

ASSESSMENT REPORT

Section 75W Modification

BlueScope Steel Paint Line Facility, Erskine Park (DA-206-8-2004-i MOD 6)

1. INTRODUCTION

This report assesses a modification request by BlueScope Steel Limited (the Applicant) to amend the noise limits that apply to the BlueScope Steel Paint Line Facility (the Site). The request has been lodged pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

2. BACKGROUND

The Applicant operates a steel paint line and manufacturing facility at 25-55 Templar Road, Erskine Park in the Penrith local government area (see **Figure 1**). The paint line is a continuous production line designed to organically coat hot dipped metal coated steel (strip) into pre-painted steel products. The facility produces metal roofs, wall cladding, and metal fencing with an annual production capacity of 120,000 tonnes. The Applicant employs approximately 70 full time employees to operate the facility.



Figure 1: Site Location

The facility is located in the Western Sydney Employment Area (WSEA), which is a 2,200 hectare (ha) precinct zoned specifically for industrial purposes and employment growth. The nearest industrial neighbours to the site are Enviroguard, Staples Advantage, Goodman Fielder, CSR Limited and Darley Aluminium Trading.

The closest residential suburbs are St Clair and Erskine Park which are approximately 850 metres (m) to the north of the site (refer to **Figure 1**). South Creek is located approximately 3 kilometres (km) to the west and Ropes Creek 2 km to the east of the site.

3. DEVELOPMENT CONSENT HISTORY

On 3 December 2004, consent was granted by the then Minister for Infrastructure and Planning for the construction and operation of a steel paint line and manufacturing facility (DA-206-8-2004-i).

The Department of Planning and Environment (the Department) has previously approved five modifications to the development consent (DA-206-8-2004-i) as detailed in **Table 1**.

Table 1: Approved modifications for DA-206-8-2004-i

Modification	Approved	Details
DA-206-8-2004-i MOD 1	6 July 2005	Improve the stormwater drainage from the roof to the rainwater tanks and amend the staging with development in two stages
DA-206-8-2004-i MOD 2	13 July 2006	Modification to: <ul style="list-style-type: none"> amend the size and design of the administrative building on-site; amend the design of the main plant building; amend ancillary plant along the southern elevation of the building; amend the landscaping of the site; and create a truck route around the southern perimeter of the facility.
DA-206-8-2004-i MOD 3	25 July 2006	Correct an administrative error
DA-206-8-2004-i MOD 4	20 March 2012	Remove all conditions that refer to the construction phases of the development consent and amend conditions relating to noise and air monitoring and annual reporting requirements
DA-206-8-2004-i MOD 5	7 July 2014	Change the frequency of noise monitoring and remove reference to air emissions sampling requirements from the consent (as it is duplicated in the EPL)

4. PROPOSED MODIFICATION

The Applicant has lodged a modification request under section 75W of the EP&A Act to modify the noise limits in the consent. The modification is described in full in the supporting letter included in **Appendix B** and the approved Operational Noise Limits as detailed in condition 2.8 of the development consent is provided in **Table 2**.

The Applicant is seeking to modify the noise limits in the consent due to a recent variation to its Environment Protection Licence (EPL No.12495) which was issued by the Environment Protection Authority (EPA) on 27 April 2017. The variation to the EPL now includes a night-time sleep disturbance limit of 54 dB(A). This differs to the consent which includes a night-time sleep disturbance limit of 47 dB(A). The EPL was varied as annual noise monitoring conducted by the Applicant identified background noise levels had increased since consent was granted in 2007, associated with significant growth in industrial development in the WSEA. Under the EPA's Industrial Noise Policy (INP), night-time sleep disturbance is calculated from the existing background levels.

The Applicant is seeking one of two options to modifying the consent:

1. align the consent with the EPL; or
2. remove the Table of Operational Noise Limits (condition 2.8 of the development consent) and replace the table with a statement such as "the applicant must comply with all operational noise limit requirements as specified by the EPA in the EPL for the site".

Table 2: Approved Operational Noise Limits for DA-206-8-2004-i

Location	Day	Evening	Night	
	L _{Aeq} , 15min			L _{A1} , 1min or L _A max
Nearest affected Residents at Erskine Park and St Clair	35	35	35	47

The Applicant's request to increase the night-time sleep disturbance limit is based on the following evidence provided in the supporting letter:

- since commissioning of the facility in 2007, there has been no noise complaints received from the community;

- the EPA approved a night-time sleep disturbance limit variation from 47 dB(A) to 54 dB(A) in the EPL on 27 April 2017;
- the modification will not involve any changes to plant operations;
- a Noise Management Plan is in place and reviewed every two years (last reviewed May 2017);
- the findings of *BlueScope Steel Western Sydney Service Centre – Paint Line Heavy Vehicle Horn Noise Assessment* prepared by SLR Consulting Australia Pty Ltd dated 7 April 2017 (“the Heavy Vehicle Horn Noise Assessment”) (Attached to the supporting letter in **Appendix B**); and
- noise samples collected between 2007-2017, have met the noise limits apart from sampling carried out in 2015 and 2012.

5. STATUTORY CONTEXT

5.1 Approval Authority

The Minister for Planning is the approval authority for the request. However, as reportable political donations were made by the Applicant, the request will be determined by the Planning Assessment Commission (the Commission) in accordance with the Minister’s instrument of Delegation, dated 14 September 2011.

5.2 Section 75W

In accordance with Clause 12 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under clause 8J(8)(b) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), a development consent granted by the Minister for Planning for State significant development under *State Environmental Planning Policy No. 34 – Major Employment-Generating Industrial Development* is to be modified under Section 75W of the EP&A Act. Despite the repeal of Part 3A of the EP&A Act on 1 October 2011, the effect of section 75W is continued for such consents by the operation of Clause 12 of Schedule 6A of the EP&A Act.

The Department notes that:

- the primary function and purpose of the approved development would not change as a result of the proposed modification;
- the modification is of a scale that warrants the use of section 75W of the EP&A Act;
- the approved production rates of products would remain unchanged as a result of the proposed modification; and
- any potential environmental impacts would be appropriately managed through the existing or modified conditions of consent.

Therefore, the Department is satisfied the proposed modification is within the scope of section 75W of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the request should be assessed and determined under section 75W of the EP&A Act rather than requiring a new development application to be lodged.

6. CONSULTATION

Under section 75W of the EP&A Act, the Department is not required to notify or exhibit the modification request. Upon receipt, the request was placed on the Department’s website and following a review of the documentation, the Department did not consider that further consultation was necessary. Notwithstanding, the Department sought comments from the EPA and Penrith City Council.

The **EPA** and **Penrith City Council** did not object to the modification.

The EPA considered that the predicted noise levels in the Heavy Vehicle Horn Noise Assessment were consistent with the sleep disturbance criterion in the NSW EPA Industrial Noise Policy (INP). The EPA also noted that increasing the $L_{A1(1\text{minute})}$ as requested by the Applicant will not necessarily increase actual noise levels. The EPA advised that it had not received any complaints about horn noise from the premises at residential receivers. The EPA advised that it had no objection to the development consent being modified to reflect the current noise limits on the EPL. However, it was recommended that the Department keep a $L_{A1(1\text{minute})}$ limit on the consent, as this will hold the Applicant accountable for horn noise levels generated from the premises.

Penrith City Council noted that the request from the Applicant was associated with non-compliance with the original EPL requirements relating to truck and forklift horns. In November 2015, a forklift horn was measured at 49 dB(A) and a truck horn measured 56 dB(A). It was Council's opinion that the Applicant had been proactive in testing the horns, assessing the risk and where practicable reducing horn volumes. Taking the above into consideration, Council had no objection to the proposal.

7. ASSESSMENT

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- Statement of Environmental Effects and assessment report for the original application;
- existing conditions of consent (as modified);
- the letter supporting the proposed modification (**Appendix B**);
- submissions from State government authorities and Council (**Appendix C**);
- relevant environmental planning instruments, policies and guidelines; and
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issues are determining whether to support the change to the noise limits in the consent and if so, determine the most appropriate way to modify the consent.

7.1 Noise

Increase Night-Time Sleep Disturbance Limit

As discussed in section 4, the existing consent includes operational noise limits that apply to the site. This includes a night-time sleep disturbance limit of 47 dB(A). The Applicant's initial request to the EPA to increase the night-time sleep disturbance limit was due to the findings of annual noise sampling undertaken at the site on 17 November 2015 resulting in a non-compliance with the licence and consent. A forklift horn was measured at 49 dB(A) and a truck horn measured 56 dB(A). Truck and forklift horns are mandatory safety precautions when entering and exiting the buildings on the site.

A licence variation application was submitted to the EPA in October 2016. The EPA declined the variation pending additional information, including a Noise Computer Modelling Assessment. SLR Global Environmental Solutions conducted a Heavy Vehicle Horn Noise Assessment (see **Appendix B**) in response to the EPA's recommendations. The assessment monitored the noise emissions generated using vehicle horns against the site licence conditions for sleep disturbance and against the sleep disturbance noise criteria derived through the procedures outlined in the EPA's INP. The INP recommends the sleep disturbance criterion $LA_{1(1\text{minute})}$ should not exceed the $LA_{90(15\text{minute})}$ by more than 15 dB(A) (that is, background plus 15 dB(A)).

The assessment concluded that the night-time LA_{90} noise levels (which represent background noise levels) were approximately 1dB to 2dB higher in 2015 compared to 2007 (39 dB $LA_{90(15\text{minute})}$ in 2015 and 37 dB $LA_{90(15\text{minute})}$ in 2007) due to a significant growth in industrial developments, in the vicinity of the site from 2007 to current. Using the INP's guideline, the sleep disturbance criterion for the site may be calculated as 39 dB(A) plus 15 dB(A), or 54 dB(A).

The Applicant's assessment was provided to the EPA who was satisfied with the results and subsequently amended the night-time sleep disturbance limit in the EPL from 47 dB(A) to 54 dB(A) on 27 April 2017. The Applicant is now seeking to modify the noise limits in the development consent to align with the EPL and the INP.

The EPA advised that it had no objections to the proposed modification. Penrith City Council also had no objection.

Based on the information provided in the supporting letter and the advice of the EPA, the Department considers that there is adequate evidence to support increasing the night-time sleep disturbance limit from 47 dB(A) as specified in the development consent to 54 dB(A).

Delete Operational Noise Limits

Alternatively, the Applicant has requested the removal of the Table of Operational Noise Limits (i.e. condition 2.8 of the development consent) and replacement with "the applicant must comply with all operational noise limit requirements as specified by the EPA in the EPL for the site".

The Department understands the Applicant is proposing this option to reduce duplication with the EPL. However, by asking for the removal of the Table of Operational Noise Limits, the Applicant is requesting the removal not only of the night time sleep disturbance limit but also all other operational noise limits relating to the development consent. Operational noise limits are established at approval and prescribed in the development consent to manage noise associated with all aspects of the project including but not limited to construction, onsite operations and vehicles entering and leaving the site.

The Department considers the information provided by the Applicant adequately supports increasing the night-time sleep disturbance limit in the Table of Operational Noise Limits in the development consent. The modification request has limited information to support the removal of the entire Operational Table of Noise Limits from the development consent. As such, neither the EPA nor the Department support the removal of the Table in its entirety.

It is noted that the EPA recommended $L_{A1(1 \text{ minute})}$ limits are kept on the development consent. As such, the Department recommends the consent be modified to increase the night-time sleep disturbance limit rather than having the noise limits deleted from the consent. The Department's assessment concludes the modification should be approved, subject to conditions.

8. CONCLUSION

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate on the basis that:

- it aligns the night-time sleep disturbance limit with the approved variation limit in the EPL; and
- is consistent with the night-time sleep disturbance limit as prescribed in the NSW EPA Industrial Noise Policy.

Following on from its assessment of the proposed modification to the development, the Department considers that the modification request is approvable, subject to any modifying conditions of consent outlined in **Appendix A**. This assessment report is hereby presented to the Planning Assessment Commission for determination.