



# Modification of Development Consent SSD 7628



SIMTA

SYDNEY INTERMODAL TERMINAL ALLIANCE

Part 4, Division 4.7, State Significant  
Development

June 2020

## Modification 1

# Moorebank Precinct East Development Consent SSD 7628

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## REVISIONS

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## Table of Contents

<b>1.0</b>	<b><i>Introduction</i></b> .....	<b>1</b>
<b>2.0</b>	<b><i>The MPE Site</i></b> .....	<b>2</b>
<b>3.0</b>	<b><i>Subdivision of the MPE Site</i></b> .....	<b>5</b>
<b>4.0</b>	<b><i>Land to which this modification applies</i></b> .....	<b>8</b>
<b>5.0</b>	<b><i>Consent Proposed to be Modified</i></b> .....	<b>9</b>
5.1	Subdivision .....	9
5.2	Compliance Reporting .....	9
<b>6.0</b>	<b><i>Proposed Modification</i></b> .....	<b>11</b>
6.1	Subdivision .....	11
6.2	Compliance Reporting .....	14
<b>7.0</b>	<b><i>Substantially the same development</i></b> .....	<b>16</b>
<b>8.0</b>	<b><i>Assessment and management</i></b> .....	<b>18</b>
8.2	Compliance Reporting .....	18
<b>9.0</b>	<b><i>Conclusion</i></b> .....	<b>19</b>

## Appendices

**APPENDIX A – SUBDIVISION PLAN (LANDPARTNERS, MARCH 2020)**

**APPENDIX B – STAGED SUBDIVISION PLAN APPROVAL (DPIE; 3 DECEMBER, 2019. REF: DOC19/982214)**

**APPENDIX C – LAND OWNERS’ CONSENT**

**APPENDIX D – CLAUSE 4.6 VARIATION REQUEST**

## List of Figures

<b>Figure 1</b>	MLP Site location (Source: Arcadis, 2016) .....	<b>3</b>
<b>Figure 2</b>	MPE Site local context (Source Figure 1-1 MPE Stage 2 SSD 7628 EIS, Arcadis 2016) .....	<b>4</b>
<b>Figure 3</b>	Leasehold arrangements for delivery and operation of MPE .....	<b>5</b>
<b>Figure 4</b>	Approved Subdivision - MPE SSD 7628 Partial Development Consent Appendix 1, January 2019 .....	<b>6</b>
<b>Figure 5</b>	Proposed Modification – Additional Proposed Lots (shown in red) .....	<b>13</b>

## List of Tables

<b>Table 1</b>	Land affected by the proposal.....	8
<b>Table 2</b>	MPE subdivision lots – dimensions and description .....	12

## Glossary of Key Terms

Term	Description
CEMP	Construction Environmental Management Plan
DA	Development Application
DP&E	NSW Department of Planning and Environment (now DPIE)
DPIE	Department of Planning, Industry and Environment
EEC	Endangered Ecological Communities
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
EPA	NSW Environment Protection Agency
EPBC Act	Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i>
GFA	Gross Floor Area
IMT	Intermodal freight terminal facility
IMEX	Import Export freight facility
IPC	Independent Planning Commission
Liverpool LEP	<i>Liverpool Local Environmental Plan 2008</i>
MIC	Moorebank Intermodal Company
Moorebank Logistics Park	The Moorebank Precinct
Moorebank Precinct	Includes MPE Project and MPW Project
MPE Project	The SIMTA Moorebank Intermodal Facility at Moorebank, as approved by the concept plan (MP_10_0913)
MPE Site	Includes the Moorebank Precinct East Site and the rail corridor i.e. the entire site area which was approved under the concept plan approval
MPW Site	The former School of Military Engineering site to the immediate west of the MPE Site, across Moorebank Avenue i.e. the entire site area which was approved under the concept plan approval
PAC	Planning Assessment Commission
SEARs	Secretary's Environmental Assessment Requirements
SIMTA	Sydney Intermodal Terminal Alliance
SSD	State significant development
SSFL	Southern Sydney Freight Line
TEC	Threatened Ecological Communities
TEU	Twenty-foot equivalent unit or a standard shipping container

## 1.0 Introduction

This modification application has been prepared by Aspect Environmental Pty Limited on behalf of SIMTA (as Qube Holdings Limited) (the Applicant), pursuant to Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify the State significant development consent SSD 7628 for the approved second stage of development of the Moorebank Intermodal Precinct East (MPE) Site.

The modification application proposes two changes to the Moorebank Precinct East (MPE) SSD 7628 consent for an intermodal terminal (IMT) facility, warehousing and a freight village at Moorebank, NSW.

### 1. Subdivision

This modification seeks to enable subdivision of two additional lots (creating four lots) as part of the subdivision of the MPE Site which will facilitate the ongoing management and functionality of the MPE Site, and the lots contained therein.

Development Consent SSD 7628 was granted on 31 January 2018 by the Planning Assessment Commission (PAC) (now the Independent Planning Commission (IPC)). The Development Consent SSD 7628 granted consent to the construction and operation of Stage 2 of the MPE Project, with the exception of the subdivision component of the application under section 80(4)(b) of the EP&A Act.

Further assessment of the subdivision component of the application was required to demonstrate that any subdivision of the MPE Site would be subject to the appropriate legal, management and maintenance framework to ensure that the intermodal operations were not fragmented, and the development continued to function as a single operation.

The *MPE Stage 2 (SSD 7628) Subdivision Ancillary Report* (Subdivision Ancillary Report) prepared by Aspect Environmental Pty Limited (Aspect Environmental, 2018) was lodged with DP&E on 9 August 2018 for the subdivision of the MPE Site. DP&E assessed the application, provided their recommendation and a Partial Development Consent SSD 7628 was issued by the IPC on 5 April 2019. The consent instrument is included as Appendix A. This proposed modification seeks consent to amend this approved MPE subdivision layout.

Included as part of this Modification is a Clause 4.6 request, seeking exception to the minimum lot size development standards (Clause 4.1) of the *Liverpool Local Environmental Plan* (LEP) 2008, in accordance with Clause 4.6 of the Liverpool LEP 2008, as amending the approved MPE subdivision layout will also involve creation of lots that are less than the existing 120 ha minimum requirement.

### 2. Compliance Reporting

Additionally, this modification seeks to change the frequency of construction compliance reporting required by condition C21 (c)(ii) from quarterly to six-monthly. This frequency aligns with MPE Stage 1 (SSD 6766) and MPW Stage 1 (SSD 5066) and MPW Stage 2 (SSD 7709) consent requirements and with the *Compliance Reporting: Post Approval Requirements*, issued by DPE (June, 2018).

A detailed description of the proposed modification elements is provided in Section 6, and an assessment of potential environmental impacts is provided in Section 8.

This application identifies the consent, describes the proposed modification and provides an assessment of the relevant matters contained in Section 4.55(1A) of the EP&A Act. It should be read in conjunction with the Partial Development Consent 7628 (5 April 2019), provided as Appendix A.

## 2.0 The MPE Site

The MPE Site, including the MPE Stage 2 Project site, is located approximately 27 km south-west of the Sydney central business district and approximately 26 km west of Port Botany. The MPE Site is situated in the Liverpool local government area, in Sydney's South-West subregion, approximately 2.5 km from the Liverpool city centre.

The MPE Project involves the development of an intermodal terminal facility (IMT) including a rail link to the Southern Sydney Freight Line (SSFL), warehouse and distribution facilities, freight village (ancillary site and operational services), stormwater basins, landscaping, servicing and associated works on the eastern side of Moorebank Avenue, Moorebank.

The MPE Project is to be developed in stages. The current active stages are:

- Stage 1 - Construction and operation of the Intermodal Terminal (IMT) and rail link
- Stage 2 - Construction and operation of warehouse and distribution facilities.

MPE Stage 1 (SSD 6766) was granted approval on 12 December 2016. The initial processes for the operation of the IMT on the eastern side of Moorebank Avenue and the rail link to the SSFL have commenced.

The MPE Stage 2 Project (SSD 7628) involves the construction and operation of warehousing and distribution facilities on the MPE Site and upgrades to approximately 1.5 kilometres of Moorebank Avenue (See **Error! Reference source not found.**).

The MPE Site is located 5 km east of the M5/M7 Interchange, 2 km from the main north-south rail line and SSFL and 600 m from the M5 Motorway. It is surrounded by a mix of existing and proposed industrial sites, along with bushland and is accessed directly from the M5 Motorway by Moorebank Avenue, which runs north-south from the northern side of the M5 Motorway to the Holsworthy Military Reserve.

The MPE Site includes the MPE Stage 1 development, the IMEX IMT, which is located in the central and south-western portions of the site. The Defence Joint Logistics Unit, operated by the Department of Defence is located immediately north of the MPE Site. To the east and south of the site there is an area of bushland, known as the "Boot Land", and Moorebank Avenue runs along the western boundary of the site. The Moorebank Precinct West (MPW) Site is located on the other (western) side of Moorebank Avenue and is subject to separate approvals.

A number of residential suburbs are located near the MPE Site, the closest being Wattle Grove which is approximately 380 m south-east of the MPE Site boundary at its nearest point. The MPE Site is also located near a number of significant industrial precincts, including Moorebank (including but not limited to the Yulong and Amiens

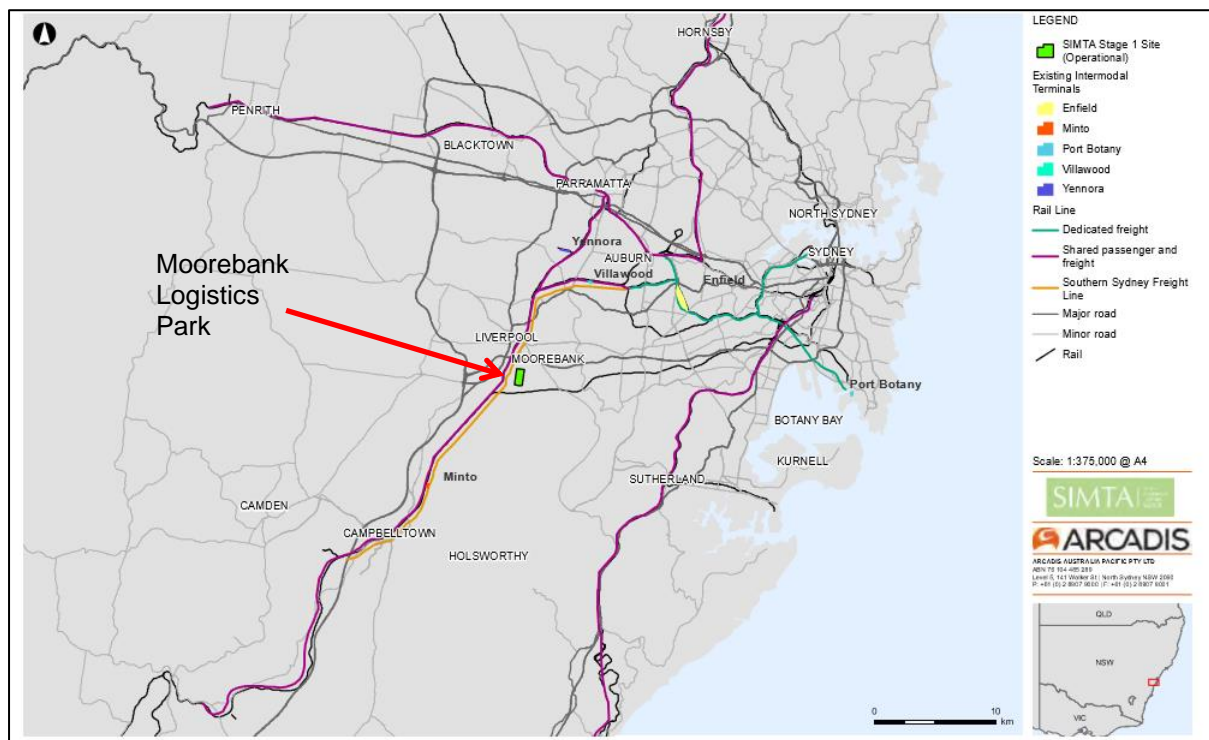


and ABB sites) and Warwick Farm to the north, Chipping Norton to the north-east, Prestons to the west, and Glenfield and Ingleburn further to the south-west.

The Applicant is progressing with the development of the MPE Site and construction activities related to MPE Stage 2 have commenced under the progressive approval of management plans.

There have been two separate modification applications for SSD 7628:

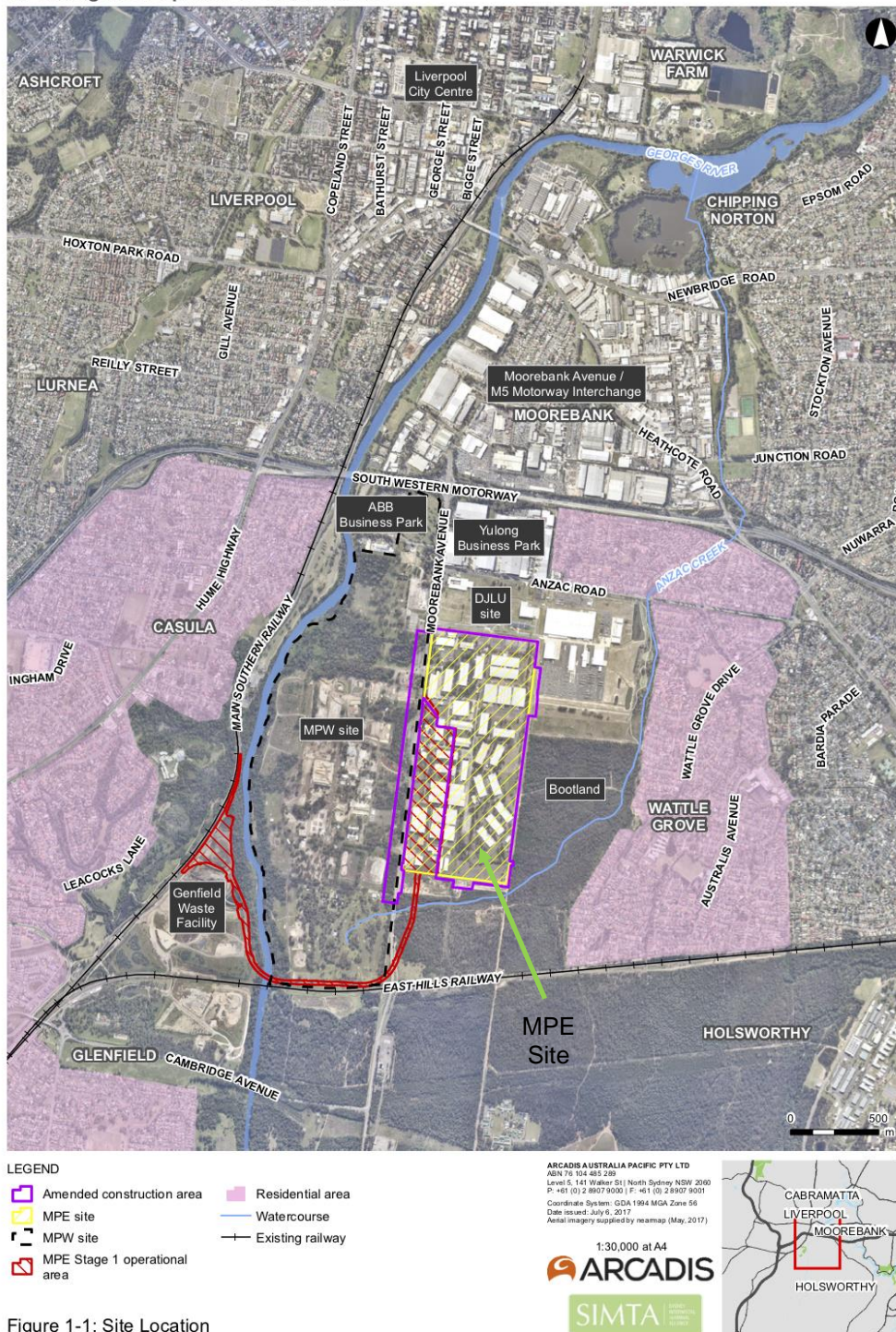
- SSD 7628 MOD 1: seeking modifications to signage controls (CoC B141(f)), timing for intersection design approvals and upgrades (B13), and biodiversity credit requirements (B104) in addition to an update to cross-referencing of conditions. This modification remains under assessment by DP&E
- SSD MOD 2: seeking modification to the construction and operation boundary, and stormwater infrastructure design requirements (B40(c)(iii)). This modification was approved by DP&E on 31 January 2020.



**Figure 1** MLP Site location (Source: Arcadis, 2016)



# MPE Stage 2 Response to Submissions



**Figure 2** MPE Site local context (Source Figure 1-1 MPE Stage 2 SSD 7628 EIS, Arcadis 2016)

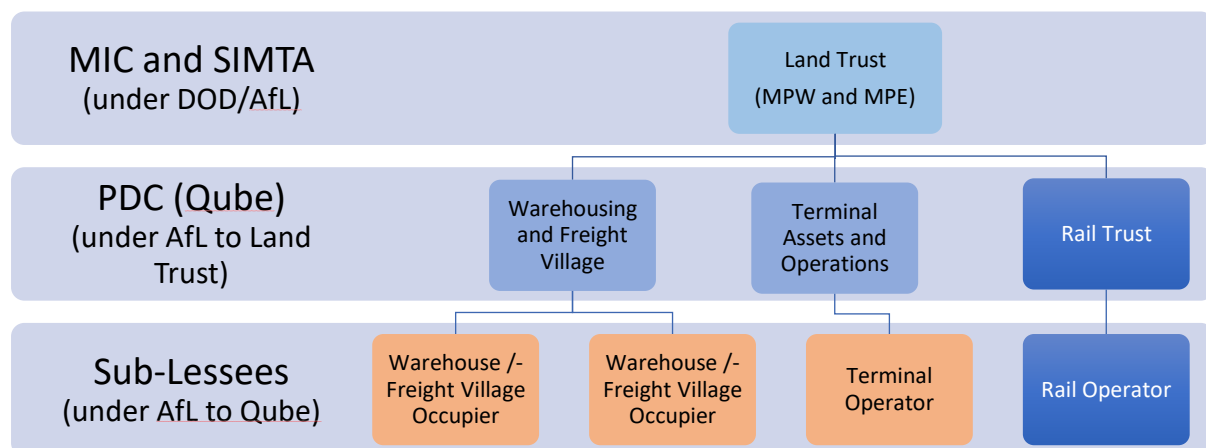
### 3.0 Subdivision of the MPE Site

On 3 June 2015, Moorebank Intermodal Company Limited (MIC), a Commonwealth Government entity, and Qube Holdings entered into an agreement, the Development and Operations Deed (DOD), for the development and operation of the MPE and MPW sites on a whole of precinct basis.

On 24 January 2017, financial close under the agreement occurred. The land comprising the Precinct was placed under a 99-year lease to a Land Trust for the sole purpose of facilitating the development of the Precinct. Responsibility for Precinct environmental management sits with Qube in its function as the Precinct Development Company (PDC), which was established as part of the trust arrangement with the Commonwealth Government.

Under the arrangement described above, Qube has entered into an agreement with the Commonwealth for 99-year leases for each of the IMEX terminal, interstate terminal and warehouses across the MPE and MPW sites. The agreement with the Commonwealth includes obligations and requirements for subdivision for both the MPE and MPW sites.

PDC is the entity responsible for delivering the development and is also tasked with the ongoing maintenance of the Precinct once it has been developed. Agreements for Lease (AfLs) with subsequent tenants provide the mechanism to detail the roles and responsibilities of tenants and PDC for the construction and operations of the Precinct over the 99-year term. While not immediately foreseeable, this framework would apply equally should a sub-lease for rail operations ever be considered.



**Figure 3** Leasehold arrangements for delivery and operation of MPE

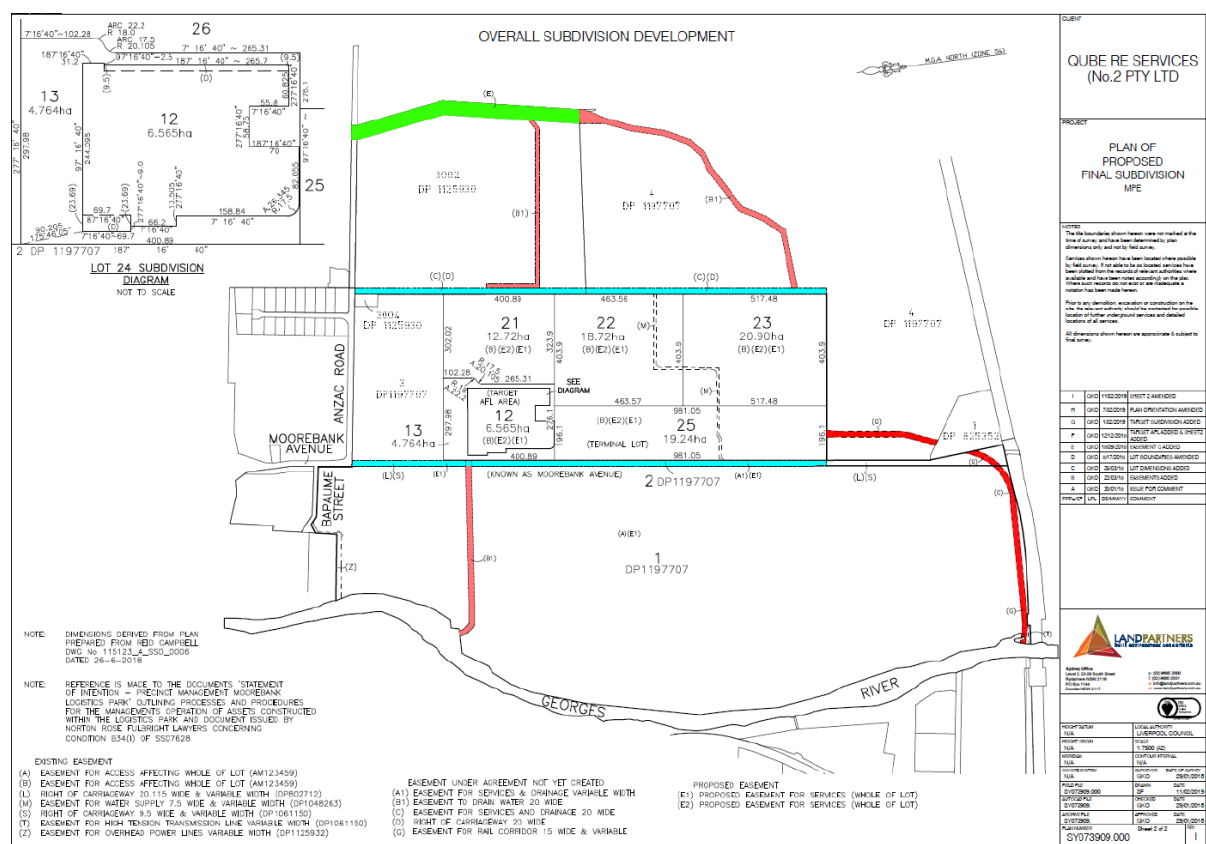
The Concept Approval (MP10\_0193) for the intermodal terminal facility, warehousing and a freight village at Moorebank, the MPE Project, was modified in January 2018 to enable the future consideration and assessment of subdivision of the MPE Site.

The MPE Stage 2 SSD 7628 Application sought approval for, among other precinct components, the subdivision of the MPE Site to comprise four lots, separate to the terminal lot (Lot 25), for warehousing and the freight village. The subdivision was supported by the DP&E, subject to conditions in its recommendation to the PAC. On review of the assessment and taking into consideration the future assessment requirements for subdivision under the modified Concept Plan (MP10\_0193), the

PAC was unable to include the subdivision component of SSD 7628 in its final approval. The PAC identified that the finding would not preclude its consideration of further documentation addressing the future assessment requirements of the modified Concept Plan (MP10\_0193).

The MPE Subdivision Ancillary Report (Aspect Environmental, 2018) was subsequently lodged with DP&E on 9 August 2018 to provide the supporting documentation for subdivision, being the balance of the development initially applied for under SSD 7628. This report enabled the IPC to consider and determine the subdivision component of the SSD 7628 Application.

The MPE Subdivision Ancillary Report also included an updated subdivision plan and easements for the site, including those for access, services and drainage and future easements. The subdivision plan presented in the report is provided below as Figure 4. It identifies existing easements, easements under agreement not yet created and proposed easements.



**Figure 4** Approved Subdivision - MPE SSD 7628 Partial Development Consent Appendix 1, January 2019

The report also outlined the management responsibilities for site operations and maintenance, which had been identified as a main point of consideration for both DP&E and PAC. The application outlined the legal framework that binds the intermodal components, ie the terminal, warehouses and freight village, to deliver on the environmental requirements of the consent instrument, including giving effect to the Operation Environmental Management Plan (OEMP).

The legal framework was established by reference to the consent instrument for SSD 7628, the provisions of s4.2 of the EP&A Act and the registration of long-term leases that reflect the subdivision objectives of facilitating the interdependency and co-dependency of the intermodal components.



The MPE Subdivision Ancillary Report SSD 7628 application was given consent by the IPC on 5 April 2019 as a partial development consent to SSD 7628.

This currently proposed modification to the partial development consent was identified as part of a review of the submitted subdivision plan and the management and responsibility requirements identified in the Development and Operations Deed (DOD), which forms the agreement between SIMTA and MIC for the construction and operation of the Moorebank Intermodal Precinct.

Specifically, as part of the subdivision of the MPE Site that creates Lot 25 (the Terminal Lot), portions of the rail corridor also require subdivision to create a clear delineation for the allocation of responsibility for day to day operations and management and ongoing maintenance responsibilities for the rail access and corridor.

Additionally, this modification seeks to update the naming of the Terminal Lot from Lot 25 to Lot 26, to maintain consistency with recent approval of the MPE Stage 2 subdivision plan and supporting information from NSW Department of Planning Industry and Environment (NSW DPIE) (3 December, 2019 Ref: DOC19/982214) (Appendix B).

## 4.0 Land to which this modification applies

A description of the land to which this modification application applies is provided in **Error! Reference source not found.** below.

**Table 1** Land affected by the proposal

Name	Lot description
MPE Site	Formerly Lot 1 DP 1048263, now being Lots 12 and 13 DP1251885 and Lots 26 and 27 DP1253673
Former Moorebank Railway Station Land	Lot 1 DP 825352
Existing 'Boot Land' site	Lot 4 DP1197707

Lot 1 DP 1048263 is wholly owned by The Trust Company Limited as custodian and agent for Qube RE Services Pty Limited as trustee of the Moorebank Industrial Property Trust. It forms part of the land that is under a 99-year lease arrangement to a Land Trust, comprising the Commonwealth and Qube, for the purpose of facilitating the development of the wider Moorebank Intermodal Precinct.

Land owner's consent was provided in respect of MPE Stage 2 SSD 7628 application, and subsequent modification applications proposals. These consents continue to have effect for the scope of the proposed modification (Appendix C).

Lot 1 DP 825352 is owned by RailCorp and is located north of the East Hills Rail Line and east of Moorebank Avenue, adjacent to the Boot Land.

Lot 4 DP 1197707 (the Boot Land) is owned by the Commonwealth of Australia.

Land owners' consent will be required in respect of the modification application to this land.

## 5.0 Consent Proposed to be Modified

### 5.1 Subdivision

The Proponent submitted to the NSW DPIE an application for consent for State significant development (SSD) 7628 for Stage 2 of the Moorebank Precinct East Intermodal Project. The NSW Planning and Assessment Commission (PAC) granted consent to SSD 7628 covering the MPE Stage 2 key components, identified above, on 31 January 2018.

Under SSD 7628 Development Consent Terms of Consent, Condition A2 identifies:

- A2. The development may only be carried out:*
- (a) in compliance with the conditions of this consent;*
  - (b) in accordance with all written directions of the Secretary in relation to this consent;*
  - (c) in accordance with the EIS, Submissions Report, Consolidated assessment clarification responses, and updated Biodiversity Assessment Report;*
  - (d) in accordance with the amended Development Layout Plans and Design Plans, amended WSUD plans and amended architectural plans to be submitted for the Secretary's approval as part of this consent; and*
  - (e) in accordance with the management and mitigation measures at APPENDIX B of this consent.*

Application to include subdivision within the SSD 7628 consent was submitted to the DP&E on 9 August 2018 and approved by the IPC as Partial Development Consent SSD 7628 on 5 April 2019.

This modification seeks to modify the Partial Development Consent Instrument SSD 7628 in respect of subdivision.

It is noted that in order to affect this subdivision modification, a Clause 4.6 variation is required to exempt Lot 4 DP 1197707 from the current Liverpool LEP 2008 minimum lot size requirements, being 120 ha. This request has been prepared and is provided as part of this Modification (Appendix D).

### 5.2 Compliance Reporting

Under SSD 7628, Condition C21 requires:

*C21. The Proponent must prepare and implement a Compliance Tracking Program to track compliance with the requirements of this approval. The Compliance Tracking Program must be submitted to the Secretary for approval prior to the commencement of construction.*

*The Compliance Tracking Program must include, but not be limited to:*

- (a) provision for the notification of the Secretary prior to the commencement of construction and prior to the commencement of operation of the development (including prior to each stage, where works are being staged);*
- (b) provision for periodic review of the compliance status of the development against the requirements of this approval and the environmental management measures committed to in the documents referred to in condition A2;*

*(c) provision for periodic reporting of compliance status to the Secretary, including but not limited to:*

*(i) a Pre-Construction Compliance Report prior to the commencement of construction,*

*(ii) quarterly Construction Compliance Reports, for the duration of construction, and*

*(iii) a Pre-Operation Compliance Report prior to the commencement of operation, and six monthly operational compliance reports;*

*(d) a program for independent environmental auditing;*

*(e) mechanisms for recording environmental incidents during construction and actions taken in response to those incidents;*

*(f) provision for reporting environmental incidents to the Secretary during construction; and*

*(g) procedures for rectifying any non-compliance identified during environmental auditing, review of compliance or incident management; and*

*(h) provision for ensuring all employees, contractors and sub-contractors are aware of, and comply with, the conditions of this approval relevant to their respective activities.*

This Modification also seeks to modify the compliance monitoring and tracking requirements of SSD 7628 by modifying the frequency of construction compliance reporting.



## 6.0 Proposed Modification

### 6.1 Subdivision

#### **Overview**

The Proposed Modification seeks the creation of four additional lots as part of the subdivision of two lots within the MPE Site. The proposed subdivision plan, submitted as part of the MPE Subdivision Ancillary Report, is shown in Figure 4, above.

The proposed modification seeks the inclusion of the following four lots in the subdivision of the MPE Site to be created from the subdivision of Lot 1 DP 825352 (being the RailCorp wedge land to the south of the MPE Site between Moorebank Ave, the Boot Land and the East Hills passenger rail line) into two lots:

- Lot 44 DP 825352: the rail corridor through the RailCorp wedge-land
- Lot 43 DP 825352: the residual RailCorp wedge-land.

Similarly, Lot 4 DP 1197707 (the Boot Land) is to be subdivided into two lots:

- Lot 42 DP 1197707: the rail corridor through the Boot Land, currently described as Easement 'G' in the approved subdivision plan
- Lot 41 DP 1197707: the residual Boot Land site, to become a biodiversity lot as per the DOD.

Accordingly, the MPE subdivision would comprise the following subdivided lots, described in Table 2 below and shown in Figure 5. The proposed additional lots are shown in **bold underlined**. Note that the Terminal Lot is described as Lot 26 to maintain consistency with recent approvals and the subdivision creating Lot 26.

Attachment A provides plans of the proposed subdivision modification.

**Table 2** MPE subdivision lots – dimensions and description

Lot No.	DP	Size (ha)	Location Description	Ownership/Responsibility
<b><u>41</u></b>	<b><u>1197707</u></b>	<b><u>99.09</u></b>	<b><u>Residual Boot Land lot</u></b>	<b><u>Commonwealth</u></b>
<b><u>42</u></b>	<b><u>1197707</u></b>	<b><u>0.90</u></b>	<b><u>The rail corridor through the Boot Land (currently known as Easement G on approved subdivision plans)</u></b>	<b>Tenant/Operator</b>
<b><u>43</u></b>	<b><u>823352</u></b>	<b><u>3.77</u></b>	<b><u>The residual RailCorp wedge-land south of Boot Land and MPE Site</u></b>	<b><u>RailCorp</u></b>
<b><u>44</u></b>	<b><u>823352</u></b>	<b><u>15 m wide corridor</u> <b><u>0.25</u></b></b>	<b><u>The rail corridor through the RailCorp wedge-land south of Boot Land and MPE Site</u></b>	<b>Tenant/Operator</b>
21	1048263	12.72	North-eastern corner of the Proposal Site (now registered as 21/1253673)	Tenant/Operator
22	1048263	18.72	Central portion of the Proposal site, excluding land within the Stage 1 IMT facility (now registered as 22/1253673)	Tenant/Operator
23	1048263	20.90	Southern portion of the Proposal site, excluding land within the Stage 1 IMT facility (now registered as 23/1253673)	Tenant/Operator
12	1048263	6.58	North-western corner of the Proposal site (denoted on plan as 'Target Exclusion Area'), resulting from the subdivision of Lot 24. (now registered as 12/1251885)	Tenant/Operator
13	1048263	4.75	North-western corner of the Proposal site, resulting from the subdivision of Lot 24. (now registered as 13/1251885)	Tenant/Operator
26	1048263	19.24	South-western portion of the site, comprising the IMT facility (Terminal Lot, formerly Lot 25) (now registered as 26/1253673)	Tenant/Operator

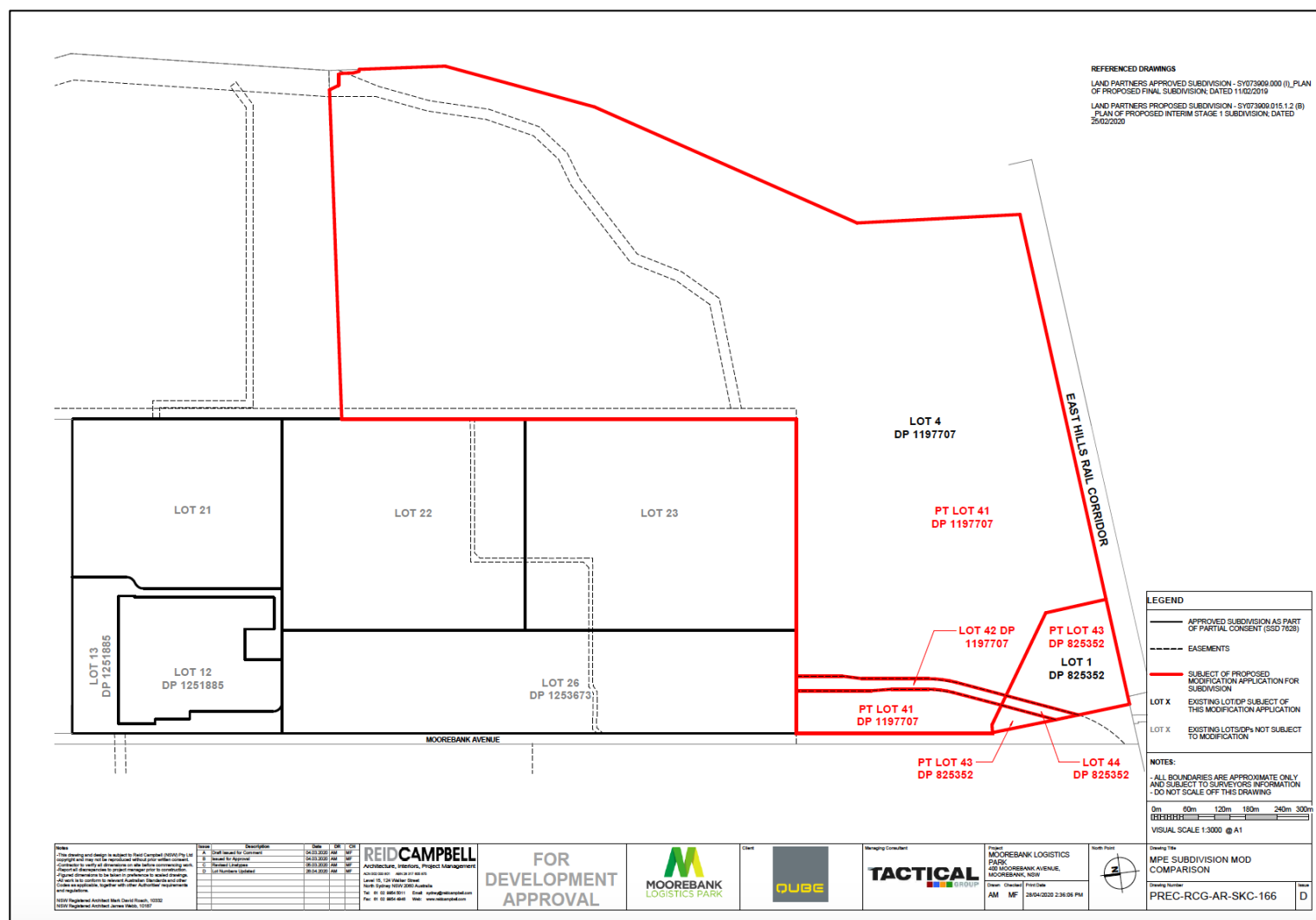


Figure 5 Proposed Modification – Additional Proposed Lots (shown in red)

## **Proposed Modification Justification**

The inclusion of the additional four lots in the MPE Subdivision Plan is required to ensure that the MPE Site, particularly Lot 26, (the Terminal lot), can function effectively through provision of the prescribed rail access corridor which will enable management and operation in accordance with the DOD.

Creation of the lots maintains the connectivity and interdependencies between the individual intermodal functions, i.e. IMEX and warehouses, of the MPE Site through the provision of the rail corridor access. It will also affect the lease with RailCorp (in relation to existing Lot 1 DP 825352) and provide clear management responsibility for the respective lots.

The rail corridor access is identified as a requirement under the DOD agreement with MIC to ensure accessibility and functionality of rail access and connectivity for future warehouse operations.

The subdivision plan (Attachment A) identifies existing easements, easements under agreement not yet created and proposed easements. Final identification of the easements would be determined subject to detailed design and lessee construction requirements. Details would be included within any respective tenancy agreements for lease. Whole of lot easements either exist or are to be created to maintain internal connectivity and interdependencies between the individual intermodal functions within the development site.

## **Clause 4.6 Variation Request**

In order to effect the above described subdivision layout, a Clause 4.6 variation is required. This request (Appendix D) seeks exception to the minimum lot size development standards (Clause 4.1) of the Liverpool LEP 2008, in accordance with Clause 4.6 of the Liverpool LEP 2008.

The Boot Land (Lot 4 DP1197707) currently has a minimum lot size of 120 ha, under the LEP. Although the existing Boot Land site is only 99.1 ha, this subdivision would result in creation of two new lots, each less than 120 ha – as shown in Table 2 (Lot 41 and Lot 42).

The attached request demonstrates that compliance with the development standard is unnecessary in the context of the proposed development and that sufficient environmental planning grounds exist to justify an exception to the development standard. Approval from NSW DPIE is therefore sought to vary the minimum lot size development standard that applies, thereby permitting subdivision of the Boot Land, as described, to take place.

## **6.2 Compliance Reporting**

### **Overview**

The Proposed Modification also seeks to amend the compliance monitoring and tracking requirements of SSD 7628 by modifying the frequency of construction compliance reporting from quarterly to 6-monthly.

Specifically, this modification seeks to modify condition C21 as follows (modification shown using **bold** and ~~strike through~~):

- C21. *The Proponent must prepare and implement a Compliance Tracking Program to track compliance with the requirements of this approval. The Compliance*

*Tracking Program must be submitted to the Secretary for approval prior to the commencement of construction.*

*The Compliance Tracking Program must include, but not be limited to:*

- (a) provision for the notification of the Secretary prior to the commencement of construction and prior to the commencement of operation of the development (including prior to each stage, where works are being staged);*
- (b) provision for periodic review of the compliance status of the development against the requirements of this approval and the environmental management measures committed to in the documents referred to in condition A2;*
- (c) provision for periodic reporting of compliance status to the Secretary, including but not limited to:*
  - (i) a Pre-Construction Compliance Report prior to the commencement of construction,*
  - (ii) ~~quarterly~~ **six-monthly** Construction Compliance Reports, for the duration of construction, and*
  - (iii) a Pre-Operation Compliance Report prior to the commencement of operation, and six monthly operational compliance reports;*
- (d) a program for independent environmental auditing;*
- (e) mechanisms for recording environmental incidents during construction and actions taken in response to those incidents;*
- (f) provision for reporting environmental incidents to the Secretary during construction; and*
- (g) procedures for rectifying any non-compliance identified during environmental auditing, review of compliance or incident management; and*
- (h) provision for ensuring all employees, contractors and sub-contractors are aware of, and comply with, the conditions of this approval relevant to their respective activities.*

### **Proposed Modification Justification**

Modifying construction compliance reporting from quarterly to 6-monthly would bring SSD 7628 in line with MPE Stage 1 (SSD 6766), MPW Stage 1 (SSD 5066) and MPW Stage 2 (SSD 7709) consent requirements, which require compliance reporting to be undertaken 6-monthly. Amending this condition would provide for consistent compliance monitoring requirements across the Precinct as a whole and enable consolidation of compliance reporting for the Precinct in the future.

The *Compliance Reporting: Post Approval Requirements*, issued by DPE (June 2018), which reflect a consistent approach to compliance reporting across the various Moorebank Logistics Park (MLP) consents, in Table 1: *Minimum Frequency of Compliance Reporting*, identifies that construction compliance reporting is to be undertaken at intervals no greater than 26 weeks (i.e. 6-monthly) from the date of commencement of construction. Amending the requirements of CoC C21(c)(ii) would therefore align the condition requirements to be consistent with the DPIE post-approval approach to construction compliance monitoring and reporting. While the Department has subsequently released a revised version of the *Compliance Reporting: Post Approval Requirements* (DPIE, May 2020), removing the requirements for construction compliance reporting from consents issued from May 2020, this approach is presently considered inconsistent with the suite of compliance reporting conditions across MLP.

## 7.0 Substantially the same development

Section 4.55 (1A) of the EP&A Act states that a consent authority may approve an application for the modification of development consent if,

*“it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).”*

While the legislation does not include a strict definition on what constitutes ‘substantially the same development’, the phrase was interpreted by the court in the case of *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) NSWLEC 280*.

Within this case important principles for consideration in the approval of a modification were established. These included;

- the verb ‘modify’ means to alter without radical transformation
- ‘substantially’ in this context means essentially materially or having the same essence
- a development as modified would not necessarily be ‘substantially the same development’ simply because it is for precisely the same use as that for which consent was originally granted
- a modification application involves undertaking both a qualitative and quantitative comparison of the development as originally approved and modified
- although the comparative task required under Section 96 (now Section 4.55) involves a comparison of the whole of the development being compared, the fact does not eclipse or cause it to be eclipsed if a particular feature of the development particularly if that feature is found to be important, material or essential to the development
- environmental impacts of the proposed modification are relevant in determining whether or not a development is substantially the same.

The proposed modifications do not change the purpose for which the development is being carried out and maintains all the key components of the development, as described in Schedule 1 of the consent.

The proposed modification does not involve any change to the approved disturbance footprint of the MPE Site, nor does it represent a change to the approved site construction activities or operations.

The additional lots proposed to be created are required to ensure that the site is able to operate and be managed in an effective, integrated and sustainable manner in accordance with the development agreement between SIMTA and MIC. The precinct management responsibilities outlined in Section 5 of the MPE Subdivision Ancillary Report will apply to the additional lots.

Modifying the requirement for construction compliance reporting does not change the intent or objectives of this condition and would result in consistent compliance reporting with current DPIE post-approval requirements and enable consistency of reporting across the MLP Precinct.

The proposed modification provides for a development that remains consistent with the applicable legislation, policies and controls relevant to the development.

Accordingly, the Proposed Modification is considered to be substantially the same development as the MPE Project for which consent was originally granted and is considered to be of minimal environmental impact.



## 8.0 Assessment and management

As outlined in Section 3, the proposed modification seeks to:

1. provide for additional lots to give effect to the functionality and operation of Lot 26 (the Terminal lot) on the MPE Site as a condition for the IMEX works completion under the DOD and as part of Development Consent SSD 7628
2. modify CoC C21(c)(ii) to align the frequency of construction compliance reporting to the MPE Stage 1 (SSD 6766), MPW Stage 1 (SSD 5066) , and MPW Stage 2 (SSD 7709) consent requirements and the published DPE (June, 2018) compliance monitoring and reporting post-approval requirements.

**8.1 Subdivision** The Concept Approval (MP10\_0193) for the MPE Site contemplates the provision of a rail access corridor to service the site. The Proposed Modification would not have any additional environmental impacts beyond those predicted or approved, as the proposed inclusion of the additional lots would not require any additional physical works. The proposed additional lots would facilitate implementation of environmental management controls by providing clarity of the allocation of management responsibilities within the respective lots.

The AfLs include a precinct management agreement (PMA) for the ongoing operation and management of the Precinct. The AfLs also reference a set of management principles which set out the matters that are to be addressed in the precinct management agreement (PMA Principles).

The PMA Principles identify that their object is to ensure that appropriate arrangements are made for:

- the management and operation of the Precinct
- the proper repair and maintenance of the Precinct facilities
- the fair apportionment of costs of repair and maintenance and upgrading of Common Facilities on the Precinct
- the keeping of certain insurances.

Where tenancies are established for terminals, the PMA would be extended to include any sub-lessees with terms from the PMA included within the sub-lease documents.

## 8.2 Compliance Reporting

The potential environmental impacts of the construction works and operational activities have already been assessed and approved as part of the previous development consents issued for the MPE Site. Altering the frequency of compliance reporting to 6-monthly does not have implications on the nature, scale or extent of potential impacts of construction or their respective management. It would provide for a consistent compliance reporting approach across the MLP.

## 9.0 Conclusion

The Modification application seeks:

1. The creation by subdivision of four additional lots as part of the subdivision of the MPE Site to facilitate the intended establishment and operation of the rail corridor access for the ongoing sustainable operation and management of the MPE Site and the lots contained therein.

The inclusion of the additional lots within the MPE Stage 2 SSD 7628 Partial Development Consent enable the MPE approval to give effect to requirements under the agreement between MIC and SIMTA relating to ensuring operability of the precinct and providing the necessary operating capability for the MPE IMEX and associated warehousing.

The outcome of the proposed modification would be the creation of four additional lots that enable effective provision for, and management of, the rail corridor. Additionally the modification would provide clear separation of land utilised as rail corridor from that forming part of the Butcher's knife, the Bootland and residual RailCorp land.

A Clause 4.6 Variation request is provided as part of this Modification (Appendix D) seeking exemption to the minimum lot size development standard on the Boot Land site (Lot 4 DP1197707). This request is required to effect the proposed subdivision modification, as subdivision of the Boot Land as proposed, will result in two lots which are less than the current minimum lot size (120 ha).

This modification also formalises the change in lot numbering of the Terminal lot from Lot 25 to Lot 26, in order to maintain consistency with recent DPIE approval related to the subdivision plan for MPE Stage 2 (3 December 2019).

2. Modification of CoC C21(c)(ii) to reduce the frequency of construction compliance reporting from quarterly to 6-monthly.

This change would result in construction compliance reporting requirements that are consistent with those required by MPE Stage 1 (SSD 6766), MPW Stage 1 (SSD 5066) and MPW Stage 2 (SSD 7709). Furthermore, it is consistent with the required approach documented within the *Compliance Reporting Post Approval Requirements* (DPE June 2018).

Under the proposed modification there is no change to approved construction or operations for the MPE Site.

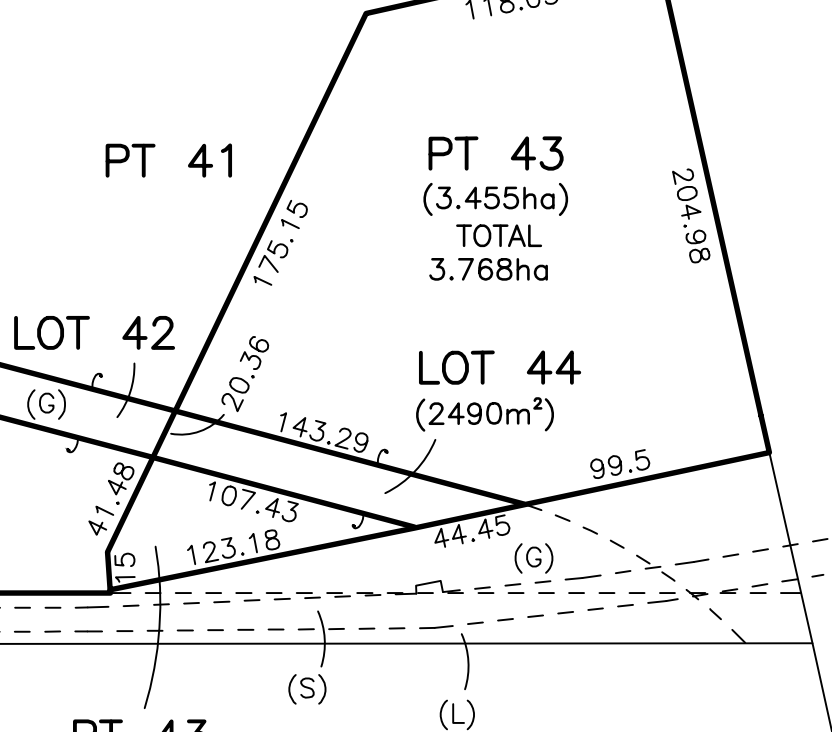
In accordance with section 4.55(1A) of the EP&A Act, the proposed modification is considered appropriate to approve as:

- the proposed modification is of minimal environmental impact
- the consent as proposed to be modified is substantially the same development as the development for which consent was granted.

## Appendix A – Subdivision Plan (LandPartners, March 2020)

DIAGRAM

NOT TO SCALE



PT 43  
(3130m<sup>2</sup>)

NOTE 'A': PROPOSED LOT 43 & 44 ARE LOTS TO BE CREATED FROM A SUBDIVISION OF LOT 1 DP825352  
NOTE 'B': LOT 12 & 13 DERIVE FROM A SUBDIVISION OF LOT 24

NOTE: DIMENSIONS DERIVED FROM PLAN PREPARED FROM REID CAMPBELL DWG No 115123\_A\_SSD\_0006 DATED 26-6-2018

NOTE: REFERENCE IS MADE TO THE DOCUMENTS 'STATEMENT OF INTENTION - PRECINCT MANAGEMENT MOOREBANK LOGISTICS PARK' OUTLINING PROCESSES AND PROCEDURES FOR THE MANAGER'S OPERATION OF ASSETS CONSTRUCTED WITHIN THE LOGISTICS PARK AND DOCUMENT ISSUED BY NORTON ROSE FULBRIGHT LAWYERS CONCERNING CONDITION B34(I) OF SSD7628

EXISTING EASEMENT

- (A) EASEMENT FOR ACCESS AFFECTING WHOLE OF LOT (AM123459)
- (B) EASEMENT FOR ACCESS AFFECTING WHOLE OF LOT (AM123459)
- (L) RIGHT OF CARRIAGEWAY 20.115 WIDE & VARIABLE WIDTH (DP802712)
- (M) EASEMENT FOR WATER SUPPLY 7.5 WIDE & VARIABLE WIDTH (DP1048263)
- (S) RIGHT OF CARRIAGEWAY 9.5 WIDE & VARIABLE WIDTH (DP1061150)
- (T) EASEMENT FOR HIGH TENSION TRANSMISSION LINE VARIABLE WIDTH (DP1061150)
- (U) EASEMENT FOR RAILWAY LINE VARIABLE WIDTH (DP1228283)
- (Z) EASEMENT FOR OVERHEAD POWER LINES VARIABLE WIDTH (DP1125932)

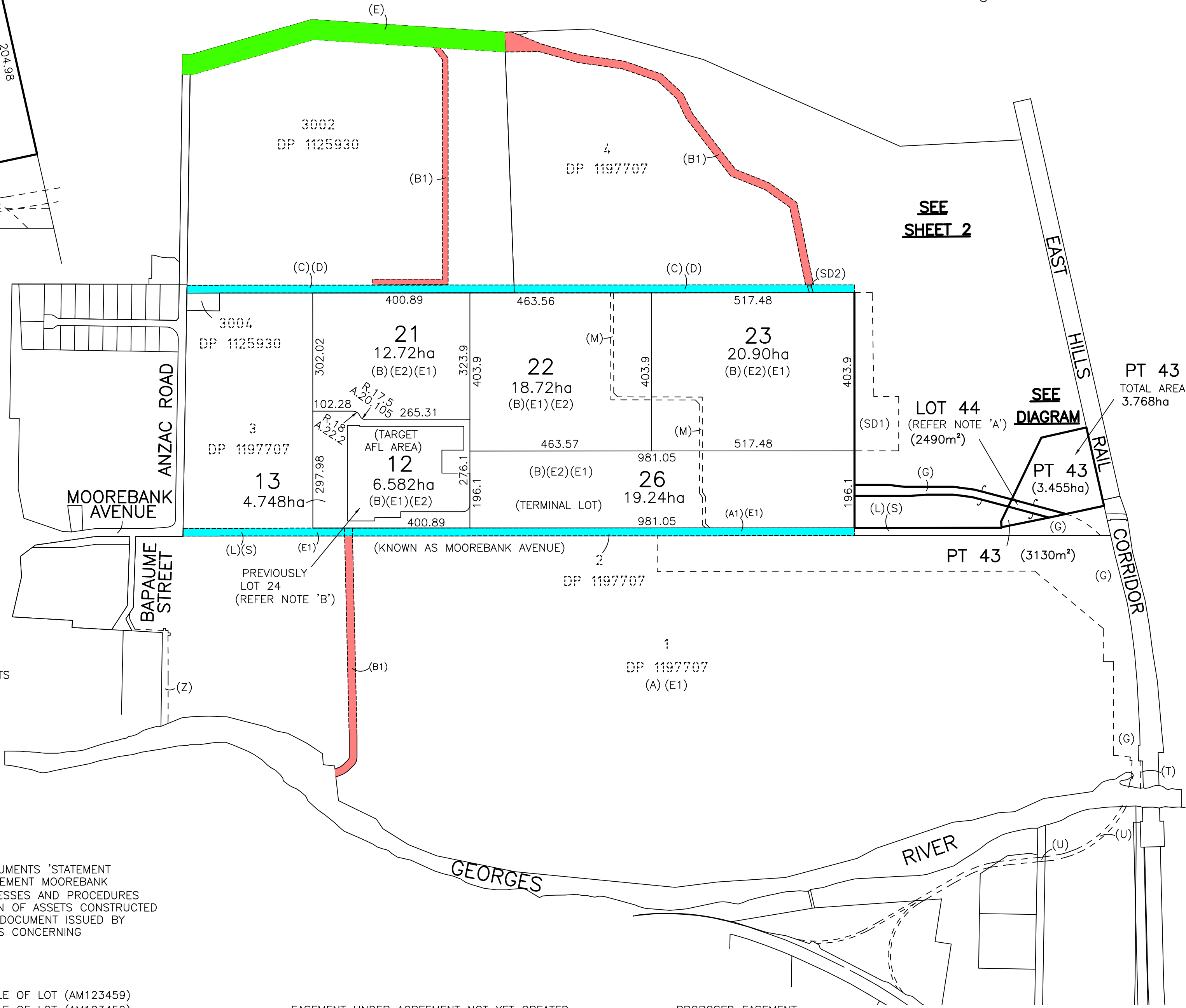
EASEMENT UNDER AGREEMENT NOT YET CREATED

- (A1) EASEMENT FOR SERVICES & DRAINAGE VARIABLE WIDTH
- (B1) EASEMENT TO DRAIN WATER 20 WIDE
- (C) EASEMENT FOR SERVICES AND DRAINAGE 20 WIDE
- (D) RIGHT OF CARRIAGEWAY 20 WIDE
- (G) EASEMENT FOR RAIL CORRIDOR 15 WIDE & VARIABLE

PROPOSED EASEMENT

- (E1) PROPOSED EASEMENT FOR SERVICES (WHOLE OF LOT)
- (E2) PROPOSED EASEMENT FOR SERVICES (WHOLE OF LOT)
- (SD1) PROPOSED EASEMENT FOR DRAINAGE OF WATER
- (SD2) PROPOSED EASEMENT FOR DRAINAGE OF WATER

OVERALL SUBDIVISION DEVELOPMENT





Appendix B – Staged Subdivision Plan Approval (DPIE; 3  
December, 2019. Ref: DOC19/982214)





Our ref: DOC19/982214

Mr Michael Yiend  
Development Director  
Qube Property Management Services  
Level 25, 45 Clarence Street  
SYDNEY, NSW 2000

Dear Mr Yiend

**Approval of staged subdivision under condition A6 of MPE Stage 2 partial consent**

I refer to your correspondence dated 4 October 2019 requesting approval of the staged subdivision plan for Lots 26 and 27, in accordance with condition A6 of partial consent SSD 7628. I also acknowledge your response to the Department's request for additional information on 15 October 2019.

I note that the staged subdivision plan:

- has been reviewed by Qube and no issues have been raised;
- has been endorsed by a Registered Surveyor (LandPartners Pty Ltd);
- has been certified by the Principal Certifying Authority (Baker Ryan Stewart Pty Ltd);
- contains the information required by the conditions of the partial consent.

As delegate of the Planning Secretary, I approve the subdivision plan and supporting information, as provided to the Department on 15 October 2019.

Please note that this approval is for the purposes of subdivision only and does not approve any amended layout, access roads, architectural details or drainage infrastructure pursuant to other conditions of consent.

Condition A6 requires that, prior to the issue of any subdivision certificate (including the first and subsequent certificates), you provide a revised Subdivision Plan and supporting information that clearly identifies that relevant estates works for the proposed lots have been completed. The Department will not consider further requests for subdivision until such time that the relevant estate works for the proposed lots have been completed.

You are reminded that if there is any inconsistency between the approved documents and the conditions of consent, then the requirements of the conditions of consent will prevail.

If you have any questions please contact Jake Shackleton, Senior Environmental Assessment Officer on Ph 8275 1168 or [jake.shackleton@planning.nsw.gov.au](mailto:jake.shackleton@planning.nsw.gov.au)

Yours sincerely,

 3/12/2019

Erica van den Honert

**Director**  
**Infrastructure Assessments, Infrastructure Management**

As delegate of the Planning Secretary



## Appendix C – Land Owners’ Consent

The Trust Company Limited  
As custodian for the Moorebank Industrial Property Trust  
Level 18, 123 Pitt Street  
Sydney NSW 2000

SIMTA  
c/- Mr Michael Yiend  
Director Development,  
Qube Holdings Limited  
Level 27, 45 Clarence St  
SYDNEY NSW 2000

Dear Sir,

**Moorebank Precinct East (MPE) Stage 2 State significant development application (SSD-7628) and MPE Concept Plan Approval Modification Application 2 (MP10\_0193 MOD 2) Land Owner's consent to SSD-7628 and MP10\_0193 MOD 2 and any future modification applications to any approval**

The Trust Company Limited as custodian for the Moorebank Industrial Property Trust is the owner of land (**Land Owner**) located at Moorebank, described as Lot 1 DP 1048263 (**Land**).

The Land Owner is aware that SIMTA has obtained approval of a Concept Plan MP 10\_0193 (29 September 2014), a modification to that Concept Plan Approval MP\_10\_0193 MOD 1 (12 December 2016) and Stage 1 Development Consent SSD 6766 (12 December 2016) for the proposed Moorebank Precinct East Project, and that SIMTA has lodged a State significant development application for Stage 2 (SSD 7628) and Concept Plan Approval modification application (Concept Plan Modification 2) with the Minister for Planning and Environment, seeking development consent for construction and operation of the second stage of the MPE Project and modification of the MPE Concept Plan Approval.

The Stage 2 SSD Application has been given reference number SSD 7628 and seeks approval for Stage 2 of the MPE Project under Part 4, Division 4.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Concept Plan Modification 2 has been given reference number MP10\_0193 MOD 2 and seeks approval to modify the MPE Concept Plan Approval under section 75W (now repealed) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The MPE Concept Plan Approval is a Transitional Part 3A Project, and accordingly section 75W of the EP&A Act continues to apply pursuant to clause 3C of Schedule 6A of the EP&A Act.

The Land forms part of the land on which development is proposed pursuant to the Stage 2 SSD Application (SSD 7628) and the Concept Plan Modification 2 (MP10\_0193 MOD 2). As the owner of the Land, I give consent to the making of the Stage 2 SSD Application (SSD 7628) and Concept Plan Modification 2 (MP10\_0193 MOD2) and any and all future modification applications in relation to any approval issued in respect of SSD 7628 under section 96 of the EP&A Act and MP10\_0193 under section 75W of the EP&A Act, either in its current form or representative future provisions.

This owner's consent is limited to the Stage 2 SSD Application (SSD 7628) and Concept Plan Modification 2 (MP10\_0193 MOD 2) and any future modification applications in relation to any approval of SSD 7628 and MP10\_0193 MOD 2. Further, this letter does not constitute owner's consent in respect of any subsequent State significant development application that may affect the Land. Further requests for owner's consents in respect of any subsequent development applications will be required.

This letter does not constitute agreement by the Land Owner to the grant, or terms of, any easements or rights of carriageway that Qube may seek to obtain in respect of the Land.

Yours faithfully,

 20.10.2017

Signed

Trent Franklin  
Manager Custody

-----  
Name of landowner



**Australian Government**

**Department of Infrastructure and Regional Development**

**Secretary**

File Reference: 17/1558  
PDR ID: EC17-001322(A)  
Contact: David Crawford

Sydney Intermodal Terminal Alliance  
c/- Mr Michael Yiend  
Senior Development Manager, Qube Holdings Limited  
Level 27, 45 Clarence Street  
SYDNEY NSW 2000

Dear Mr Yiend

**Moorebank Intermodal Terminal Project - Commonwealth Land Owners consent to the Sydney Intermodal Terminal Alliance (SIMTA) State Significant Development (SSD) Application SSD 7628, Concept Plan Approval Modification Application MP10\_0193 MOD 2 and future modification applications to any approval for the Moorebank Intermodal Precinct East Stage 2**

The Commonwealth of Australia is the owner of land (Land Owner) located at Moorebank, New South Wales, described the following and referred to herein as Land (Land):

Lot 1 DP 1197707

Lot 2 DP 1197707

Lot 4 DP 1197707

The Land Owner is aware that SIMTA has obtained approval of a Concept Plan MP 10\_0193 (29 September 2014) and Stage 1 Development Consent SSD 6766 (12 December 2016) for the proposed Moorebank Intermodal Precinct East, and that Qube has lodged a State Significant Development Application for Stage 2 (SSD 7628) with the Minister for Planning and Environment, seeking development consent for construction and operation of the second stage of the Moorebank Intermodal Precinct East and a Concept Plan Approval Modification Application (Concept Plan Modification 2) seeking to modify the Concept Plan Approval for the Moorebank Intermodal Precinct East, with the Minister for Planning and Environment.

The Stage 2 SSD Application has been given reference number SSD 7628 and seeks approval for Stage 2 of the Moorebank Intermodal Precinct East under Part 4, Division 4.1 of the New South Wales *Environmental Planning and Assessment Act 1979* (EP&A Act). The Concept Plan Modification has been given reference number MP10\_0193 MOD 2 and seeks approval to modify the Concept Plan Approval under section 75W (now repealed) of the EP&A Act. The SIMTA Concept Plan is a Transitional Part 3A Project, and accordingly section 75W of the EP&A Act continues to apply pursuant to clause 3C of Schedule 6A of the EP&A Act.

The Land forms part of the land on which development is proposed pursuant to the Stage 2 SSD Application (SSD 7628) and Concept Plan Modification (MP10\_0193 MOD 2). As the authorised officer on behalf of the Land Owner, I give consent to the making of the Stage 2 SSD Application (SSD 7628), Concept Plan Modification (MP10\_0193 MOD 2) and any and all future modification applications in relation to any approval issued in respect of SSD 7628 and MP10\_0193.

This owner's consent is limited to the Stage 2 SSD Application (SSD 7628), Concept Plan Modification (MP\_10\_0193 MOD 2) and any future modification applications in relation to any approval of SSD 7628 and MP\_10\_0193. Further, this letter does not constitute owner's consent in respect of any subsequent State Significant Development Application that may affect the Land. Further requests for owner's consents in respect of any subsequent development applications will be required.

This letter does not constitute agreement by the Land Owner to the grant or terms of any easements or rights of carriageway that Qube may seek to obtain in respect of the Land.

Yours sincerely



Mike Mrdak AO

Signed on behalf of The Commonwealth of Australia, as  
Secretary  
Department of Infrastructure and Regional Development

13 September 2017

## Appendix D – Clause 4.6 Variation Request



# Moorebank Precinct East Intermodal Terminal Facility

Clause 4.6 Request – Minimum Lot Size Requirements



SIMTA

SYDNEY INTERMODAL TERMINAL ALLIANCE

Part 4, Division 4.7, State Significant  
Development

June 2020



## Clause 4.6 Request – Minimum Lot Size Requirements

### Moorebank Precinct East Stage 2 (SSD 7628)

**Authors** Megan Kovelis and Richard Johnson

**Checker** Richard Johnson

**Approver** Richard Johnson

**Report No** 20060206.1

**Date** 22/06/2020

**Revision** 1

#### Author Details

Author Details	Qualifications and Experience
Richard Johnson	BSc; Dip. Law
	30 yrs environmental planning, assessment and management. 15 yrs public sector; 15 yrs consulting (water/ resources/ energy/ industrial/ infrastructure) Planning, construction, operation and decommissioning environmental management.
Megan Kovelis	BEnvSc(Hons1), GradCert EnvPI
	13 yrs environmental planning, assessment and management

## REVISIONS

Revision	Date	Description	Prepared by	Approved by
Draft	June 2020	Draft	Megan Kovelis	Richard Johnson
Final	June 2020	Final on review of draft	Megan Kovelis and Richard Johnson	Richard Johnson

Limitation: This document has been prepared by Aspect Environmental Pty Limited for Sydney Intermodal Terminal Alliance (SIMTA). The document and contents are subject to, and issued in accordance with, the provisions of the contract between Aspect Environmental Pty Limited and SIMTA. Aspect Environmental Pty Limited accepts no liability or responsibility whatsoever for, or in respect of, any use of, or reliance upon, this document by any third party

## Table of Contents

<b>Glossary of Key Terms.....</b>	<b>4</b>
<b>Executive Summary.....</b>	<b>5</b>
<b>1.0.....</b>	<b>Introduction</b>
.....	6
1.1.    Background .....	6
1.2.    Report Structure.....	6
1.3.    Existing Approvals.....	6
1.4.    Proposed MPE Subdivision Modification.....	7
<b>2.0.....</b>	<b>MPE and Site Description</b>
.....	9
<b>3.0.....</b>	<b>Proposed Variation Description</b>
.....	11
3.1.    Description.....	11
3.2.    Justification .....	11
<b>4.0.....</b>	<b>Planning Assessment</b>
.....	18
4.1.    Statutory Planning Assessment.....	18
4.2.    Substantially the Same Development.....	21
<b>5.0.....</b>	<b>Environmental Assessment</b>
.....	22
<b>6.0.....</b>	<b>Conclusion</b>
.....	23

## Glossary of Key Terms

Term	Description
Boot Land site	The subject site, being Lot 4 DP 1197707, located to the east and south of MPE Site
CEMP	Construction Environmental Management Plan
DA	Development Application
DP&E	NSW Department of Planning and Environment (now DPIE)
DPIE	Department of Planning, Industry and Environment
EEC	Endangered Ecological Communities
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
EPA	NSW Environment Protection Agency
EPBC Act	Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i>
GFA	Gross Floor Area
IMT	Intermodal freight terminal facility
IMEX	Import Export freight facility
IPC	Independent Planning Commission
Liverpool LEP	<i>Liverpool Local Environmental Plan 2008</i>
MIC	Moorebank Intermodal Company
Moorebank Precinct	Includes MPE Project and MPW Project
MPE Project	The SIMTA Moorebank Intermodal Facility at Moorebank, as approved by the concept plan (MP_10_0913)
MPE Site	Includes the Moorebank Precinct East Site and the rail corridor i.e. the entire site area which was approved under the concept plan approval
MPW Project	The development of an intermodal facility, associated commercial infrastructure (warehousing), a rail link, and associated works as approved by the Concept Plan (SSD-5066) and modified by MPW Stage 2 (SSD 7709)
MPW Site	The former School of Military Engineering site to the immediate west of the MPE Site, across Moorebank Avenue i.e. the entire site area which was approved under the concept plan approval
PAC	Planning Assessment Commission
The Proposal	Seeks exception to the minimum lot size development standards (Clause 4.1) of the Liverpool Local Environmental Plan (LEP) 2008, in accordance with Clause 4.6 of the Liverpool LEP 2008.
Proposal Site	Area on which the Proposal is to be developed, the Boot Land
SEARs	Secretary's Environmental Assessment Requirements
SIMTA	Sydney Intermodal Terminal Alliance
SSD	State significant development
SSFL	Southern Sydney Freight Line
TEC	Threatened Ecological Communities
TEU	Twenty-foot equivalent unit or a standard shipping container

## Executive Summary

This Clause 4.6 request has been prepared on behalf of SIMTA and seeks exception to the minimum lot size development standards (Clause 4.1) of the *Liverpool Local Environmental Plan* (LEP) 2008, in accordance with Clause 4.6 of the Liverpool LEP 2008.

The MPE Stage 2 Approval (SSD 7628) was granted approval on 31 January 2018 from the NSW Department of Planning & Environment (DP&E), now the NSW Department of Planning, Industry and Environment (DPIE), under what was then Part 4, Division 4.1 of the EP&A Act. It sought, amongst other things, the subdivision of the MPE Site to comprise four lots, separate to the terminal lot, for warehousing and the freight village.

The subdivision was supported by the DP&E, subject to conditions in its recommendation to the PAC. On initial review of the assessment, the PAC was unable to include the subdivision component of SSD 7628 in its final approval. The MPE Subdivision Ancillary Report (Aspect Environmental, 2018) was subsequently lodged with DP&E on 9 August 2018 to provide the supporting documentation for subdivision (i.e. the balance of the development initially applied for under SSD 7628). This report enabled the IPC to consider and determine the subdivision component of the SSD 7628 Application, on 5 April 2019.

This current request forms an attachment to a modification application under MPE Stage 2 (SSD 7628) that has been lodged with DPIE. This modification is seeking, amongst other things, consent to amend the approved MPE subdivision layout. The amended layout involves the inclusion of additional lots, one of which is Lot 4 DP1197707 (the Boot Land), which would, under the modification, be subdivided into two allotments to provide a 15 m wide rail access corridor for the Terminal lot and a large residual lot.

The Boot Land currently is mapped under Liverpool LEP 2008 as having a minimum lot size of 120 ha. The site is currently 99.99 ha and subdivision of this site will create two lots, each below the minimum lot size requirement. This request therefore seeks an exception from the minimum lot size requirement on the Boot Land, in order to give effect to the proposed MPE Subdivision Modification, and allow it to be consistent with the LEP requirements.

This request demonstrates that compliance with the development standard may be excepted in the context of the proposed development and that sufficient environmental planning grounds exist to justify an exception to the development standard. An exception under the development standard does not compromise the ability of the development to remain consistent with the objectives of the zone (being IN1 General Industrial zone and SP2 Infrastructure) and the Clause 4.1 (minimum lot size) objectives. Assessment against the Clause 4.6 variation requirements concludes it is unnecessary and unreasonable to comply with the existing development standard, and that compliance is not in the public's interest. There are sufficient environmental planning grounds to support an exception to the standard, without raising any State or regional matters of significance. Importantly, the development will continue to be substantially the same as that approved under SSD 7628, in accordance with Section 4.55 (1A) of the EP&A Act 1979.

This application demonstrates that it is compliant and consistent with the objectives and requirements of relevant legislation, excluding the Liverpool LEP 2008 minimum lot size requirements (for which exception to the standard is sought).

It is concluded that this proposed exception to the Liverpool LEP 2008 development standards would result in a development that is substantially the same as the project described within the MPE Concept Plan and Stage 2 Approval and the changes would not alter the development of the MPE IMT facility and associated warehousing.

## 1.0 Introduction

This Clause 4.6 request application has been prepared by Aspect Environmental Pty Limited on behalf of SIMTA (as Qube Holdings Limited) (the Proponent) and seeks exemption to the minimum lot size development standard (Clause 4.1) of the Liverpool LEP 2008. The exception to the development standard supports and will facilitate modification of the subdivision layout for the MPE Site, as approved in the MPE Stage 2 Partial Development Consent (SSD 7628) dated April 5 2019. The MPE development relates to the development of an intermodal freight terminal facility (IMT) facility and warehousing on the eastern side of Moorebank Avenue, Moorebank, NSW. This request is made pursuant to Clause 4.6 of the Liverpool LEP 2008.

The exception request seeks to modify the minimum lot size requirements at the Boot Land site (Lot 4 DP 1197707) under Clause 4.1 of the Liverpool LEP 2008, being 120 ha, to 2,000 m<sup>2</sup>. Exception to the development standard on this site would create consistency with the minimum lot size requirements on the adjacent MPE Site.

This request will result in a development that is substantially the same as that approved within the MPE Stage 2 Approval and does not alter the development of the intermodal facility or warehousing. Modification of the current approved subdivision layout for MPE will provide for the prescribed rail access corridor and enable the MPE Site, and in particular the Terminal lot, to operate effectively without compromising environmental, social or economic outcomes. Importantly, an exception to the development standard in this case is supported and justified on environmental planning grounds.

This application identifies the consent, describes the proposed development standard exception and provides an assessment of the relevant matters contained in Clause 4.6 of the Liverpool LEP 2008.

### 1.1. Background

The MPE Project includes development of an IMT which will be linked to Port Botany, the interstate and the intrastate freight network. It also includes associated warehouse and logistics facilities, a rail link connecting to the Southern Sydney Freight Line (SSFL) and a road entry and exit point from Moorebank Avenue.

Further detail on the MPE Project and related approvals is provided in Section 1.3.

### 1.2. Report Structure

This application report is structured as follows:

Section 1: Introduction and Project and approvals background

Section 2: Site description

Section 3: Proposed application description

Section 4: Statutory planning assessment

Section 5: Environmental assessment

Section 6: Conclusion

### 1.3. Existing Approvals

The MPE Project (formerly the SIMTA Project) involves the development of an intermodal terminal (IMT) on the eastern side of Moorebank Avenue, Moorebank, NSW. It includes a rail link to the SSFL within the Rail Corridor, warehouse and distribution facilities with ancillary offices, a freight village (ancillary site and operational services), stormwater, landscaping, servicing and associated works. The Concept Plan approval (MP 10\_0193) was approved on 29 September 2014.

The MPE Project is to be developed in three stages:

- Stage 1 – Construction and operation of the IMT facility and rail link
- Stage 2 – Construction and operation of warehouse and distribution facilities
- Stage 3 – Increase in capacity of the IMT facility as per the MPE Concept Plan Conditions of Approval (subject to future development application) and upgrades to the warehousing and

distribution facilities (in accordance with the Concept Plan Conditions of Approval) to accommodate the increase in capacity of the IMT.

MPE Stage 1 (SSD 6766) was granted approval on 12 December 2016. The construction of the IMT on the eastern side of Moorebank Avenue and the rail link to the SSFL has commenced.

The MPE Stage 2 Project (SSD 7628) involves the construction and operation of warehousing and distribution facilities on the MPE Site, upgrades to approximately 1.5 kilometres of Moorebank Avenue (See **Error! Reference source not found.**) and subdivision of the MPE Site to comprise four lots, separate to the Terminal lot, for warehousing and the freight village. The subdivision was supported by the (then) DP&E, subject to conditions in its recommendation to the Planning Assessment Committee (PAC, now the Independent Planning Commission, IPC). On review of the assessment and taking into consideration the future assessment requirements for subdivision under the modified MPE Concept Plan (MP10\_0193), the PAC was unable to include the subdivision component of SSD 7628 in its final approval. The PAC identified, however, that the finding would not preclude its consideration of further documentation addressing the future assessment requirements of the modified Concept Plan (MP10\_0193).

The MPE Subdivision Ancillary Report (Aspect Environmental, 2018) was subsequently lodged with DP&E on 9 August 2018 to provide the supporting documentation for subdivision, being the balance of the development initially applied for under SSD 7628. This report enabled the IPC to consider and determine the subdivision component of the SSD 7628 Application. The MPE Subdivision Ancillary Report SSD 7628 application was given consent by the IPC on 5 April 2019 as a partial development consent to SSD 7628. Components of Stage 2 development have commenced.

There have been two separate modification applications for SSD 7628:

- SSD 7628 MOD 1: seeking modifications to signage controls (CoC B141(f)), timing for intersection design approvals and upgrades (B13), and biodiversity credit requirements (B104) in addition to an update to cross-referencing of conditions.
- SSD 7628 MOD 2: seeking modification to the construction and operation boundary, and stormwater infrastructure design requirements (B40(c)(iii)).

MOD 1 remains under assessment by DP&E. MOD 2 was approved by DP&E on 31 January 2020.

## 1.4. Proposed MPE Subdivision Modification

This request forms part of and supports a modification application to MPE Stage 2 Approval (SSD 7628), seeking to amend the approved subdivision layout by provision of an additional four lots. These lots will be created through the subdivision of two lots (into two) – one of which being the Boot Land. The subdivision will create a rail access corridor lot through each of the two lots, and two residual lots. The primary purpose of this modification is to facilitate the ongoing management and functionality of the MPE Site, by creating a rail access corridor to service the Terminal lot.

Table 1-1 below provides a summary regarding the proposed lot sizes and descriptions. Proposed subdivision plans are provided within the subdivision modification document.



**Table 1-1:** MPE subdivision lots – dimensions and description (proposed additional lots are in bold)

Lot No.	DP	Size (ha)	Location Description
<b>41</b>	<b>1197707</b>	<b>99.09</b>	<b>Residual Boot Land lot</b>
<b>42</b>	<b>1197707</b>	<b>0.90</b>	<b>The rail corridor through the Boot Land (currently known as Easement G on approved subdivision plans)</b>
<b>43</b>	<b>823352</b>	<b>3.77</b>	<b>The residual RailCorp wedge-land south of Boot Land and MPE Site</b>
<b>44</b>	<b>823352</b>	<b>15 m wide corridor 0.25</b>	<b>The rail corridor through the RailCorp wedge-land south of Boot Land and MPE Site</b>
21	1048263	12.72	North-eastern corner of MPE Site (now registered as 21/1253673)
22	1048263	18.72	Central portion of the MPE Site, excluding land within the Stage 1 IMT facility (now registered as 22/1253673)
23	1048263	20.90	Southern portion of the MPE Site, excluding land within the Stage 1 IMT facility (now registered as 23/1253673)
12	1048263	6.58	North-western corner of the MPE Site (denoted on plan as 'Target Exclusion Area'), resulting from the subdivision of Lot 24. (now registered as 12/1251885)
13	1048263	4.75	North-western corner of the MPE Site, resulting from the subdivision of Lot 24. (now registered as 13/1251885)
26	1048263	19.24	South-western portion of the MPE Site, comprising the IMT facility (Terminal Lot, formerly Lot 25) (now registered as 26/1253673)

In order to facilitate this proposed subdivision, an exception from the application of the minimum lot size development standard is required – as currently the minimum lot size for the Boot Land site (Lot 4 DP1197707) is 120 ha.

The modification application should be read in conjunction with this Clause 4.6 request.

## 2.0 MPE and Site Description

The Moorebank Precinct East (MPE) Site (Figure 2-1) is located approximately 27 km south-west of the Sydney central business district and approximately 26 km west of Port Botany. It is situated within the Liverpool local government area, in Sydney's South-West subregion, approximately 2.5 km from the Liverpool City Centre.

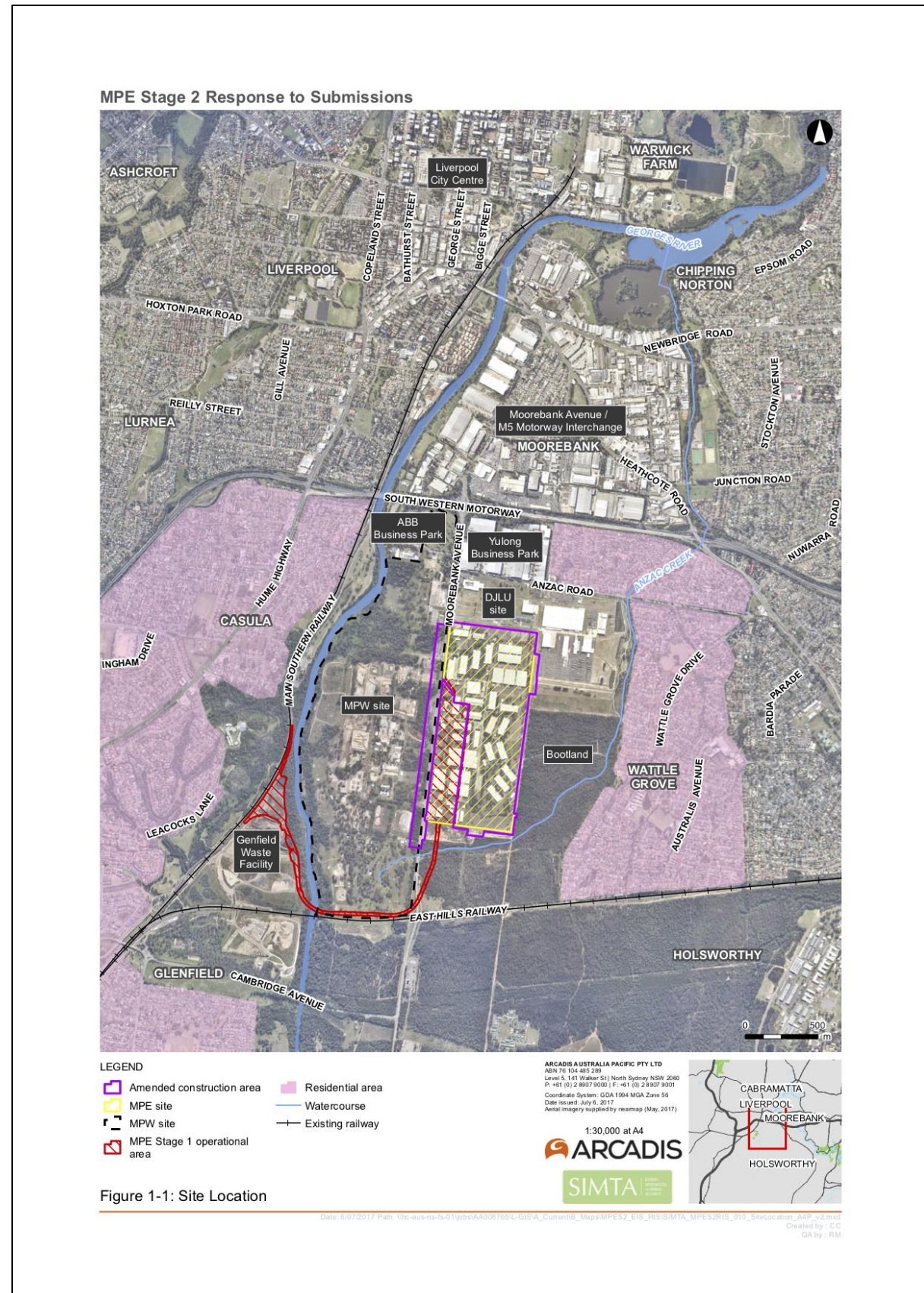
The MPE Site is located on the eastern side of Moorebank Avenue, Moorebank. Lot and Deposited Plan details are as provided in Table 1-1. The existing MPE Site is owned by SIMTA. The subject Boot Land site (Lot 4 DP1197707) is Commonwealth land and located to the east and south of the existing MPE footprint. It is approximately 99.99 ha in area and densely vegetated.

The proposed rail corridor is to be dedicated to SIMTA, whilst the residual Boot Land will remain under Commonwealth ownership. The remaining lot included in the subdivision modification (Lot 1 DP 825352) is owned by Railcorp. As with the Boot Land, the rail corridor shall be dedicated to SIMTA, whilst the residual land remains with Railcorp.

The MPE Site includes the MPE Stage 1 development, the IMEX IMT, which is located in the central and south-western portions of the site. The Defence Joint Logistics Unit (DJLU), operated by the Department of Defence is located immediately north of the MPE Site. To the east and south of the site consists of the Boot Land. Moorebank Avenue runs along the western boundary of the site. The MPW Site is located on the western side of Moorebank Avenue and is subject to separate approvals.

Several residential suburbs are located near MPE and the Boot Land including:

- Wattle Grove - approximately 1.3 km to the east
- Moorebank - approximately 2.5 km to the north-east
- Casula - approximately 1 km to the west
- Glenfield - approximately 2 km to the south-west.



**Figure 2-1: MPE Site local context (Source Figure 1-1 MPE Stage 2 SSD 7628 EIS, Arcadis 2016)**

## 3.0 Proposed Variation Description

### 3.1. Description

A Clause 4.6 exception is sought to (reduce) the minimum lot size requirement within the bounds of the Boot Land site (Lot 4 DP1197707), thereby enabling the subdivision of the site into two lots that have an area less than the current minimum lot size provision within the Liverpool LEP 2008 (120 ha). A minimum lot size requirement that is consistent with the adjacent MPE Site (i.e. 2,000 m<sup>2</sup>) is considered appropriate.

Exception to the minimum lot size development standard will allow modification of the MPE subdivision, which aims to provide for a rail access corridor to the Terminal lot, to proceed in compliance with the Liverpool LEP 2008.

Without the exception to the development standard, the minimum lot size requirements prevent subdivision of the Boot Land site, which is required for the rail access corridor establishment. Further, it compromises effective management and operation of the Terminal Lot, as outlined in the Development and Operations Deed (DOD). The DOD is an agreement established between the Moorebank Intermodal Company Limited (MIC – a Commonwealth entity), and Qube Holdings, for the development and operation of the MPE and MPW sites on a whole-of-precinct basis.

The exception shall not compromise the development from continuing to be consistent with the intent of the Concept Plan Approval or subsequent consents.

### 3.2. Justification

Exceptions to development standards, imposed by an environmental planning instrument, can be effected by a consent authority in situations where there is sufficient justification to support the exception. This mechanism allows a certain degree of flexibility in applying development standards, to allow development to proceed under circumstances where it would otherwise be prohibited. This request seeks an exception to the minimum lot size provisions of the Liverpool LEP 2008 within the bounds of the Boot Land site, thereby giving effect to the subdivision modification request (which this request forms a part of) by allowing this subdivision to take place without direct contravention of the LEP. The following provides an assessment of the variation request against the requirements of Clause 4.6 of Liverpool LEP 2008, and the objectives of Clause 4.1 (minimum lot size) and the zone (being both SP2 Infrastructure and IN1 General Industrial).

**Table 4.1:** Compliance assessment and variation justification: Liverpool LEP 2008.

Clause	Requirement/Objective	Response/Justification
Land Use Table IN1 General Industrial	To provide a wide range of industrial and warehouse land uses.	The proposed variation will not compromise the Boot Land site's ability to provide for industrial use (where permitted by the zone). Reducing the minimum lot size of the site will, in fact, promote this objective by rendering subdivision feasible, and providing for a rail access corridor to be established.
	To encourage employment opportunities.	Permitting variation of the minimum lot size development standard will not have any adverse implications on employment opportunities at the site. It will facilitate and encourage appropriate management and operation of the Terminal lot.  The current standard will inhibit subdivision of the site which will have implications on the provision of this access corridor and hence servicing of the Terminal lot.
	To minimise any adverse effect of industry on other land uses.	The proposed variation does not seek to amplify or modify the proposed industrial operations at the MPE Site, as envisaged in the Concept Plan.



Clause	Requirement/Objective	Response/Justification
	To support and protect industrial land for industrial uses.	The proposed variation shall support the intention to utilise the industrial land to support industrial uses, by facilitating subdivision of the site and subsequent operation and management of the Terminal lot.
	To particularly encourage research and development industries by prohibiting land uses that are typically unsightly or unpleasant.	<p>The proposed variation does not have implications on the intended site use of the MPE Site as an approved IMEX facility. Visual impacts of this landuse have been assessed as part of the MPE Concept Plan, Stage 1 and Stage 2 approval and found to be acceptable.</p> <p>The variation will give effect to a subdivision modification application and allow a rail access corridor lot to be established through the Boot Land site. No additional infrastructure is proposed as part of this application.</p>
	To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.	The proposed variation does not seek to change the MPE concept plan, but rather aims to permit subdivision and hence facilitate delivery of the approved operations and services.
Land Use Table SP2 Infrastructure	To provide for infrastructure and related uses	The proposed variation will allow subdivision of the Boot Land site to be undertaken, thereby providing for the establishment of a rail corridor and management and efficient operation of the MPE Terminal lot.
	To prevent development that is not compatible with or that may detract from the provision of infrastructure.	The variation will allow subdivision of the Boot Land site to be undertaken, which will allow a rail access corridor to be established. This is compatible with the approved use of the MPE Site as an IMT facility.
	To reserve land for the provision of infrastructure	The proposed variation will allow subdivision of the Boot Land site to be undertaken – which will result in a 15 m wide rail access corridor and a residual site approximately 99.09 ha in area. The subdivision will not constrain this land from being utilised for provision of infrastructure in the future, should this ever be proposed/required.
Clause 4.1 (1)	(a) to ensure that lot sizes are consistent with the desired residential density for different locations,	The proposed development is not for residential development/landuse.
	(b) to ensure that lot sizes are able to accommodate development that is suitable for its purpose and consistent with relevant development controls,	The proposed variation seeks to reduce the minimum lot size requirements at the site to facilitate subdivision at the Boot Land site. The subdivision will result in a 15 m wide rail access corridor and a residual site approximately 99.09 ha in area. The resultant proposed lot sizes are suitable for their intended future use, allowing efficient and appropriate operation and management of the greater MPE Site as an IMEX facility, and does not compromise the requirements of the MPE consents.
	(c) to prevent fragmentation of land which would prevent the achievement of the extent of development	Reducing the minimum lot size at the Boot Land site, thereby allowing subdivision, will not result in fragmentation of land, but rather facilitate the extent of the MPE development (consistent with the intended nature of uses) as envisaged and approved for this

Clause	Requirement/Objective	Response/Justification
	and nature of uses envisioned for particular locations,	development in this particular location. The residual parcel of the Boot Land site will be approximately 99.09 ha, .
	(d) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,	The proposed variation, and subdivision of the Boot Land will have no implications on existing traffic loads on classified roads. The rail corridor is intended to provide access to the Terminal lot only, and no traffic-generating development is proposed by enabling a reduced lot size.
	(e) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,	The impact of the MPE development and, in particular, the IMT facility, on local amenity has been assessed as part of previous MPE approvals and consent instruments. Subdivision of the Boot Land is to provide for a rail access corridor so that the MPE Site and the Terminal lot can be managed and operated as per the approval, and in accordance with the DOD. No further development or changes to operation are proposed, and so no impacts to the amenity of neighbouring properties is anticipated – beyond those already identified as part of previous approvals.
	(f) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,	Given the proposed subdivision is to establish a rail access corridor 15 m wide and a large residual site, this objective is not relevant. No development is proposed and so the local pattern of development will remain unchanged.
	(g) to ensure that lot sizes allow buildings to be sited to protect natural or cultural features including heritage items and retain special features such as trees and views.	The subdivision is not being sought to allow development (buildings) on the Boot Land site. It is to provide for a rail access corridor that will enable management and operation of the MPE Site, and in particular the Terminal lot.
Clause 4.6 Exceptions to development standards	(1) Objectives (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,	This proposed variation request seeks flexibility in minimum lot size requirements, within the bounds of the Boot Land site, in order to facilitate subdivision. This is considered appropriate, given the site is already less than the prescribed minimum lot size (120 ha), and the change would create consistency in lot sizing between the Boot Land and the MPE Site. Furthermore, it will enable the rail corridor, currently approved to be provided as an easement, to be established as a separate lot, under the ownership of SIMTA, to enable efficient and proper management of the MPE Site and Terminal lot.
	(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	Variation of the lot size development standard in this case would achieve better outcomes for and from the MPE development, as subdivision will facilitate a dedicated rail access corridor to be established and enable appropriate management and operation of the Terminal lot.  Should the development proceed without subdivision it will have adverse outcomes on the performance of the precinct as a whole, and implications on the execution of the management responsibilities agreed to within the DOD, which are required to support the broader management responsibilities and inter-related co-

Clause	Requirement/Objective	Response/Justification
		dependencies of the MPE development as established in the original subdivision consent.
	2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	<p>This variation request seeks an exception to the minimum lot size (Clause 4.1) development standard.</p> <p>That development standard is not excluded from the application of Clause 4.6.</p> <p>Assessment of the variation request against the objectives of Clause 4.1 (minimum lot size) has been completed as part of this Table.</p>
	<p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>This variation request forms a written application from the Applicant, seeking consent to contravene the minimum lot size development standard within the bounds of the Boot Land site.</p> <p>Compliance with the development standard is considered unreasonable as the Boot Land site is already less than the prescribed 120 ha. Subdivision as proposed will create a 15 m wide corridor (approximately 0.9 ha) and a residual site that is 99.09 ha – and so will not create a fragmented site that cannot be used in the future for the purposes of delivering infrastructure. The rail access corridor is currently approved under the MPE subdivision as an easement over the Boot Land. This variation will allow a subdivision that instead creates a distinct rail access corridor allotment, that will secure efficient operation and management of the MPE Site and Terminal lot. There is significant benefit to the proposed variation and subsequent subdivision, with little to no adverse impacts. It is therefore considered unreasonable to comply with the development standard as it currently applies.</p> <p>Compliance with the development standard is unnecessary in the circumstances of this case as the Boot Land site is already less than the minimum lot size area. Subdivision as proposed will create a small access corridor lot – whilst retaining a larger residual lot which can continue to operate and function as it currently does.</p> <p>Subdivision of the Boot Land site will support the intended use of the MPE Site and Terminal lot. Additionally it will place minimum lot size conditions on the site that are consistent with those across the MPE Site.</p> <p>Exception to the Liverpool LEP 2008 minimum lot size requirements does not compromise the ability of the MPE development, including the proposed subdivision modification, from being consistent with the intent of the</p>



Clause	Requirement/Objective	Response/Justification
		Concept Plan Approval. Instead it will facilitate efficient use of the intermodal precinct as intended.
	(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>As demonstrated within this assessment (Table 1), contravention of the development standard will not compromise the ability of the Boot Land site or the MPE development to meet zone objectives, or the minimum lot size objectives (Clause 4.1) of the Liverpool LEP 2008.</p> <p>Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. Section 4 provides a statutory assessment demonstrating the proposed modification is consistent with relevant policy and requirements.</p> <p>Furthermore, exception to the development standard does not compromise the development's consistency with the intention or requirements of the consent and allows the development to be executed as intended and as approved.</p>
	(4) Development consent must not be granted for development that contravenes a development standard unless	The assessment within this table adequately assesses the proposed development standard contravention against subclause 3 of Clause 4.6.
	(a) the consent authority is satisfied that	
	(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	As demonstrated within this table, this variation request and proposed subdivision modification application (supported by this request) are consistent with the IN1 General Industrial and SP2 Infrastructure zone objectives. The application is therefore within the public interest.
	ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	
	(b) the concurrence of the Planning Secretary has been obtained.	Concurrence of the Planning Secretary is assumed in this case, as per Planning Circular PS 18-003.
	(5) In deciding whether to grant concurrence, the Planning Secretary must consider	
	a) whether contravention of the development standard raises any matter of significance for State or	As outlined in Section 4, contravention of the minimum lot size development standard does not raise any matter of significance for State or regional environmental planning.

Clause	Requirement/Objective	Response/Justification
	regional environmental planning, and	
	(b) the public benefit of maintaining the development standard, and	<p>There is no public benefit to maintaining the development standard, thereby prohibiting subdivision of the Boot Land site, in this case.</p> <p>Permitting subdivision will enable orderly and efficient operation and management of the MPE Site and terminal lot. Importantly it will enable management and operation in accordance with the DOD and the MPE consent for subdivision by facilitating clear management responsibility for the rail corridor in support of the interrelated co-dependencies between warehousing and rail terminal access as required by the Subdivision Partial Development Consent (SSD 7628).</p> <p>The residual Boot Land site will be 99.09 ha in area and continue to function and operate as it does currently. The proposed subdivision is only for the purpose of dedicating a relatively small portion of land (0.9 ha) to SIMTA for the purposes for operation and maintenance of the Terminal lot.</p> <p>The Concept Approval (MP10_0193) for the MPE Site and MPE Stage 1 SSD 6766 consent contemplates the provision of a rail access corridor to service the site. The subdivision of the Boot Land would not have any additional environmental impacts beyond those predicted or approved, as the proposed inclusion of the additional lots would not require any additional physical works.</p> <p>The subdivision and provision of additional lots would facilitate implementation of environmental management controls by providing clarity of the allocation of management responsibilities within the respective lots.</p> <p>Subdivision, as proposed, does not generate any adverse environmental, social or economic outcomes that have not already been identified, assessed and approved (with appropriate mitigation measures) within earlier stages of MPE development consents.</p>
	(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	No other matters have been identified within this assessment that would prevent concurrence from DPIE to contravene this development standard.

Clause	Requirement/Objective	Response/Justification
	<p>8) This clause does not allow development consent to be granted for development that would contravene any of the following</p> <p>(a) a development standard for complying development</p> <p>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,</p> <p>(c) clause 5.4,</p> <p>ca) clause 6.4, 6.5, 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30.</p>	<p>This request does not result in contravention of a development standard for complying development, a development standard in connection with a commitment to which SEPP (BASIX) 2004 applies, or any other relevant clauses of the Liverpool LEP 2008. The application does not involve subdivision of existing land zoned for rural, large lot residential or environmental use.</p>

## 4.0 Planning Assessment

In accordance with Section 4.15 of the EP&A Act (Matters of Consideration), the following sections consider the legislation and plans relevant to this application and provide an assessment. Section 5.0 provides an environmental assessment.

### 4.1. Statutory Planning Assessment

A compliance assessment of this request against applicable Commonwealth, State and Local Government legislation is provided in Table 4.1.

**Table 4.1:** Legislation applicable to the Proposal.

Legislation	Associated Environmental Concerns	Approval or Assessment Required
<b>Commonwealth</b>		
EPBC Act	Impacts to Matters of National Environmental Significance, particularly disturbance to listed threatened species, ecological communities and/or migratory species, and impact(s) on Commonwealth land	<p>The MPE Project was declared a controlled action by the Commonwealth Minister of the Environment as it will be undertaken by, or on behalf of the Commonwealth and will result in impacts to listed threatened species.</p> <p>Approval was granted for the MPE Project by the Commonwealth Minister for the Environment in March 2014 (Approval No 2011/6229). The exception and subsequent subdivision modification does not compromise compliance of the MPE Project with the EPBC Act.</p> <p>Subdivision of the Boot Land falls within the development area originally referred to the Commonwealth and itself is not constituted a Controlled Action and will not have implications on the above approval.</p>
<b>State</b>		
EP&A Act EP&A Regulation State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP)	Planning approval pathway determination and any potential impacts on the environment	<p>Subdivision of the MPE Site was approved as part of MPE Stage 2 Approval (SSD 7628) granted on 5 April 2019 by the IPC as a Partial Development Consent (SSD 7628).</p> <p>A modification application for SSD 7628 is being lodged concurrently with this application to, amongst other things, update the approved lot layout to include an additional four lots, thereby providing for a rail access corridor to the Terminal lot.</p> <p>Approval for this request is sought under Part 4, Division 4.7 of the EP&amp;A Act.</p>
<i>Protection of the Environment Operations Act</i>	Impacts of the operation of the Proposal relating to air quality,	The Proposal does not include activities listed under Schedule 1 of the POEO Act. Therefore,

Legislation	Associated Environmental Concerns	Approval or Assessment Required
1997 (POEO Act)	noise emissions and discharge of polluted water	an Environment Protection Licence (EPL) would not be required for the Modification.
<i>Contaminated Land Management Act</i> 1997 (CLM Act) State Environmental Planning Policy No. 55- Remediation of Land (SEPP 55)	Disturbance of contaminated land and potential for further soil contamination	The proposed exception to the Liverpool LEP 2008 does not necessitate any contamination assessment under SEPP 55. The variation would enable a subdivision only, and no change of land use is proposed.
<i>National Parks and Wildlife Act</i> 1974 (NPW Act)	Disturbance of any objects or places of Aboriginal Heritage significance	Under Section 4.41 of the EP&A Act development applications assessed as SSD do not require an Aboriginal Heritage Impact Permit (under section 90 of the NPW Act).  The MPE Concept Plan, Stage 1 and Stage 2 approvals included an Aboriginal Heritage Impact Assessment for the MPE Site.  The proposed exception to the Liverpool LEP 2008 minimum lot size requirement does not necessitate any further heritage assessment.
<i>Biodiversity Conservation Act</i> 2016 (BC Act)	Disturbance to listed and threatened species and ecological communities	No impacts on biodiversity values will arise as a result of this request.
<i>Noxious Weeds Act</i> 1993 (NW Act)	Spread and impact of weed	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size would not result in the spread of noxious weeds.
<i>Fisheries Management Act</i> 1994 (FM Act)	Disturbance to aquatic flora and fauna	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size will not result in any disturbance to aquatic flora and fauna. No assessment is necessary.
<i>Water Act</i> 1912 (Water Act) <i>Water Management Act</i> 2000 (WM Act)	Disturbance of groundwater aquifers impacts to flooding behaviour and/or water quality of surrounding water bodies	The proposed development standard exception will have no impact on groundwater aquifers, flooding behaviours and/or water quality of surrounding water bodies. The potential impacts of subdivision have already been considered and assessed as part of the MPE Stage 2 approvals. No further assessment is required.
<i>Roads Act</i> 1993 (Roads Act)	Impacts of the construction and/or operation of the Proposal on traffic flows and works to public and private roads	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size will have no impacts on construction and/or operational impacts on traffic flow.
<i>Heritage Act</i> 1977 (Heritage Act)	Disturbance to any object that is of state or local heritage significance	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size

Legislation	Associated Environmental Concerns	Approval or Assessment Required
		will have no impact on items of heritage significance. No further assessment is required.
<i>Waste Avoidance and Resource Recovery Act 2001 (WARR Act)</i>	Waste management and potential opportunities for diversion of waste from landfill	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size will not require a waste assessment be prepared.
<i>Rural Fires Act 1997 (Rural Fires Act)</i>	Bushfire management/prevention and ensuring the site is suitably protected from the threat of bushfires	Under Section 4.41 of the EP&A Act development applications assessed as SSD do not require a bush fire safety authority (under section 100B of the <i>Rural Fires Act 1997</i> ). This proposal does not trigger the requirement for a bushfire assessment.
State Environmental Planning Policy No. 33- Hazardous and Offensive Development (SEPP 33)	Management of hazardous and dangerous goods	This request does not trigger the requirement for preparation of a hazard assessment.
State Environmental Planning Policy No. 64- Advertising and Signage (SEPP 64)	Location and design of signage and impact on the surrounding visual environment	The impact of the MPE development and, in particular, the IMT facility, on local amenity has been undertaken as part of previous MPE approvals.  There is no advertising or signage intended for the intended rail corridor.  No additional assessment is required.
Greater Metropolitan regional Environmental Plan No 2 – Georges River Catchment	Drainage and site runoff including potential impacts on water quality and flooding of the Georges River Catchment	This request will have no impact on water management across the MPE Site. No further assessment is required.
Local		
<i>Liverpool Local Environment Plan 2008 (Liverpool LEP)</i>	Impact on the environment and the built form of the Liverpool Local Government Area	The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size would allow the proposed subdivision of the Boot Land to contravene the existing Liverpool LEP minimum lot size requirements. Concurrently with this application, a modification application has been lodged with DPIE to amend the approved MPE subdivision layout to include an additional four lots, two of which would come

Legislation	Associated Environmental Concerns	Approval or Assessment Required
		<p>from the subdivision of the Boot Land. This variation request would enable this modification to be undertaken without contravening Clause 4.1 of the LEP.</p> <p>Seeking a Clause 4.6 variation to the existing lot size development standard is considered the most efficient way in securing a subdivision layout and achieving MPE Site operation and management as envisaged by the Concept Approval and DOD.</p> <p>Despite the contravention of the current development standard, the proposed development will continue to meet the objectives of the Liverpool LEP, Clause 4.1 of the LEP and the intent of the approved MPE development.</p> <p>Approval of the proposed exception would not result in any change to the approved built form.</p>
Liverpool Development Control Plan 2008 (Liverpool DCP)	Impact on the environment and the built form of the Liverpool Local Government Area	<p>As the MPE project is SSD under Part 4, Division 4.7 of the EP&amp;A Act, consideration of the Liverpool DCP is not required.</p> <p>Approval of the proposed exception would not result in any change to the approved built form.</p>

## 4.2. Substantially the Same Development

The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size does not change the purpose for which the MPE development is being carried out and maintains all of the key components of the development, as outlined in Schedule 1 of the consent.

This request does not include any physical works. The Concept Approval (MP10\_0193) for the MPE Site together with the approved development under MPE Stage 1 SSD 6766 provides for a rail access corridor to service the MPE Site. The Proposed Modification (which this variation supports) would not have any additional environmental impacts beyond those predicted or approved, as the proposed inclusion of the additional lots would not require any additional physical works. The proposed additional lots would facilitate implementation of environmental management controls by providing clarity of the allocation of management responsibilities within the respective lots.

The MPE Stage 2 Approval (SSD 7628) Development Consent would remain consistent with the applicable legislation, policies and controls, including the residual conditions of consent.

Accordingly, the consent authority may be satisfied that the proposed MPE development is 'substantially the same' as that approved, despite the proposed exception to the subject development standard.



## 5.0 Environmental Assessment

The purpose of this request is to seek an exception to (reduce) the current minimum lot size requirements within the Boot Land site, thereby permitting subdivision of the Boot Land into lots that have an area less than the existing minimum requirement within the Liverpool LEP 2008 (i.e. 120 ha). Maintaining this development standard as it is currently will prohibit any subdivision from taking place, which would prevent a dedicated rail access corridor lot from being established and compromise the clear allocation of management and operational responsibilities of the MPE Terminal lot.

In considering environmental values on site, the following elements are relevant to the wider MPE Project, and have been assessed as part of the MPE Concept Plan and/or MPE Stage 1 and Stage 2 approvals:

- soils and contamination
- biodiversity
- heritage (indigenous and non-indigenous)
- stormwater (water supply and water quality)
- hazards (bushfire, flooding)
- traffic
- air quality
- noise and vibration
- visual impacts and landscaping.

The proposed variation and subdivision modification would not have any additional environmental impacts beyond those predicted or approved, as the subdivision and inclusion of additional lots in the MPE subdivision layout does not require any additional physical works.

The subdivision modification application (which this variation request is supporting) provides an outline of the MPE operation and management agreement. This agreement will be extended to additional lots to facilitate implementation of environmental management controls and provide clear direction and clarity in allocation of management responsibilities.

The proposed exception to the subject development standard, under the Liverpool LEP 2008, will not generate any environmental impacts beyond those already assessed and approved in the previous consents. Additionally, it will not affect the findings of impact assessments previously undertaken in support of the MPE Project. This conclusion is based on the fact that:

1. the proposal exclusively involves exception to the minimum lot size development standard
2. subdivision is currently an approved aspect of the MPE Stage 2 approval (refere Partial Development Consent for Subdivision SSD 7628)
3. provision of a rail access corridor to service the MPE Site has been previously approved as part of the MPE Concept Approval (MP10\_0193) and the MPE Stage 1 SSD 6766 consent.

## 6.0 Conclusion

This Clause 4.6 request has been prepared on behalf of SIMTA and seeks exception to the existing minimum lot size development standard, as required by Clause 4.1 of the Liverpool LEP 2008. Approval for this is sought from DPIE, using their overarching powers to assess the MPE Stage 2 (SSD 7628) subdivision modification application (submitted concurrently with this request).

Given the Boot Land site (Lot 4 DP1197707) is 99.99 ha, compliance with the current LEP requirements (being minimum 120 ha) would inhibit subdivision and creation of a rail access lot. The Concept Approval (MP10\_0193) for the MPE Site together with the MPE Stage 1 SSD 6766 consent provides for a rail access corridor to service the Site. This access would facilitate implementation of environmental management controls by providing clarity of the allocation of management responsibilities within the respective lots. It will enable management and operation of the MPE Site, and particularly the Terminal lot, in accordance with the DOD, which forms the agreement between SIMTA and MIC for the construction and operation of the Moorebank Intermodal Precinct.

A planning assessment of the proposed exception demonstrates that it is compliant and consistent with the objectives and requirements of relevant legislation. Clause 4.6 of the LEP provides a mechanism to lodge an application to vary a development standard (in this case, minimum lot size), thereby rendering the proposed MPE subdivision modification compliant with the LEP.

An assessment of the variation request against the LEP has found it to be consistent with and supportive of the objectives of the relevant zone (SP2 Infrastructure and IN1 General Industrial zone), Clause 4.1 minimum lot size development standard, and the requirements of Clause 4.6. There is therefore sufficient grounds and justification supporting contravention of this development standard, in order to facilitate subdivision of the Boot Land site.

Contravention of the existing Liverpool LEP 2008 minimum lot size requirements does not compromise the ability of future subdivision to comply with the objectives of Clause 4.1 of the LEP or the intent of the MPE Concept Plan Consent. Instead it will promote efficient operation and management of the MPE Site and Terminal lot.

An environmental assessment based on previous MPE Concept Plan, Stage 1 and Stage 2 EIS and consent instruments demonstrates the proposed variation and subdivision modification would not have any additional environmental impacts beyond those predicted or approved, as the subdivision and inclusion of additional lots in the MPE subdivision layout does not require any additional physical works. The subdivision modification application (which this variation request is supporting) provides an outline of the MPE operation and management agreement. This agreement will be extended to additional lots to facilitate implementation of environmental management controls and provide clear direction and clarity in allocation of management responsibilities.

Consequently, it is concluded that this application would result in a development that is substantially the same as the project described within the MPE Concept Plan and MPE Stage 2 Approval and the changes would not alter the development of the IMT facility and warehousing.