

4 September 2025

2200216

Ms Joanna Bakopanos
A/Director – Industry Assessments
Department of Planning & Environment
12 Darcy Street
PARRAMATTA NSW 2150

Dear Joanna,

SSD 10412 – Breen Resource Recovery Facility, Captain Cook Drive, Kurnell MODIFICATION 1 – Modification Application

This letter is submitted to the Department of Planning, Housing & Infrastructure (DPHI) on behalf of Breen Resources for a proposed modification of the consent to SSD 10412, being a State Significant Development (SSD) consent for the Breen Resource Recovery Facility at Captain Cook Drive, Kurnell.

The proposed modification seeks to make refinements to facilitate the staged transition of the facility and to ensure consistency between the development consent and the Planning Agreement between Sutherland Shire Council and Breen Resources Pty Ltd. It is highlighted that the proposed modification only seeks amendments to the conditions of the development consent. The approved project description is not proposed to be amended and no approved development plans are proposed to be amended.

1.0 Background

1.1 Approved Development

The Breen Resource Recovery Facility was originally approved on 13 November 2024 by the Acting Executive Director of Energy, Resources and Industry of DPHI, under delegation from the Minister for Planning. The original SSD consent approved the following development:

- Construction and operation of a resource recovery facility (RRF) to process up to 650,000 tonnes per annum (tpa) of waste including the expansion of an existing active landfill (on Lot 5 DP1158627) with a maximum disposal rate of 90,000 tpa (see **Figure 1**).
- Construction of the Marang Parklands that are to be transferred to Council under a Voluntary Planning Agreement (see **Figure 2**).

The SSD consent has not yet been physically commenced. The SSD consent has not previously been modified.

1.2 Current Operational Activities

Historical and current ongoing operational activities at the site continue to be carried out under development consent to DA/269/90, which was issued by Sutherland Shire Council (Council) on 6 September 1990. DA/269/90 is for the establishment of a depot to receive excavated materials and selected demolition materials (including bricks, tiles and concrete spall), and for the restoration of the land by

application of the materials to the land. The 'depot' and land restoration activities together comprise the Existing Breen Resources Facility. Existing Breen Resources Facility activities can be seen in the aerial photograph at **Figure 4** below.

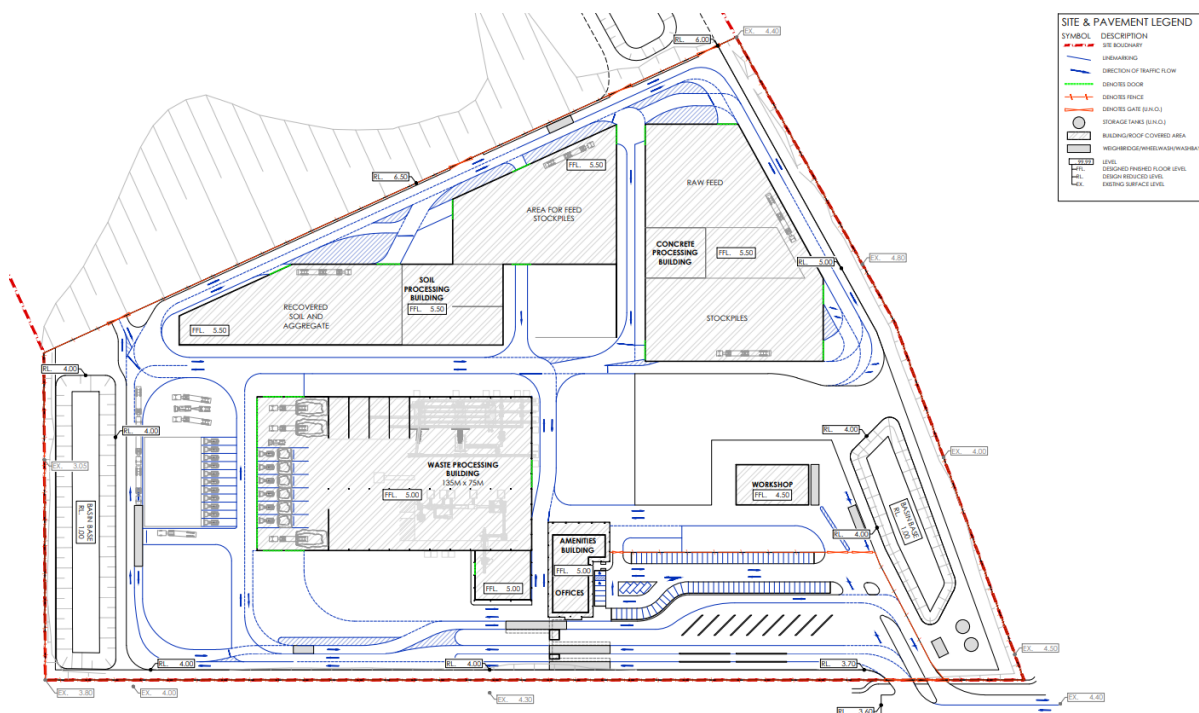


Figure 1 Site Layout Plan for RRF

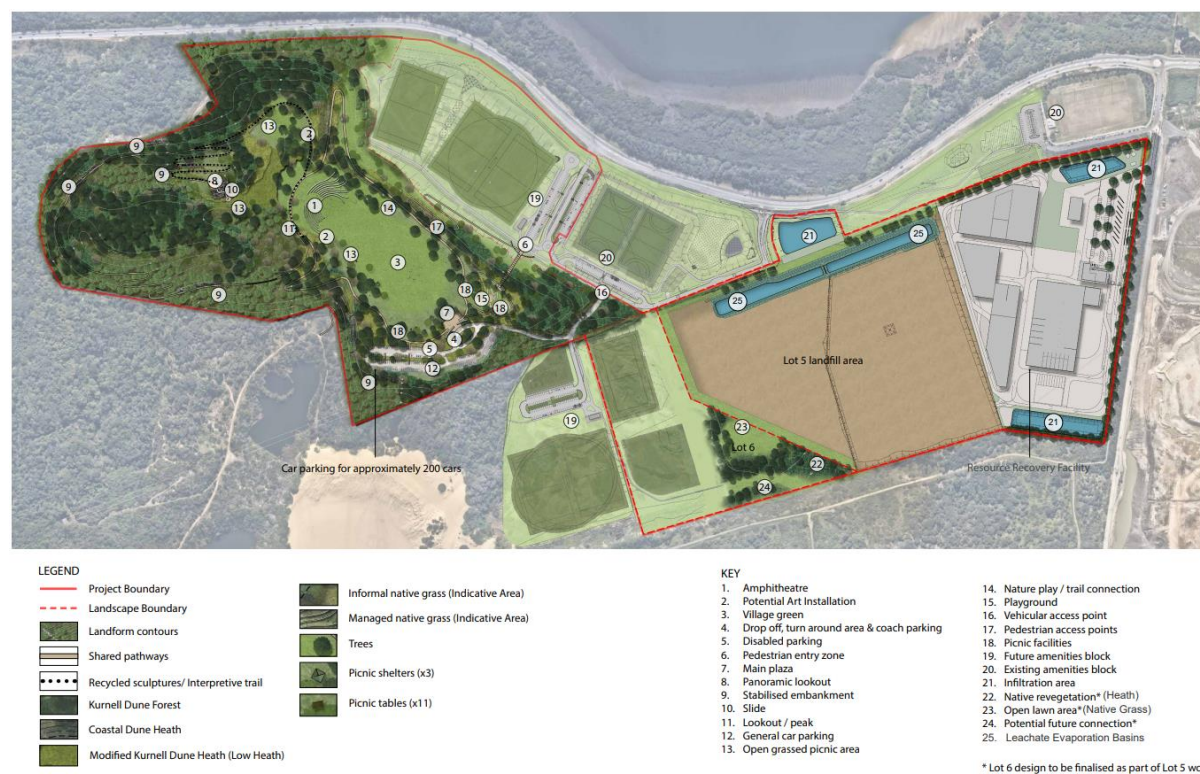


Figure 2 Site Layout Plan for Marang Parklands and Landfill Area

2.0 Site Analysis

The Site is located within the Local Government Area of the Sutherland Shire, and is approximately 10 kilometres south of the Sydney Kingsford Smith Airport. The Site's locational context is shown at **Figure 3**. Situated on the Kurnell Peninsula, the Site is positioned between Quibray Bay (within Botany Bay) to the north and Bate Bay (being Cronulla and Wanda beaches) to the south. A context plan showing the local context and existing condition of the Site is shown at **Figure 4**.

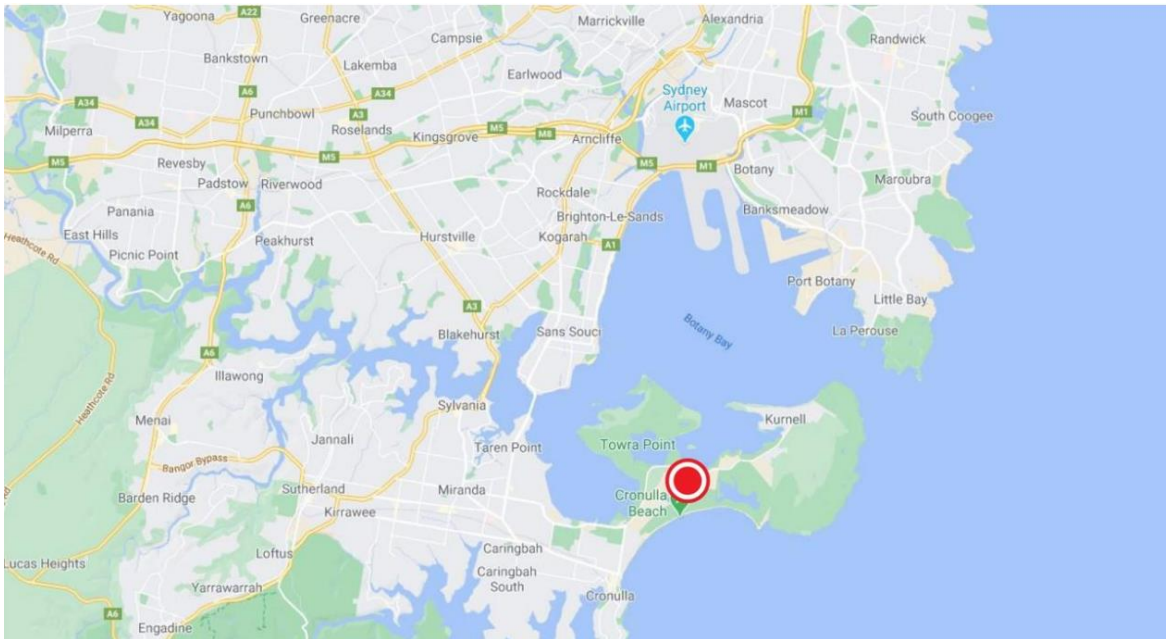


Figure 3 Site Location and Context Plan



Figure 4 Aerial Photograph of the Site

3.0 Description of the Proposed Modifications

The proposed modification only seeks amendments to the conditions of the development consent. The approved project description is not proposed to be amended and no approved development plans are proposed to be amended.

The proposed modification seeks to:

- Extend the period that Breen can continue to use existing infrastructure from 1 year to 3 years from the commencement of operation of SSD-104121.
- Extend the period that Breen can continue carry out current activities from 1 year to 3 years from the commencement of operation of SSD-104121.
- Clarify that a cement stabilised road base hardstand is a suitable hardstand finish, and specify that dust should be minimised.
- Specify that landfill capping will be carried out in accordance with a Progressive Site Capping Plan set out at Appendix U of the EIS (prepared by Consulting Earth Sciences, dated 28 October 2020).

3.1 Proposed Amendments to Conditions

The proposed modifications are as listed below. Words proposed to be deleted are shown in **~~bold-strike~~** through and words to be inserted are shown in ***bold italics***.

- Amend Conditions A19 and A20 to provide certainty to Breen that the interim continuation of activities and infrastructure can continue for 3 years from the commencement of operation of SSD-104121. Suggested amendments to the consent as follows:

- A19. Within ~~12 months~~ ***3 years*** of commencement of operation of any part of the development, or within another timeframe agreed by the Planning Secretary, the Applicant must surrender the existing Sutherland Shire Council development consent for the existing Breen waste facility (DA/269/90) in accordance with the EP&A Regulation.
- A20. Within ~~12 months~~ ***3 years*** of commencement of operation of any part of the development, or within another timeframe agreed by the Planning Secretary, the Applicant must remove all buildings, weighbridges and ancillary infrastructure associated with the waste facility approved under Sutherland Shire development consent DA/269/90.

Reason for Proposed Amendments

It is critical to Breen's commercial viability, and therefore Breen's capacity to finance and deliver the project, that the project is delivered in a way that has no disruption to Breen's operational capacity, or its ability to service its customers, at any time. This is the main driver for Breen's approach to staging, and mostly relates to staging the delivery of waste processing buildings (which were an added complication during the assessment phase by the EPA).

Breen's intention is to construct the new access, weighbridge, and main waste processing building at the RRF as quickly as possible. This would enable the initial commencement of the consent from an operational perspective within approximately 18 months from the commencement of construction.

However, under this arrangement the processing of concrete and soils would not be able to commence at the same time under SSD-10412. The Soil Processing and Concrete Processing buildings would be constructed subsequently, (i.e. after the commencement of operations under SSD-10412), but will need to be constructed in a way that does not affect the operational activities – which will add time to complete.

Flexibility is therefore required to manage the transition of activities to the new RRF with minimal disruption to business activities, and accelerate the delivery of the parkland development. To ensure that the business can continue to provide waste processing services to its customers, without interruption, and to allow the staged commencement of capping and parkland works, it is requested that the surrender date be extended to allow the early commissioning of the new RRF, while part of the existing operation can continue (albeit on an increasingly smaller footprint).

In particular, the approved soil or concrete processing buildings may not be complete and ready for occupation within 12 months of the waste processing building being commissioned. These activities would need to continue occurring under DA/269/90 for more than 1 year after initial operation commences at the RRF. Breen is confident that it can probably commence operations of the Soil Processing and Concrete Processing buildings within 2 years of their commencement, but is seeking to 3 years to account for construction risks in relation to timing uncertainty.

- Amend Conditions A14 and A15 to align certain public infrastructure delivery timeframes with the Planning Agreement between Breen and Council. Suggested amendments to the consent as follows:

A14. The Marang Parklands including the panoramic lookout as detailed in Condition D1, must be completed and dedicated to Council **~~no later than 31 May 2026~~ in accordance with the timeframe defined by the Planning Agreement** or as otherwise agreed with the Planning Secretary.

A15. Lot 6 must be connected to the State Park walking trail to the south to provide direct access for users of the trail no later than **~~the date the Marang Parklands, including the panoramic lookout as detailed in Condition D1, is completed and dedicated to Council 31 May 2026~~**, or as otherwise agreed with the Planning Secretary. The access must remain open to the public during all operational hours.

Reason for Proposed Amendments

The commencement of the development has been subject of delays on multiple fronts – partly as a result of Breen’s ability to have confidence in the environmental standards that will apply to the development, but also due to approved construction related delays, as defined by the Planning Agreement.

The existing date included in the consent is not able to be achieved, and the Planning Agreement provides for these milestones to be extended due to a defined group of delays that include inclement weather and approval delays. It is more efficient to refer to the Planning Agreement rather than create a secondary oversight role for the Planning Secretary.

- Amend Condition B45 to clarify that the nature of hardstand finish and the performance objectives in relation to dust emission. Suggested amendments to the consent as follows:

B45. All operational areas of the RRF site must be ~~sealed~~ hardstand to ~~prevent or~~ minimise dust emissions from the site.

Reason for Proposed Amendments

It is unreasonable to expect that dust emissions will be entirely prevented, and the word ‘prevent’ therefore creates an unrealistic expectation. Removing the word ‘prevent’ ensures that the focus of dust management is to minimise emissions from the site. This is consistent with standard wording in Environment Protection Licences, which state that: “operations and activities occurring at the premises must be carried out in a manner that will minimise the emission of dust from the premises.”

The reference to ‘sealed’ hardstand is potentially confusing as it can be interpreted in different ways. In particular, a ‘sealed’ hardstand can imply an asphalt finish – which is not suitable surface for areas used intensively by heavy vehicles, as is proposed. A cement stabilised road base hardstand is a stronger, more durable, and longer-lasting surface for heavy vehicles – and providing some scope for Breen to arrive at a fit-for-purpose solution that meets EPA conditions is requested.

The wording in the consent therefore presents some uncertainty in relation to the finish of the surface, which we are seeking to remove. The proposed amendment provides more specific wording about the type of sealing to be achieved, and ensures that the condition is not interpreted as requiring asphalt or full concrete finish.

- Amend the Applicant’s Management and Mitigation Measures Table in Appendix 2 of the development consent to provide additional certainty to Breen in relation to the approved version of the Progressive Site Capping Plan. Suggested amendments to the consent, as follows:

Impact	Environmental Safeguard	Responsibility	Timing
Validation of the landfill capping system	Capping of the landfilled waste will be carried out in accordance with a Progressive Site Capping Plan approved by the NSW EPA under the EPL set out at Appendix U of the EIS (prepared by Consulting Earth Sciences, dated 28 October 2020).	Breen	Pre-construction
Reduce the amount of leachate generated	Progressive construction of the final capping for the Former Landfill Areas in accordance with a Progressive Site Capping Plan approved by the NSW EPA under the EPL set out at Appendix U of the EIS (prepared by Consulting Earth Sciences, dated 28 October 2020).	Breen	Pre-construction

Reason for Proposed Amendments

Uncertainty over the capping plan requirements that could be applied in the future by the EPA (i.e. after the project has commenced but before the EPL has been varied) is affecting feasibility and Breen’s ability to move forward for confidence. Breen needs to secure a final agreement on the capping plan (including by the EPA) to ensure the project can progress with certainty.

4.0 Statutory Planning Framework

4.1 Statutory Planning Framework

The Modification would be submitted pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to the Minister for Planning as the consent authority responsible for modifying approved SSD development.

Section 4.55 of the EP&A Act states that a consent authority may modify a development consent if “*it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*”.

The development as proposed to be modified is substantially the same development as the development for which consent was granted for the following reasons:

- The proposed modifications do not alter the approved development description.
- The proposed modifications do not seek to amend the approved land use – as a resource recovery facility. With an associated landfill and parklands.
- The proposed modifications would result in no change to the approved total GFA.
- The proposed modifications would not increase the processing and handling capacity of the RRF or the or disposal capacity of the landfill.
- The proposed modifications would result in no changes to staffing or traffic.
- The proposed modification would not result in no alteration in the appearance of the RRF.
- The proposed modifications would only result in more certainty for Breen in relation to ensuring consistency between the approved development, the conditions of consent, and the terms of the Planning Agreement.

For these reasons, the Department can be satisfied that the modified development would be substantially the same development as the development for which the consent to SSD 10412 was originally granted.

Section 4.55(1A) of the EP&A Act also states that a consent authority may modify a development consent if “*it is satisfied that the proposed modification is of minimal environmental impact*”.

An environmental assessment has been carried out in section 5.0 of this Modification Report letter. The environmental assessment demonstrates that the proposed modification will not result in any additional significant environmental impacts beyond those already considered by the Department as part of the assessment of SSD 10412. As such, the proposed modification will be of minimal environmental impact, and it requested that the Modification Application be progressed under Section 4.55(1A) of the EP&A Act.

4.2 Strategic Context

The strategic context for the site generally has not changed, however there are two relevant changes in the strategic context for the site:

- A Planning Proposal has been lodged by Besmaw Pty Ltd for land immediately to the east of the RRF site. The Besmaw Planning Proposal takes the Breen RRF into account by establishing a 100m landscaped setback along the western boundary of the Planning Proposal site where it fronts the Breen RRF site.
- The NSW Government has released a draft Waste and Circular Infrastructure Plan, which identifies that without intervention, waste collection and disposal services could be severely impacted by 2030, forcing councils to transport rubbish to regional areas or interstate. The Waste and Circular Infrastructure Plan emphasises the critical importance of delivering increased resources recovery capacity and increased landfill capacity to avoid significant costs to the NSW economy. The development approved SSD 10412 would contribute to ameliorating the forecast shortfall.

5.0 Environmental Assessment

This section of the report assesses and responds to the environmental impacts of the proposed modifications to SSD 10412.

It is highlight that the proposed modification only seeks amendments to the conditions of the development consent. The approved project description is not proposed to be amended and no approved development plans are proposed to be amended.

The Table below sets out an assessment of environmental and planning issues in accordance with DPHI's State Significant Development Guidelines – Preparing a Modification Report (July 2021).

Issue	Assessment
Waste Management	The original EIS provided a details description of the construction and operational staging complexities associated with the development approved under SSD 10412. In particular, Breen set out a detailed staging and sequencing plan and sought the staged surrender and consolidation of DA/269/90, ensuring that all activities associated with ongoing operations will ultimately be captured under the SSD. It is critical for Breen to be able to manage this transition with minimal impact to continuing waste management activities. Since receiving development consent, Breen has progressed detailed design and construction planning, which indicates that the conditioned 1-year timeframe for transitioning to the new RRF is now unrealistic. Breen therefore requests that the consent enable this transition to occur over a longer period, and seeks certainty over this transition prior to commencing the development.
Visual Impacts	The proposed modification does not introduce any new structures and will not change the visual amenity or landscape of the ultimate development. Breen seeks to ensure that the delivery timeframes set out in the conditions of the development consent are consistent with the Planning Agreement, to avoid compliance related issues during construction and implementation, and to provide certainty for Breen in this regard. The Planning agreement includes a mechanism to modify the timing of practical completion of the Embellished Marang Parklands, and the Completion of the Breen Compaction Works and Breen Works as they relate to Stage 2 and Stage 3 of the Playing fields. This mechanism allows Breen to adjust the estimated dates for practical completion for Construction Related Delays (including but not limited to inclement weather, approval or regulatory delays). Breen remains committed to delivering the Marang Parklands (and associated lookouts) as quickly as possible, but the proposed modification reflects the fact that there are matters outside of Breen's control that can affect the timing of delivery.
Dust / Air Quality	Whilst the proposed amendment of Condition B45 will refine the specified controls for managing dust emissions, it is highlighted the Breen still proposes to provide a hardstand surface for operational areas of the RRF consistent with the intent of the condition. The cement stabilised road base hardstand is an appropriate solution for a strong, durable, and long-lasting surface for heavy vehicles. It is not a loose surface, and has no adverse implications in relation to dust emissions. The purpose of the modification is to provide certainty to Breen that the provision of a cement stabilised road base hardstand sufficiently complies with this condition.
Stormwater	No change to the approved stormwater management plans is propsoed as part of the modification. The cement stabilised road base hardstand now sought under the proposed Condition B45 is a strong, durable, and long-lasting surface for heavy vehicles. It is not a loose surface, and has no adverse implications in relation to stormwater management as it will not alter the quantity or quality of stormwater managed at the RRF.

Issue	Assessment
Noise	No changes to the approved noise management plans are proposed as part of the modification. All construction works and operational activities carried out under SSD 10412 will continue to be subject to the approved hours of work for construction, operational noise limits, and management plans specified under Conditions B51-B54. No change in noise impacts will likely occur as a result of this modification.
Contamination	Contamination investigations were undertaken in support of SSD 10412, which identified that the site of the RRF is suitable for use as an RRF in its current state and remediation is not required. No changes are proposed to the Marang Parklands or Lot 5 Landfill area. No further contamination investigations are required.
Groundwater	The proposed modification will not change the nature or extent of works, and only relates to timing. As such, the proposed modification will not alter the groundwater impacts of the approved development.
Traffic	The proposed modification will not change the processing capacity of the RRF or the number of vehicles visiting the facility (either staff or customers). As such, further traffic impact assessment is not required.
Infrastructure, Utilities and Services	Provision of utilities, services and infrastructure have been approved pursuant to the consent to SSD 10412. No changes to the provision of infrastructure, utilities and services to the site is proposed. No additional demand on utilities, services and infrastructure is expected as the RRF is still proposed to contain the same staffing levels and processing capacity.
Economic Impact	The economic impacts of the proposal will not be different to those anticipated by the assessment undertaken for SSD 10412, as the RRF is still proposed to contain the same staffing levels and processing capacity.
Flooding	The EIS demonstrated that the site was mostly located outside of the 100 year Annual Recurrence Interval (ARI) flood level, and that peak flood levels on Lindum Road and Captain Cook Drive would be reduced due to on-site containment and management of stormwater. These assessment outcomes would not change.
Heritage	The development footprint and extent of works will not change. No further assessment of heritage is proposed for the modification application.
Hazards and Risk	The original development was not classified as “potentially hazardous development” or “potentially offensive development” under SEPP 33 (now R&H SEPP). No changes to land use are proposed as part of the Modification Application, and the proposal does not seek to introduce the storage of additional hazardous materials or dangerous goods. As such, no further assessment of hazards and risks are proposed.
Biodiversity	The development footprint and extent of works will not change. Pursuant to Section 7.17(c) of the BC Act it is requested that the Department form the opinion that the proposed modification will not increase the impact on biodiversity values and agree that a biodiversity development assessment report is not required.
Bushfire	The scale of development, the processing capacity, and the nature of waste management activities will not change. There will be no increase in population including staff or customers. Existing bushfire controls remain sufficient.

6.0 Consultation and Engagement

Breen has been progressing pre-construction requirements with particular focus on utilities and servicing needs. In addition, Breen has been consulting constantly with Sutherland Shire Council in relation to the commencement of the consent and the completion of obligations under the Planning Agreement. Breen have also been extensively engaging with the NSW EPA making applications to obtain the necessary approvals to allow the commencement of the proposed capping works as part of SSD 10412.

In particular, Breen have undertaken extensive consultation and discussions with the EPA, and the required EPA accredited site auditor in relation to the suitability of the stockpiled material for use within the capping profile. Neither the EPA nor the site auditor have raised any objections to the use of these materials. However, the EPA and the site auditor are in the process of assessing further information that has been requested before confirming its suitability.

It is highlighted that the intent of the Modification Application is to ensure consistency between the development consent and the Planning Agreement, and to provide Breen the certainty and flexibility required to manage the staged transition of the site to SSD 10412 in the most efficient and effective way.

7.0 Conclusion

This Modification Report letter has been prepared to provide an assessment of a modification to the SSD 10412 consent for the Breen RRF. The Modification Report letter demonstrates that the proposed modification represents a minor change to the approved development in keeping with the vision for the site, and therefore a modification under Section 4.55(1A) of the EP&A Act is appropriate.

Yours sincerely,

A handwritten signature in blue ink that reads "T. Ward".

Tim Ward

Director

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