

ASSESSMENT REPORT

Section 75W Modification

**Orica Southlands Remediation and Warehouse Development Project –
Warehouse Reconfiguration (MP 06_0191 MOD 2)**

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval (MP06_0191 MOD 2) for a remediation and warehouse redevelopment at Banksmeadow in the Botany Bay local government area (the Project). The request has been lodged by Goodman Ltd (on behalf of Orica Australia Pty Ltd) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to modify the approved project layout as well as remove or modify a number of other conditions and commitments primarily relating to design.

2. SUBJECT SITE

Orica Australia Pty Ltd (Orica) is an Australian-based global company that produces and supplies mining, chemical and consumer products. In 1980, Orica purchased a vacant parcel of land adjacent to the Botany Industrial Park which is known as Southlands (refer to **Figure 1**). The site has remained undeveloped since its purchase except for some equipment and infrastructure (primarily pipes) required by Orica to maintain its Botany Groundwater Cleanup Project (a project approved by the EPA in 2005).

The site is surrounded by industrial and commercial premises. Nant Street, an unsealed roadway owned by Council, runs through the middle of the site, providing access from the McPherson Street site entrance to the Qenos's Nant Street tank farm located directly adjacent to the site's northern boundary.

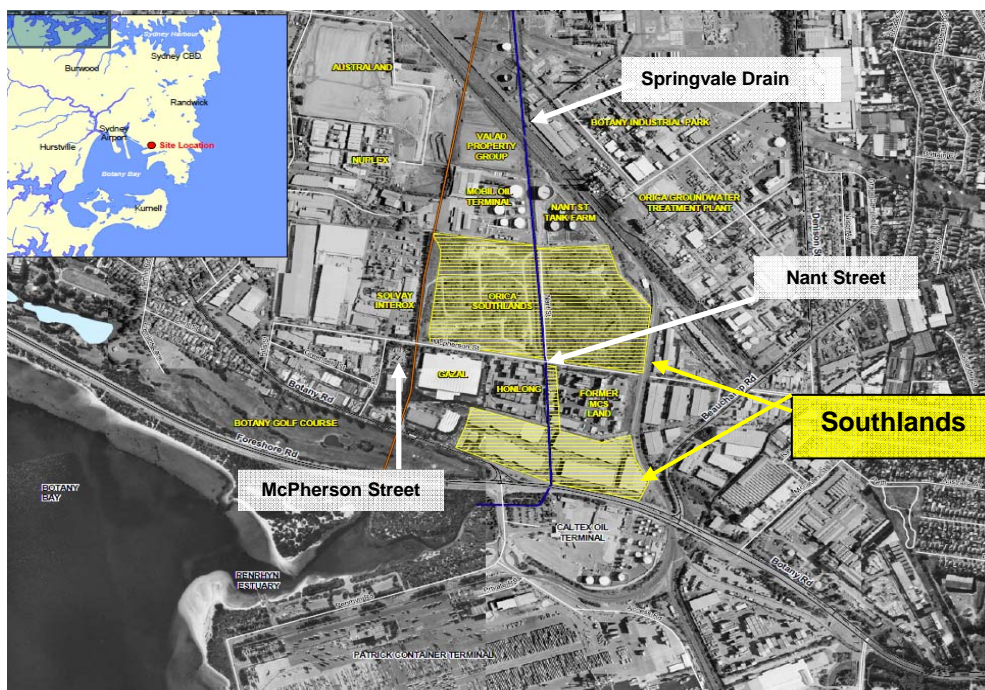


Figure 1: Site Location

3. SITE HISTORY

On 16 April 2012, the then Deputy Director-General, Development Assessment and Systems Performance, granted approval under delegation for the construction and operation of an industrial warehousing estate at Orica's Southlands site.

3.1 Project Approval

The approval allowed for:

- remediation works over the whole site (Areas 1, 2 and 3);
- flood mitigation and drainage works;
- staged subdivision into 9 lots (see **Figure 3**);
- filling of the land on the site's western side to raise it above the 1 in 100 year flood levels;
- establishment of 6 industrial use warehouses (with a gross floor area of 48,000m²) each with ancillary office components;
- traffic improvement works at the intersection of Hill Street and Botany Road;
- direct vehicle access for warehouses 1-4 off McPherson Street; and
- carparking and landscaping works.

An overview of approved works is provided in **Figure 2**.

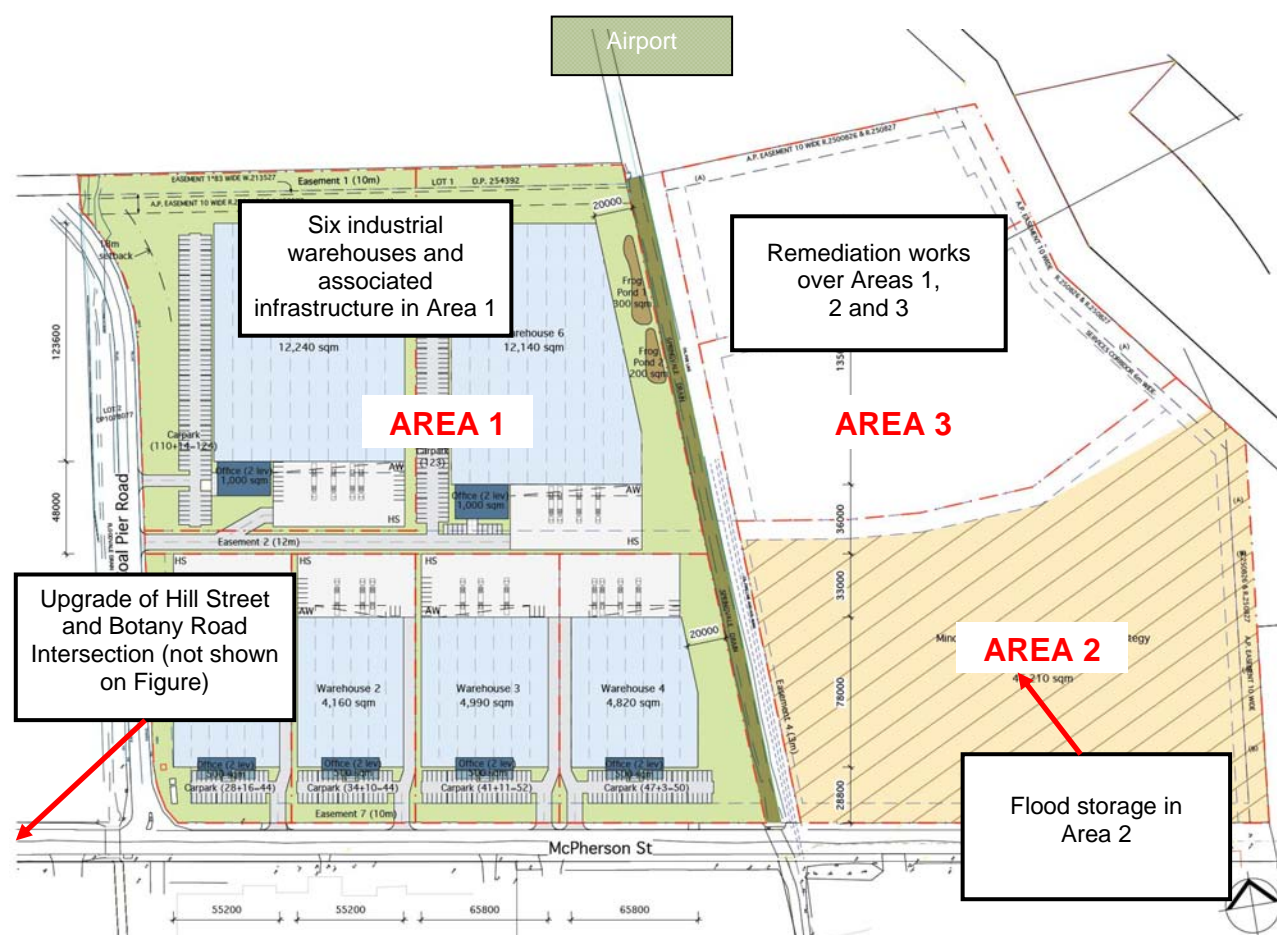


Figure 2: Approved Project layout

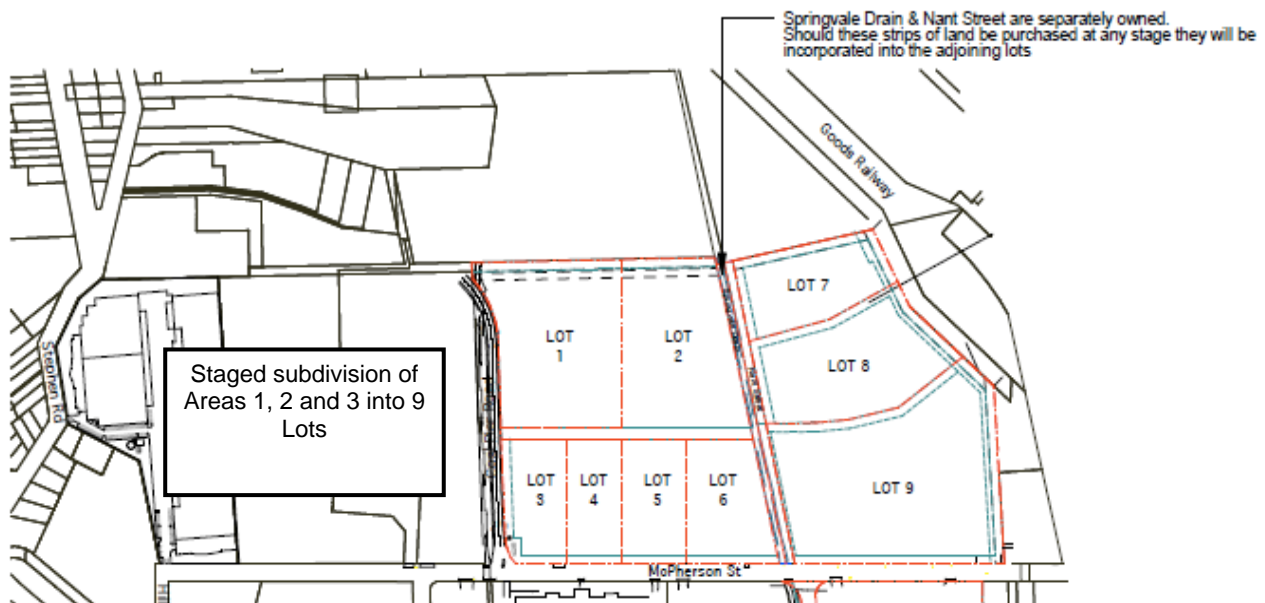


Figure 3: Approved Project subdivision

3.2 Modification Request

Modification 1 (MP 06_0191 MOD 1) was approved on 14 August 2013, it reconfigured and increased the surface area of the approved flood storage basin. A number of other changes to the Project were also approved (see **Figure 4** for the current site layout) including:

- a reduction in the warehouse gross floor area from 46,500 m² to 36,170 m²;
- slight reconfiguration of internal traffic circulation to allow trucks to move through the site in a one way direction;
- a weir comprising a natural channel constriction in Springvale drain (the original approval did not define the type of weir);
- a revised subdivision and easement plan which included:
 - minor reconfiguration and reduction in size of Lots 1-6;
 - reconfiguration of Lots 7, 8 and 9 to create three development Lots (7, 8 and 12) over the eastern, unexcavated portion of the site, and Lot 9 (the compensatory flood storage basin on the eastern half of the site);
 - two additional Lots (10 and 11), in place of the originally proposed easements for the Botany Groundwater Clean Up Project (BGCuP); and
- relocation of the frog ponds.



Figure 4: Current Site Layout

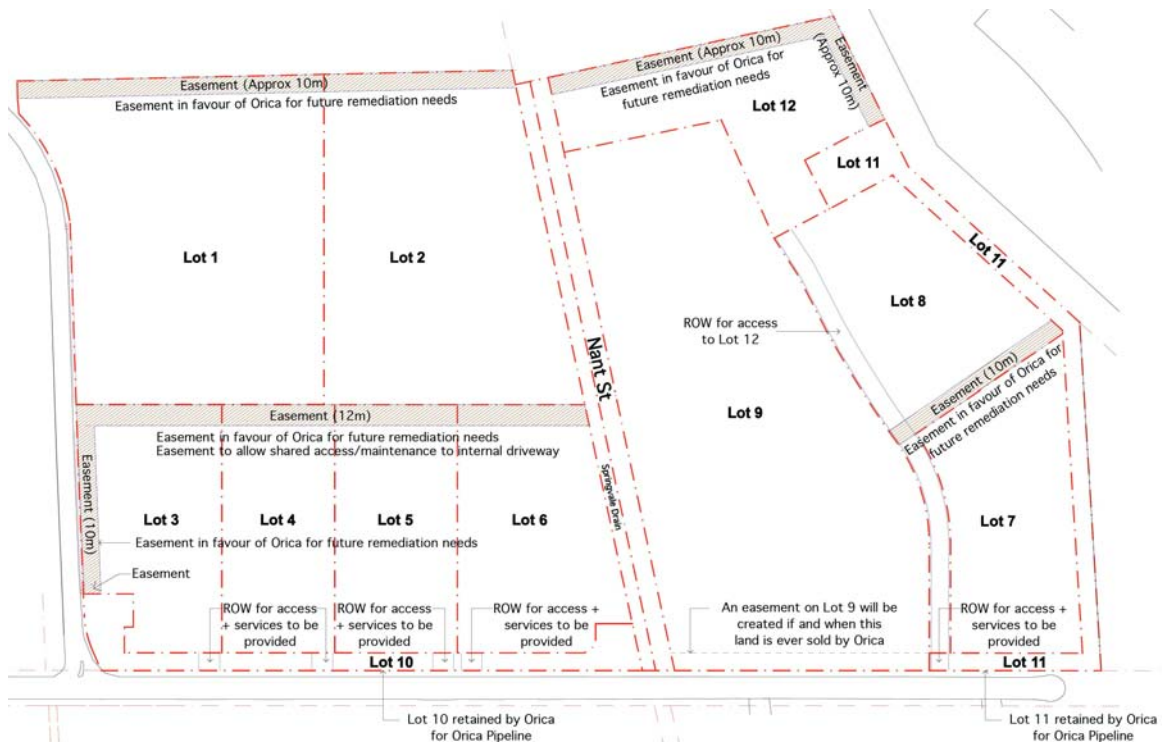


Figure 5: Current Subdivision Plan

4. PROPOSED MODIFICATION

Goodman Ltd (Goodman) is in discussions with Orica to purchase a part of the Southlands site to the west of Nant Street, that is Lots 1-6, referred to as Port Botany Industrial Estate (PBIE). Goodman, on behalf of Orica (the Proponent), is now seeking to further modify the approval to allow for the consolidation and reconfiguration of the approved warehouses.

Goodman is a global organisation, which owns, develops and manages a portfolio of industrial land across Australia and internationally. The Proponent intends to develop and manage the estate (to the west of Nant Street), leasing the warehouse space, with a likely focus on freight and logistics.

The modification involves:

- alteration of the building footprints by consolidating the six approved warehouse buildings into two larger warehouse buildings;
- reduction of lots to seven by amending the subdivision plan to retain the two warehouse buildings, associated access ways and parking under a single lot (Lot 102 DP 1189375);
- integration and relocation of car parking areas to provide two consolidated on-site parking areas serving the two warehouse buildings;
- reconfiguration of internal traffic circulation with truck ingress and egress via Coal Pier Road and McPherson Street. Separate light vehicle access is provided via Coal Pier Road for Warehouse A and McPherson Street for Warehouse B; and
- internal fit out of Warehouse B to accommodate Toll's operations.

The proposed amendments (shown in **Figures 6 and 7**) would decrease the number of lots from 12 to seven, increase the total gross floor area from 36,170 m² to 40,386 m², decrease the number of access points off McPherson Street and decrease the number of parking spaces by 39 from 341 to 302.

The Proponent is also seeking to amend or delete a number of other conditions and commitments. These range from administrative changes such as updating its letter of offer in line with the increased floor space and removing a requirement for the Proponent to submit a fencing plan to Council, to changes to the proposed traffic restrictions. The proposed changes are discussed further in **Table 1** below.

The Proponent is also proposing to amend Conditions 13 and 14 of Schedule 2, 8A, 21 and 31 of Schedule 3 and Appendices 1, 3, 4, 5 and 7 to reference revised plans and other components of this modification.

Table 1: Proposed Amendments to Approval

Condition/ Commitment	Current Approval	Proposed
Condition 12 of Schedule 2	The Proponent shall pay developer contributions to a maximum amount of \$3,110,914.00 payable to Council generally in accordance with the offer dated 7 May 2013.	The Proponent shall pay developer contributions to a maximum amount of \$3,133,577 payable to Council generally in accordance with the offer dated 9 March 2015
Condition 20 of Schedule 3	The Proponent shall install signage on Botany Road (eastbound) to prevent trucks longer than 12.5 m turning left into Hill Street.	Deletion of this requirement.
Condition 25 of Schedule 3	Construction hours of 8 am until 1 pm on a Saturday.	Extension of construction hours until 3 pm on a Saturday.
Condition 29 of Schedule 3	Prior to installing any fencing at the site, the Proponent shall submit detailed plans of this fencing to the Director-General for approval. These plans must be prepared in consultation with Council.	Deletion of this requirement.
Statement of Commitments	Detailed design to be in accordance with CoBB DCP for Energy Efficiency.	Deletion of this commitment.
Statement of Commitments	Detailed design of each building will be submitted to Botany Bay City Council for review and design input from the Council's Urban Design Review Panel prior to issue of a CC for each new building.	Deletion of this commitment.

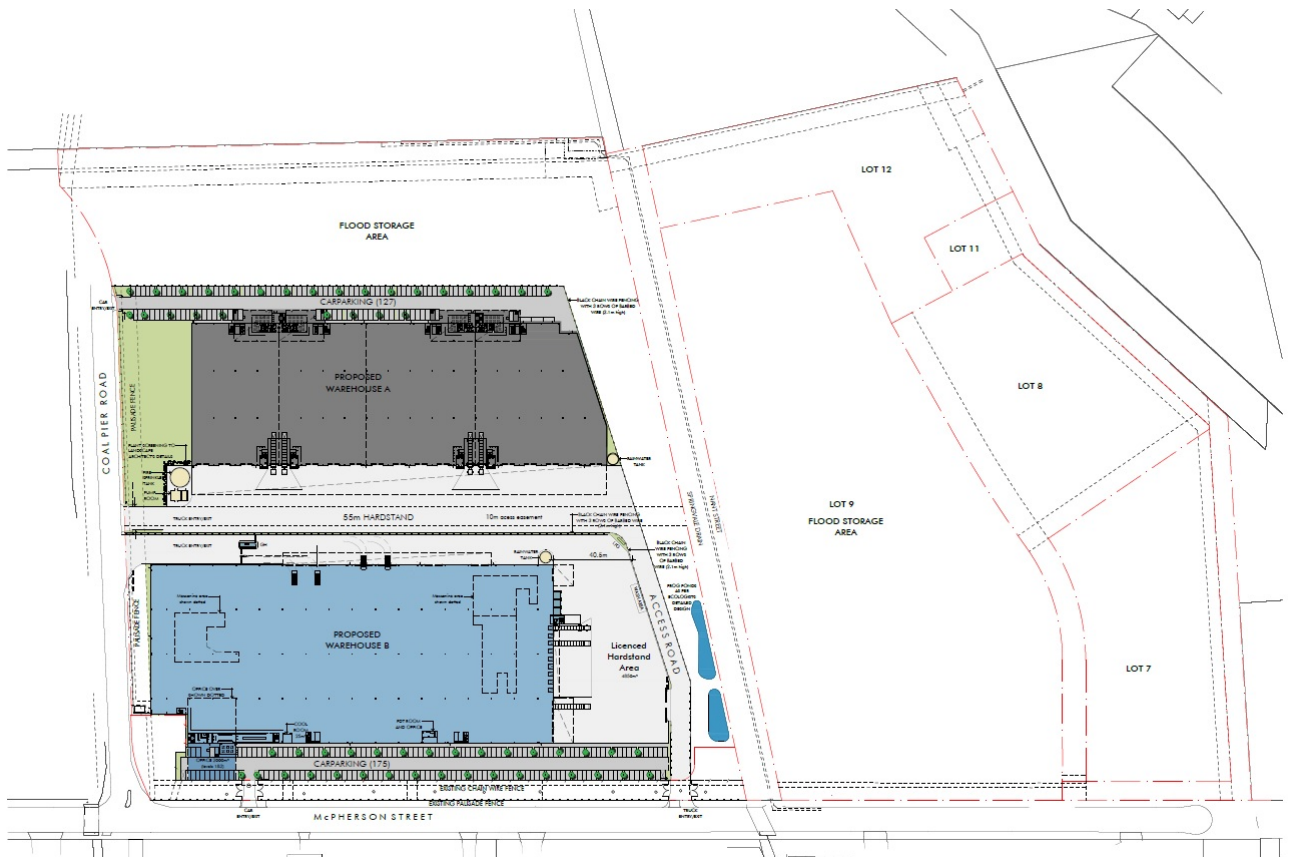


Figure 6: Proposed Site Layout

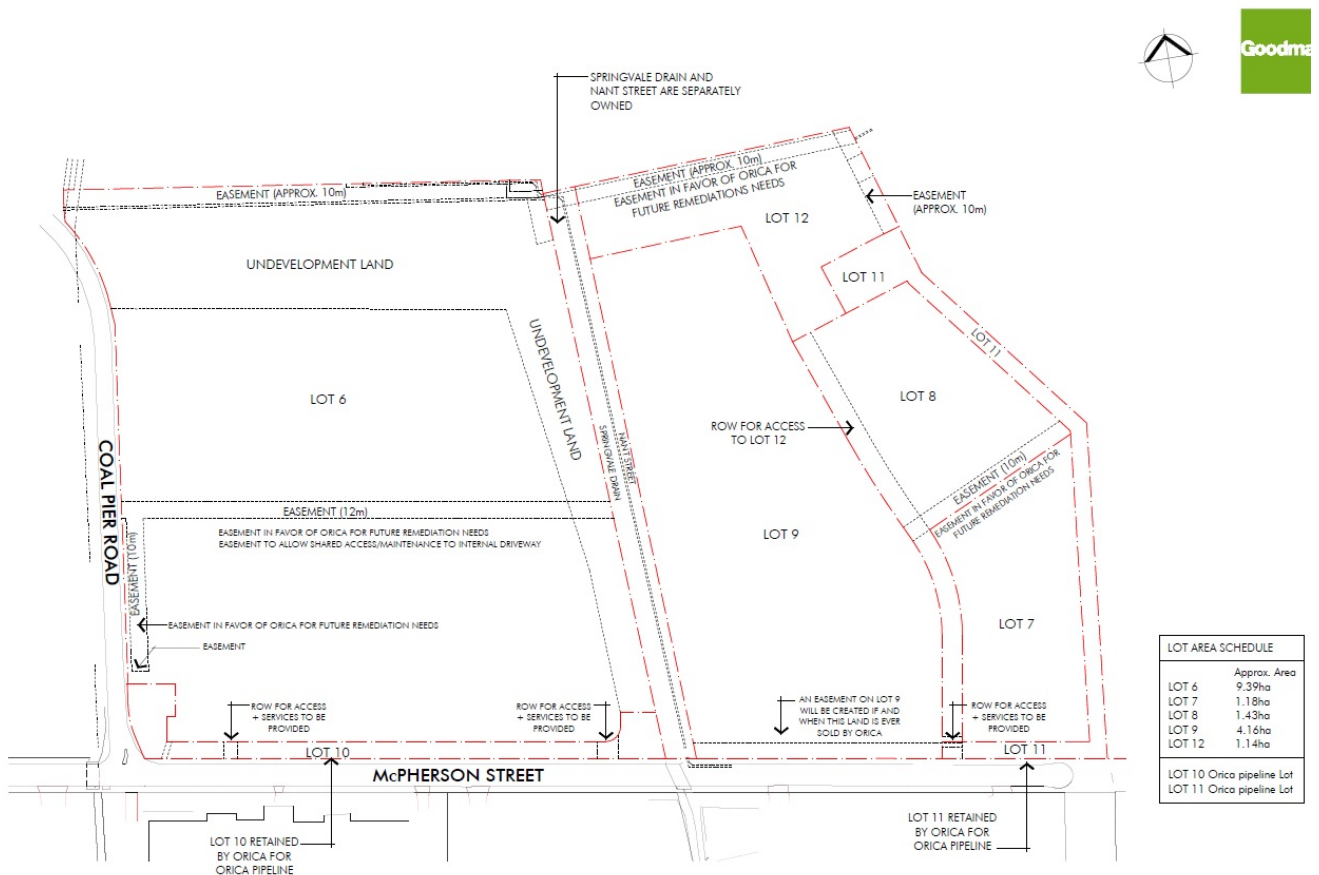


Figure 7: Proposed Subdivision and Easement Plan

The Proponent has advised that the modification would:

- retain the underlying industrial/warehouse use on the site;
- enable a more efficient use of the developable portion of the site;
- better respond to the constraints and opportunities presented by the site;
- reconfigure the site layout and the building footprints to better reflect the likely needs of future tenants and improve the functionality of the facility; and
- improve the efficiency of vehicular circulation.

5. STATUTORY CONTEXT

5.1 Section 75W

Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to section 75W modification request to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original approval. As the modification request seeks to modify the conditions of the approval and the Statement of Commitments in Schedule 3, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or his delegate) has the ability to determine the modification request.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). The Minister (or his delegate) may approve or disapprove of the modification of the Project under section 75W of the EP&A Act.

5.2 Approval Authority

On 16 February 2015, the Minister for Planning delegated responsibility for the determination of section 75W modification requests to the Executive Directors who report to the Deputy Secretary, Planning Services where:

- the relevant local Council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

The modification complies with the terms of the delegation as Botany Bay City Council (Council) did not object to the proposal, a political disclosure has not been made in relation to the request and no public submissions were received in the nature of objections. Accordingly, the Executive Director, Infrastructure and Industry Assessments may determine the request in accordance with the Minister's delegation.

6. CONSULTATION

Under section 75X(2)(f) of the EP&A Act, the Secretary is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the EP&A Regulation, the modification request was made publicly available on the Department's website and referred to Botany Bay City Council (Council), RMS, EPA and NSW Fire and Rescue for comment.

Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies. One public submission was received in relation to the modification application.

A summary of the issues raised in the submissions is provided below. A copy of each submission is included in **Appendix B**.

6.1 Public Authority Submissions

Council did not object to the proposed modification, however, it objected to the proposed deletion of condition 20d on the basis that is inconsistent with the restrictions in the locality. Council also objected to the alteration of construction hours.

Council also provided comments on a range of issues including:

- traffic including swept path analysis and the need for a Give Way sign at the Coal Pier Road and McPherson Street intersection;
- the need for additional façade treatment and landscaping;
- clarification on landscaping including fencing, cycleways and the pedestrian path;
- section 94A contributions;
- flooding; and
- contamination.

The Department reviewed Council's submission and requested that the Proponent address these issues in its Response to Submissions (RTS). This is further considered in **Sections 6.3** and **7.2** of this report.

The **EPA** did not object to the proposed modification, however, it notes that the Proponent should report all proposed breaches of the surveyed marker layer along with soil testing results and proposed rectification measures to the EPA's approved independent site auditor, prior to any construction.

The **RMS** raised no objections to the proposed modifications.

Fire and Rescue NSW recommended a range of conditions to ensure that any alternative solution developed to meet performance requirements of the Building Code of Australia be designed in accordance with the principles detailed in the 'International Fire Engineering Guidelines' (IFEG); and that the preparation of the fire engineering brief (required by the IFEG) is undertaken in consultation with all relevant stakeholders. These conditions have been included in the recommended Instrument of Modification.

6.2 Public Submissions

Hynlong, a nearby business operator, provided three submissions during the assessment of the modification request. Hynlong supported the proposal providing it would not adversely affect its land. However, it raised the following concerns:

- the Environmental Assessment (EA) contains incorrect references to conditions, lot numbers and plans;
- a section 88B instrument has been registered, it is inconsistent with the existing approval as it allows the Proponent to vary easements registered on title and does not provide for the maintenance of the flood detention basin; and
- there are inadequate controls in the approval for ongoing maintenance of the flood detention basin.

Hynlong also requested that any Instrument of Modification clearly state that all flood mitigation works are completed prior to the commencement of construction of the warehouses.

The Department acknowledges that the Proponent's EA contained a number of minor errors, particularly within the suggested wording of the proposed conditions. Where these conditions have otherwise been agreed to by the Department in its assessment, these errors have been rectified in the recommended Instrument of Modification.

Matters relating to the existing section 88B instrument are outside the scope of this modification request and are being separately addressed by the Department.

Other matters raised in this submission are addressed in **Section 7.3**.

6.3 Response to Submissions

The Proponent lodged its RTS on 25 March 2015 (**Appendix A**). The RTS was lodged to address the issues raised in Council's and the public submission and to further revise the layout of Warehouse B to suit Toll, the proposed tenant. The RTS included revised plans and supplementary information including:

- ecological advice in relation to the proximity of the Green and Golden Bell Frog habitat to the site's access points;
- confirmation from the Proponent's engineers that bulk earthworks on Lot 6 would not change the stormwater or flood impacts assessed in MOD 1;
- confirmation from the EPA accredited site auditor that any excavation into the marker layer will be managed by the Long Term Site Environmental Management Plan (LTSEMP) required by Condition 6 of Schedule 3 and a Construction Management Plan both of which will be reviewed by the auditor;
- a revised S94 contributions letter of offer;
- an updated Fire Study;
- a breakdown of traffic numbers and confirmation that, although the longest vehicles that will access the site may not be able to enter and exit simultaneously, there will be controls in place to prevent this happening; and
- an updated landscape plan which includes additional tree planting along the McPherson Street frontage.

The RTS also identified that the Proponent was no longer seeking to delete the requirement to install a sign restricting vehicles over 12.5 m from turning left into Hill Street (Condition 20d).

The Department referred the RTS to Council for comment. Council advised that it had a number of additional concerns, however, the Department considers that many of these concerns have been addressed by the additional information provided in the final RTS.

Council's final submission contained a number of outstanding issues along with a range of recommended conditions. Council's issues comprised:

- the construction vehicles' haul route has not been described, therefore Council will not support the amendment to construction hours;
- the Department should undertake an assessment of whether the proposal would have additional risk impact associated with the dangerous goods transport on Denison Street; and
- a note that the development would not be eligible for a parking permit.

Council also recommended a range of conditions in relation to landscaping, contamination, traffic, flooding, a Green Travel Plan, office fit out in Warehouse A as well as a number of changes to the wording of the conditions proposed to be modified by the Proponent.

The Department has reviewed Council's concerns and is satisfied that:

- Condition 22 of Schedule 3 of the approval already requires the preparation of a Green Travel Plan. This plan will include an assessment of alternate travel modes to reduce reliance on private car transport;
- Condition 23 of Schedule 3 will ensure that there will be no queuing on the public road;
- registration of the LTEMP on title is superfluous as Condition 6 of Schedule 3 requires the site to be maintained for the duration of site occupation in accordance with the LTEMP;
- the modification would not have additional risk impact associated with dangerous good transport as existing conditions require that the Proponent ensure that Dangerous Goods are not stored at or distributed to/from the site; and
- the Project approval already allows for the construction and operation of the warehouses, including the internal fit out of Warehouse A.

Other issues have been addressed in the Department's assessment of the impacts of the modification in **Section 7**.

7. ASSESSMENT

The Department has assessed the merits of the proposed modification. During its assessment, the Department has considered:

- the Environmental Assessment, Preferred Project Report and the Director-General's environmental assessment report for the approved Project;
- existing conditions of approval;
- documentation supporting the proposed modification request (**Appendix A**);
- all submissions received (**Appendix B**);
- the Proponent's Response to Submissions report (**Appendix A**);
- relevant environmental planning instruments, policies and guidelines; and
- the requirements of the EP&A Act, including the objects of the Act.

In regard to the proposed modification, the Department considers the key environmental issues to be associated with design and layout changes as well as contamination. The assessment of other issues including, traffic, flooding, noise, energy efficiency, Section 94 contributions and impacts on the Green and Golden Bell Frog habitat is outlined in **Section 7.4**.

7.1 Design and Layout Changes

The proposed change to the building layout may have additional visual impacts on the surrounding area.

The proposed modification seeks to consolidate the six approved warehouses into two large warehouse buildings oriented east-west, separated by a large area of hardstand providing loading and access areas. See **Figures 8-11** which compare the approved and proposed layout and elevations.

Although the bulk and scale of the warehouses would change, the external finishes would be very similar to those approved, being primarily grey toned colourbond sheeting and a pitched roof. As per the original design, the majority of the hardstand and roller doors are to the rear of the property, away from the street-front.

Warehouse A would be 15,100 m² and nominally broken into four smaller units, and Warehouse B would be one building of 22,800 m². The warehouses, although approximately 1 m higher than the buildings originally approved, would remain below height restrictions imposed by the Sydney Airport Corporation Limited (SACL) in relation to airspace protection.

The Department is satisfied that visual impacts would be similar to those approved. However, the Proponent is seeking to remove the existing commitment which requires the submission of the detailed design of each building to Botany Bay City Council for design input from the Council's Urban Design Review Panel.

Council has not objected, however, it sought additional façade treatment and landscaping and recommended a number of detailed conditions. In response the Proponent revised its Landscape Plan to show additional tree planting within the car park area.

On consideration, the Department recognises that the Project is located within two cul-de-sacs servicing an industrial precinct. Opportunities to view the warehouses would primarily be limited to traffic accessing the site or the surrounding industry. Although longer than the surrounding buildings, the warehouses would generally be of a similar design.

As per the original approval, the Department is satisfied that visual impacts from the modification would be consistent with the industrial nature of the area. Furthermore, the Project Approval requires a detailed landscape plan to be prepared in consultation with Council. The Department considers that landscaping can help break up the bulk of the building and soften views from public spaces.



Figure 8: Approved layout

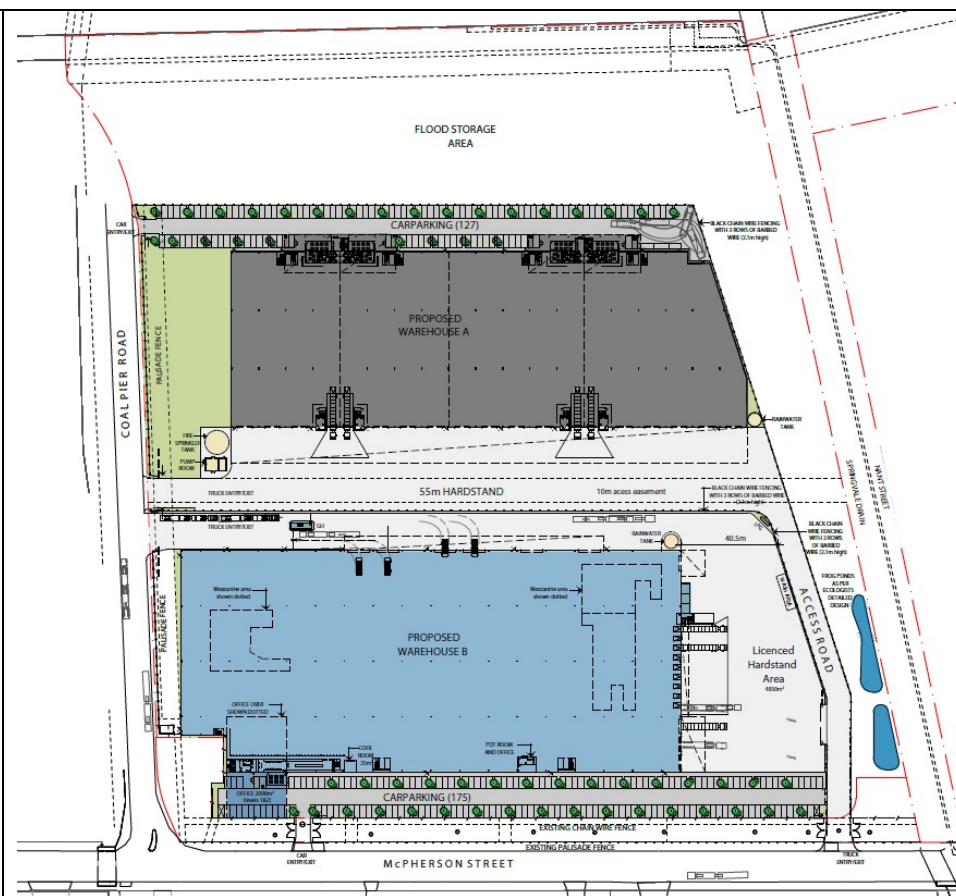


Figure 9: Proposed layout



Figure 10: Approved southern elevation, from McPherson Street

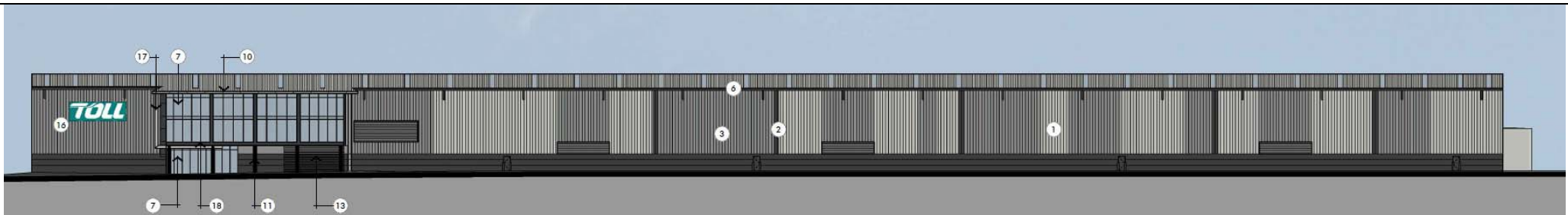


Figure 11: Proposed southern elevation, from McPherson Street (additional landscaping in car park not shown)

7.2 Contamination

Past activities adjacent to and on the site have resulted in contamination of soil and groundwater within the Southlands site. The original assessment identified the soil contamination and included a Remedial Action Plan (RAP) which had been endorsed by an EPA accredited site auditor.

According to the RAP, the primary concern in the area in which the PBIE is located, is the management of asbestos which would be contained on-site and physically separated from future users through the construction of a physical barrier. That is, fill covered by a marker layer to indicate the interface between the fill and underlying contaminated soils.

The modification does not propose any changes to the approved remediation works which are nearing completion. However, the Proponent's assessment identifies that due to recessed loading docks and the internal stormwater drainage, breaches into the marker layer would occur. The RAP states that any Construction Environmental Management Plan (CEMP) should make provision for contamination management requirements during construction if localised penetration of the marker layer is required.

The EPA has reviewed the modification and raises no concerns, providing the Proponent report all proposed breaches, soil testing results and rectification measures to the EPA accredited auditor (site auditor). However, Council requested that if penetration of the marker layer differs from that proposed by the approved RAP, an additional RAP should be prepared and reviewed under a new Site Audit Statement. Council also recommended that any CEMP and OEMP be amended to manage any additional risks and raised some concerns about landscaping in contaminated soil.

The site auditor has provided advice on the proposed breaches explaining that the Long Term Environmental Management Plan (LTEMP), required by Condition 6 of Schedule 3, will contain requirements for the maintenance and integrity of the marker layer. The LTEMP would be implemented following remediation and would apply to construction of the PBIE, including landscaping. Notwithstanding, it was advised that a review of the Proponent's Construction Management Plan, which would provide detailed construction methods to be followed during construction of the warehouses, to ensure compliance with the approved LTEMP, would be undertaken. The site auditor raised no concerns regarding the potential for future landscaping to penetrate the marker layer within the PBIE.

To ensure the above measures are implemented, the Department has recommended that the CEMP, required by Condition 3 of Schedule 3, be updated to the satisfaction of the site auditor prior to the commencement of construction. The updated CEMP must contain measures to manage construction that would penetrate the marker layer.

The Department's assessment concludes that the existing conditions requiring remediation to be undertaken in accordance with the RAP, the preparation of a LTEMP and a Site Audit Statement and Report, along with the recommended CEMP update, is sufficient to manage any contamination issues during the construction and operation of the proposed warehouses.

7.3 Other minor amendments to approval

The Proponent is seeking a number of administrative amendments to the approval, the two key changes have been considered below.

7.3.1 Landscape plan

Landscaping for the site has been approved under MOD 1 in accordance with Condition 31 of Schedule 3 of the approval. Landscaping within the PBIE area is shown as grass only. The Proponent is seeking to amend the timing for the submission of any landscape plan from within 4 weeks from the determination date of MOD 1 (as per the existing Project Approval) to prior to issue of a construction certificate for the warehouses. The Department notes that this request represents a minor departure from the original approval and therefore agrees to the change.

The concept landscape plan provided with the current modification request only covers the PBIE area and does not describe how it would integrate with the approved plan. As such, the Department has included a recommended condition requiring the Proponent to prepare a landscape plan for the PBIE area that reflects the changed layout and is consistent with the approved Landscape Management Plan dated October 2013 and plans dated 4 December 2013, in consultation with Council.

Council also recommended a range of detailed conditions in relation to landscaping. The Department supports the majority of these recommendations and although the details haven't been included in the recommended modifying instrument, it considers that they can be addressed by the Proponent in its consultation with Council during the preparation of the detailed Landscape Management Plan above. It is noted that a number of Council's recommendations either relate to the area covered by the previously approved landscape plan (on which Council was consulted), or in the case of the recommended depth of fill, to the RAP. These plans were approved as part of the original Project and MOD 1 and no modification to these plans have been proposed by the Proponent as part of this modification. As such, the Department has not included these proposed conditions in the recommended modifying instrument.

Council also sought payment of a bond and other measures to ensure establishment and maintenance of the landscaping is undertaken in a timely manner and in accordance with any approved landscape plan. The Department is satisfied that a recommended condition requiring the landscaping to be maintained for the life of the Project is sufficient. Furthermore, any landscaping is to be installed prior to warehouse occupation.

7.3.2 Fencing plan

The Proponent is seeking to delete Condition 29 of Schedule 3 which requires detailed plans of any proposed fencing to be prepared in consultation with Council. The Landscape Management Plan (required by Condition 31 of Schedule 3), and approved on 20 December 2013, contained some details about the proposed fence design. A consequent detailed fencing plan, dated 23 December 2013, was also provided. Council commented that all boundary fences shall be steel palisade rather than chainwire, the Department notes that the approved plan is consistent with this request. The Proponent confirmed that it intends to install fencing in line with the approved plan. As such, the Department's assessment concludes that this condition is not required. However, as the approval did not indicate any timing for implementation of the fencing plan, the Department has recommended it be implemented prior to the issue of the first occupation certificate.

7.4 Other Issues

A number of other environmental aspects were considered as a result of the modification request. Effects of these issues were not considered to impact the environment beyond a level that has already been assessed as part of previous applications. These matters are discussed in **Table 2**.

Table 2: Assessment of other issues

Issue	Assessment	Recommendation
Traffic	<p><u>Car Park</u></p> <ul style="list-style-type: none"> The Proponent estimate that the modified project would result in a reduction to the original Project's traffic generation (235 vehicles per hour) to 210 vehicles in the morning peak and 226 in the afternoon peak. Given the reduction in floor space from the original project, the Proponent also proposes a reduction of car parking spaces to 302, a number higher than both Council's and RMS's current requirements. The Proponent has also advised that there is scope to increase on-site parking in the future should this be required. 	No change to existing conditions.

Issue	Assessment	Recommendation
	<p><u>Internal Circulation</u></p> <ul style="list-style-type: none"> The modification would alter internal traffic movements slightly. Small vehicle movements would be separated from heavy vehicles and the internal circulation would still result in an adequate level of safety and amenity. <p><u>External Roadwork</u></p> <ul style="list-style-type: none"> Traffic impacts were considered a key issue when assessing the original proposal. Given the complexity, the Department engaged a specialist traffic consultant who recommended a range of conditions to ensure that the Project would not negatively impact the surrounding road network. In its submission, Council requested that the Proponent install a give way sign on Coal Pier Road. Given that the modified Project would result in less traffic than originally approved, the Department disagrees that the modification warrants the installation of a give way sign. In the Response to Submissions the Proponent recommended that the Department give regard to the signalisation of the Botany Road/Exell Street intersection. This arrangement was assessed as part of the original application where the (then) RTA stated that signals would not be approved at this location because their modelling indicated extensive delays and unacceptable queue lengths on Botany Road. As such, it was not considered a viable option. Furthermore, the Department's independent traffic consultant for the original assessment determined that Orica's traffic analysis for the Exell Street intersection is reasonable in maintaining the current left-out layout. The RMS raised no concerns with the proposed modification. The Department's assessment concludes that the measures contained in the Project Approval, including a requirement to upgrade the Hill Street and Botany Road intersection; prepare and implement an Operational Traffic Management Plan; and ensure that all parking generated by the project is accommodated on site, are sufficient to ensure traffic impacts are appropriately managed. 	
Noise	<ul style="list-style-type: none"> The Proponent is seeking to modify the approved construction hours to allow an additional two hours on Saturday afternoon. The Proponent considers that the change is warranted given that the area is industrial and that there are no residential receivers in the proximity of the Project. Council raised concerns about the potential impacts to residents along the construction vehicle haul route. The Department considers that the Proponent has not provided sufficient information to support its request, namely an additional noise assessment along expected haul routes. Notwithstanding, Condition 25 of the Project Approval permits construction out of hours, subject to approval by the Director-General (now Secretary). The Proponent will be able to seek out of hours construction approval subject to provision of appropriate justification. 	No change to existing conditions.
Subdivision pattern	<ul style="list-style-type: none"> The proposal generally preserves the approved subdivision pattern, however, the Proponent now proposes to retain the warehouses within one lot rather than six. 	The Department has recommended administrative changes to the Project Approval to revise the

Issue	Assessment	Recommendation
	<ul style="list-style-type: none"> As the overall footprint of the proposed Lot 6 remains the same as the individual approved lots 1-6, the Department concludes that this represents a negligible change and would not result in any environmental impacts beyond those originally assessed. 	description of the Project.
Flooding	<ul style="list-style-type: none"> Flooding and the existing approval's adequacy in regards to flood mitigation and long-term controls have been raised as a concern within both the public and Council's submission. The Department acknowledges that flooding was a key issue for both the original assessment and the approved modification. Due to its complexities, the Department engaged an independent specialist to provide technical advice on flooding related issues for both the original approval and the modification. This approach ensured a robust and comprehensive assessment. The proposed modification would not change the total impervious area or modify the approved flood detention basin. The Proponent's civil engineer confirmed that the quantity of stormwater discharging into the onsite flood detention basin would not increase. The submissions from the public and Council sought assurance that all flood mitigation works would be completed prior to commencement of construction on the PBIE site and that Condition 8A, requiring a covenant to be registered for the maintenance of the flood detention basin, be amended to include both Lot 6 and Lot 9. The Department notes that the existing approval applies to the whole site and therefore existing conditions requiring: <ul style="list-style-type: none"> all flood mitigation works to be completed prior to the commencement of construction of the warehouse buildings, a range of flood validation reports; the Proponent maintain adequate flood storage for the life of the Project; and a positive covenant be registered on title of Lot 6 requiring maintenance of the flood detention portion of the lot, will ensure that the flood detention basin operates as designed and is appropriately managed for the life of the Project. However, the Department notes that although Lot 9 holds the majority of the flood detention basin, there is currently no requirement to register a positive covenant for the maintenance of the flood detention over this lot. Therefore, the Department recommends that a positive covenant is registered over Lot 9 when the remaining lots are subdivided. 	<p>The Department has recommended conditions that require the Proponent to:</p> <ul style="list-style-type: none"> ensure any easements or any other encumbrances and indemnities in the easement plan nominate Council, the EPA or other relevant Authority (ie Sydney Water etc) as the authority to release, vary or modify the easement; and register a section 88B/E instrument pursuant to the <i>Conveyancing Act, 1919</i> over Lot 6 and Lot 9 requiring the maintenance and management of the flood detention basin and prohibiting the use of the land at grade other than for the maintenance of the flood detention basin.
Building Safety	<ul style="list-style-type: none"> The modification includes a revised Building Code of Australia (BCA) report which shows that there would be some BCA non-compliances that are proposed to be addressed by alternative solutions. The Proponent also prepared a Fire Safety Study which proposes a number of alternative solutions to meet the performance requirements of the BCA. NSW Fire and Rescue raised no concerns, however, suggested a range of conditions which the Department has included in the instrument of modification. In its Response to Submissions Report the Proponent included a revised Warehouse B design and an 	<p>Recommended conditions require the Proponent to:</p> <ul style="list-style-type: none"> Ensure that any alternative solution developed to meet performance requirements of the Building Code of Australia be designed in accordance with the principles detailed in the <i>'International Fire</i>

Issue	Assessment	Recommendation
	<p>updated Fire Safety Study. As the changes were minor, the revised report has not been reviewed by Fire and Rescue NSW. Notwithstanding, the Department's assessment concludes that the proposed conditions along with the existing condition requiring the Proponent to prepare an Emergency and Fire Response Plan to the satisfaction of Fire and Rescue NSW are sufficient to manage safety impacts from fires.</p>	<p><i>Engineering Guidelines'</i> (IFEG); and</p> <ul style="list-style-type: none"> the preparation of the fire engineering brief (required by the IFEG) be undertaken in consultation with all relevant stakeholders including Fire and Rescue NSW.
Water and Energy Efficiency	<ul style="list-style-type: none"> The Proponent is seeking to remove the commitment which states that detailed design would be in accordance with the City of Botany Bay DCP (the DCP) for Energy Efficiency. The original application contained a Water and Energy Efficiency report which proposed compliance with the DCP. The report stated that the intention of complying with requirements of the DCP is to demonstrate that the proposal will achieve enhanced environmental outcomes over the life of the development. The report provides a list of design measures proposed in response to the DCP. The Proponent advised that it still proposes to comply with the majority of these measures. A condition of approval requires the Proponent to prepare and implement an Energy Efficiency Management Plan. The Department's assessment concludes that existing conditions are sufficient to reduce energy usage and greenhouse gas emissions from the site and supports the removal of this commitment. 	No changes to existing conditions.
Developer Contributions	<ul style="list-style-type: none"> The original application included a letter of offer based on the Stage 1 site area of 9.815 ha (including gross floor area (GFA) of 46,500 m²). A revised letter of offer which was provided with MOD 1 was calculated using the same area, even though amendments made as a result of MOD 1 meant that the Stage 1 area included flood detention. That is, MOD 1 reduced the warehouse GFA. The current proposed modification would result in a reduction of developable floor space and revised employee figures. The Proponent requested that Council accept a revised offer based on a developable area of 6.59 ha, not including the flood detention basin. The Proponent submitted a revised letter of offer dated 6 March 2015 which commits to a Section 94 contribution of \$3,133,577 (indexed as the original offer was based on rates calculated in January 2006). Council has accepted the revised contribution amount, however, it requested that any recommended condition omit reference to The Proponent's revised letter of offer as it does not agree with its wording. Notwithstanding, Council's preferred wording of Condition 12 includes reference to a Voluntary Planning Agreement (VPA). It also requested that The Proponent be required to pay its contributions prior to the issue of a construction certificate. The Department generally supports Council's position and has recommended that the Condition be updated accordingly. 	Recommended conditions require the Proponent to: enter into a VPA or pay developer contributions to a maximum amount of \$3,133,577 prior to the issue of a construction certificate payable to Council, for the provision of infrastructure within the Botany Bay local government area.

Issue	Assessment	Recommendation
	<ul style="list-style-type: none"> The Department's assessment concludes that the recommended condition will ensure that the agreed contributions are paid to Council within an appropriate timeframe. The condition also provides some flexibility to both Council and The Proponent if they should seek to enter into a VPA. 	
Green and Golden Bell Frog Ponds	<ul style="list-style-type: none"> The approved Project includes the construction of two small ephemeral ponds and associated foraging areas as a compensatory habitat for the Green and Golden Bell Frog (GGBF). The modified layout would mean that the driveway and warehouse hardstand are closer to ponds than originally assessed and approved. Council raised concerns over the potential impact of noise on the frogs. The Proponent's Response to Submissions Report included advice from an ecologist which concluded that as background noise and vibration has not proven to be a disturbance to the GGBF in the many GGBF sites in or close to industrial areas around Sydney, any additional noise and vibration would not affect the GGBF. The Department concurs with the findings of the ecologist and concludes that there would be no additional impacts on Green and Golden Bell Frogs resulting from the proposed modifications. 	No changes to existing conditions.

8. CONCLUSION

The Department has assessed the merits of the proposal in accordance with the requirements of the EP&A Act. This assessment has found that the proposed modification would have negligible impacts beyond those originally assessed and approved. The Department considers that any impacts can be managed by the existing and modified conditions of approval.

The modification would also:

- reduce traffic volumes from those originally approved;
- ensure that any soil contamination is appropriately managed during construction; and
- ensure that the infrastructure associated with the Botany Groundwater Clean-up Project is still accessible.

Consequently the Department believes the proposal should be approved subject to minor amendments to the existing conditions of approval, as set out in the Notice of Modification at **Appendix C**.

9. RECOMMENDATION

It is **RECOMMENDED** that the Executive Director, Planning Services:

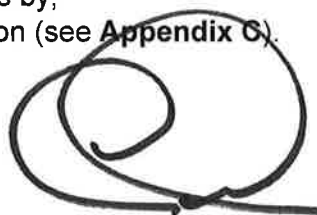
- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the request subject to conditions by;
- **signing** the attached notice of modification (see **Appendix C**).

Report prepared by
Emma Barnet



22.4.15

David Mooney
A/Manager
Industry Assessments



Chris Wilson
Executive Director
Infrastructure and Industry Assessments

22.4.15

APPENDIX A THE PROPONENT'S REQUEST AND RESPONSE TO SUBMISSIONS

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6743

APPENDIX B SUBMISSIONS

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6743

