

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development modification
Application number and project name	SSD-7308-Mod-1 - St Marys Intermodal Modification 1
Applicant	Pacific National Pty Limited
Consent Authority	Minister for Planning and Public Spaces

Decision

The Director, Social and Infrastructure Assessments, under delegation from the Minister for Planning and Public Spaces has, under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (**the Act**) modified the consent subject to the recommended conditions.

A copy of the instrument of modification and conditions is available at [here](#).

A copy of the Department of Planning, Industry & Environment's (the Department's) assessment report is available [here](#).

Date of decision

29 January 2021.

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act, including the objects of the Act, and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the reasons given by the consent authority for the grant of the original consent;
- the considerations under s 7.14(2), 7.16(3) and 7.17(2) of the Biodiversity Conservation Act 2016 (NSW);
- all information submitted with the modification application during the assessment and information considered in the Department's Assessment Report;
- the findings and recommendations in the Department's Assessment Report;
- the submissions made concerning the modification; and
- the views of the community about the project (see **Attachment 1**).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision

The decision maker was satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted was modified.

The key reasons for granting the modification are as follows:

- the modification would provide a range of benefits for the region and the State as a whole, including the provision of new railway sidings to support the St Marys Intermodal development, \$5,500,000 capital investment, and up to 15-20 jobs during construction
- the modification is permissible with consent, and is consistent with NSW Government policies including:
 - *A Metropolis of Three Cities – The Greater Sydney Plan*
 - *Western District Plan*
 - *Future Transport Strategy 2056*
 - *State Infrastructure Strategy 2018-2038*
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards as identified in the Department's Assessment Report
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the recommended conditions of consent
- weighing all relevant considerations, the modification is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the modification from 22 October 2020 until 4 November 2020 (14 days) and received twelve submissions, including one public submission in objection.

The Department also undertook a site inspection on 4 November 2020.

The key issues raised by the community and Council (including in submissions) and considered in the Department's Assessment Report and by the decision maker include construction and operational noise impacts, flooding, stormwater, permissibility and zoning, and biodiversity impacts. Other issues are addressed in detail in the Department's Assessment Report.

The table below includes a summary of how key issues raised by the community were taken into consideration.

Issue	Consideration
<i>Construction and operational noise impacts</i> • construction noise impacts during the rail refurbishment works. • operational noise impacts and increased noise and activity at proposed level crossings, including increased train horn use.	<i>Assessment</i> • The Department notes that the Applicant must comply with the recommended standard construction work hours outlined in the <i>Interim Construction Noise Guideline (ICNG)</i>. • The Department considers that implementation of best practice mitigation measures set out in the approved Construction Noise and Vibration Management Plan for the development would substantially mitigate noise impacts at the closest sensitive receivers during construction. • The Applicant advised that there is no increase in train activity as a result of the proposed upgraded level crossings, and that train horns would only be used in case of an emergency and not during normal operation. • The Department considers rail noise generated from operation of the rail refurbishment works area can be effectively managed through the implementation of detailed mitigation measures including: ○ use of track lubrication and wagon steering to minimise curve squeal ○ use of electronically controlled pneumatic braking systems ○ detailed noise monitoring and reporting requirements ○ construction and implementation of a 3 metre high noise barrier on the southern side of the Main Western Rail Line. <i>Conditions</i> • To manage construction noise impacts, the Department has recommended a condition requiring the Applicant to update the Construction Noise and Vibration Management Plan for the development, to include any changes required to address the amendments to the development. • To manage compliance with operational rail noise impacts, the Department has recommended updates to condition B26 and E10 of the development consent to reference any updated noise assessments prepared for the rail sidings.
<i>Flooding</i> • recommendation that a flood safety assessment is to be undertaken for the section of access track that traverses Little Creek. • recommendation that further investigation be undertaken and modelled, to ensure that the rail corridor works do not increase flood levels on adjoining properties.	<i>Assessment</i> • As part of the Response to Submissions (RtS), the Applicant advised that the low point in the proposed access track is subject to high hazard flooding conditions during the 1% Annual Exceedance Probability (AEP) event, during both existing and post-developed flow scenarios. • The Applicant advised that a site-specific Flood Management Plan would be implemented during operation of the development and would be maintained by the operator of the site. • The Applicant also provided updated flood modelling as part of the modification application, indicating that there is no predicted increase in flood levels as a result of the rail refurbishment works and that the works would lead to an improvement in local flood conditions. • The Department considers that construction and operation of the proposed one-way access track is necessary to facilitate the efficient and safe operation of the rail sidings and intermodal terminal and can be actively managed through the recommended conditions of consent. Further, it is considered that the rail refurbishment works would not lead to an increase in flood levels. <i>Conditions</i> • In regard to flood safe access, the Department has recommended a condition that prior to the commencement of operation, a flood safety assessment shall be undertaken for the section of the existing access track that traverses Little Creek, and included as part of the Operational Environmental Management Plan for the development. • Further, the Department has recommended a condition that prior to the commencement of operation, further investigation shall be undertaken and modelled, and mitigation works undertaken (if required) to ensure that the rail corridor works at the north-eastern end of the development do not increase

	flood levels on adjoining properties to the east.
Stormwater increased stormwater volumes and run off created by the development	Assessment - The Applicant prepared a Stormwater Management Plan, to assess water quality and quantity impacts during construction and operation of the rail refurbishment works area. The Applicant's proposed stormwater quality design incorporates six drainage swales and use of an existing sediment basin, which would be fitted with spill capture basins. - The Applicant has committed to implement a range of erosion and sediment control measures to prevent adverse impacts on local waterways during construction, in accordance with the Construction Soil and Water Management Plan (CSWMP) approved for the development. Measures include, installation of catch drains (diversion channels) with check dams, inlet and outlet protection, erosion matting and geotextiles. Conditions - To manage erosion and sediment impacts during construction of the rail refurbishment works, the Department has recommended a condition requiring the Applicant to update the Construction Soil and Water Management Plan for the development, to include any changes required to address the amendments to the development.
Permissibility and zoning - construction and operation of permanent stormwater infrastructure is located on RE1 zoned land. - temporary construction compound area is located on RE1 zoned land.	Assessment - The Department considered the appropriateness of the proposed permanent stormwater infrastructure located within RE1 Public Recreation land. The Department is satisfied that suitable provisions exist under State Environmental Planning Policy (SEPP) (Infrastructure) 2007, to allow development for the purpose of stormwater management systems to be carried out by any person with consent on any land. - Further, the Department also considered the appropriateness of establishment and use of the temporary construction compound on RE1 zoned land. The Department notes that: - the compound site (inclusive of lot 2031 DP 815293) is owned by Pacific National - the site is not used for public recreation purposes and is not identified for acquisition purposes. There is no known future role for public recreation purposes - the lot has been historically used for industrial purposes - the boundary of the site is fenced to prevent public access and avoid people accessing the operational rail sidings within the site - the construction compound is temporary and would be in use for six months in total. The Department considers that use of the temporary construction compound is an integral component to the efficient and coordinated construction of the rail refurbishment works area. Conditions - To manage use of the proposed temporary construction compound on RE1 zoned land, the Department recommends a condition that the temporary construction compound area is permitted for a period of up to six months following establishment of the compound.
Biodiversity impacts - clearing of additional 2,000m² of native vegetation that requires offsetting. - requested if the sediment basin to the west of the rail refurbishment area has been subject to flora and fauna assessment. - recommendation that the Vegetation Management Plan for the development be expanded to include the proposed works in Lot 2031 DP 815293.	Assessment - The Department, in consultation with EES Group, is satisfied that the proposal's biodiversity impacts have been assessed in accordance with the Biodiversity Assessment Method (BAM) and the <i>Biodiversity Conservation Act 2016</i> (BC Act), including the calculation of a requirement for biodiversity offsets. The Department considers that the Applicant's revised Biodiversity Development Assessment Report outlines an acceptable process of avoiding and minimising impacts, and proposes to manage and offset residual impacts in accordance with the policy requirements. - The Applicant has advised that there are no works proposed within the sediment basin to the west of the rail sidings, and therefore no flora and fauna assessment of that area has been undertaken. - The Applicant considered that rehabilitation of the construction compound area and revision of the Vegetation Management Plan is not currently feasible as: - site surveys of the construction compound area found that no biodiversity values exist on the compound site. The area is cleared and has no vegetation - the construction compound area is used for access and storage, and will continue to be used as such until the rail refurbishment works are complete - Lot 2031 DP 815293 may continue to be used for industrial activities in the future. Conditions - The Department has recommended conditions requiring that an additional 3 ecosystem and 6 species credits must be offset.