

Partial Development Consent

Section 4.38 of the Environmental Planning and Assessment Act 1979

The Independent Planning Commission (the Commission), as the declared consent authority under clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* and section 4.5 (a) of the *Environmental Planning and Assessment Act 1979*, approves the specified part or aspect of the development application referred to in Schedule 1 under section 4.16 (5) of the *Environmental Planning and Assessment Act 1979*, subject to the conditions in Schedule 2.

These conditions are required to:

- prevent, minimise, or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development

[Name of Commissioner]
Member of the Commission

[Name of Commissioner]
Member of the Commission

[Name of Commissioner]
Member of the Commission

Sydney

2018

File: EF18/34908

SCHEDULE 1

Application Number: SSD 7628
Applicant: SIMTA
Consent Authority: The Independent Planning Commission
Site: Lot 1 DP1048263
Part Lots 1, 2 and 4 DP 1197707
Moorebank Avenue
Development: Subdivision of the MPE site

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DEFINITIONS

Applicant	SIMTA, or any person carrying out any development to which this consent applies
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
CEMP	Construction Environmental Management Plan
Commission, the	Independent Planning Commission
Conditions of this consent	Conditions contained in Schedule 2 of this document
Construction	The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including bulk earthworks, and erection of buildings and other infrastructure permitted by this consent
Council	Liverpool City Council
Department	NSW Department of Planning and Environment
Development	The proposal for subdivision described in the EIS, Response to Submissions, <i>Subdivision Ancillary Report – Moorebank Precinct East Stage 2 (SSD 7628)</i> (Aspect Environmental, August 2018), <i>MPE Stage 2 Subdivision Application</i> (SIMTA, 12 December 2018), and <i>MPE Stage 2 SSD 7628 – Subdivision</i> (SIMTA, 19 December 2018), as modified by the conditions of this consent
EIS	The Environmental Impact Statement submitted with the development application, titled <i>Moorebank Precinct East - Stage 2 Proposal: Environmental Impact Statement</i> , prepared by Arcadis, dated December 2016
Environment	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance Note: “material harm” is defined in this consent
Land	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act
Material harm	Is harm that: <ul style="list-style-type: none"> a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)
Minister	NSW Minister for Planning (or delegate)
Mitigation	Activities associated with reducing the impacts of the development prior to or during those impacts occurring
Monitoring	Any monitoring required under this consent must be undertaken in accordance with section 9.40 of the EP&A Act
MPE Concept Plan Approval	Project Approval MP10_0193, granted by the then Planning Assessment Commission on 29 September 2014 (as modified)
MPE Site	The land inclusive of the totality of the site areas approved under SSD 7628 and SSD 5066, and generally shown in Appendix 2
MPE Stage 1 development consent	Development consent SSD 6766 (MPE Stage 1), granted by the Land and Environment Court per orders made on 13 March 2018 (as modified)
MPE Stage 2 development consent	Development consent SSD 7628 (MPE Stage 2), granted by the then Planning Assessment Commission on 31 January 2018 (as modified)
Night	The period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays

Non-compliance	An occurrence, set of circumstances or development that is a breach of this consent
OEMP	Operational Environmental Management Plan
Operation	Operation of the development (whether in full or in part) for its intended purpose, excluding the following activities carried out during construction: <ul style="list-style-type: none"> • commissioning trials of equipment; • temporary use of any part of the development; and • maintenance works
Planning Secretary	Planning Secretary under the EP&A Act, or nominee
Reasonable	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, costs of mitigation versus benefits provided, community views, and the nature and extent of potential improvements
Response to submissions	The Applicant's response to issues raised in submissions received in relation to the application for consent for the development under the EP&A Act
Subdivision Plan	The Plans of Subdivision described in <i>Plan of Proposed Interim Stage 1 Subdivision MPE [Plan Number SY073909.000 (Rev F)]</i> , and shown in Appendix 1

SCHEDULE 2

PART A ADMINISTRATIVE CONDITIONS

OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development, and any rehabilitation required under this consent.

TERMS OF CONSENT

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
 - (b) in accordance with all written directions of the Planning Secretary;
 - (c) in accordance with the EIS and Response to Submissions; and
 - (d) in accordance with *Subdivision Ancillary Report – Moorebank Precinct East Stage 2 (SSD 7628)* (Aspect Environmental, August 2018), *MPE Stage 2 Subdivision Application* (SIMTA, 12 December 2018), and *MPE Stage 2 SSD 7628 – Subdivision* (SIMTA, 19 December 2018), inclusive of the Subdivision Plan.
- A3. Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:
- (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and
 - (b) the implementation of any actions or measures contained in any such document referred to in condition A3(a).
- A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A2(c) or A2(d). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition A2(c) and A2(d), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

Note: For the purposes of this condition, there will be an inconsistency between documents if it is not possible to comply with both documents, or in the case of a condition of consent or direction of the Planning Secretary, and a document, if it is not possible to comply with both the condition or direction, and the document.

LIMITS OF CONSENT

- A5. This partial consent does not authorise the carrying out of any construction works.
- A6. This partial consent allows staging of subdivision provided that, prior to the issue of any subdivision certificate (including the first and any subsequent subdivision certificates), the Applicant provides a revised Subdivision Plan and supporting information to the Planning Secretary for approval that clearly identifies that relevant estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) for the proposed lot(s) have been completed.

The Applicant must not commence subdivision of the development until the revised Subdivision Plan and supporting information is approved by the Planning Secretary.

APPLICABILITY OF GUIDELINES

- A7. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.
- A8. However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

REPORTING AND AUDITING

Incident Notification, Reporting and Response

- A9. The Department must be notified in writing to compliance@planning.nsw.gov.au immediately after the Applicant becomes aware of an incident. The notification must identify the development (including the development application number and the name of the development if it has one), and set out the location and nature of the incident. Subsequent notification requirements must be given and reports submitted in accordance with the requirements set out in Appendix 3.

Non-Compliance Notification

- A10. The Department must be notified in writing to compliance@planning.nsw.gov.au within seven days after the Applicant becomes aware of any non-compliance.
- A11. A non-compliance notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.
- A12. A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

ADVISORY NOTES

- AN1.** All licences, permits, approvals and consents as required by law must be obtained and maintained as required for the development. No condition of this consent removes any obligation to obtain, renew or comply with such licences, permits, approvals and consents.

PART B SPECIFIC ENVIRONMENTAL CONDITIONS

SUBDIVISION CERTIFICATE

Requirements of *Environmental Planning and Assessment Act 1979* – Application for a Part 4A Certificate

- B1. In undertaking the subdivision approved under this consent, the Applicant must comply with the requirements of Part 4A of the *Environmental Planning and Assessment Act 1979* in relation to the issue of a Subdivision Certificate.

For the purposes of this approval, the issue of a Subdivision Certificate is restricted to the subdivision defined by Condition A2.

Subdivision Certificate

- B2. Before granting any Subdivision Certificate, the Certifying Authority must be satisfied that the Applicant has complied with all conditions of this consent that are required to be complied with and the relevant estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) have been completed.

Statement of Compliance – Completion in Accordance with a Project Approval/Development Consent

- B3. Prior to the issue of a Subdivision Certificate, a Statement of Compliance shall be provided to the Certifying Authority demonstrating that the proposed subdivision is consistent with relevant conditions of any relevant planning approval/development consent (to the extent that they are relevant and required for that stage), including but not limited to MPE Stage 1 development consent, MPE Stage 2 development consent, the conditions of this consent, and MPE Concept Plan approval.

EASEMENTS

- B4. The Applicant must create and display on the subdivision plan those particular easements as required, inclusive of the requirements of conditions B5-B9 of this consent. The easements must include those easements described for the whole of the MPE site in the 'Form of easement Instrument for subdivided lots of Lot 1 DP1048263' included in Appendix B of the Subdivision Ancillary Report – Moorebank Precinct East Stage 2 (SSD 7628) (Aspect Environmental, August 2018).
- B5. The drainage easements must be consistent with the final drainage details approved by the Planning Secretary in relation to conditions A22, A23 and A24 of the MPE Stage 2 development consent.
- B6. The access easements must be consistent with the final access details approved by the Planning Secretary in relation to condition A22 of the MPE Stage 2 development consent.
- B7. Survey of drainage works (including OSD, channels and pipes and pits) and access works confirming the location of the works required in relation to the final approved versions of the amended development layout plans and design plans, amended WSUD plans and amended architectural plans required conditions A22, A23 and A24 of the MPE Stage 2 development consent shall be undertaken prior to the registration of the plan of subdivision.
- B8. Prior to the issue of a Subdivision Certificate, the Applicant must provide to the Certifying Authority and the Planning Secretary evidence from an independent subdivision engineer that the drainage and access easements are consistent with the final approved versions of the amended development layout plans and design plans, amended WSUD plans and amended architectural plans required conditions A22, A23 and A24 of the MPE Stage 2 development consent.
- B9. A section 88B instrument shall be placed on each lot requiring that the development of the lot shall be in accordance with the MPE Stage 1 development consent, MPE Stage 2 development consent and the conditions of this consent.
- B10. As part of the Subdivision certification process and prior to lodgement of the Subdivision Plan at the NSW Land Registry Services (LRS), the Applicant must prepare a section 88B instrument as a component of the Subdivision Plan for the creation of all relevant easements, restrictions and covenants. The Subdivision plan shall provide to the Certifying Authority and the Planning Secretary evidence that all easements required by this approval, and other licences, approvals and consents, have been lodged for registration or registered at the NSW Land Registry Services.

UTILITIES AND SERVICES

- B11. Before the construction of any utility works associated with the MPE Stage 2 development, the Applicant must obtain relevant approvals from service providers.

Telecommunications

- B12. Before the issue of a Subdivision Certificate for the development, the Applicant (whether or not a constitutional corporation) is to provide evidence, satisfactory to the Certifying Authority, that arrangements have been made for:

- (a) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project to enable fibre to be readily connected to any premises that is being or may be constructed on those lots; and
- (b) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

B13. The Applicant must demonstrate that the carrier has confirmed in writing they are satisfied that the fibre ready facilities are fit for purpose.

Sydney Water Compliance Certificate

B14. Prior to issue of any Subdivision Certificate, a Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water and shall be provided to the Certifying Authority demonstrating that the development has satisfied the detailed requirements of Sydney Water in respect to water and wastewater.

Endeavour Energy Electrical Infrastructure

B15. A Notification of Arrangement from Endeavour Energy must be obtained prior to lodgement of the subdivision plan.

MANAGEMENT

B16. Prior to issue of any Subdivision Certificate, a Precinct Operational Environmental Management Plan (OEMP) for the MPE Site must be prepared and submitted to the Secretary for approval. The OEMP must:

- (a) specify that Qube, or another nominated single entity named in the OEMP, retains sole responsibility for delivery and ongoing maintenance of estate works (including but not limited to site services, internal roads, pedestrian paths, landscaping, lighting of common areas, emergency services including bushfire mitigation, OSD and Water Sensitive Urban Design elements) across the entirety of the Site; and
- (b) prescribes the management and maintenance measures applicable to the estate works described at (a) above.

Note: The OEMP required under this condition may be incorporated within the OEMP prepared and implemented in accordance with condition C3 of the development consent SSD 7628 (MPE Stage 2), granted by the then Planning Assessment Commission on 31 January 2018, and the OEMP prepared and implemented in accordance with condition F4 of the development consent SSD 6766 (MPE Stage 1), granted by the Land and Environment Court per orders made on 13 March 2018.

B17. The Applicant must:

- (a) not commence operation or subdivision of the development until the OEMP is approved by the Planning Secretary; and
- (b) carry out the operation of the development in accordance with the OEMP approved by the Planning Secretary and as revised and approved by the Planning Secretary from time to time.

B18. The requirement to comply with the OEMP is to be registered on title.

APPENDIX 3 INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be emailed to the Department at the following address: compliance@planning.nsw.gov.au within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition A9 or, having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
 - a. identify the development and application number;
 - b. provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
 - c. identify how the incident was detected;
 - d. identify when the Applicant became aware of the incident;
 - e. identify any actual or potential non-compliance with conditions of consent;
 - f. describe what immediate steps were taken in relation to the incident;
 - g. identify further action(s) that will be taken in relation to the incident; and
 - h. identify a project contact for further communication regarding the incident.

INCIDENT REPORT REQUIREMENTS

3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
 - a. a summary of the incident;
 - b. outcomes of an incident investigation, including identification of the cause of the incident;
 - c. details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
 - d. details of any communication with other stakeholders regarding the incident.