Objection to Modification Applications SSD-5066-Mod-2 and SSD-7709-Mod-1

I am the owner of the property at 20 Buckland Road, Casula NSW 2170. I have resided at this address for approximately 15 years.

I refer to the Notice of Exhibition of State Significant Development Modification Applications Moorebank Intermodal Precinct West ("**MPW**") – Concept Plan and Stage 1 ("**SSD-5066-Mod-2**") and Stage 2 ("**SSD-7709-Mod-1**") (collectively, "**the Modifications Applications**") published on 10 August 2020 ("**the Notice**"), which invites written submissions in respect of the Modification Applications during the exhibition period from 10 August 2020 to 24 August 2020.

In accordance with the Notice, I respectfully make the following submissions for consideration by the Independent Planning Commission ("**the Commission**"), which support a **refusal** of the Modification Applications on both legal and merits grounds:

Not substantially the same development

1. Firstly, the Modification Applications are purportedly made pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ("**the Act**") which provides that the consent authority may only modify an existing consent in circumstances where it is satisfied that the proposed modified development is "*substantially the same development*" as the originally approved development.

2. The test as to whether a proposed modified development is "*substantially the same development*" is well established in law. The test is whether the proposed modified development is "*essentially or materially or having the same essence*" as the original development and it requires a comparison of "*the before and after situations*" (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8). Critically, those authorities provide that, a development, as modified, is not "*substantially the same development*" as originally approved merely because it is for the same use, and any change to an important or material feature of the development is likely to mean that the modified development is not substantially the same as the original consent (*Moto Projects (No2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280.

3. In this instance, notwithstanding that the use of the development may not change as a result of the Modification Applications, it is **extremely significant** that the applicant's proposed modifications to increase the height of the warehouses by **214%** as set out in the two Modification Applications would result in such a **radical transformation** to the **bulk, height and scale** of the development that the development could not be said to be essentially or materially the same essence or, for that matter, substantially the same development.

4. On this basis alone, the Modification Applications **should be refused.**

Non-compliance with maximum building height development standard

5. Secondly, the Commission must also take into consideration those matters referred to in section 4.15 of the Act as are relevant to the development which, in this instance, includes the applicable environmental planning instruments.

6. It is apparent that the abovementioned proposed amendments to increase the maximum height of the warehouses to 45m reflect such an **egregious contravention of clause 4.3** of the *Liverpool Local Environment Plan 2008* ("**LLEP 2008**"), which prescribes a maximum building height of only **21m**.

7. The planning 'justification' provided in support of this non-compliance in the respective Modification Applications **fails entirely** to substantiate, by reference to any quantitative analysis whatsoever, the basis for the now proposed **radical increase** in height following the original consent. It is trite to say that if that reasoning were provided in clause 4.6 variations in support of the same non-compliance at the time the original development applications were made (which, for obvious reasons, were not included in those original applications), that consent would **surely be refused** by the Commission and indeed the Land and Environment Court in any subsequent appeal (which would most probably not have been commenced by the applicant given the flagrant contravention of the development standard).

8. In the circumstances, the Commission **should refuse** these Modification Applications which, on their face, are an apparent attempt by the applicant to subvert the development standards prescribed by the LLEP 2008. Approving these Modification Applications would only set a negative precedent and encourage more developers to proceed in this arguably duplicitous manner.

Adverse visual impacts

9. Thirdly, the proposed modifications to increase the height of the warehouses will drastically impact on my views from my property and will result in a **monstrous blot on the landscape**.

10. The effect of the proposed **dramatic increase in height, bulk and scale** of the development on my property is best illustrated in the applicant's photomontage on page 53 of the Visual Impact Assessment JR for SSD-7709-Mod-1.

11. Notwithstanding that the existing consent for height of up to 21m would still, to an extent, impede my view of the presently luscious, green native bushland to the horizon (see page 35 of the above visual impact assessment), the proposed increase to a height of 45m would undoubtedly now result in a **significant visual change** to my view, rendering the warehouses a **dominant feature of the landscape** greatly exceeding in scale any trees and vegetation in the area, and consequently severely **reducing the quality of the scenery**.

Noise disturbance

12. Fourthly, the proposed amendments to the acoustic criteria under the development, specifically the increases to the operational noise limits, are a cause for concern and are yet another example of the **further erosion of the tranquil surroundings** of my property.

Safety concerns

13. Finally, the proposed amendment to Condition B176 regarding the storage of dangerous goods, which contemplates a scenario in which the total quantities of dangerous goods present at the development **will exceed** the threshold quantities prescribed in the "*Hazardous and Offensive*

Development Application Guidelines: Applying SEPP 33", also gives serious cause for concern, particularly in light of the recent disaster in Beirut, Lebanon, and that my property is located less than 1km from the development.

14. It is unclear from the material provided by the applicant: (a) what "dangerous goods" are contemplated to be stored and/or transported via the development; (b) what policies and procedures are in place in respect of the dangerous goods; (c) whether the surrounding residential areas (and newly developed family friendly parkland west of Georges River) will be impacted by these dangerous goods in the event that there is an accident at the development or deliberate targeting of same; and (d) has there been any consideration of the location of the development within 12km from the Lucas Heights nuclear reactor?

Devalue my property

15. The proposed modifications, which will cause a blight on the scenery, obstructing views, increasing noise pollution and safety concerns over storage of dangerous goods, **will significantly reduce any demand** for properties in the area and have an adverse effect on the value of my own property.

For the above reasons, I respectfully request that the Commission refuse the Modification Applications as the proposed modifications therein are not suitable for approval under section 4.55(2) of the Act and will also have significant adverse impacts on my property.

Your sincerely,
Anthony Keating