

**Moorebank Intermodal Precinct West – Concept Plan and Stage 1 (SSD-5066-Mod-2) and Stage 2 (SSD-7709-Mod-1)**

**Moorebank Intermodal Precinct West – Stage 2 – MOD 1 – Building Height Increase (SSD-7709-Mod-1)**

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1. We object to the proposed modifications to the development consent, in particular:
  - (a) The proposed amendment of the maximum building height established across warehouse areas 5 and 6 from 21 metres to 45 metres;
  - (b) The amendments sought to increase the operational noise criteria established under Condition B131 of SSD 7709; and
  - (c) The amendments sought to Condition B176 to allow for the storage of dangerous goods onsite at warehouse areas 5 and 6.
2. For completeness, we also disagree with the legal advice provided by Mills Oakley dated 21 February 2020 (Appendix 16), where that firm provided an opinion that the proposed modifications could lawfully be approved by way of s 4.55(2) of the *Environmental Planning and Assessment Act 1979* (“the EPA Act”).

**Proposed amendment of maximum building height from 21m up to 45m is a significant and material change**

3. Putting aside the detailed reports and experts paid for by the applicant, the purpose of the modifications is to allow for the construction of two High Bay Warehouses that have capacity for higher density stacking and an automated retrieval system.
4. Paragraph 3.1 of the *Modification Application Planning Report* (‘MAPR’) prepared by Willow Tree Planning dated July 2020 puts forward a number of ‘objectives’ that the modifications are seeking to achieve, such as: compatibility with surrounding developments and local context, employment-generation, minimal impacts on the environment and visual amenities and the implementation of suitable migration measures, where required.
5. But these are all weasel words as the true justification for the modifications are set out in paragraph 4.1 of the MAPR of “satisfying market needs” and “increased need for availability to attain increased heights, due to limited land supply and increased land value across Western Sydney...”.
6. In the end this proposal turns on whether the consent authority and the Minister value the profits of businesses over the concerns and safety of residents.
7. It should not be in dispute that an increase in building height from 21 metres to 45 metres (an increase of 214%) is significant.

8. It is disingenuous for the applicant to now apply for the modifications after the original development consent was approved, and Stage 1 clearing of the site has neared completed. The applicant would have been aware of its desires to increase storage density and profits well before the amendment application was lodged, and they have provided no explanation as to why the 45 metre warehouse heights were not raised in the original development application, or at an earlier time. The community has been given two weeks to consider exhibition of the proposed modifications and to make submissions.
9. The applicants make broad-based statements about market needs and the commercial viability of the site being threatened by end user requirements but have provided no evidence that the existing approvals with 21 metre high warehouses will not be profitable. If this were true, the applicants would not have submitted the original development approval to begin with, or be proceeding with the project. This is not a case of the proposed heights being necessary for the commercial viability of a business, this is about the applicants seeking to achieve super profits at the expense of the community.
10. The stated *“community need drivers”* on page 24 of the MAPR of *“reduced travel distances”* and *“new employment opportunities”* are illusory.
11. It is unclear how a significant change in the height of warehouses can reduce travel distances for residents. This perceived benefit to ‘local working residents’ is so minor so as to render it an irrelevant consideration for the purpose of considering the amendment application. Further, there is no evidence that employers at the intermodal will be required to hire local residents.
12. In terms of new employment opportunities, the amendment application provides no evidence that the increase in warehouse height will increase employment. The proposal refers to automated retrieval systems, which may actually significantly reduce the amount of human labour required at the intermodal in the future.
13. It is unclear how more than doubling the warehouse heights will be compatible with surrounding developments and the local context. The area is near the Georges’ River and was once surrounded by trees and a natural landscape. While it is accepted that there will be an increased industrial presence in the future, there is currently no equivalent 45 metre high warehouses in the area. The enjoyment of natural parkland, as well as local reserves, will be further diminished by the excessive height. The Visual Impact Assessments at Appendix 5 and 6 are from particular vantage points that do not do justice to the view of residents at Marsh Parade and Buckland Roads and adjoining streets. Where residents would previously step onto their balcony to enjoy the blue birds and greenery, this will now be replaced by huge warehousing facilities that may more than double in height.

**Proposed amendment to noise limit from 35 dB(a) to 39 dB(a) will cause further nuisance to residents**

14. The intermodal is already approved to operate 24/7.
15. There will already be increased noise from increased freight trains, trucks and other activity.

16. Any further nuisance or disturbance to the peaceful enjoyment of residents should not be approved without good reason, and evidence that there is no reasonable alternative.

**Proposed amendments to allow for the storage of dangerous goods have not adequately considered safety concerns of residents**

17. The amendment application is mainly directed to the amendment to building heights and gives insufficient consideration to the potential impacts of the storage of dangerous goods.
18. Presumably, by more than doubling the height of warehouse areas 5 and 6, that will also increase the capacity to store more dangerous goods in a more concentrated area.
19. The industrial fire in West Footscray, Melbourne at a facility that stored dangerous goods in 2018 and the disaster that recently occurred in Beirut, Lebanon are recent examples of the devastating damage and loss of life that can occur where there are insufficient plans and enforcement in relation to the storage of dangerous goods.
20. Casula has been subjected to bushfires in the past and in recent years.
21. The site is within 450m of the Casula Powerhouse Arts Centre, which is also within close proximity to public parks and facilities used by the community. The site is within 1000m of low, medium and high density residential areas and public transport.
22. The only report that deals with the storage of dangerous goods provided in support of the amendment application is the report on the *Woolworths Distribution Centre – Moorebank Logistics Park* by Mendham Consultants dated 25 June 2020 (Appendix 15). This report only uses a screening test to provide a preliminary hazard analysis report, and concludes Consent Condition B176 need only be amended so that if the total quantities of dangerous goods present at any time exceed the screening threshold quantities and movements listed in the Department’s Hazardous and Offensive Development guidelines *Applying SEPP 33* (January 2011), a preliminary hazard analysis must be provided.
23. *Applying SEPP 33* (on page 14) states that “...the risk screening method is suggested simply as part of the process for deciding if a proposal is ‘potentially hazardous industry’ under SEP 33... [and] should not be used in isolation...for making decisions about the suitability of a proposal.”
24. The report provides no specific consideration of the proposed modifications to building height and the reclassification of warehouse areas 4 and 5 to allow for the storage of dangerous goods. In failing to do so, it does not undertake a merit-based assessment of the dangers in allowing the increased storage of goods in warehouses which will more than double storage capacity, and allow for higher density stacking where it is proposed that an automatic retrieval system will be implemented. Nor does it provide a qualitative analysis with reference to proposed safeguards.
25. Apart from a proposed amendment to a condition that requires the users of the intermodal facility to be aware of the Department’s Hazardous and Offensive Development Guidelines and places the onus on them to obtain a preliminary hazard analysis, there are no practical safeguards set out to reduce the risk of a serious accident that may devastate the community. Indeed, the preliminary hazard report itself notes that its assessment only addresses ‘offsite’

risks associated with hazardous chemicals storage and handling and does not address 'onsite' risks, which will be subject to a fire safety engineering report to be developed.

26. There is significant lack of consideration of the safety issues associated with the reclassification of warehouse areas 4 and 5 to allow for the storage of dangerous goods and this should not be approved.

**Legal advice of Mills Oakley dated 21 February 2020 is wrong**

27. The legal advice of Mills Oakley (Appendix 16) proceeds at such a high level of generality in its analysis of the current development consent, and the proposed modifications, in order to conclude the *"...proposed modified development as a whole may still be 'substantially the same'."*
28. Before interpreting s 4.55(2) of the EPA Act it is important to have regard to s 4.55 as a whole.
- a. s 4.55(1) allows the consent authority to modify a development consent to *"..correct a minor error, misdescription or miscalculation."*
  - b. s 4.55(1A) allows the consent authority to modify a consent if they involve *"minimal environmental impact"* and the consent as modified is *"substantially the same as the development for which the consent was originally granted."*
  - c. s 4.55(3) provides that in determining an application for modification of a consent, the consent authority must take into consideration the matters referred to in s 4.15(1)
29. It is clear that this section should be interpreted narrowly, and is intended to limit the circumstances in which a consent may be modified by a consent authority where it is *"substantially the same"* as the original consent.
30. On any reading, the increase in building height from 21 metres to 45 metres departs materially and substantially from the original consent and so the power is not enlivened. Moreover, the advice of Mills Oakley fails to consider the proposed amendments to allow for the storage of dangerous goods.
31. Instead, to reach its conclusion, the advice approaches its analysis of the original development and proposed modifications at such a high level of generality, that it misapplies the test.
32. By analogy, if a resident obtained development approval for a one-storey residential building and sought to amend its approval to a three-storey residential building, would the proposals be *"substantially the same"* because the resident still intended to live in a house? The example in this case is even starker because the applicant is effectively applying for a three-storey building plus an additional secured garage for which it can store dangerous goods.
33. Additionally, pursuant to s 4.55(3) of the EPA Act, the matters that must be taken into account in s 4.15(1) include:

- a. Any environmental planning instrument: the proposed modifications are in breach of the *Liverpool Local Environmental Plan 2008* in relation to height restrictions and there has been insufficient consideration of *SEPP 33* in relation to the proposed storage of dangerous goods;
- b. The public interest: the proposed modifications only serve the commercial interests of the applicant and there is no benefit to the community above those already given under the original consent.

34. If the consent authority proceeds on the basis that it can modify the original consent under s 4.55(2) of the EPA Act then it will be committing jurisdictional error.

35. The proposed modifications should not be approved.