

23 August 2016

Andrew Beattie
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Andrew,

Re: Moorebank Intermodal Terminal Stage 1 Early Works (SSD 5066 MOD 1)

I write with regard to the above modification application to Sydney Intermodal Terminal Alliance (SIMTA) Moorebank Intermodal Terminal Stage 1 Early Works (SSD 5066 MOD 1). Liverpool City Council engaged Cardno to prepare a Peer Review and submission (Attachment 1) of the application based on the information provided by the proponent, SIMTA.

Council maintains its objection to locating an intermodal freight terminal at Moorebank. The development and operation of the terminal at this site will adversely impact the local and surrounding communities. Council considers the technical studies undertaken to date by the proponent in support their application to be grossly inadequate. Additionally, Council objects to the Moorebank Intermodal Company (MIC) application and the SIMTA application being treated as two distinct proposals. A master plan approach should be undertaken to address the cumulative impacts of both applications.

With regard to the Section 96 modification specifically, Council notes the application to import 1,600,000 cubic metres of fill will generate a significantly greater number of heavy vehicle movements than that proposed in the original application (approximately a 37 fold increase). The potential impacts resulting from the scale of intensification associated with the early stage works now proposed, including the importation and crushing of fill, is inconsistent with the existing Project Approval.

Due to the significant nature of the proposed modification and the potential scale of environmental impacts, Council considers the modification application is not 'substantially the same' as the existing project approval. Consequently, a Section 96(2) modification is not the appropriate approval pathway. A formal request for Secretary's Environmental Assessment Requirements should be lodged, with a subsequent Environmental Impact Statement prepared to fully consider the extent of impact.

Our review identifies the potential for extensive environmental impacts, some of which are yet to be adequately assessed by the proponent. Council questions whether these impacts can be mitigated without the identification and preparation of supporting infrastructure, management plans, operating procedures and compensation schemes, which the current scheme and associated assessment fails to address.

It is noted that there will be significant impacts associated with the proposed modification. The key issues are outlined below:

- An approximate 37-fold increase in the number of heavy vehicle movements during the early works phase. This is a significant increase which will cause amenity impacts during the early works period that were not considered in the Project Approval.

It is also noted that the origin of the imported fill needs to be identified in order for the proposed routes to be analysed.

- The haulage activities will require improvements to two intersections along the section of Moorebank Avenue along the site. Details of the intersection improvements should be discussed and agreed to with the RMS and Council. Similarly, haulage routes and times need to be discussed and agreed with Council to ensure that haulage is limited to existing approved B-double routes.
- The proposal will significantly increase on-site dust emissions during construction and impact on adjoining residential communities, with the residential area of Casula located directly to the west across the Georges River, as well as residential areas further to the north and south potentially subject to reduced air quality.
- The import of 1,600,000 cubic metres of fill is anticipated to create a substantial increase in noise impacts on the community, with noise increasing by 4 - 6 dB during the day time, noting also the proposed extended hours of construction activity to 10pm at night will mean increased noise impacts at night. Council recommends that the crushing and compaction at the site should be restricted to the normal construction hours i.e. 7:00pm.

Further, it is recommended that a precinct wide, master planned approach to earthworks be considered.

- Far greater consideration of constructability is required due to the substantially different earthworks model now proposed, which indicates the need for importation of 1,600,000 m³ of fill occurring over a six to nine-month period. Unless this consideration is given, there is the potential for further modifications to be required to address the final design and construction process.
- The importation and emplacement rates are ambitious, particularly given that the anticipated unsuitable ground conditions will be 'treated' on an ad-hoc basis. This poses a high environmental impact risk, with further traffic, noise, dust and constructability assessments necessary to demonstrate the feasibility of works on this scale.
- The modification at the scale proposed is not considered to satisfy the 'substantially the same' test as defined by legal precedent under Section 96(2) of the EP&A Act. Therefore, it is deemed inappropriate for the development as modified to obtain approval under Section 96 of the EP&A Act.

Council requests the DPE seek legal advice on the above point and advise Council prior to determination of this modification. Subsequent to receiving the legal advice, Council will submit appropriate consent conditions, should the proposed modification be considered for approval.

Need for Master Plan

Council questions the processes for modifications to both proposals and requests that a master plan application be lodged which provides a full assessment of environmental impacts associated with both the SIMTA and MIC applications, now that SIMTA is to develop the combined projects.

This approach reflects previous comments from the Planning and Assessment Commission and from Council, as this approach would allow more orderly development and aid the understanding of the full extent of environmental impacts.

Additional Environmental Health Comments

1. Apart from onsite crushing activities and rail movements, the NSW Environment Protection Authority (EPA) appears reluctant to regulate non-scheduled construction and operational activities. Instead, the NSW EPA is only offering minimal assistance to Council even though Liverpool Council has consistently raised concerns regarding its ability to regulate the proposed 24 hour operation.

In addition to the NSW EPA, the Department of Planning and Environment (the Department) will be responsible for assessing compliance with the planning approvals. It is envisaged that the Department will have primary responsibility for assessing compliance with conditions of consent in relation to environmental emissions (i.e. noise, air, water, land) during the construction and operational phases of the project.

According to the NSW Planning & Environment website, the Department's compliance team monitors and enforces the conditions of projects granted by the Minister for Planning or their delegate. The Department has published a compliance policy and associated guidelines for breach management, prosecutions and penalty notices to assist their Authorised Officers in exercising enforcement powers in a fair, consistent and equitable manner. Therefore, Liverpool Council believes that the Department is equipped with the appropriate skills, knowledge and enforcement powers to jointly regulate the proposed development with the NSW EPA during construction and operation. A united regulatory response between the Department and NSW EPA would alleviate Council's role in regulating the remaining unscheduled activities.

It is requested that the Department outlines their commitment and confirms their responsibilities in regulating construction and operational activities at the proposed freight terminal. Furthermore, the Department and NSW EPA have appeared largely disinterested in attending meetings with the Proponent at Council's Administration Centre. Council is requesting that appropriate personnel from the Department and NSW EPA attend a future meeting with Council officers regarding the proposed freight terminal.

2. The proponent indicated that the proposed development would appoint an Environmental Representative to immediately respond to any future pollution incidents, complaints and concerns. Although self-regulation is important, an appropriately skilled and resourced Regulatory Authority will be required to control site activities. Council is requesting clarification of the Appropriate Regulatory Authorities for scheduled and non-scheduled activities at the site. Furthermore, Council is also seeking confirmation of what assistance will be provided by the State in the regulation of non-scheduled activities at the facility.
3. The Modification Application is seeking to import approximately 1,600,000m³ of fill by truck to the site. The Environment and Health Section is seeking confirmation as to whether the importation of fill material to the site is a scheduled activity and would therefore be regulated by the NSW Environment and Protection Authority under the Protection of the Environment Operations Act 1997.

4. Based upon the meeting held with the applicants on 18 August 2016, it was understood that the proposed modification would result in an exceedance of the relevant site assessment criteria by approximately 1-2 dB(A). In contrast, Cardno's Peer Review indicates that predicted noise increases of between 4 - 6 dB are likely as a result of the proposed modification. The extent of noise exceedances associated with the proposed modification appears relatively uncertain. Council is seeking further information regarding the extent of noise exceedances associated with the proposed modification and the adequacy of proposed mitigation measures.
5. The Proponent is primarily interested in attaining the necessary approvals without completing a comprehensive environmental assessment of the proposed development. It is concerning that the identification and selection of appropriate mitigation measures to address environmental impacts is an afterthought when planning for the proposal. During the meeting, Council's officers were advised on numerous occasions that appropriate mitigation measures would be selected when the contractor is required to prepare their appropriate Environmental Management Plans. Approval shall not be granted until further consideration is given to the selection of appropriate safeguards that offer sufficient protection to human health and the environment.
6. During the meeting it was indicated that opportunities for appropriate environmental monitoring and reporting had not been fully investigated. In particular, it was suggested that compliance monitoring would be largely dependent upon active surveillance by site personnel and the appointed Environmental Representative. Council believes that the environmental monitoring program must incorporate both qualitative and quantitative measures. In this regard, data collected using quantitative methods for the duration of construction and operational phases would assist in determining compliance with the appropriate Approval. Furthermore, data collection would assist the proponent to monitor their adherence with conditions of consent, Environment Protection Licences and environmental best practice. Reporting of environmental parameters via online or printed media could also be used to inform the community of the Proposal's environmental compliance; and
7. Council was provided with insufficient time to provide a thorough response to the proposed modification. The complexity of this project demands a comprehensive assessment which cannot be undertaken within the limited timeframe provided by the Department. It is believed that the hasty consultation process will lead to inaccuracies in the environmental assessment process and deliver inadequate levels of protection to human health and the environment.

Should you require any further information on this matter, please contact me on 9821 9396.

Yours sincerely



Toni Averay
Director Planning and Growth

Attachment:

1. SIMTA Intermodal Terminal Project – Moorebank Precinct West Peer Review of Proposal Modification