

ASSESSMENT REPORT

Section 96(1A) Modification WestPark Industrial Estate Chemical Storage and Distribution Facility, Erskine Park (SSD-4953)

1. BACKGROUND

In 2003, Penrith City Council (Council) approved a masterplan for the staged development of the Westpark Industrial Estate (the Estate) at Erskine Park, in the Penrith local government area (see Figure 1).

The Estate is located on a site in the north-west corner of the 'Erskine Park Employment Lands Precinct' of the Western Sydney Employment Area (WSEA, see Figure 1).

The site is located in an established industrial area, is surrounded by a number of other storage and distribution facilities and the suburbs of St Clair to the north and Erskine Park to the east.

The nearest residences are rural residences located approximately 270 metres to the west of the site on Mamre Road and in Mandalong Close (see Figure 1).

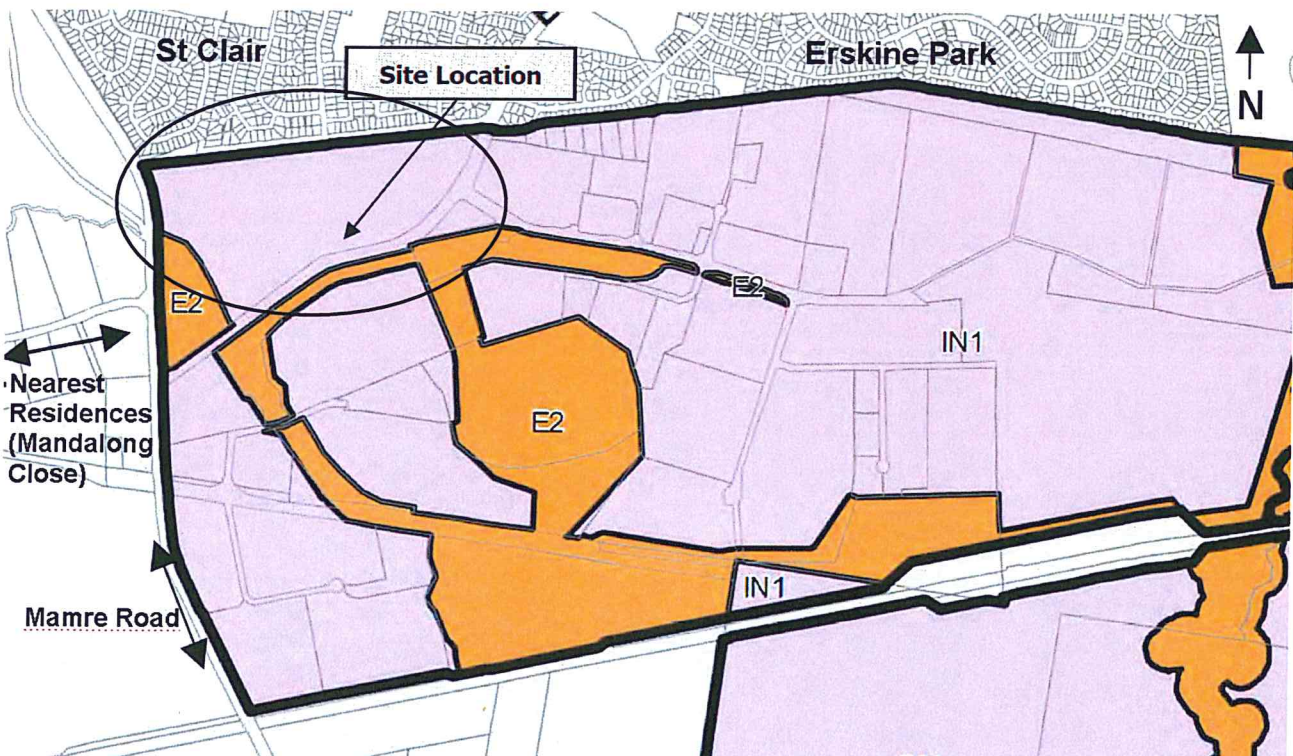


Figure 1: Location of the Westpark Industrial Estate in the WSEA

The approved masterplan for the Estate included three warehouse structures (A, B and C, see Figure 2).

In July 2008, a development application (DA) for the construction of warehouse Building B (including two separate tenancies, B1 and B2) was approved by Council (DA 08/0345).

On 21 May 2012, the Executive Director, Major Projects Assessment, as delegate for the Minister for Planning and Infrastructure granted consent (SSD-4953) to Prime Construction Pty Ltd (Prime) for the fit-out and operation of Building B1 as a dangerous goods storage and distribution facility.

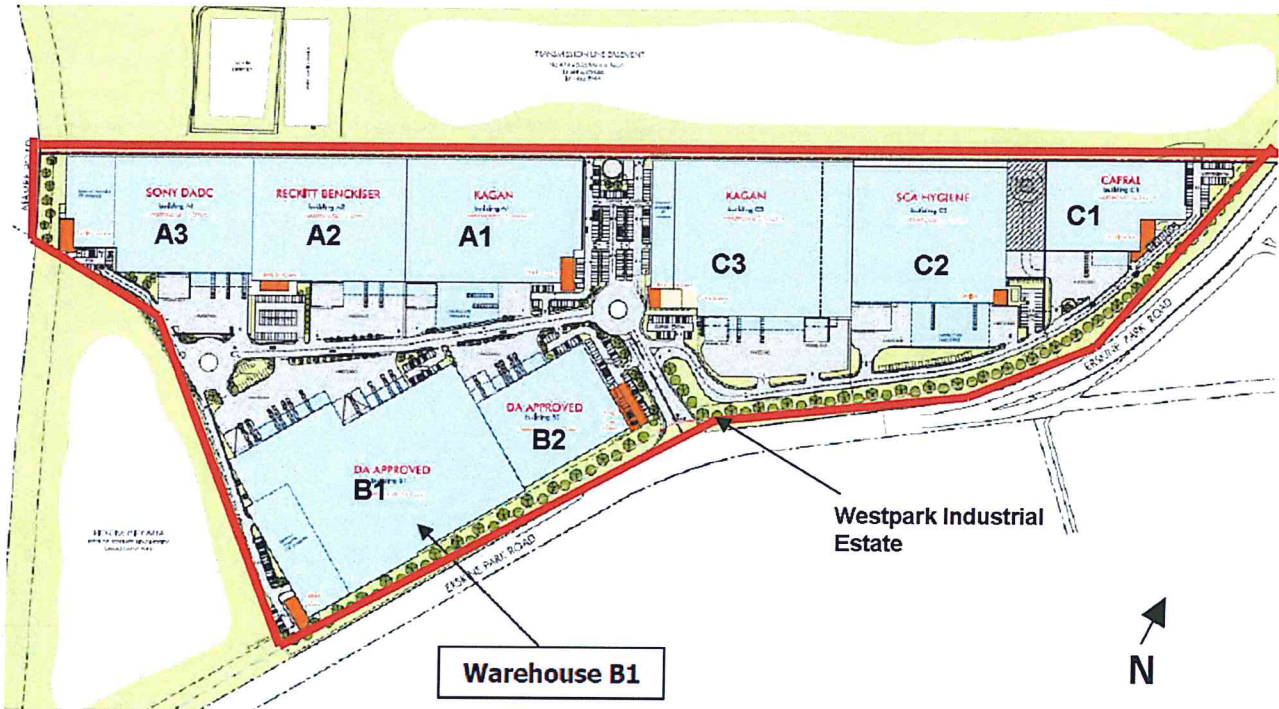


Figure 2: Masterplan of the Westpark Industrial Estate

The proposal was State Significant Development (SSD) because it involved the storage of around 1,700 tonnes of household aerosol products (e.g. aerosol fly sprays, carpet and oven cleaners) which are classified as Dangerous Goods-Class 2.1 under the Australian Dangerous Goods Code (Edition 7). This substantially exceeded the Major Hazards Facility (MHF) threshold of 200 tonnes for the storage of Class 2.1 materials, and as such met the criteria in Clause 10(3) of Schedule 1 in *State Environmental Planning Policy (State and Regional Development) 2011*.

The approved layout of Building B1 is shown in Figure 3.

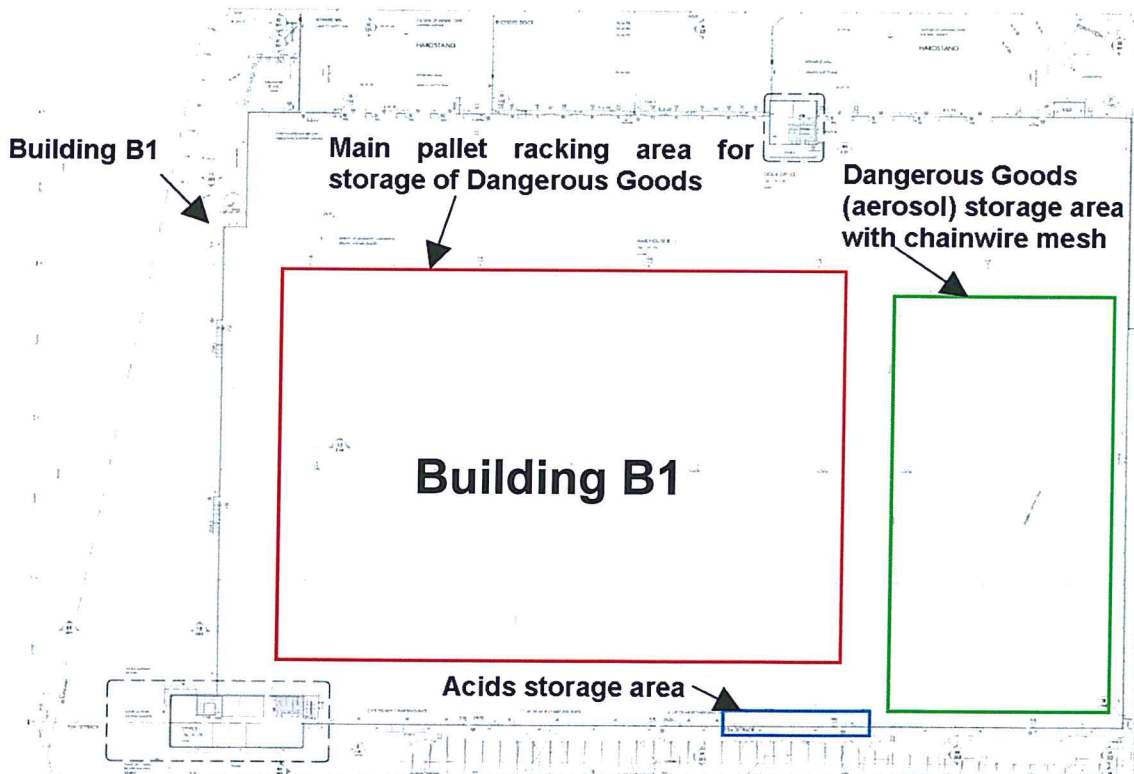


Figure 3: Approved Internal Floor and Storage Plan for Building B1

The construction and fit-out of Building B1 is currently being finalised by Prime. The site is owned by Goodman Industrial Funds Management Ltd (Goodman) and is leased to, and operated by DHL Supply Chain (Australia) Pty Ltd (DHL) as the building tenant.

2. PROPOSED MODIFICATION

On 20 November 2012, Goodman lodged a modification application with the Department under section 96(1A) of the *Environmental Planning and Assessment Act 1979* to extend the approved hours of operation at the facility to 24 hours a day, 7 day a week.

Under the current Minister's consent (SSD-4953), the facility is approved to operate from 6.00am to 10.00pm (i.e. 16 hours), 7 days a week.

On rare occasions, DHL is required to keep a constant supply of goods to its clients (e.g. large retail outlets) to meet demand during holiday periods and special events. In these peak periods, DHL require longer working hours to meet the constant demand.

DHL does not intend to regularly operate outside normal hours (i.e. those hours currently approved for the facility), rather it would operate 24 hours in exceptional circumstances to meet customer demand during peak periods. An additional staff shift would be necessary to accommodate 24 hour operation.

- During peak periods when it is necessary to operate 24 hours, there would be no increase in heavy vehicle movements to and from the site, rather the movements (at existing approved levels over 16 hours) would now be spread over a full 24 hours to allow a constant supply of goods to customers.

The proposed modification would result in no change to the approved use, throughput of Dangerous Goods or physical building footprint of the approved facility.

3. STATUTORY CONTEXT

Consent Authority

The application proposes to modify a State Significant Development consent (SSD-4953) granted by the Executive Director, Major Projects Assessment, as delegate of the Minister under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act). The Minister (or his delegate) is therefore the consent authority for the proposed modification.

The Executive Director, Development Assessment Systems and Approvals, may determine this application on behalf of the Minister in accordance with the Minister's delegation dated 27 February 2013, where:

- • the relevant Council has not made an objection;
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

In this regard, it is noted that Council has not made an objection to the proposal, no political disclosure statement has been made for this application or any previous related application, and no public submissions have been received. Consequently, the Department considers that the application meets the terms of the delegation and that the Executive Director may determine this application under delegated authority.

Section 96

Section 96(1A) of the EP&A Act requires the consent authority to consider a number of matters in respect of all applications which seek modifications to an approval. The Department's consideration of these matters is outlined in Table 1 below.

Table 1: Department's consideration of matters under Section 96(1A) of the EP&A Act

Matter	Consideration
Whether the proposed modification would have minimal environmental impact?	The Department has considered the environmental impacts of the proposed modification in Section 5 of this report and is satisfied that they would be minimal.
Whether the modified development would be substantially the same	The proposed modification would result in no change to the approved use, throughput or physical building footprint of the originally approved facility. Further, the Department is satisfied the environmental impacts of the proposed modification

Matter	Consideration
development?	would be minimal (see Section 5 of this report). As such, the Department is satisfied that the modified development would be substantially the same development when compared to the development for which consent was originally granted.
Whether the application has been notified in accordance with the <i>Environmental Planning and Assessment Regulation 2000</i> ?	Refer to Section 4 of this report.
Whether submissions concerning the proposed modification have been considered?	Refer to Sections 4 and 5 of this report.
Any relevant provisions of Section 79(C) of the EP&A Act	The Department has assessed the merits of the proposed modification having regard to the relevant provisions of Section 79C of the Act in Section 5 of this report. The Department is satisfied that the modification is in the public interest and should be approved, subject to conditions (see Section 6 of this report).

Based on the consideration in Table 1, the Department considers that the application should be assessed and determined under Section 96(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4. CONSULTATION

The Department is not required to notify or exhibit a modification application made under Section 96(1A) of the EP&A Act. Following a review of the application, the Department did not believe formal public notification of the application was necessary. Notwithstanding, the Department sought comments from Penrith City Council (Council), the Environment Protection Authority (EPA), Roads and Maritime Services (RMS) and WorkCover NSW (WorkCover).

Council noted that the environmental impacts of the proposal would need to be assessed by the EPA because the development is subject to an Environmental Protection Licence (EPL) under the *Protection of the Environment Operations Act 1997* (POEO Act).

Council considered that the noise predictions for the modified operation should be calculated using actual noise emissions measured at the facility, rather than using generic noise data from a database.

The **EPA** considered that the potential noise impacts of the proposed modification had been satisfactorily addressed in the Environmental Assessment and recommended draft EPL conditions.

RMS requested that the Applicant submit a Traffic Impact Report (TIR) including details of changes to staffing levels, staff shifts and traffic movements for light and heavy vehicles due to the proposed increased hours of operation.

WorkCover requested clarification on whether or not the proposed modification would result in increased turnover/throughput or transport of dangerous goods.

WorkCover noted that if the proposed modification would result in increased turnover/throughput of dangerous goods, a Hazards Analysis would be required.

5. ASSESSMENT

The Department has assessed the merits of the proposed modification and considers the key issues to be noise, hazards and risk and traffic impacts (see Table 2 below).

Table 2: Assessment of key issues

Issue	Assessment	Recommendation
Noise	<ul style="list-style-type: none"> The site is located in an established industrial area of the WSEA and is surrounded by a number of other facilities that operate 24 hours, 7 days a week. The nearest residences are rural residences located approximately 270 metres to the west of the site across Mamre Road and Mandalong Close (see Figure 1). The Environmental Assessment (EA) for the proposed modification included a Noise Impact Assessment (NIA) undertaken by SLR Consulting Pty Ltd. 	<ul style="list-style-type: none"> Require the Applicant to: <ul style="list-style-type: none"> comply with the noise limits for the facility during day, evening and night, as recommended by the EPA; undertake a noise compliance validation assessment in consultation with the EPA, within 1 month

Issue	Assessment	Recommendation
	<ul style="list-style-type: none"> The NIA concluded that during modified operations (24 hours, 7 days a week), the facility would comply with the relevant EPA noise criteria for morning shoulder, day, evening and night-time operations (including sleep disturbance) at all residential receivers. Council noted that the facility is subject to an EPL under the POEO Act therefore, the proposed modification would need to be assessed by the EPA. Council considered that the noise predictions in the NIA should be calculated by using actual noise emissions measured at the facility, rather than using generic noise data from a database. As such, a revised NIA was provided by the Applicant in the RTS using actual noise emissions measured at the facility which did not change the conclusions of the original NIA (see above). The EPA considered that the potential noise impacts of the proposed modification had been satisfactorily addressed and recommended draft EPL conditions such as additional noise limits for night-time and sleep disturbance and a requirement for the Applicant to install a meteorological weather monitoring station at the site. The Department is satisfied that the noise impacts of the modified operation would be minor, can be satisfactorily managed and would comply with the relevant EPA noise criteria. Notwithstanding this, as recommended by the EPA in their draft EPL conditions, the Department has recommended a number of conditions to validate the noise predictions in the EA and if necessary, further manage/mitigate noise (see recommendation). 	<ul style="list-style-type: none"> of the commencement of modified operations; and install a meteorological weather monitoring station at the site. Manage through existing conditions of consent which require the Applicant to: <ul style="list-style-type: none"> implement suitable mitigation measures if the noise limits are not complied with, in consultation with the EPA, and to the satisfaction of the Director-General.
Hazards and Risk	<ul style="list-style-type: none"> Both the Department and WorkCover requested clarification on whether the proposed modification would result in increased turnover/throughput or transport of dangerous goods. If so, a revised hazard analysis would be required to establish the impact of such an increase on the overall risks from the facility. In the RTS, the Applicant confirmed that the proposed modification would result in: <ul style="list-style-type: none"> no increase to the current dangerous goods stock levels in Warehouse B1; no increase in transport of dangerous goods to and from the site; and no increase in the movements of dangerous goods stock items within Warehouse B1. As such, it was concluded that the proposed modification would not alter the existing levels of hazards or risk at the facility and it would continue to comply with all risk criteria adopted in NSW for new developments. Upon review of the RTS, WorkCover considered the issues originally raised in its submission had been satisfactorily addressed. Based on the above, both the Department and WorkCover are satisfied that the proposed modification would not increase hazards and risk. 	<ul style="list-style-type: none"> Manage through existing conditions of consent (post-construction) which require the Applicant to: <ul style="list-style-type: none"> submit a Safety Case to WorkCover NSW; develop an Emergency Plan and Safety Management System for the facility; submit Pre and Post-Startup Compliance Reports detailing compliance with all conditions required to be satisfied prior to and after operation has commenced; and undertake on-going independent Hazard Audits for the facility to ensure safety and compliance with all statutory documents and approvals.
Traffic	<ul style="list-style-type: none"> As previously discussed, the site is located in an established industrial area of the WSEA and is surrounded by a number of other facilities that operate 24 hours, 7 days a week. The increased hours of operation may result in increased traffic movements and subsequent traffic impacts. RMS requested that the Applicant submit a Traffic Impact Report (TIR) with the proposed modification including details of changes to staffing levels, staff shifts and traffic movements for light and heavy vehicles. In the RTS, the Applicant included a TIR which confirmed the proposal would not result in any additional heavy vehicle movements to that already assessed by Council (i.e. 154 delivery trips a day at the site), rather the movements (at existing approved levels over 16 hours) would now be spread over a full 24 hours. An additional staff shift would be necessary to accommodate 24 hour operation. As such, the proposed modification would result in a small increase of 10 to 20 (worst-case) light vehicle movements from staff to and from the site between 10.00pm and 6.00am. However, these movements would occur during off-peak traffic periods and given the low numbers, would have a negligible impact on the safety and capacity of the surrounding road network. 	<ul style="list-style-type: none"> Manage through existing conditions of consent which require the Applicant to: <ul style="list-style-type: none"> ensure the design of internal roads, driveways and parking comply with the relevant Australian Standards; ensure heavy vehicle manoeuvrability arrangements comply with AUSTROADS; ensure vehicles do not queue or park on the public road network; and ensure all loading and unloading of vehicles is carried out on site.

Issue	Assessment	Recommendation
	<ul style="list-style-type: none"> Following the preparation of the TIR in the RTS, RMS raised no further issues in relation to traffic. The Department is satisfied that the proposed modification would have a negligible impact on traffic and can be managed through existing conditions of consent (see recommendation). 	

6. CONCLUSION

The Department has assessed the application in accordance with the requirements in Section 96(1A) and Section 79C of the EP&A Act, and is satisfied that the proposed modification:

- would result in minimal environmental impacts beyond the approved operation;
- is consistent with the original approved development application (SSD-4953) such that the modified facility would be substantially the same development; and
- would allow the tenant of Building B1 (DHL) to maintain a constant supply of goods to its clients.

Goodman, the EPA, and Council have reviewed and accepted the draft conditions.

Consequently, the Department is satisfied that the modification is in the public interest and should be approved, subject to conditions.

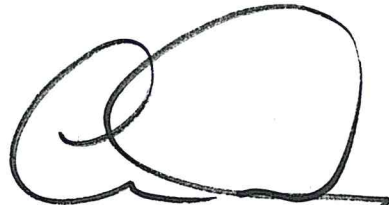
7. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Development Assessment Systems and Approvals:

- determine** that the proposed modification is within the scope of Section 96(1A) of the EP&A Act;
- approve** the application subject to conditions; and
- sign** the attached notice of modification (see Tag 'A').

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