



ASSESSMENT REPORT

Section 96(1A) Modification Kings Park Metal Recovery (SSD 5041 MOD 1)

1. INTRODUCTION

This report assesses a modification application by Sell and Parker Pty Ltd (the Applicant) seeking to modify the State significant development (SSD) consent for the expansion of an existing waste metal recycling facility in the Blacktown local government area (LGA). The application has been lodged pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks approval for minor changes to the layout of the facility, relocation of an acoustic wall, increase in height of an awning / plant enclosure and installation of roller doors in existing industrial buildings.

2. BACKGROUND

The Applicant operates a waste metal recycling facility at 45 Tattersall Road in the Blacktown local government area (see **Figure 1**).

On 12 November 2015, the then Acting Executive Director, Key Sites and Industry Assessments under Ministerial delegation, approved State significant development (SSD) application 5041 to increase the capacity of the existing waste metal recycling facility from 90,000 tonnes per annum (tpa) to 350,000 tpa of waste. The proposal included a reconfiguration and expansion of operations to encompass the adjoining site at 23-43 Tattersall Road. As such, the site is made up of two lots, legally known as Lot 5 DP 7086 (45 Tattersall Road) and Lot 2 DP 550522 (23-43 Tattersall Road).

The site is approximately 6.1 hectares (ha) in area and has a primary frontage of 246 metres (m) to Tattersall Road. The rear boundary of the site backs onto Breakfast Creek. Access to the site is off Tattersall Road, which connects to Sunnyholt Road, a regional road connecting to the M7 motorway. The site is located in an area of Kings Park containing predominantly industrial uses and is zoned IN1 General Industrial under *Blacktown Local Environmental Plan 2015* (BLEP) (see **Figure 1**). The nearest residences are located approximately 300 m east of the site beyond Sunnyholt Road and the acoustic wall adjacent to the Transitway.

The Applicant has sought the modification application, following investigations into operational efficiencies which identified a need to alter the site layout and built form of the development.

Following the submission of the modification application, it was noted by the Department of Planning and Environment's (the Department) Compliance Officers during a site investigation that several of the proposed elements of the modification had been constructed / installed without development consent including most notably the construction of the shear building, weighbridges, internal walls and roller doors. It was also noted that several components of SSD 5041 not subject to the modification had been constructed without the issuance of a Construction Certificate and prior to the approval of several environmental management plans required under the consent. Compliance investigations regarding the above works have been commenced by the Department's Compliance Section.

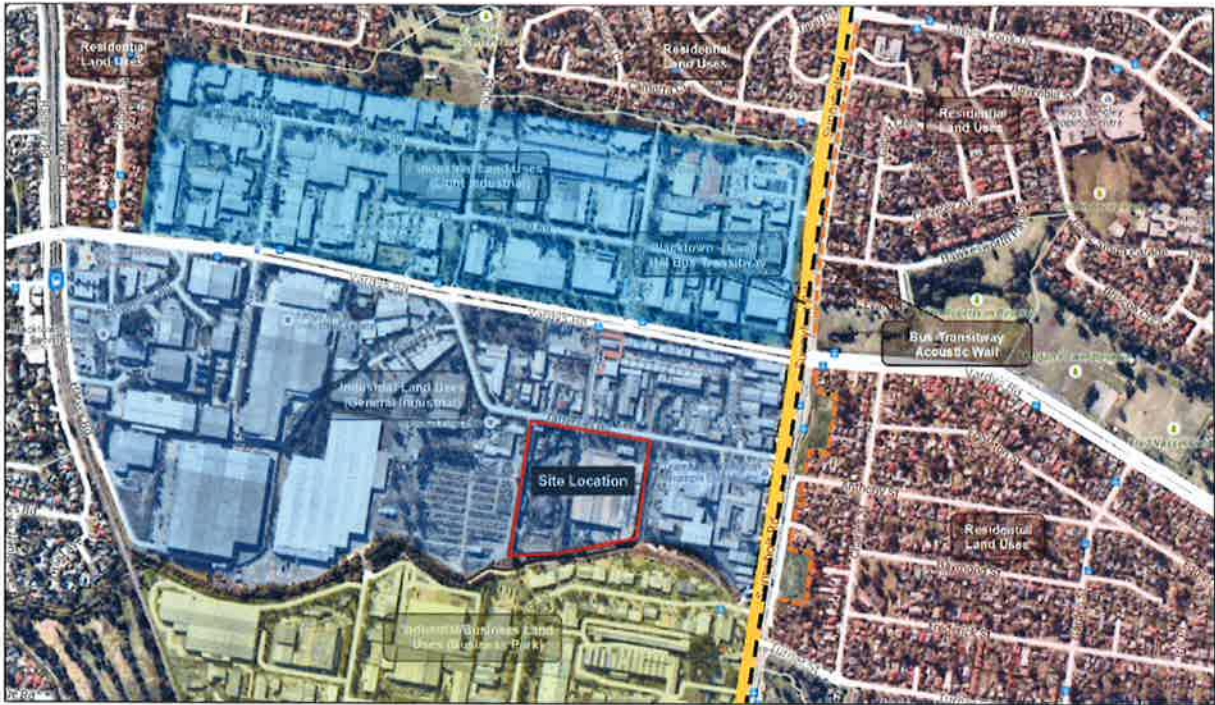


Figure 1: Site Location

3. APPROVAL HISTORY

On 27 November 1996, development consent (DA-96-305) was granted by Blacktown City Council (Council) for a metal recycling facility with a capacity to process 30,000 tpa of waste operating within the southern portion of 45 Tattersall Road (Lot 5 DP 7086).

On 11 November 2001, development consent (DA 10204-2000) was granted by the Land and Environment Court (LEC) for the construction and operation of a hammermill with additional processing capacity of 60,000 tpa of waste in the northern portion of 45 Tattersall Road (Lot 5 DP 7086). The LEC development consent increased the processing capacity of the site to 90,000 tpa of waste.

On 12 November 2015, development consent was granted by the then Acting Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning, for the expansion of the waste metal recycling facility (SSD 5041). The development consent permits the following:

- increase in processing capacity from 90,000 tpa to 350,000 tpa of waste;
- demolition of the existing office and ancillary structures on the existing site (45 Tattersall Road) with these facilities and activities being relocated to the existing offices on the expanded site (23-43 Tattersall Road);
- use of existing buildings on the expanded site (23-43 Tattersall Road) for processing;
- community education centre within the offices on the expanded site;
- installation of dual weighbridges at the ingress and egress access points;
- hardstand across the site;
- enclosure of processed material conveyors and transfer points;
- installation of an air emissions collection system above the hammer mill;
- construction of a shear building; and
- primary, secondary and tertiary stormwater treatment devices.

The Applicant, on 28 May 2016 surrendered development consents DA-96-305 and DA 10204-2000 by way of a notice to the Department in accordance with clause 97 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

4. PROPOSED MODIFICATION

The Applicant has lodged a modification application under section 96(1A) of the EP&A Act to modify development consent SSD 5041 for the expansion of a waste metal recycling facility. The modification

is described in full in the Statement of Environmental Effects (SEE) included in **Appendix B** and is illustrated on **Figure 2**.

The modification application does not seek to amend the processing activities on site or increase the processing capacity of the facility. Rather, the modification seeks approval for minor changes to the layout and built form of the facility. The Applicant suggests the modification is required to increase operational efficiencies and better utilise the site area. The modification application proposes the following:

- relocation of an existing acoustic wall to the western boundary of the site to permit the widening of the internal road to facilitate two-way movement of trucks;
- erection of a four metre screen on top of the relocated acoustic wall;
- a one metre height extension to the acoustic wall which separates the existing processing area from the entry driveway;
- re-configuration of entry weighbridges and overhead weighbridge office;
- retention of acoustic wall between 23-43 Tattersall Road and 45 Tattersall Road;
- installation of roller shutters in the processing buildings at 23-45 Tattersall Road;
- increase in height of the proposed non-ferrous processing three sided enclosure from 10 metres to 15 metres;
- repositioning of the proposed shear building approximately 18 metres to the south-west; and
- relocation of existing exit weighbridge to within Building B; and
- other minor alterations.

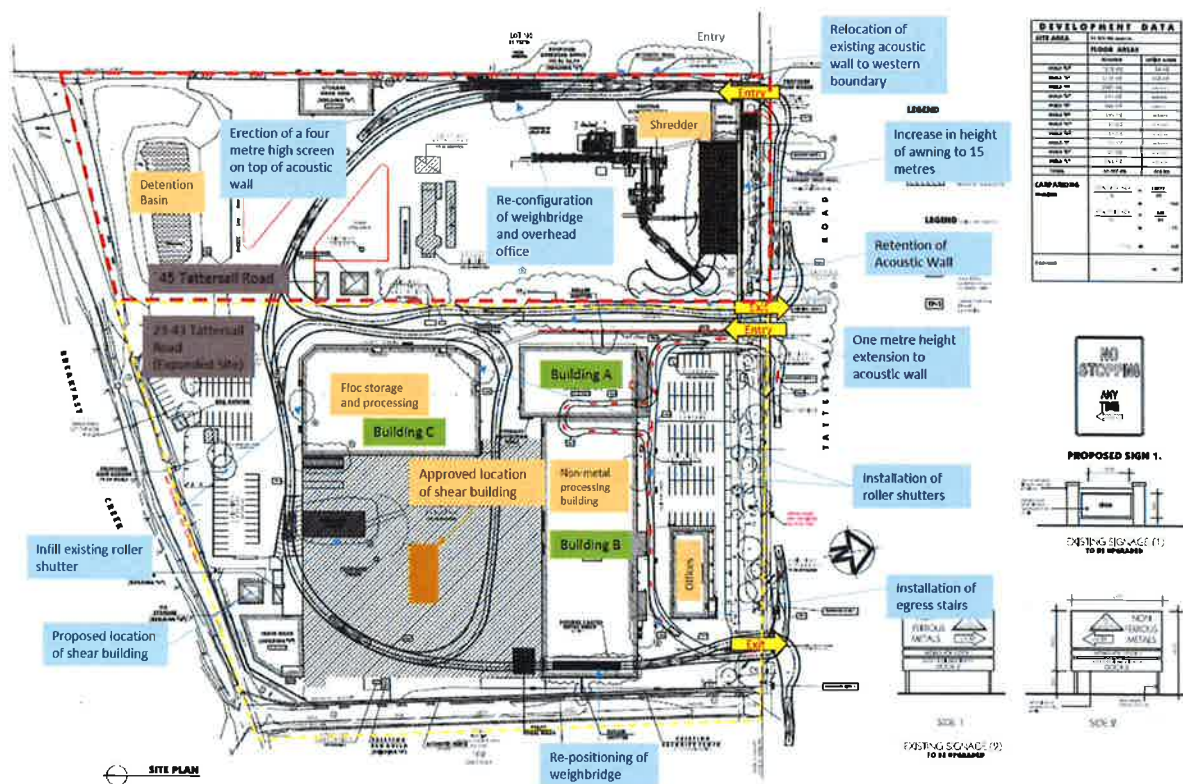


Figure 2: Proposed Modifications to Approved Site Plan

During a site visit in October 2016, the EPA and the Department's Compliance section noted several elements of the proposed modification had been constructed or installed prior to the determination of the modification application or issue of a Construction Certificate. These elements include:

- roller shutters in Building B;
- egress stairs in Building B;
- construction of internal weighbridge in Building B;
- construction of partition wall in Building B;
- roller shutter on western elevation of Building C;
- construction and installation of shear building in proposed modified location;
- widening of existing ramp on eastern side of Building C; and

- acoustic wall along the eastern and southern boundary.

5. STATUTORY CONTEXT

5.1 Consent Authority

The Minister for Planning is the consent authority for the application. Under the Minister's delegation of 16 February 2015, the Director, Industry Assessments, may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

5.2 Section 96(1A)

The Department has reviewed the scope of the modification application and is satisfied that the proposed modification would result in minimal environmental impacts, and relates to substantially the same development as the original development consent on the basis 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 96(1A) of the EP&A Act;
- the approved processing capacity of the metal recycling facility would remain unchanged; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of approval.

Therefore, the Department is satisfied the proposed modification is within the scope of section 96(1A) of the EP&A Act and does not constitute a new development application. Accordingly, 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.

6. CONSULTATION

Clause 117(3B) of the EP&A Regulation specifies that the notification requirements of the EP&A Regulation does not apply to State significant developments. Given the above, the application was not advertised. However, the application was made publicly available on the Department's website on 12 October 2016 and was referred to Environment Protection Authority (EPA), Department of Primary Industries (Water), Fire and Rescue New South Wales (FRNSW) and Blacktown City Council (Council) for comment. Adjoining landowners and previous objectors were also notified of the modification application on 14 October 2016 and invited to make a submission by 28 October 2016. No submissions were received from adjoining land owners or previous objectors. Three submissions were received from public authorities, none of which objected to the development.

EPA did not object to the modification. The EPA had concerns that some of the components of the modification had been constructed or demolished without a Construction Certificate or prior to the approval of environmental management plans required by SSD 5041, including:

- demolition of an industrial building;
- construction of the shear building and installation and use of the shear in the amended location proposed by the modification; and
- installation of roller shutters.

The EPA noted these works had been carried out during a compliance inspection. The EPA also noted the use of the expanded site for waste and metal recycling had commenced. The EPA reviewed the addendum to the Noise Impact Assessment (NIA) prepared by Renzo Tonin & Associates and were satisfied the proposed modified site layout would not alter the predicted noise levels at sensitive receivers.

Council did not object to the modification. Council had concerns with the visual impact of the development when viewed from the Tattersall Road frontage. Council noted that the enclosure of the plant is expected to have a positive outcome in terms of addressing ongoing concerns with regard to smoke discharge and noise.

FRNSW did not object to the modification. FRNSW had concerns with the existing fire safety measures in place at the site and therefore provided requirements for crucial upgrades, alterations and consultation including:

- upgrade of existing Ordinance 70 fire hydrant systems to meet the National Construction Code (NCC);
- the use of a single fire hydrant system as opposed to separate systems for each lot. The use of two hydrant systems for one facility is problematic in respect to effective incident management;
- water supply capability;
- requesting the final design of the hydrant system be developed in consultation with and to the satisfaction of FRNSW;
- protection of floc storage area with a sprinkler system and smoke detection system;

FRNSW stated their comments related not only to the proposed modification, but the entire development as approved by SSD 5041. Although specific conditions were not recommended regarding fire safety measures during the assessment and determination of SSD 5041, FRNSW believes that a more rigorous critique of the site and its fire safety measures is warranted at this time due to the special hazard potential of the development and the occurrence of a large-scale fire event at the site since the determination of the development application (SSD 5041). Furthermore, FRNSW contends that in their experience, recycling facility fires pose significant challenges to first responders in terms of safe and efficient incident management and thus warrant special consideration in regards to minimum fire protection systems.

The Department has reviewed the comments received from public authorities and requested the Applicant respond to the issues raised. However, the Department notes that existing conditions of consent require the Applicant to obtain relevant additional approvals from government authorities and utility providers.

On 23 December 2016, the Applicant submitted a report responding to the issues raised in the public authority submissions which included:

- a letter of response to the issues raised by FRNSW from M.J. Harvey & Associated Pty Ltd – Hydraulic & Fire Protection Engineers;
- Statement of Available Pressure and Flow from Sydney Water;
- a Building Certificate issued by Blacktown City Council for several elements of the development constructed without a Construction Certificate;
- a Structural Engineering Certificate issued by Mirco Lepage Consulting Pty Ltd; and
- an amended set of plans.

The Applicant's response was sent to the EPA, Council and FRNSW for comment. The EPA reiterated that it had no objection to the modification and had no further comment. Council advised the majority of its comments had been addressed and requested that additional tree plantings be required at the Tattersall Road frontage and the existing shade cloth be replaced.

FRNSW reiterated its concerns regarding existing and proposed fire safety measures and provided the following additional comments:

- separate fire hydrant systems: to facilitate the amalgamation of the two fire hydrant systems, FRNSW recommend the consolidation of the two allotments on one title;
- fire hydrant water supply capability: the NCC in clause E1.10 includes provisions for special hazards which require suitable additional fire safety provisions. FRNSW believes the facility is captured under this clause and as such recommends the sites fire water demand be determined in consultation with them; and
- floc storage area sprinklers and smoke detection systems: FRNSW reiterated that these systems are required to be implemented at the site.

In response to Council's subsequent submission, the Applicant provided updated plans and elevations on 27 January 2017 which show additional tree plantings at the Tattersall Road frontage and the replacement of the shade cloths.

On 18 April 2017, the Applicant provided a response to FRNSW subsequent submission in which the Applicant again questioned FRNSW's requirement to utilise a single hydrant system for the site and ensure the water supply capability of the hydrants meets the hazard potential of the facility. The Applicant did however agree to install a sprinkler system and smoke detection in the floc storage area.

On 27 April 2017, FRNSW provided a further submission which reiterated their position that the facility should be considered a special fire hazard site in accordance with E1.1 of the NCC. FRNSW also provided details of an additional large metal fire which occurred on 24 April 2017 at the facility which required an extensive commitment of resources to achieve fire containment and extinguishment. FRNSW suggested that the difficulties faced by fire fighters, the amount of resources exhausted and the length of time it took to extinguish the fire strengthens their argument that the site poses a special fire hazard requiring the additional measures to be installed.

7. ASSESSMENT

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

- the SEE and RTS provided to support the proposed modification (see Appendix B);
- the assessment report for the original development application;
- submissions from the public, 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:

- approving elements of the proposed modification retrospectively;
- visual impact; and
- fire safety measures.

The Department's assessment of other issues is provided in **Table 1**.

7.1 Approving Elements of the Proposed Modification Retrospectively

As elements of the proposed modification have been constructed prior to the approval of the modification application, the Department must consider whether development consent can be granted retrospectively to permit the continuation of use of the structures. The Department requested the Applicant provide details of all construction or installation works carried out without necessary development consents or Construction Certificates on the site. In response, the Applicant provided a Building Certificate issued by Blacktown City Council for the elements of the modification constructed without development consent or a Construction Certificate (see Section 4). The Building Certificate included a Structural Engineer's Certificate issued by Lepagier Consulting Pty Ltd.

A Building Certificate itself does not regularise the elements of the modification installed without consent. It merely provides the Applicant with assurance that Council will not take enforcement actions in relation to a structure for a period of 7 years. The issuance of a Building Certificate and Structural Engineer's Certificate for these elements can provide the Department with some assurance the works carried out have been done so in a competent manner. However, to ensure the development consent aligns with the actual site layout and built form, these elements would need to be retrospectively approved by the consent authority (the Department).

Prior to the assessment of the likely impacts of the development as amended, the Department must consider if the retrospective approval of works outside the scope of development consent SSD 5041 is available through a section 96 modification application. The Land and Environment Court (LEC) has heard several cases on the topic of retrospective approval since the gazettal of the EP&A Act, including most notably the case of *Windy Dropdown Pty Ltd v Warringah Council [2000]* NSWLEC 240. In this case, the developer carried out earthworks in contravention of the existing development consent and subsequently sought retrospective approval for the works through a section 96 modification application with Warringah Council. Council refused to grant consent to the modification application. The LEC decided that it is within the scope of section 96 to amend a development consent where the relevant works had already been carried out. The effect of this decision is that an application can be made to modify a development consent, which would extend that development consent to cover work already carried out. As such the scope of section 96 would appear to extend to the elements of the proposed modification which have been constructed or installed without consent.

The Department's assessment concludes that section 96 of the EP&A Act is available to the Applicant to seek retrospective approval of those elements of the proposed modification which were constructed without consent. However, this issue is also subject to separate and ongoing compliance investigation and potential enforcement actions could arise.

7.2 Visual Impact

The proposed amendments include alterations to building facades and the increase in height of an awning structure which could impact the visual amenity of the locality. The Applicant provided an assessment of the visual impact of the proposed modified development in the SEE. The Applicant's assessment suggests the only visually prominent element of the proposed modification as compared with the approved development under SSD 5041 is the increase in height of the awning from 10 m to 15 m.

The awning is located immediately adjacent to Tattersall Road (see **Figure 2 and 3**). At 10 metres in height, the awning does not visually or acoustically screen the recycling plant from Tattersall Road. The Applicant argues that at a height of 15 m the awning screens the majority of the recycling plant from view from Tattersall Road and therefore the increase in height is beneficial (see **Figure 3**). Further, the Applicant suggests the existing and proposed landscaping treatments effectively screen the awning when viewed from Tattersall Road.

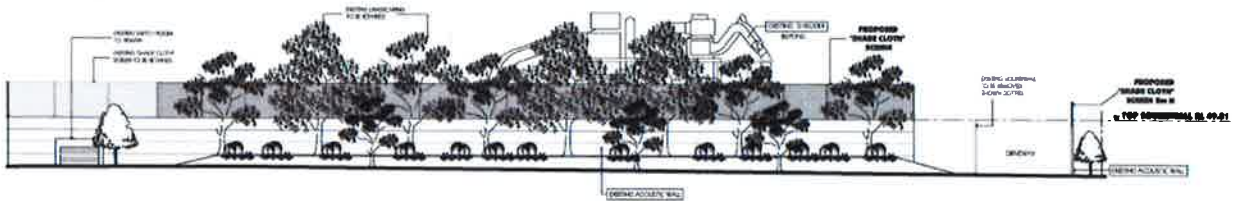


Figure 1: Existing Elevation of Development from Tattersall Road

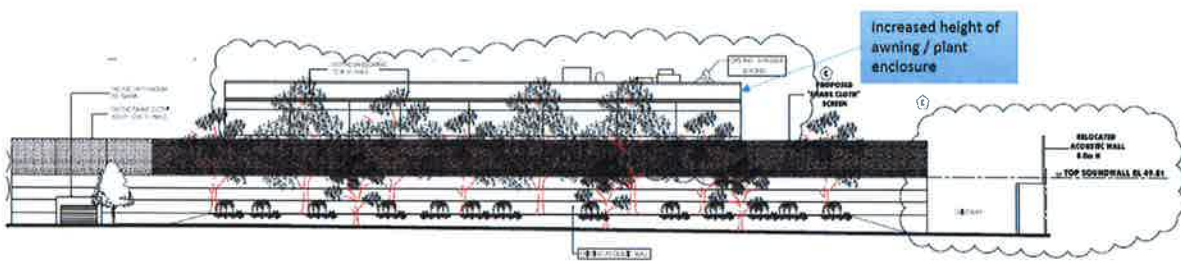


Figure 2: Proposed Elevation of Development from Tattersall Road

In its submission, Council raised concerns regarding the amended height of the proposed awning (from 10 m to 15 m in height). Council suggested the location of the awning at the boundary of Tattersall Road will have an imposing effect on the streetscape. Council also requested that the details of the external finishes and treatments of the awning be provided to ensure methods to assist in breaking up bulk and scale of the structure are utilised.

In a report responding to the submissions, the Applicant addressed Council's concerns by stating the external finish of the awning will encompass prefabricated "heritage green" steel panels. The Applicant also suggested the view of the awning structure from Tattersall Road will be screened by existing mature trees and acoustic wall.

Council reviewed the Applicant's submission report and suggested additional trees be planted at the street frontage and the existing shade cloth atop the acoustic wall be replaced. The Applicant, in response, provided revised plans to indicate the shade cloths will be replaced and additional plantings will be provided.

The Applicant's argument that the landscaping will mask the appearance of the awning from Tattersall Road is problematic as landscaping is not considered a sustainable impediment to unsightly construction. The awning itself will be constructed of painted prefabricated steel and is to be located immediately adjacent to the road frontage. The appearance of the structure from the street would be imposing. However, its ultimate purpose of masking the unsightly appearance of the existing 16 m high metal recycling plant would prove beneficial to the appearance of the development when viewed from the street. The existing landscaping would aid in masking the appearance of the awning and

existing Condition B39 which requires the preparation and implementation of a Landscape Management Plan will ensure the trees and shrubs are maintained or re-planted if required.

The Department's assessment concludes the Applicant has provided adequate justification that the amendments to the site layout and built form of the development proposed in the modification will not detrimentally alter the visual impact of the development.

7.3 Fire Safety Measures

Altering the layout and built form of the development has the potential to impact or alter the required fire safety measures to be implemented at the facility. The Applicant has constructed several elements of the proposed modification without consent and prior to the issue of a Construction Certificate and subsequent issue of a fire safety schedule (listing all the required measures to be installed) for the development by Council or a PCA. An Occupation Certificate, which can only be issued once all items identified in the fire safety schedule have been installed, cannot be issued for works constructed without a Construction Certificate. As such, there is no defined pathway to ensure fire safety measures are adequately installed.

The Applicant did not provide any details regarding the location or adequacy of existing fire safety measures at the site. FRNSW were concerned the sites existing fire safety measures were inadequate and provided a number of upgrades which must be implemented, including:

- upgrades to hydrants and use of a single hydrant system;
- water supply capability; and
- sprinkler and smoke detection systems in the floc storage area.

The Applicant provided a response to FRNSW concerns including a letter from M.J. Harvey and Associates – Fire Protection Engineers. The Applicant suggested that several of the upgrades required by FRNSW were in the process of being installed. However, the Applicant questioned FRNSW's requirement for the site to have a single fire hydrant system, to increase the water supply capability of the site or install sprinklers and smoke detection as these measures are not specifically required by the National Construction Code (NCC). In response, FRNSW suggested that the site should be considered a "special hazards" facility to which clause E1.10 of the NCC applies:

"Suitable additional provision must be made if special problems of fighting fire could arise because of (a) the nature of quantity of materials stored, displayed or used in a building or on the allotment; or (b) the location of the building in relation to a water supply for fire-fighting purposes."

FRNSW has based this assertion on their extensive experience with fighting fires at recycling facilities including two fires at the Applicant's Kings Park facility in the last three years (one in 2014 and the other on 24 April 2017). Each fire which occurred at the site required a 12th alarm response entailing the use of crews from all available local commands in the area which included 121 personnel, 24 fire trucks and various other fire-fighting equipment.

FRNSW suggests that during the two fire events at the facility, deficiencies in fire safety measures were apparent and additional off-site fire water supplies had to be transferred to the site to enable fire containment and extinguishment. The most recent fire at the facility took 20 hours to extinguish partly due to the sites deficient water supply system. FRNSW has asserted that due to the relevance of clause E1.10 of the NCC and considering the inadequacies of the flow rate through the hydrants during the fire events, the target demand for the site should be 110 L/sec. FRNSW also asserts that the Applicant's proposal to utilise two separate fire hydrant systems serving the one metal waste recycling facility conducted over adjoining and connected allotments is significantly problematic during a fire emergency.

In an additional response, the Applicant provided a flow rate and pressure test indicating the target demand required by FRNSW could be met at the site. The Applicant also agreed to upgrade the sprinkler system and install a smoke detection system in the floc storage area. However, the Applicant questioned whether the additional fire safety measures required by FRNSW could be required as conditions of consent as part of this section 96(1A) modification application as they believe there is no nexus between the amendments proposed and the required fire safety measures. The Applicant argues that the fire safety measures required by FRNSW relate to the entire site and the proposed modification only relates to minor alterations to part of the site.

The Department is concerned that the site is presently operating without adequate fire safety measures installed posing a significant risk to the public. To ensure the required upgrades proposed by FRNSW are installed at the site, the Department could either insert additional conditions as part of this modification application or require the upgrades through an Order No. 6 in accordance with section 121B of the EP&A Act. However, in order for a condition to be imposed on a modification, there must be a fair and reasonable nexus between the modification and its predicted consequences, on the one hand, and the requirements of the condition imposed, on the other. As such, it does not appear that a condition could be inserted requiring fire safety measures that were not directly related to what was proposed under the modification.

The modification application proposes structural alterations to existing Buildings A, B & C. Therefore, a sufficient nexus exists to require appropriate fire safety measures to be installed in these buildings as conditions of consent. As such, the Department has recommended a condition of consent requiring the necessary fire safety measures as prescribed in the NCC to be installed in Buildings A, B & C and verified through a fire safety audit. The Department has also recommended a condition of consent which requires the installation of a sprinkler and smoke detection system in Building C (floc storage area) to the satisfaction of FRNSW. There does not, however, appear to be a sufficient nexus between the proposed modification and FRNSW requirement to consolidate the sites hydrant systems. Consequently, the Department could ensure this is carried out through the issuance of an Order No. 6 rather than through the insertion of a condition of consent which would be subject to ongoing compliance investigations.

The Department's assessment concludes that through the recommended conditions of consent and the issuance of an Order No. 6 which would be subject to ongoing compliance investigations, all of the necessary fire safety measures required by FRNSW and the NCC can be installed at the site. The Department is satisfied there is sufficient nexus between the proposed modifications and the recommended conditions of consent. Due to the nature of the materials stored and processed on site, it is not possible to totally avoid fire events. However, with the fire safety measures recommended by FRNSW in place, fire fighters will be provided with adequate means to fight fires in an expedited manner in the future.

7.4 Other Issues

The Department's assessment of other issues is provided in **Table 1**.

Table 1: Assessment of Other Issues

Issue	Assessment	Recommendation
Noise	<ul style="list-style-type: none"> • Altering the site layout and built form of the development as compared to that originally approved and assessed could alter the potential noise impacts of the development. • The Applicant submitted an addendum to the NIA submitted with the original application, prepared by Renzo Tonin & Associates. • The addendum input the proposed design and layout amendments in the CadnaA noise model used in the NIA. The results indicate no change in acoustic impact on some of the nearest residential receivers and a reduction in impact on others. • The EPA reviewed the modification application including the addendum to the NIA and did not have any concerns with the revised noise predictions. • The Department does not consider the proposed amendments to the site layout and built form of the development would increase the overall noise impacts of the development. The Applicant proposes to increase the height of the awning around the existing metal recycling plant and hammermill which would more effectively mitigate the noise of the plant. As such, the Department considers the proposed modification to be beneficial to the acoustic performance of the development. • The Department's assessment concludes that the Applicant's addendum to the NIA has provided a reasonable assessment of the acoustic performance of the development in full operation including the amendments proposed in the modification. • As the proposed amendments to the site layout and built form of the development will not increase the noise impact of the development, the Department considers that the noise criteria in existing Condition B26 of the development consent remain valid. 	<ul style="list-style-type: none"> • N/A

Issue	Assessment	Recommendation
	<ul style="list-style-type: none"> Further, the Applicant will be required to prepare and implement a Noise Management Plan including a noise monitoring program under existing Condition B29 to ensure all reasonable and feasible measures are employed to minimise noise and the Applicant actively monitors the acoustic performance of the development. 	
Vehicle Maneuvering	<ul style="list-style-type: none"> Alterations to the site layout and built form of the development could impact vehicle movements through the site. The proposed modification includes the re-positioning of the exit weighbridge and the reconfiguration of the entry weighbridges and installation of roller shutters. Only minor alterations to the haul routes of trucks through the site are required due to the relocated weighbridges. Access to the additional roller doors are proposed to be restricted to light vehicles. The Applicant has provided a Site Plan prepared by Algorry Zappa & Associates Pty Ltd which includes turning path movements of vehicles through the site including entering and exiting the weighbridges and roller doors. The Site Plan illustrates the largest sized vehicles proposed to be utilised on the site can maneuver unobstructed throughout the site, enter and exit the site in a forward direction and adequately queue on site to avoid conflict with road users on Tattersall Road. The Department is satisfied the modified site layout will not impact on the maneuvering of vehicles through the site or impact on the safety and efficiency of Tattersall Road. 	<ul style="list-style-type: none"> N/A
Stormwater	<ul style="list-style-type: none"> As part of the original application, the Applicant provided a concept stormwater management plan for the site. As the concept plan was deemed inadequate by the Department and the EPA a suite of conditions of consent were placed on the development to ensure that the Applicant develops and implements a Water Management Plan including treatment of contaminated stormwater. The existing Environment Protection Licence (EPL) for the facility does not permit any discharge of stormwater off site. The proposed modification will not increase the amount of stormwater generated by the development or alter any existing or proposed drainage patterns or catchments on the site. As such, the Department does not consider the proposed modification will impede the Applicant's ability to develop and implement a Water Management Plan and system for the site required by existing Conditions B4-B8 of development consent SSD 5041. 	<ul style="list-style-type: none"> N/A
Air Quality	<ul style="list-style-type: none"> The use of the site for metal recycling including shredding, shearing and oxy-acetylene cutting has the potential to impact air quality in the locality. As part of the original application, the Applicant carried out an Air Quality Impact Assessment (AQIA) for the development which was revised based on consultation with and concerns of the EPA and the Department. The revised AQIA concluded that with the implementation of mitigation measures, the development would be within the criteria set out in the EPA's <i>Approved Methods for Modelling and Assessment Air Pollutants in NSW</i>. The Department included a suite of conditions of consent to ensure the proposed mitigation measures were commissioned prior to the operation of the development. The proposed modification does not include any alterations to the approved processing activities on site or include any site layout amendments which could alter the air quality impacts of the development. As such, the Department does not consider the proposed modification will impede or alter the Applicant's ability to commission or operate the necessary air quality mitigation measures for the site required by the AQIA and existing Conditions B17-B21 of development consent SSD 5041. 	<ul style="list-style-type: none"> N/A

Issue	Assessment	Recommendation
Waste Definition	<ul style="list-style-type: none"> • Development consent SSD 5041 does not include a definition for "waste" which could lead to uncertainty in the interpretation of conditions of consent. • It is now common practice for the Department to ensure a definition of "waste" is included in the Definitions table of development consents for waste facilities. • The Department considers all items received or processed at a waste facility, including a waste metal or scrap metal facility to be a form of waste. • This assertion is based on the broad and encompassing definition of "waste" contained in the Protection of the Environmental Operations Act 1997 (POEO Act) which includes all forms of scrap metal. • The EIS, prepared by ERM Pty Ltd and dated July 2014, submitted with the original application describes the development as a waste metal recovery, processing and recycling facility. • As such, the Applicant has identified that metal which is received or processed at the site/facility is considered a form of waste. • To add clarity to the development consent, a definition for waste which refers to the POEO Act definition has been recommended to be inserted into the Definitions Table of development consent SSD 5041. 	<ul style="list-style-type: none"> • Insert the following definition into the Definitions Table: <i>"Waste: As defined in the POEO Act"</i>

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:

- the proposed modification will result in minimal environmental impacts beyond the approved facility;
- the increase in height of the awning / enclosure will mask the unsightly appearance of the recycling plant from the street and potentially mitigate noise;
- the proposed amendments to the site layout and built form of the development will not increase the amount of noise experienced at the nearest sensitive receiver; and
- although elements of the proposed modification were constructed prior to the determination of the modification and without a Construction Certificate, a condition of consent has been recommended to ensure crucial fire safety measures are installed at the site in consultation with FRNSW.

The Department is satisfied that the modification should be approved, subject to conditions.

9. RECOMMENDATION

It is RECOMMENDED the Director, Industry Assessments:

- **consider** the findings and recommendations of this report;
- **approve** the modification application SSD 5041 MOD 1, subject to conditions, under section 96(1A) of the EP&A Act; and
- **sign** the attached notice of modification (**Appendix A**).

Kelly McNicol
Team Leader, Industry Assessments


Chris Ritchie
Director
Industry Assessments

6/7/17