

ASSESSMENT REPORT

Section 75W Modification Botany Industrial Park Subdivision (DA 30/98 MOD 3)

1. BACKGROUND

This report assesses a modification request by Orica Limited (the Proponent) to subdivide land within the Botany Industrial Park (BIP).

The BIP is a complex of chemical manufacturing and storage facilities which cover an area of around 74 hectares (ha) in the suburb of Banksmeadow, in the Bayside local government area (see **Figure 1**). The BIP is bounded to the north by Corish Circle, to the east by Denison Street, to the south by Beauchamp Road and to the west by the Botany freight railway line easement.



Figure 1: Botany Industrial Park Location

Imperial Chemical Industries (ICI), first commenced operations on the BIP site in 1942 manufacturing carbon bisulfide 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 Limited (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 (DA 30/98) from Orica for the subdivision of the BIP site into 9 lots (see **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.

2. APPROVAL HISTORY

2.1 Original Subdivision (DA 30/98)

The conditions of the original consent required Orica to form a Special Purpose Company (SPC) comprising Orica, Huntsman and Qenos to ensure the effective and coordinated management of hazards and risks across the BIP. 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.

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.

2.2 Car Park Waste Emplacement Remediation Approval (06_0197)

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 Car Park Waste Encapsulation (CPWE) site (see **Figure 2**). This approval allowed for the treatment of contaminated material that had been enclosed in a liner and cover with bitumen in the north-eastern corner of the BIP. The approval also allowed the consolidation of land holdings by individual owners within the BIP and changes to lot boundaries.

2.3 Council Subdivision Approval (10/486)

On 21 December 2010, Orica lodged a development application with the (now former) City of Botany Bay 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. On 31 August 2012, the LEC determined to approve the subdivision application.

2.4 Excise of Land (DA 30/98 MOD 1)

The approval by the LEC of Orica's subdivision application (the area shaded yellow in **Figure 3**) created an inconsistency with the Minister's subdivision consent under DA 30/98 (see **Figure 2**). As a result, Orica sought to excise the LEC approved subdivision area from the BIP which would enable Orica to proceed with the future development of this land.

On 29 January 2013, the Department approved a modification request to the Minister's subdivision consent for the BIP (DA 30/98) to correct the inconsistency with the Court subdivision consent. This resulted in land being excised from the BIP (shown in **Figure 3**) for future development. In effect, the excise of the land removed:

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

The remaining land within the BIP was not altered from the 1998 subdivision approval (DA 30/98) and is still subject to the conditions of DA 30/98.

2.5 Contemporisation of the BIP Subdivision (DA 30/98 MOD 2)

On 6 August 2015, the Department approved a modification request to further subdivide Orica's land within the BIP to better reflect on-site operations. Lot 11 in DP 1039919 was subdivided from six lots into 11 lots (see **Figure 4**). The modification also contemporised the conditions of the consent to reflect current practice and legislation.

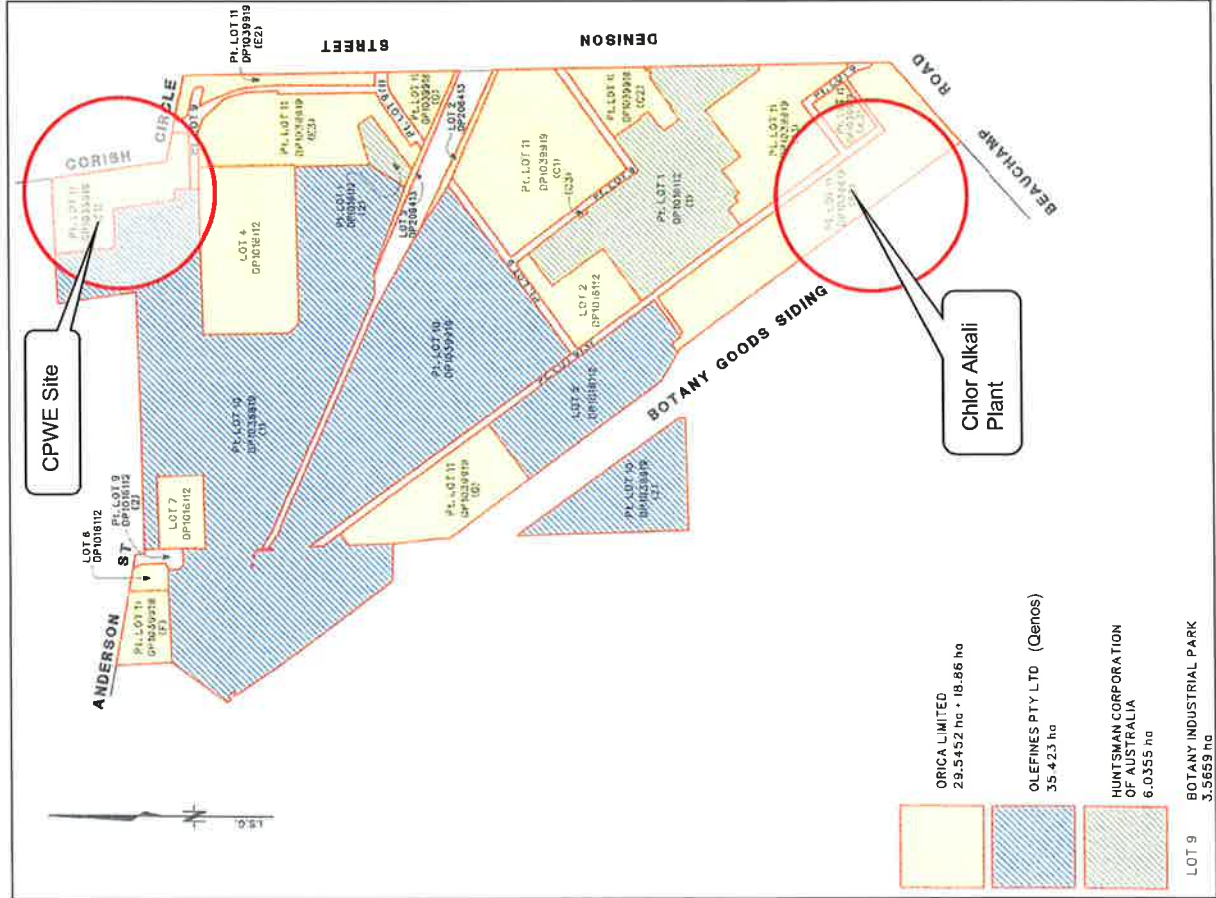


Figure 2: Botany Industrial Park Allotments (DA 30/98)



Figure 3: Land excised from the BIP (DA 30/98 MOD 1)



Figure 4: Contemporisation of the BIP Subdivision (DA 30/98 MOD2)

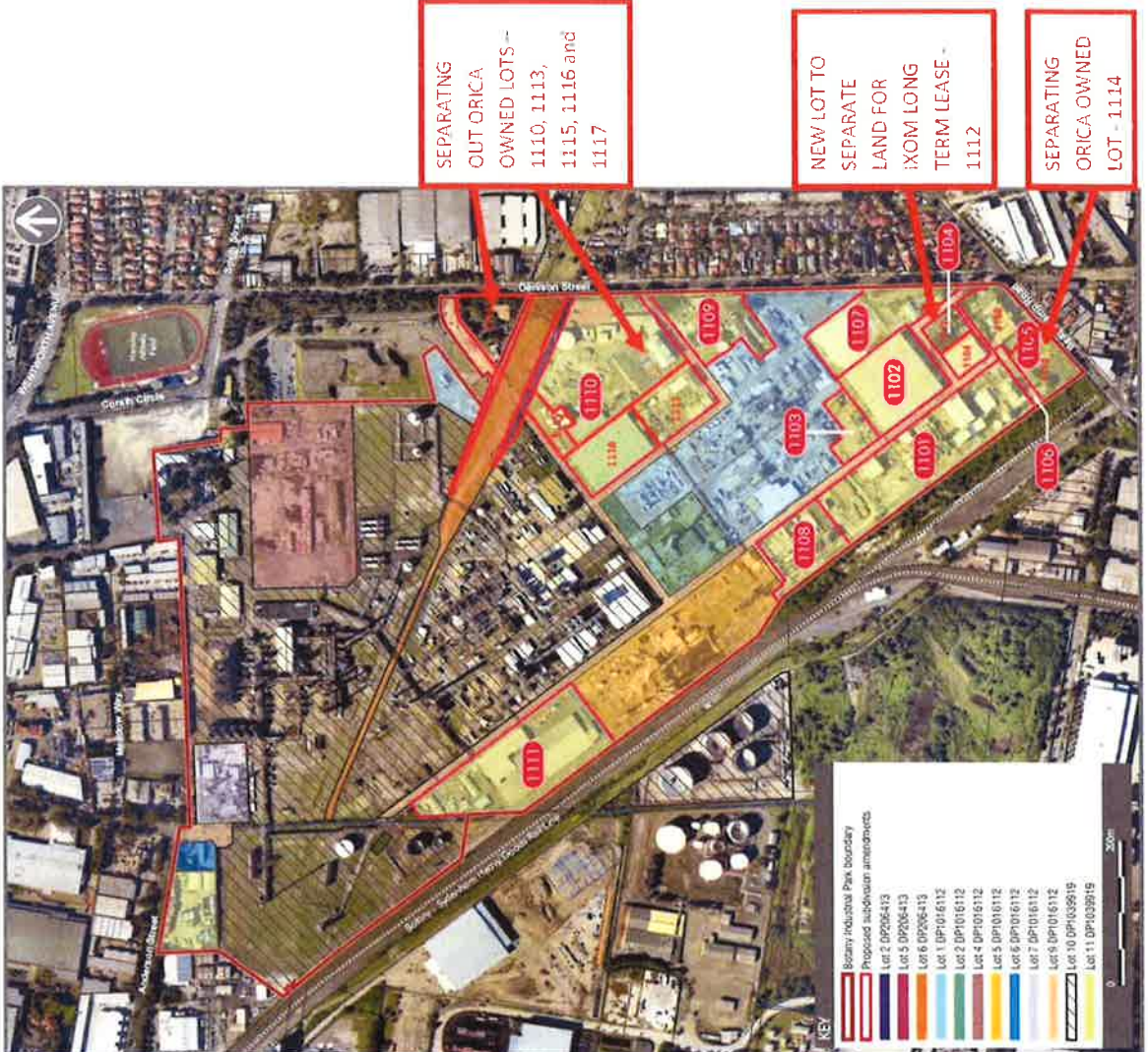


Figure 5: Proposed Modification with Changes Indicated in Red (DA 30/98 MOD3)

3. PROPOSED MODIFICATION

On 20 May 2016, Orica lodged a modification request under section 75W of the EP&A Act to further subdivide its land to better reflect Orica's land ownership and long term lease tenure for its chemicals business to IXOM. The proposal would also allow greater flexibility with the remaining useable land within the BIP by segregating assets that cannot be moved.

The modification is described in full in **Appendix A and C** and is illustrated on **Figure 5**. The proposed lot changes are summarised in **Table 1**.

Table 1: Summary of Proposed Lot Changes

Approved	Proposed		
	Lot	Size (ha)	Purpose
Lot 1110 Majority of this lot is currently occupied by Orica's hexa chlorobenzene (HCB) storage.	Lot 1110	2.535	Auxiliary storage of HCB materials (current and approved use) and BIP firewater tank (existing)
	Lot 1115	0.458	IXOM ferric chloride tanks
	Lot 1116	1.042	Orica's permanent HCB waste storage facility
	Lot 1117	0.569	Auxiliary storage and repackaging areas for HCB waste
Lot 1104 Houses workshops and ancillary storage for IXOM's chlor-alkali plant.	Lot 1112	0.180	Orica storage
	Lot 1104	0.295	IXOM office and workshop space
Lot 1105 Office building/admin, parking facility and dilapidated tennis courts.	Lot 1114	0.532	Parking and tennis courts
	Lot 1105	0.649	Office building/admin and parking facility
Lots 1113 and 1118 Formerly part of residual Lot 11 DP 1039919.	Lot 1113	0.661	Orica operated Botany Technical Centre building
	Lot 1118	0.129	Residual portion of Sydney Water SWOOS corridor

4. STATUTORY CONTEXT

4.1 Approval Authority

The Minister was the consent authority for the original development, and is consequently the consent authority for this modification request.

On 16 February 2015, the Minister for Planning delegated responsibility for determination of requests under section 75W of the EP&A Act to Directors who report to the Executive Director, Planning Services where:

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

The Department is satisfied that the modification request meets the terms of the delegation as Council did not object to the proposal, a political donations disclosure statement has not been made and no public submissions were received. As such, the Director, Industry Assessments may determine the modification request under delegated authority.

4.2 Section 75W

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

In accordance with Clause 12 of Schedule 6A of the EP&A Act, section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011, continues to apply to any such modification. It should be noted that whilst the modification process is taking place under section 75W of the EP&A Act, any modified consent would remain a development consent under Part 4 of the EP&A Act.

The Department notes 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 75W of the EP&A Act; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of approval.

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 request should be assessed and determined under section 75W of the EP&A Act rather than requiring a new development application to be lodged.

5. CONSULTATION

Under section 75W of the EP&A Act, the Department is not required to notify or exhibit the request. Upon receipt, the request was placed on the Department's website and following a review of the request, the Department did not consider that further consultation was necessary. Notwithstanding, the Department sought comments from Council, the Environment Protection Authority, SafeWork NSW, Fire and Rescue NSW and NSW Ports. Comments were received from four agencies, none of which were objections.

Bayside Council (Council), the recent amalgamation of the City of Botany Bay and Rockdale Councils, recommended that future owners be notified of the risk and contamination issues associated with the site.

The **Environment Protection Authority** (EPA) requested further clarification regarding lot ownership and arrangements for common assets. A meeting was held on 20 September 2016 at the Orica office with the EPA and the Department to discuss these matters. Orica committed to providing the EPA a map delineating ownership, occupation and management of the BIP. Orica will also consult with the EPA prior to the submission of any future development applications on this site.

Fire & Rescue NSW (FRNSW) raised concerns regarding emergency access, management of fire safety measures and revision of the Fire Safety Study (FFS).

SafeWork NSW noted risk concerns for new occupants. New occupants would potentially be closer to current hazardous activities or the storage of hazardous materials.

Orica provided a Response to Submissions (RTS), which is further discussed in the Department's assessment in **Section 6** of this report and is included in **Appendix C**. All submitting agencies have reviewed the RTS and indicated no further comment.

6. ASSESSMENT

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

- Statement of Environmental Effects and assessment report of the original development;
- previous modifications;
- existing conditions of consent;
- documentation supporting the proposed modification;
- submissions received;
- RTS;
- relevant environmental planning instruments, policies and guidelines; and
- requirements of the EP&A Act, including the objects of the EP&A Act.

6.1 Issues

The Department's assessment of the issues associated with the modification request is provided in **Table 2**.

Table 2: Assessment of Issues

Issue	Assessment
Hazardous Risk	<ul style="list-style-type: none">• The Department notes that as activities within the site are not being changed, the risk (including cumulative) associated with the creation of new lots within the site will not change.• The proposed subdivision of land within the BIP would facilitate the categorisation of the land to reflect on-site operations and assist with the management of how the land is used.

Issue	Assessment
	<ul style="list-style-type: none"> Importantly, the proposed new IXOM lots will be outside the cumulative individual fatality risk criteria for industrial land uses, as estimated in the 2012 BIP Quantitative Risk Assessment (QRA). The Department's assessment concludes there will be no impact or change to the hazard and risk profile of the site.
Risk for New Occupiers	<ul style="list-style-type: none"> Council requested that all future occupiers are adequately notified of the risks associated with the site. The RTS noted that section 149 certificates and declaration under the <i>Contaminated Land Management Act 1997</i> will ensure future owners are made aware of the risks and contamination associated with the site. Prior to the divestment of any parcels, Orica has also committed to both an internal investigation and an assessment by an EPA Accredited Contaminated Sites Auditor. SafeWork NSW noted that new occupiers may be subject to increased risk as a result of the subdivision as they would potentially be closer to hazardous operations. The RTS advised that any changes to current land uses would trigger a review of potential risks in the development application process. Both Council and SafeWork NSW have indicated satisfaction with the RTS and provide no further comment. The Department notes that the owner and any lessee or occupier of a lot created in the subdivision must become a member of the SPC as required by the approved conditions (DA 30/98). A covenant must also be placed on the Certification of Title of each new lot created. Consequently, any future occupier will be made aware of the risks associated with the site. The Department's assessment concludes the measures currently in place in the conditions of consent adequately address the concerns raised regarding risk for future occupiers.
Emergency Access	<ul style="list-style-type: none"> FRNSW raised concerns regarding the potential impacts to emergency access as a result of the proposed subdivision. SafeWork NSW also noted that the subdivision should not result in blocking of access points for emergency services. The RTS advised that the modification request does not permit any change in land use and will not change any existing access arrangements. Orica committed to consulting with FRNSW prior to any future applications that would result in changes to emergency access or infrastructure. Both FRNSW and SafeWork NSW have indicated satisfaction with the RTS and provide no further comment. As the request does not seek approval to change existing operations on site nor the existing emergency access arrangements, the Department concludes emergency access will be suitably maintained.
Fire Safety	<ul style="list-style-type: none"> FRNSW raised concerns regarding the subdivision of Lot 1110 to segregate the fire water tank into proposed Lot 1115. The original modification request proposed to annex the fire water tank into proposed lot 1115. The RTS has modified the request to remove the annexing of the fire water tank in response to FRNSW's concerns. FRNSW also voiced concerns regarding the ongoing maintenance of fire safety measures over a large site and the need for an updated site-wide FSS. The RTS advised that all current fire and emergency assets on site are protected by covenants and are maintained with a Utilities Services Agreement. FRNSW has indicated satisfaction with the RTS and provides no further comment. The Department notes the approved conditions (DA 30/98) includes a SPC which is responsible for the implementation and coordination of various site-wide safety systems and plans. This includes a Site FSS which must be reviewed and updated when potentially impacted. The Department's assessment concludes that the fire safety concerns raised are adequately addressed with the existing conditions of consent and with the revised subdivision of Lot 1110.

7. CONCLUSION

The Department has assessed the modification request in accordance with the requirements of Clause 8B of the EP&A Regulations.

The assessment has found the modification would not increase the cumulative risk of the BIP beyond those originally assessed and approved. The modification facilitates the better delineation of Orica owned land within the BIP. Further, Orica has adequately addressed the concerns raised by Council, the EPA, FRNSW and SafeWork NSW. Consequently, the Department is satisfied that the modification should be approved, subject to conditions.

8. RECOMMENDATION

It is RECOMMENDED the Director, Industry Assessments:

- **consider** the findings and recommendations of this report;
- **approve** the proposed modification under section 75W of the EP&A Act; and
- **sign** the attached instrument of modification (refer **Appendix D**).

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Industry Assessments

Endorsed by:

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