

ASSESSMENT REPORT

Section 96(2) Modification to Consent for Subdivision Lucas Heights Waste Management Centre DA 11-01-99

1. BACKGROUND

On 12 November 1999, the then Minister for Urban Affairs and Planning granted Development Consent to the Waste Recycling and Processing Service of NSW (now WSN Environmental Services (WSN)) and Sutherland Shire Council (SSC), as joint applicants, for the expansion of the Lucas Heights Waste Management Centre (LHWMC).

The LHWMC is spread over two sites; Lucas Heights 2 – (LH2); and Lucas Heights 1 – (LH1), which are both covered by the November 1999 development consent. Under the consent, WSN concurrently operates relevant aspects of LH2 for composting, landfilling and recycling, and carries out rehabilitation works and the progressive development of a local and regional multi-purpose sporting and recreational complex at LH1. See Figure 1. While LH1 predominantly supports land used for recreational purposes, it also incorporates waste management infrastructure used to treat leachate and gas generated from the ongoing waste management operations at LH2.

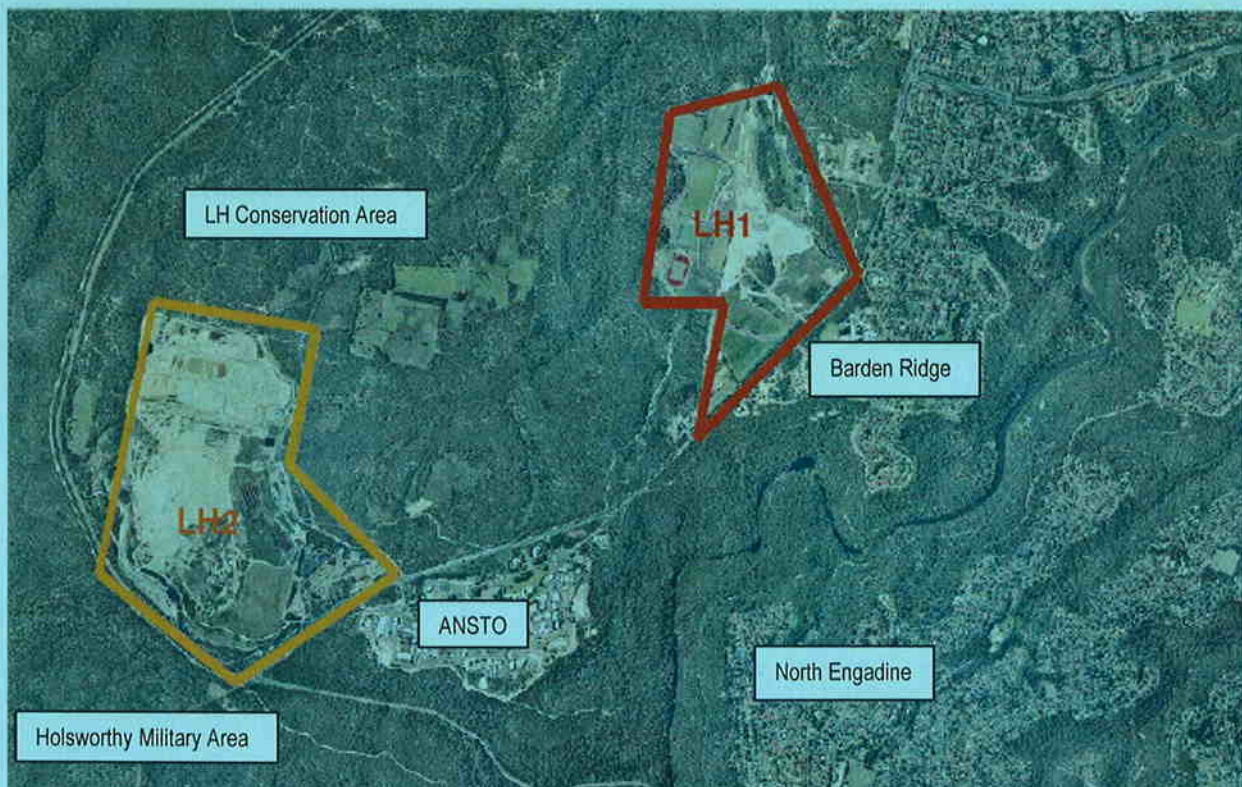


Figure 1: Location Map

Both LH1 and LH2 operations occur under a Deed of Agreement between WSN and SSC. The Deed of Agreement defines their respective responsibilities for different areas of the subject land; and responsibilities and arrangements between them for implementing and complying with the conditions of the consent.

A more detailed description of the respective LH1 & LH2 sites that make up the LHWMC follows:

Lucas Heights 1

The former waste management facility and landfill site is located approximately 2.5kms to the north east of LH2 on land fronting New Illawarra Road at Barden Ridge. The land is owned by the Crown and is currently reserved for recreational purposes under the care, control and management of SSC.

WSN operates on LH1 under Crown Licence L310966. The Licence facilitates progressive rehabilitation and handover of the land to the Crown for development for recreational purposes, consistent with its Reservation.

Aside from carrying out rehabilitation works, WSN also operate a leachate treatment plant and sub lease space to Energy Developments Ltd (EDL) who operate a landfill gas-to-power plant on the site. Both of these facilities treat effluent generated from the LH2 operation which is piped to LH1 via a rising main connection (see Figure 2).

Operation of these facilities will continue until closure of LH2 in 2024 and thereafter until the completion of rehabilitation of the LH2 site. The rising main and leachate treatment plant are both the subject of an approval under Part 5 of the Act, granted on 7 April 2004 by WSN.



Figure 2: Lucas Heights 1 (LH1)

Lucas Heights 2

The land that incorporates the operating waste management centre at Lucas Heights is roughly bounded by New Illawarra Road, Heathcote Road and Little Forest Road at Lucas Heights. The land is partly owned by WSN, and partly leased by WSN from the Australian Nuclear Science and Technology Organisation (ANSTO) and SSC.

WSN has consent to carry out landfill operations at LH2 until 2024 (Condition 39). Under the Deed of Agreement with SSC, WSN is also obliged to progressively rehabilitate the land as waste management operations conclude and, after closure, to complete rehabilitation and revert the Council owned land to SSC for recreational uses.

2. PROPOSED MODIFICATION

WSN, as joint applicant with SSC, propose to modify to the existing Consent (DA 11-01-99) to permit subdivision of **LH1** including, Lot 1 in DP1027216 and Lot 3 in DP1142918 (Crown Land, Portion 126) (refer Figure 3), to create four new allotments (refer Figures 4):

- Lot 6 which will support the existing leachate treatment plant;
- Lot 4 which will support the two existing storm surge leachate storage dams; and
- Lots 5 and 7, residual lots that encompass the land to be rehabilitated.

In addition, it is proposed to register a series of easements for services and access to the newly created allotments. A plan has recently been lodged with Land and Property Information, NSW (LPI) to register a Crown Public Road that will provide access to the EDL plant. Following registration it is proposed to create Lots 1 and 2 as a Crown Public Road under the *Roads Act 1993*.

No building works or vegetation clearing will be undertaken as part of or for the proposed subdivision. The proposed subdivision and easements are to formalise existing infrastructure and access for each of the allotments.

3. JUSTIFICATION

The key purpose of the proposed modification is to separate land on **LH1** earmarked for recreational purposes from land that will be required in the medium to long term for waste management activities.

Under the current approval (DA 11-01-99) and the Deed of Agreement, the land that incorporates the LH1 site is to be progressively rehabilitated by WSN and handed back to SSC as the Trustee of the Crown Reservation. This process is continuing and to date the majority of the LH1 site has been rehabilitated and has reverted to SSC as Trustee (refer Figure 2).

However, the existing waste management infrastructure on the LH1 site, incorporating the EDL power platform, the leachate treatment plant and the storm surge storage dams, functions to treat leachate and gas generated from the ongoing waste management operations occurring on the LH2 site. This function will continue until the cessation of waste management operations on LH2 in 2024 and thereafter until the site has ceased to produce leachate and gas. Consequently, the land that supports this infrastructure will not be available for recreational use in the foreseeable future.

As a result, the applicant considers the land supporting waste management infrastructure on LH1 should occur under separate title to land that will be used for recreational purposes in the short to medium term. Creating separate lots for the leachate treatment plant and the storm surge storage dams via subdivision will achieve this outcome.



Figure 3: Lucas Heights 1 (LH1) – Existing Lots (Approx. only)



Figure 4: Lucas Heights 1 (LH1) – Proposed Lots (Approx. only)

4. STATUTORY CONTEXT

Consent Authority

The Minister was the approval authority for the original development application and is consequently the approval authority for this modification application. However, on 4 March 2009, the Minister delegated her powers and functions as an approval authority to modify certain project approvals under section 96(2) of the EP&A Act to the Executive Director. This modification application meets the terms of this delegation as there has been less than 25 public submissions and the cost of the development (subdivision) is less than 50% of the original development application. Under these circumstances, the Executive Director may determine the application under delegated authority.

Section 96

Under section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a consent authority may modify a development consent if:

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

The Department has assessed the application, and is satisfied that the proposed modification is substantially the same development.

The modification is for subdivision only and will result in no change to the form, function or extent of the operation that is the subject of the existing consent. Further, no construction works are proposed as part of the modification and there are not expected to be any environmental impacts. As such, the Department is satisfied that the consent as modified is substantially the same development.

5. CONSULTATION

Under Section 96(2) of the EP&A Act, the Department is required to notify and exhibit the application.

After accepting the Statement of Environmental Effects (SEE) for the proposed modification, the Department:

- made it publicly available for a period of 17 days from 25 November until 11 December 2009 at:
 - the Department of Planning's Information Centre, 22-33 Bridge St, Sydney, NSW;
 - Sutherland Shire Council: Administration Centre, 4-20 Eton Street, Sutherland (9710 0333); and
 - the Nature Conservation Council, Level 2, 301 Kent St, Sydney.
- notified relevant State government agencies by letter;
- notified the submitters of the original development applications; and
- advertised the exhibition in the St George and Sutherland Shire Leader.

During the exhibition period, the Department received 4 submissions from public authorities [the Department of Environment, Climate Change and Water (DECCW), Sydney Water, TransGrid and Industry and Investment. No submissions were received from the general public or special interest groups.

None of the agencies objected to the proposal. The DECCW advised that the proposal was essentially the same activity as that already licensed with the DECCW and raised no objections regarding the formalisation of lots through the proposed subdivision.

Sydney Water advised that a Section 73 Certificate would be required and recommended that WSN engage a Water Servicing Coordinator to manage the Section 73 Certificate requirements and servicing aspects of the project. Sydney Water would further assess the impact of the development when WSN applies for the Section 73 Certificate to specify any works required as a

result of the development and to assess if amplification and/or changes to the system are applicable.

TransGrid did not object to the proposed subdivision and advised that the subdivision site is clear of TransGrid's existing assets.

Industry and Investment advised that for water management, normal practice is to keep potential water sources on the same title – otherwise it may limit access.

6. CONSIDERATION

The Department considers that there are no merit issues arising from this modification application. The proposed modification is for subdivision only, for the purposes of separating land with differing long term uses. No construction is proposed and the currently approved operations on the site will not be altered. On this basis, it is considered that the proposed modification will have no additional environmental impacts

The proposed modification will separate land set aside for recreational use from land that will be required in the long term for operations associated with the management and rehabilitation of the Lucas Heights 2 Waste Management facility. In this regard, the modification will provide surety to the public with respect to long term land use in the locality and will also facilitate the proper management and rehabilitation of the waste management facility. It is considered that this outcome is in the public interest.

7. RECOMMENDED CONDITIONS OF APPROVAL

The Department has recommended a minor amendment to the current consent to include the modification application within the terms of the approval and facilitate subdivision of the site. Refer to the proposed instrument of modification at **TAG A**.

8. CONCLUSION

The Department has assessed the application in accordance with the requirements in section 79C of the EP&A Act, and is satisfied that:

- the development as modified would remain consistent with the aims, objectives and requirements of the relevant environmental planning instruments;
- the proposal would have minimal environmental impacts;
- the site is suitable for the development; and
- the proposal is generally in the public interest.

Consequently, the Department is satisfied that the proposed modification should be approved.

9. RECOMMENDATION

It is **RECOMMENDED** that the Executive Director, Major Projects Assessment:

- consider the findings and recommendations of this report;
- determine that the development consent, as modified, would relate to substantially the same development for which consent was originally granted;
- approve the proposed modification under section 96(2) of the EP&A Act; and
- sign the attached notice of modification **Tagged A**.

Christine Chapman
Planner, MDA



Chris Ritchie
A/Director, MDA

15/1/10.



Chris Wilson
Executive Director

15.1.10

APPENDIX A - STATUTORY CONSIDERATION, Section 96(2) of EP&A Act

Under Section 96(2) of the EP&A Act, a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

Provision	Comment
a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).	Complies (refer to Section 4 and 8 above)
b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.	Complies (refer to Section 4 above)
c) it has notified the application in accordance with: i) the regulations, if the regulations so require, or ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent	Complies (refer to Section 4 above)
d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	Complies (refer to Section 4 above).

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development the subject of the application:

Provision	Comment
a) the provisions of: i) any environmental planning instrument, and ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and iii) any development control plan, and iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and iv) the regulations (to the extent that they prescribe matters for the purpose of this paragraph: • in the case of a development application for the carrying out of development in a local government area referred to in section 92 of the EP&A Regulation and on land to which the Government Coastal Policy applies, the provisions of that Policy, • in the case of a development application for the demolition of a building, the provisions of AS 2601.	The following environmental planning instruments (EPIs) apply to the proposed modification: ▪ <i>Sutherland Local Environmental Plan, 2006 (Sutherland LEP 2006)</i> ▪ <i>State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)</i> ▪ <i>Sutherland Development Control Plan, 2006 (Sutherland LEP 2006)</i> The proposed modification is not inconsistent with these EPIs.
b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.	Refer to Section 6 above. The proposed modification is for subdivision only. No construction is proposed and currently approved operations will not be altered. The proposed modification will therefore have no additional impacts.
c) the suitability of the site for the development.	The site remains suitable for the proposed development.
d) any submissions made in accordance with this Act or the regulations.	Not applicable.
e) the public interest.	The proposed modification is generally in the public interest as it would facilitate the operation of the facility with minimal changes to the environmental impacts of the approved development.