damage to nearby structures; and
- potential cumulative noise impacts from other construction projects (including the adjacent MPE and MPW Sites).

There is also the potential that construction works may be required outside of standard construction hours for safety reasons. Any works outside of standard construction hours may potentially impact on sensitive receivers surrounding the Proposal Site.

ii Operation

During operation there is potential for the following impacts:

- the Proposal would result in the redistribution of traffic from the existing Moorebank Avenue that runs directly between the MPE and MPW Sites, to the realigned Moorebank Avenue to the east of the MPE Site; and
- potential change to presently assessed operational road noise and vibration impacts at sensitive receivers.

6.2.3 Further assessment

The assessment process for the Proposal would include a noise and vibration impact assessment to identify and assess potential impacts of the Proposal on sensitive receivers, and would propose management measures to avoid, minimise and manage these potential impacts where feasible and reasonable.

The noise and vibration impact assessment would include the following:

- assessment of construction noise and vibration impacts including impacts from construction traffic and ancillary facilities under variable weather conditions. The assessment would identify sensitive receivers and assess construction noise/vibration generated by representative construction scenarios focusing on high noise generating works. Where work hours outside of standard construction hours are proposed, clear justification and detailed assessment of these work hours must be provided, including alternatives considered, mitigation measures proposed and details of construction practices, work methods, and compound design;
- development of a road noise model for the realigned section of Moorebank Avenue to predict road traffic noise to sensitive receivers in accordance with the *Road Noise Policy* (EPA 2011); and
- identification of feasible and reasonable noise mitigation and management as required to minimise impacts to offsite neighbours.

The noise and vibration impact assessment would be prepared in accordance with the relevant guidelines, including:

- *NSW Noise Policy for Industry* (EPA 2017);
- *Interim Construction Noise Guideline* (DECC 2009);
- *Assessing Vibration: a technical guide* (DEC 2006);
- *Development Near Rail Corridors and Busy Roads Interim Guideline* (DoP 2008); and
- *NSW Road Noise Policy 2011* (EPA 2011).

6.3 Air quality

6.3.1 Overview

A number of existing and potential future air emission sources contribute toward the condition of the local air shed including:

- traffic emissions from the wider road network, including the M5 Motorway;
- emissions from diesel locomotives using the SSFL and the MLP rail link to the SSFL;
- emissions from traffic associated with the MPE and MPW Sites;
- existing commercial and industrial facilities, including the Greenhills Industrial Estate and Moorebank Business Park to the north; and
- emissions from aircraft at Bankstown Airport to the north-east.

6.3.2 Potential impacts

i Construction

Construction works have the potential for the following impacts:

- dust generation resulting from earthworks, vegetation clearing, handling and stockpiling of spoil material and movement of vehicles, heavy plant and machinery on unsealed access roads; and
- temporary, localised increases in air quality impacts from emissions, such as exhaust fumes generated by the operation of machinery and other construction vehicles.

The nature of any dust generation would depend on the scale of activities and quantities of material handled and mitigation measures employed during construction.

ii Operation

The Proposal would result in relocation of traffic that would otherwise travel down the existing Moorebank Avenue (between the MPE and MPW project sites).

The Proposal would not result in a net increase in air emissions. Air emissions of current vehicle loads on Moorebank Avenue have been assessed as part of the MPE and MPW projects.

6.3.3 Further assessment

The assessment process for the Proposal would include an air quality impact assessment to:

- identify the relevant air quality goals and standards, and sensitive receivers (such as residential properties) located near the Proposal;
- assess the existing ambient air quality in the vicinity of the Proposal;
- assess the meteorological conditions which may influence the impacts of the Proposal;
- assess the potential impacts of the Proposal on air quality during construction and operation; and
- identify appropriate safeguards and management measures to reduce the impact of the Proposal on air quality during construction and operation.

6.3.4 Management and safeguard measures

The potential for air quality impact from road projects is common and can be managed through the development of a construction environmental management plan (CEMP) and appropriate consideration of air quality issues during detailed design. Management measures and safeguards to be implemented during construction would be documented within the EIS.

6.4 Biodiversity

6.4.1 Overview

As identified in Section 1.1, the Proposal would run along the northern boundary of the MPE Site from the shared intersection with DJLU, then south along the eastern boundary of the site through the Boot Land, then south-west through the Boot Land by an existing easement to rejoin the current alignment of Moorebank Avenue at the East Hills Railway. As shown in Figure 1.1, along the majority of the proposed alignment, the roadway is partially within the MPE Site, utilising the existing internal roadway.

The biodiversity values of the proposed alignment are well understood, as the MPE Site and surrounds have been extensively investigated as part of the previous concept plan and SSD applications for the site. A list of the previous biodiversity investigations is provided below:

- *SIMTA Moorebank Intermodal Terminal Facility – Flora and Fauna Assessment*, prepared by Hyder Consulting (2013), as part of the MPE Concept Plan Application (MP 10_0193);
- *SIMTA Intermodal Terminal Facility - Stage 1 – Biodiversity Assessment Report*, prepared by Hyder Consulting (2015) as part of the MPE Stage 1 development application, and revised by Arcadis as part of Land and Environment Court proceedings in 2017;
- *Moorebank Precinct East - Stage 2 – Biodiversity Assessment Report*, prepared by Arcadis (2016), and revised in 2017a as part of the Response to Submissions process; and
- *Boot Land threatened flora surveys memorandum*, prepared by Arcadis (2017b) as part of the Moorebank Avenue Realignment concept design process and the MPE Stage 2 Response to Submissions.

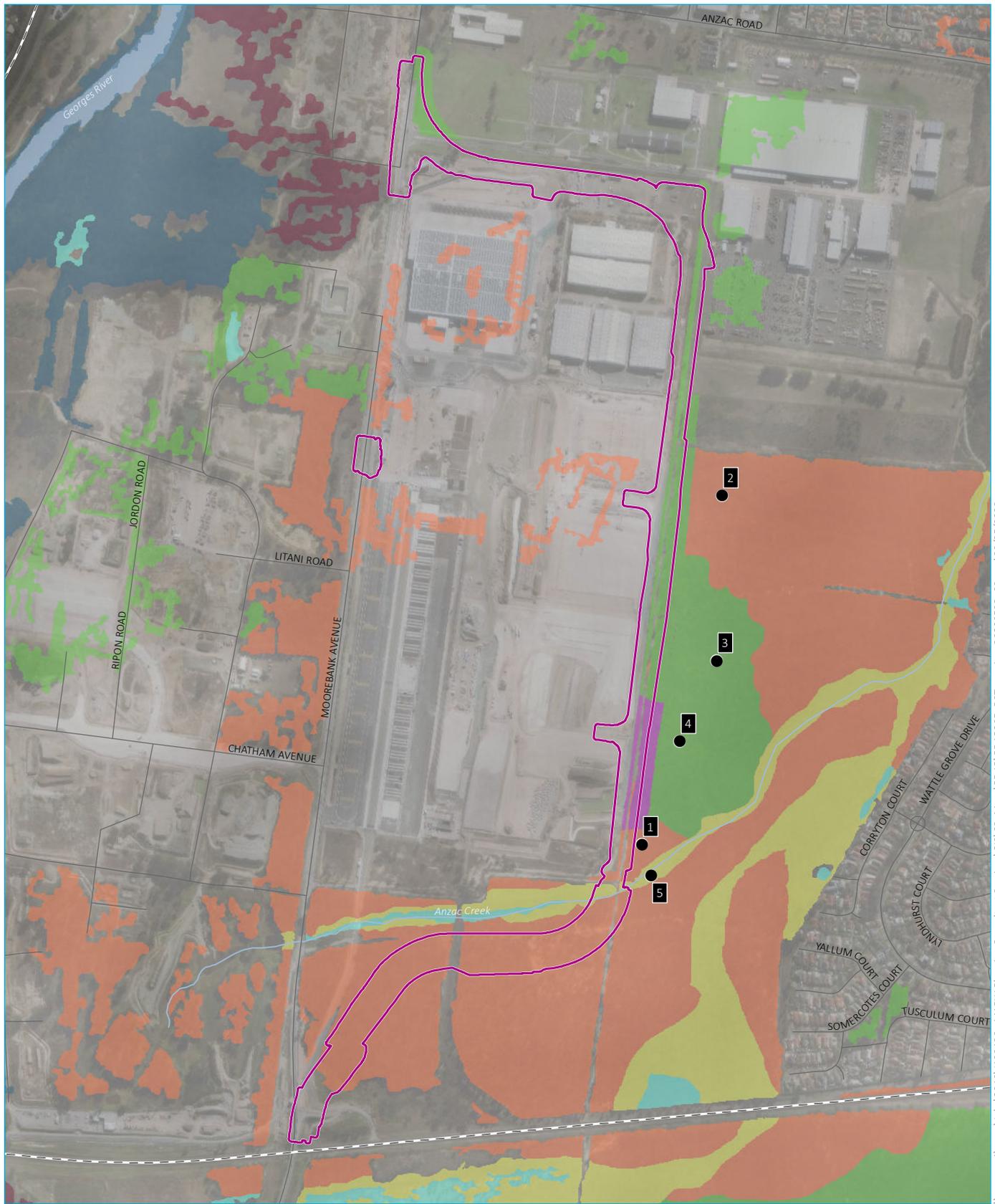
A review of the existing biodiversity investigations for the MPE Site identified potential constraints relating to the Proposal. Surveys undertaken as part of the MPE Stage 2 BAR identified the following plant community types (PCTs) along the proposed alignment (refer to Figure 6.2):

- Broad-leaved Ironbark – Grey Box – Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion;
- Broad-leaved Ironbark –Melaleuca decora shrubby open forest on clay soils of the Cumberland Plain, Sydney Basin Bioregion;
- Hard-leaved Scribbly Gum – Parramatta Red Gum heathy woodland of the Cumberland Plain, Sydney Basin Bioregion; and
- Parramatta Red Gum woodland on moist alluvium of the Cumberland Plain, Sydney Basin Bioregion.

Three of the PCTs listed above fall within the definitions of threatened ecological communities listed under the BC Act and/or EPBC Act. These are outlined, along with their conservation status, in Table 6.1.

Table 6.1 Threatened ecological communities along the Proposal alignment

Plant Community Type	Equivalent TEC	BC Act Status	EPBC Act Status
Broad-leaved Ironbark –Melaleuca decora shrubby open forest on clay soils of the Cumberland Plain, Sydney Basin Bioregion	Cooks River – Castlereagh Ironbark Forest in the Sydney Basin Bioregion	Endangered	Critically Endangered
Hard-leaved Scribbly Gum – Parramatta Red Gum heathy woodland of the Cumberland Plain, Sydney Basin Bioregion	Castlereagh Scribbly Gum Woodland in the Sydney Basin bioregion	Vulnerable	Endangered
Parramatta Red Gum woodland on moist alluvium of the Cumberland Plain, Sydney Basin Bioregion	Castlereagh Scribbly Gum Woodland in the Sydney Basin bioregion	Endangered	Not listed
Parramatta Red Gum woodland on moist alluvium of the Cumberland Plain, Sydney Basin Bioregion	Castlereagh Swamp Woodland	Endangered	Not listed



Source: EMM (2020); DFSI (2017); GA (2011); ASGC (2006); DOE (2020)

KEY

- BAM plot
- ▭ Project area
- Rail line
- Minor road
- Watercourse
- Waterbody

- Plant community type**
- Parramatta Red Gum woodland on moist alluvium of the Cumberland Plain, Sydney Basin Bioregion
 - Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion
 - Coastal freshwater lagoons of the Sydney Basin Bioregion and South East Corner Bioregion

- Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion
- Hard-leaved Scribbly Gum - Parramatta Red Gum heathy woodland of the Cumberland Plain, Sydney Basin Bioregion
- Mountain Blue Gum - Thin-leaved Stringybark open forest on river flat alluvium in the Sydney Basin Bioregion

PCT mapping and vegetation zone mapping along the proposal alignment

Moorebank Avenue realignment works
Scoping report
Figure 6.2



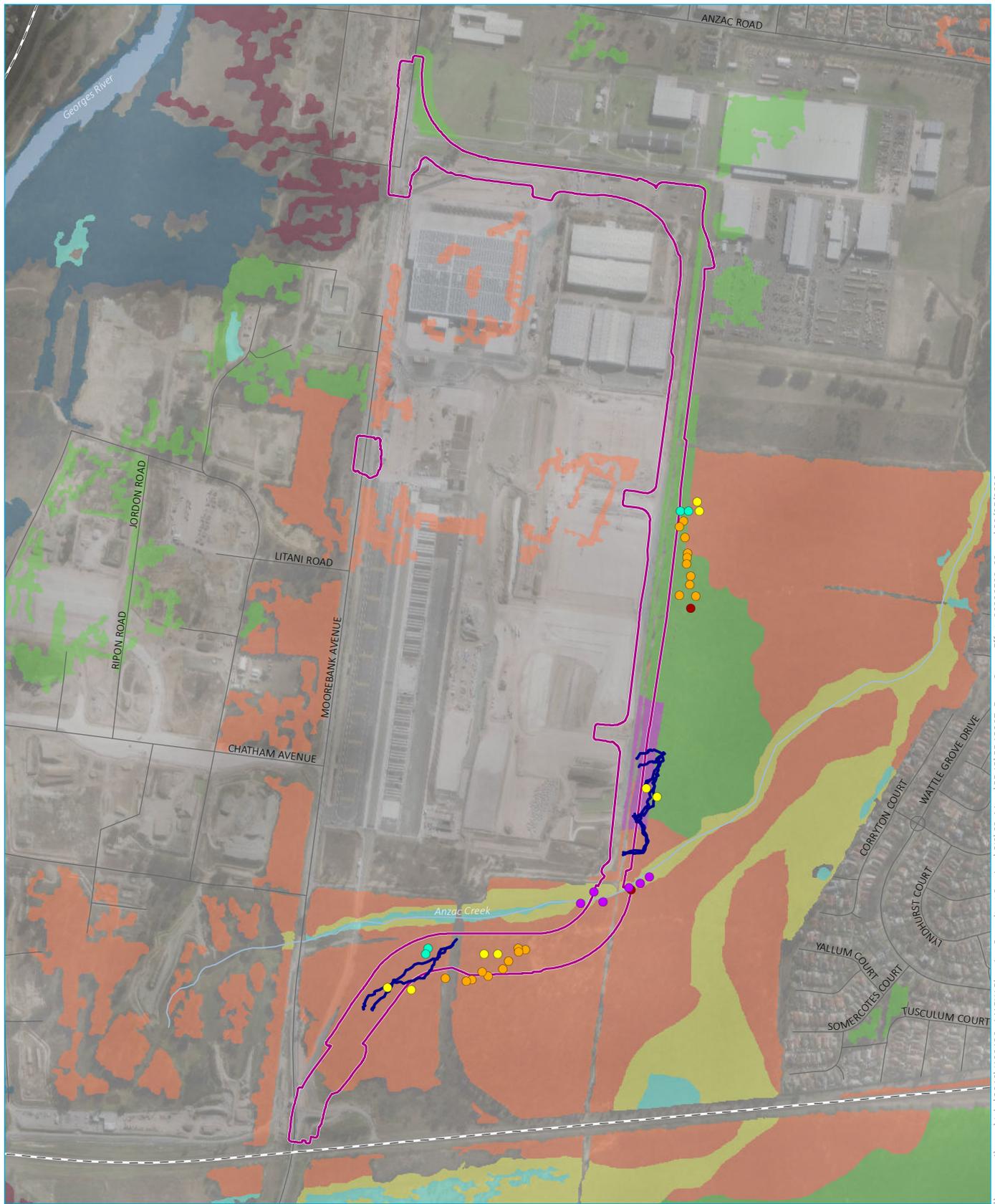
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In addition to the PCTs identified along the Proposal alignment, individuals of the following threatened flora species were also recorded in the Boot Land (shown in Figure 6.3):

- *Persoonia nutans* (Nodding Geebung), listed as endangered under the BC Act and EPBC Act;
- *Grevillea parviflora subsp. parviflora* (Small-flower Grevillea), listed as Vulnerable under the BC Act and EPBC Act;
- *Hibbertia puberula subsp. puberula*, listed as endangered on the BC Act;
- *Hibbertia fumana*; and
- *Acacia pubescens* (Downy Wattle), listed as Vulnerable under the EPBC Act and the BC Act, was recorded at the edge of bushland to the east of the MPE Site.

95 fauna species were identified in the study area, including 38 species of birds, 15 species of mammals, four species of reptiles, and two species of amphibians. This included four threatened fauna species, namely:

- Eastern Bent-wing Bat (*Miniopterus schreibersii oceanensis*), listed as Vulnerable under the BC Act;
- Southern Myotis (*Myotis macropus*), listed as Vulnerable under the BC Act;
- Eastern Free-tail Bat (*Mormopterus norfolkensis*), listed as Vulnerable under the BC Act; and
- Grey-headed Flying Fox (*Pteropus poliocephalus*), listed as Vulnerable under the BC Act and the EPBC Act.



Source: EMM (2020); DFSI (2017); GA (2011); ASGC (2006); DOE (2020)

KEY

- Project area
- Spotlight survey track
- Minor road
- Rail line
- Watercourse
- Waterbody
- Fauna survey effort
- Anabat
- Arboreal trap
- Camera
- Elliot trap line
- Frog call playback
- Plant community type
- Parramatta Red Gum woodland on moist alluvium of the Cumberland Plain, Sydney Basin Bioregion
- Broad-leaved Ironbark - Grey Box - Melaleuca decora grassy open forest on clay/gravel soils of the Cumberland Plain, Sydney Basin Bioregion
- Coastal freshwater lagoons of the Sydney Basin Bioregion and South East Corner Bioregion
- Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion
- Hard-leaved Scribbly Gum - Parramatta Red Gum heathy woodland of the Cumberland Plain, Sydney Basin Bioregion
- Mountain Blue Gum - Thin-leaved Stringybark open forest on river flat alluvium in the Sydney Basin Bioregion

Threatened fauna targeted survey effort December - April 2020

Moorebank Avenue realignment works
Scoping report
Figure 6.3



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Fauna habitats near to the MPE Site are isolated from adjacent areas of habitat, due to the presence of significant barriers to fauna movement at the site boundaries and within the locality. These barriers include Moorebank Avenue, the East Hills Railway, and chain-mesh fencing surrounding the MPE Site. This limits movement into and through the MPE Site to small terrestrial mammals, reptiles, amphibians, bats, and birds.

Aquatic fauna habitat near to the MPE Site is limited to the adjacent Anzac Creek which does not support permanent water.

6.4.2 Potential impacts

The Proposal has the potential to result in a number of impacts to biodiversity during construction and operation. The assessment process for the Proposal would assess potential impact, using Commonwealth and NSW assessment methodologies.

i Construction

Construction of the Proposal would impact on biodiversity, including threatened species, populations, and communities. Potential impacts to biodiversity (direct and indirect) would be mostly associated with areas of surface disturbance and required clearing, however, potential impacts could also occur as a result of surface water discharges or import of weed or pest species on construction vehicles or in construction materials.

ii Operation

During operation there is potential for the following impacts:

- fauna injury or mortality from collisions with vehicles; and
- an increased utilisation of the site by vehicles may potentially impact upon the roosting, breeding and foraging activities of locally occurring fauna, as a result of increased exposure to light, noise, dust, vehicles, and people.

6.4.3 Further assessment

A Biodiversity Development Assessment Report (BDAR) would be prepared in accordance with the BC Act. The BDAR would:

- assess impacts on the biodiversity values of the site and adjoining areas, including Endangered Ecological Communities and threatened flora and fauna species and their habitat, impacts on wildlife and habitat corridors, riparian land, and habitat fragmentation and details of mitigation measures, having regard to the range of fauna species and opportunities for connectivity (terrestrial, arboreal and aquatic) across the rail link between the site and the East Hills Railway;
- include a Vegetation Management Plan that has been prepared in consultation with the NSW Office of Water;
- document how impacts to the threatened flora species have been minimised through the detailed design process; and

- include the details of available offset measures to compensate the biodiversity impacts of the Proposal where offset measures are proposed to address residual impacts, in particular the following would be considered:
 - as required in principle 2 of 'NSW offset principles for major Proposals (state significant development and infrastructure)', for terrestrial biodiversity, established assessment tools, such as the BioBanking Assessment Methodology, are considered best practice;
 - the Biodiversity Offset Strategy will be undertaken in accordance with the BC Act; and
 - identification of offsets and demonstration that they can be secured and retired.

6.5 Hydrology, flooding, and surface water

6.5.1 Overview

There are two main waterbodies near the Proposal Site, namely Anzac Creek and the Georges River. Anzac Creek is a small tributary of the Georges River and is located within the Georges River sub-catchment of the Liverpool District catchment. Anzac Creek is located about 50 m south-east of the Proposal Site and flows east traversing the Rail link (part of the MPE Project). The tributary discharges into the Georges River about 3 km north-east of the Proposal Site.

Flood modelling for the MPE Project indicated that upstream of the M5 Motorway Corridor, any flooding event up to the 100-year annual recurrence interval (ARI) will be confined to the main channel of Anzac Creek and would not impact the MPE Site (Arcadis 2016). Downstream of the M5 Motorway Corridor, there is extensive floodplain inundation for events in excess of the five-year ARI event, with flooding highly influenced by conditions in the Georges River

The Georges River is located about 1.5 km west of the Proposal Site and flows from south to north along the western perimeter of the MPW Site. At the location of the MPE Rail link, the Georges River is located within the Mid-Georges River sub-catchment of the Liverpool District sub-catchment (Arcadis 2016).

6.5.2 Potential impacts

i Construction

Construction works have the potential for the following impacts:

- potential for a change to stormwater flow volume as a result of removal of vegetation; and
- reduction in water quality of Anzac Creek from erosion and sedimentation and/or discharge of water into waterways as a result of:
 - increased stormwater flows;
 - construction activities, including vegetation removal, alteration of site topography, and earthworks; and
 - spills or leaks of substances such as oil, hydraulic fluids and soils which enter the stormwater runoff system.

ii Operation

During operation there is potential for the following impacts:

- impacts to the geomorphology of receiving watercourses from increased surface water runoff, subject to discharge volumes and the point of discharge;
- increased impervious surfaces and/or changes to the total catchment area of existing drainage infrastructure, leading to localised flooding; and
- concentrated surface flows could result in erosion and scour of waterways.

6.5.3 Further assessment

A surface water assessment would be prepared as part of the EIS to:

- describe the catchments in the study area around the Proposal, including existing hydrology and flooding characteristics (flood levels and velocities) for a range of storm events;
- identify the flood immunity objectives for the Proposal and review these objectives against proposed surface water management and infrastructure design criteria;
- assess the impacts to flooding and hydrology characteristics for a range of design storm events and effects on the surrounding areas including to properties;
- assess potential impacts of climate change and partial blockage on flooding and hydrology;
- assess the activities and potential risks to erosion and sedimentation during construction and operational phases;
- review and assess potential water quality risks and impacts through both the construction and operational phases of the project;
- identify feasible and reasonable mitigation measures for the project; and
- develop and provide for a surface water monitoring plan.

6.6 Soils, contamination, groundwater, and hazards

6.6.1 Overview

i Soils

The geology and soils of the adjacent MPE Site were considered during the preparation of the EIS's for the various stages of the MPE Project. The underlying geology of the MPE Site was identified as containing tertiary alluvium. Several erosional, fluvial, and residual soil landscapes were also present across the MPE Site (Golder 2016).

The majority of the MPE Site is within the Berkshire Park Soil Landscape, a relatively flat and level fluvial soil landscape on Quaternary terraces of the Nepean and Georges Rivers. Soils are poorly structured orange to red clay loams, clays and sands, with texture increasing at depth (Golder 2016). Plastic clays are present along drainage lines.

This baseline information will be used to inform the EIS for the Proposal.

ii Contamination

A search of the NSW EPA contaminated sites register under the *Contaminated Lands Management Act 1997* (CLM Act) was carried out for the Liverpool LGA on 15 January 2019. The search found two records:

- Former ACR, 85-107 Alfred Street, Chipping Norton; and
- ABB Australia Pty Ltd, 1 Bapaume Road, Moorebank.

These sites are more than 500 m from the Proposal Site. Due to the distance, no further consideration of these sites is required.

A review of the Australian Soil Resource Information System on 15 January 2019 identified that there is a low probability of the presence of acid sulfate soil materials at, or near the Proposal Site.

6.6.2 Potential impacts

i Construction

Construction of the Proposal has the potential for the impacts to:

- water quality from accidental chemical spills or materials during construction or improper management of run-off, sediment control, and discharge from the construction site; and
- groundwater contamination where groundwater intersection occurs during construction;

Other potential issues include erosion and sedimentation due to earthworks, vegetation clearing, and where soils are exposed, and disturbance of contaminated soils, resulting in onsite and offsite pollution.

ii Operation

During operation there is potential for:

- contamination of local waterways resulting from runoff from the road. Road runoff would typically contain oils and greases, nutrients from atmospheric fallout, petrochemicals, and heavy metals because of vehicle leaks, operational wear, and road wear; and
- localised reduction in the groundwater recharge area because of an impermeable road surface.

6.6.3 Further assessment

A preliminary site investigation would be undertaken as part of the assessment process, and would include:

- preparation of a study area plan, identifying areas of:
 - confirmed contamination;
 - likely or potential contamination; and
 - areas where no evidence of contamination has been identified based on the results of the desktop investigation;

- information regarding contaminants of potential concern in the areas identified as confirmed (through site inspection or review of historical reports) or potentially contaminated;
- provide an indication of the sampling program for soil, groundwater, surface water or other investigations that may be required for any additional contamination investigations that may be required; and
- identify the presence and likelihood of encountering acid sulfate soils.

6.6.4 Management and safeguard measures

Potential soil, contamination, and water quality impacts would be managed and mitigated through the implementation of standard safeguards and management measures. Standard safeguards and management measures would include:

- where required, use of energy dissipaters, scour protection and erosion protection measures would be used at outlets to protect natural watercourses;
- soil and water quality impacts managed in accordance with the Blue Book – *Managing Urban Stormwater, Soils and Construction Volume 1 4th Edition* (EPA, 2014a);
- stockpile sites managed in accordance with the RMS *Technical Guideline EMS-TG-10: Stockpile Site Management* (RTA, 2011a);
- management of contaminated land in accordance with the RMS *Guideline for the Management of Contamination* (RMS, 2013);
- a contamination remedial action plan (if required, based on contamination investigations being undertaken as part of the EIS) would be prepared in accordance with the relevant EPA guidelines;
- construction sediment and erosion control plans and construction spill emergency procedures as part of the CEMP for the Proposal; and
- construction dewatering carried out onsite would be managed in accordance with the RMS Technical Guideline EMS-TG- 011: Environmental Management of Construction Site Dewatering (RTA, 2011b).

6.7 Aboriginal heritage

6.7.1 Overview

Two of the four proposed lanes are in the MPE Site and form the internal access road for the site, along the MPE eastern boundary. This area has previously been assessed as highly disturbed and modified and as such it is highly unlikely that intact unidentified archaeological deposits would occur in the area or be unearthed as a result of the construction activities (Artefact Heritage 2016).

The two remaining lanes, directly to the east of the MPE eastern boundary, are currently vegetated and would require further assessment and survey to ascertain if there is any Aboriginal heritage significance.

The remainder of the proposed alignment, to the south of the southern boundary of the MPE Site as it traverses the Boot Land and links with the current Moorebank Avenue alignment could be considered potentially sensitive.

The Aboriginal Heritage Assessment for the MPE Stage 2 Project (Artefact 2016) completed an extensive search of the Aboriginal Heritage Information System (AHIMS) database on 19 July 2016 (refer to Figure 6.4). The AHIMS search area encompassed a wider region around the MPE Site including the Proposal Site, in order to give context. None of the sites identified by that AHIMS extensive search are located within the Proposal Site. Further assessment and survey is required to ascertain if there is any Aboriginal heritage significance in the Proposal study area.

6.7.2 Potential impacts

Most of the Proposal Site would be subject to complete re-development to facilitate the construction and operation of the realigned Moorebank Avenue.

Overall, the risk of significant impacts to Aboriginal sites and/or artefacts is likely to be low for the existing two lanes within the MPE Site. Management of Aboriginal heritage would be included in the CEMP and would include:

- a summary of the findings of the preliminary Aboriginal Heritage Assessment;
- guidance on unexpected archaeological and cultural finds (including human remains); and
- a requirement that all relevant personnel and contractors involved in the design and construction of the Proposal would be advised of the relevant heritage considerations, legislative requirements, and recommendations in the preliminary Aboriginal heritage assessment.

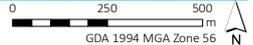
i Construction

Construction works have the potential for the following impacts:

- direct or indirect impacts to known Aboriginal heritage sites including areas of Aboriginal archaeological sensitivity; and
- potential direct or indirect impacts to unknown or unidentified heritage sites and archaeological items.



Source: EMM (2020); OEH (2020); DFSI (2017)



KEY

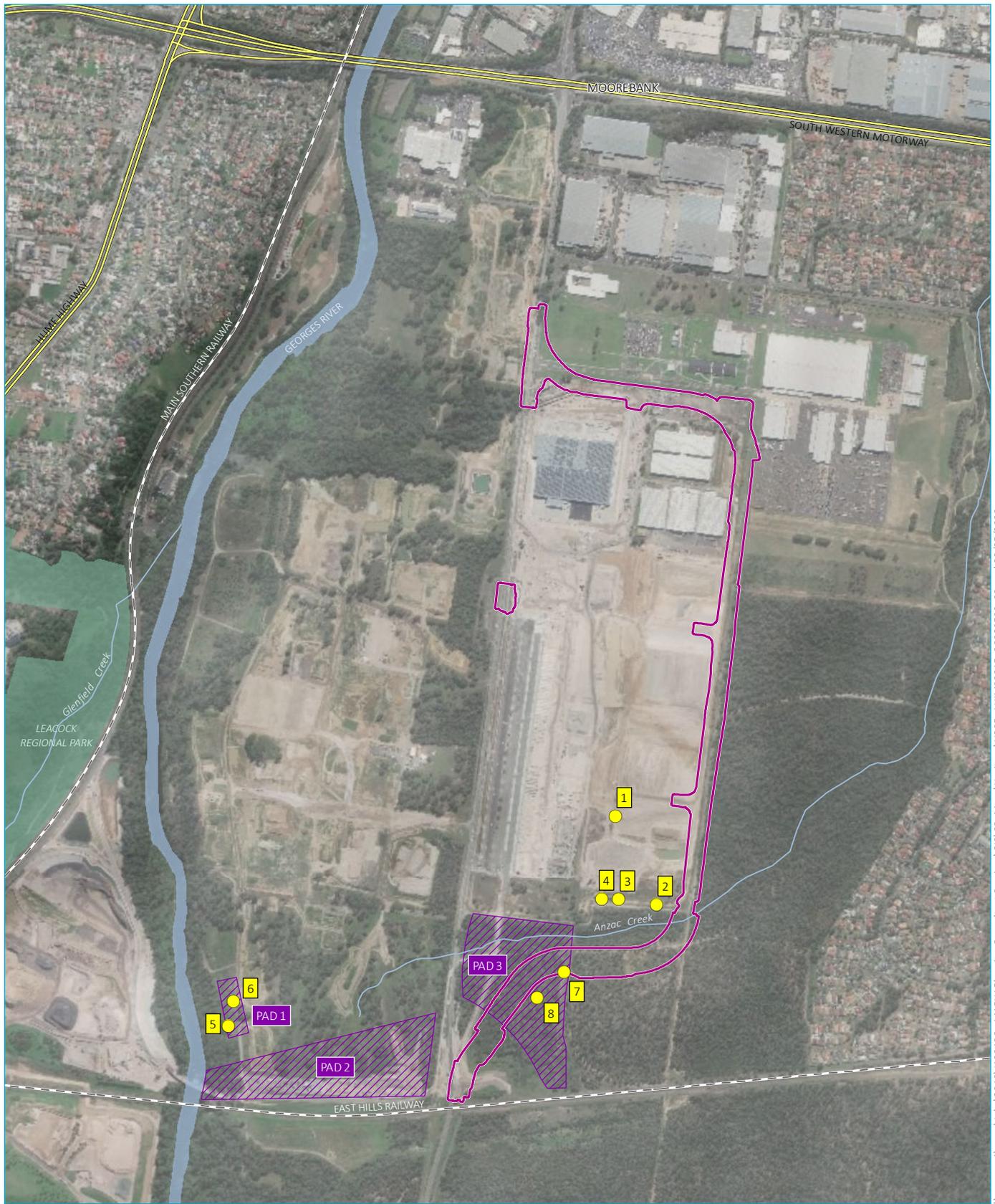
- Project footprint
- Rail line
- Major road
- Watercourse
- Named waterbody
- NPWS reserve
- AHIMS site
- Artefact
- Modified tree (carved or scarred)
- Potential archaeological deposit (PAD)

Aboriginal sites identified on the AHIMS register

Moorebank Avenue realignment works
Scoping report
Figure 6.4



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Source: EMM (2020); OEH (2020); DFSI (2017)



- KEY**
- Project footprint
 - Rail line
 - Major road
 - Named watercourse
 - Named waterbody
 - NPWS reserve
 - Isolated Aboriginal find
 - Potential archaeological deposit (PAD)

Aboriginal sites and area of sensitivity identified by AHIMS 2015

Moorebank avenue realignment works
Scoping report
Figure 6.5



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ii Operation

Subject to further investigations and the implementation of mitigation measures, impacts to Aboriginal heritage during operation of the Proposal are considered unlikely.

6.7.3 Further assessment

Given the previous level of investigation and the likely disturbed nature of much of the study area, a preliminary Aboriginal Heritage Assessment and will include:

- a review of environmental information, including soils, geology, and geomorphology;
- a review of previous archaeological studies in the region, including a search of the DPIE Aboriginal Heritage Information Management System (AHIMS) database;
- identification of landforms of archaeological interest within and near the study area;
- consultation with the Cubitt Barta Native Title Claimants and Tharwal Local Aboriginal Land Council (LALC) in relation to the project to identify any cultural/intangible values;
- site investigation to identify any extant Aboriginal objects or sites, and document any existing disturbance and develop a predictive model; and
- identify of potential impacts, and provide recommendations on further requirements to investigate, avoid and or mitigate impacts to cultural heritage, if required.

6.8 Non-Indigenous heritage

6.8.1 Overview

There are two items listed as having local heritage significance in the Liverpool LEP. The listings are shown on Figure 6.6 and are described as follows:

- Australian Army Engineers Group, including RAE Memorial Chapel, RAE Monument, Major General Sir Clive Steele Memorial Gates, Cust Hut (Item 57, Schedule 5 Liverpool LEP) – this item includes the entirety of the MPW Site, including the riparian conservation area, the Boot Land, and the Defence Joint Logistics Unit that is north and north-east of the MPE Site and is currently active.
- Defence National Storage and Distribution Centre (Item 57A, Schedule 5 of the Liverpool LEP) – this item includes the entirety of the MPE Site.

Two of the four proposed lanes are in the MPE Site and form the internal access road for the site, along the MPE eastern boundary. The MPE Site is highly disturbed and modified.

The two remaining lanes, directly to the east of the MPE eastern boundary, are currently vegetated and would require further assessment and survey to ascertain if there is any non-Indigenous heritage significance.

Following the surrender of the MPW and MPE Sites by the Department of Defence, a number of the heritage elements were relocated to the Holsworthy Military Complex. Both sites have subsequently been subject to SSD applications, that have included archaeological monitoring and archiving, and salvage prior to the demolition of the buildings and other built elements on site, and as a result have been significantly disturbed, and are not considered to have any residual heritage value.

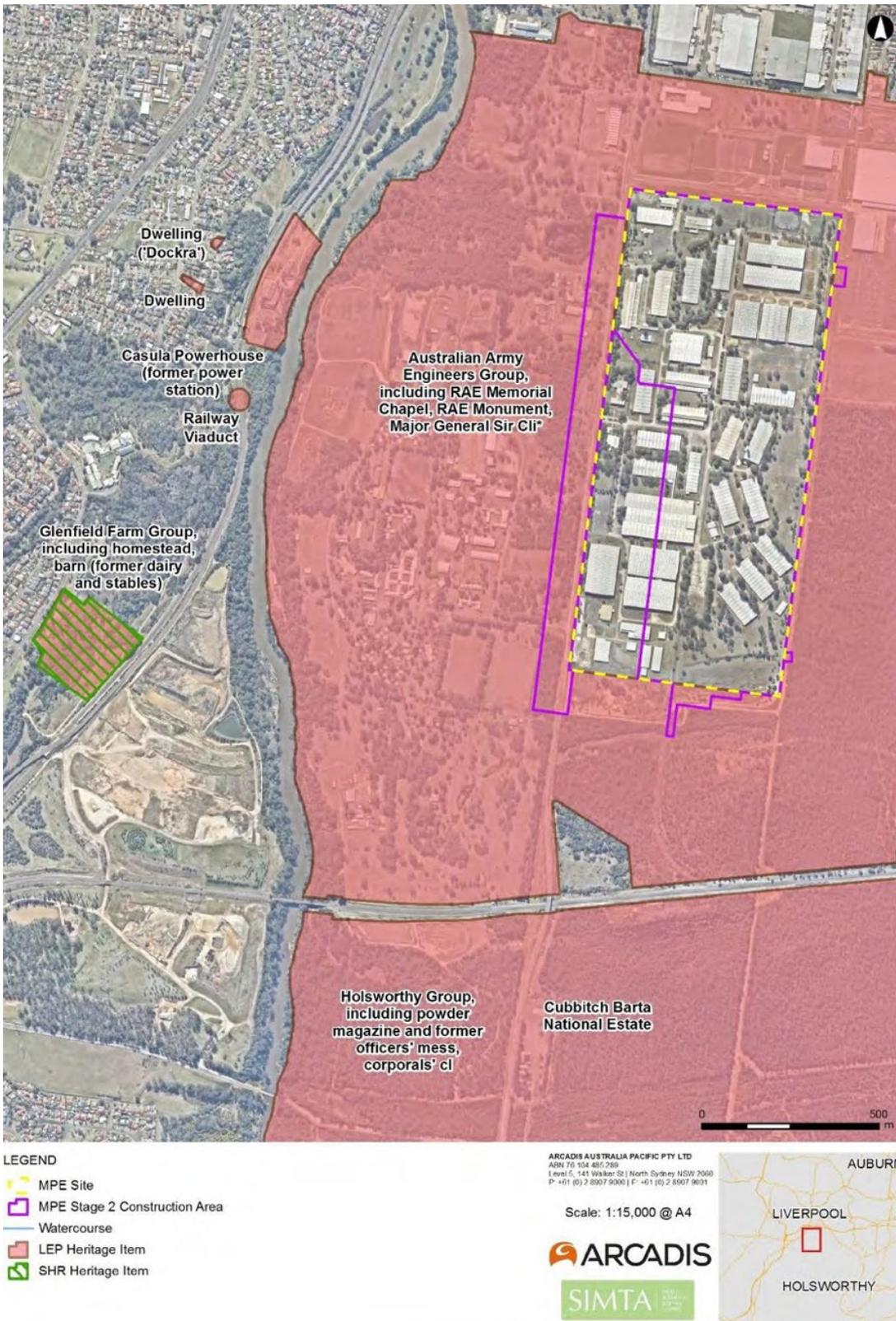


Figure 6.6 Listed heritage items (Artefact, 2016)

6.8.2 Potential impacts

i Construction

If unexpected finds are located during works an archaeological consultant would be engaged to assess the significance of the finds and the NSW Heritage Council notified.

ii Operation

Subject to further investigations and the implementation of mitigation measures, impacts to non-Indigenous heritage during operation are considered unlikely.

6.8.3 Further assessment

A preliminary historic heritage assessment would be prepared and to:

- describe the existing non-Aboriginal heritage and archaeological heritage values relevant to the Proposal as informed by literature reviews, database searches, field validation and test excavation (where required based on the results of background research, field surveys and nature of the potential impact);
- provide an assessment of heritage significance for items within the Proposals Site;
- provide an assessment of the potential impacts of the Proposal to non-Aboriginal heritage values for all identified heritage items;
- identify reasonable and feasible management measures to minimise any impacts to non-Aboriginal heritage sites; and
- assess whether further investigations (for example archaeological test excavation) is required.

6.9 Visual amenity, urban design, and landscaping

6.9.1 Overview

The Proposal Site is located near the M5 Motorway Corridor, which intersects with Moorebank Avenue about 800 m north of the Moorebank Precinct. To the south, the existing East Hills Railway, part of the Sydney Trains passenger rail network travels in an east-west direction before connecting to the Main Southern Railway (including the SSFL) to the west.

The Proposal Site is surrounded by the residential areas of Wattle Grove to the east, Moorebank in the north, Casula to the west and Glenfield in the south-west. These residential areas generally have minimal or no views due to the significant viewing distances, undulated topography, and landform, or shielding by other existing structures and vegetation.

The Proposal Site is surrounded by expansive areas of natural dense bushland and other lands occupied and owned (both existing and recently vacated) by the Department of Defence and military related uses.

Non-residential developments near the Proposal Site are largely industrial, including the Moorebank Precinct, immediately west of the current Moorebank Avenue, and Moorebank Business Park, to the north of the DJLU (to the immediate north of the Proposal Site).

6.9.2 Potential impacts

Overall, given the significant Moorebank Precinct development to the west and the local topography, potential operational impacts are expected to be manageable with the implementation of mitigation measures and the use of appropriate design principles.

i Construction

Construction works have the potential for the following impacts:

- visual impacts associated with construction activities (vegetation clearing, site offices and stockpile sites, construction machinery and plant, temporary structures and signage, light spill, and etc); and
- visual amenity impacts on sensitive receivers near construction activities, and on road users from construction vehicle movements.

ii Operation

During operation there is potential for:

- potential impact through introduction of new visual elements in the landscape (new interchanges, bridge structures, retaining walls, noise barriers, lighting, and signage); and
- impacts on views for residences, motorway users, and users of other roads in the area.

6.9.3 Further assessment

A Landscape Character and Visual Impact Assessment would be prepared in accordance with the RMS *Environmental Impact Practice Note: Guideline for Landscape Character and Visual Impact Assessment Note EIA-04* (RMS 2018), to provide (as a minimum):

- An analysis of the built and natural environment and community context of the Proposal Site;
- A landscape character impact assessment assessing the landscape character zones across the Proposal Site;
- A visual impact assessment of the Proposal including views to and from the Proposal, assessment of magnitude of change to existing views and the visual sensitivity of the viewers;
- An existing light pollution assessment; and
- The identification of feasible and reasonable mitigation measures for incorporation into the Proposal design.

6.10 Other environmental issues

A summary of other environmental issues, which are not considered key issues, however which have the potential to be evident during the construction and operation of the Proposal are described in Table 6.2.

Table 6.2 Other potential environmental issues

Environment al issue	Potential Impact	Previous Studies/ Further Environmental Assessment
Bushfire	Management and protection of the site against bushfire	<p>The EIS would include an assessment of bushfire risk in accordance with the <i>Planning for Bushfire Protection Guidelines</i> (NSW Rural Fire Service 2019) and would incorporate any key objectives identified by the Rural Fire Service into relevant future designs in accordance with the following principles:</p> <ul style="list-style-type: none"> • Ensure operational access and egress for emergency service personnel and residents. • Provide for ongoing management and maintenance of bushfire protection measures including fuel loads in asset protection zones. • Ensure that utility services are adequate to meet the needs of the fire fighters.
Socio-economic	Direct and indirect employment opportunities for businesses to supply goods, services, and materials	The EIS would include a socio-economic impact assessment in accordance with RMS <i>Environmental Planning and Impact Assessment Practice Note for Socio-Economic Assessment</i> (EIA-N05) (RMS 2013).
Utilities	Potential relocation of existing services including stormwater, sewer, water, telecommunications, and electricity	The Proposal would include further investigations, as required, and ensure that adequate services are available to the Proposal Site and provide details regarding the proposed servicing upgrades.
Sustainability, greenhouse gas, and climate change	<p>The activities that would result in greenhouse gas emissions include:</p> <ul style="list-style-type: none"> • clearing of vegetation; • fuel consumption from construction plant, machinery, and vehicles; • embodied energy of construction products and their supply chains e.g. concrete, and steel; • generation of electricity consumed by the Proposal; • greenhouse gases emitted during the operation of the Proposal would be associated with maintenance activities and the operation of private motor vehicles on the road network; and • increased road surface area and more intense rainfall events would lead to an increase in stormwater runoff. 	<p>Further assessment of sustainability, greenhouse gas, and climate change impacts would be carried out during the environmental assessment process and would include:</p> <ul style="list-style-type: none"> • a chapter in the EIS addressing greenhouse gas and climate change; • a chapter in the EIS addressing Ecologically Sustainable Development; and • Identification of feasible and reasonable management measures that may be implemented to reduce greenhouse gas emissions during construction and operation.

Table 6.2 Other potential environmental issues

Environmental issue	Potential Impact	Previous Studies/ Further Environmental Assessment
Waste	Disposal of waste during construction and operation	<p>Waste issues can be managed and mitigated through the implementation of standard management and safeguard measures, which would be detailed in the EIS. These may include the following:</p> <ul style="list-style-type: none"> • construction waste management in accordance with waste hierarchy principles of avoid, reduce, reuse, recycle, recover, treat and dispose; • provision of a waste management plan detailing the management and disposal methods of waste. All generated waste will be managed and disposed of in accordance with relevant State legislation and government policies including the <i>Waste Avoidance and Resource Recovery Act 2001</i>, the <i>NSW Waste Avoidance and Resource Recovery Strategy 2014-21</i> (EPA 2014c) and the <i>NSW Waste Reduction and Purchasing Policy</i> (DEC 2006b). • waste classification in accordance with the <i>NSW Waste Classification Guidelines</i> (EPA 2014b); • the maintenance of a waste register to detail the types of waste collected, amounts, date, time, and details of disposal; • a requirement that the construction contractor be required to re-use materials where feasible, including material collected onsite; and • a requirement that solid waste materials awaiting disposal would be appropriately contained and stored in a manner that would ensure they do not escape into the environment.
Cumulative	<p>Cumulative impacts for the Proposal include consideration of impacts to the suite of environmental and social values in the context of the adjacent MLP, both MPE and MPW.</p> <p>Potential cumulative impacts extend beyond the immediate intermodal precinct. Other local and regional projects may impact or be impacted upon by the Proposal.</p>	<p>Consideration of local and regional cumulative impacts across the suite of environmental and social values would be included in the assessment.</p>

Table 6.2 Other potential environmental issues

Environmental issue	Potential Impact	Previous Studies/ Further Environmental Assessment
Bushfire	Management and protection of the site against bushfire	<p>The EIS would include an assessment of bushfire risk in accordance with the <i>Planning for Bushfire Protection Guidelines</i> (NSW Rural Fire Service 2019) and would incorporate any key objectives identified by the Rural Fire Service into relevant future designs in accordance with the following principles:</p> <ul style="list-style-type: none"> • Ensure operational access and egress for emergency service personnel and residents. • Provide for ongoing management and maintenance of bushfire protection measures including fuel loads in asset protection zones. • Ensure that utility services are adequate to meet the needs of the fire fighters.
Socio-economic	Direct and indirect employment opportunities for businesses to supply goods, services, and materials	<p>The EIS would include a socio-economic impact assessment in accordance with RMS <i>Environmental Planning and Impact Assessment Practice Note for Socio-Economic Assessment</i> (EIA-N05) (RMS 2013).</p>
Utilities	Potential relocation of existing services including stormwater, sewer, water, telecommunications, and electricity	<p>The Proposal would include further investigations, as required, and ensure that adequate services are available to the Proposal Site and provide details regarding the proposed servicing upgrades.</p>
Sustainability, greenhouse gas, and climate change	<p>The activities that would result in greenhouse gas emissions include:</p> <ul style="list-style-type: none"> • clearing of vegetation; • fuel consumption from construction plant, machinery, and vehicles; • embodied energy of construction products and their supply chains e.g. concrete, and steel; • generation of electricity consumed by the Proposal; • greenhouse gases emitted during the operation of the Proposal would be associated with maintenance activities and the operation of private motor vehicles on the road network; and • increased road surface area and more intense rainfall events would lead to an increase in stormwater runoff. 	<p>Further assessment of sustainability, greenhouse gas, and climate change impacts would be carried out during the environmental assessment process and would include:</p> <ul style="list-style-type: none"> • a chapter in the EIS addressing greenhouse gas and climate change; • a chapter in the EIS addressing Ecologically Sustainable Development; and • Identification of feasible and reasonable management measures that may be implemented to reduce greenhouse gas emissions during construction and operation.

Table 6.2 Other potential environmental issues

Environmental issue	Potential Impact	Previous Studies/ Further Environmental Assessment
Waste	Disposal of waste during construction and operation	<p>Waste issues can be managed and mitigated through the implementation of standard management and safeguard measures, which would be detailed in the EIS. These may include the following:</p> <ul style="list-style-type: none"> • construction waste management in accordance waste hierarchy principles of avoid, reduce, reuse, recycle, recover, treat and dispose; • provision of a waste management plan detailing the management and disposal methods of waste. All generated waste will be managed and disposed of in accordance with relevant State legislation and government policies including the <i>Waste Avoidance and Resource Recovery Act 2001</i>, the <i>NSW Waste Avoidance and Resource Recovery Strategy 2014-21</i> (EPA 2014c) and the <i>NSW Waste Reduction and Purchasing Policy</i> (DEC 2006b). • waste classification in accordance with the <i>NSW Waste Classification Guidelines</i> (EPA 2014b); • the maintenance of a waste register to detail the types of waste collected, amounts, date, time, and details of disposal; • a requirement that the construction contractor be required to re-use materials where feasible, including material collected onsite; and • a requirement that solid waste materials awaiting disposal would be appropriately contained and stored in a manner that would ensure they do not escape into the environment.
Cumulative	<p>Cumulative impacts for the Proposal include consideration of impacts to the suite of environmental and social values in the context of the adjacent MLP, both MPE and MPW.</p> <p>Potential cumulative impacts extend beyond the immediate intermodal precinct. Other local and regional projects may impact or be impacted upon by the Proposal.</p>	<p>Consideration of local and regional cumulative impacts across the suite of environmental and social values would be included in the assessment.</p>

7 Conclusion

This Scoping Report supports SIMTA's request for SEARs in relation to the Proposal to seek development consent for the Moorebank Avenue realignment Proposal, under the EP&A Act. This report should be read in conjunction with the associated for the Minister's Order to list the Moorebank Avenue Realignment as an SSI project.

A key part of the assessment of the Proposal will be to continue the consultation with government agencies, the local community, specialist interest groups, RAPs, and affected landowners that has been previously carried out as part of the environmental impact assessment process for the MPE Project and MPW Project. This consultation will be undertaken throughout the preparation of the EIS and assessment of the Proposal.

The assessment will include:

- a detailed description of the Proposal including its components and construction activities;
- a comprehensive assessment of the potential impacts on the key issues including a description of the existing environment, assessment of potential direct and indirect construction and operation impacts;
- an assessment of local and regional cumulative impacts;
- a description of measures to be implemented to avoid, minimise, manage, mitigate, offset, and/or monitor the potential impacts; and
- identification and consideration of issues raised by stakeholders.

The provided description of the Proposal and the overview of likely construction and operation impacts is considered to provide sufficient information to inform the initial request for scoping meeting with the DPIE.

References

- Arcadis (2016) *Moorebank Precinct East - Stage 2 Proposal*
- Arcadis (2017a) *Moorebank Precinct East - Stage 2 – Biodiversity Assessment Report*
- Arcadis (2017b) *Boot Land threatened flora surveys memorandum*
- Artefact Heritage (2016) *Moorebank Precinct East - Stage 2 Proposal, Aboriginal Heritage Assessment*
- Department of Environment and Climate Change (DECC 2009) *Interim Construction Noise Guideline*
- Department of Environment and Conservation (DEC 2006a) *Assessing Vibration: a technical guide*
- DEC (2006b) *NSW Waste Reduction and Purchasing Policy*
- Department of Planning (2008) *Development Near Rail Corridors and Busy Roads Interim Guideline*
- EPA (2011) *NSW Road Noise Policy*
- EPA (2014a) *Managing Urban Stormwater, Soils and Construction Volume 1, 4th Edition*
- EPA (2014b) *NSW Waste Classification Guidelines*
- EPA (2014c) *NSW Waste Avoidance and Resource Recovery Strategy 2014-21*
- EPA (2017) *NSW Noise Policy for Industry*
- Golder (2016) *MPE Stage 2 – Moorebank Precinct, Moorebank, Geotechnical Interpretive Report*
- Hyder Consulting (2015a) *SIMTA Moorebank Intermodal Terminal Facility – Flora and Fauna Assessment*
- Hyder Consulting (2015b) *SIMTA Intermodal Terminal Facility - Stage 1 – Biodiversity Assessment Report*
- NSW Rural Fire Service (2019) *Planning for Bushfire Guidelines*
- RMS (2011a) *Technical Guideline EMS-TG-10: Stockpile Site Management*
- RMS (2011b) *Technical Guideline EMS-TG- 011: Environmental Management of Construction Site Dewatering*
- RMS (2011c) *Procedure for Aboriginal Cultural Heritage Consultation and Investigation*
- RMS (2013a) *Guideline for the Management of Contamination*
- RMS (2013b) *Environmental Planning and Impact Assessment Practice Note for Socio-Economic Assessment (EIA-N05)*
- RMS (2018) *Environmental Impact Practice Note: Guideline for Landscape Character and Visual Impact Assessment Note EIA-04*
- Wilkinson Murray (2013) *Concept Plan Noise and Vibration Impact Assessment*
- Wilkinson Murray (2015) *Stage 1 Noise and Vibration Impact Assessment*
- Wilkinson Murray (2016) *Stage 2 Noise and Vibration Impact Assessment*

Appendix A

Planning agreement

ROADS AND MARITIME SERVICES

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Warehouse Trust

Planning Agreement

Section 7.4 of the Environmental Planning and Assessment Act 1979 (NSW)

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JH Date 21/03/2019

Parties

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**RMS**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Assets Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Operations Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Warehouse Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Warehouse Development Co**)

Background

- A The Developer is the proponent of the Development on the Land.
- B The Development comprises the Moorebank Intermodal Precinct East Development and the Moorebank Intermodal Precinct West Development.
- C The Developer has been granted the following planning approvals for the Development:
- (i) Moorebank Intermodal Precinct East – Concept Plan Approval;
 - (ii) Moorebank Intermodal Precinct East – Stage 1 Approval;
 - (iii) Moorebank Intermodal Precinct East – Stage 2 Approval; and
 - (iv) Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
- D The Developer has lodged the following Planning Applications for the Moorebank Intermodal Precinct West Development:
- (i) the Moorebank Intermodal Precinct West – Stage 2 Application for the Moorebank Intermodal Precinct West - Stage 2 Development; and
 - (ii) An application to modify the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval, known as SSD 5066 Mod 1.
- E The Moorebank Intermodal Precinct West Development is subject to clause 7.36 of the Liverpool LEP.
- F Clause 7.36 of the Liverpool LEP provides that Development Consent must not be granted to certain development on the Moorebank Intermodal Precinct West Land unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of Relevant State Public Infrastructure in relation to that land.

- G The Developer has offered to enter into this deed to provide Development Contributions to satisfy the Relevant State Public Infrastructure needs that will arise from the Moorebank Precinct West Development – Stage 2 Development to enable a Satisfactory Arrangements Certificate to be issued for the Moorebank Intermodal Precinct West Development – Stage 2 Application.
- H The parties agree that the Development Contributions offered by the Developer under this deed are also being provided to address the regional road infrastructure needs arising from the Moorebank Intermodal Precinct West Development as a whole.

Operative provisions

1 Definitions

1.1 Definitions

In this deed, including in the recitals, these terms have the following meanings:

- Approval** any approvals, Development Consents, certificates granted or issued under Part 4, Division 4.5 or Part 6 of the Planning Act, determinations under Part 5, Division 5.1 of the Planning Act, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law.
- Approved Security** has the meaning given to that term in a WAD.
- Authority** in respect of a particular context or circumstance, means each federal, state or local government, semi-government, quasi-government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.
- Bank Guarantee** an irrevocable and unconditional undertaking:
- a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
 - b) on terms acceptable to RMS, in RMS' absolute discretion,
- to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Business Day	a day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Complying Development Certificate	has the meaning given to that term in the Planning Act.
Construction Certificate	has the meaning given to that term in the Planning Act.
Dealing	means selling, transferring or subdividing land or an interest in land. For the avoidance of doubt, Dealing does not include the grant of a lease of any tenure.
Dedicate	means to dedicate land as a public road (but not a temporary public road) in accordance with the <i>Roads Act 1993</i> (NSW) and Dedicated and Dedication have the same meaning.
Developer	Terminal Assets Co, Terminal Operations Co and Warehouse Development Co, whose obligations are joint and several.
Development	the: <ul style="list-style-type: none"> a) Moorebank Intermodal Precinct East Development; and b) Moorebank Intermodal Precinct West Development, in the form and scale approved as at the date of this deed pursuant to the Moorebank Intermodal Precinct East – Concept Plan and the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Development Consent	has the same meaning as in the Planning Act.
Development Contributions	the contributions to be provided by the Developer in accordance with clause 4 and Schedule 3 .
Due Date	the date(s) on which the Development Contributions must be provided as specified in Column 2 or Column 4 of the Table in clause 1 of Schedule 3 .
Explanatory Note	the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Planning Act, as required by the Planning Regulation.
Land	the: <ul style="list-style-type: none"> a) Moorebank Intermodal Precinct East Land; and b) Moorebank Intermodal Precinct West Land.

Law	any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, State, territorial or local, and the common law.
Liverpool LEP	the <i>Liverpool Local Environmental Plan 2008</i> (NSW).
Monetary Contribution	the payment of monies in the amount(s) specified in Item 1 of the Table in clause 1 of Schedule 3 .
Moorebank Avenue South Upgrade	<p>means the upgrade of Moorebank Avenue:</p> <ul style="list-style-type: none"> a) from the IMEX Terminal Main access point (as referred to in Condition B13 of the Moorebank Intermodal Precinct East – Stage 2 Approval) to the southern boundary of Lot 1 DP 1048263, so that Moorebank Avenue in this location comprises: <ul style="list-style-type: none"> i) four (4) through lanes with the lanes generally being 3.5 metre wide central travel lanes; ii) any required intersections, including turning lanes at intersections; iii) 4.2 metre wide kerbside travel lanes; iv) a 3.5 metre verge along the northbound and south bound carriageways; and b) associated tie in works to the four (4) through lanes to approximately 120 metres south of the southern boundary of Lot 1 DP 1048263.
Moorebank Avenue South Upgrade Land	<p>means:</p> <ul style="list-style-type: none"> a) a 21 metre wide corridor for the length of the Moorebank Avenue South Upgrade, unless RMS agrees in its absolute discretion to a reduced corridor width as part of any RMS approval of the Moorebank Avenue South Upgrade final design pursuant to a WAD; and b) any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue South Upgrade.
Moorebank Avenue Realignment	<p>the realignment of Moorebank Avenue, in the general location depicted in the plan at Annexure B, including the following, unless otherwise agreed or required by RMS in writing in its absolute discretion:</p> <ul style="list-style-type: none"> a) four (4) through lanes: <ul style="list-style-type: none"> i) from where the realignment connects with existing Moorebank Avenue (Lot 2 in DP 1197707) in the location of the Defence Joint

Logistics Unit site (Lot 3 in DP 1197707) and Lot 1 in DP 1048263 including any associated tie in works; and

- ii) along the northern and eastern boundaries of Lot 1 in DP 1048263 and to the south eastern boundary of that land,

with the lanes generally being 3.5 metre wide central travel lanes;

- b) two (2) through lanes from the south eastern boundary of Lot 1 in DP 1048263 to the southern boundary of existing Moorebank Avenue (Lot 2 in DP 1197707) at the East Hills Rail line, including any associated tie in works to Moorebank Avenue (Lot 2 DP 1197707) in that location, and with the lanes generally being 3.5 metre wide central travel lanes;
- c) any required intersections, including any required traffic lights and turning lanes at intersections;
- d) 4.2 metre wide kerbside travel lanes;
- e) a 3.5 metre verge along the northbound and south bound carriageways; and
- f) any road work or road related infrastructure required beyond the 3.5 metre verge.

**Moorebank Avenue
Realignment Land**

means:

- a) a 21 metre wide corridor for the length of the land comprising the Moorebank Avenue Realignment, unless RMS agrees in its absolute discretion to a reduced corridor width as part of any RMS approval of the Moorebank Avenue Realignment final design pursuant to a WAD;
- b) any additional land required by RMS at any intersections; and
- c) any additional land required by RMS acting reasonably following practical completion of the Moorebank Avenue Realignment.

**Moorebank
Intermodal Precinct
East Development**

the development and use of the Moorebank Intermodal Precinct East Land as an intermodal facility, including a rail link to the Southern Sydney Freight Line, warehouse and distribution facilities, freight village, stormwater, landscaping, servicing and associated works consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval, and as approved in the Moorebank Intermodal Precinct East – Stage 1 Approval and the Moorebank Intermodal Precinct East - Stage 2 Approval.

Moorebank Intermodal Precinct East Land	the land identified in Table 1 at Schedule 2 .
Moorebank Intermodal Precinct East – Concept Plan Approval	the Part 3A concept plan approval (MP10_0193) for the Moorebank Intermodal Precinct East Development concept plan approved by the Minister for Planning on or about 29 September 2014, in the form and scale approved as at the date of this deed.
Moorebank Intermodal Precinct East – Stage 1 Approval	the State significant development consent (SSD 6766) for Stage 1 of the Moorebank Intermodal Precinct East Development approved by the Minister for Planning on or about 12 December 2016, as modified from time to time, consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval.
Moorebank Intermodal Precinct East – Stage 2 Approval	the State significant development application (SSD 16_7628) for Stage 2 of the Moorebank Intermodal Precinct East Development approved by the Minister for Planning on or about 31 January 2018, as modified from time to time, consistent with the Moorebank Intermodal Precinct East – Concept Plan Approval.
Moorebank Intermodal Precinct West Development	the development and use of the Moorebank Intermodal Precinct West Land as an intermodal facility, including a rail link to the Southern Sydney Freight Line, warehouse and distribution facilities and associated works, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Moorebank Intermodal Precinct West Land	the land identified in Table 2 at Schedule 2 .
Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval	the State significant development consent (SSD 5066) concept proposal and Stage 1 (early works) for the Moorebank Intermodal Precinct West Development approved by the Minister for Planning on or about 3 June 2016, in the form and scale approved as at the date of this deed.
Moorebank Intermodal Precinct West - Stage 2 Application	the State significant development application (SSD 16_7709) lodged by the Developer with the Minister for Planning on or about 16 June 2016, as amended by the Response to Submissions report lodged by the Developer with the Minister for Planning in or about July 2017, seeking approval to undertake Stage 2 of the Moorebank Intermodal Precinct West Development, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.

Moorebank Intermodal Precinct West - Stage 2 Development	the development the subject of the Moorebank Intermodal Precinct West – Stage 2 Application, as approved, and as modified from time to time, consistent with the Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (Early Works) Approval.
Novation Deed	the deed at Annexure A .
NSW LRS	NSW Land Registry Services or any other Authority replacing it.
Party	a party to this deed, including their successors and assigns.
Planning Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Planning Application	a) a development application; or b) a modification application to a Development Consent, made under the Planning Act.
Planning Regulation	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Register	the Torrens title register maintained under the <i>Real Property Act 1990</i> (NSW).
Registration Land	means that part of Moorebank Avenue, Moorebank, comprised in Lot 2 in DP 1197707.
Relevant State Public Infrastructure	has the meaning given to that term in clause 7.36 of the Liverpool LEP.
Satisfactory Arrangements Certificate	in respect of any land means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of relevant State public infrastructure in accordance with clause 7.36 of the Liverpool LEP.
Security	means a Bank Guarantee.
Secretary	the Secretary of the Department of Planning and Environment.
Subdivision Certificate	has the meaning given to that term in the Planning Act.
Subdivision Works Certificate	has the meaning given to that term in the Planning Act.

Trigger Event

means any of the following events:

- a) the issue of a Construction Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development;
- b) the issue of a Subdivision Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development;
- c) the issue of a Subdivision Works Certificate for any part of the Moorebank Intermodal Precinct West - Stage 2 Development; or
- d) if any part of the Moorebank Intermodal Precinct West - Stage 2 Development may be carried out without the need for a Construction Certificate, Subdivision Certificate or Subdivision Works Certificate:
 - i) commencement of that part of the Moorebank Intermodal Precinct West - Stage 2 Development; or
 - ii) the issue of a Complying Development Certificate in respect of that part of the Moorebank Intermodal Precinct West - Stage 2 Development.

WAD

a Works Authorisation Deed or other infrastructure delivery agreement entered into by RMS and the Developer regarding the design, construction, completion and Dedication of road works by the Developer.

1.2 Construction

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;

- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 Operation and Application of this deed

2.1 Operation

This deed will operate only if:

- (a) it is signed by the Parties; and
- (b) Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application.

2.2 Planning agreement under the Planning Act

This deed is a Planning Agreement governed by Part 7, Division 7.1, Subdivision 2 of the Planning Act.

2.3 Application

This deed applies to the:

- (a) Moorebank Intermodal Precinct West - Stage 2 Development; and
- (b) Moorebank Intermodal Precinct West Development as a whole.

3 Application of sections 7.11, 7.12 and 7.24 of the Planning Act

The application of sections 7.11, 7.12 and 7.24 of the Planning Act is excluded to the extent stated in **Schedule 1**.

4 Development Contributions

4.1 Provision of Development Contributions

Subject to **clause 4.2**, the Developer must provide, or must procure the provision of, the Development Contributions in accordance with **Schedule 3**.

4.2 Obligation to provide Development Contributions

The Developer's obligations to provide or procure the provision of the Development Contributions in accordance with this **clause 4** and **Schedule 3** of this deed will arise in relation to:

- (a) the Monetary Contribution, on the earlier of:
 - (i) three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application, unless the Development Consent is surrendered in accordance with the Planning Act prior to that time; or
 - (ii) prior to a Trigger Event occurring; and
- (b) the Moorebank Avenue Realignment or the Moorebank Avenue South Upgrade (as applicable), upon the operation of this deed in accordance with **clause 2.1**, unless the Development Consent is subsequently surrendered in accordance with the Planning Act within three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application.

Nothing in this **clause 4.2** otherwise affects the Developer's obligations under this deed, including its obligations under **clauses 6** and **8** and **Schedule 4**.

4.3 Notice of Surrender

If the Developer seeks to surrender the Development Consent granted for the Moorebank Intermodal Precinct West - Stage 2 Application in accordance with the Planning Act for the purpose of **clause 4.2**, it must:

- (a) provide RMS with a copy of any notice of surrender prepared in accordance with the Planning Regulation at the same time as any notice is given to the consent authority; and
- (b) immediately provide RMS with a copy of any response(s) or notification(s) received from the consent authority in relation to any notice of surrender.

4.4 Restriction on issue of certificates

The parties agree that the requirement to provide the Monetary Contribution in accordance with **clause 4.2(a)** is a restriction on the issue of:

- (a) a Construction Certificate within the meaning of section 6.8 of the Planning Act and clause 146A of the Planning Regulation; and
- (b) a Subdivision Certificate within the meaning of section 6.15(1)(d) of the Planning Act.

4.5 Acknowledgment

The Developer acknowledges and agrees that RMS:

- (a) has no obligation to use or expend a Development Contribution for a particular purpose;
- (b) has no obligation to repay or provide any compensation or payment for a Development Contribution, except as provided for in this deed; or
- (c) has not made any representation or warranty that, if any part of a Development Contribution is transferred or provided to another Authority, the Development Contribution will or must be used for any particular purpose by it or any other Authority.

5 Interest for late provision of Monetary Contribution

- (a) If the Developer is required to pay a Monetary Contribution under this deed and fails to do so on the Due Date for provision of that Monetary Contribution, the Developer must also pay to RMS interest on the overdue amount at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the Due Date for provision of those amounts until those amounts (including interest on those amounts) have been paid to RMS.

6 Registration of this deed

6.1 Registration of deed

Within 10 Business Days of this deed becoming operative in accordance with **clause 2.1**, the Developer must, at its expense, take all practical steps and otherwise do anything necessary to procure:

- (a) the consent of each person required by the Registrar-General who:
 - (i) has an estate or interest in the Registration Land registered under the *Real Property Act 1990* (NSW); or
 - (ii) is seized or possessed of an estate or interest in the Registration Land,to the registration of this deed on the title of the Registration Land and to the terms of this deed;
- (b) the execution of any documents required to enable registration of this deed on the title of the Registration Land;
- (c) the production of the certificates of title for the Registration Land; and
- (d) the lodgement and registration of this deed by the Registrar-General in the relevant folios of the Register for the Registration Land.

6.2 Evidence of registration

The Developer must provide RMS with:

- (a) evidence of the lodgement of this deed pursuant to **clause 6.1(d)** within 10 Business Days of such lodgement at the NSW LRS; and

- (b) a copy of the relevant folios of the Register and a copy of all registered dealings for the Registration Land within 10 Business Days of registration of this deed.

6.3 Release and discharge of deed

- (a) The Developer will be released from its obligations under this deed once the Developer has satisfied its obligations to provide the Development Contributions in accordance with this deed.
- (b) Following the Developer's satisfaction of its obligations under this Deed, RMS will do all things reasonably required by the Developer to have the Registrar-General remove this deed from the relevant folio(s) of the Register.

6.4 No fetter on Commonwealth as land owner

The parties acknowledge and agree that registration of this deed on the title of the Registration Land will not in any way restrict or otherwise affect the unfettered discretion of the Commonwealth to exercise any of its statutory functions or powers pursuant to any Law, or render the Commonwealth liable for anything the Commonwealth does, purports to do or fails to do in the exercise of its statutory functions or powers.

7 Dispute Resolution

7.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this **clause 7**.

7.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other Party specifying the nature of the dispute and requiring the dispute be addressed in accordance with this **clause 7**.

7.3 Attempt to resolve

On receipt of a notice under **clause 7.2**, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Mediation

If the Parties do not agree within 21 Business Days of receipt of a notice under **clause 7.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all material steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

then, subject to **clause 7.5**, the Parties must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The Parties must, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 7.2** (or any other period agreed in writing by the Parties) then any Party which has complied with the provisions of this **clause 7** may, by written notice to the other Parties, terminate any dispute resolution process undertaken under this clause and any Party may then commence court proceedings in relation to the dispute.

7.6 Use of information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 7** is to attempt to resolve the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 7** for any purpose other than in an attempt to resolve the dispute.

7.7 No prejudice

This **clause 7** does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

7.8 Continued performance of obligations

Despite the existence of a dispute under this **clause 7**, but subject to any order of a court or the agreement of the Parties, the Parties must continue to perform their obligations under this deed.

8 Enforcement

The Developer has agreed to provide security for the performance of the Developer's obligation to provide the Development Contributions under this deed by:

- (a) registering this deed on the title of the Registration Land in accordance with **clause 6**; and
- (b) providing the Security in accordance with **Schedule 4**.

9 Notices

9.1 Delivery

Any notice that must be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Emailed to that Party at its email address set out below.

Developer

Attention:	The Company Secretary
Address:	Level 27, 45 Clarence Street, Sydney, NSW 2000
Email:	Adam.Jacobs@qube.com.au

RMS

Attention: Rachel Cumming, Senior Manager Land Use Assessment

Address: Level 5/27 Argyle Street Parramatta NSW 2150

Email: rachel.cumming@rms.nsw.gov.au

9.2 Change of details

If a Party gives the another Party 3 Business Days' notice of a change of its address or email address, any notice is only given or made by that other Party if it is delivered, posted or emailed to the latest address.

9.3 Giving of notice

Subject to **clause 9.4**, any notice is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) If it is sent by email, on the date that the sending Party's email system records indicate the email was sent, unless:
 - (i) the sender receives a delivery failure notification; or
 - (ii) the intended recipient(s) is able to provide information which indicates that the email was not received by the email system of the intended recipient(s).

9.4 Delivery outside of business hours

If any notice is delivered or emailed on a day that is not a Business Day or, if on a Business Day, after 5.00pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

10 Assignment and Novation

10.1 Assignment by Developer

- (a) The Developer must not assign any right or benefit under this Agreement without the prior written consent of the other Parties. RMS must not unreasonably withhold or delay its written consent and must respond within 15 Business Days.
- (b) Any purported dealing in breach of this **clause 10.1** is of no effect.

10.2 Novation by Developer

Prior to a proposed novation of its obligations under this deed, the Developer must seek the written consent of RMS and:

- (a) satisfy RMS, acting reasonably, that the person to whom the Developer's obligations are to be novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;

- (b) satisfy RMS of any other reasonable requirements relating to the Incoming Party;
- (c) satisfy RMS, acting reasonably, that the Developer is not in material breach of its obligations under this deed;
- (d) procure the execution of the Novation Deed with RMS, the Developer and the Incoming Party in a form reasonably acceptable to the Parties; and
- (e) the Developer and the Incoming Party must pay all costs reasonably incurred by RMS in relation to the Novation Deed, including legal costs and disbursements.

10.3 Assignment by RMS

RMS may assign the rights and benefits of this deed to another public Authority in its absolute discretion, without the need for prior consent from the Developer.

10.4 Dealings with the Registration Land

The Developer must not enter into any Dealing with a third party (**Transferee**) relating to the Developer's interests in the Registration Land unless before the Dealing is entered into with the Transferee:

- (a) the Developer satisfies RMS (acting reasonably) that the proposed Transferee is financially capable of complying with those of the Developer's obligations under this deed which RMS (acting reasonably) specifies, by written notice to the Developer, must be adopted by the Transferee (**Required Obligations**);
- (b) the Transferee enters into a deed in favour of RMS substantially in the form of the Novation Deed, under which the Transferee agrees to comply with the Required Obligations as if the Transferee were the Developer;
- (c) any default by the Developer in relation to the Registration Land the subject of the proposed Dealing has been remedied by the Developer, unless that default has been waived expressly by RMS in writing; and
- (d) the Developer and the Transferee pay all costs reasonably incurred by RMS in relation to that Dealing, including legal costs and disbursements.

11 Representations and warranties

The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any Law.

12 GST

12.1 Construction

In this **clause 12**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

12.2 Intention of the parties

- (a) The parties intend that divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- (b) No additional amounts will be payable on account of GST and no tax invoices will be exchanged between the Parties.

12.3 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

12.4 Payment of GST

If GST is payable on any supply made by:

- (a) a Party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a Party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the Party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

12.5 Timing of GST payment

The amount referred to in **clause 12.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

12.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 12.4**.

12.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 12.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

12.8 Reimbursements

- (a) Where a Party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another Party or indemnify another Party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first Party will be reduced by the amount of any input tax credits to which the other Party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 12.8** does not limit the application of **clause 12.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 12.8(a)**.

12.9 No merger

This **clause 12** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

13 Trustee Limitation of Liability

- (a) This clause applies to each Party that enters into this deed only in its capacity as trustee (**Trustee**) of a trust (**Trust**) and in no other capacity.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of Trust, including seeking the appointment of a receiver (except in relation to property of Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of Trust).
- (d) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of Trust, as a result of the Trustee's fraud, negligence or breach of trust.

14 Termination

- (a) If the Developer's obligations to provide or procure the provision of the Development Contributions do not arise in accordance with **clause 4.2** of this deed because the Development Consent for the Moorebank Intermodal Precinct West – Stage 2 Application is surrendered in accordance with the Planning Act within three (3) months after the date that the Development Consent is granted, then:
- (i) RMS may terminate this deed by written notice to the Developer following notification by the consent authority in accordance with the Planning Regulation that the proposed surrender has taken effect;
 - (ii) the Developer may provide written notice to RMS requesting that RMS exercise its rights under **clause 14(a)(i)** and RMS must accept any such request within 20 Business Days;
 - (iii) upon written notice of the termination of this deed being provided by RMS to the Developer:
 - (A) the rights of each Party that arose before the termination or which may arise at any future time for any breach of obligations occurring prior to the termination of this deed are not affected; and
 - (B) RMS will return the Security provided in accordance with **clause 8** and **Schedule 4** of this deed to the Developer after first deducting any amounts owed to RMS in accordance with this deed; and
 - (iv) RMS must, within 15 Business Days of any written request by the Developer, and at the Developer's cost, do all things reasonably required to remove this deed from the title of the Registration Land.
- (b) Where this deed is terminated in accordance with this **clause 14**, if any future Planning Application(s) is made by the Developer or any other person in relation to the Moorebank Intermodal Precinct West Development, then the applicant of that Planning Application(s) must comply with the requirements of clause 7.36 of the Liverpool LEP and this deed will have no operation or effect in relation to that Planning Application(s).
- (c) This **clause 14** will survive termination of this deed.

15 General Provisions

15.1 Liability

An obligation of two or more persons binds them separately and together.

15.2 Entire agreement

This deed constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.

15.3 Variation

This deed must not be varied except by a later written document executed by all Parties.

15.4 Waiver

A right created by this deed cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

15.5 Further assurances

Each Party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

15.6 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

15.7 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this deed.

(b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

15.8 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

15.9 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a Party before the expiration or termination date.

15.10 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

15.11 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

15.12 Relationship of Parties

Nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between RMS and the Developer.

15.13 Good faith

Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this deed.

15.14 No fetter

Nothing in this deed shall be construed as:

- (a) requiring RMS to do anything that would cause RMS to breach any of the RMS' obligations at law; or
- (b) limiting or fettering in any way the discretion of RMS in exercising any of RMS' statutory functions, powers, authorities or duties.

15.15 Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

15.16 Costs, expenses and stamp duty

- (a) The Developer must pay their own and RMS' legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable, on any transfer of land).
- (d) The Developer must provide RMS with bank cheques in respect of RMS' costs pursuant to **clauses 15.16(a) and (b)**:
 - (i) where RMS has provided the Developer with written notice of the sum of such costs prior to execution of this deed, on the date of execution of this deed; or
 - (ii) where RMS has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by RMS for payment.

15.17 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this deed as if those terms were included in the operative part of the deed.

Schedule 1

Section 7.4 Requirements

The Parties acknowledge and agree that the Tables set out below provide for certain terms, conditions and procedures for the purpose of this deed complying with the Planning Act.

Table 1 – Requirements under section 7.4 of the Planning Act

Provision of the Planning Act	This deed
Under section 7.4(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	No
(b) made, or proposes to make, a development application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	No
Description of the land to which this deed applies- (Section 7.4(3)(a))	The whole of the Moorebank Intermodal Precinct West Land as defined in clause 1.1 of this Deed.
Description of the development to which this deed applies- (Section 7.4 (3)(b)(ii))	a) the Moorebank Intermodal Precinct West - Stage 2 Development; and b) the Moorebank Intermodal Precinct West Development as a whole, as defined in clause 1.1 of this Deed.
The scope, timing and manner of delivery of Development Contributions required by this deed - (Section 7.4 (3)(c))	See Schedule 3 .
Applicability of Section 7.11 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.11 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.
Applicability of Section 7.12 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.12 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.

Provision of the Planning Act	This deed
Applicability of Section 7.24 of the Planning Act - (Section 7.4 (3)(d))	The application of section 7.24 of the Planning Act is not excluded in respect of the Moorebank Intermodal Precinct West - Stage 2 Development.
Applicability of Section 7.4 (3)(e) of the Planning Act	The Development Contribution to be provided by the Developer under this deed will not be taken into consideration in determining a development contribution in respect of the Moorebank Intermodal Precinct West - Stage 2 Development under section 7.11 of the Planning Act.
Mechanism for Dispute resolution - (Section 7.4 (3)(f))	See clause 7
Enforcement of this deed - (Section 7.4 (3)(g))	See clause 8
No obligation to grant consent or exercise functions - (Section 7.4 (9))	See clause 15.14

Table 2 – Other Matters

Requirement under the Planning Act or Planning Regulation	This deed
Registration of the Planning Agreement – (section 7.6 of the Planning Act)	Yes, see clause 6
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Construction Certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes – see clause 4.2(a)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Subdivision Certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	Yes – see clause 4.2(a)
Whether the Planning Agreement specifies that certain requirements of the	No

Requirement under the Planning Act or Planning Regulation	This deed
agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Planning Regulation)	

Schedule 2

Land

Table 1: Moorebank Intermodal Precinct East Land

Registered Proprietor		Title	Folio Identifier
TRUST COMPANY LIMITED	1	1048263	1/1048263
COMMONWEALTH OF AUSTRALIA	1	1197707	1/1197707
COMMONWEALTH OF AUSTRALIA	2	1197707	2/1197707
COMMONWEALTH OF AUSTRALIA	4	1197707	4/1197707
COMMONWEALTH OF AUSTRALIA	3002	1125930	3002/1125930
THE COMMONWEALTH OF AUSTRALIA	4	1130937	4/1130937
RAIL CORPORATION NEW SOUTH WALES	1	825352	1/825352
RAIL CORPORATION NEW SOUTH WALES	2	825348	2/825348
RAIL CORPORATION NEW SOUTH WALES	1	1061150	1/1061150
THE COMMONWEALTH OF AUSTRALIA	2	1061150	2/1061150
RAIL CORPORATION NEW SOUTH WALES	1	712701	1/712701
HELEN LOUISE KENNETT	5	833516	5/833516A
FIGELA PTY LIMITED	5	833516	5/833516B
JC & FW KENNETT PTY LIMITED	5	833516	5/833516C
RAIL CORPORATION NEW SOUTH WALES	6	833516	6/833516
RAIL CORPORATION NEW SOUTH WALES	7	833516	7/833516
RAIL CORPORATION NEW SOUTH WALES	101	1143827	101/1143827
RAIL CORPORATION NEW SOUTH WALES	102	1143827	102/1143827
FIGELA PTY LIMITED	103	1143827	103/1143827
J.C. AND F.W. KENNETT PTY LIMITED	104	1143827	104/1143827
RAIL CORPORATION NEW SOUTH WALES	1	1130937	1/1130937
RAIL CORPORATION NEW SOUTH WALES	4	1186349	4/1186349
J.C. & F.W. KENNETT PTY LIMITED	51	515696	51/515696
J C AND F W KENNETT PTY LIMITED	52	517310	52/517310
J C & F W KENNETT PTY LIMITED	91	1155962	AUTO

Registered Proprietor	Title	Folio Identifier
		CONSOL 14018-92
	Conveyance Book 76 Number 361	
	George's River, Crown Land	
	Crown Road	
	Public road reserve of Moorebank Avenue (north of Anzac Road)	

Table 2: Moorebank Intermodal Precinct West Land

Registered Proprietor		Title	Folio Identifier
COMMONWEALTH OF AUSTRALIA	1	1197707	1/1197707
COMMONWEALTH OF AUSTRALIA	2	1197707	2/1197707
THE COMMONWEALTH OF AUSTRALIA	100	1049508	100/1049508
THE COUNCIL OF THE CITY OF LIVERPOOL	101	1049508	101/1049508
HELEN LOUISE KENNETT	5	833516	5/833516A
FIGELA PTY LIMITED	5	833516	5/833516B
JC & FW KENNETT PTY LIMITED	5	833516	5/833516C
J.C. & F.W. KENNETT PTY. LIMITED	51	515696	51/515696
RAIL CORPORATION NEW SOUTH WALES	102	1143827	102/1143827
FIGELA PTY LIMITED	103	1143827	103/1143827
J.C. AND F.W. KENNETT PTY LIMITED	104	1143827	104/1143827
RAIL CORPORATION NEW SOUTH WALES	4	1186349	4/1186349

Schedule 3

1 Development Contributions

The Developer undertakes to make the following Development Contributions in the manner set out in the Table below and this **Schedule 3**:

Item	Column 1: Type of Contribution	Column 2: Due Date	Column 3: Indexation	Column 4: Additional Specifications /Additional Due Dates
1.	Monetary Contribution of \$48 million : Regional road upgrade works	The earlier of: a) three (3) months after the date that Development Consent is granted for the Moorebank Intermodal Precinct West - Stage 2 Application, unless the Development Consent is surrendered in accordance with the Planning Act prior to that time; and b) prior to a Trigger Event occurring, in accordance with clause 4.2(a) of this deed.	No	Not applicable
2.	Works in Kind and Dedication: Moorebank Avenue Realignment or Moorebank Avenue South Upgrade	a) By 31 December 2021, or such other date agreed by RMS in writing in its absolute discretion, the Developer is to obtain all Approvals required for the Moorebank Avenue Realignment; and b) By 31 December 2023, or such other date agreed by RMS in writing in its absolute discretion, the Developer is to:	Not applicable	Where the Developer has not obtained all Approvals required for the Moorebank Avenue Realignment by 31 December 2021 or such other date agreed by RMS in writing in its absolute discretion, then the Developer must: a) obtain all Approvals required for the Moorebank Avenue South Upgrade by 31 December 2022, or such other date

		<p>i) achieve practical completion of the Moorebank Avenue Realignment; and</p> <p>ii) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue Realignment Land,</p> <p>in accordance with clause 3 of this Schedule 3 and subject to the additional specifications in Column 4 of this Table.</p>		<p>agreed by RMS in writing in its absolute discretion; and</p> <p>b) achieve practical completion of the Moorebank Avenue South Upgrade by 31 December 2024, or such other date agreed by RMS in writing in its absolute discretion; and</p> <p>c) take all practical steps and otherwise do anything necessary to procure the Dedication of, the Moorebank Avenue South Upgrade Land by 31 December 2024, or such other date agreed by RMS in writing in its absolute discretion,</p> <p>in accordance with clause 4 of this Schedule 3.</p>
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2 Monetary Contribution

2.1 Monetary Contribution

The Developer must pay the Monetary Contribution to RMS:

- (a) by the Due Date; and
- (b) in accordance with **clause 2.2** of this **Schedule 3**.

2.2 Delivery of Monetary Contribution

- (a) The Monetary Contribution is paid for the purposes of this Deed when funds are deposited, cleared and credited by means of electronic funds transfer into a bank account nominated by RMS.
- (b) The Developer is to give RMS not less than 15 Business Days written notice of its intention to pay the Monetary Contribution in accordance with this deed.
- (c) If GST is payable in accordance with **clause 12**:
 - (i) the Developer is not required to pay the Monetary Contribution under this deed until RMS, after having received the Developer's notice under **clause 2.2(b)** in this **Schedule 3**, has given to the Developer a tax invoice for the amount of the Monetary Contribution; and
 - (ii) the Developer is not in breach of this deed if it fails to pay the Monetary Contribution at the time required by this deed by reason only of RMS' failure to give to the Developer a tax invoice in relation to the Monetary Contribution.

3 Moorebank Avenue Realignment

3.1 Moorebank Avenue Realignment Proposal

The Developer intends to undertake the Moorebank Avenue Realignment.

3.2 Commencement

Prior to commencing any part of the Moorebank Avenue Realignment, the Developer must:

- (a) provide evidence to RMS that it has obtained all Approvals required for the Moorebank Avenue Realignment by the Due Date specified in **Item 2, column 2** of **clause 1** of this **Schedule 3**;
- (b) enter into a WAD with RMS in relation to the Moorebank Avenue Realignment on terms and conditions acceptable to RMS, including obtaining RMS' approval for the design of the Moorebank Avenue Realignment; and
- (c) provide the Approved Security to RMS for the Moorebank Avenue Realignment in accordance with the WAD.

3.3 Delivery

The Developer must carry out the Moorebank Avenue Realignment in accordance with:

- (a) all Approvals required for the Moorebank Avenue Realignment; and
- (b) the WAD applying to the Moorebank Avenue Realignment.

3.4 Completion

The Developer must:

- (a) achieve practical completion; and
- (b) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue Realignment Land, acknowledging that Commonwealth approval will be required for any Dedication of land owned by the Commonwealth and such approval is yet to be granted,

in accordance with this deed, all Approvals and the WAD applying to the Moorebank Avenue Realignment, and by the Due Date for the Moorebank Avenue Realignment and Dedication of the Moorebank Avenue Realignment Land specified in **Item 2, column 2 of clause 1 of this Schedule 3.**

4 Moorebank Avenue South Upgrade

4.1 Obligation to provide Moorebank Avenue South Upgrade

Where the Developer has not obtained all Approvals required for the Moorebank Avenue Realignment by 31 December 2021 or such other date agreed by RMS in writing in its absolute discretion, the Developer must deliver the Moorebank Avenue South Upgrade in accordance with this **clause 4 of Schedule 3.**

4.2 Commencement

Prior to commencing any part of the Moorebank Avenue South Upgrade (**Road Works**), the Developer must:

- (a) provide evidence to RMS that it has obtained all Approvals required for the Road Works by the Due Date specified in **Item 2, column 4 of clause 1 of this Schedule 3;**
- (b) enter into a WAD with RMS in relation to the Road Works on terms and conditions acceptable to RMS, including obtaining RMS' approval for the design of the Road Works; and
- (c) provide the Approved Security to RMS for the Road Works in accordance with the WAD.

4.3 Delivery of Road Works

The Developer must carry out the Road Works in accordance with:

- (a) all Approvals required for the Road Works; and
- (b) the WAD applying to the Road Works.

4.4 Completion of Road Works

The Developer must:

- (a) achieve practical completion; and
- (b) take all practical steps and otherwise do anything necessary to procure the Dedication of the Moorebank Avenue South Upgrade Land, acknowledging that Commonwealth approval will be required for any Dedication of land owned by the Commonwealth and such approval is yet to be granted,

in accordance with this deed, all Approvals and the WAD applying to the Road Works, and by the Due Date for the Road Works and Dedication of the Moorebank Avenue South Upgrade Land specified in **Item 2, column 4** of **clause 1** of this **Schedule 3**.

Schedule 4

Security Requirements

1 Provision of Security

In order to:

- (a) secure the provision of the Moorebank Avenue Realignment required by this deed; and
- (b) the Developer's general compliance with its obligations under this deed, the Developer will provide Security in accordance with this **Schedule 4**.

2 Moorebank Avenue Realignment

2.1 Provision of Security

Within 5 Business Days of Development Consent being granted for the Moorebank Intermodal Precinct West – Stage 2 Application, the Developer must provide RMS with Security, in the form of one or more Bank Guarantees, with a total face value equivalent to \$15 million.

2.2 Claims under Bank Guarantees

- (a) RMS may:
 - (i) call upon the Security where the Developer fails to comply with any obligation in this deed to provide the Moorebank Avenue Realignment; and
 - (ii) retain and apply monies obtained from the call upon the Security towards any costs and expenses incurred by RMS in:
 - (A) rectifying such failures; or
 - (B) taking whatever steps or actions that RMS considers are necessary to respond to the failure by the Developer.
- (b) For the purposes of this deed, any costs and expenses which another Authority incurs in rectifying a failure under this deed are taken to be costs and expenses incurred by RMS in rectifying such a failure.
- (c) Prior to calling upon the Security, RMS must give the Developer not less than 10 Business Days written notice of its intention to call upon the Security.
- (d) The Developer may, within 10 Business Days of the date of the notice in **clause 2.2(c)** of this **Schedule 4**, elect to pay to RMS an amount equivalent to the amount of RMS' proposed call upon the Security. If payment is made by the Developer within 5 Business Days of such an

election by the Developer, RMS shall no longer be entitled to call upon the Security to the extent of the amount that has been paid by the Developer.

2.3 Top-up of Security

If the RMS calls upon the Security in accordance with this **clause 2** of this **Schedule 4** then the Developer must immediately provide to RMS one or more replacement Bank Guarantees to ensure that, at all times until the relevant Bank Guarantee(s) is released in accordance with **clause 2.4** of this **Schedule 4**, RMS is in possession of one or more Bank Guarantees with a total face value equivalent to \$15 million.

2.4 Release of Security

If the Developer:

- (a) obtains all Approvals required for the Moorebank Avenue Realignment in accordance with **clause 3.2** of **Schedule 3** of this deed;
- (b) enters into a WAD with RMS in accordance with **clause 3.2** of **Schedule 3** of this deed;
- (c) pays RMS the Approved Security in accordance with the WAD; and
- (d) the Security has not been expended or applied by RMS in accordance with this deed,

then RMS will promptly return the amount of any Security held by RMS to the Developer and RMS will accept the Approved Security provided by the Developer under the WAD as security for the performance of the Developer's obligations under this deed to provide the Moorebank Avenue Realignment .

2.5 WAD security

- (a) If the Developer breaches any of its obligations under the WAD to increase or maintain the Approved Security:
 - (i) any such breach will constitute a breach of this deed; and
 - (ii) RMS may provide written notice to the Developer requesting that the Developer provide a Bank Guarantee to RMS for an amount determined by RMS, acting reasonably, that will rectify the Developer's breach of the WAD and ensure that sufficient security is available for the Moorebank Avenue Realignment.
- (b) Within 10 Business Days following receipt of a written notice pursuant to **clause 2.5** of this **Schedule 4**, the Developer must provide the Bank Guarantee to RMS.

3 Moorebank Avenue South Upgrade

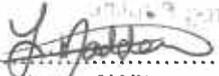
Where the Developer is required to provide the Moorebank Avenue South Upgrade in accordance with this deed, the parties agree:

- (a) that the terms of **clauses 1 and 2** of this **Schedule 4** will apply to the Moorebank Avenue South Upgrade, as if the Security had originally been provided by the Developer for the Moorebank Avenue South Upgrade and not the Moorebank Avenue Realignment;
- (b) RMS will be able to use the Security for the Moorebank Avenue South Upgrade in accordance with this **Schedule 4**; and
- (c) any references in **clauses 1 and 2** of this **Schedule 4**:
 - (i) to the “Moorebank Avenue Realignment” shall be taken to be a reference to the “Moorebank Avenue South Upgrade”; and
 - (ii) to “**clause 3.2 of Schedule 3**” shall be taken to be a reference to “**clause 4.2 of Schedule 3**”.

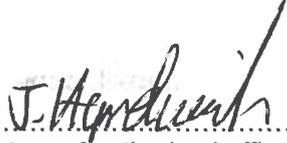
Execution

Executed as a deed.

EXECUTED by Roads and Maritime Services (ABN 76 236 371 088) by its duly authorised officer in the presence of:)
)
)


.....
Signature of Witness

Larissa Madden
.....
Name of Witness


.....
Signature of authorised officer

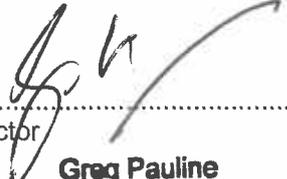
John Hardwick
.....
Name of authorised officer

Executive Director Sydney
.....
Position of authorised officer

Executed by Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782) in accordance with s 127(1) of the Corporations Act 2001 (Cth):)
)
)
)
)
)


.....
Company Secretary/Director
Adam Jacobs

.....
Name of Company Secretary/Director (print)


.....
Director
Greg Pauline

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Operations Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)



.....
Company Secretary/Director

Adam Jacobs

.....
Name of Company Secretary/Director
(print)

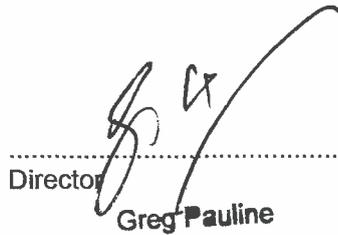
Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Warehouse Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)



.....
Company Secretary/Director

Adam Jacobs

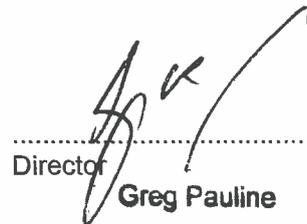
.....
Name of Company Secretary/Director
(print)



.....
Director

Greg Pauline

.....
Name of Director (print)



.....
Director

Greg Pauline

.....
Name of Director (print)

3467-8972-8006v22

816/2017/501/4

Annexure A

Novation Deed

Draft No []
[Date]

ROADS AND MARITIME SERVICES

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust

QUBE RE SERVICES (NO. 2) PTY LIMITED in its capacity as the trustee of the Moorebank Industrial Warehouse Trust

[Insert New Developer]

Deed of Novation for Planning Agreement

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Execution		8

Date

Parties

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**RMS**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Assets Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Assets Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Terminals Operations Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Terminal Operations Co**)

Qube RE Services (No 2) Pty Limited in its capacity as the trustee of the Moorebank Industrial Warehouse Trust (ACN 605 751 782) of Level 27, 45-53 Clarence Street, Sydney New South Wales, 2000 (**Warehouse Development Co**)

[Insert New Developer] ACN [insert] of [insert address] New South Wales (**New Developer**)

Background

- A RMS and the Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C The Developer has entered into the Dealing with the New Developer in relation to the Dealing Land.
 - D The Developer wishes to novate the Required Obligations, being its obligations under the Original Agreement which relate to the Dealing Land, to the New Developer.
-

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Dealing [Insert description of dealing relating to the Dealing Land e.g. the transfer of all or any part of the Developer's rights, interests and obligations to the New Developer].

Dealing Land	the whole or any part of Lot 2 in Deposited Plan 1197707, including any subdivided, newly created or consolidated lot(s) forming part of that original title.
Developer	has the meaning given to that term in the Original Agreement.
Effective Date	[Insert date on which this deed becomes effective]
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Land	has the meaning given to that term in the Original Agreement.
Original Agreement	the planning agreement dated [insert] between RMS and the Developer.
Required Obligations	The Developer's obligations under the Original Agreement which relate to the Dealing Land, being: [itemise as required, including substitution of Bank Guarantees prior to/simultaneously with existing Bank Guarantees, registration of Original Agreement, provision of Development Contributions etc]

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Developer as a party to the Original Agreement;
- (a) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a Party to the Original Agreement instead of the Developer;
- (b) the New Developer will be required to perform the Required Obligations in accordance with the Original Agreement; and
- (c) the Developer is released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations arising under the Original Agreement.

2.2 Liability before Effective Date

Notwithstanding **clause 2.1**, the Developer is not released, relieved or discharge from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Developer

occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) insofar as the Original Agreement relates to the Required Obligations.

2.3 Address for notices

RMS must address all notices and communications to be given or made by RMS and which relate to the Required Obligations, to the New Developer under the Original Agreement to the following address:

New Developer:

Attention: [Insert name and title]

Address: [Insert address]

Email: [Insert email]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this document, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Original Agreement will continue in full force and effect.

4 Warranties and representations

4.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

4.2 Survival of warranties

The warranties and representations in **clause 4.1** survive the execution of this document and the novation of the Original Agreement.

5 GST

5.1 Construction

In this **clause 5**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

5.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

5.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

5.4 Timing of GST payment

The amount referred to in **clause 5.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

5.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 5.3**.

5.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 5.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

5.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 5.7** does not limit the application of **clause 5.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 5.7(a)**.

5.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

5.9 No merger

This **clause 5** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

6 Stamp duty and costs

- (a) The New Developer will pay all stamp duty arising directly or indirectly from this document.
- (b) The Developer and the New Developer are jointly and severally liable for RMS' costs, including legal costs and disbursements, incidental to the negotiation, preparation and execution of this document and must reimburse RMS for such costs promptly on demand.

7 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

8 Entire agreement

This document constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

9 Amendment

This document may only be varied or replaced by a document executed by the parties.

10 Waiver

A right created by this document cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12 Relationship of parties

Unless otherwise stated:

- (a) nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those

courts and waives any right to object to any proceedings being brought in those courts.

14 No fetter

Nothing in this document shall be construed as requiring RMS to do anything that would cause RMS to breach any of RMS' obligations at law and, without limitation, nothing in this document shall be construed as limiting or fettering in any way the discretion of RMS in exercising any of RMS' statutory functions, powers, authorities or duties.

15 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

16 General

16.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) Capitalised terms not defined in this document have the meanings given to them in the Original Agreement.

16.2 Headings

Headings do not affect the interpretation of this document.

16.3 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each party.

Execution

Executed as a deed.

**EXECUTED by Roads and Maritime)
Services (ABN 76 236 371 088) by its)
duly authorised officer in the presence of:)**

.....
Signature of Witness

.....
Name of Witness

.....
Signature of authorised officer

.....
Name of authorised officer

.....
Position of authorised officer

**Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Assets Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)**

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
Director

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Operations Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by Qube RE Services (No 2))
Pty Limited in its capacity as the trustee)
of the Moorebank Industrial Terminals)
Warehouse Trust (ACN 605 751 782) in)
accordance with s 127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

New Developer

EXECUTED by [Insert company name)
and ABN]:)
)

.....
Company Secretary/Director

.....
Director

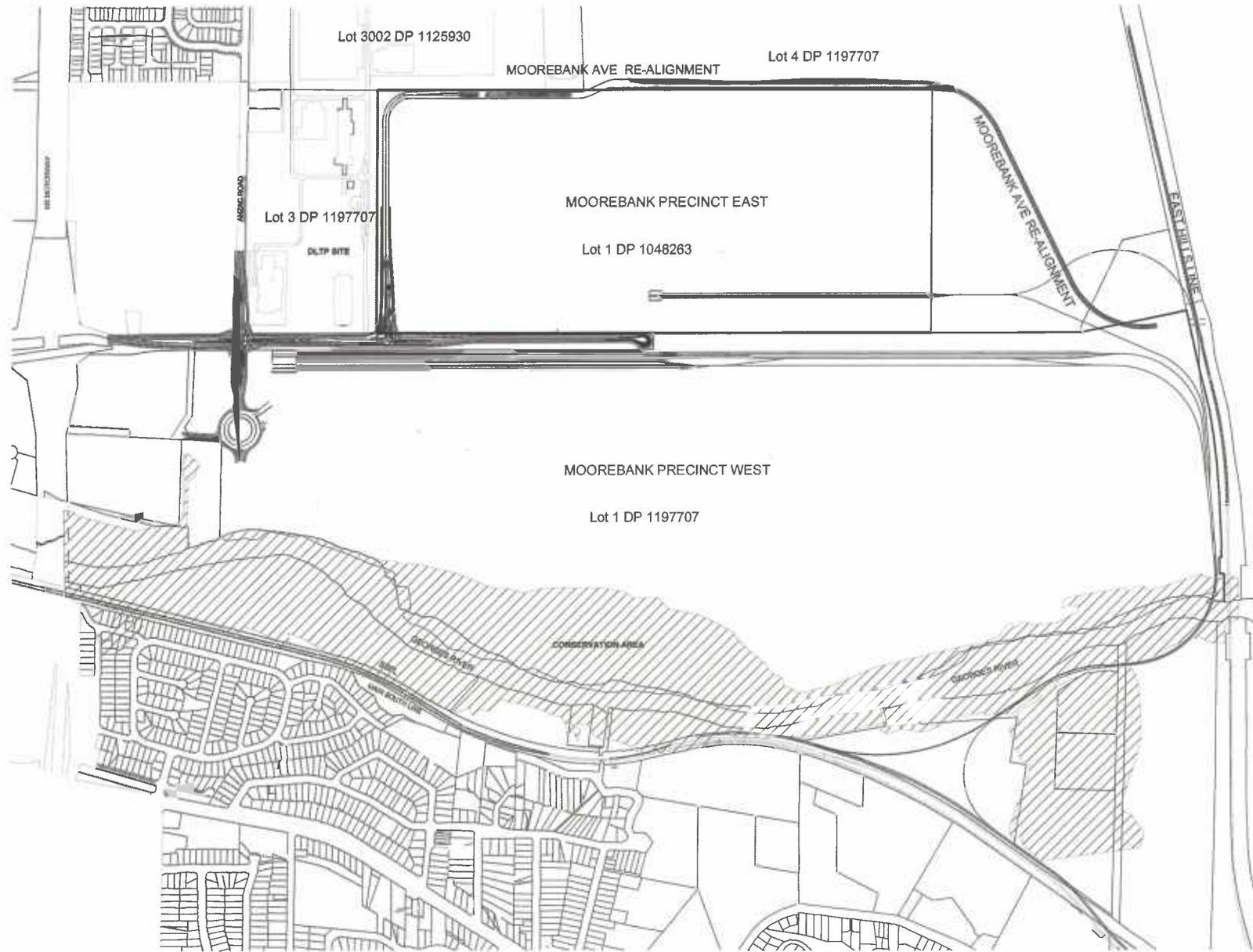
.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Annexure B

Moorebank Avenue Realignment Plan

REVISION SCHEDULE		
Issue	Description	Date
A	Draft Issue	28/10/2018
B	Draft Issue	28/11/2018



CLIENT



PROJECT MANAGER



REIDCAMPBELL

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DRAWING NAME
MOOREBANK AVE REALIGNMENT

DATE 28/11/2018	SCALE 1:5000 @ A1	ISSUE B	NORTH
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