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Dear Mark,

WERRIS CREEK INTERMODAL FREIGHT TERMINAL – APPROVAL ASSESSMENT

1. Introduction

Crawfords Freightlines Pty Ltd (Crawfords) is a privately owned and operated integrated intermodal freight transportation company with a network of three dedicated service hubs across eastern Australia. The Werris Creek Intermodal Freight Terminal (the Werris Creek Facility) became operational in June 2019.

In September 2022, Crawfords engaged Onward Consulting to revise the Site Water Management Plan (SWMP) dated 30 July 2021, which was originally submitted to the EPA in October 2021. The revision was required to address specific actions identified during a compliance audit undertaken by the Environment Protection Authority (EPA) in June 2022, and reflected in the associated Prevention Notice issued by the EPA to Crawfords on 20 September 2022. The revised SWMP was submitted on 28 October 2022 in accordance with the requirements of the Prevention Notice.

The Water Technical Advice team within the EPA reviewed the 2022 SWMP and provided comments to Crawfords on 30 November 2022. A copy of the EPA's comments was provided by email to Onward Consulting on 1 December 2022. The comments identified additional issues and recommendations relating to the revision of the SWMP.

After consideration of the EPA's review comments and a thorough review of the development consent history and the EPL in collaboration with Crawfords, a number of inconsistencies and potential gaps were identified in the approval documentation for the Werris Creek Facility. Crawfords subsequently engaged Onward Consulting to complete a full review and analysis of approval and licensing considerations (planning approval, environment protection licence, harvestable rights and water licensing) associated with the existing and proposed water management infrastructure.

The scope of work included:

- reviewing relevant background information, reports and correspondence as provided by Crawfords;
- outlining any additional approvals required to reflect operation of the existing site water management system;
- outlining additional approvals required for proposed upgrades to the site water management system (e.g. construction of additional water containment structures); and
- detailing the approval pathways to obtaining additional approvals required in accordance with relevant planning and environmental legislation.

Once the requisite approvals have been obtained, the SWMP will be revised and updated to address site water management objectives for the Werris Creek Facility. The revision will also fully address the scope which is yet to be agreed between Crawfords and/or the EPA. The revision of the SWMP will build upon the October 2022 draft SWMP and will consider the EPA's review comments and recommendations: management of leachates and chemicals likely to be generated in site runoff; basin sizing; further separation of water types with different risk profiles; and discharge concentration criteria.

The majority of the information in this report has been obtained from the following sources:

- *Environmental Planning and Assessment Act 1979* (EP&A Act);
- *Protection of the Environment Operations Act 1997* (POEO Act);
- *Water Management Act 2000* (WM Act); and
- documentation made available by Crawfords, including:
 - notices of determination of development applications (development consents);
 - technical reports and management plans; and
 - email and letter correspondence.

This report is subject to the provision that the above sources may contain errors or inaccuracies. Where possible, the information obtained from these sources has been validated against other available information.

2. Background review and assumptions

2.1 Review of existing approvals

Existing operations at the Werris Creek Facility are undertaken in accordance with Development Consent DA 37/2018, Development Consent DA 44/2019, Development Consent DA 1/2020 and Environment Protection Licence (EPL) No. 21253, as modified and varied.

2.1.1 Development Consent DA 37/2018

Overview

A Statement of Environmental Effects (SEE) was prepared by Paul McGrath Property Services in May 2018 (PMPS, 2018) to support a development application for the Werris Creek Intermodal Freight Terminal. The original Development Consent DA 37/2018 was granted by the Liverpool Plains Shire Council (LPSC) on 10 September 2018, with the consent to operate for a five-year period from 10 September 2018 to 10 September 2023.

Development Consent DA 37/2018 is the primary development consent authorising operations at the Werris Creek Facility.

Table 2.1 provides a summary of modifications to Development Consent DA 37/2018.

Table 2.1 Summary of modifications to Development Consent DA 37/2018

Consent reference	Modification type	Description	Date of determination
DA 37/2018	Not applicable, original consent	Rail infrastructure facility and associated container operations	10 September 2018
DA 37/2018-2	Modification 1 – Section 4.55(2) modification*	Increased capacity of timber fumigation (wood preservation activities) beyond the limit of 10,000 cubic metres annually during the initial start-up period of the development.	13 February 2019
DA 37/2018-3	Modification 2 – Section 4.55(1A) modification**	Variation to conditions relevant to carrying out road works.	3 June 2019

*Modification under Section 4.55(2) of the EP&A Act, classified as an 'other modification'.

**Modification under Section 4.55(1A) of the EP&A Act, classified as a 'modification involving minimal environmental impact'.

Development consent area

The Development Consent DA 37/2018 applies to the following parcels of land as stated in the determination notice:

- Lot 41 DP 1126436¹;
- Lot 22 DP 8788; and
- Lot 23 DP 8788.

The site plan referenced in condition 1 of the Development Consent DA 37/2018 is included in the SEE and depicts the 'Site Boundary' to which the approved development relates. This figure is reproduced in Figure 2.1.

Approved water management infrastructure

The project description provided in Section 3.3 of the SEE includes a list of onsite infrastructure to support the requirements of the operation. Relevantly, this section describes two stormwater containment dams located within Lot 41 to collect stormwater on the site.

The conceptual location of the two stormwater dams adjacent to the western boundary is shown in Figure 2.1, marked as Features 11.1 and 11.2.

The project description in Section 3.3 of the SEE states that the stormwater containment dams are to be constructed in accordance with the recommendations of the '*Blue Book Managing Urban Stormwater*' (Landcom, 2004) (Blue Book) and that collected stormwater would not be discharged but retained in the dams for dust suppression on the site.

¹ The description of land provided in Section 2.1 of the SEE refers to the development being on Part of Lot 41, with access and egress to be via Lots 22 and 23. However, it is noted that in the description of land to be developed in Development Consent DA 37/2018, reference is made to Lot 41 rather than to Part of Lot 41. The reference to Lot 41 rather than Part of Lot 41 is a minor misdescription that could be corrected as part of a future modification application.



Source: Figure 3 of SEE (PMPS, 2018).

Figure 2.1 Site layout depicting the site boundary of the approved

Water management conditions

Table 2.2 outlines the relevant water management conditions from Development Consent DA 37/2018.

Table 2.2 Development Consent DA 37/2018 water management conditions

Condition	Requirement	Reason
11	An Erosion and Sediment Control Plan that satisfies the requirements of the Department of Water's 'Blue Book' objectives shall be prepared and submitted to Council for review and approval.	To prevent environmental pollution during construction.
12	Sediment and erosion control measures that will minimise damage to and avoid pollution of the environment must be installed prior to the commencement of any construction	To prevent environmental pollution during construction.
30	Erosion and sediment control facilities shall be provided and maintained to avoid damage to and/or pollution of the environment during construction.	To prevent offsite pollution.
54	All stormwater from the proposed development site, buildings and works must be reused onsite with any excess discharged along the western side of the development to the satisfaction of Council.	To manage the developments water supply requirements and minimise offsite stormwater impacts.
55	Any stormwater management system that harvests stormwater for re-use must satisfy WaterNSW requirements for harvestable rights.	To ensure compliance with WaterNSW requirements.
56	The discharge of stormwater off the site onto adjoining properties must be in a fashion that does not concentrate flows so as to create erosion.	To minimise offsite stormwater impacts.
57	Erosion and Sediment Control measures shall be installed so as to avoid pollution of the environment.	To prevent pollution.

2.1.2 Development Consent DA 44/2019

Development Consent DA 44/2019 is referred to by Condition 6 of Development Consent DA 1/2020, however this document was not able to be provided by Crawfords for this assessment. Consequently, this assessment was not able to conclude if there are any requirements relevant to water management at the site incorporated within Development Consent DA 44/2019.

2.1.3 Development Consent DA 1/2020

In 2019, Crawfords sought to modify the Development Consent DA 37/2018 to extend the hours of operation to meet loading times for transport and shipping of time-sensitive freight. It is understood that following a meeting between Crawfords, LPSC and EPA representatives, it was advised that a new development application would need to be lodged as the proposed changes would vary an essential component of the Development Consent DA 37/2018-03, taking into account the potential noise impacts on the community.

An SEE was prepared by Paul McGrath Property Services in November 2019 (PMPS, 2019) to support a development application for the Werris Creek Intermodal Freight Terminal, specifically to extend hours of operation for the existing operations. Development Consent DA 1/2020 was granted by the LPSC on 18 November 2020, with the consent to operate for a five-year period from 23 November 2020 to 23 November 2025. The development application was supported by an SEE, which included a noise and traffic impact assessment.

Development Consent DA 1/2020 deals specifically with extended hours of operation for the Werris Creek Facility and does not contain any requirements relevant to water management at the site.

Crawfords have advised that a modification application was lodged in September 2022 to annex Lot 43 DP 8788 onto DA 1/2020 and to further amend operating hours for the Werris Creek Facility. At the time of writing this modification application was still being assessed.

2.1.4 EPL 21253

Crawfords holds EPL 21253 for the Werris Creek premises, which authorises the carrying out of the scheduled activity 'Wood preservation' at the premises at an annual processing capacity greater than 30,000 cubic metres. Variations to EPL 21253 have been made since 2019 to:

- extend hours of operation (notice number 1583556, issued 18 September 2019);
- update the premise details (notice number 1588266, issued 12 November 2019);
- include limits on fumigation venting (notice number 1589871, issued 20 December 2019);
- include an air quality discharge point (from fumigation containers), updates to Air Quality Management Plan conditions and update the premise details (notice number 1604166, issued 23 December 2020);
- install a video monitoring system and incorporate a Pollution Reduction Program condition for the preparation of a SWMP (notice number 1605085, issued 30 April 2021);
- update noise limits and monitoring requirements (notice number 1615833, issued 8 February 2022); and
- make various administrative amendments.

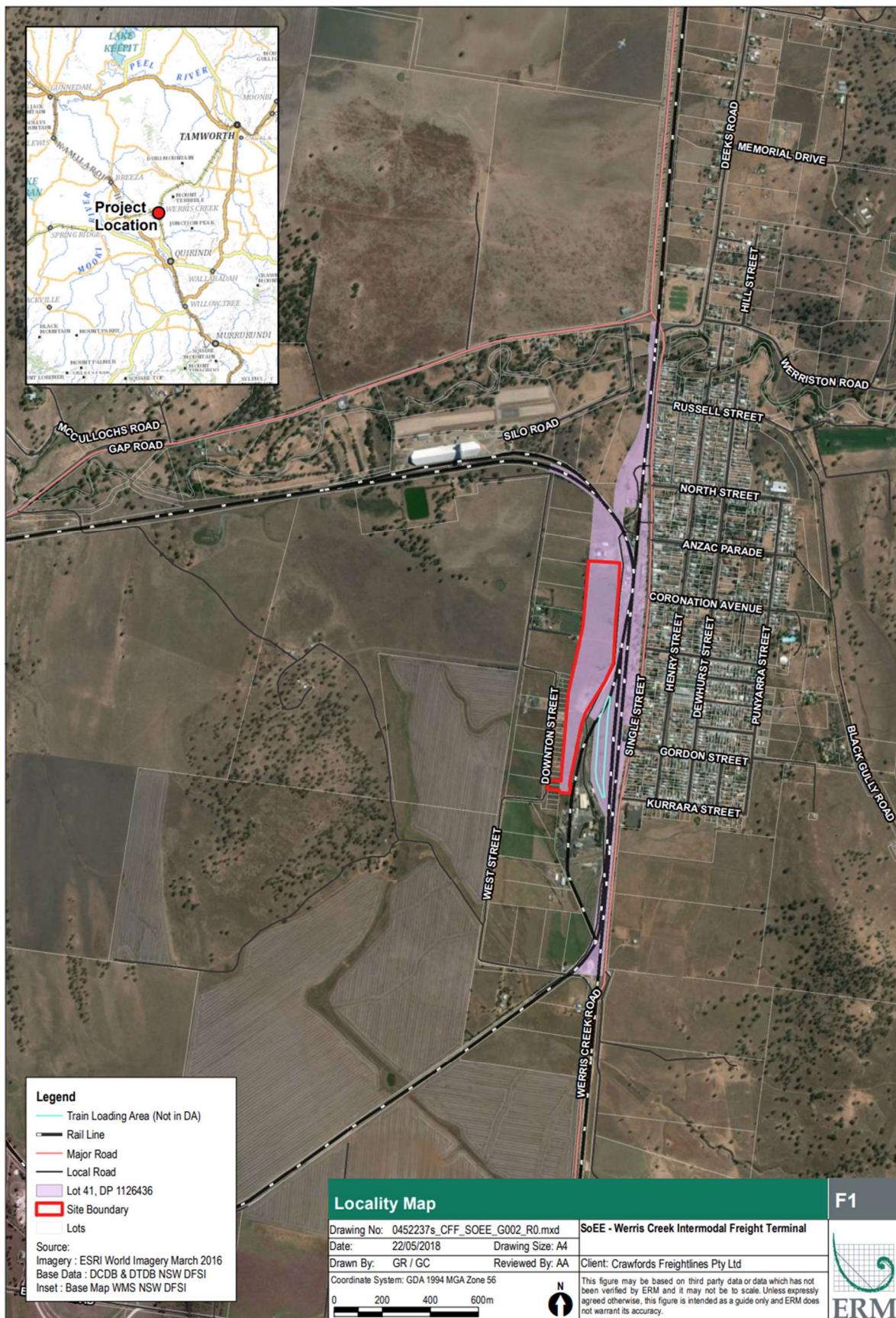
EPL premises boundary

The premises boundary applies to the following parcels of land as stated in Condition A2.1 of EPL 21253:

- Lot 22 DP 8788
- Lot 23 DP 8788
- Part Lot 41 DP 1126436

Condition A2.1 also references the project location as shown in the 2019 SEE (PMPS, 2019). This figure is reproduced in Figure 2.2.

EPL 21253 was varied on 23 December 2020 to update the premises description to encompass Lots 22 and 23 DP 8788 which are used for site access.



Source: Figure 1 of SEE (PMPS, 2019).

Figure 2.2 Project location identified in EPL 21253 premises details

Water management conditions

The EPL 21253 variation notice dated 30 April 2021 states that the EPA became aware of discharges of water from the premises from both the stormwater and sediment basins on the premises and that the EPA were concerned that these basin structures were not sufficiently sized to capture and effectively treat runoff from the premises. Consequently, a Pollution Reduction Program condition (condition U1) was added as part of this licence variation, requiring the preparation of a SWMP to ensure surface water is appropriately captured and treated at the premises.

Condition U1 sets out the process, objectives, content requirements and submission timeframe for the preparation of the SWMP for the premises.

The following definitions are also included in Condition U1:

- sediment basin² – a detention structure designed to capture, treat and manage surface water at the Premises; and
- stormwater basin – a detention structure designed to capture, treat and manager stormwater piped through the site from Werris Creek Village and the ARTC site.

Although Development Consent DA 37/2018 includes conditions permitting the discharge of water from the site (Table 2.2), EPL 21253 does not include any conditions prescribing the following in relation to management of surface water:

- location of surface water monitoring/discharge points;
- surface water concentration limit conditions for monitoring/discharge points; or
- surface water monitoring requirements.

Condition L1 states that 'Except as may be expressly provided in any other condition of this licence, the licensee must comply with section 120 of the *Protection of the Environment Operations Act 1997*.' This is typically included as a standard licence condition.

Given that there is no express provision in any condition of EPL 21253 to discharge water from the premises, Section 120 of the *Protection of the Environment Operations Act 1997* must be complied with. Section 120 prohibits pollution of any waters and carries strong penalties for individuals and companies who allow pollution of waters.

The general terms of approval from the EPA attached as Appendix A to both Development Consents DA 37/2018-2 and DA 37/2018-3 included operating conditions O5.1 and O5.2 for stormwater and sediment control, requiring a soil and water management plan for the construction phase (condition O5.1) and a stormwater management scheme for the operation phase (condition O5.2). These conditions have not been included in EPL 21253 to date.

2.2 Existing and proposed water management system infrastructure

There are two sediment dams that have been constructed to collect runoff from the site and two stormwater dams to capture stormwater piped through the site from Werris Creek Village and the ARTC site. These four dams are identified in the existing SWMP dated 30 July 2021 as follows:

- Dam 1 – sediment dam;
- Dam 2 – town stormwater;
- Dam 3 – town stormwater; and
- Dam 4 – sediment dam.

² The SEE and Development Consent DA 37/2018 generally use the term 'stormwater' when referencing surface water at the site and containment dams for capturing runoff. In contrast, EPL 21253 describes a containment dam used for capturing surface water at the site as a sediment basin, with stormwater being associated with surface water generated from land beyond the site boundary.

Figure 2.3 shows the location the existing dams. A summary of the location, land ownership and approval status of the existing dams is outlined in Table 2.3.

Table 2.3 Location, land ownership and approval status of the dams identified in the existing SWMP

Dam	Type	Location	Land ownership	Approval status
Dam 1	Sediment dam	Lot 43 DP 8788	DIPA ADMINISTRATION PTY LTD	Not described in Development Consent DA 37/2018 and not located within Development Consent DA 37/2018 or EPL premises boundary
Dam 2	Town stormwater	Lot 43 DP 8788	DIPA ADMINISTRATION PTY LTD	Not described in Development Consent DA 37/2018 and not located within Development Consent DA 37/2018 or EPL premises boundary
Dam 3	Town stormwater	Lot 41 DP 1126436	Land leased from Australian Rail Track Corporation	Not described in Development Consent DA 37/2018, however it is located within the Development Consent DA 37/2018 and EPL premises boundary
Dam 4	Sediment dam	Lot 41 DP 1126436	Land leased from Australian Rail Track Corporation	Described in Development Consent DA 37/2018 and located within Development Consent DA 37/2018 and EPL premises boundary

Crawfords have advised that the existing dams were likely constructed during the period between late 2018 and early 2019. A local consultancy, Constructive Solutions, were engaged by Crawfords in late 2018 to prepare detailed design drawings for two stormwater dams and three sediment basins and to guide the management of stormwater at the Werris Creek Facility, all in accordance with the Blue Book.

As outlined in Section 2.1.1, Development Consent DA 37/2018 incorporates two stormwater containment dams located within Lot 41 DP 1126436 adjacent to the western boundary as described in the SEE (PMPS, 2018).

Based on the information presented in Table 2.3, Dam 4 is considered the only existing containment dam for which development consent has been obtained. Whilst Dam 3 is located within the Development Consent DA 37/2018 boundary, the containment dams described in the SEE are not for the purpose of capture of stormwater piped through the site from Werris Creek Village and the ARTC site. Dam 1 and Dam 2 are located on Lot 43 DP 8788 which is not described in the SEE nor contained either within the Development DA 37/2018 boundary or EPL premises boundary. Therefore, Dams 1, 2 and 3 are not considered to be approved by Development Consent DA 37/2018 or any other development consent for that matter.



Figure 2.3 Location of existing sediment and stormwater dams

In addressing the requirements of the EPA Prevention Notice issued to Crawfords in September 2022, it is understood that Crawfords proposes to construct an additional sediment dam to increase the capacity of the surface water management system on the site, and ultimately include this dam in the revision to the SWMP. The additional sediment dam is proposed to be located adjacent to the existing stormwater and sediment ponds located within Lot 41 DP 1126436 at the northern end of the site.

As outlined in Section 2.1.1, the Development Consent DA 37/2018 does not contemplate this proposed third sediment dam in addition to the two existing approved sediment dams, which were described in the original SEE (PMPS, 2018). Therefore, the proposed third sediment dam is not considered to be approved by Development Consent DA 37/2018, or any other development consent for that matter.

Relevantly, Condition U1.2 of EPL 21253 provides the following:

If sediment and/or stormwater basins are located outside Premises boundary, provide plans to relocate the basins onto the Premises; or provide details of planning consent for these basins to be located off Premises and how they have been designed to capture surface water from the Premises; or obtain planning consent to incorporate the land into the licenced Premises.

A development consent under the EP&A Act would need to be obtained to authorise the proposed third sediment dam and Dams 1, 2 and 3 prior to including these dams within the SWMP revision. The approval strategy to either obtain planning consent for the dams to be located outside the premises or to incorporate the land into the premises boundary will satisfy the requirements of Condition U1.2.

Once development consent has been granted to authorise the existing and proposed sediment and stormwater dams, an EPL variation application would need to be submitted to include monitoring and discharge points, appropriate concentration limits and water monitoring requirements relevant for the authorised sediment dams. Once the EPL notice of variation has been obtained containing revised discharge conditions, discharge of water from the premises would be authorised. The varied EPL 21253 would also be in alignment with the conditions of Development Consent DA 37/2018 which authorises the discharge of excess stormwater from the development. The SWMP could then be revised in accordance with the relevant approvals and submitted to the EPA to satisfy the requirements of Condition U1.

The approval pathways associated with obtaining a modification to the relevant development consent/s and a variation to EPL 21253 are outlined in Section 4.

3. Statutory context

This section outlines the legislation relevant to the approvals that are likely to apply to the existing and proposed water management infrastructure at the Werris Creek Facility.

3.1 Environmental Planning and Assessment Act 1979

The EP&A Act provides the statutory basis and framework for planning and environmental assessment in NSW. The EP&A includes provisions to ensure that the potential environmental impacts of a development are assessed and considered in the decision-making process.

Designated development

Section 4.10 of the EP&A Act states that:

(1) Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.

Clause 47(1) of Schedule 3 of the Environment Planning & Assessment Regulation 2021 (EP&A Regulation) lists development that is for the purposes of wood preservation works to be designated development if the works process more than 10,000 cubic metres per year of timber.

Wood preservation works means:

works that treat or preserve timber using chemical substances containing –

- (a) copper, chromium, arsenic or creosote, or*
- (b) a substance classified in the ADG Code.*

As the Werris Creek Facility processes and would continue to process more than 10,000 cubic metres of timber per year, it is declared designated development under clause 47(1) of Schedule 3 of the EP&A Regulation.

Clause 40(3) of Schedule 3 of the EP&A Regulation lists development that is for the purposes of a railway freight terminal is to be designated development if the terminal –

(a) is located within 500 metres of –

- (i) a residential zone, or*
- (ii) a dwelling not associated with the terminal, and*

(b) is, in the consent authority's opinion, considering topography and local meteorological conditions, likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, lights, traffic or waste.

As the Werris Creek Facility is located within 500 m of a residential zone and could be considered likely to significantly affect the amenity of the neighbourhood, there is potential for it to be declared designated development under clause 40(3) of Schedule 3 of the EP&A Regulation.

Integrated development

The Werris Creek Facility also constitutes integrated development under section 4.46 of the Act since in addition to development consent, the Project requires approvals under other legislation that are integrated under general terms of approval. The additional approvals include an EPL issued by the EPA under the POEO Act, an approval under Section 58 of the *Heritage Act 1977* and an approval under Section 138 of the *Roads Act 1993* for works within the road reserve.

Liverpool Plains Local Environmental Plan 2011

The Lot 41 DP 1126436 is zoned as SP2 (Rail Infrastructure Facilities) under the *Liverpool Plains Local Environmental Plan 2011* (Liverpool Plains LEP), which is the corresponding local planning law. Lots 22, 23 and 43 of DP 8788 are zoned as RU1 (Primary Production).

The objectives of Zone SP2 are:

- to provide for infrastructure and related uses; and
- to prevent development that is not compatible with or that may detract from the provision of infrastructure.

The operation of sediment and stormwater dams and other water management infrastructure located on Lot 41 DP 1126436 is considered ordinarily incidental or ancillary to the development, being for the purpose 'Rail Infrastructure Facilities' as shown on the Land Zoning Map and are therefore considered permissible with consent.

The objectives of Zone RU1 are:

- to encourage sustainable primary industry production by maintaining and enhancing the natural resource base;
- to encourage diversity in primary industry enterprises and systems appropriate for the area;
- to minimise the fragmentation and alienation of resource lands; and
- to minimise conflict between land uses within this zone and land uses within adjoining zones.

In relation to the operation of sediment and stormwater dams located on Lot 43 DP 8788, there does not appear to be a specific type of permitted use outlined in Part 2 of the Liverpool Plains LEP.

A transcript of an email sent from a representative of Liverpool Plains Shire Council to Crawfords on 10 September 2020 indicates that development consent for a dam would not be required as the use 'water supply systems' are permitted without consent in Zone RU1. The Liverpool Plains LEP defines a water supply system as:

- a water reticulation system;
- a water storage facility;
- a water treatment facility; and
- a building or place that is a combination of any of the things referred to in paragraphs (a) to (c).

A dam for storing water (as relevant to the existing sediment and stormwater dams on Lot 43 DP 8788) would fall within the definition of a water storage facility which is defined in the Liverpool Plains LEP as 'a dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment'.

Whilst the sediment dam would typically be used for supply of water for dust suppression on the site, the use of water from the adjacent stormwater dam (which receives town stormwater generated from land beyond the site boundary) may require water licencing requirements to be met. If water from this source is not available for use as a water supply (consistent with the permitted use 'water supply systems'), this may mean that the stormwater dam would not be a permitted use within Zone RU1.

Within Zone RU1, 'freight transport facilities' are permitted with consent. The Liverpool Plains LEP defines a freight transport facility as 'a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved'.

To avoid the uncertainty associated with the stormwater dam falling under the permitted use of 'water supply systems', the Werris Creek Facility (incorporating the existing and proposed sediment and stormwater dams located on Lot 43 DP 8788) could be considered ancillary to the development, being for the purpose 'freight transport facilities' and would therefore be permissible with consent.

3.2 Protection of the Environment Operations Act 1997

The POEO Act is the principal NSW environmental protection legislation and is administered by the EPA. The Werris Creek Facility has an existing EPL issued under the POEO Act, identified as EPL 21253.

Section 48 of the POEO Act requires an EPL for a premises at which any scheduled activities listed in Schedule 1 of the Act is carried on. Schedule 1, Clause 44 lists wood preservation (meaning the treating or preserving timber with pesticides) if it has a capacity to process more than 30,000 tonnes of materials per annum as a scheduled activity.

The Werris Creek Facility is a scheduled activity under the POEO Act and will continue to operate under EPL 21253 issued by the EPA and be required to comply with requirements, including water quality limits for discharge of waters.

Section 58 of the POEO Act allows the EPA to vary an EPL, including the conditions of the EPL. The EPL can be varied at any time on application by the holder of the licence.

The EPA regulates discharges to water through conditions that are placed on a facility's EPL. These conditions may include:

- restricting the amount of pollutants that can be discharged;
- requiring discharges to waters to be monitored and reported; and
- requiring that pollution control equipment operates properly and efficiently.

It is an offence under Section 120 of the POEO Act to pollute waters. Sections 121 and 122 of the POEO Act provide a defence against prosecution under Section 120 where the pollution was regulated by a licence as long as the licence holder complies with all related requirements.

3.3 Water Management Act 2000

The *Water Management Act 2000* (WM Act) provides for sustainable and integrated management of water resources of the state for the benefit of both present and future generations. The WM Act regulates licensing and approvals for various activities including water use and carrying out activities on waterfront land.

Water sharing plans (WSP) are prepared under the WM Act, which include rules for protecting the environment and administering water licencing and trading.

Under Section 53 of the WM Act, an owner or occupier of a landholding within a harvestable rights area is entitled to construct and use one or more water supply works for the purpose of capturing, storing, and using water without the need for any access licence, water supply work approval, or water use approval.

Boundaries set by the Water Group within the Department of Planning and the Environment (DPE Water) place the Werris Creek Facility within the central inland-draining catchments harvestable rights area. Within this area up to 10 per cent of the average annual regional rainfall runoff may be captured and used for any purpose.

Dams built to capture and store water under harvestable rights can be located on:

- non-permanent minor streams;
- hillsides; and
- gullies.

However, they cannot be located on:

- or within 40 metres of any river or stream that is not a minor stream;
- any declared floodplain; and
- or within 3 kilometres upstream of a wetland of international importance (listed under the Ramsar Convention).

Each landholding has a maximum harvestable right capacity, which varies based on location and size of the landholding. The location of the landholding may also impose further restrictions to the use of water stored in harvestable rights dams.

Any channels or diversion works constructed to capture and transfer rainfall runoff into a harvestable rights dam are not provided for under a harvestable right. They may require approval prior to construction.

Mixed-rights dams (those that store water captured under harvestable rights as well as water taken under another right or licence) may require a water access licence and water supply work approval prior to construction.

If the capacity of the mixed-rights dam is greater than the maximum harvestable right dam capacity (at 10 per cent of rainfall runoff), the use of all the water in the dam is limited to domestic consumption, stock watering and extensive agriculture purposes, even if the non-harvestable rights water in the mixed-rights dam was taken under a water access licence (for example, an unregulated river access licence) or an exemption.

4. Approval pathway

The following approvals are required to authorise the existing and proposed sediment and stormwater dams:

- development consent under the EP&A Act; and
- a varied EPL under the POEO Act.

The requirement for water licensing and assessment of harvestable rights entitlement will require finalisation of the specific design and operational details of the site water management system proposed to be incorporated within the revised SWMP. Water licensing requirements will be evaluated in further detail as a component of the revision to the SWMP.

4.1 Development application

A modification to Development Consent DA 37/2018 would be required to address the identified approval gaps whereby Dams 1, 2 and 3 are currently not considered to be approved by Development Consent DA 37/2018. This would involve including additional lots within the development consent boundary and incorporating the existing sediment and stormwater dams within the project description for the Werris Creek Facility. The additional sediment dam proposed to be situated adjacent to the existing stormwater and sediment ponds located within Lot 41 DP 1126436 at the northern end of the site would also need to be included in the project description for the Werris Creek Facility.

A consent modification under Section 4.55 of the EP&A Act requires the development to be substantially the same development as the development for which consent was originally granted, and before that consent as originally granted was modified. The proposal for a minor increase in development consent footprint and the inclusion of existing and proposed sediment and stormwater dams is considered to be consistent with the requirements of a modification described in Section 4.55 of the EP&A Act.

Alternatively, a new development application could be made to incorporate components of Development Consents DA 44/2019 (if relevant) and DA 1/2020 into a single consolidated development approval. Development Consents DA 44/2019 (if relevant) and DA 1/2020 would then be surrendered following grant of the consolidated development approval. A new development application would also allow additional components to be included within the project description for the development to expand or optimise the existing operations (e.g. additional infrastructure, changes to operations). Division 4.3 and Division 4.8 of the EP&A Act provide the approval process for a designated development and integrated development, respectively. Section 4.12(8) of the EP&A Act provides that a development application for designated development is to be accompanied by an environmental impact statement, which is the document by which environmental impacts are assessed, prior to a decision being made by the consent authority on whether to approve an application.

4.2 EPL variation application

Once development consent has been obtained to authorise the existing and proposed sediment and stormwater dams, the SWMP would be revised in accordance with Condition U1 of EPL 21253.

An EPL variation application under Section 58 of the POEO Act would be made to amend the conditions of the EPL. It is proposed that the conditions would be added or amended relevant to the following:

- premises description;
- location of surface water monitoring/discharge points;
- surface water concentration limit conditions for monitoring/discharge points; and
- surface water monitoring requirements.

Engagement with the EPA prior to lodgement of an EPL variation application will be required so that the proposed revisions and updates to the SWMP align with the requested EPL variation.

5. Conclusions and recommendations

A comprehensive review and analysis of approval and licensing considerations associated with the existing and proposed water management infrastructure has been undertaken with reference to relevant background information, reports and correspondence as provided by Crawfords. Table 5.1 outlines the key findings of the approval assessment and recommendations to address these findings.

Table 5.1 Approval assessment findings and recommendations

Finding	Recommendation
Dam 4 is considered the only existing containment dam for which development consent has been obtained. Whilst Dam 3 is located within the Development Consent DA 37/2018 boundary, the containment dams described in the SEE are not for the purpose of capture of stormwater piped through the site from Werris Creek Village and the ARTC site.	Lodge modification application to Development Consent DA 37/2018 for an increase in development consent footprint (to include Lot 43 DP 8788) and the inclusion of existing sediment and stormwater dams.
Lot 43 DP 8788 (on which Dam 1 and Dam 2 are located) is not contained within the area of the approved development identified within Development Consent DA 37/2018 and Development Consent DA 1/2020.	Crawfords have advised that a modification application was lodged in September 2022 to annex Lot 43 DP 8788 onto DA 1/2020 (at the time of writing this modification application was still being assessed).
Lot 43 DP 8788 (on which Dam 1 and Dam 2 are located) is not contained within the premises boundary identified within EPL 21253.	Lodge EPL variation application to include Lot 43 DP 8788 in the premises boundary.
The third sediment dam proposed to be located adjacent to the existing stormwater and sediment ponds located within Lot 41 DP 1126436 at the northern end of the site is not considered to be approved by Development Consent DA 37/2018, or any other development consent for that matter.	Lodge modification application to Development Consent DA 37/2018 to include the proposed third sediment dam.

Finding	Recommendation
There is no express provision in any condition of EPL 21253 to discharge water from the premises, which is inconsistent with the conditions of Development Consent DA 37/2018 which allow discharge of water from the site.	Lodge EPL variation application to include monitoring and discharge points, appropriate concentration limits and water monitoring requirements relevant for the authorised sediment dams. Engagement with the EPA prior to lodgement of an EPL variation application will be required so that the proposed revisions and updates to the SWMP align with the requested EPL variation.
A minor misdescription was identified in Development Consent DA 37/2018, where a reference is made to Lot 41 rather than Part of Lot 41 in the development description.	Request correction as part of the recommended modification application to Development Consent DA 37/2018.
Development Consent DA 44/2019 was not able to be sighted as part of the assessment and no conclusion able to be made as to whether any requirements relevant to water management at the site were incorporated within this consent.	Request copy of Development Consent DA 44/2019 from LPSC for further assessment and maintain a copy of the consent on site.

As outlined in Section 4.1 a new development application, supported by an Environmental Impact Statement (EIS), could be made to incorporate the suite of existing development consents into a single consolidated development approval and would be considered the appropriate approval pathway should Crawfords seek additional components to be included within the project description for the development to expand or optimise the existing operations (e.g. additional infrastructure, changes to operations).

Onward Consulting would be pleased to provide a proposal to prepare a Modification Report or EIS to support a development application for the Werris Creek Facility on behalf of Crawfords. Any proposal would include a description of Onward Consulting's team, our experience and the estimated fees.

If you have any queries regarding the letter or proposed approaches, please do not hesitate to contact me on mike.gale@onward.net.au or 0419 920 415.

Yours faithfully



Mike Gale
Senior Environmental Consultant

References

Landcom (2004). *Managing Urban Stormwater: Soils and Construction including Volume 1: Blue Book*.

Paul McGrath Property Services (2018). *Statement of Environmental Effects – Werris Creek Intermodal Freight Terminal*.

Paul McGrath Property Services (2019). *Statement of Environmental Effects – Werris Creek Intermodal Freight Terminal*.