



# Orica Villawood Remediation Project Modification 3

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Proposed subdivision and long-term environmental management

State Significant Development Modification Assessment (09\_0147 MOD 3)

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Cover image: *Site locality aerial (source: Nearmap)*

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# Glossary

Abbreviation	Definition
<b>BDAR</b>	Biodiversity Development Assessment Report
<b>CLM Act</b>	<i>Contaminated Land Management Act 1997</i>
<b>Council</b>	Canterbury Bankstown Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EP&amp;A (ST&amp;OP) Regulation</b>	<i>(Savings, Transitional and Other Provisions) Regulation 2017</i>
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPL</b>	Environment Protection Licence
<b>GMP</b>	Groundwater Management Plan
<b>LEP</b>	Local Environmental Plan
<b>LTEMP</b>	Long-term Environmental Management Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>POEO Act</b>	<i>Protection of the Environment Operations Act 1997</i>
<b>RAP</b>	Remediation Action Plan
<b>Site Auditor</b>	EPA accredited Site Auditor
<b>SAS</b>	Site Auditor Statement
<b>SSD</b>	State Significant Development

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# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (SSD) consent for the Orica Villawood Remediation Project (09\_0147) (the project). The project was originally approved under the now repealed provisions of Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The project was transitioned on Friday 28 June 2019 to be State significant development under the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, for the purposes of the *Environmental Planning and Assessment Act 1979*.

While remediation of the soil contamination at the site was undertaken in 2015, residual soil and groundwater contamination remains onsite and groundwater contamination has migrated offsite, resulting in the need for robust ongoing environmental management. Condition 10 of Schedule 4 of the current Project Approval (09\_0147 as modified) requires the applicant to prepare a long-term environmental management plan (LTEMP) however the proposed amendments would contemporise the current condition and satisfy the EPA Site Auditor.

The modification application, originally lodged on 10 July 2019, sought approval to amend Condition 10 of Schedule 4 to require the LTEMP to be implemented on the site into the future, in accordance with a requirement from the NSW Environment Protection Authority (EPA) accredited Site Auditor in its Site Audit Statement (SAS).

The modification application was amended on 27 November 2020 to additionally include a request for approval of a subdivision of the site into two lots (Proposed Lot 1 and Lot 2). The subdivision would allow the Applicant to retain ownership of part of the site (Proposed Lot 1) and meet the requirements of the LTEMP, including ongoing groundwater monitoring, while enabling the future divestment or redevelopment of Proposed Lot 2.

The modification application, as amended, has been lodged by Orica Australia Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the EP&A Act.

## 1.1 Background

The site was used by Taubmans (1946-1953) and then ICIANZ (later known as Orica) to make hydrocarbon-based agricultural and pharmaceutical pesticides. Orica ceased manufacturing on the site in 2000 but the property remains under Orica's care and maintenance.

As a result of past activities, hydrocarbon-based compounds contaminated the soils underlying the site. On 22 April 2005, the EPA declared the site to be a 'Remediation Site' under the *Contaminated Land Management Act 1997* and on 2 November 2005 issued Remediation Order No. 23019 - Area 3200. The site is also subject to current Environment Protection Licences (EPL 2149 and EPL 6964) issued under the *Protection of the Environment Operations Act 1997*.

Remediation work on the site is now complete, however, residual soil and groundwater contamination remains which requires effective ongoing environmental management. Remediation of the groundwater was considered by Orica to be impracticable, which was also confirmed by the Site Auditor. The



modification seeks to ensure there is a robust LTEMP in place as well as a mechanism to enforce it, in line with the advice of the Site Auditor.

## 1.2 Site Description

The Orica Villawood Remediation Project is located at 2 Christina Road, Villawood and is legally described as Lot 1 and DP 634604 (the site). The site is located approximately 20 kilometres (km) west of the Sydney CBD (see **Figure 1**) and is zoned as IN1 General Industrial under the Bankstown Local Environmental Plan (LEP) 2015.

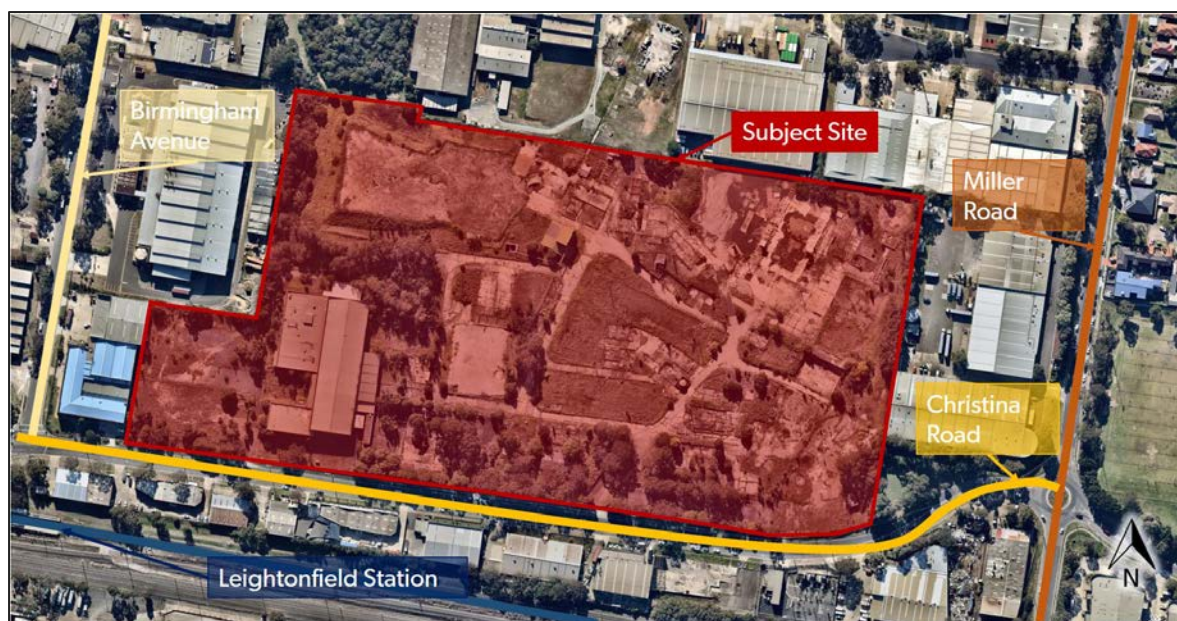


**Figure 1 | Regional and Locality Context Map**

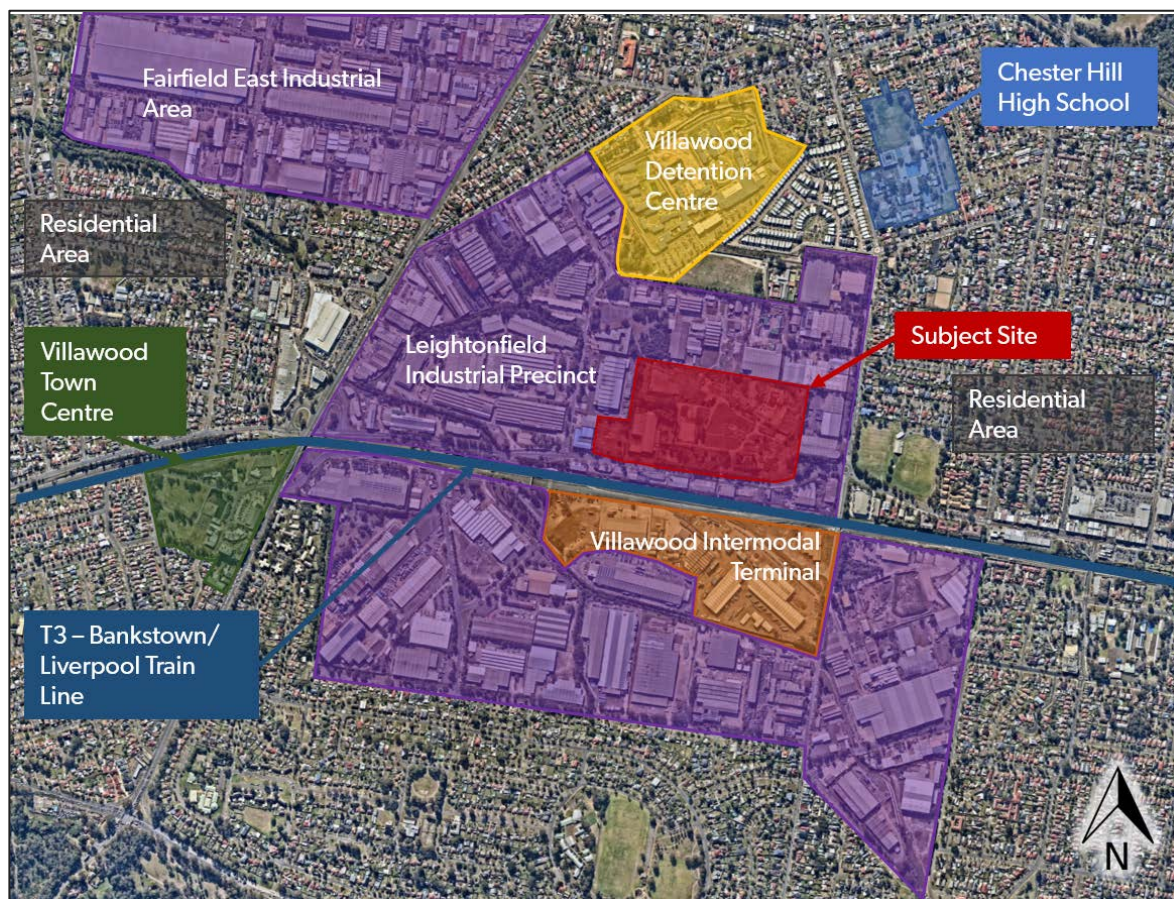
## 1.3 Surrounding Land Uses

The site is predominantly surrounded by industrial developments with Christina Road bordering to the south of the property (see **Figure 2**). The nearest sensitive receivers are located approximately 150 metres (m) to the east (residential), 200 m to the north (Villawood Immigration Centre) and 500 m to the west (Chester Hill High School) (see **Figure 3**).





**Figure 2 | Subject Site**



**Figure 3 | Surrounding Land-uses**

## 1.4 Approval history

On 18 May 2012, the then Minister for Planning granted Project Approval for remediation of the site (09\_0147). Under the approval, consent was given to the Applicant to undertake the following works:

- install a Directly-heated Thermal Desorption (DTD) plant, Emissions Control System (ECS) and Wastewater Treatment Plan (WTP), all of which would be decommissioned and removed from the site at the end of the remediation project;
- additions to an existing building (the Secure Soil Facility) to form an enclosed Feed Soil Building (FSB) for handling and blending of contaminated soils prior to treatment;
- excavation and treatment (via the DTD plant) of approximately 15,000 cubic metres (m<sup>3</sup>) of in-situ contaminated soils from the site; and
- DTD treatment of approximately 10,000 m<sup>3</sup> of existing contaminated soils stored in the on-site Secure Soil Facility (excavated from the western part of the site property in 2003 and 2004), and approximately 2,000 m<sup>3</sup> of contaminated soils stockpiled on the site from Orica's former remediation works from the former Orica Chester Hill facility in 2008.

The site is also regulated under the *Protection of the Environment Operations Act 1997* (POEO Act) by the EPA through two Environment Protection Licences (EPL) (EPL 2149 and 6964), and is licensed for treatment of contaminated soils, waste storage and chemical production as Scheduled Activities under the POEO Act.

Project Approval 09\_0147 has been modified on two occasions. A summary of each modification is provided in **Table 1** below.

**Table 1 | Summary of Modifications**

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
<b>MOD 1</b>	To amend the design of the on-site treated wastewater storage facilities to allow for a series of water storage ponds	Executive Director	s75W	3 April 2013
<b>MOD 2</b>	To isolate asbestos-impacted treated soils in the northwest portion of the site, with additional conditions relating to the implementation of a LTEMP for future management of the site.	Director	s75W	27 October 2015



## 2 Proposed modification

Under the conditions of approval, the Applicant is required to submit an LTEMP to the Department as part of the sites proposed long-term management. As part of finalising a SAS, the Site Auditor is to be satisfied that the LTEMP could be appropriately enforced, often through a condition of consent. As part of this review, the Site Auditor requested the project approval be amended to provide clarity regarding the implementation of the LTEMP and Groundwater Management Plan (GMP). The Department agreed with this finding and noted the conditions could be contemporised to reflect the need for the site to be maintained in perpetuity and align with the proposed approach to subdivision of the site and its proposed management. The modification application seeks to:

1. amend the Project Approval to include a revised condition for the preparation of an LTEMP for proposed Lot 1 and proposed Lot 2;
2. introduce a new condition to require the preparation of a separate GMP which applies to both proposed Lot 1 and proposed Lot 2; and
3. subdivide the site in two lots and require easements, including a Public Positive Covenant (PPC), to be registered on the proposed Lot 1 and Lot 2 (as set out in **Table 2**).

The modification is described in full in the Modification Report included in **Appendix B**.

### 2.1 Long-term management of the site

The Site Auditor issued a SAS on 14 August 2020 to certify the remediated site can be made suitable for ongoing commercial/industrial land-use, subject to the ongoing implementation of the LTEMP and GMP. To ensure residual contamination would be managed appropriately, the Site Auditor requested the long-term environmental management requirements for implementing the LTEMP were updated to ensure the management plans were legally enforceable through conditions of approval as set out in the Guidelines for the NSW Site Auditor Scheme, 3<sup>rd</sup> edition, 2017 (the Guidelines). The Applicant therefore lodged a modification application to amend Condition 10, Schedule 4 of 09\_0147.

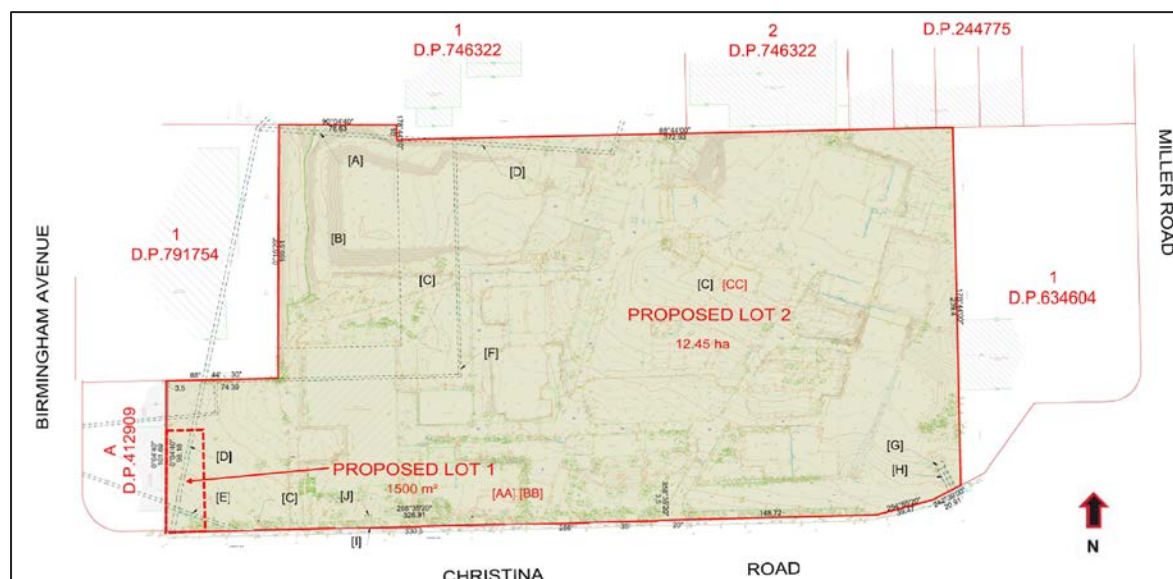
The Applicant maintains a revised condition for the LTEMP and new condition for the GMP reflect its ongoing commitment to managing residual contamination at the site and would enable the EPA and the Department to have oversight of the site, even if the Applicant was to divest either proposed Lot 1 or 2.

### 2.2 Subdivision and Easements

The Applicant is seeking consent for a minor subdivision of the site into two lots; a smaller parcel (Lot 1) and the majority of the site (Lot 2) (see **Figure 4**). The Applicant would retain ownership of Lot 1 to facilitate its commitments for ongoing environmental management, which includes the implementation of the LTEMP. Lot 1 would meet the minimum lot size requirements set out in the *Bankstown Local Environment Plan (BLEP) 2015*.

The subdivision would allow for future divestment and ongoing land-use of the wider site, as Lot 2 could be redeveloped in the future. However, the whole of Lot 2 would be burdened with an easement (CC) in favour of Lot 1 to enable access by the Applicant for installation and maintenance of groundwater monitoring and extraction wells and carrying out of well testing and any contingency actions, as required

(see **Figure 5**). Both lots would also be burdened with an easement (DD) for access in favour of the EPA, to allow the EPA to enter both Lot 1 and Lot 2, to monitor compliance.



**Figure 4 | Proposed subdivision**

Further easements (EE and FF) would apply to Lot 2 in favour of Lot 1 for a 5-metre-wide strip along the Christina Road frontage requiring it to remain clear of major improvements. **Table 2** sets out the proposed easements included in the modification.

**Table 2 | Proposed easements**

Easement identifier	Purpose of easement	Burdened lot(s)	Benefited lot or approved authorities
<b>CC</b>	Install and access groundwater wells	Lot 2	Lot 1
<b>DD</b>	Access	Lot 1 & Lot 2	NSW EPA
<b>EE</b>	Install and access future works on Lot 1	Lot 2	Lot 1
<b>FF</b>	Restriction of the use of land to remain clear	Lot 2	Lot 1
<b>GG</b>	Positive covenant	Lot 1	NSW EPA

A new condition is proposed to require the registration of the proposed easements on the proposed Lot 1 prior to the issuing of a subdivision certificate for the site. The subdivision would be carried out in accordance with the subdivision plan to be included as Appendix E of the consent.

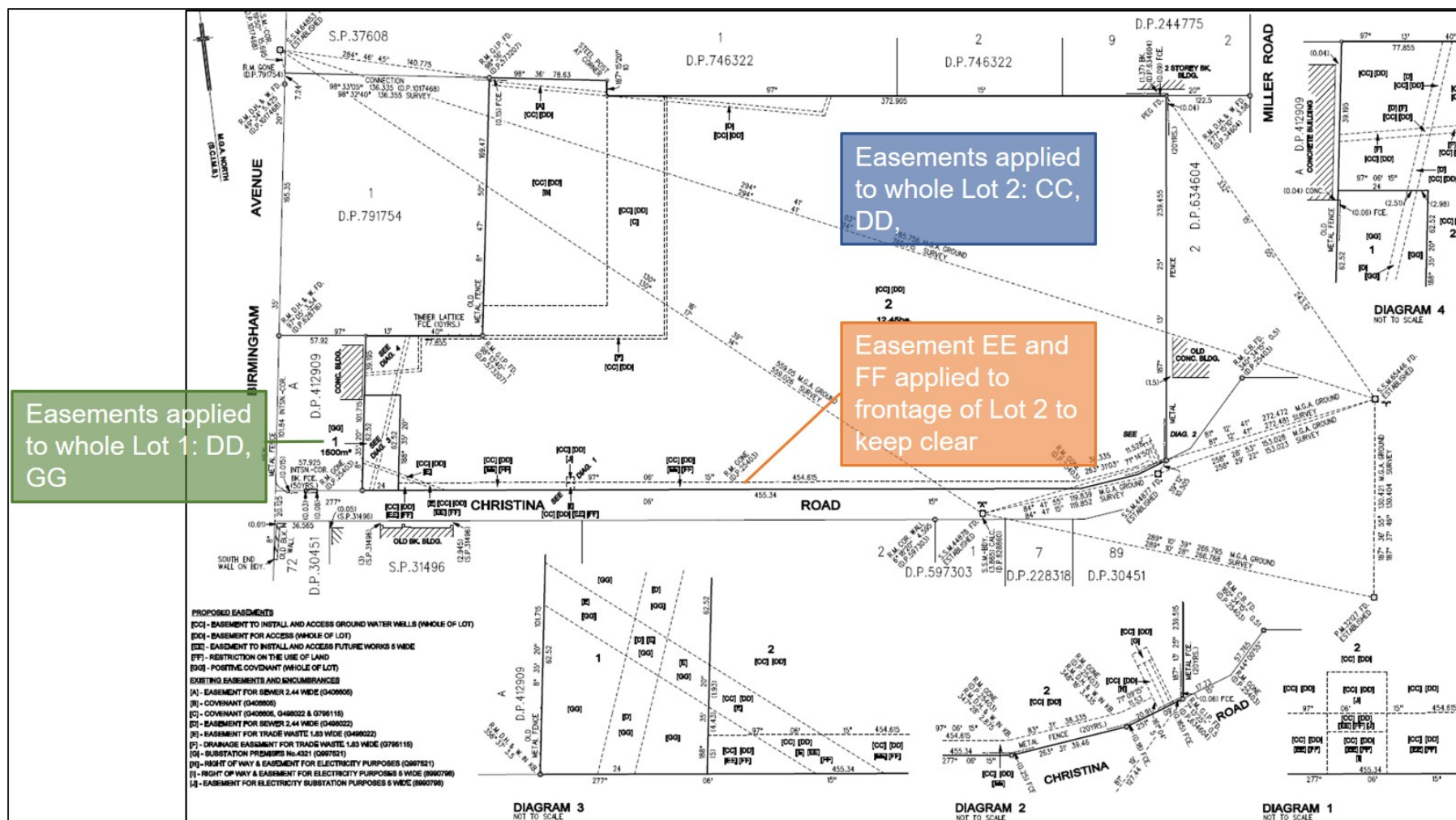


Figure 5 | Proposed subdivision with proposed easement



## 3 Strategic context

### 3.1 A Metropolis of Three Cities – the Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission (GSC) released the Greater Sydney Region Plan: A Metropolis of Three Cities (Region Plan) which establishes a 40-year vision for land use and transport planning to boost Greater Sydney's liveability, productivity and sustainability. The site is located within the 'Central River City'. The 'Central River City' is anticipated to provide 817,000 new jobs within the Sydney region. The development is consistent with the directions and principles outlined in A Metropolis of Three Cities, specifically the principles for managing industrial land. The site would support appropriate management of industrial land and would stimulate employment growth in the region through redevelopment in the future.

### 3.2 Southern District Plan

The Region Plan is supported by more detailed District Plans, which outline how the broad directions of the Region Plan will be implemented. The development is located within the Southern District Plan (District Plan). The District Plan identifies 1,666 hectares (ha) of industrial and urban services land, approximately 12 per cent of Greater Sydney's total stock of industrial and urban services land. The District Plan identifies that in the Southern District traditional industry is transitioning from manufacturing to professional, high-tech, scientific and creative industries. The development is consistent with this approach as it would ensure the land can be released for future industrial use.

### 3.3 Guidelines for the NSW Site Auditor Scheme

Section 3.4.6 of the guideline specifically refers to Environmental Management Plans (EMPs). The Guidelines note that EMPs can be an effective means of long-term management of the site where the complete remediation of contamination affecting a site is not practicable. The Guidelines require the Site Auditor consider a number of conditions prior to including any EMPs on the SAS. The conditions include:

- ensuring any EMPs can be made to be reasonably legally enforceable e.g. through appropriate conditions of approval;
- appropriate public notification through notations on a planning certificate issued under s.149(2) (now s10.7) of the EP&A Act or a covenant registered on the title to land under s.88B of the Conveyancing Act 1919; and
- where there is off-site migration or its potential, that contamination within the site is managed or monitored so it does not present an unacceptable risk to either the on-site or off-site environments

## 4 Statutory context

### 4.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts, and relates to substantially the same development as the original Project Approval (as last modified under the former section 75W of the EP&A Act) as the modification:

- would not increase the environmental impacts of the project as approved;
- is of a scale that warrants the use of section 4.55(1A) of the EP&A Act; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 4.2 Consent Authority

The Minister for Planning and Public Spaces (Minister) will be the consent authority under section 4.5(a) of the EP&A Act. Under the Minister's delegation dated 9 March 2020, the Director, Industry Assessments, may determine the modification application under delegation as:

- the modification application has not already been referred by the Planning Secretary to the Independent Planning Commission as at the date of the delegation;
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

### 4.3 Part 3A transition to State significant development

This project was originally approved under the former section 75J of the EP&A Act and was a transitional Part 3A project under Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the associated EP&A (ST&OP) Regulation on 1 March 2018, the power to modify Part 3A project approvals under former section 75W is no longer available for modifications submitted after 1 March 2018. In order to modify a transitional Part 3A project approval, the Minister for Planning and Public Spaces can declare the development to be SSD by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made the project approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant criteria.

On 28 June 2019, the Project Approval 09\_0147 was transitioned to SSD. Accordingly, the Project Approval is now subject to the SSD modification pathway under section 4.55 of the EP&A Act.

## 5 Engagement

### 5.1 Department's engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact applications. Accordingly, the modification application was not notified or advertised.

However, the initial modification application was made publicly available on the Department's website and was referred to the EPA and Canterbury Bankstown Council (Council) for comment on 25 July 2019. The modification application was subsequently amended following extensive discussions with agencies, including Council and EPA.

#### Request for Additional Information

The Department received correspondence from the Applicant on 18 September 2019 notifying of ongoing discussions with the EPA regarding obligations for long-term environmental management at the site, which included ongoing groundwater monitoring in accordance with the LTEMP. The Applicant asked for additional time to negotiate the preferred solution with EPA and Council which was likely to include a potential subdivision.

In response to the above, the Department issued a letter to the Applicant on 14 August 2019 acknowledging the Applicant's ongoing discussions with the EPA and Council on the options for the long-term management of the site. The Department advised the Applicant to lodge an amended modification application once an outcome had been reached with the EPA.

#### Amended Modification Application

On 20 November 2020, the Applicant submitted an amended modification application seeking to amend the conditions of the Project Approval (09\_0147) to require ongoing compliance with the LTEMP for the site, and the subdivision of the site into two lots. The amended modification application was made publicly available on the Department's website and was referred to the EPA and Council for comment on 23 November 2020.

### 5.2 Summary of Submissions

EPA provided an initial submission on 31 July 2019 requesting the modification application consider offsite impacts from the site. The Department concluded that it would not be reasonable to include requirements for offsite contamination and that the requirement to carry works on another person's land not the subject of the application would not be sufficiently related to the approved development. As a result, the EPA and the Applicant considered a revised approach.

EPA provided a further submission on 4 December 2020 on the amended modification application, and raised no objections to amending the conditions of the Project Approval 09\_0147 to require ongoing compliance with the LTEMP, and the addition of a new condition to the Project Approval to require a PPC on the proposed Lot 1 in favour of the EPA.



**Council** did not have any comments on the initial modification application and were also included in the Applicant's discussions regarding a revised approach. Following a review of the amended modification application and proposed subdivision arrangement Council provided additional advice on 3 December 2020. Council did not raise any objections to the amended modification application, and confirmed that the proposed Lot 1 would meet the minimum width and area requirements set out in clauses 4.1 and 4.1C of the BLEP 2015, as well as acknowledging that access to the proposed Lot 1 would be available via Christina Road.

## 6 Assessment

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

- the Modification Application provided to support the proposed modification (see Appendix B);
- the assessment report for the original application, and subsequent modification applications;
- submissions received from Council and EPA (see Appendix C);
- relevant environmental planning instruments, policies and guidelines;
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issue is the long-term environmental management of the site.

### 6.1 Long-term environmental management

The Site Auditor has recommended the Project Approval provide clarity regarding the implementation of the LTEMP. The modification application therefore seeks to amend the conditions of Project Approval 09\_0147 to modernise the conditions to reflect current best practice and include specific wording required by the site auditor to explicitly require the management plans to be implemented for the duration of occupation and operation of each lot. The recommended conditions would require any current and future landowners to carry out monitoring and any contingency actions in accordance with the LTEMP and for the owner of proposed Lot 1 to carry out monitoring required in the GMP.

To facilitate the ongoing environmental management obligations, the Applicant is seeking to subdivide the site into two lots (proposed Lot 1 and Lot 2). The subdivision is to be accompanied by easements and obligations to guide ongoing environmental management at the site. The Applicant intends to retain ownership of Lot 1 and carry out the ongoing groundwater monitoring and contingency actions, in accordance with a GMP. The subdivision would be supported by a public positive covenant (PPC) in favour of the EPA.

Initially, Council and the EPA raised some concerns regarding the practicalities of this approach, particularly around how the easements would be applied and the size and location of the subdivision. The Applicant submitted an amended application to address the concerns of Council and EPA, which included changes to the size and width of the subdivision and a draft PPC. EPA and Council had no objections to the amended modification application, including the proposed subdivision plan.

The Department recognises the proposed subdivision would enable the Applicant to retain part of the site to carry out its long-term management obligations while divesting a larger portion of the site for redevelopment. The redevelopment of the site is the purpose of the remediation works and would deliver employment opportunities and growth. The Department is satisfied the proposed new and amended conditions would support the redevelopment of the site without any additional risks of impact to the environment. The Department therefore recommends the approval of the subdivision plan, including the proposed easements, to facilitate the Applicant's approach to managing residual contamination at the site.

The Department has considered the supporting information provided in the amended modification application and advice from both Council and the EPA. While the remediation works on the site are now

complete, there remains some residual soil and groundwater contamination and the Applicant's approach, which is supported by the Site Auditor, is to continue to manage and monitor this contamination in the long-term. The recommended changes to the conditions of consent would modernise consent and ensure the site's LTEMP follows current best practice. The outcome would be that any risks associated with the residual contamination would be managed by having an effective LTEMP.

The Applicant has requested a separate GMP be prepared for the site to align with the proposed subdivision and PPC. The Applicant proposed to include the GMP on the s10.7 certificate for Lot 1 only. The EPA confirmed they were satisfied with the proposed approach because the PPC would provide them with a mechanism for enforcement in the future.

The Department has agreed the LTEMP and GMP can be separate documents however would require the Applicant to prepare the LTEMP and GMP in consultation with EPA and to the satisfaction of the Site Auditor and Planning Secretary. The GMP would need to include details of how groundwater contamination will be monitored and managed into the future across both proposed Lot 1 and 2. The Department would also require both the LTEMP and GMP to be registered on the planning certificate for both proposed Lot 1 and Lot 2 and evidence of this would need to be submitted to the Planning Secretary as part of the modified conditions of approval.

Section 3.4.6 of the Guidelines require appropriate public notification of any restrictions applying to the land to ensure that potential purchasers or other interested individuals are aware of the restrictions. The Department's justification for requiring the GMP to be registered on the planning certificate for Lot 2 is:

- there is residual groundwater contamination (plumes 1,2,3,4 and 5) on proposed Lot 2 which was considered by the Applicant and agreed by the Site Auditor to be impracticable to remediate;
- six of the 13 monitoring wells are located on proposed Lot 2 and there is an easement covering the entire lot to access, install and maintain these groundwater monitoring wells; and
- the LTEMP and the GMP are both part of the approach for the long-term management of the site.

The Department concludes the proposed approach to the long-term management of the site would ensure the residual risks can be adequately managed and would allow for future industrial and commercial use of the site. The recommended conditions support this approach by requiring the preparation of a LTEMP and GMP and for these EMPs to be registered on the planning certificate for both Lot 1 and Lot 2.



## 7 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate on the basis that:

- the proposed modification will result in minimal environmental impacts beyond the approved facility
- the inclusion of a condition requiring update of the LTEMP would ensure the site is appropriately managed in the future
- the proposed minor subdivision and its associated obligations and inclusion of a PPC would ensure any owner of Lot 1 is committed to the long-term environmental management associated with the site.

Following on from its assessment of the modification, the Department considers the modification request is approvable, subject to any conditions of consent.

## 8 Recommendation

It is recommended that the Director, Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the modification application 09\_0147 MOD 3 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 that a Biodiversity Development Assessment Report (BDAR) is not required to be submitted with this modification application as the modification application will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the consent 09\_0147
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:



**Katelyn Symington**  
Senior Environmental Assessment Officer  
Industry Assessments

Recommended by:



**William Hodgkinson**  
Team Leader  
Industry Assessments

## 9 Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink, appearing to read 'C. Ritchie', written in a cursive style.

**Chris Ritchie**

Director

Industry Assessments

as delegate of the Minister for Planning and Public Spaces



# Appendices

## **Appendix A – Notice of Modification**

<https://www.planningportal.nsw.gov.au/major-projects/project/16836>

## **Appendix B – Modification Application**

<https://www.planningportal.nsw.gov.au/major-projects/project/16836>

## **Appendix C – Submissions**

<https://www.planningportal.nsw.gov.au/major-projects/project/16836>