

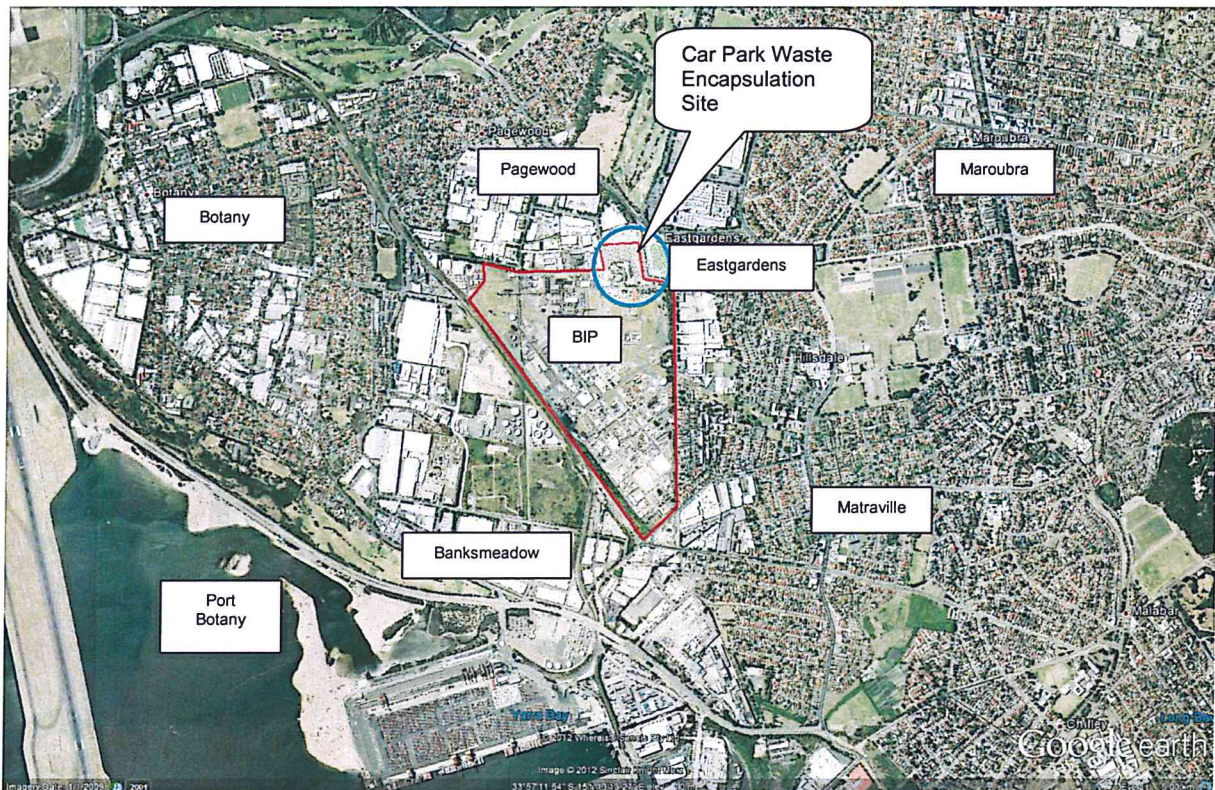
# ASSESSMENT REPORT

## Section 75W Modification Orica Car Park Remediation Project (MP 06\_0197 MOD 5)

### 1. BACKGROUND

Orica Australia Pty Ltd (Orica) is an Australian based global company that produces mining, chemical and consumer products. Orica has been manufacturing chemicals in Banksmeadow in the Botany Local Government Area since 1941.

The area in Banksmeadow, comprising the Orica facility as well as the adjacent industrial plants operated by Qenos and Huntsman, has been collectively referred to as the Botany Industrial Park (BIP) since 1996. The BIP occupies over 100 hectares and is bound by Denison Street to the east, Beauchamp Road to the south, and the Botany Rail Goods line to the west (see **Figure 1**).



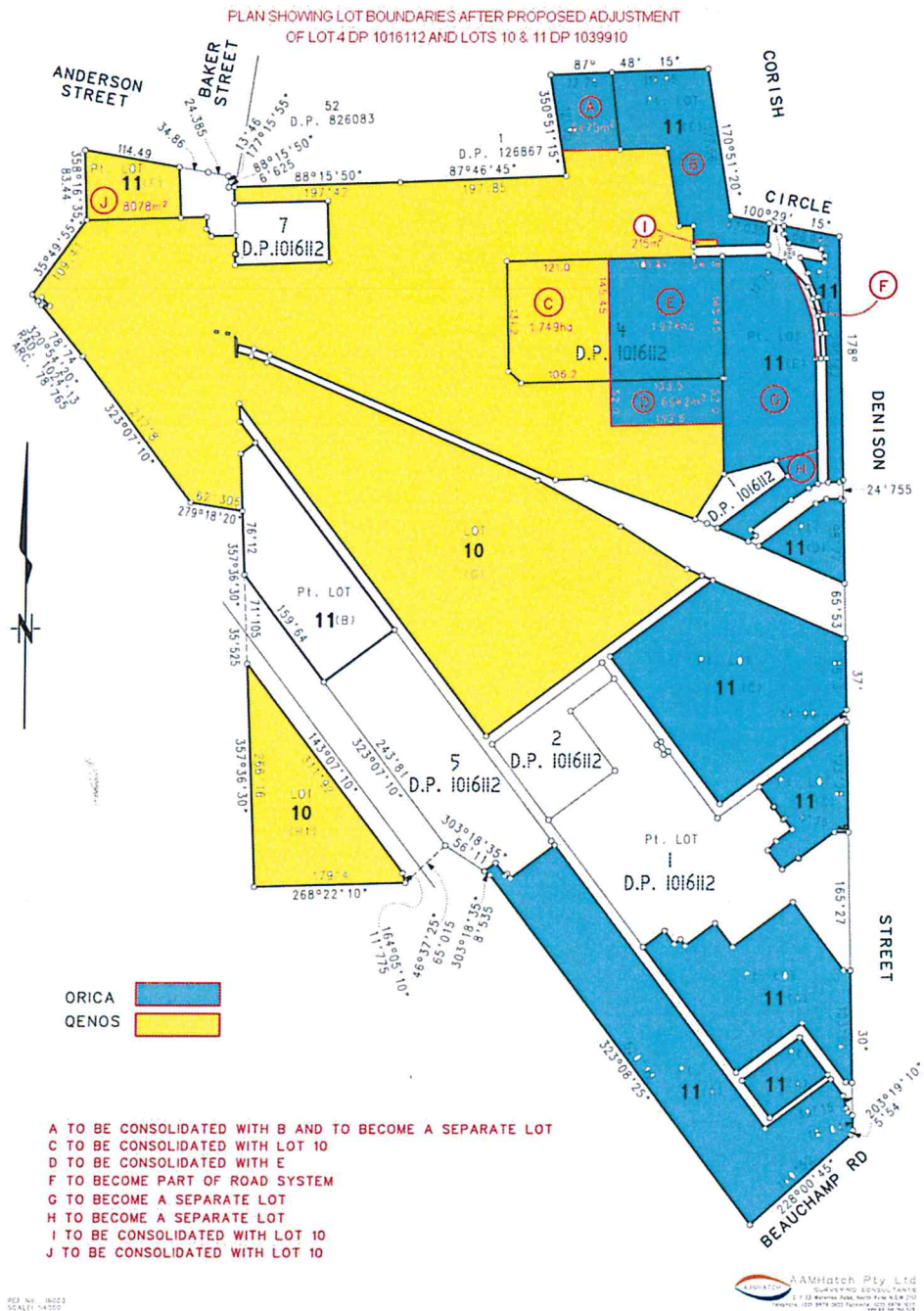
**Figure 1: Botany Industrial Park Location**

#### Car Park Waste Encapsulation 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 1**).

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 excavation and treatment of contaminated material, reinstatement of the remediated site, consolidation of land holdings by individual owners within the BIP and changes to lot boundaries. The changes to lot boundaries is shown in **Figure 2**.



**Figure 2: Existing lot boundaries approved under (MP 06\_0197)**

Following the successful remediation of the site, Orica deemed that the CPWE site was surplus to its future requirements. As the CPWE site 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.

On 29 January 2013, the Executive Director (as delegate of the Minister for Planning and Infrastructure) approved a modification application from Orica under section 75W of the EP&A Act to excise certain land (including the CPWE site) from the BIP (Refer to **Figure 3**).

Excising the land from the BIP removed the requirements and covenants contained within the Conditions of Approval (30/98) for the subject land and enabled the transfer of the land between the landowners. The remaining land located 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.



## 2. PROPOSED MODIFICATION

On 19 September 2013, Orica lodged an application to modify the Orica Car Park Remediation Project (06\_0197) with the Department under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

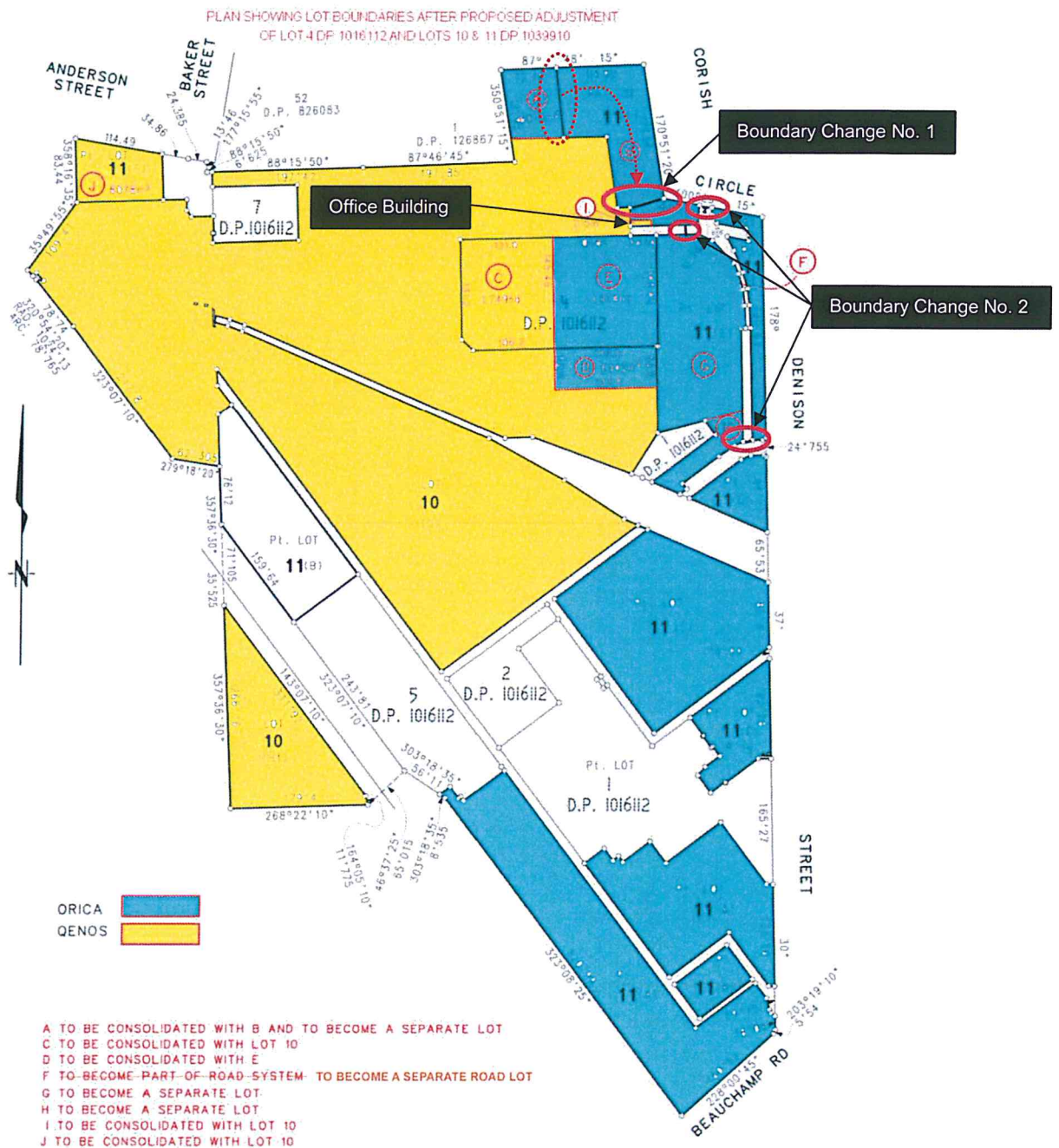
Under the modification application, Orica seeks to amend the approved changes to the lot boundaries to assist in the sale or transfer of the land. The proposed modifications are detailed in **Table 1** and illustrated in **Figure 4** below.

**Table 1: Proposed Modifications**

Boundary Change No.	Proposed modification
1	<u>Subdivide 'Lot' B</u> <ul style="list-style-type: none"><li>Existing conditions require the amalgamation of 'Lot' A and 'Lot' B to create a single lot.</li><li>However, there exists a small brick office building located on 'Lot' B.</li><li>The proposal seeks to subdivide 'Lot' B to allow for a clear distinction of the former car park being located on one allotment and the remaining land with the office building on another allotment.</li><li>In effect, this will shift the existing lot boundary between 'Lot' A and 'Lot' B to the south.</li></ul>
2	<u>Create a separate allotment for the road</u> <ul style="list-style-type: none"><li>The existing plan indicates that the road is to become part of the BIP road system. However, the road was recently excised from the BIP as part of 30/98 MOD 1.</li><li>By creating a separate allotment for the road, this will enable its transfer in ownership.</li></ul>

The proposed modification will involve replacing the 'Boundary Readjustment' plan attached as Appendix D of Project Approval (06\_0197). The proposal does not seek to alter the remaining Conditions of Approval.

Further, the proposal does not include any land uses. Any future land uses will be subject to separate development applications and any potential impacts will be considered during the assessment stage.



**Figure 4: Modified lot boundaries**

### 3. STATUTORY CONTEXT

#### Section 75W

In accordance with Clause 12 of Schedule 6A of the EP&A 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 transitional Part 3A projects.

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;
- the modification is of a scale that warrants the use of Section 75W of the EP&A Act; and
- environmental impacts would remain unchanged as a result of the modification.

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, 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, 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**

The Department made the supporting documentation of the proposal publicly available on its website and sought comments from Botany Bay City Council (Council). Consultation with other government agencies and neighbouring sites was considered to be unnecessary as the environmental impacts of the proposal would essentially remain unchanged.

**Council** did not object to the modification subject to the development not impacting upon the existing approvals on the site.

A copy of Council's submission can be found in **Appendix A**.

## **5. ASSESSMENT**

During its assessment of the merits of the proposed modification, the Department has reviewed the:

- Environmental Assessment of the original proposal;
- existing conditions of approval;
- supporting documentation of the proposed modification;
- submissions on the proposed modification; and
- relevant policies and guidelines.

The proposed modification is considered to be administrative. Further, there would be no impact upon any other Development Approvals or Environmental Protection Licences that currently apply to the site.

The Department considers that there will be no additional impacts associated with the proposed modification. Any potential impacts associated with future land uses of the subject land will be assessed as part of future development applications.

## **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.

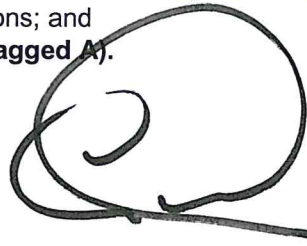
The Department considers that the proposed modification is acceptable, particularly given that separate development approval is required for any future development on the land that is subject to the proposed boundary adjustment. The Department is satisfied that the recommended conditions would ensure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

## 7. RECOMMENDATION

It is RECOMMENDED that, as delegate for the Minister, the Executive Director:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the application subject to conditions; and
- **sign** the attached notice of modification (**tagged A**).

  
Chris Ritchie  
A/Director  
Industry, Social Projects and Key Sites  
19/11/13.

  
Chris Wilson  
Executive Director  
Development Assessment Systems and  
Approvals  
20.11.13  
Ashley Cheong  
Planning Officer

## APPENDIX A – SUBMISSIONS

Our ref: RJ Dowsett-PPTY/17-16-20.11



22 October 2013

Ms Ashley Cheong  
Planning Officer  
Major Projects Assessment  
Department of Planning & Infrastructure  
23-33 Bridge Street,  
Sydney NSW 2000

Dear Mr Cheong

**RE: Orica Car Park Remediation Project  
Modification Application 06\_0197 Mod 5**

The Council has received notification from the Department regarding the above mentioned modification application to seek minor variation to the approved boundary adjustment plan. The modification will assist in land swap arrangements for the area recently excised from the Botany Industrial Park (DA 30/98 MOD 1).

Based on the information provided by the Department, Council has no objection to the proposal subject to the following:

- The modification application (06\_197 Mod 5) must not interfere with the implementation of Development Application Consent No.10/486 and the terms of that consent granted by Land and Environment Court dated 12 September 2012.
- The proponent must ensure access is provided to each of the subdivided lots. In particular, Lot A, G and the lot containing the existing small brick office building.
- The modification must not impact on the existing services and infrastructure (i.e. underground cable) on the site.
- Development approval is required for any new development on the subdivided lots.
- No additional work, use or amendment is to be approved as part of this modification approval.
- The subdivided lots must comply with relevant development approval and conditions (i.e. Project Approval 06\_0197).

Should you have any queries please contact Mr Gilead Chen – Senior Strategic Planner on (02) 9366 3566 or the writer on (02) 9366 3553.

Yours faithfully

A handwritten signature in black ink, appearing to be "RJ Dowsett", written over a horizontal line.

**R J DOWSETT  
DIRECTOR – PLANNING & DEVELOPMENT**

Administration Centre, 141 Coward Street, Mascot NSW 2020 (PO Box 331 Mascot NSW 1460)

Telephone: (02) 9366 3666 Facsimile: (02) 9366 3777

E-mail: [council@botanybay.nsw.gov.au](mailto:council@botanybay.nsw.gov.au) Internet: <http://www.botanybay.nsw.gov.au>