



ASSESSMENT REPORT

Section 75W Modification Patons Lane Waste and Resource Management Facility (formally Orchard Hills)

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval (MP 09_0074 MOD 1) for the Orchard Hills Waste and Resource Management Facility under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks to amend the conditions of approval relating to site establishment and the approval lapse date.

1.1. Site History – Project Approval

On 13 July 2012, the Land and Environment Court (the Court) granted Project Approval to Dellara Pty Ltd (Dellara) to construct and operate a waste and resource management facility at Orchard Hills in the Penrith local government area. The approval permitted the processing of up to 450,000 tonnes per annum (tpa) of construction and demolition and commercial and industrial waste and the extraction of shale/clay.

The project was determined by the Court as Dellara had lodged a Class 1 appeal challenging the Minister for Planning's (Minister) refusal. The Minister had recommended refusal due to:

- a lack of demonstrable need for a proposal of this scale and at this location;
- the introduction of land use conflicts between the proposal and nearby residents;
- an unacceptable risk that the project would not meet relevant noise criteria;
- the proposal being inconsistent with the objectives of key strategic planning instruments in relation to maintaining the scenic qualities and rural landscape character of the area;
- unacceptable long term visual impacts; and
- the proposal not being in the public interest.

During the course of the Court proceedings, the project was revised to reduce its potential impacts and as such, is different from the project that was refused by the Minister (see **Section 2.2**).

The site has recently been purchased from Dellara by SRC Properties (SRC) and is approximately 60 hectares (ha) in area. The site is located on the site of a shale quarry at 123-179 Patons Lane, Orchard Hills, approximately 7.7 kilometres (km) south east of Penrith (see **Figure 1**).

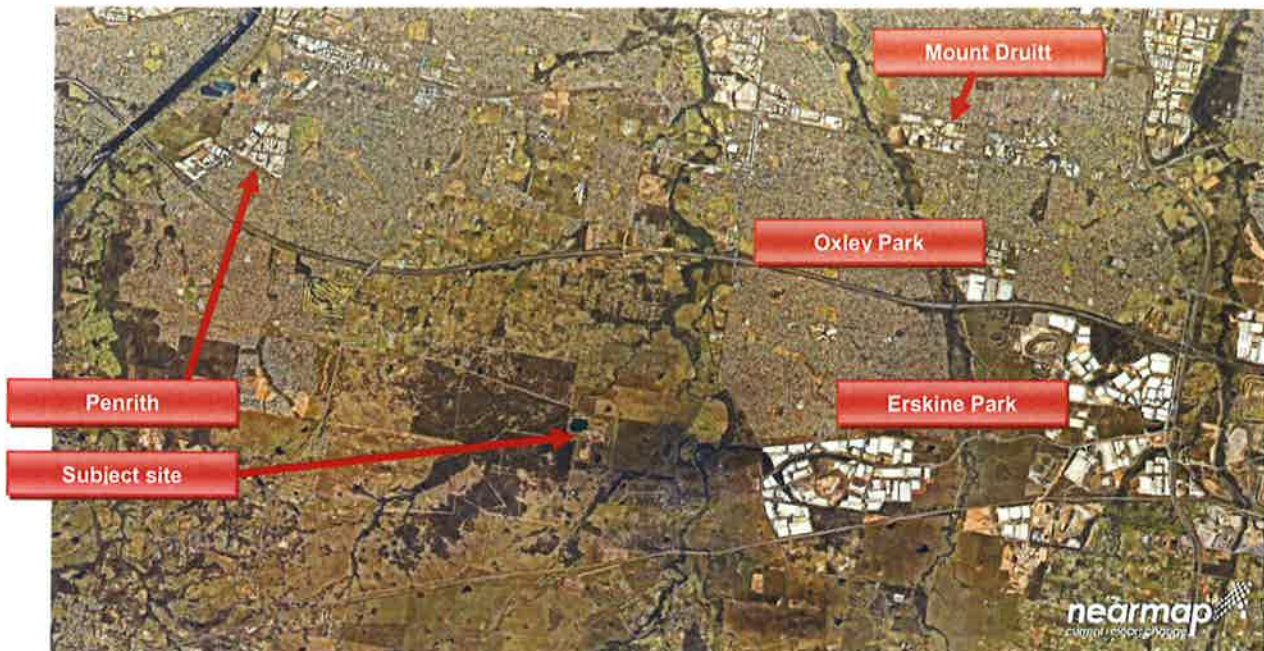


Figure 1: Locality map showing the subject site

1.2. Site and surrounding land uses

The site has operated intermittently as a shale quarry since 1981. Quarrying operations have disturbed much of the site. The main disturbance areas include two quarry extraction areas, four dams, a sump, and earthen perimeter bund walls. The bund walls vary in height from 5 metres (m) to 19 m and total approximately 1,900 m in length.

Access to the project site is via Patons Lane, which connects to Luddenham Road, then Mamre Road, which ultimately connects to the M4 Motorway approximately 5 km to the north of the site.

The closest dwellings are within a residential subdivision known as “The Vines” located 500 m to the north. A rural property known as “Roughwood Park” is located to the east. A former horse stud is to the south east and vegetated land owned by the Commonwealth Department of Defence is located to the west (see **Figure 2**).



Figure 2: The site and surrounding land uses

2. SITE HISTORY

2.1 Quarrying operations

The shale quarry commenced operation in 1981 under a development consent granted by Penrith City Council. The quarry was sold to another operator in 1989 and later, that operator's Environment Protection Licence was suspended as a result of accepting unauthorized building and demolition waste, including asbestos waste. The waste had been incorporated into the north and north east perimeter bunds. The site was purchased by Dellara in August 2008 and later by the current Proponent, SRC. The site has been in a state of "care and maintenance" since it was purchased by Dellara.

2.2 Project Approval

The 13 July 2012 approval by the Court permits:

- 4,300,000 tonnes (t) total waste emplacement (revised down from 6,300,000 t);
- revised and lower profile re-shaping of the north and north-eastern bund walls;
- 5,200,000 t total clay/shale extraction; and
- a revised and lower profile final landform.

The Court's conditions of approval require:

- site establishment to be undertaken over a period of not more than six months; and
- the consent to lapse if site establishment is not completed within five years from the date of approval (ie the Court's approval dated 13 July 2012).

Since the Court's approval, Dellara went into receivership and SRC purchased the site. The transfer of ownership took a number of years following the project's approval, and as such, there has been no actions to comply with the conditions of approval at this stage.

The layout of the Court approved project is shown in **Figure 3** and the Court approved plan of site establishment works (as relevant to this modification) is shown in **Figure 4**.

3. PROPOSED MODIFICATION

The modification proposal involves amending the Court's conditions of approval to:

- allow site establishment works over a period of 18 months (instead of six months);
- clarify the scope of site establishment works in the definitions schedule of the approval conditions to address a misdescription (the definitions currently specify that all of landfill Cell 1 is to be constructed, whereas the Court approved plan specifies only landfill Cell 1A is required to be developed as part of site establishment works); and
- amend the lapsing condition so that the approval does not lapse once physical work has commenced on the project, rather than lapsing if all the site establishment has not been completed.

SRC advises that these modifications are necessary to allow site establishment works to be carried out. The new timeframe has arisen following a detailed investigation of site establishment works. SRC's detailed analysis found that:

- a significant quantity of rainwater needs to be removed from the quarry voids before earthworks can begin, which is estimated to take six months; and
- the site establishment earthworks involve 1.04 million cubic metres (m³) of excavations, with a further 119,000 m³ required to excavate Cell 1A (note: this volume of material is the same as the approved project). This is now expected to take 12 months.

4. STATUTORY CONTEXT

4.1 Modification request

The project approval was originally granted by the Court under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act. Therefore, the proposed modification must be determined under Section 75W of the EP&A Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act and do not constitute a new application. The modifications are essentially an extension to the construction schedule and there are no material changes to the scope and layout of the project.

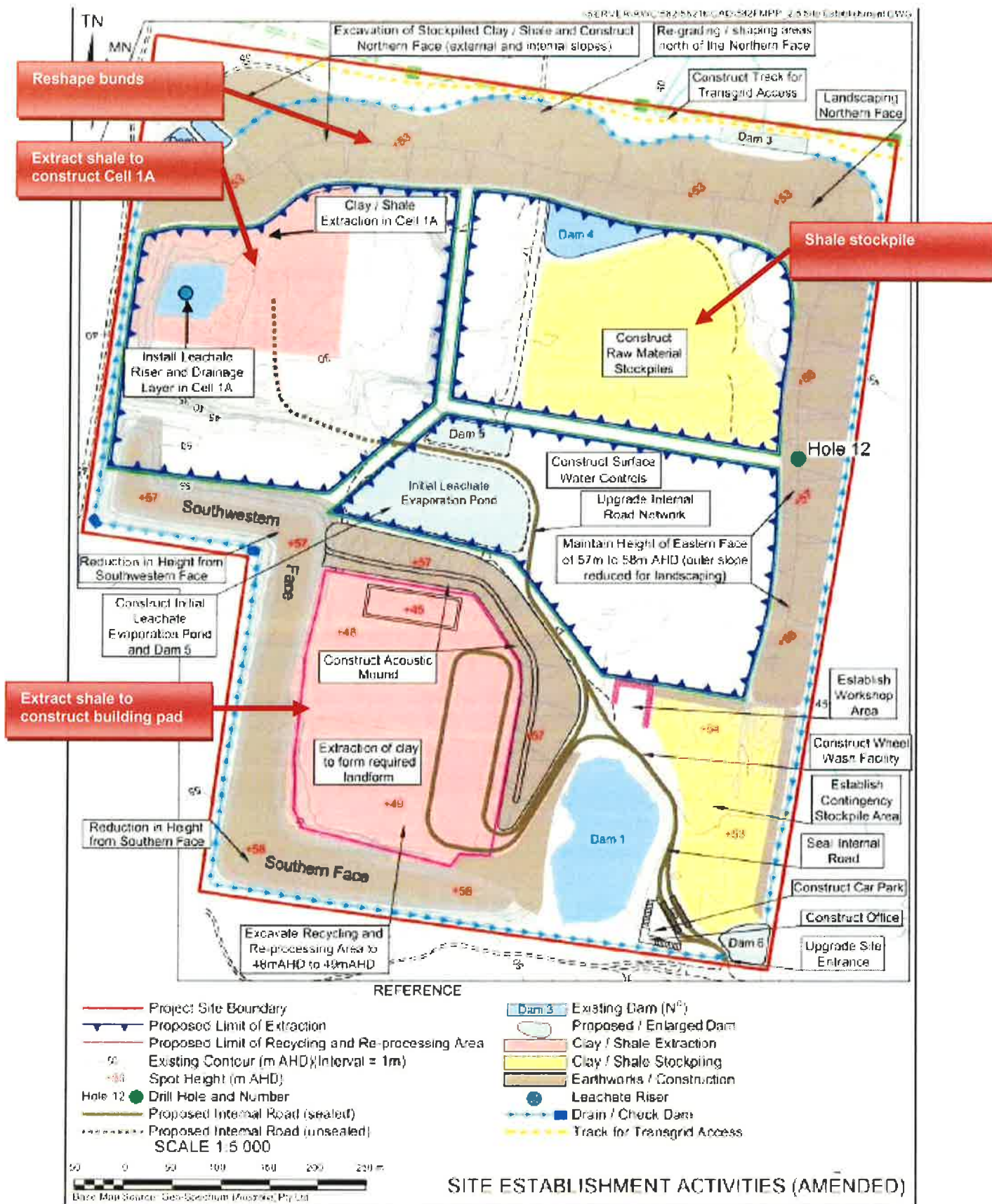


Figure 4: Approved site establishment plan

4.2 Approval Authority

On 16 February 2015, the Minister for Planning delegated authority for the determination of section 75W modifications to the Executive Directors who report to the Deputy Secretary, Planning Services where:

- the relevant local council has not made an objection;
- a political donations disclosure has not been made; and
- there are fewer than 25 public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Penrith City Council did not object to the modification, a political donations disclosure was not made in relation to the modification, and fewer than 25 public submissions were received in the nature of objections. Accordingly, the Executive Director, Key Sites and Industry Assessments may determine the modification in accordance with the Minister's delegation.

5. CONSULTATION

Under Section 75W of the EP&A Act, the Department is not required to formally notify or exhibit the proposed modification. However, due to the significant public interest in the original project application and the potential for continued interest, the Department exhibited the proposed modification for three weeks from 25 November 2015 to 18 December 2015:

- on the Department's website;
- at the Department's information centre; and
- at Penrith City Council's offices.

The Department advertised the public exhibition in the Penrith Press and Western Weekender, and notified the Environment Protection Authority (EPA), Council and nearby landowners in writing.

5.1 Submissions

The Department received five submissions during the exhibition period, one from the Environment Protection Authority (EPA), one from Penrith City Council, and three from the general public. Neither Council nor the EPA objected. All three public submissions objected.

The **EPA** raised no concerns in relation to the proposal.

Council did not object and noted that the Department should give consideration to the potential noise and air impacts of the extended construction period.

All **public submissions** objected to the proposed modification. A key concern was that the approval should not be modified in principle as the Proponent purchased the site with knowledge of the conditions of approval that applied. The Department acknowledges that the original project application and the Court appeal attracted a lot of public concern. However, the Department is obliged to consider the modification on its merit.

One submission raised concerns in relation to potential noise impacts from the extended construction timeframe (see Section 6 of this report), while other concerns in the public submissions related to the original project application.

6. ASSESSMENT

In assessing the modification, the Department has considered the following documents:

- the modification request and supporting document (see **Appendix B**);
- submissions (see **Appendix C**);
- the Court's approval; and
- the relevant provisions of the EP&A Act.

Key issues for assessment include whether there are additional impacts to air quality, noise or traffic as a result of the extended site establishment period. As the modification is primarily administrative and does not seek to increase the volume of material extracted, landfilled or the intensity of operations, the original studies assessed by the Court and as part of the original application are considered to remain relevant for this modification.

6.1 Air quality impacts

Air quality was an issue carefully considered by the Court in making its determination on the application. During the Court case, an air quality assessment of the revised project was undertaken by PAE Holmes in accordance with the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (Approved Methods)*. The assessment approach was conservative as it assumed:

- clay/shale extraction would occur throughout the site establishment period rather than at the end as proposed; and
- the earthmoving equipment would be in the location of highest impact for the entire site establishment period.

The assessment determined that the project would generally comply with the relevant assessment criteria for dust, particulates and odour.

While proposing to extend the duration of site establishment, the modification does not propose additional or revised site establishment work. As such, the amount of dust generated by the modified project is likely to remain the same as previously assessed. However, as the generation of this dust would occur over a longer period of time, it is expected that impacts would be lower given the decreased volume of dust liberated at any one time.

On this basis, the 2011 PAE Holmes assessment remains applicable to the modification. The PAE Holmes assessment concluded that worst-case cumulative impacts (background plus site establishment) from site establishment works (and the project generally) would generally comply with the air emissions criteria in the *Approved Methods*. **Figure 4** shows a contour map of 24-hour average PM₁₀ air emission from site establishment works, which is also indicative of the potential air quality impacts of the development more generally.

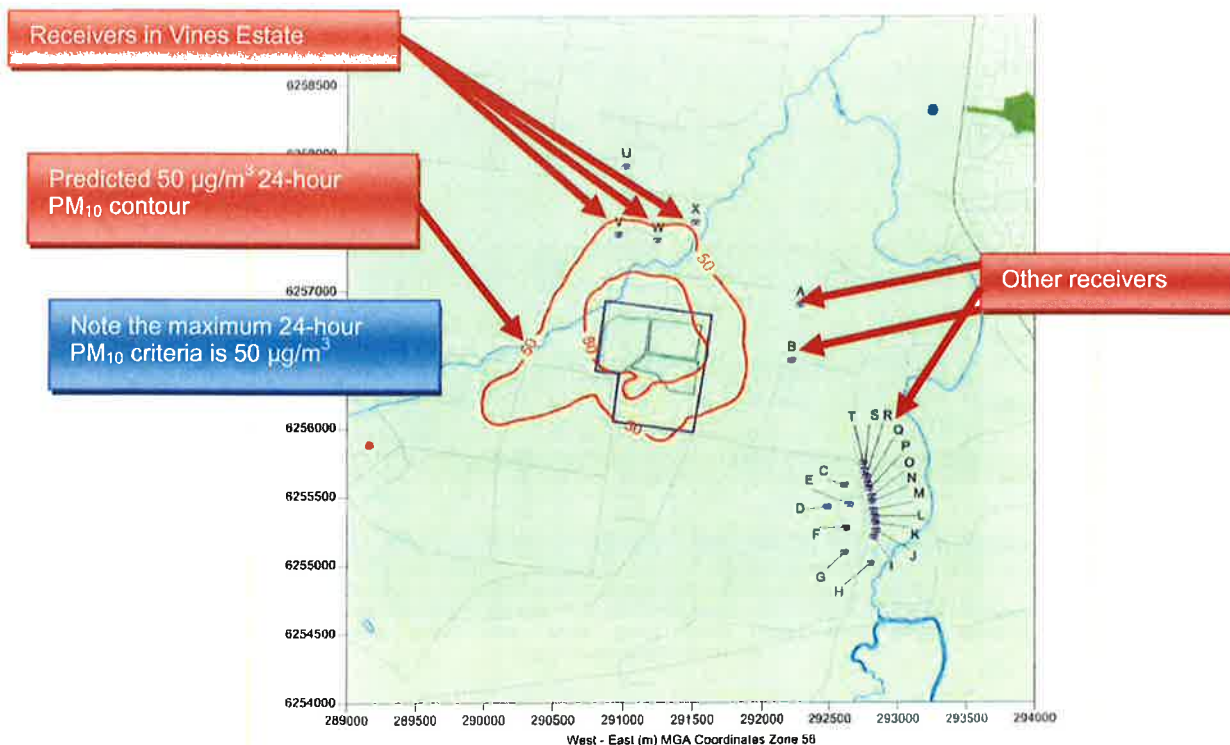


Figure 5: Maximum 24-hour PM_{10} air emissions from site establishment work including background

The assessment identified the potential for up to $1.1 \mu\text{g}/\text{m}^3$ exceedance of 24-hour PM_{10} criteria at two receivers on one day during the modelled period (see **Figure 5**) and attributed the exceedance to unusually high background levels, likely resulting from an extraordinary event such as a bushfire. The assessment also identified that the contribution to air emissions by the facility would be generally low for all measured pollutants.

However to ensure dust is adequately managed, the approval includes a range of stringent conditions which aim to control the generation of particulates from the site. In particular, the conditions include:

- emissions limits as required by the *Approved Limits*;
- reasonable and feasible control measures;
- the requirement to implement a comprehensive Air Quality Management Plan which is prepared by an experienced expert and includes a monitoring program and installation of a real-time particulate matter (PM_{10}) air quality monitor; and
- the requirement that any identified non-compliances are rectified.

These conditions would apply to the proposed extended site establishment period in the same way they apply to the approved site establishment period.

The existing conditions also contain the requirement to install a weather station, however the timing for its installation was not identified. To ensure that it is installed at the appropriate time, the Department has recommended that the weather station is installed prior to site establishment to ensure the Proponent can determine the periods when construction is likely to impact off-site air quality and modify any activity on site to ensure compliance with the approval.

The EPA did not raise any issues with the proposed modification, and the Department's assessment has concluded that with the implementation of the existing and recommended conditions of approval, additional air impacts resulting from the modification would be negligible and adequately managed.

6.2 Noise impacts

The project approval has a number of conditions governing noise impacts from the site. There are conditions relating specifically to site establishment works such as:

- specific noise limits;
- real time compliance monitoring;
- hours of work;
- the use of 4 m high noise barriers; and
- the implementation of a Site Establishment Noise Management Plan.

The Proponent is also required to provide the Department with a compliance report 3 months after the commencement of site establishment. These conditions would apply to the proposed extended site establishment period in the same way they apply to the approved site establishment period.

The noise limits specified in the conditions were based on the 2012 noise impact assessment report, undertaken by Wilkinson Murray during the Court case, which addressed the requirements of the *Interim Construction Noise Guideline* (ICNG). The noise limits in the approval for site establishment is shown for nearby receivers in **Figure 6**.

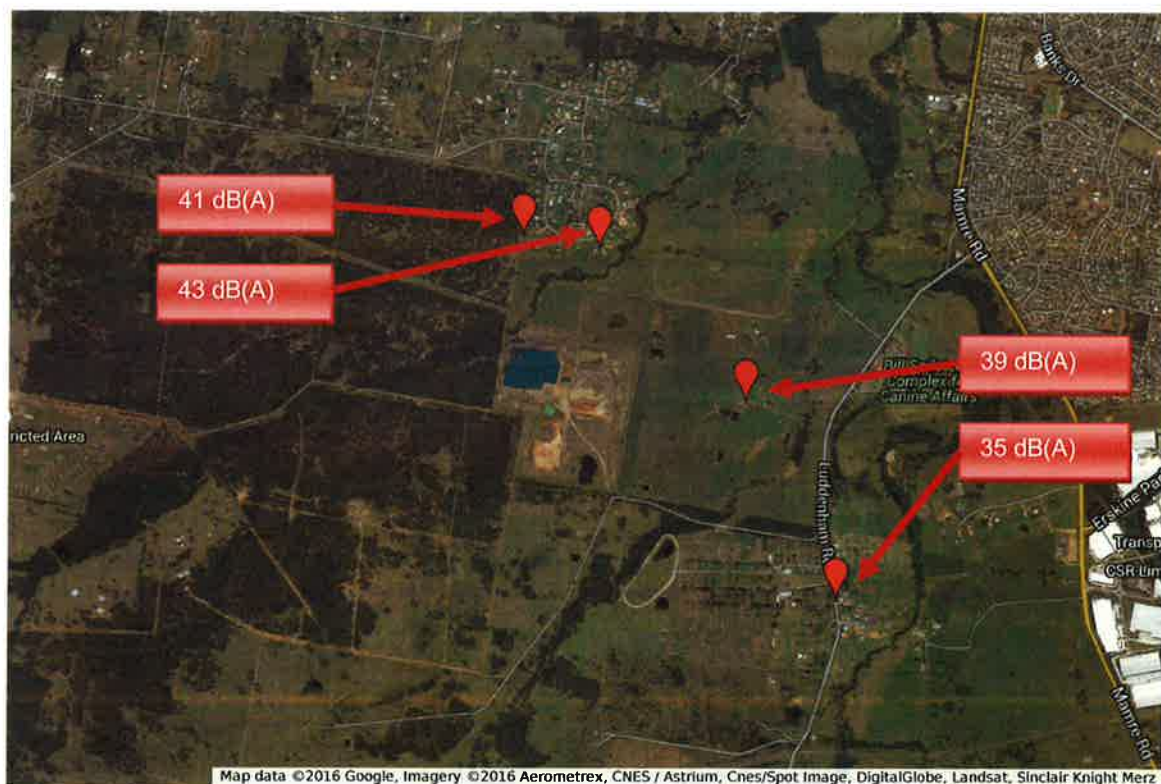


Figure 6: Site establishment noise criteria at nearby receivers

As there is no change to the nature of the approved site establishment work, the potential noise impacts remain the same in the proposed modification. While an objector raised concerns about the longer duration of site establishment noise impacts, the Department notes that an 18 month construction schedule is not unusually long for a project of this scale and it remains within the scope of impacts anticipated by the project. The Department recommends that the noise monitoring report, which currently is required to be submitted three months after site establishment commences, should now be submitted every three months for the duration of the 18 month site establishment period. This recommendation has been included in the conditions of approval.

The EPA did not raise any noise issues in relation to the proposed modification and the Department's assessment has concluded that the existing conditions contained in the project approval are sufficient to ensure that noise impacts associated with the proposed modification are managed appropriately.

6.3 Traffic impacts

The site is accessed via Patons Lane which connects to Luddenham Road. Patons Lane is a public road, however access is restricted due to the proximity of a training area (to the west) owned by the Commonwealth Department of Defence, as such it is fitted with a locked gate near its intersection with Luddenham Road. This limits the amount of traffic along Patons Lane. Once site establishment works commence, the gate will remain open during operating hours and locked at all other times. Luddenham Road is classified as a regional road and the 2010 traffic assessment determined it had an annual average daily traffic count of 3,162 vehicles.

The traffic assessment undertaken for the approved project determined that a maximum of 102 truck movements would be generated per day during site establishment. This is less than half of the approved 250 maximum daily heavy vehicle movements prescribed by the approval for the operations of the project.

Given the access restriction to Patons Lane and the number of vehicles permitted for the operational life of the project, the additional time proposed for site establishment is unlikely to increase traffic impacts.

The existing approval includes traffic related conditions to minimise construction traffic impacts including the preparation of a Construction Traffic Management Plan and a bridge load capacity investigation before site establishment commences. These will continue to apply to the proposed extended site establishment period.

Council did not raise any construction traffic issues, and the Department notes the longer site establishment period would not change the total number of traffic movements required for site establishment work, and is likely to result in lower average daily construction traffic. Consequently, the Department's assessment has concluded that the modification would not result in construction traffic impacts beyond those originally assessed and approved.

6.4 Lapse date

The Proponent has advised that if the lapse provisions remained, the project would not be able to proceed and is therefore seeking to amend the approval to align with standard wording which is generally linked to physical commencement.

The Court's condition is not a standard condition in that it is possible for the approval to lapse after site establishment works have commenced. This is generally inconsistent with the EP&A Act, which specifies that an approval does not lapse after work has physically commenced on a site.

The Department has included a revised condition of approval governing the approval lapse date. The lapse date would not change (being 5 years after the grant of the approval), but if physical work is commenced on the site prior to the date, the approval will not lapse.

6.5 Site establishment definition

The site establishment definition in the project approval specifies the construction of landfill Cell 1. However, this is inconsistent with the approved site establishment plan, which specifies landfill Cell 1A as part of the site establishment work (with the remainder of Cell 1 to be completed as part of operations). The Department notes that site establishment

impacts in the Court's decision were based on the construction of Cell 1A and therefore, the definition of site establishment in the approval is a misdescription. The Department has therefore recommended the definition in the project approval be revised accordingly.

7. CONCLUSION

The proposed modification primarily involves extending the approved site establishment construction program from six months to 18 months. The Proponent has identified the need for the additional time following a detailed review of the site establishment works. This includes a need to undertake six months of quarry dewatering before excavation work can begin on the new landfill cell, followed by around 12 months of excavation and site re-shaping.

As the works to be undertaken during site establishment would remain the same as those assessed and approved by the Court, the air, noise and traffic impacts of the longer site establishment period would not increase and remain within acceptable limits.

The Department acknowledges the strong public interest in the project during both the original assessment and appeal in the Court. The Department also acknowledges the concerns raised in one public submission about the longer duration of potential construction impacts. However, the proposed site establishment period is not an unusually long construction schedule for a project of this scale and nature and would likely have been approved by the Court had the need for additional time been identified during the appeal.

The Department notes that neither the EPA nor Council have raised objections or any issues with the proposed modification and therefore recommends approval of the modification subject to strengthened conditions which require:

- the weather station to be installed prior to site establishment;
- a noise monitoring report be submitted every three months during site establishment; and
- amendments to the consent lapse condition and the site establishment definition.

8. RECOMMENDATION

Under delegation of the Minister, it is **RECOMMENDED** that the Executive Director, Key Sites and Industry Assessments;

- consider the findings and recommendations of this report;
- approve the modification under Section 75W of the EP&A Act;
- sign the attached instrument **Appendix A**.

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Chris Ritchie
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Industry Assessments

15/3/16



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30/3/16