

ASSESSMENT REPORT

Botany Industrial Park (DA 30/98 MOD 1) Section 75W Modification – Excise of Land

1. BACKGROUND

The Botany Industrial Park (BIP) is a complex of chemical manufacturing and storage facilities which covers an area of around 74 hectares in the suburb of Banksmeadow, in the City of Botany Bay local government area (refer to **Figure 1**).

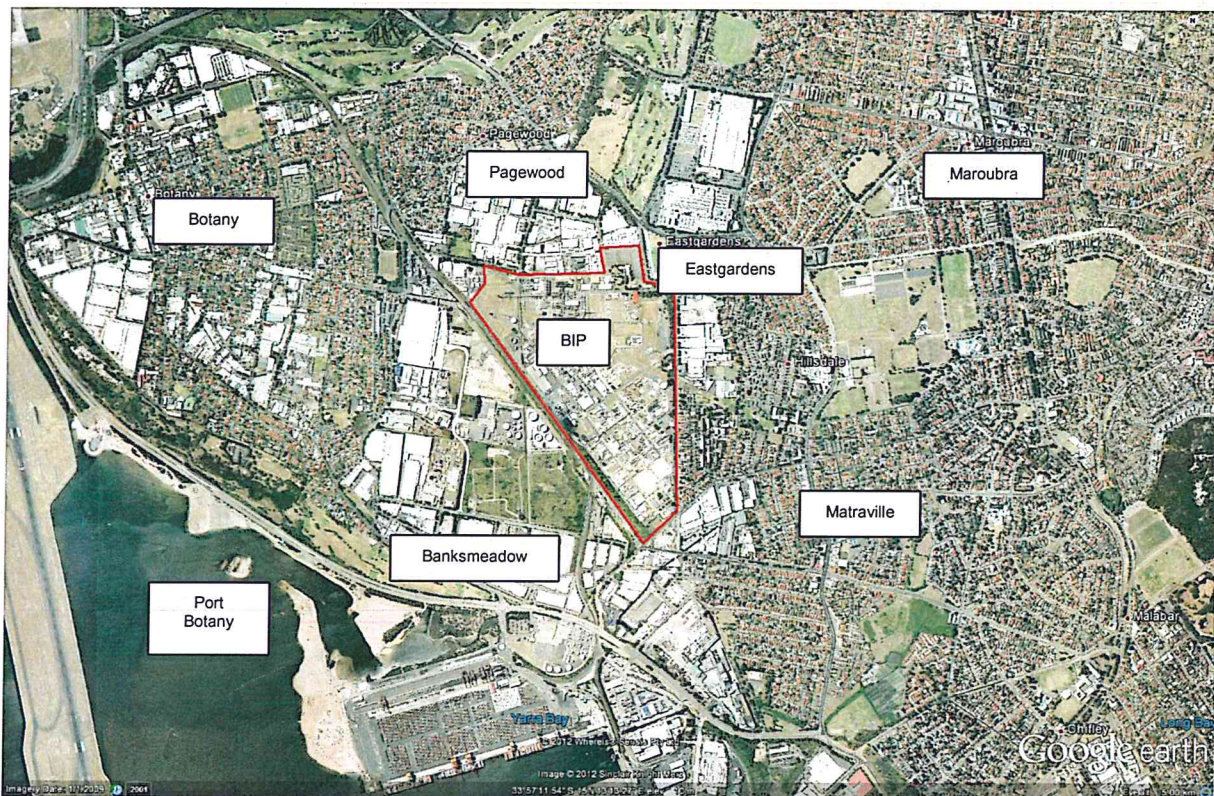


Figure 1: Botany Industrial Park Location

Imperial Chemical Industries (or ICI), first commenced operations on the BIP site in 1942 manufacturing carbon bisulphide and chlorine related products. Over the next 55 years, ICI went on to produce a range of chemicals used in various domestic and industrial products.

In July 1997, the ICI Group underwent some restructure and divestment of its various activities, including the formation of a new company called Orica Ltd (Orica). Following the changes in ownership and name in 1998, Orica conducted a review of its company strategy and operations.

On 16 December 1998, the then Minister for Planning approved a development application (No. 30/98) from Orica for the subdivision of the BIP site into 9 lots (refer to **Figure 2**). After the subdivision of the BIP site, Orica proceeded to sell its surfactants business to Huntsman

and later formed a joint venture company with ExxonMobil to manufacture various plastic based products which is referred to as Qenos.

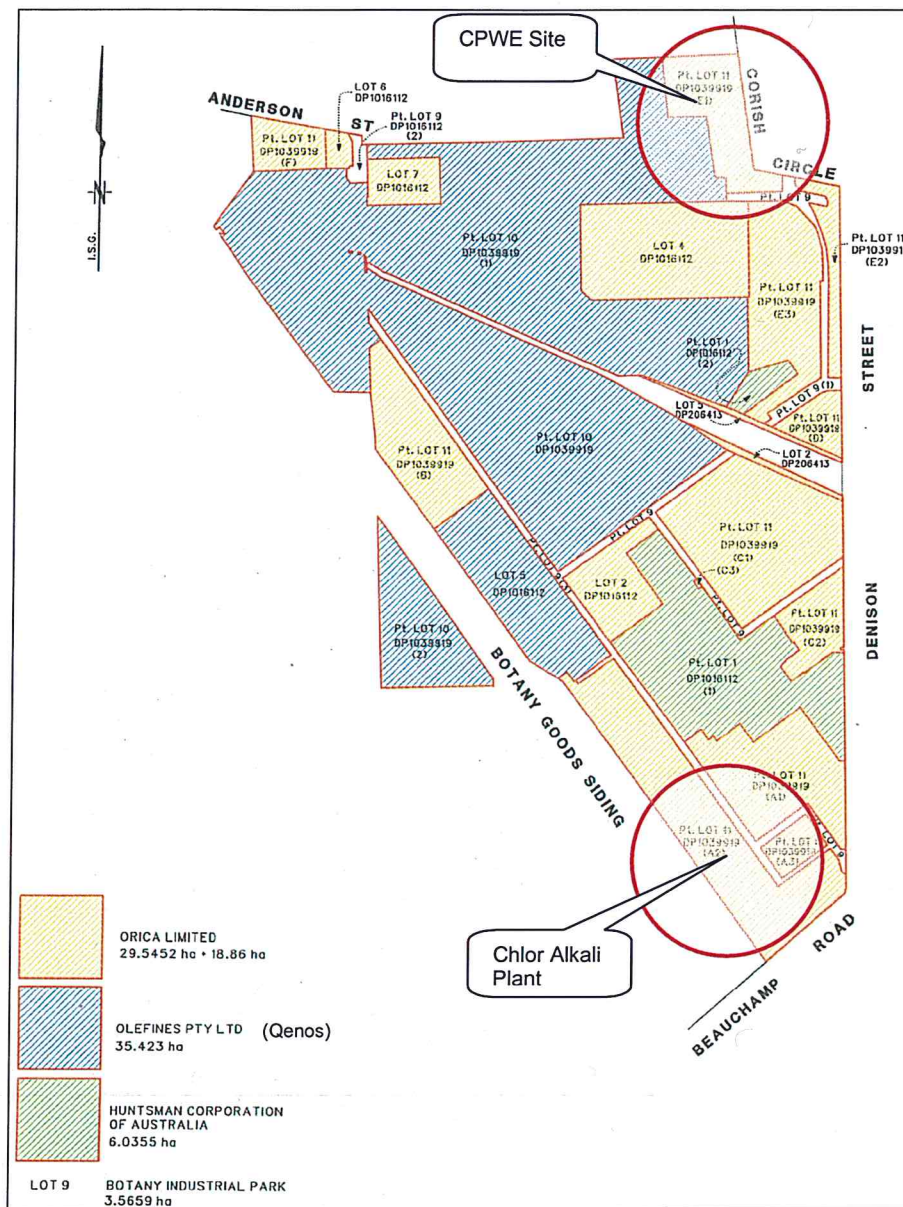


Figure 2: Botany Industrial Park Allotments (DA No. 30/98)

Original Subdivision (DA 30/98)

As part of the approval of the original subdivision in 1998, the conditions required Orica to form a Special Purpose Company (SPC) comprising Orica, Huntsman and Qenos. The primary responsibility of the SPC is to ensure that the management of hazards and risks across the BIP are undertaken in an effective and coordinated manner. The SPC is responsible for the preparation and implementation of safety management systems, fire safety studies, site emergency plans, cumulative risk assessments, noise reduction programs and stormwater management across the BIP site.

Furthermore, the conditions also required that a covenant be applied to all land within the BIP and the covenant be placed on the title of each lot within the BIP. This covenant requires that all landowners comply with the conditions of DA 30/98.

Car Park Waste Emplacement Remediation Approval (06 0197)

From the 1960s, Orica operated a chlorinated solvents plant which produced industrial solvents for use as dry cleaning fluids and refrigerants. The waste products from the solvents plant lead to contamination of the underlying ash bed and sandy soil which were then excavated and relocated to the north eastern corner of the BIP. The contaminated material was then enclosed in a liner and covered with bitumen. This area is referred to as the Car Park Waste Encapsulation (CPWE) site (Refer to **Figure 2**).

On 12 November 2009, the Director-General (as delegate of the then Minister for Planning) approved a major project application from Orica under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for the remediation of the CPWE site. This approval allowed for the treatment of contaminated material, consolidation of land holdings by individual owners within the BIP and changes to lot boundaries.

Following the successful remediation of the site, Orica deemed that the CPWE was surplus to its future requirements. As the CPWE is positioned on the boundary of the BIP, Orica considered that it represents an ideal opportunity for other industrial development to occur provided it is compatible with surrounding land uses.

Council Subdivision Approval (10/486)

On 21 December 2010, Orica lodged a development application with the City of Botany Bay Council (Council) for the industrial subdivision of the abovementioned portion of the CPWE land (3 lots and an existing private internal road) into 22 smaller lots and associated public roads.

Due to the time taken by Council to undertake the assessment, Orica proceeded to make a deemed refusal application to the Land and Environment Court (LEC) to have the application determined.

During the Court proceedings and at the request of Council, the Department provided technical advice and recommended conditions to Council on matters relating to hazards and risks. In particular, the Department provided advice on whether the future development of the subdivided site would increase cumulative risks from the BIP. Further information on the conditions recommended by the Department, which were adopted by the LEC, are described in section 5.1 of this Report.

On 31 August 2012, the LEC determined to approve the subdivision application (refer to **Figure 3**).

Inconsistency between the LEC and Minister Subdivision Layout

The approval by the LEC of Orica's subdivision application has created an inconsistency with the Minister's subdivision consent under DA 30/98. As a result, Orica now propose to excise the LEC approved subdivision area from the BIP which would enable Orica to proceed with the future development of this land.

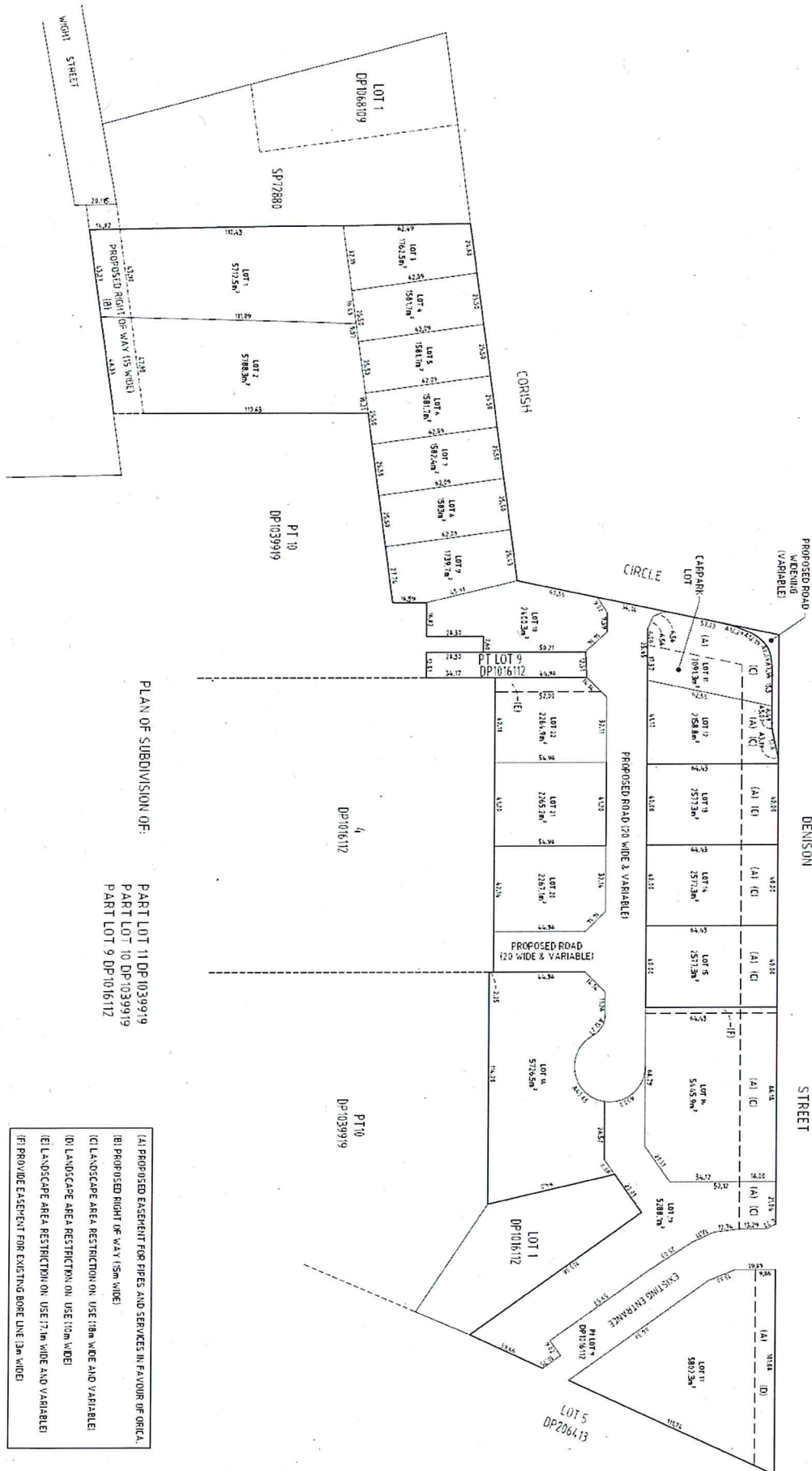
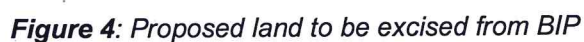


Figure 3: Subdivision Plan approved by the LEC (DA10/486).

On 30 October 2012, Orica lodged a modification application with the Department under section 75W of the *Environmental Planning and Assessment act 1979* (EP&A Act).

- remove the requirement for the subdivided lots to become a member of the SPC; and
- remove the existing covenant on the land title from the subdivided lots.

The remaining land within the BIP would be unaltered from the 1998 subdivision approval (DA 30/98) and would still be subject to the conditions of DA 30/98.



3. STATUTORY CONSIDERATION

Statutory Framework

Under clause 8J (8) of the *Environmental Planning and Assessment Regulation 2000*, development consent DA 30/98 is taken to be an approval under Part 3A of the Act and can be modified by the Minister under section 75W of the Act.

Section 75W of the Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to these development consents in accordance with Clause 12 of Schedule 6A of the Act.

Under Section 75W of the EP&A Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent.

Therefore, it is considered that the proposed modification is within the scope of section 75W of the EP&A Act. Consequently, the Department considers that the application should be assessed and determined under Section 75W of the EP&A Act rather than requiring a new development or project application to be lodged.

Approval Authority

The Minister was the approval authority for the original project approval, and is consequently the approval authority for this application.

The Executive Director, Major Projects Assessment, may determine this application on behalf of the Minister in accordance with the Minister's delegation dated 14 September 2011, subject to the following:

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

The Department is satisfied that the application meets the terms of the delegation and that the Executive Director may determine the application under delegated authority.

4. CONSULTATION

Under Section 75W of the EP&A Act, the Minister is required to make the application publicly available on the Department's website. Upon receipt, the application was placed on the Department's website and 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 the City of Botany Bay Council (Council) and the Environment Protection Authority (EPA).

Council raised no objection to the proposed modification subject to the proposed excised lots complying with the conditions contained within DA 10/486 issued by the LEC.

While the EPA raised no objection to the modification, the EPA requested that:

- Orica maintain access to the groundwater monitoring wells within the proposed excised area to allow completion of the groundwater monitoring program for the CPWE remediation project;

- Orica vary its Environment Protection Licence's (EPL) 2148 and 13263 in order to register the proposed changes in boundaries and lot sizes; and
- Orica consult with Huntsman and Qenos regarding EPL's 7494 and 10000 in relation to boundary changes and lot sizes.

The Department is satisfied that the above concerns raised by the EPA would be considered as part of any future development on the LEC approved lots and any application to vary the relevant EPL's. However, the Department has recommended a condition which requires Orica maintain access to the groundwater monitoring wells located on the CPWE site.

Consultation with neighbouring sites external to the BIP was considered unnecessary, as the environmental impacts of the proposal would essentially remain unchanged from the approved project as it primarily relates to excising some land. Notwithstanding, any future development of these lots would also be subject to its own consultation requirements.

Further, the Department is aware of recent concerns regarding off site mercury contamination. The Department understands that the concerns relate to the operation of the former Chlor-Alkali Plant which is located in the southern portion of the BIP outside the area of this current application (Refer to Figure 2).

The former Chlor-Alkali Plant started operating in the 1940's and utilised elemental mercury in its manufacturing process. The former Chlor-Alkali Plant ceased operations in 2002. On 6 November 1998, the then Minister approved the construction and operation of a new Chlor-Alkali plant utilising membrane cell technology to replace the 1940's plant.

The Department understands that Orica is currently working with the EPA on its remediation plans for the former Chlor-Alkali Plant. Orica is also continuing the monitoring of mercury at the boundary of and within the BIP as required by the EPA.

In terms of the area that is the subject of the proposed excise of land, the CPWE site has been treated. Notwithstanding, full stack monitoring undertaken as part of required proof of performance tests identified mercury emissions, albeit well below the EPL limit. Further, the Independent Expert Panel indicated that there was no significant health risks associated with these emissions. The site is awaiting final validation by an accredited site auditor.

5. ASSESSMENT

In assessing the merits of the modification the Department reviewed:

- the assessment for the original development application and consent for DA 30/98 (See Appendix A);
- the EA for the original project and project approval for 06_0197 which relates to the CPWE project and subsequent project modifications;
- the SEE and development consent for DA No. 10/486 for the subdivision of land within the north east corner of the BIP into 22 lots (See Appendix B);
- submissions from other authorities (see Appendix C);
- relevant environmental planning instruments, policies and guidelines; and
- relevant provisions of the EP&A Act, including the objects of the Act.

The key issues associated with the modification, including hazards and risks and traffic impacts which are considered below.

5.1 Key Issues

Hazards and Risks

At the request of Council, the Department provided technical advice and recommended conditions as part of Council's response to the LEC.

In terms of the LEC application, the Department considered that while the subject land was suitable for industrial development and compatible with surrounding land uses, specific conditions would need to be adopted to ensure that potential cumulative risks would be managed.

In providing its advice to Council, the Department recommended that any approval by the LEC should include the following conditions:

- that no development be permitted within 90 metres of any propylene oxide and ethylene storage vessels;
- Lots 18 and 19 and Part of Lot 16 should only be used for the parking of vehicles or the storage of containers, plant and equipment until such time that the above storage vessels permanently cease to operate; and
- that any future application to develop these lots be subject to their own hazards and risk assessment.

The above conditions were recommended by the Council to the LEC, which were adopted by the LEC in its decision.

As such, the Department is satisfied that the issue of hazards and risks associated with the proposed excise of this land and the removal of the existing covenant has been adequately considered and managed by the LEC approval.

Further, the removal of the site will not impact on the SPC managing hazards and risk across the remaining sections of the BIP as these lands would still be required to comply with the requirements of the SPC and conditions under DA 30/98.

Therefore, the Department is satisfied that the modification application by Orica to excise the subdivided land from the BIP is primarily administrative.

Traffic

The subdivision application approved by the LEC (DA 10/486) included the creation of 22 lots and associated access roads.

An assessment of the potential traffic impacts associated with the proposed LEC subdivision was undertaken as part of the application originally lodged with Council. The assessment determined that the traffic impacts of any future development would be adequately managed.

As the modification application to the Minister's consent relates to the excise of certain land from the BIP, the Department is satisfied that there would be no additional traffic impacts.

Furthermore, any future development on the excised land would be required to consider potential traffic impacts during the assessment of any future development application.

6. CONCLUSION

The Department has assessed the proposed modification in accordance with the requirements in Clause 8B of the EP&A Regulation. This assessment has found that the proposed modification would not have any environmental impacts. Consequently, the Department is satisfied that the modification should be approved.

The Department considers that the proposed modification is acceptable, particularly given that separate development approval is required for any future development on the land that is to be excised from the BIP. The Department is satisfied that the recommended conditions would ensure consistency with other approvals relating to the BIP.

7. RECOMMENDATION

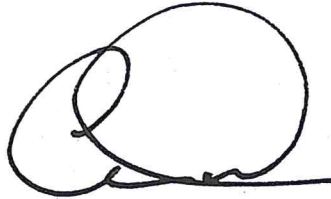
Under delegation of the Minister, it is RECOMMENDED that the Executive Director, Major Projects Assessment:

- approve the proposed modification under Section 75W of the EP&A Act; and
- sign the attached instrument (tagged A).



Chris Ritchie
Manager - Industry
Major Project Assessment

24/1/13



Chris Wilson
Executive Director
Major Project Assessment

Ashley Cheong
Planning Officer - Industry

29.1.13