



Moorebank Precinct West Intermodal Terminal Facility

Clause 4.6 Request – Minimum Lot Size Requirements



SIMTA

SYDNEY INTERMODAL TERMINAL ALLIANCE

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Clause 4.6 Request – Minimum Lot Size Requirements

Moorebank Precinct West Stage 3 (SSD 10431)

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Glossary of Key Terms

Term	Description
CEMP	<i>Construction Environmental Management Plan</i>
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	<i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>

Term	Description
FEARs	Specific conditions for future environmental assessment requirements provided under SSD 5066
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
MOD 1	Modification to SSD 5066 MPW Concept Plan and Early Works Stage 1, granted 30 October 2019 by the Minister for Planning
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 Stage 3	MPW Stage 3 (SSD 10431) for establishment of a works compound and materials storage areas, subdivision of the MPW Site, and ancillary works
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	Mod 2 - 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
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 MPW Concept Plan and Early Works Approval (SSD 5066) was granted approval on 3 June 2016 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 included both the Concept Plan approval and approval for completion of early (preparatory) works. Modification (MOD 1) of SSD 5066 was granted 30 October 2019 by the Minister for Planning. This application sought, amongst other things, the approval to subdivide the site as part of a future development application.

SSD 5066 provides specific conditions for future environmental assessment requirements (FEAR) for subsequent applications.

FEAR Condition E26(a) of the consent for SSD 5066 requires future subdivision of the MPW Site to comply with the minimum lot size requirements of *Liverpool LEP 2008*. Given the MPW Site is 189.4 ha in area, and the minimum lot size requirement is 120 ha, complying with this Condition would altogether remove the ability to subdivide the MPW Site as an approved component of the MPW development. This Clause 4.6 Request application therefore seeks an exemption to this development standard, within the bounds of the MPW site, to permit subdivision of the MPW site.

This request forms an attachment to a development application for MPW Stage 3 (SSD 10431) that has been lodged with DPIE concurrently with this application. SSD 10431 includes, among other development components, application to subdivide the MPW Site. Environmental assessment of the proposed future subdivision of the MPW Site is subject to the SSD 10431 application that addresses the balance of the FEARs required in respect of subdivision.

Consent for the IMT development at the adjoining MPE Site (SSD 7628) authorises subdivision, subject to certain conditions, and resultant lots have areas that are less than 120 ha, ranging from 11.3 ha to 20.9 ha. Future subdivision of the MPW Site, subject to approval of this modification application, would be consistent with this approach across the Precinct as a whole. Furthermore, subdivision of the MPW Site is required to allow registration of long-term tenancing of individual warehouses whilst maintaining connectivity across the intermodal precinct.

This 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 contravention of the development standard. Contravention of the development standard does not compromise the ability of the development to remain consistent with the objectives of the IN1 General Industrial zone 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 contravene the standard, without raising any State or regional matters of significance. Importantly, exception to the *Liverpool LEP 2008* minimum lot size development standard would not compromise the ability of future subdivision to comply with the remaining elements of SSD 5066 E26 condition, or the intent of the Concept Plan Approval. It will also result in a development that is substantially the same as that approved under SSD 5066, 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 MPW Concept Plan Approval and the changes would not alter the development of the MPW 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 will facilitate subdivision of the MPW site, as approved in the MPW Concept Project and Early Works (Stage 1) (SSD 5066) approval, as modified and approved October 30, 2019. The MPW development relates to the development of an intermodal freight terminal facility (IMT) facility and warehousing on the western side of Moorebank Avenue, Moorebank, NSW (the MPW Project). 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 subject site under Clause 4.1 of the Liverpool LEP 2008, being 120 ha, to 2,000 m². Exception to the development standard on the MPW site would create consistency with the minimum lot size requirements between MPW and the adjacent MPE site.

This request will result in a development that is substantially the same as that approved within the Concept Plan Approval and does not alter the development of the intermodal facility or warehousing. Subdivision of the MPW Site will allow efficient use of the site as it is intended without compromising the environmental, social or economic outcomes. Importantly, contravention of 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 MPW 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 MPW 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 and Project Description

1.3.1. MPW Concept Plan and Early Works Approval

A summary of the MPW Project based on the various stages of consent, is provided below.

The MPW Concept Plan and Early Works Approval (SSD 5066) was granted on 3 June 2016 by the DPIE under Part 4, Division 4.7 (formerly Division 4.1) of the EP&A Act. It included both the Concept Plan approval and approval for completion of early (preparatory) works.

Concept Plan

- Import/export (IMEX) freight terminal - maximum capacity of 1.05 million twenty-foot equivalent units (TEU) throughput per annum, servicing international IMEX freight movement between Port Botany and the MPW Site.

- IMT facility - maximum capacity of 500,000 TEU throughput per annum, servicing trains and container freight movements by truck travelling to, from and between Sydney, regional and interstate destinations.
- Warehousing facilities - maximum of 300,000 m² gross floor area (GFA) to service the IMEX and interstate terminals.
- Rail link connection between the MPW Site and the Southern Sydney Freight Line (SSFL), and between MPW and MPE.
- Conservation area, to maintain and enhance riparian vegetation on the western boundary of the site, along the Georges River.
- Moorebank Avenue upgrade, including widening of the road to four lanes between Anzac Road and the M5 Motorway.

The MPW Concept Plan Conditions of Consent (CoC) provide a detailed list of further investigations that should be undertaken prior to commencement of any action. The CoC also provide direction to inform the future assessment of applications forming part of the MPW Project, which would then authorise the construction and operation of the MPW Project.

Early Works

- The demolition of existing buildings and structures.
- Service utility terminations and diversion/relocation.
- Removal of existing hardstand/roads/pavements and infrastructure associated with existing buildings.
- Rehabilitation of the excavation/earthmoving training area (i.e. the dust bowl).
- Remediation of contaminated land and hotspots, including areas known to contain asbestos, and the removal of:
 - underground storage tanks;
 - unexploded ordnance and explosive ordnance waste, if found; and
 - asbestos contaminated buildings.
- Archaeological salvage of Aboriginal and European sites.
- Establishment of a conservation area along the Georges River, including seed banking and planting.
- Establishment of construction facilities (which included a construction laydown area, site offices, hygiene units, kitchen facilities, wheel wash and staff parking) and access, including site security.
- Vegetation removal, including the relocation of hollow-bearing trees.

1.3.2. MPW Concept Plan and Early Works Approval MOD 1

Modification of Development Consent SSD 5066 (SSD 5066 MOD 1) was granted 30 October, 2019 by the Minister for Planning. This application modified the SSD 5066 consent as follows:

- enabling importation of approximately 1,600,000 m³ of clean fill for bulk earthworks within the site;
- expansion of construction footprint to allow for Moorebank Avenue/ Anzac Road intersection works;
- rearrangement of warehousing, freight village, internal roads and truck parking locations and layouts;
- additional onsite detention (OSD) basin near the northern boundary of the site and relocation to the western boundary and enlargement of the southern OSD basin;
- removal of the port shuttle (IMEX) rail freight intermodal terminal and an increase in the warehousing area;

- use of the interstate terminal for interstate, intrastate and port shuttle rail freight including one additional rail track;
- increase in building heights as a result of raising the site by up to 3.6 m;
- reducing construction stages from four (excluding Stage 1 Early Works) with potentially only two future development applications;
- transfer of containers by heavy vehicles between the MPW warehouses and MPE rail terminal and between the MPE rail terminal and MPW warehouses; and
- ability to subdivide the site as part of a future development application.

Condition E26 was introduced to the consent which provided specific conditions in relation to future MPW Site subdivision applications. This condition, and specifically the exception to point (a) from the consent (refer to Section 3.2), forms the subject of this Clause 4.6 variation application.

E26. Any future Development Application for subdivision must:

a) demonstrate compliance with the minimum lot size specified in the Liverpool Local Environmental Plan

1.3.3. EPBC Approval

Approval for the MPW EPBC Approval (No. 2011/6086) under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to develop the MPW Project was granted in mid-2016. The EPBC Approval was required, subsequent to a referral, as the MPW Project was determined to be a 'controlled action' under the EPBC Act for the reasons outlined in Table 1-1.

Table 1-1: MPW EPBC Approval.

Matter of National Environmental Significance Triggered	Details
An action by the Commonwealth which will have a significant impact on the environment	MIC is a Commonwealth Government Business Enterprise and as stated in the MPW Concept EIS, without mitigation measures, MPW Project would potentially have a significant impact on surrounding environment, particularly with regards to traffic, transport and access, noise and vibration, local air quality and human health.
Significant impact on listed threatened species and communities	The MPW Project would affect two threatened species of plant, <i>Grevillea parviflora subsp. Parviflora</i> and <i>Persoonia nutans</i> , which are listed under the EPBC Act and the <i>Threatened Species Act 1995</i> (TSC Act). Impacts on these species would include direct loss of individuals and loss of habitat. Impacts were also predicted to 25 threatened fauna species known or likely to occur on the MPW Site. Overall it was determined that no EPBC Act or TSC Act threatened species population or ecological community was likely to be significantly affected by the Project.

1.3.4. MPW Stage 2 Approval

MPW Stage 2 (SSD 7709) was approved by the Independent Planning Commission (IPC) (under Part 4 Division 4 of the EP&A Act) on 11 November 2019. The approval authorises the construction of an IMT facility, warehousing and a rail link connection. The key development components covered by this consent are summarised below.

- IMT facility including:
 - infrastructure to support a container freight throughput volume of 500,000 TEUs per annum;
 - installation of nine rail sidings and associated locomotive shifter;
 - capacity to receive trains up to 1,800 m in length;
 - truck processing, holding and loading areas;

- container storage area serviced by manual handling equipment; and
- administration facility, engineer’s workshop and associated car parking.
- Rail link including:
 - construction of the rail link connection, which links the sidings within the IMT facility to the rail link (which were approved as part of the MPE Stage 1 consent); and
 - the operation of the rail link connection and the rail link (from the rail link connection to the SSFL).
- Warehousing area including:
 - construction of approximately 215,000 m² GFA of warehousing, plus ancillary offices, with associated warehouse access roads.
- Upgraded intersection on Moorebank Avenue, which would provide site access and egress and construction of an internal road.
- Ancillary works, including vegetation clearing, earthworks (including the importation of 1,600,000 m³ fill), utilities installation/connection, signage and landscaping.

Construction for MPW Stage 2 development works is expected to commence once the *Construction Environmental Management Plans* (CEMPs) and other required documentation have been prepared and approved.

1.3.5. Proposed MPW Stage 3

This Proposal represents the third stage of development for the MPW site, as per the Concept Approval. The SSD application is being submitted to DPIE concurrently with this application.

The key components of the Proposal are:

1. Works Compound:

Establishment of a works compound to facilitate approved site development works for the MPW site (as per the MPW Concept Plan and Stage 1 Early Works Approval (SSD 5066), MPW Stage 2 Approval (SSD 7709)) and future MPW site development, and includes hardstand, laydown and materials stockpile areas, temporary and permanent access roads, and installation of utilities and services.

2. Subdivision:

Progressive subdivision of the MPW site to create nine (9) allotments for the purpose of creating separate lots for the IMT, warehousing, and biodiversity conservation allotment (being proposed lots 5 to 13 inclusive).

3. Ancillary Works:

Ancillary works to facilitate establishment, access and servicing of the proposed application. Works will be progressively undertaken and include access roads, earthworks, utilities installation/connection, stormwater and drainage infrastructure, signage and landscaping.

With regards to the proposed subdivision, a proposed lot layout is provided in Section 3.1 of the EIS for SSD 10431.

Table **1-2** below provides a summary regarding the proposed lot sizes and descriptions. Figure 1-1 provides a proposed draft plan of subdivision.

Table 1-2: Proposed subdivision lots of MPW Site.

Proposed Lot Number	Approximate Size (ha)	General Description
5	24.45	Northern portion of the MPW Site, to be used for warehousing and distribution facilities, and ancillary-related development for the Precinct in accordance with the approved Concept Plan and the MPW Stage 2 Consent.
6	22.92	Central portion of the MPW Site, to be used for warehousing and distribution facilities in accordance with the approved Concept Plan and the MPW Stage 2 Consent.
7	16.18	Central portion of the MPW Site, to be used for warehousing and distribution facilities, and ancillary-related development for the Precinct in accordance with the approved Concept Plan and the MPW Stage 2 Consent.
8	16.14	Southern portion of the MPW Site, to be used under this Proposal for hardstand, laydown and material stockpile area to support the works compound, and for access to the works compound via a temporary loop road. The future intention of the lot use is for warehousing and distribution facilities, and ancillary-related development for the Precinct in accordance with the approved Concept Plan and a future development consent.
9	14.73	Southern portion of the MPW Site, to be used under this Proposal for hardstand, laydown and material stockpile area to support the works compound. The future intention of the lot use is for warehousing and distribution facilities, and ancillary-related development for the Precinct in accordance with the approved Concept Plan and a future development consent.
10	17.42	Southern portion of the MPW Site, to be used under this Proposal for the establishment of the works compound, materials and store area, and car parking. Access to the works compound will be constructed near the northern lot boundary. The future intention of the lot use is for warehousing and distribution facilities, and ancillary-related development for the Precinct in accordance with the approved Concept Plan and a future development consent.
11	43.85	Adjacent to the western boundary, to be used as a biodiversity conservation area to the west of the MPW Site and east of the Georges River.
12	20.48	Adjacent to the north-eastern boundary of the MPW Site, to be used as an interstate/intrastate freight terminal in accordance with the approved Concept Plan and MPW Stage 2 consent.
13	12.28	Adjacent to the south-eastern boundary of the MPW Site, to be used as part of the rail connection (known as the SME Rail Corridor) to, and subsequent operation of, the rail link under SIMTA's development arrangement with MIC.

In order to facilitate this proposed subdivision, contravention of the minimum lot size development standard is required – as currently the minimum lot size for the MPW site is 120 ha.

2.0 Site Description

The Moorebank Precinct West (MPW) 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. The MPW Site is situated within the Liverpool local government area, in Sydney's South West subregion, approximately 2.5 km from the Liverpool City Centre. It is located on Moorebank Avenue, Moorebank and forms Lot 1 in Deposited Plan (DP) 1197707 and Lot 100 DP1049508, which is wholly owned by the MIC, and leased by SIMTA.

Most of the land surrounding the MPW Site is owned by either the Commonwealth or SIMTA and comprises:

- The MPE Site, owned by SIMTA and previously operating as the Department of Defence National Storage and Distribution Centre (DNSDC). The Department of Defence vacated the site and relocated to the Defence Joint Logistics Unit to the immediate north of the MPE Site.
- The Holsworthy Military Reserve, to the south of the MPE Site on the southern side of the Sydney Trains East Hills Rail Corridor.
- Residual Commonwealth land (known as the Boot Land), to the immediate east and south of the MPE Site between the site boundary and the Wattle Grove residential area and Sydney Trains East Hills Rail Corridor respectively (Lot 4, DP 1199707).

Several residential suburbs are located near MPW 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; and
- Glenfield - approximately 2 km to the south-west.

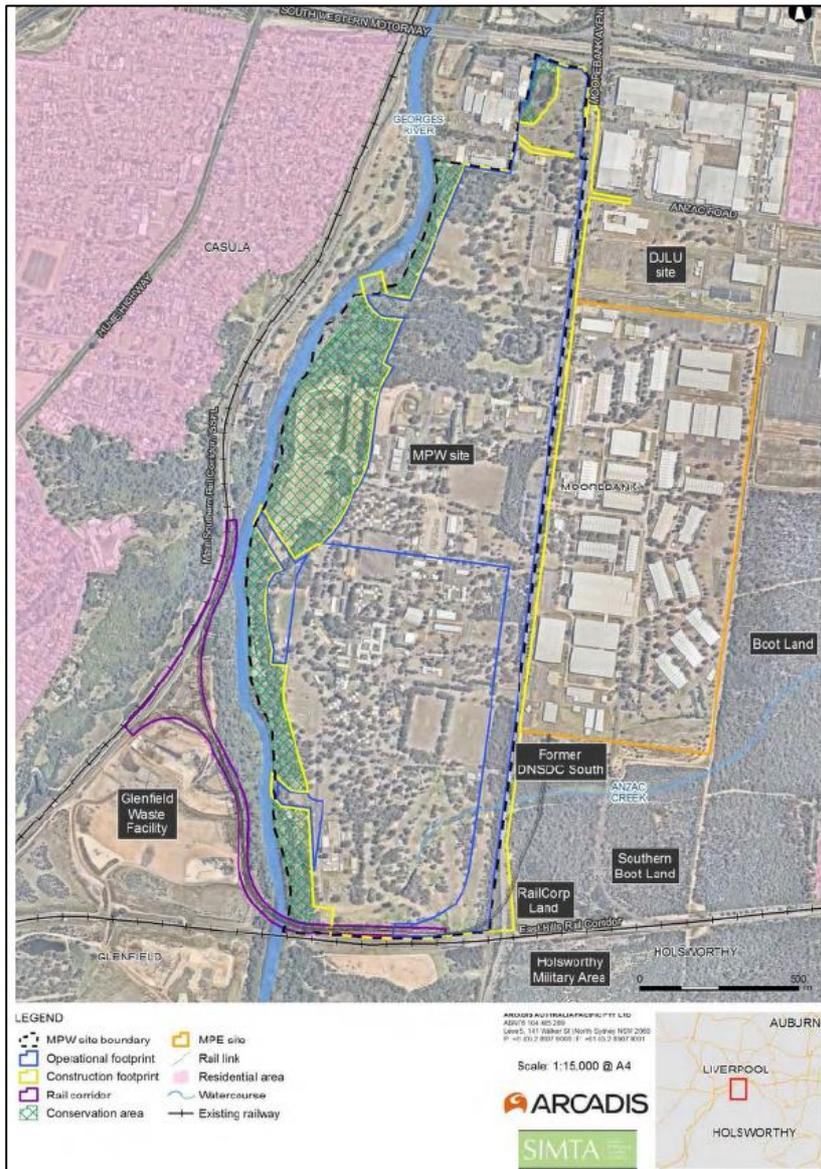


Figure 2-1: MPW Project – local context (Arcadis, 2016)

3.0 Proposed Variation Description

3.1. Description and Proposed Consent Modification

A Clause 4.6 request is sought as an exemption to (reduce) the minimum lot size requirement within the bounds of the MPW site, thereby permitting the subdivision of the site into lots that have an area less than the current minimum lot size provision within the Liverpool LEP 2008 (120 ha). Given the MPW development is part of a greater Moorebank Logistics Park development that encompasses both the MPW development and the adjacent MPE development, a minimum lot size requirement that is consistent with the MPE site (i.e. 2,000 m²) is considered appropriate. This will allow a consistent subdivision approach across the greater Precinct.

Exception to the minimum lot size development standard will allow the MPW subdivision to proceed in full compliance with Condition E26 of SSD 5066, which current requires (emphasis added in **bold**):

Subdivision

E26 Any future Development Application for subdivision must:

- a) **demonstrate compliance with the minimum lot size specified in the Liverpool Local Environmental Plan;***
- b) demonstrate compliance with Condition 15 of this consent;*
- c) include a subdivision plan showing completed estate works including but not limited to site services, internal roads, maintenance access roads, pedestrian paths, landscaping, lighting of common areas, provision for emergency services including for firefighting, onsite detention basins and stormwater treatment systems;*
- d) include a detailed management and maintenance program for estate infrastructure; and*
- e) nominate a single entity responsible for implementation of the management and maintenance program.*

Without the exception to the development standard, the minimum lot size requirements directly contravene and prohibit subdivision of the MPW site – for which approval has already been granted via the MPW Concept approval.

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

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 contravention. 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 exemption to the minimum lot size provisions of the Liverpool LEP 2008 within the bounds of the MPW Site, thereby allowing future subdivision at the site without direct contravention of the LEP or the SSD 5066 consent. 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 General Industrial (IN1) zone.

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 site's ability to provide for industrial and warehouse land use, as permitted within the SSD 5066 consent. Reducing the minimum lot size of the site will, in fact, promote this objective by rendering subdivision practical and feasible.
	To encourage employment opportunities.	Permitting variation of the minimum lot size development standard will increase employment opportunities at the site by enabling the lease of buildings and tenancing of individual warehouses. The current standard will inhibit

Clause	Requirement/Objective	Response/Justification
		subdivision of the site which will have implications on the provision of warehousing opportunities and services at the site, and hence employment opportunities.
	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 site, as envisaged in the Concept Plan (SSD 5066). The impacts of proposed industrial operations on other land uses was assessed and as part of this application, mitigation measures established and subsequently approved.
	To support and protect industrial land for industrial uses.	The proposed variation shall support the intention to utilise the industrial land for industrial uses, by facilitating subdivision of the site and subsequent individual tenancing of warehouses. This intention is as per the approved Concept Plan (SSD 5066).
	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 as an IMEX facility. Visual impacts of this landuse has been assessed as part of the MPW Concept Plan and MPW Stage 2 approval and found to be acceptable.</p> <p>MPW Stage 3 (SSD 10431) also includes a Visual Impact Assessment, that considers proposed subdivision of the MPW site into 9 lots. This assessment has found that there is a negligible impact to that which has already been assessed and approved within earlier stages of MPW site development.</p>
	To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.	The MPW site development, as outlined within the Concept Plan approval, includes land uses including warehousing, rail freight facilities, biodiversity conservation areas and freight village (providing for retail and commercial needs of workers). The proposed variation does not seek to change this concept plan, but rather aims to permit subdivision and hence facilitate delivery of these services.
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 MPW site, as envisaged and approved within the SSD 5066 Concept Approval. The EIS prepared as part of the SSD 10431 application demonstrates that the proposed lot layout can accommodate warehouse development that is suitable for the use of the greater site as an IMEX facility, and that is consistent with the MPW Concept Plan and MPW Stage 2 approvals.
	(c) to prevent fragmentation of land which would prevent the achievement of the extent of development and nature of uses	Reducing the minimum lot size at the MPW site, thereby allowing subdivision of the site, will not result in fragmentation of land, but rather facilitate the extent of the development (and the nature of uses) that has been envisaged and approved for this particular location. The lot layout design will be consistent with that of the

Clause	Requirement/Objective	Response/Justification
	envisioned for particular locations,	adjacent MPE site and characteristic of similar nearby industrial areas.
	(d) to minimise traffic impacts resulting from any increase in the number of lots on classified roads,	As outlined within the EIS supporting SSD 10431, traffic impact assessments have been completed for the MPW Concept Plan, Stage 2 and Stage 3 applications. These assessments have found that the proposed development will not generate adverse impacts on intersection performance or level of service on nearby classified roads.
	(e) to minimise any likely impact of subdivision and development on the amenity of neighbouring properties,	The EIS prepared supporting SSD 10431 included visual impact assessment of the proposed subdivision on nearby neighbouring properties and communities. This assessment has found that the subdivision does not generate any adverse impacts beyond those that have already been assessed in the MPE Stage 2 approval, and mitigating measures will continue to protect the amenity of nearby properties.
	(f) to ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,	The proposed variation request seeks to allow subdivision of the MPW site to achieve consistency and reinforce the subdivision pattern that has been approved and executed for the adjacent MPE Site.
	(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.	As outlined within the MPW Stage 3 (SSD 10431) application, the proposed subdivision lot layout has been designed to accommodate and protect natural and cultural features on the site, including the biodiversity conservation area (including the riparian zone of the Georges River) in the site's west.
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 MPW site, in order to facilitate subdivision at the site. This is considered appropriate, given subdivision is an already approved element of the MPW Concept Plan – but currently cannot be achieved based on the existing lot size (189.4 ha) and the minimum lot size requirement (120 ha).
	(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 from the MPW development, as it will facilitate subdivision, as approved in the SSD 5066, and individual tenanting of warehouses on each lot. It will allow for a development layout, operation and management that reflects what has been approved and executed on the adjacent MPE site. Should the development proceed without subdivision, as per the SSD 10431 application, it will create a development that requires management and operation that is consistent with the MPE site, which would have adverse outcomes on the performance of the precinct as a whole..
	2) Development consent may, subject to this clause, be granted for	This variation request seeks contravention of the minimum lot size (Clause 4.1) development standard.

Clause	Requirement/Objective	Response/Justification
	<p>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>	<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 (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 MPW site.</p> <p>Compliance with the development standard is considered unreasonable as subdivision of the MPW Site is consistent with the intent of the approved Concept Plan. The development consent (SSD 5066 MOD 1), as approved on 30 October 2019, included conditions regarding the <i>'ability to subdivide the site as part of a future development application'</i>. Given the site is approximately 189.4 ha, compliance with the existing minimum lot size requirements (120 ha) would prohibit any such subdivision at the MPW site. It is therefore considered unreasonable to comply with the development standard as it currently applies. Exception to the existing development standard would facilitate subdivision of the MPW site as envisaged and approved.</p> <p>Compliance with the development standard is unnecessary in the circumstances of this case as it will not provide any additional security in relation to site maintenance and management to that that will be achieved under the proposed subdivision and tenancing arrangement. Moreover, it is likely that having multiple tenants and warehouses across a single allotment would be more difficult to manage with regards to provision of services and easements.</p> <p>Subdivision of the site will support the intended use of the site, which is consistent with the approach taken for the approved adjacent MPE development. Development consent SSD 7628 (for the adjoining MPE Site) authorises subdivision into lots that are substantially less than 120 ha in area, subject to conditions. Across the MPE site, a minimum lot size of 2,000 m² applies under Clause 4.1 of the Liverpool LEP 2008.</p> <p>Exception to the Liverpool LEP 2008 minimum lot size requirements does not compromise the ability of future subdivision to comply with the SSD 5066 E26 Subdivision condition, or the intent of the Concept Plan Approval. Instead it will promote efficient use of the intermodal precinct as intended in the approved Concept Plan.</p>

Clause	Requirement/Objective	Response/Justification
	<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>As demonstrated within this assessment (Table 1), contravention of the development standard will not compromise the ability of the MPW 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 developments consistency with the intention or requirements of the consent, and allows the development to be executed as intended and as approved.</p>
	<p>(4) Development consent must not be granted for development that contravenes a development standard unless</p> <p>(a) the consent authority is satisfied that</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>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</p>	<p>The assessment within this table adequately assesses the proposed development standard contravention against subclause 3 of Clause 4.6.</p> <p>As demonstrated within this table, this variation request and proposed subdivision application (as outlined within this document and within the EIS supporting the SSD 10431 application) are consistent with the IN1 General Industrial zone objectives. The application is therefore within the public interest.</p>
	<p>(b) the concurrence of the Planning Secretary has been obtained.</p>	<p>Concurrence of the Planning Secretary is assumed in this case, as per correspondence from NSW DPIE (17 April, 2020) as Planning Circular PS 18-003.</p>
	<p>(5) In deciding whether to grant concurrence, the Planning Secretary must consider</p> <p>a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p>	<p>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.</p>

Clause	Requirement/Objective	Response/Justification
	(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 MPW site, in this case. Subdivision is a previously approved element of the MPW development. Permitting subdivision will enable orderly and efficient operation and management of the MPW site, and importantly create consistency with the MPE development. It is likely that having multiple tenants and warehouses across a single allotment would be more difficult to manage with regards to provision of services and easements. It is therefore more likely that under these circumstances adverse environmental impacts would result – which would have implications on site amenity and the public.</p> <p>As outlined in the EIS supporting SSD 10431, subdivision 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 MPW development approval.</p>
	(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	<p>No other matters have been identified within this assessment that would prevent concurrence from DPIE to contravene this development standard.</p>
	<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
Commonwealth		
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	The MPW 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. Approval was granted for the MPW Project by the Commonwealth Minister for the Environment on 27 September 2016 (Approval No 2011/6086). The exception does not compromise compliance of the MPW Project with the EPBC Act.
State		
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	Concept Plan Approval (SSD 5066) for the MPW Project was granted on 3 June 2016 by the DPIE. This Concept Plan included proposed subdivision of MPW. Subsequent approval of MOD 1 was granted on October 30 2019. SSD 10431 has been lodged concurrently with this application and is for, among other elements, subdivision of the MPW site into 9 allotments. Approval for this request is sought under Part 4, Division 4.7 of the EP&A Act.
<i>Protection of the Environment Operations Act</i> 1997 (POEO Act)	Impacts of the operation of the Proposal relating to air quality, noise emissions and discharge of polluted water	The Proposal does not include activities listed under Schedule 1 of the POEO Act. Therefore, an Environmental Protection Licence (EPL) would not be required for the Modification.

Legislation	Associated Environmental Concerns	Approval or Assessment Required
<i>Contaminated Land Management Act 1997</i> (CLM Act) State Environmental Planning Policy No. 55- Remediation of Land (SEPP 55)	Disturbance of contaminated land and potential for further soil contamination	Contamination across the entire MPW Site is addressed as part of the MPW Stage 1 and Stage 2 Consents. The proposed exception to the Liverpool LEP 2008 does not necessitate any further contamination assessment under SEPP 55.
<i>National Parks and Wildlife Act 1974</i> (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 MPW Concept Plan and Stage 2 approvals included an Aboriginal Heritage Impact Assessment for the MPW Site. Activities under the Early Works consent included Aboriginal Heritage salvage works. The proposed exception to the Liverpool LEP 2008 minimum lot size requirement does not necessitate any further heritage assessment.
<i>Biodiversity Conservation Act 2016</i> (BC Act)	Disturbance to listed threatened species and ecological communities	No additional impacts on biodiversity values will arise as a result of this request beyond those already assessed as part of the MPW Concept Plan and Stage 2 Approval.
<i>Noxious Weeds Act 1993</i> (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 1994</i> (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 further assessment is necessary.
<i>Water Act 1912</i> (Water Act) <i>Water Management Act 2000</i> (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 beyond that generated by the MPW development 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 MPW Concept Plan and Stage 2 approvals. Further assessment is provided within the EIS for MPW Stage 3 (SSD 10431). No further assessment is required.
<i>Roads Act 1993</i> (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.

Legislation	Associated Environmental Concerns	Approval or Assessment Required
<i>Heritage Act 1977</i> (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 will have no impact on items of heritage significance, beyond those already assessed and approved as part of the Concept Plan and MPW Stage 2 Approval. The MPW Stage 3 application includes assessment of the impacts of subdivision on heritage significance. No further assessment is required.
<i>Waste Avoidance and Resource Recovery Act 2001</i> (WARR Act)	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, in addition to that already prepared and approved for MPW Concept and Stage 2 approvals.
<i>Rural Fires Act 1997</i> (Rural Fires Act)	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>). An assessment of the MPW Project against the relevant factors for bushfire risk was undertaken within the <i>Hazards and Risks Assessment</i> prepared as part of the application for Concept Plan Approval. This proposal does not trigger the requirement for an additional 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	A Visual Impact Assessment was undertaken as part of the assessment for Concept Plan Consent. Mitigation of visual impacts will be consistent with relevant Landscape Drawings, and MPW Stage 2 Conditions of Approval B57. This request will not generate any additional visual impacts beyond those already identified and assessed as part of the MPW Concept Plan and Stage 2 approvals. The EIS for MPW Stage 3 (lodged concurrently with this application) includes an assessment of the potential impacts on visual amenity as a result of subdivision. No additional assessment is required.
Greater Metropolitan regional Environmental	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 MPW Site. No further assessment is required.

Legislation	Associated Environmental Concerns	Approval or Assessment Required
Plan No 2 – Georges River Catchment		
Local		
<i>Liverpool Local Environment Plan 2008</i> (Liverpool LEP)	Impact on the environment and the built form of the Liverpool Local Government Area	<p>The proposed exception to the Liverpool LEP 2008 development standard for minimum lot size would allow the MPW Site subdivision layout to contravene the existing Liverpool LEP minimum lot size requirements.</p> <p>Concurrently with this application, a development application for MPW Stage 3 has been lodged with DPIE (SSD 10431), which includes (among other elements) subdivision of the MPW Site into 9 allotments.</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 as envisaged by the Concept Approval.</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 Concept Plan.</p>
Liverpool Development Control Plan 2008 (Liverpool DCP)	Impact on the environment and the built form of the Liverpool Local Government Area	The Concept Plan Approval assessment included consideration of the Liverpool DCP. As the project is SSD under Part 4, Division 4.7 of the EP&A Act, consideration of the Liverpool DCP is not required.

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 MPW 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. It is within the scope of the Concept Plan approval and does not involve new land. The scale, nature, extent and form of the building envelopes approved for the MPW Site would remain the same. In addition, the request would not result in any environmental impacts beyond those previously assessed and approved as part of the consent. The MPW Concept Approval (SSD 5066 MOD 1) 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 exception to the subject development standard would ensure the proposed MPW development is 'substantially the same' as that approved.

5.0 Environmental Assessment

The purpose of this request is to seek an exemption to (reduce) the current minimum lot size requirements within the MPW site, thereby permitting subdivision of the Site into lots that have an area less than the existing minimum requirement within the Liverpool LEP 2008 (i.e. 120 ha). Given the MPW Site is 189.39 ha in area, maintaining this development standard as it is currently will prohibit any subdivision from taking place – which forms an integral part of the approved MPW Concept Plan.

In considering environmental values on site, the following elements are relevant to the wider MPW Project, and have been assessed as part of the MPW Concept Plan and/or MPW Stage 2 approvals. These have been reviewed and updated (where required) as part of the MPW Stage 3 EIS which covers the proposed subdivision:

- 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.

Further environmental assessment of future subdivision of the MPW Site is therefore not required as part of this request.

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 (MPW Concept Plan and MPW Stage 2), and those identified and assessed as part of the MPW Stage 3 EIS. Additionally, it will not affect the findings of impact assessments previously undertaken in support of the MPW Project. This conclusion is based on the fact that:

1. The proposal exclusively involves exception to the minimum lot size development standard.
2. No amendments or variations to the approved MPW Project are proposed.
3. Subdivision is currently an approved aspect of the MPW Concept Plan.

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 SSD 10431 application.

Given the MPW Site is 189.4 ha, compliance with the current LEP requirements (being minimum 120 ha) would inhibit subdivision – which forms an integral part of the MPW Concept Plan. Subdivision of the site is required to facilitate tenancing of individual warehouses by enabling the lease of buildings and facilitating the establishment of easements. It will also provide for a consistent approach to site operation between the MPW and adjoining MPE Site.

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 proposal compliant with the LEP and subsequently Condition E26 of the Concept Approval (SSD 5066).

An assessment of the variation request against the Liverpool LEP 2008 has found it to be consistent with and supporting the objectives of 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 MPW Site.

Concurrent with this application, a development application for MPW Stage 3 has been lodged with DPIE for, among other elements, subdivision of the MPW Site. This request therefore allows MPW Stage 3 to proceed without contravening the Concept Approval or the Liverpool LEP 2008 minimum lot size requirements.

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 Concept Plan Consent. Instead it will promote efficient use, and facilitate the registration of, long term tenant leaseholds within the intermodal precinct.

An environmental assessment based on previous MPW Concept Plan and MPW Stage 2 EIS and on the current MPW Stage 3 EIS demonstrates that the proposed exception to the existing development standard for minimum lot size will not generate any environmental impacts beyond those previous assessed and/ or approved and will not affect the findings of impact assessments previously undertaken in support of the MPW project.

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