Form 40 (version 1)
UCPR 35.1

# AFFIDAVIT OF NEIL RICHARD KENNAN

| **COURT DETAILS** | |
|---|---|
| Court | Land and Environment Court of New South Wales |
| Class | 1 |
| Case number | 16/159652 (formerly 2015/10898) & 16/157848 (formerly 2015/10951) |

| **TITLE OF PROCEEDINGS** | |
|---|---|
| **PROCEEDINGS 16/159652 (FORMERLY 2015/10898)** | |
| Applicant | **Liverpool City Council** |
| First respondent | **Moorebank Recyclers Pty Ltd** |
| Second respondent | **Minister for Planning** |

| **PROCEEDINGS 16/157848 (FORMERLY 2015/10951)** | |
|---|---|
| First applicant | **Benedict Industries Pty Limited** |
| Second applicant | **Tanlane Pty Limited** |
| First respondent | **Minister for Planning** |
| Second respondent | **Moorebank Recyclers Pty Limited** |

| **FILING DETAILS** | |
|---|---|
| Filed for | **Moorebank Recyclers Pty Ltd,** First respondent in proceedings 16/159652 and Second respondent in proceedings 16/157848 |
| Legal representative | Mark Gerard McDonald, Mark McDonald & Associates Lawyers Pty Ltd |
| Legal representative reference | MGM 01/246 |
| Contact name and telephone | Mark Gerard McDonald, (02) 9293 2519 |
| Contact email | mgmcdonald@ozemail.com.au |

Mark McDonald

**AFFIDAVIT**

| | |
|---|---|
| Name | Neil Richard Kennan |
| Address | Suite 29, 103 Majors Bay Road, Concord, NSW 2137 |
| Occupation | Town Planner |
| Date | 5 October 2016 |

I say on oath:

1 I am a town planner retained by Moorebank Recyclers Pty Ltd ("**Moorebank**").

2 I am a director of Nexus Environmental Planning Pty Ltd ("**Nexus**").

3 In preparing this affidavit, I have had regard to the requirements of Division 2 of Part 31 of the Uniform Civil Procedure Rules and I agree to be bound by the requirements of the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

4 On behalf of Moorebank, Nexus prepared an application for a materials recycling facility (**MRF**) on the Moorebank land with a capacity of 500,000 tonnes per annum pursuant to the then Part 3A of the *Environmental Planning and Assessment Act* 1979 (**Project application**).

5 The Project application was approved by the Planning Assessment Commission (**PAC**) on 11 September 2015 (the **Project**).

6 I swear this affidavit in support of an application to grant leave to Moorebank Recyclers Pty Ltd to modify the Project.

7 Annexed to this affidavit and marked with the letter "A" is a copy of plans prepared by Cardno and Lyle Marshall & Associates Pty Ltd showing the proposed modifications to the Project (the **Plans**).

8 I have prepared a schedule identifying, by reference to the Plans, each proposed modification to the Project, the effect of the modification and the source of each modification (**Schedule**). A copy of the Schedule is annexed to this affidavit and marked with the letter "B".

SWORN at

~~Concord~~ Sydney

Signature of deponent

Name of witness Mark Gerard McDonald

Address of witness Level 29 Chifley Tower, 2 Chifley Square, Sydney 2000

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 I have known the deponent for at least 12 months.

Signature of witness

"A"

This and the following 6 pages is the annexure marked "A" referred to in the Affidavit of Neil Richard Kennan sworn/affirmed at Sydney this 5th day of October 2016 before me

Solicitor/Justice of the Peace



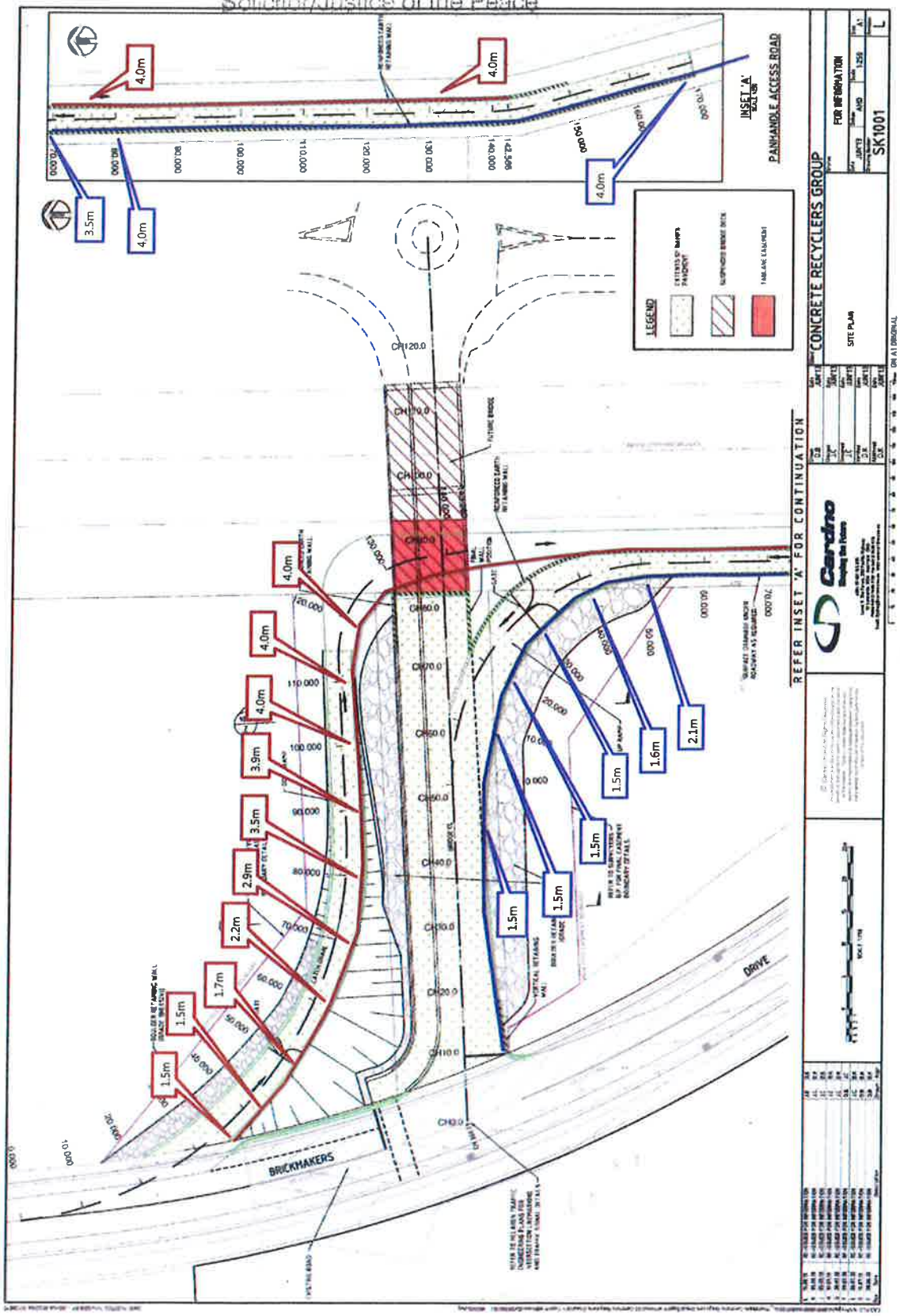


Figure 8 Height and location of ramp acoustic walls

## LEGEND

- EXISTING CONTOURS
- RIDGE LINE
- MINIMUM 1% CROSS FALL
- TYPICAL 2% CROSS FALL OR GREATER
- FLOOD LEVEE TO 6m AHD WHERE FINISHED LEVEL IS < 6m AHD
- NEW BATTERS

NOTE: PROPOSED AMENDMENTS SHOWN IN GREEN

| ISSUE | DATE | APPD | COMMENTS |
|---|---|---|---|
| A | 25.07.13 | KC | FOR SUBMISSION |
| B | 02.09.16 | SP | ADVISIAN AMENDMENTS |
| C | 04.10.16 | SP | ADVISIAN AMENDMENTS |

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EMAIL: steve@ahserconsulting.com.au

plot date : 30/8/13
file name : 5018-13_250713-KC.mm

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web: www.lylemarshallandassociates.info

ACEA The Association of Consulting Engineers Australia

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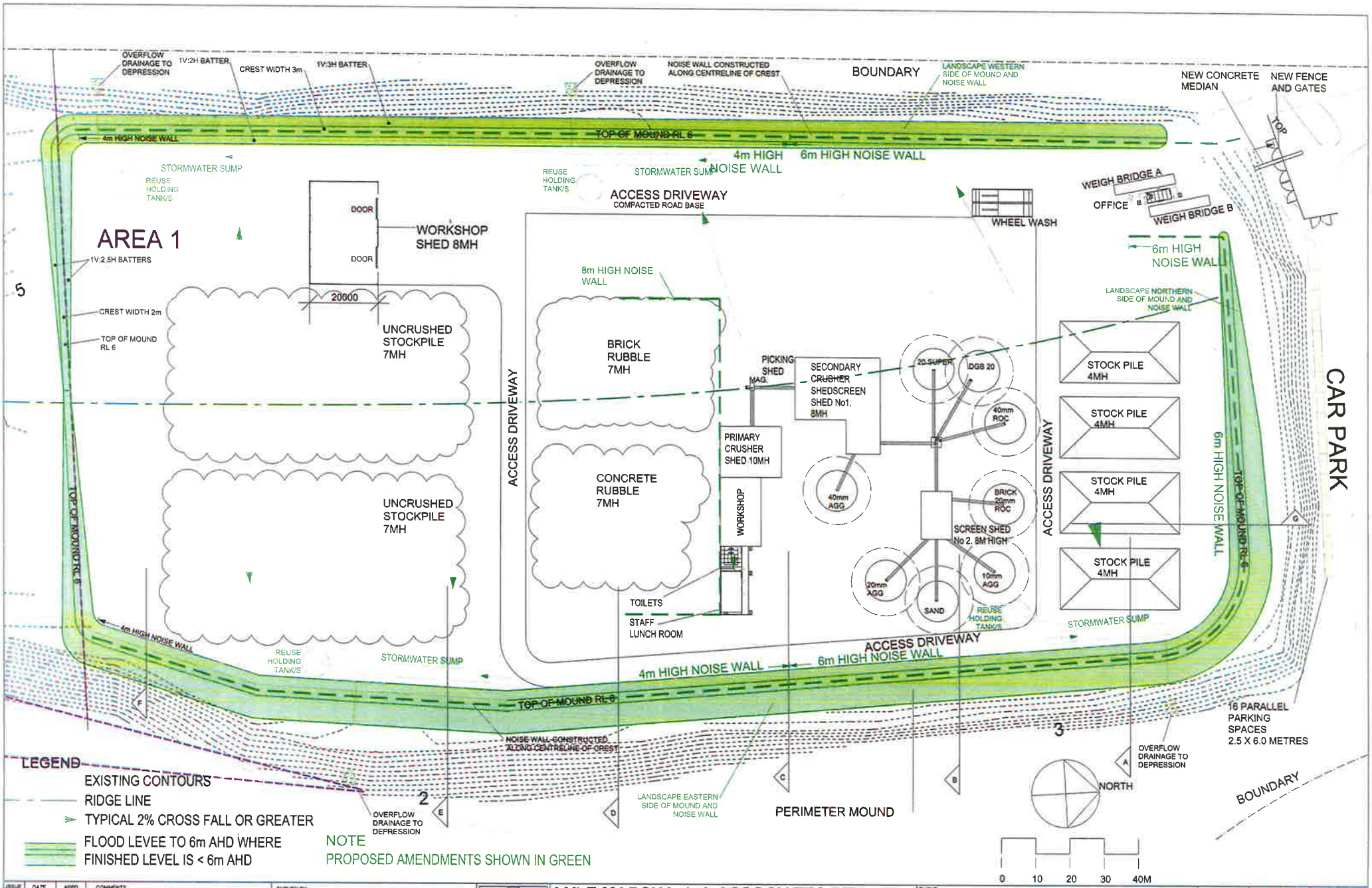
THACKERAY STREET CAMELLIA NSW 2142

PROJECT ADDRESS:
CONCRETE RECYCLERS
NEWBRIDGE ROAD MOOREBANK
INDICATIVE REGRADED LANDFORM - PROPOSED AMENDMENTS
(WASTE REMOVED FROM AREAS 3 AND 4)

| SCALE | PASSED | DATE |
|---|---|---|
| 1:2000 @ A3 | EMMC | 25.07.13 |

| DESIGN | LMA | JOB No. | SHEET No. | ISSUE |
|---|---|---|---|---|
| DRAWN | KC | 5018-13 | 00 | C |
| CHECKED | EMMC | DATE FIRST ISSUED JULY 2013 | OF | |

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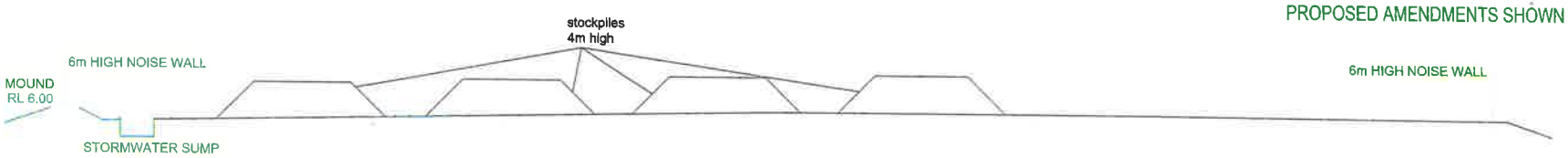
NEWBRIDGE ROAD MOOREBANK
PROPOSED DETAILED SITE PLAN
PROPOSED AMENDMENTS

| SCALE | PASSED | DATE |
|---|---|---|
| 1:1000 @ A3 | EMMC | 25.07.13 |

| DESIGN | LMA | JOB No. | SHEET No. | ISSUE |
|---|---|---|---|---|
| DRAWN | KC | 5018-13 | 01 | C |
| CHECKED | EMMC | DATE FIRST ISSUED JULY 2013 | OF | |

NOTE
PROPOSED AMENDMENTS SHOWN IN GREEN




## CROSS SECTION A

LEGEND

ES — — — EXISTING SURFACE

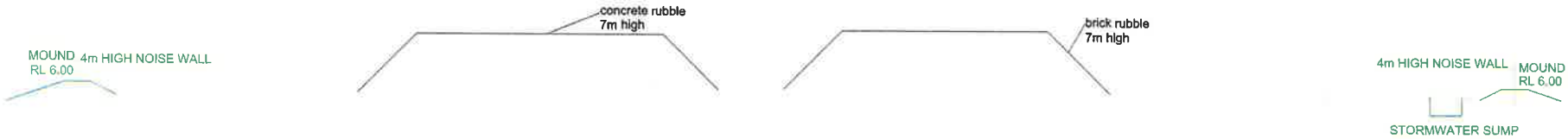
——— REGRADED SURFACE

NOTE

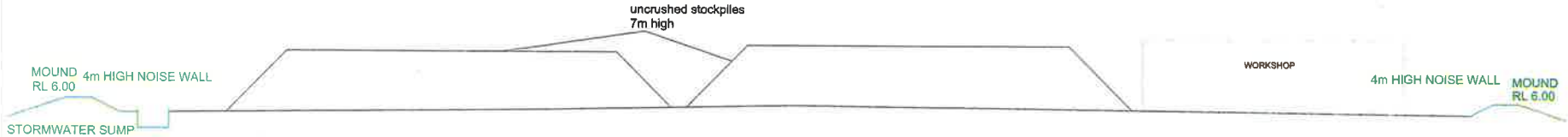
HEIGHT OF NOISE WALL MEASURED FROM FINISHED LEVEL AT BASE OF MOUND (INSIDE FACILITY)

## CROSS SECTION B

## CROSS SECTION C




## CROSS SECTION D




## CROSS SECTION E

| ISSUE | DATE | APPD | COMMENTS |
|---|---|---|---|
| A | 25.07.13 | KC | FOR SUBMISSION |
| B | 02.09.16 | SP | ADVISIAN AMENDMENTS |
| C | 04.10.16 | SP | ADVISIAN AMENDMENTS |

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PROJECT ADDRESS:
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NEWBRIDGE ROAD MOOREBANK
PROPOSED SITE SECTIONS SHEET 1
PROPOSED AMENDMENTS

| SCALE | PASSED | DATE |
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| 1:500 @ A3 | EMMC | 25.07.13 |

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| CHECKED | EMMC | DATE FIRST ISSUED JULY 2013 | OF | |

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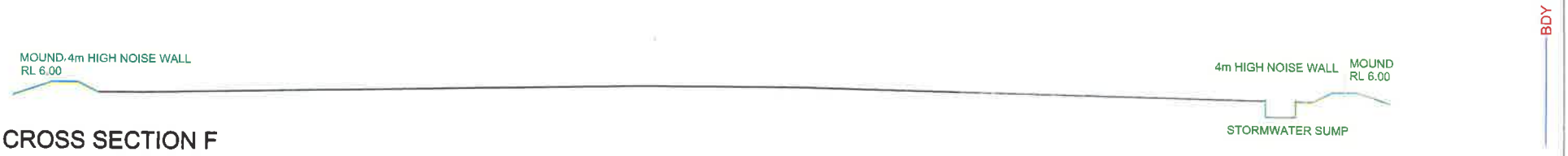
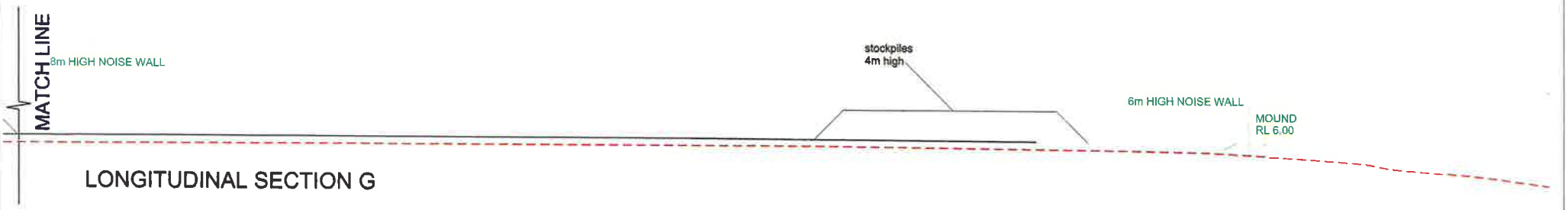
NOTE
PROPOSED AMENDMENTS SHOWN IN GREEN




CROSS SECTION F




LONGITUDINAL SECTION G

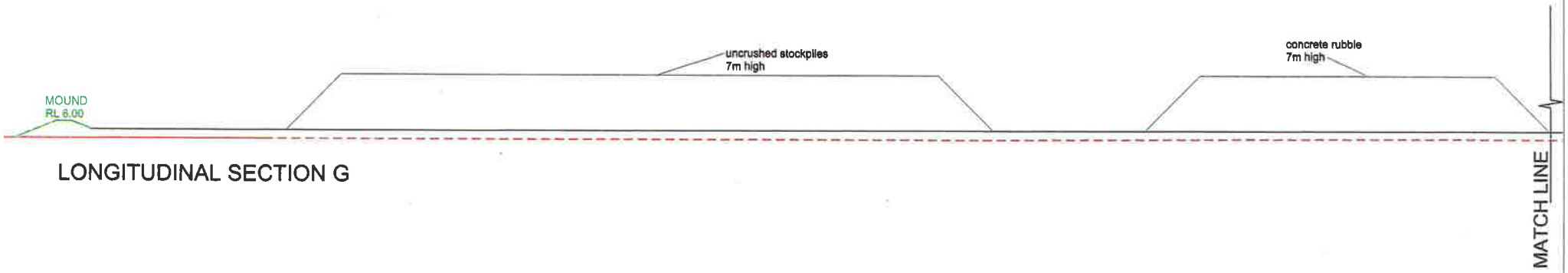
LEGEND

ES — — — EXISTING SURFACE

——— REGRADED SURFACE

NOTE

HEIGHT OF NOISE WALL MEASURED FROM FINISHED LEVEL AT BASE OF MOUND (INSIDE FACILITY)




LONGITUDINAL SECTION G

| ISSUE | DATE | APPD | COMMENTS |
|---|---|---|---|
| A | 25.07.13 | KC | FOR SUBMISSION |
| B | 02.09.16 | SP | ADVISIAN AMENDMENTS |
| C | 04.10.16 | SP | ADVISIAN AMENDMENTS |

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PROPOSED SITE SECTIONS SHEET 2
PROPOSED AMENDMENTS

| SCALE | PASSED | DATE |
|---|---|---|
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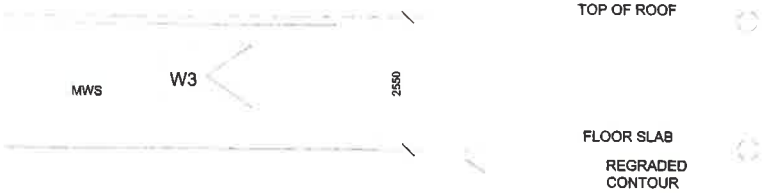
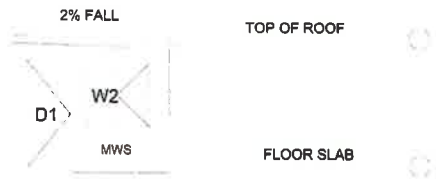
| CHECKED | EMMC | DATE PRINTED JULY 2013 | OF | |




WEST ELEVATION
SCALE 1:100

EAST ELEVATION
SCALE 1:100



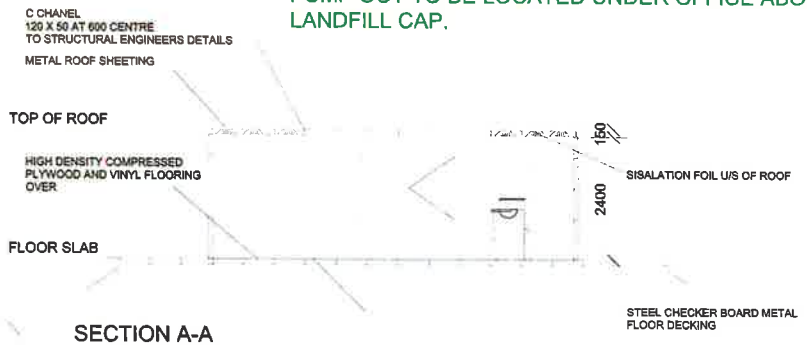

SOUTH ELEVATION
SCALE 1:100

LEGEND

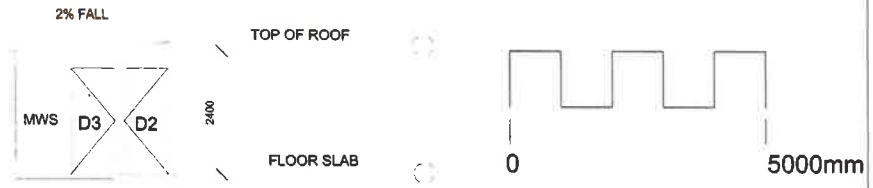
| | |
|---|---|
| MWS | Metal wall sheet (Colorbond Wilderness Green) |
| MS | Metal Roof Sheeting - (Colourbond Bushland) |
| EG | Edge Gutter |
| DP | Down Pipe |

NOTE

5m³ CONCRETE WASTE WATER TANK FOR SEPTIC PUMP OUT TO BE LOCATED UNDER OFFICE ABOVE LANDFILL CAP.




SECTION A-A
SCALE 1:100




NORTH ELEVATION
SCALE 1:100

NOTE
PROPOSED AMENDMENTS SHOWN IN GREEN

| ISSUE | DATE | APPD | COMMENTS |
|---|---|---|---|
| A | 25.07.13 | KC | FOR SUBMISSION |
| B | 02.09.16 | SP | ADVISIAN AMENDMENTS |
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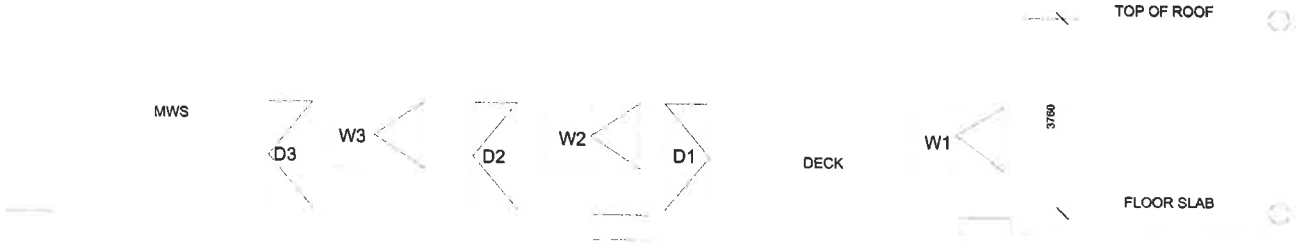
THACKERAY STREET CAMELLIA NSW 2142

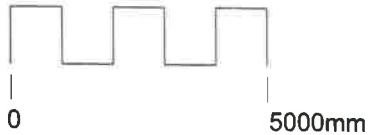
PROJECT ADDRESS:
CONCRETE RECYCLERS
NEWBRIDGE ROAD MOOREBANK
OFFICE ELEVATIONS AND SECTION
PROPOSED AMENDMENTS

| SCALE | PASSED | DATE |
|---|---|---|
| 1:100 @ A3 | EMMC | 25.07.13 |

| DESIGN | LMA | JOB No. | SHEET No. | ISSUE |
|---|---|---|---|---|
| DRAWN | KC | 5018-13 | 04 | C |
| CHECKED | EMMC | DATE PRINTED JULY 2013 | OF | |




NORTH ELEVATION
SCALE 1:100

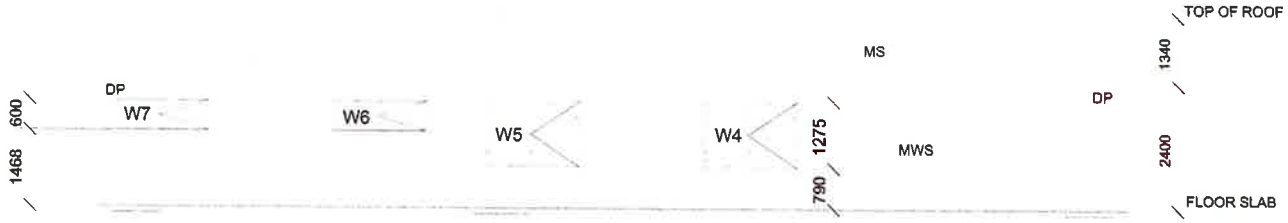



LEGEND

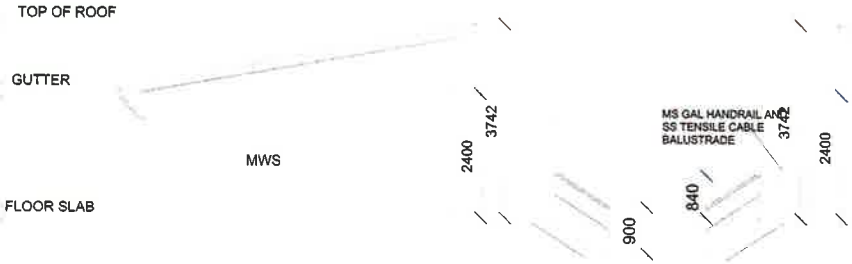
| | |
|---|---|
| MWS | Metal wall sheet (Colorbond Wilderness Green) |
| MS | Metal Roof Sheeting - (Colourbond Bushland) |
| EG | Edge Gutter |
| DP | Down Pipe |

NOTE

15m³ CONCRETE WASTE WATER TANK FOR SEPTIC PUMP OUT TO BE LOCATED UNDER AMENITIES BUILDING ABOVE LANDFILL CAP.




SOUTH ELEVATION
SCALE 1:100

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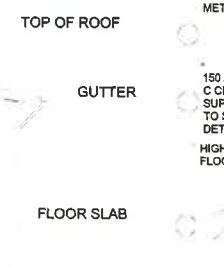
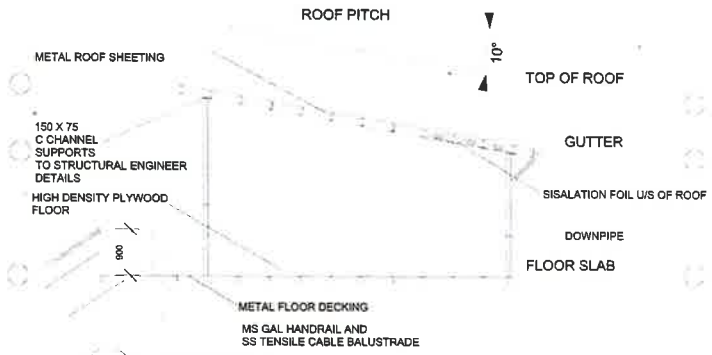
SCALE 1:100




WEST ELEVATION
SCALE 1:100




SECTION A-A
SCALE 1:100

NOTE

PROPOSED AMENDMENTS SHOWN IN GREEN

| ISSUE | DATE | APPD | COMMENTS |
|---|---|---|---|
| A | 25.07.13 | KC | FOR SUBMISSION |
| B | 02.09.16 | SP | ADVISIAN AMENDMENTS |
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NOMINATED ARCHITECT : ERICA MARSHALL-MCCLELLAND | NO. 6813

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THACKERAY STREET CAMELLIA NSW 2142

PROJECT ADDRESS:
CONCRETE RECYCLERS
NEWBRIDGE ROAD MOOREBANK
STAFF LUNCH ROOM / AMENITIES SECTION AND ELEVATIONS
PROPOSED AMENDMENTS

| SCALE | PASSED | DATE |
|---|---|---|
| 1:100 @ A3 | EMMC | 25.07.13 |

| DESIGN | LMA | JOB No. | SHEET No | ISSUE |
|---|---|---|---|---|
| DRAWN | JK | 5018-13 | 05 | C |
| CHECKED | EMMC | DATE FIRST ISSUED JULY 2013 | OF | |

| Item | Proposed Amendment | Drawing No. | Effect of Amendment | Source of Amendment |
|---|---|---|---|---|
| 1 | Placement of noise walls of varying height 1.5 to 4 metres on the approved bridge and associated ramps | Individual Expert report of Dr Renzo Tonin Figure 8, Cardno SK1001, Site plan. | Further reduction in acoustic impact to sensitive receivers from vehicles entering and leaving the site via the ramps and road bridge. | Council Amended Statement of Facts and Contentions, page 22, Contention 4a, 4b and 4c.<br><br>Tanlane Amended Statement of Facts and Contentions, page 13, Contention 3a.<br><br>Individual Expert Report of Dr Tonin, 17 August 2016. Figure 8, page 42. & Paragraphs 149 x, page 51. |
| 2 | Noise attenuation walls/mounds on western northern and eastern boundaries of the proposed development. | Lyle Marshall & Associates Pty Ltd Drawings Nos.01, 02 & 03, Revision C, dated 5 October 2016. | Noise attenuation as per the original proposal, however, with different construction technique to limit impact on the integrity of the landfill and ensure that the landfill can support the proposed structures.<br><br>Maintain flood levee to prevent flooding of the site as per the Earthworks Consent DA 1417/05. | Council Amended Statement of Facts and Contentions, page 22, Contention 4a, 4b and 4c.<br><br>Tanlane Amended Statement of Facts and Contentions, page 13, Contention 3a.<br><br>Individual Expert Report of Dr Tonin, 17 August 2016. Figure 5, page 35 & Paragraphs 149 i and ii, page 51.<br><br>To address 2.2.4, Bund Walls, page 6 of the Individual Expert Report of Dr Peter Redman, dated 19 July 2016, prepared on behalf of Council.<br><br>The individual expert report of Dr Steve Perrens, dated 19 August 2016, Figure 4, page 25. |

| Item | Proposed Amendment | Drawing No. | Effect of Amendment | Source of Amendment |
|---|---|---|---|---|
| | | | | The addendum to Expert Report: Sewerage Management, Flooding and Stormwater prepared by Dr Steve Perrens, dated 16 September 2016, Figure A2, page 10.<br><br>The individual expert report of Andrew Jackaman, dated 19 August 2016, 5.1-5.3, page 6 & 6.1.9, page 8. |
| 3 | The inclusion of acoustic walls around the stockpile of rubble adjacent to the crushing plant sheds. as shown on Figure 5 at page 35 of Dr Tonin's Individual Expert Report. | Lyle Marshall & Associates Pty Ltd Drawings Nos.01, 02 & 03, Revision C, dated 5 October 2016. | Additional noise attenuation within the proposed facility to reduce potential impact to sensitive receivers. | Council Amended Statement of Facts and Contentions, page 22, Contention 4a, 4b and 4c.<br><br>Tanlane Amended Statement of Facts and Contentions, page 13, Contention 3a.<br><br>Individual Expert Report of Dr Tonin 17 August 2016, Figure 5 at page 35. |
| 4 | Noise proofing of the crusher sheds and the penetrations to the crusher sheds. | Not shown on drawings. | Additional noise attenuation within the proposed facility to reduce potential impact to sensitive receivers. | Council Amended Statement of Facts and Contentions, page 22, Contention 4a, 4b and 4c.<br><br>Tanlane Amended Statement of Facts and Contentions, page 13, Contention 3a. |

| Item | Proposed Amendment | Drawing No. | Effect of Amendment | Source of Amendment |
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| | | | | Individual Expert Report of Dr Tonin 17 August 2016, Paragraphs 149 vii, viii, and ix. |
| 5 | Landscaping of the acoustic walls/mounds. | Lyle Marshall & Associates Pty Ltd Drawing No.01, Revision C, dated 5 October 2016. | Mitigation of visual impact of concrete acoustic walls which were previously proposed to be landscaped mounds. | Individual Expert Report of Ms Woodland's, dated 8 September 2016, pages 8-13. |
| 6 | Grading of the site with cross falls including flood bund. | Lyle Marshall & Associates Pty Ltd Drawing Nos.00 & 01, Revision C, dated 5 October 2106. | To ensure appropriate drainage of surface water. | The addendum to Expert Report: Sewerage Management, Flooding and Stormwater prepared by Dr Steve Perrens, dated 16 September 2016, paragraphs 29-32, page 8, Figure A1, page 9 & Figure A2, page 10. |
| 7 | Stormwater collection sumps. | Lyle Marshall & Associates Pty Ltd Drawing No.01, dated 4 October 2016. | Clarification of works necessary to ensure appropriate collection of surface water. | The individual expert report of Dr Steve Perrens, dated 19 August 2016, Figure 1, page 5 & Figure 4, page 25 in response to Clause 9e of Council's Amended Statement of Facts and Contentions and the Individual Expert Report of Dr Daniel Martens, paragraph 19d, dated 5 August 2016. |
| 8 | Provision of wastewater holding tanks located under the floor slab of the amenities building and under the floor of the office adjacent to the weigh bridges. | Lyle Marshall & Associates Pty Ltd Drawing Nos.04 & 05, Revision C, dated 5 October 2016. | Sewage management to ensure no penetration of landfill cap. | Individual Expert Report of Dr Daniel Martens, Water Management, dated 5 August 2016, point 13, page 8 prepared. |

| Item | Proposed Amendment | Drawing No. | Effect of Amendment | Source of Amendment |
|---|---|---|---|---|
| | | | | The individual expert report of Dr Steve Perrens, dated 19 August 2016, paragraphs 19-26, pages 8 & 9 in response to the Individual Expert Report of Dr Daniel Martens, paragraph 13d, dated 5 August 2016. |
| 9 | Rebuilding of the western bundwall of the landfill below surface level. | Not shown on drawings. | To prevent leachate breakout during earthworks and ongoing operation. | Individual Expert report of Rowena Salmon, Contamination and Waste Management, dated 4 August 2016.<br><br>Remedial Action Plan prepared by Sophie Wood, dated 20 September 2016, 6.3.7, pages 48-50. |
| 10 | Installation and operation of a leachate treatment plant. | Not shown on drawings. | To prevent leachate breakout during earthworks and ongoing operation. | Individual Expert report of Rowena Salmon, Contamination and Waste Management, dated 4 August 2016.<br><br>Individual Expert Report of Andrew Kosciusko, dated 18 July 2016, 5.1, page 5 & 5.3, page 6.<br><br>The individual expert report of David Bristow, dated 23 August 2016, pages 6 & 7. |