

APPENDIX B CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

The primary controls guiding the assessment of the proposal are:

- a) *State Environmental Planning Policy (State and Regional Development) 2011*
- b) *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- c) *State Environmental Planning Policy No.33 – Hazardous and Offensive Development*
- d) *State Environmental Planning Policy No. 44 – Koala Habitat Protection*
- e) *State Environmental Planning Policy No.55 – Remediation of Land*
- f) *State Environmental Planning Policy (Infrastructure) 2007*
- g) *Liverpool Local Environmental Plan 2008*

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The aims of the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) are to identify State significant development and State significant infrastructure and provide the necessary functions to joint regional planning panels to determine development applications.

The proposal is State significant development given it is development for the purpose of an intermodal facility with a capital investment value (CIV) in excess of \$30 million under clause 19 (Rail and related transport facilities) of Schedule 1 of State Environmental Planning Policy (State and Regional Development) 2011. Therefore the Minister for Planning is the consent authority.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) aims to protect bushland within urban areas because of its value to the community, aesthetic value and its value as a recreational, educational and scientific resource.

An assessment of biodiversity impacts was provided as part of the EIS. The Department accepts that vegetation clearing is inevitable for the proposal to proceed. This would require clearing of 52.7ha of threatened ecological communities, however this would be refined during detailed design. A biodiversity offset package has been developed which includes three sites to offset the impacts to threatened vegetation communities and species. These are the Casula offset (the hourglass land); the Moorebank offset (riparian forest on the eastern riverbank) and the Wattle Grove offset (the boot land). This proposed land offset incorporates:

- retention and management of all riparian vegetation below the 100 year ARI flood line with some additional areas above this mark to be included and refined in subsequent application stages (20.8 ha);
- Castlereagh swamp woodland (23.5 ha); and
- Castlereagh scribbly gum woodland (33.6 ha).

OEH is concerned with the lack of commitment by the Applicant to entering into a biobanking agreement for the Moorebank and Casula offsets. It is understood that the applicant is continuing to consider its options for mechanisms to deliver the offset that are consistent with the requirement of the Framework Biodiversity Assessment. The Department recommends a condition that requires the biodiversity offset package to be:

- updated to detail the mechanism for its delivery consistent with the *NSW Biodiversity Offset Policy for Major Projects* (2014); and
- finalised within 12 months of the commencement of early works package (Stage 1).

Separately, approval is being sought from the Commonwealth Department of the Environment due to the likely significant impact of the proposal on *Persoonia nutans* (Nodding Geebung) and *Grevillea parviflora* (Small-flowered Grevillea) and the site being on part Commonwealth land. At the time of writing this report, a determination has not been made.

The Department considers that with appropriate mitigation measures, the aims and objectives of SEP 19 have been met.

State Environmental Planning Policy No.33 – Hazardous and Offensive Development

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33) provides clear definitions of hazardous and offensive industries and aims to facilitate development defined as such and to ensure that in determining developments of this nature, appropriate measures are employed to reduce the impact of the development and require advertisement of applications proposed to carry out such development.

The Department acknowledges that the intermodal facility may handle containers that contain goods that may be considered hazardous and offensive. However, the concept proposal does not seek approval for development involving potentially hazardous and offensive development. The specific location of land use activities that may involve the storage of goods or works of this nature would be determined in future development applications.

The Department is satisfied that the proposed development is not a hazardous or offensive development under SEPP 33, and that all necessary assessments under the SEPP 33 will be undertaken for future development applications.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No 44 – Koala Habitat Protection aims to encourage the conservation and management of natural vegetation that provide habitat for koalas to reverse the trend of koala population decline.

The EIS indicates that given fragmentation of vegetation across the main site, koala habitat may be limited to the riparian zones along the Georges River, much of which would be protected under a EM3 Environmental Management zone (part of a concurrent Planning Proposal) along the eastern bank. No koalas have been located on the site.

The Department considers the proposed mitigation measures, in particular the retention of riparian vegetation along the eastern bank of the Georges River, would ensure the aims and objectives of SEPP 44 are met.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) is the primary environmental planning instrument guiding the remediation of contaminated land in NSW. SEPP 55 aims to:

- provide a state-wide planning approach to the remediation of contaminated land;
- identify when consent is required or not required for a remediation work;
- specify certain considerations that are relevant to applications for consent to carry out remediation works; and
- require that remediation work meet certain standards and notification requirement.

Clause 7 of SEPP 55 identifies that a consent authority must not consent to the carrying out of any development on land unless:

- it has considered whether the land is contaminated;

- if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The Department considers that the contaminated lands can be appropriately managed in subsequent applications and as such, considers the site would be suitable for its future intended use as an intermodal facility subject to the implementation of the RAP measures and management controls during the construction and operation of the facility. The concept proposal and early works is therefore considered to satisfactorily address the requirements of SEPP 55. For further detail, refer to **Section 5.4** of this report.

State Environmental Planning Policy (Infrastructure) 2007

The aim of *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) is to improve regulatory certainty, facilitate the effective state wide delivery of infrastructure by providing greater flexibility in the location of infrastructure and service facilities, allowing the development of surplus government land, identifying relevant environmental assessment categories for development, identifying relevant matters to be considered and providing for consultation with relevant public authorities.

Clause 81 Development Permitted with Consent includes rail freight terminals, rail freight sidings or rail intermodal facilities. The proposal is for a rail intermodal terminal and would require a connection into the SSFL which is an ARTC owned/operated line. The proposal is consistent with this clause as it is considered to be development required with consent.

Clause 104 Traffic-generating development applies to the proposed development as the proposal involves more than 8,000m² in floor space. In this regard, and in accordance with clause 104(3) of the Infrastructure SEPP, TfNSW (including RMS) were given written notice of the SSD application and due consideration was given to its comments.

Liverpool Local Environmental Plan 2008

Separate to the subject application, a concurrent Planning Proposal to regularise the zones to an *IN1 General Industrial* zone for the main MIT site and partly *EM3 Environmental Management* zone along the eastern bank of the Georges River is being pursued.

In addition to the rezoning, the key sites map is being amended to include the subject site to ensure development is supportive of the future provision of appropriate regional transport measures to reduce the demand for travel by private car and commercial vehicle.

A satisfactory arrangements clause is also proposed which requires a consent authority to be satisfied that contributions to the provision of improvements to regional transport infrastructure and services reasonably required as a result of the proposal.

Development standards are also being amended, including a maximum heights of 21 metres, and a maximum FSR of 1:1.

Consideration of the relevant controls contained within Liverpool LEP is provided below.

Table 17: Liverpool LEP Compliance Table

Liverpool LEP 2008	Objectives	Department Comment/ Assessment
Clause 4.3 Height of Buildings	<ul style="list-style-type: none"> - Height must not exceed set maximums, however currently only applies to the northern portion of the subject site. 	<p>The Planning Proposal includes a maximum height of 21 metres.</p>
Clause 4.4 Floor space ratio	<ul style="list-style-type: none"> - FSR must not exceed set maximums, however does not apply to the subject site. 	<p>The Planning Proposal includes a maximum FSR of 1:1.</p>
Clause 5.9 Preservation of trees or vegetation Clause 5.9AA Trees or vegetation not prescribed by DCP	<ul style="list-style-type: none"> - to preserve the amenity of the area, including biodiversity values through the preservation of trees and other vegetation. 	<p>The proposal includes rezoning 28.43ha of EM3 Environmental Management land comprising mostly riparian vegetation along the eastern and western banks of the Georges River. The Applicant is also proposing to offset impacts with one option being entering into a biobanking agreement. Further, a condition requiring a Landscape Plan and Vegetation Management Plan for subsequent applications is recommended.</p>
Clause 5.10 Heritage Conservation	<ul style="list-style-type: none"> - to conserve the environmental heritage of Liverpool, the heritage significance of items/areas, archaeological sites and Aboriginal objects and places. 	<p>The EIS included European Heritage and Aboriginal Heritage Impact Assessments. These were prepared in consultation with OEH and the Heritage Division. Consultation has also been ongoing throughout the assessment process. Submissions from both OEH and the Heritage Division have been taken into consideration.</p> <p>The Department has recommended a series of conditions relating to both non indigenous and Aboriginal Heritage including:</p> <ul style="list-style-type: none"> • the preparation and implementation of a European Heritage Interpretation Strategy; • further consultation in relation to the possible scar trees; and • further geotechnical and archaeological assessment to determine the need for further archaeological investigation and/or salvage and requiring the Applicant to salvage artefacts of moderate to high Aboriginal heritage significance prior to any impacts, in consultation with RAPs. <p>Additional consideration of heritage will be undertaken during the assessment of subsequent applications.</p>
Clause 7.7 Acid Sulfate Soils	<ul style="list-style-type: none"> - to ensure that development does not disturb or expose acid sulfate soils and cause environmental damage. 	<p>The Department does not consider the concept proposal (and early works) triggers the need for an Acid Sulfate Soils Management Plan prior to determination given the proposed works within Class 5 land are above 5m AHD and would not lower the groundwater in adjoining Class 1 land. However, it is noted that a Plan may be required following further investigations of the</p>

Liverpool LEP 2008	Objectives	Department Comment/ Assessment
<p>Clause 7.8 Flood Planning</p>	<p>- to minimize flood risk to life and property, to allow for development that is compatible with the land's flood hazard, and to avoid adverse impacts on flood behavior and the environment.</p>	<p>site. A condition has been recommended relating to the early works component and additionally, this matter will be considered in further detail in subsequent applications.</p> <p>The concept proposal included a flood risk assessment as part of the EIS. The extent of the proposed EM3 Environmental Management zone (which forms part of the concurrent Planning proposal) lies within the area affected by the 1% AEP flood level. Any impacts from flooding are considered negligible, particularly if the materials and equipment required to establish this area are stored outside the flood zone.</p> <p>While the piers of the proposed rail bridge would enter flood affected land, detailed design to minimise afflux will be addressed in subsequent applications.</p> <p>Further, flooding impact mitigation measures would also be included in Environmental Management Plan documents during construction, following any approval of subsequent stages.</p>
<p>Clause 7.9 Foreshore building line</p>	<p>- to ensure development in the foreshore area will not impact on the natural foreshore processes or affect the significance and amenity of the area.</p>	<p>The concept proposal includes the provision for a protected riparian zone along the eastern bank of the Georges River. This is being reinforced through the concurrent Planning Proposal, which proposes to rezone the land to EM3 Environmental Management. Through the preparation and implementation of construction and operational management plans, impacts on water quality can be appropriately managed. The specific measures to minimise any impacts of the proposed rail bridge on the Georges River will be considered in more detail in subsequent applications.</p>
<p>Clause 7.27 Development of certain land at Moorebank</p>	<p>- to ensure development is supportive of the future provision of appropriate regional transport measures to reduce the demand for travel by private car and commercial vehicle.</p>	<p>The northern portion of this site extends to within the identified land on the key sites map, however this is being addressed as part of the Planning Proposal. By including the site in the Key Sites Map (KYS-013).</p> <p>The concept proposal includes measures to increase the use of alternate transport modes such as bus re-routing, walking and cycling. Additionally, consideration has also been given to a possible future pedestrian bridge and connection to Casula Station. Further detailed consideration will be provided in subsequent applications.</p>