



DOC19/52637-02  
Your Ref. SSD 7628  
MOD 1

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Team Leader Ports and Water Assessments  
Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

Attn: Heather Nelson  
By email [Heather.Nelson@planning.nsw.gov.au](mailto:Heather.Nelson@planning.nsw.gov.au)

Dear Ms Nelson,

**Exhibition of Modification Request for Exhibition of Modification Request for the Moorebank Precinct East Stage 2 Moorebank Avenue, Moorebank (SSD 7628 MOD 1)**

The Environment Protection Authority (EPA) refers to your email dated 21 January 2019 requesting input to the submission for the proposed modification by SIMTA as Qube Holdings Limited (SIMTA) relating to Moorebank Precinct East Stage 2 at Moorebank Avenue, Moorebank (SSD 7628 MOD 1).

The EPA has reviewed the modification application [Modification of Consent (Mod 1) State significant development SSD 7628 January 2019] prepared by Aspect Environmental on behalf of SIMTA (the proponent).

The project includes:

1. revision of the controls relating to building signage as part of the Signage Sub Plan, as set out in Condition B141(f) of the consent;
2. revision of the specified timing requirements for road upgrades, as set out in Condition B13 of the consent;
3. revision of the biodiversity offset credit requirements, as set out in Condition B104 of the consent; and
4. modify various conditions of the consent instrument to provide correct referencing to avoid potential misinterpretation and to facilitate effective compliance by the Applicant.

The Moorebank Precinct East Stage 2 Project is carried out on land subject to Environmental Protection Licence (EPL) 21054 relating to some construction activities that exceed thresholds in Schedule 1 of the *Protection of the Environment Operations Act 1997* (POEO Act). It is anticipated that the EPL will be surrendered once the relevant scheduled activities relating to construction are completed. This may be well in advance of the commencement of operations on the site as no EPL will be required for the operation of the Moorebank Intermodal terminal.

The proposed modifications do not relate to the activities authorised by the EPL. However, it is noted that the modification application seeks to modify condition B45 (possibly B44) which relate to Stormwater Infrastructure Operation and Maintenance.

The conditions relating to stormwater infrastructure require a stormwater quality treatment train that will reduce specific pollutants by certain percentages (condition B40.(e)(i)). Given that the level of pollutants in the water prior to treatment is unknown, and the physical and chemical characteristics of the receiving waters is not considered by condition B40, it is possible that discharges of treated stormwater may constitute water pollution under s 120 of the POEO Act.

Section 4.42 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) requires that the EPL *be substantially consistent with the consent*. Section 122 of the POEO Act provides a defence for water pollution if an EPL is held and the conditions are complied with.

EPL 21054 does not have conditions that would permit water pollution as permitted under the consent. Once the EPL is surrendered, the site activities would not be regulated under an EPL and therefore the relevant consent conditions may expose the site operator to a regulatory liability. While the Stormwater Monitoring Program condition (B43) makes reference to the *Using the ANZECC Guidelines and Water Quality Objectives in NSW* (DEC 2016), this does not necessarily mean that water pollution would be prevented. The EPA has not assessed the stormwater management aspects of the proposal as the operational phase was not intended to be licenced.

The EPA, therefore recommends that the modified consent should clearly articulate that no condition of the consent permits the pollution of water under s120 POEO Act. Changes to condition B40(e)(i) may be appropriate, however a revised condition B44 has been drafted below if modifications are constrained to conditions identified in the modification application (Inserts underlined, deletion ~~struck through~~).

*The Stormwater Monitoring Program must:*

- (a) assess water quality and quantity performance for operation discharges and ongoing stormwater discharges from the development to ensure protection of the desired ecological values of Anzac Creek and prevent water pollution; and
- (b) include sampling locations and the frequency of sampling including wet weather sampling.

If you have any further questions, please contact me on 9995 6927 or [craig.flemming@epa.nsw.gov.au](mailto:craig.flemming@epa.nsw.gov.au).

Yours sincerely



*Thursday, 31 January 2019*

**CRAIG FLEMMING**  
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Environment Protection Authority