

ASSESSMENT REPORT

**Former Section 75W Modification
To facilitate the adaptive reuse
of the Tarpaulin Factory
Enfield Intermodal Logistics Centre
(MP 05_0147 MOD 13)**

1. INTRODUCTION

This report is an assessment of a request to modify Project Approval (MP 05_0147) for the Enfield Intermodal Logistics Centre (ILC) within the Strathfield local government area (LGA). The request was lodged by LJB Urban Planning on behalf of Flower Power Pty Ltd (the Proponent) under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Landowner's consent to lodge the application was received from Port Botany Lessor Pty Limited on 31 August 2017.

The request seeks approval to modify the current ILC approval to reflect and recognise the separate development approval (DA 2016/132) granted by the Land and Environment Court (LEC) under Part 4 of the EP&A Act to permit the adaptive reuse of the former Tarpaulin Factory, located within land that forms part of the ILC, as a garden centre.

2. SUBJECT DESCRIPTION

The Enfield ILC, formerly known as the Enfield Marshalling Yard, is located at Cosgrove Road, Strathfield South, within the Strathfield LGA, adjoining Bankstown LGA to the northwest. The Enfield ILC site is approximately 60 hectares (ha) in total, approximately 0.5 km wide and 2 km long. The site is surrounded by the suburbs of Greenacre and Chullora to the east, Belfield to the south, Rookwood to the north and Strathfield South to the east (refer to **Figure 1**).

The ILC approval included development of the site for an intermodal terminal and railway lines, warehousing, administration buildings and light industrial/ commercial areas fronting Cosgrove Road. The southern precinct includes a 'community and ecological area' (CEA) providing habitat for the threatened Green and Golden Bell Frog (GGBF) including ponds and surrounding vegetation and a fenced, publicly accessible footpath and lookouts along the ridge of 'Mt Enfield'. In addition to the opportunity to incorporate ecological enhancement and community opportunities, the CEA (approximately 6.3 ha in area) serves as a buffer between operations on the ILC site and residences to the south of the site.

The current Mt Enfield was the location of one of five stockpiles within the ILC site containing material unsuitable for engineering work. The ILC site was remediated in 2009 with further material, including asbestos contaminated material, placed within Mt Enfield which was subsequently capped.

Figure 1 shows the ILC layout and the various land uses within the site. The former Tarpaulin Factory (the subject of this Modification) is located within the southern precinct of the ILC to the east of Mt Enfield and southwest of land established and managed as part of the ILC for GGBF habitat. The Tarpaulin Factory and associated land at 127 Cosgrove Road, Enfield occupies an area of approximately 2.16 ha and is described as being part Lot 19, DP 1183316 (see **Figure 2**).

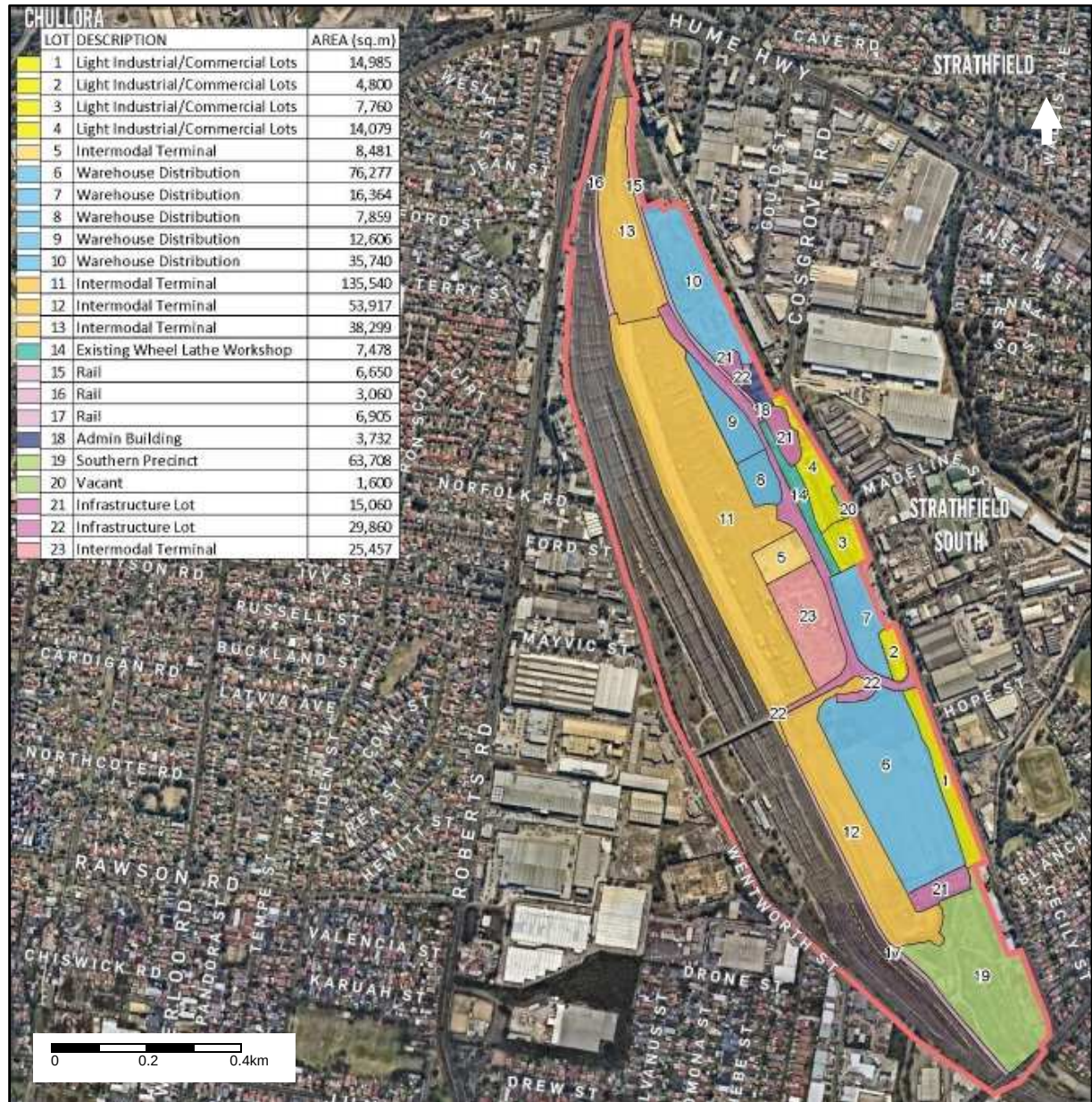


Figure 1 ILC Plan of Subdivision Plan
(source: Urbis 2018 – Undetermined (MP05_0147 MOD 14) application)

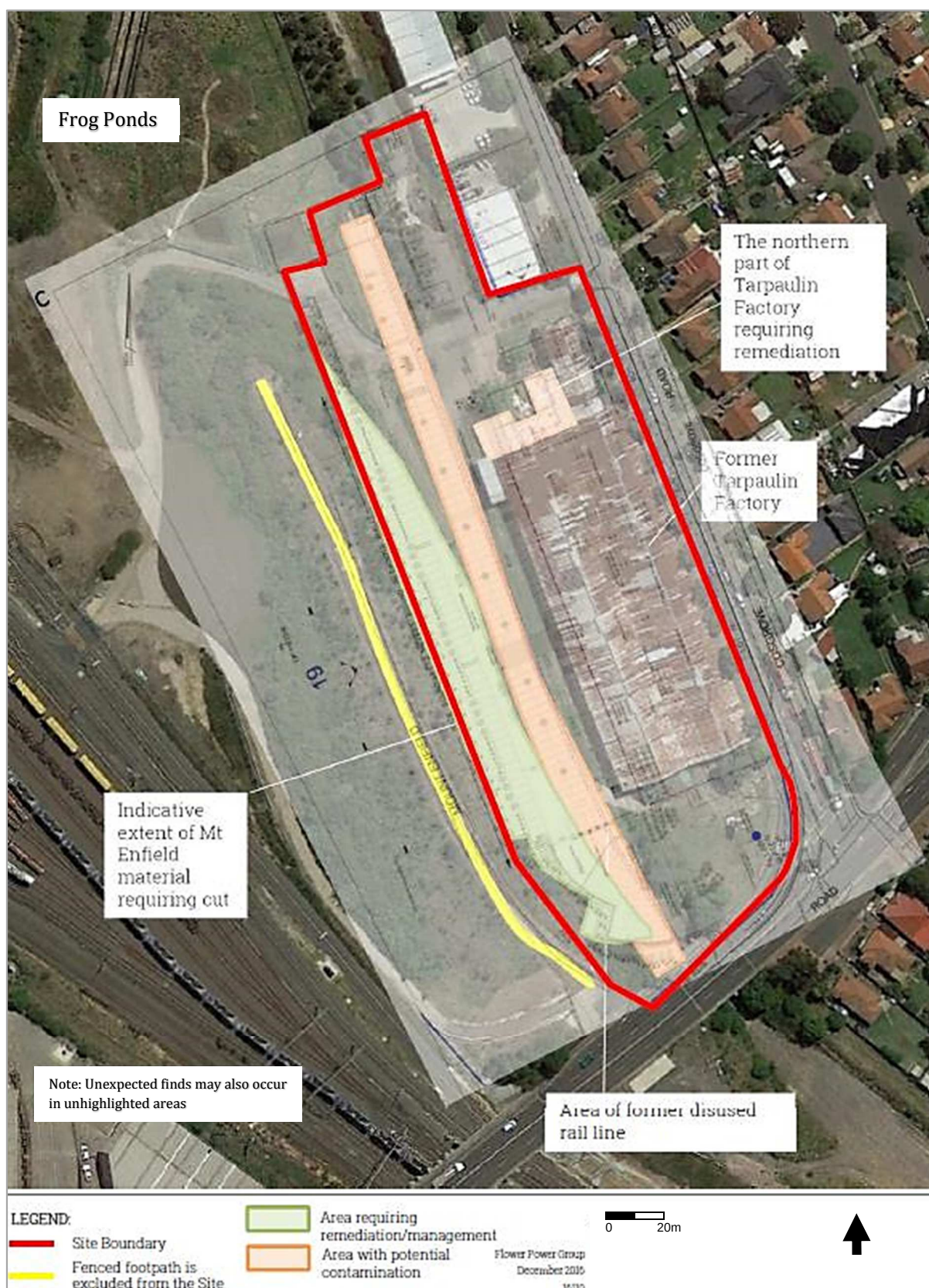


Figure 2 Tarpaulin Factory Area Site Boundary
(source: Modification Application No. 13, ZOIC 2017)

3. APPROVAL HISTORY

Construction and operation of the Enfield ILC (MP 05_0147) was approved under Part 3A of the EP&A Act on 5 September 2007 by the then Minister for Planning. The approval provides for a maximum throughput of 300,000 TEU per annum (one TEU being the equivalent of one twenty-foot shipping container) and included:

- demolition of existing buildings and structures
- earthworks and drainage
- intermodal terminal for loading/unloading containers
- rail sidings, railway lines and associated works to connect to the existing freight line
- warehousing for packing/unpacking of containers and short-term storage of cargo
- empty container storage facilities
- light industrial/commercial area
- access works including a new road bridge over the marshalling yards
- internal roads, administration buildings, LPG and fuelling facilities, container wash down, vehicle maintenance sheds and site services
- Green and Golden Bell Frog habitat improvements and habitat linkages and measure to protect water quality within frog ponds.

The approval included conditions for remediation of contaminated areas within the site prior to the commencement of construction works for the ILC. It also required the retention of the Tarpaulin Factory, with any modification (e.g. adaptive reuse) to be subject to further assessment and approval.

Fourteen applications (**Table 1**) have been submitted to modify the Project Approval (MP 05_0147) since determination. The project approval has been modified on eight occasions and is also the subject of two other modification applications yet to be determined. **Table 1** provides a summary of the modifications.

Table 1: Summary of Modifications

No.	Modification	Determination
1	Amend conditions relating to construction dust monitoring	7 October 2008
2	Amendment to conditions to enable staged construction and operation and modified timing of submission of Site Audit Statements.	30 March 2009
3	Replace approved warehouse with a car load/unload facility.	Withdrawn
4	Amendment of conditions relating to noise walls, internal roads, stormwater detention, development areas and site layout.	27 May 2010
5	Relocation and reuse of unsuitable material to the southern part of the site known as Mount Enfield.	10 November 2011
6	Inclusion of the former Toll Lease Area into the project site, adjustments to site layout, subdivision and changes to meteorological monitoring.	12 December 2012
7	Modify the subdivision of the ILC site.	Withdrawn
8	Amendment of the subdivision layout into 23 allotments to facilitate commercial leasing.	27 November 2013
9	Proposed use of Site F for agricultural and forestry commodities storage and handling facility.	Sears Issued
10	Amendment to freight-related operational activities within the intermodal terminal.	On hold

No.	Modification	Determination
11	Proposal to establish an additional warehouse (warehouse G) in the Southern portion of Area G (Lot 23).	8 February 2017
12	Modification to extend existing rail sidings, including expansion of administration building for the intermodal terminal.	7 March 2017
13	The subject of this report.	Under Assessment
14	Modification to design parameters and operational parameters for select 24/7 operating hours, warehouse and distribution uses, and truck-to-truck freight movements with no direct interface with rail sidings.	Proponent preparing response to submissions

The allocation of land uses within the ILC as approved under MP05_0147 (as modified) is shown in **Figure 1**.

4. RELATED APPROVAL

On 1 June 2017, the Strathfield Independent Hearing and Assessment Panel refused DA 2016/132 for adaptive reuse of the Tarpaulin Factory for a garden centre and hardware and building supplies. The refusal was subsequently appealed, with the LEC determining the matter by approving the application on 29 November 2017.

In addition to the construction and operation of the garden centre, the development includes a car park to the west of the Tarpaulin Factory — see **Figure 3**. Excavation within the eastern foot of Mount Enfield is required in order to construct the car park approved under DA 2016/132 and this work is the subject of this modification.

The development consent includes conditions relating to:

- site remediation verification (Condition 51)
- additional measures to ensure Green and Golden Bell Frog protection (Condition 2)
- preparation of a Construction Environmental Management Plan (CEMP - Condition 23) addressing traffic management, erosion and sediment control, stormwater management, waste management, dust control and asbestos management
- certification of compliance with the recommendations of the approved Geotechnical Investigation and Stability Assessment Report for Mount Enfield (Condition 27)
- preparation of a Noise and Vibration Management Plan (Condition 30).

As required by the Part 3A Condition of Approval (CoA) 2.34, a Heritage Impact Statement with recommendations for the adaptive reuse of the Tarpaulin Factory was submitted with the DA 2016/132 and forms part of the approval.

Construction hours specified in the DA 2016/132 approval were 7.00 am to 5.00 pm Monday to Friday and 8.00 am to 1.00 pm Saturday, with no work on public holidays. In addition, the use of noisy equipment, such as jackhammers or rock breakers was restricted to week days.

Condition 52 restricts imported fill to:

- Virgin excavated material (within the meaning of the Protection of the Environment Operations Act 1997), and*
- any other waste-derived material the subject of a resource recovery exemption under cl.51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.*

Any (b)-type material received at the development site must be accompanied by documentation certifying by an appropriately qualified environmental consultant the materials compliance with the exemption conditions; and this documentation must be provided to the Principal Certifying Authority on request.

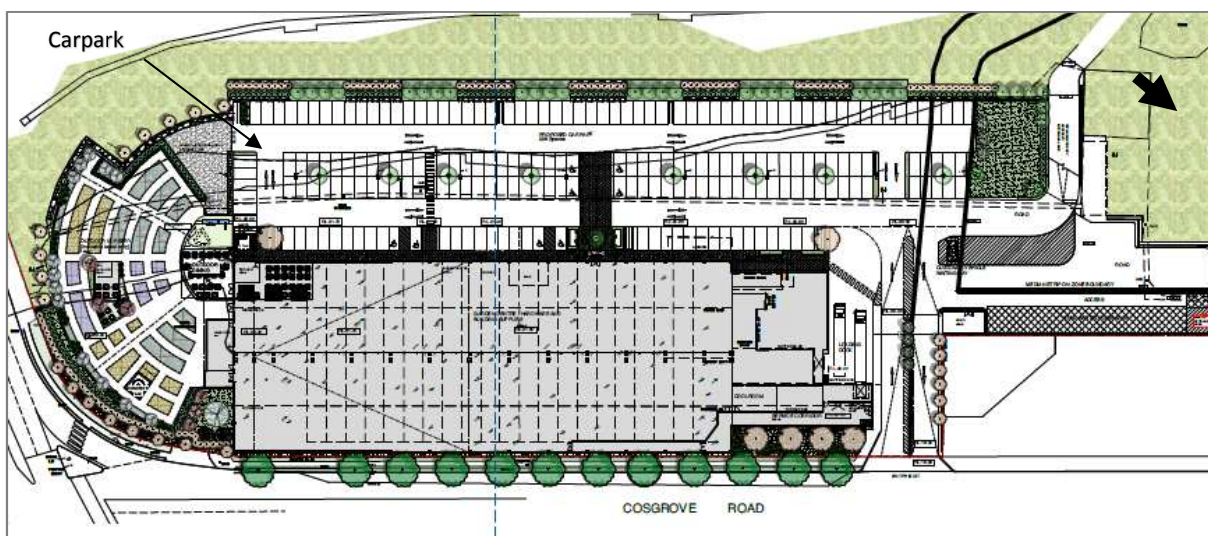


Figure 3: Proposed site layout and car park

(source: Modification Application No. 13 Landscape Plan, SiteDesign+Studios 2017)

5. PROPOSED MODIFICATION

On 5 September 2017, the Proponent lodged a section 75W modification request (MP05_0147MOD 13) to remove the approved garden centre site (shown in **Figure 2**) from the Enfield ILC site, following excavation of Mt Enfield and associated transfer of material and remediation to facilitate construction of the car park. The modification sought excision of the land from the Part 3A approval, to remove any long term obligations on the garden centre operator to comply with the conditions that govern use of the Enfield ILC.

The Department considers that excision of the land from the Part 3A approval is not the only mechanism available to ensure that the wider condition set imposed on the ILC does not create inconsistencies with the LEC determination. The Department considers this can be achieved through modification of the Part 3A conditions so that, for the purpose of any inconsistency, the terms of DA 2016/132 will prevail.

This approach is preferred by DPE as the excision of the site from the Part 3A approval would not provide enduring management obligations on that part of Lot 19, DP 1183316. This is particularly a concern if DA 2016/132 should not proceed.

The applicant subsequently agreed to this approach (email from LJB Urban Planning, dated 11 May 2018) by amending the Modification request to remove excision of the garden centre site.

As identified in the *Remedial Action Plan, 127 Cosgrove Road, South Strathfield, NSW* (RAP) prepared by ZOIC, dated 2 February 2017, the works to be carried out under the Part 3A application include the following.

- Excavation of approximately 6,000 to 10,000m³ of fill from the eastern flank of Mt Enfield and the area to the south of Tarpaulin Factory (contaminated with asbestos).
- Temporary stockpiling of excavated material.
- Remediation of the eastern flank of Mt Enfield and where required in areas identified as potentially contaminated, see **Figure 2**, (e.g. soils within the northern lean-to

buildings adjacent to the Tarpaulin Factory, uncontrolled fill across the site and contamination within the disused rail line area by way of consolidation, containment and capping with validated soil or imported subgrade or impervious paving within the Flower Power site or elsewhere on ILC site.

- Reinstatement of contamination capping over cut area at the foot of Mt Enfield.
- Construction of a retaining wall and subsoil drainage at the cut face at the foot of Mt Enfield.
- Planting to replace vegetation removed/ disturbed during excavation of Mt Enfield.
- Placement of approximately 3200 to 8000m³ of fill between Mt Enfield and the Tarpaulin Factory and the south-western corner of the Tarpaulin Factory using:
 - suitable Mt Enfield cut material
 - other suitable ILC material
 - imported material.
- Disposal of unsuitable excavated material within ILC site.

These works are expected to take approximately 6-8 months to complete. **Figure 4** shows the proposed location of the retaining wall.

The *Construction and Demolition Waste Management Plan* (prepared by Foresight Environmental dated 3 August 2017) submitted as part of the modification estimated that approximately 2000 m³ of contaminated fill would be generated during earthworks.

The excavated contaminated fill, including the excavation along the foot of Mt Enfield would be remediated in accordance with the *Remedial Action Plan, 127 Cosgrove Road, South Strathfield, NSW* (RAP) prepared by ZOIC, dated 2 February 2017. The RAP states that a site specific long term environmental management plan (LTEMP) will be required following completion of site remediation.



6. STATUTORY CONSIDERATION

6.1 Section 75W and Modification of a Minister's Approval

The ILC is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. As the Modification request was lodged before 1 March 2018 (cut-off date for modifications under section 75W), the Minister (or his delegate) may determine the application under the former section 75W of the EP&A Act.

6.2 Approval Authority

On 11 October 2017, the Minister for Planning delegated his powers and functions under section 75W of the EP&A Act to Executive Directors in the Planning Services division of the Department in cases where:

- the relevant local council has not made an objection;
- a political donation disclosure statement has not been made; and
- there are less than 25 public submissions objecting to the modification.

The Executive Director, Priority Projects Assessments may determine this modification, as the terms of this delegation are met — see **Section 7** below.

6.3 Consistency with Planning Instruments

SEPP No. 55 – Remediation of Land, the proposed changes to SEPP No. 55 (Attachment B to the *Remediation of Land SEPP Explanation of Intended Effect*, January 2018) and the Draft *Contaminated Land Planning Guidelines* are relevant to the site. The Department is satisfied that the proposed modification can be carried out in a manner that is consistent with the intent of the SEPP, proposed SEPP amendments and the new draft guidelines.

Under the *Strathfield Local Environmental Plan 2012* (LEP), the garden centre site is zoned IN1 General Industrial, with a very narrow strip of land within the northern site boundary zoned RE2 Private Recreation. The zoning of the land is not relevant to the Department's consideration of the modification, as local environmental plans do not apply to or in respect of an approved project.

7. CONSULTATION AND SUBMISSIONS

7.1 Exhibition

Under Division 7 of the EP&A Regulation, the consent authority is required to make the modification request publicly available. The modification request was exhibited for 20 days between Wednesday 27 September 2017 and Monday 16 October 2017 (inclusive) on the Department's website and notices were placed in the *Canterbury Bankstown Express* and *Inner West Courier*. The Department also consulted with Strathfield Council, Canterbury Bankstown Council, Transport for NSW (TfNSW), Roads and Maritime Services (RMS), Office of Environment and Heritage (OEH) and the Environment Protection Authority (EPA).

7.2 Submissions

At the time the modification was exhibited, DA 2016/132 had not been determined by the LEC and submissions received from agencies and the public relate to both the proposed Modification and the garden centre development that was undetermined at that time.

Strathfield Council did not object in principle to the modification application and noted the following:

- on 1 June 2017 the Strathfield Independent Hearing and Assessment Panel refused DA 2016/132 due to concerns regarding permissibility of 'ancillary' land uses, inconsistency with the objectives of the RE2 Private Recreation Zone under the Strathfield Local Environment Plan (SLEP) 2012, and the absence of a waste management plan
- the Applicant subsequently lodged a Class 1 appeal to the LEC
- a Section 34 conference was scheduled for November 2017
- the nature of the proposed use under DA 2016/132 should comply with the Standard Instrument definitions contained in the SLEP 2012.

The submission noted that if the LEC approved the proposed garden centre and hardware and building supplies development, relevant conditions under the Part 3A approval should be transferred to the LEC approval.

Furthermore, **Strathfield Council** recommended the following:

- the site should be remediated in accordance with the approved remediation action plan (RAP) in accordance with the appropriate criteria and validated by a suitably qualified consultant
- a validation report should be submitted to Council prior to issue of an Occupation Certificate
- new information discovered during remediation, demolition or construction which could potentially change the previous conclusions made about contamination should be notified to Council and the accredited certifier immediately (unexpected finds protocol)
- material must be disposed of to a suitably licensed facility able to accept the waste
- waste disposal dockets are to be provided to Council prior to issue of an Occupation Certificate
- imported fill must be validated by a suitably qualified person to ensure it is suitable, from a contamination perspective, for the proposed land use
- imported fill is to be compatible with existing soil characteristics for drainage purposes.

Canterbury Bankstown Council requested that the Department:

- consider the strategic justification for the excision of the site from the original consent
- future development should consider off-site impacts within the Canterbury Bankstown LGA including noise and air quality impacts and traffic impacts, specifically along Punchbowl Road
- confirm that the proposed use would be consistent with the CEA intended outcomes.

TfNSW raised no issues in relation to the matter, since traffic impacts would be considered by Strathfield Council as part of the DA 2016/132.

RMS raised no issues.

OEH recommended that the operation of the new facility minimise impacts on the Green and Golden Bell Frog, including light spill and that exclusion fencing be required.

EPA noted that:

- the proposed modification is not expected to change the noise emissions associated with the approved Enfield ILC
- potential impacts associated with demolition, remediation and redevelopment works can be minimised through implementing control measures outlined in existing Part 3A approved plans.

A total of 40 submissions were received from the public. There were four submissions objecting to the proposed modification and 35 in support, with one submitter providing comments. Submissions are provided at **Appendix B**.

Comments made in support of the modification included:

- visual improvements through redevelopment and landscaping as the tarpaulin factory and surrounding area is currently in a dilapidated state
- the proposed development would retain and preserve the historic tarpaulin factory building
- the proposed use as a garden centre was seen as a desirable land use as it is perceived as a 'clean and quiet' industry
- traffic generation from the garden would have less impact than industrial development of the site
- the development would have a positive impact on local amenity and bring economic benefits
- this garden centre would be used by the local community and is seen as a benefit to adjoining residents
- habitat for the Green and Golden Bell Frog would be retained
- Mt Enfield will be retained as a buffer between the rail line and residential development in Belfield.

The key environmental issues raised in objections to the proposal were:

- increased disruption in the local area due to noise and redevelopment
- risk of contaminated dust entering properties during demolition/ earthworks
- alienation of land due to carpark construction (currently within the CEA)
- permissibility of the proposed site use
- impacts on Green and Golden Bell Frog habitat.

Issues raised in relation to the Modification request to excise the garden centre site from the ILC Part 3A approval were that:

- this would be inconsistent with the original intent of the CEA under the Part 3A ILC approval
- this would effectively subdivide the CEA from the site – it was noted that a previous modification to subdivide part of the intermodal terminal area was withdrawn
- the garden centre would be a tenant within the ILC and should be bound by the Part 3A conditions of approval
- concern over long-term management of the ILC site, particularly for the Green and Golden Bell Frog.

7.3 Response to Submissions

On 21 December 2017, the Applicant submitted a Response to Submissions (RTS) to address the issues raised. The RTS was published on the Department's website.

A summary of the response to Council and Agency submissions follows.

Canterbury Bankstown Council noted that the Tarpaulin Factory area covers a large portion (2.16 ha) within the CEA. The proposed garden centre is unrelated to Port operations. Reuse of the Tarpaulin Factory would help to retain the significance of the building. Management measures are included in the Operational Plan of Management (OPM) for the Green and Golden Bell Frog habitat. Air, noise and traffic impacts were considered acceptable under the Part 4 DA and no issues were raised by RMS, TfNSW or NSW EPA.

Strathfield Council noted that the Part 4 DA and associated conditions have been approved by the LEC. A RAP dated 2 February 2017 is part of the section 75W request. Remediation

works that would be undertaken as part of the landform modification would be conducted in accordance with this RAP.

OEH noted that the OPM approved as part of DA 2016/132 manages potential impacts to the Green and Golden Bell Frog population and associated habitat. It also includes measures to address light impacts and exclusion fencing.

Environmental issues raised in public submissions related to noise, traffic impacts, dust (including from contaminated material) and impacts on the Green and Golden Bell Frog. The applicant's RtS made reference to the separate approval under Part 4 of the EP&A Act and the LEC's conditions of consent (provided with the RtS) that addressed air quality and dust, construction and operational noise, hazards and risks, waste generation, water quality and hydrological impacts, and protection of the Green and Golden Bell Frog and habitat. An OPM for the Green and Golden Bell Frog, prepared by Flower Power (dated 15 November 2017) was provided with the RtS and contains safeguards to protect Green and Golden Bell Frog and their habitat during use of the site as a garden centre including use of herbicides, exclusion fencing and external lighting.

The permissibility of the garden centre was also raised in submissions, with the applicant advising that the garden centre use is permissible in the IN1 Industrial zoned land and utilises Clause 5.3 of the Strathfield LEP 2012, development near zone boundaries, which permits the same use for the small proportion of works in the RE2 zone.

8. ASSESSMENT

The Department has assessed the merits of the proposed modification in accordance with the relevant objects and requirements of the EP&A Act. In assessing these merits, the Department has considered the:

- environmental assessment (EA) for the original Enfield ILC Project application and EAs for subsequent modifications
- conditions of approval for the Project, as amended by subsequent modifications
- modification application MP05_0147 MOD13 and accompanying documents
- LEC conditions of consent for the garden centre
- relevant environmental planning instruments, policies and guidelines.

As noted in **Section 5**, the Modification request was amended by the applicant to remove the requirement to excise the land containing the garden centre site from the ILC. However, the modification still seeks changes to the current instrument approval to facilitate development of the garden centre by clarifying conditions of approval that are relevant to, and consistent with the LEC approval. The modification request relates to earthworks and remediation to facilitate construction of the car park at the rear of the Tarpaulin Factory building.

The Department considers that the key issues for assessment are:

- traffic generation associated with earthworks, remediation and fill importation
- noise generation associated with earthworks, remediation and fill importation
- dust generation associated with earthworks, remediation and fill importation
- potential impacts on the CEA, including the Green and Golden Bell Frog populations and habitat
- relationship between the Part 3A Enfield ILC and DA 2016/132 approvals.

8.1 Traffic Generation

The operational traffic assessment for the proposed garden centre (Transport & Urban Planning Pty Ltd) notes that vehicular access to the site is from Cosgrove Road, which provides a direct traffic link to the Hume Highway to the north, and Punchbowl Road to the south.

Current B-double approved routes include Cosgrove Road, but require that B-doubles only enter between 6am and 7pm, and must do so via a right turn from Hume Highway and exit only via a right turn to Punchbowl Road.

Traffic generation for the earthworks and remediation activities would be confined to movement of construction plant, delivery of a small volume of fill and workers travelling to and from the site each day. Hence traffic impacts are expected to be minimal.

8.2 Noise Impacts

In the vicinity of the garden centre site, the main noise source is traffic travelling along Cosgrove Road. Monitoring was undertaken to characterise ambient noise levels at residences on the eastern side of Cosgrove Road. The garden centre operational *Noise Emissions Assessment* (prepared by Acoustic Logic, dated 14/04/2016) characterised day time noise levels on Cosgrove Road as indicative of a sub-arterial road.

It is proposed to dispose of unsuitable excavated material within the ILC, only involving truck movements on internal roads. In addition, the volume of fill to be imported to the site is small, hence noise impacts associated with trucking would be insignificant compared to existing traffic noise. The closest residential receiver is approximately 20 m away to the northeast on the opposite side of Cosgrove Road. However, the closest residential receivers would largely be shielded from earthworks plant by the Tarpaulin Factory building, hence noise impacts would not be significant.

8.3 Dust Impacts

The RAP (ZOIC 2017) notes that material excavated from Mt Enfield would either be stockpiled temporarily onsite or placed in trucks for placement elsewhere on the ILC site, with excavation allowing for placement of adequate capping. The RAP includes requirements to:

- keep the excavation area moist to prevent dust generation and migration (including potentially asbestos containing dust)
- cap placed material as soon as possible or keep moist or covered if capping is not undertaken within 24 hours
- cap the excavated surface of Mt Enfield before construction of retaining walls, with material capable of withstanding erosion
- manage stockpiles, including covering with plastic to minimise dust emission if left for over 24 hours
- daily air monitoring if asbestos containing material is exposed.

The Department considers that the measures outlined in the RAP, together with the RAP requirement for the Remediation Contractor to prepare a site-specific environmental management plan would adequately address air quality issues.

8.4 Impacts on CEA and Green and Golden Bell Frog population

Approximately 2750 m² of the surface area of Mt Enfield would be affected by excavation, requiring removal of some of the existing and recently planted vegetation.

The Water Sensitive Urban Design Strategy Report (Sparks and Partners, dated 18 March 2016) includes a conceptual sediment and erosion control plan showing collection of runoff from the Mt Enfield excavation area and collection in a sediment basin, just north of the existing entrance to the site. The plan also shows the installation of a catch drain/ diversion mound for collection and conveyance of clean runoff around the works area towards the frog ponds.

The Landscape Plan prepared by SiteDesign+Studios, dated 31 July 2017, provides information on the car park retaining wall landscaping where Mt Enfield to be excavated. This includes a mixture of native and introduced species.

Mt Enfield is part of the CEA, which covers the southern end of the site, including the entirety of the garden centre site, and includes land for ecological management and community and/or commercial uses. The project approval and industrial land zoning allowed for future commercial development applications to support the adaptation of the disused Tarpaulin Factory, and the potential for future use for commerce was discussed in the Department's assessment report for the original project application MP 05_0147. Adaptive reuse of the Tarpaulin Factory was also envisaged in condition 2.34, which states that any such uses would be 'subject of further assessment and approval'.

The current form of Mt Enfield was approved in MOD 5. MOD 5 allowed for the area (which was an existing stockpile site) to be raised up to 6.7 metres to form a vegetated visual and noise buffer between the ILC and surrounding residential land, with a public path and viewing point to be installed on the top of the mound. The Department's assessment of MOD 5 concluded that Mt Enfield 'was always envisaged to have limited public access', and that the final arrangements 'provided for appropriate community access', which included the ability to view the frog ponds and heritage items, including the Tarpaulin Factory and Pillar Water Tank.

DA 2016/132 states that the frog ponds are located a minimum of 40 m away from the proposed garden centre carpark. The letter report *Green and Golden Bell Frog Conservation Measures Tarpaulin Shed Site Enfield*, prepared by Biosphere Environmental Consultants Pty Ltd (27/11/2016) notes that the proximity of the site to the frog ponds means that Green and Golden Bell Frog could easily enter the garden centre site during construction. To prevent this, a number of measures to protect Green and Golden Bell Frog were recommended including:

- installation of a frog-exclusion fence prior to commencement of construction and maintenance of the fence throughout construction
- following fence installation a frog clearance survey, collection, microchipping and relocation of any frogs back to the ILC ponds
- daily inspection of the exclusion fence with any necessary repairs carried out before nightfall.

The completed earthworks and site remediation would not impact on the controlled public access along the Mt Enfield ridge. The Green and Golden Bell Frog conservation measures and the water management measures summarised above would ensure there were no adverse impacts the Green and Golden Bell Frog population or habitat. The change to the Mt Enfield landform and construction of the retaining wall would also not preclude its continuing use as a vegetated noise and visual buffer. The approved *Mt Enfield Enhancement, Revegetation and On-going Landscape Management Plan* (Sydney Ports, December 2011) specified landscaping of Mt Enfield with indigenous native species. The Department considers that restoration of Mt Enfield following remediation and construction of the car park retaining wall should be carried out in accordance with this plan, and has recommended conditions requiring landscaping to be so provided.

The Department considers that the use of the site as proposed is consistent with the overarching intent of the CEA (including the Mt Enfield site) and does not impact on the land set aside for Green and Golden Bell Frog conservation measures, as confirmed by OEH.

8.5 Relationship between the Enfield ILC and DA 2016/132 Approvals

As noted in **Section 5**, the Modification request was for removal of approximately 2.16 ha of Part Lot 19 DP 1183316, following remediation of the garden centre site, transfer of contaminated/ potentially contaminated fill within the larger ILC site, and the issuing of an Occupation Certificate for the completed development.

The Department has concerns that excision of part of Lot 19 DP 1183316 from the Enfield ILC site would:

- leave this area without appropriate environmental management requirements in the event that the approved development under DA 2016/132 did not proceed
- lead to an uncoordinated approach for the long-term management of the ILC site with regard to:
 - maintenance of measures to contain contaminated soils
 - management of the CEA
 - protection of the Green and Golden Bell Frog habitat and population.

The Department considers that the Part 3A approval can be modified to facilitate construction and operation of the approved development under DA 2016/132 without excising the site from the Enfield ILC. It is noted that the LEC consent did not require that the site be excised in order for the garden centre development to proceed. As a result, the Department has recommended conditions to ensure that impacts on Mt Enfield, remediation and long-term management are to occur under the Part 3A approval.

In order to ensure that there is no doubt as to which approval is applicable to construction and operation of the garden centre, the Department has recommended a condition that if there is any inconsistency, the LEC consent applies. This approach divides responsibility between the proponent for the garden centre development and the proponent for the overall Enfield ILC. The Part 3A conditions of approval relating to site remediation and long-term site management would apply to the garden centre site, and govern the remediation of the area. Once a site audit statement is provided, the obligations on the proponent of the garden centre would cease, and the long term management would be vested in the proponent of the overall Enfield ILC.

9. CONCLUSION

The Department has assessed the modification request and supporting information and concludes that the proposed modification is appropriate as it would facilitate adaptive reuse of the Tarpaulin Factory Building which is largely supported by the community and potential impacts associated with earthworks and remediation can be appropriately managed through the:

- implementation of measures contained in the relevant site specific supporting documentation which accompanied the Modification application
- preparation and implementation of a site specific Earthworks Environmental Management Plan
- implementation of a site specific long term environmental management plan (LTEMP) following completion of remediation, in accordance with the overarching operational environmental management plan for the ILC (NSW Ports 2016) and relevant guidelines
- undertaking landscaping in accordance with the Part 3A approved *Mt Enfield Enhancement, Revegetation and On-going Landscape Management Plan*
- identification of the location of transferred and remediated material by registration on title.

10. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Priority Projects Assessments, as delegate for the Minister for Planning:

- consider the findings and recommendations of this report
- determine that the modification request MP 05_0147 MOD 13 falls within the scope of section 75W of the EP&A Act
- modify the approval MP 05_0147
- sign the notice of modification (**Appendix A**).

Recommended by:



8/6/2018

Karen Harragon
Director
Social and Other Infrastructure Assessments

DECISION

Approved by:



David Gainsford
Executive Director
Priority Projects Assessments
as delegate of the Minister

19/6/18

APPENDIX A: NOTICE OF MODIFICATION

The Notice of Modification can be found on the Departments website at the following address:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8725

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8725

2. Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8725

3. Response to Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8725