

ASSESSMENT REPORT

Section 75W Modification Materials Recovery Facility (06_0052 MOD 2)

1. BACKGROUND

The purpose of this report is to assess a modification application to the approved project known as the Chester Hill materials recovery facility (06_0052 MOD 2) under Section 75W of the *Environmental Planning and Assessment Act 1979* (the **Act**). The modification application proposes to use shipping containers in place of the approved noise barriers on the site perimeter.

Until its Environment Protection Licence (**EPL**) was revoked by the Environment Protection Authority (**EPA**) on 20 December 2013, No 1 Demolition and Excavation (NSW) Pty Ltd (**Licensee**) operated a Materials Recycling Facility (**MRF**) at 191 Miller Road, Chester Hill. The MRF is located on a 2 hectare (**ha**) site within a larger 6.5ha parcel of land (see **Figure 1**).



Figure 1: Site Location

The MRF received Ministerial approval on 27 February 2007, under (then) Part 3A of the Act. The approval allowed up to 100,000 tonnes per annum (**tpa**) of metal waste to be processed for resource recovery and recycling at the MRF.

In June 2009, a modification was approved to allow a wider range of waste to be processed at the MRF. The approved capacity remained at 100,000 tpa and the new mix of waste included 20,000 tpa of concrete, 20,000 tpa metals, 30,000 tpa general solid waste, 20,000 tpa topsoil (only when included with other demolition material), and 10,000 tpa of timber and green waste. The approved site layout is shown in **Figure 2**.

Relevantly, the modified approval required installation of barriers around the site perimeter for noise attenuation. Barriers were also required to be installed within the site to segregate the different types of waste and processing activities. The barriers were meant to be between 3 and 8 metres (**m**) high (depending on their location) and made of either concrete or a composite of concrete, steel and rubber. The required height and location of the barriers is shown in **Figure 3**.

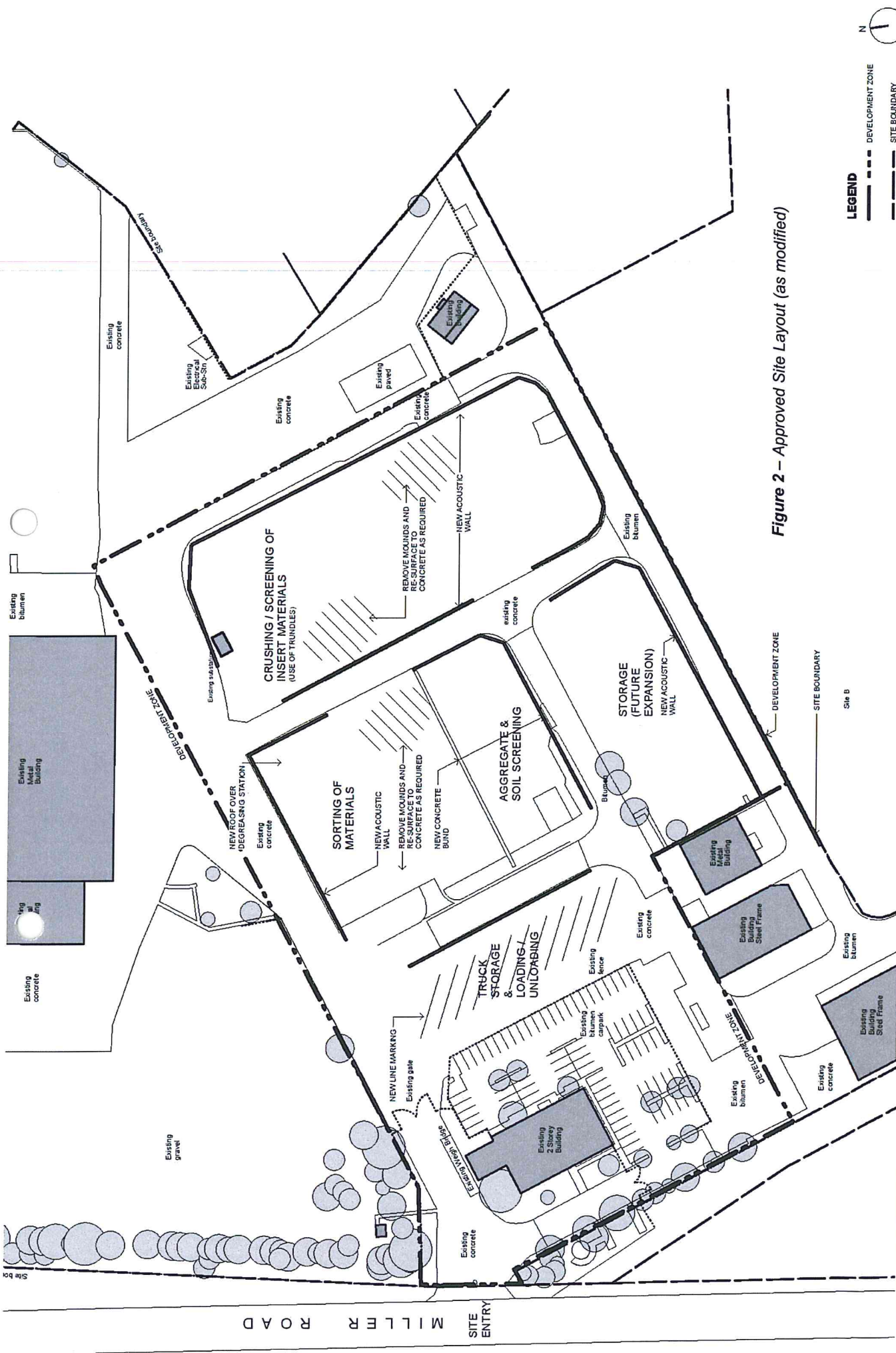


Figure 2 – Approved Site Layout (as modified)

LEGEND	
---	DEVELOPMENT ZONE
---	SITE BOUNDARY

Notes All dimensions must be taken from site and / or verified before commencement of work - DO NOT rely on dimensions shown on this plan. Any discrepancy shall be referred to Borg Architects before proceeding with the work. Exceeding the dimensions shown on this plan without the written approval of Borg Architects will not relieve the contractor or builder of any other responsibilities under contract. Copyright This work is covered by copyright & is not to be reproduced or copied in any form by any means (graphic, electronic or mechanical including photocopying) without the written permits from Borg Architects. Any license, express or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between Borg Architects and the instructing party.	35400 35400 35400	architect interiors urban design Studio 3, 61 Marlborough Street, Surry Hills NSW 2010 Ph: 02 9280 4223 102 9280 4220 arch@borgarchitects.com.au new sfb 6783 abn 66 111 755 312 www.borgarchitects.com.au	project No. 1 DEMOLITION 191 MILLER ROAD, CHESTER HILL NSW 2162	Sheet title	drawn MB	
				SITE PLAN	checked	
			date	FEBRUARY 2009	project no.	0005
			scale	1:1000 @ A3	sheet	A01
			issue			



Figure 3. Approved noise barrier layout and height

The MRF commenced operation in 2008 without the approved barriers in place. Following a compliance enquiry by the department in 2010, the Licensee placed shipping containers on the site perimeter to provide noise attenuation in place of the approved barriers. The department acknowledged this temporary arrangement by letter to the Licensee dated 11 January 2011, and advised that a modification application would be required to allow the containers to remain on the site permanently.

1.1 Site and surrounding land uses

The parcel is legally known as Lot 8 DP 1039882. It is an irregular shape of about 6.5ha. The MRF site is on a 2ha sublease. The land is roughly level and zoned 4(a) Industrial under the Bankstown *Local Environmental Plan 2001*.

There are industrial developments located immediately to the south, west and north-west of the site. Nearby industries include food packaging, cement manufacturing and storage, refrigeration manufacturing, and a container transport company. The Main Southern Rail Line is located immediately to the north of the site. Residential areas are located 120m to the north of the site, beyond the rail line, and 140m to the east.

1.2 Compliance issues

The EPA revoked the Licensee's EPL for the MRF on 20 December 2013. The revocation notice is attached at **Appendix E**. The EPA stated in the notice that:

- the Licensee is currently in liquidation and has been under administration since 6 December 2010, which means there is no assurance that the current environmental issues at the premises will be addressed;
- dust has been observed migrating from the site during several site inspections by EPA officers; and
- there has been no apparent reduction in stockpile heights since the stockpiles were surveyed on 29 August 2013 (and observed to be above the EPL approved heights).

The Land and Environment Court granted a stay in relation to the revocation on 24 January 2014 subject to the licensee giving an undertaking not to receive further waste at the premises, not to combine or mix existing stockpiles, and to comply with a number of the EPL conditions.

The EPA inspected the premise on 21 February 2014 and issued a 'clean up notice'. The clean up notice is attached at **Appendix F**. The EPA stated in the notice that:

- stockpiles on the site were observed to be burning and fire water was observed to be migrating off site in stormwater drains during an inspection by EPA officers;
- during a number of subsequent inspections, EPA officers observed that the Licensee's staff were not complying with advice from NSW Fire & Rescue about how to more effectively extinguish the burning waste; and
- the EPA continues to receive complaints about smoke and odours from the premises impacting on neighbouring facilities.

The department has also conducted a number of compliance related inspections since March 2010. Its compliance investigation into a number of areas of concern continues with the most recent inspection conducted by URS on behalf of the department on 26 November 2013. The URS compliance report, dated February 2014 (see **Appendix G**), recorded the following observations:

- dust emissions and potentially contaminated stormwater leaving the site;
- inadequate bunding and materials segregation, stormwater, dust and noise controls;
- stockpile heights exceeding height limits in the EPL by up to 12m;
- the presence of asbestos in stockpiled material; and
- the stockpiling of waste within the shipping containers on the site perimeter.

The department understands that the EPA has recently carried out a number of clean-up works on the site including extinguishing the burning waste and removing some 20,000 tonnes of unconsolidated and unsorted waste. Notwithstanding the EPA's clean-up actions, the department considers that the site remains in non-compliance with the approved site layout out in terms of noise barrier installation, materials segregation and stockpile bunding.

On 9 July 2014, the EPA issued a new EPL for the site to a new company, Proactive Management Systems Pty Ltd. The EPL permits the new licensee to operate the site. However, for the time being it does not permit receipt of any further waste at the site.

2. PROPOSED MODIFICATION

The proposed modification is described in detail in the Proponent's Environmental Assessment (EA), which is attached at **Appendix B**. The modification involves the permanent use of the shipping containers, which were originally installed on a temporary basis, for noise attenuation.

The containers have been stacked 2 high on the site perimeter in the place of the approved acoustic barriers. A shipping container is 2.5m high (for an overall stacked height of 5m), 12.2m long and 2.5m deep. The location of the various container stacks are shown in **Figure 4**.

The modification application has been made by Always Recycling Pty Ltd (**Proponent**).

3. STATUTORY CONSIDERATION

3.1 Authority to determine

The approval for the MRF was granted under Part 3A of the *Environmental Planning and Assessment Act 1979* (**the Act**). The effect of section 75W is continued for such approvals by clause 2 of schedule 6A of the Act.

- *Site segregation* – the modification proposal does not deal with the internal barriers that were required in the approval to provide site segregation; and
- *Waste* – the shipping containers have been used for storing waste, which is not permitted.

Council raised a number of concerns in its submission, including:

- *Visual impacts* – particularly as the shipping containers may rust and weather;
- *Noise*:
 - the containers are mobile and they may be moved from time to time, with the result that noise impacts would not be properly attenuated; and
 - the containers may not, in any case, provide the necessary noise attenuation.

4. ASSESSMENT

In its assessment of the modification, the Department has considered the following:

- the EA for the proposed modification (see **Appendix B**);
- submissions made in respect of the modification (see **Appendix C**);
- the Proponent's Response to Submissions (See **Appendix D**); and
- the Director-General's assessment reports for the original project application and earlier modification approval.

In the department's view, there are a number of critical issues that remain unresolved with the proposed modification. These issues are explained below and include whether the shipping containers are appropriate substitutes for the dual purpose of the barriers (i.e. materials segregation *and* noise attenuation) and whether the shipping containers are visually appropriate.

4.1 Materials segregation

The modification proposal involves placing shipping containers on the site permitter only, where they are intended to function as acoustic barriers for the approved operation. However, the approved barrier layout included a number of internal barriers, which were required to segregate stockpiled material on the site.

Without the internal barriers, it would be difficult to manage stockpiles and separate waste in an orderly manner. The operation of the MRF without the internal barriers has led to a range of compliance issues including dust emissions, excessive stockpiles heights, stormwater contamination and the uncontrolled ignition and burning of waste. In addition, there is a significant risk of cross-contamination between raw materials and processed product.

This matter was raised as an issue by the EPA which has issued a clean-up notice to the Licensee to remedy a number of compliance issues that have resulted from the lack of internal segregation barriers. The Licensee did not act on the clean-up notice and the EPA subsequently intervened to remove over 20,000 tonnes of waste from the site.

The Proponent has not addressed the matter in the Response to Submissions. The department is therefore not satisfied that the barrier layout in the proposed modification adequately deals with the site's operating requirements.

4.2 Noise attenuation

The EA included a letter dated 4 July 2011 from Spectrum Acoustics Pty Ltd (**Spectrum**) detailing the results of noise measurements taken on 7 April 2011 at various residential receivers. The letter observed that shipping containers had been stacked on the site as acoustic barriers following an earlier noise audit on 13 May 2010, which found a small exceedence of the noise criteria.

Spectrum indicated in its letter that, from the noise measurements taken on 7 April 2011, noise impacts attributable to the MRF (with the shipping containers in place) were 47dB(A)_{Leq,15min} and 43dB(A)_{Leq,15min}, which complies with the lowest criterion in the project approval of 47dB(A)_{Leq,15min} for residences in Waldron Road to the north.

However, it is unclear whether the noise measurements taken by Spectrum on 7 April 2011 accounted for the operation of machinery on top of stockpiles and above the top level of the

container stacks. The container stacks are only 5m high, whereas the approved concrete barriers are required to be 8m high on the northern perimeter of the site to ensure that activities at the premises are shielded from the noise sensitive receivers to the north.

During its inspection of the premises on 26 November 2013, the department observed machinery operating on top of stockpiles well above the height of the shipping containers (see **Figures 5 and 6**). The Proponent's approved Noise Management Plan dated September 2009 states that "no processing of materials works should be carried out at a height greater than one metre lower than the nearest barrier".



Figure 5 – Machinery operating on top of a stockpile



Figure 6 – Machinery operating on top of a stockpile

It is unclear whether the premises can operate within this requirement if 5m high shipping containers are to be the relevant barriers. The proponent's response to this issue in the Response to Submissions indicates that the approved barriers would be required and the shipping containers would be inadequate for the full range of machinery locations on the site. Despite this, the proponent still seeks approval for the shipping containers to be used for noise attenuation.

The modification application does not include a prospective noise impact assessment that models the noise impacts from the operation of the MRF with acoustic barriers that are 5m high instead of 8m high. Consequently, the department is not satisfied that the proposed shipping containers are either adequate to shield all processing activities at the premises from noise sensitive receivers, or sufficient to attenuate noise impacts to comply with the existing noise criteria in the approval.

4.3 Visual

The visual impact issues for the proposed modification are two-fold. The containers are insufficient to screen operations of the premises, as can be seen in **Figure 7**. In addition, the container stacks are sometimes misaligned, painted various colours and often in poor physical condition as can be seen in **Figures 8, 9 and 10**.

When taken collectively, the shipping container stacks are highly visually discordant, which leads to a high level of impact on the visual amenity of the area. While located within an industrial zone, such poor aesthetic qualities are highly inappropriate for permanent physical structures. Council raised the unacceptable visual impacts of the shipping containers in its submission to the department.



Figure 7 – Waste stockpiled above the container stacks



Figure 8 – Rusting container stacks

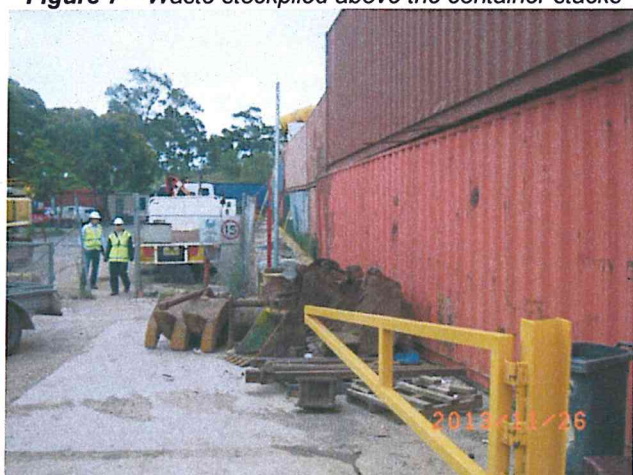


Figure 9 – Misaligned container stacks

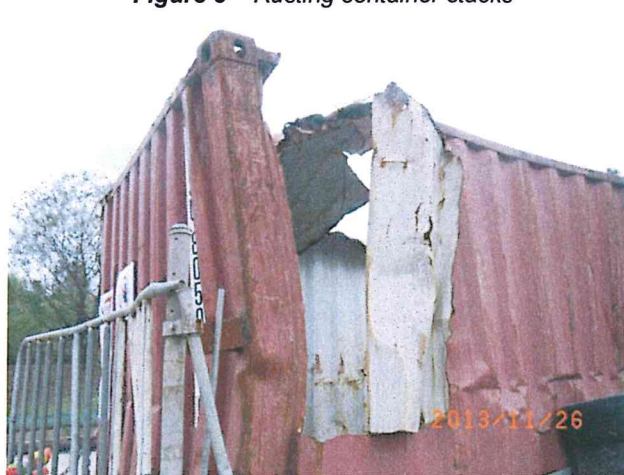


Figure 10 – A damaged container

5. CONCLUSION

The original project application required installation of acoustic barriers on the perimeter of the approved MRF, and within it to segregate stockpiles of waste and product materials. The barriers were required to be up to 8m high and made of concrete or a composite of concrete, steel and rubber. The barriers have never been installed.

In response to the department's compliance enquiry in 2010, the site operator installed a number of 5m high shipping container stacks on the site perimeter to act as acoustic barriers. The proposed modification application is to make the temporary shipping containers a permanent feature of the site. However, the department has a number of critical concerns with this proposal.

The layout of the shipping containers does not provide the necessary internal segregation of materials stockpiles. The site operator would be unable to prevent cross-contamination between the stockpiles or operate the MRF in an orderly manner. The absence of the internal segregation barriers has led to a range of compliance issues with the MRF including dust emissions, excessive stockpiles heights, stormwater contamination and the uncontrolled ignition and burning of waste.

The EPA revoked the EPL for the site, observing that the Licensee was liquidated and under administration. The EPA issued a clean-up notice to the Licensee to remedy a number of compliance issues that have resulted from the lack of internal segregation barriers. While the revocation of the EPL was suspended by the court, the Licensee did not act on the clean-up notice and the EPA subsequently intervened to remove over 20,000 tonnes of waste from the site.

In addition, the modification application does not include a prospective noise impact assessment modelling the noise impacts of the MRF with acoustic barriers that are up to 3m lower than those required in the approval. Noise measurements of the MRF in operation with the container stacks were carried out by the Proponent in June 2011. These measurements appear to indicate that the

container stacks may provide some level of noise attenuation. However, it appears that the shipping containers are not sufficient to attenuate noise impacts from the full range of machinery locations on the site, especially the operation of machinery on top of stockpiles.

Further, the containers are in very poor condition and have been placed on the site in a haphazard manner. They are painted various colours and the whole effect is one of very high visual discordance, which is unacceptable for a permanent installation.

The department is not satisfied that the shipping containers are appropriate permanent substitutes for the approved barriers because of these critical issues. The application is considered to be contrary to the public interest and refusal is recommended.

6. RECOMMENDATION

Under delegation of the Minister, it is **RECOMMENDED** that the Executive Director, Development Assessment Systems & Approvals:

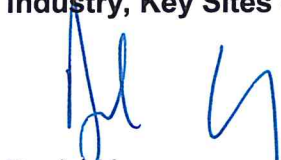
- **consider** the findings and recommendations of this report;
- **refuse** the proposed modification under Section 75W of the Act; and
- **sign** the attached notice of refusal.

David Mooney
A/Team Leader



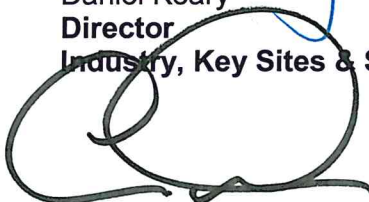
Chris Ritchie
Manager
Industry, Key Sites & Social Projects

27/8/14



Daniel Keary
Director
Industry, Key Sites & Social Projects

27/8/14



Chris Wilson
Executive Director
Development Assessment Systems & Approvals

28.8.14