

Section 96(1A) Modification Application Milk Processing Facility 111-113 Quarry Road, Erskine Park

October 2014

SECTION 96(1A) Application

To

Modify Development Consent SSD 6026 for removal
of Schedule 2 Condition 6

Prepared by
Davis Advisory
For

Murray Goulburn Co-operative Co. Limited
For submission to

NSW Department of Planning and Environment



Devondale
MURRAY GOULBURN CO-OPERATIVE CO. LIMITED

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1. Introduction

1.1. Background to Application and Development Approval Timeline

Murray Goulburn Co-Operative Co. Ltd (**MGC**) is an Australian owned cooperative that is well known for its flagship brand Devondale. MGC produces more than a third of the nation's milk volumes and is wholly controlled by its 2,800 dairy farmer shareholders in Victoria, South Australia and New South Wales. The milk processing facility at 111-113 Quarry Road, Erskine Park (**Erskine Park Facility**) is MGC's first milk processing facility in New South Wales and operations commenced in August 2014 pursuant to an interim Certificate of Occupancy.

This Section 96(1A) application (**S96 (1A) Application**) has been prepared by Davis Advisory on behalf of Murray Goulburn Cooperative Co. Limited (**MGC**) to modify Development Consent SSD 6026 (**Development Consent**), which approved the construction and operation of the Erskine Park Facility in the Penrith Local Government Area subject to the conditions in the consent. The Development Consent was granted on 17 December 2013. A copy of the Development Consent is provided in Attachment A.

This Development Consent was subsequently modified on 13 June 2014 to allow for the installation of an 80,000L liquified natural gas (LNG) tank. This modification was required for two reasons.

- First, so as to minimise delay to the commencement of operations at the Erskine Park site; and
- Secondly, to provide time for Jemena, the gas supply authority to connect the Erskine Park Site to its network.

The LNG tank will be removed once a network connection is established. This modification application was approved on 13 June 2014 (see Attachment B).

1.2. Building Survey & Amendments

This Erskine Park Facility is currently in the process of obtaining a final occupation certificate as required by the conditions of the Development Consent. As part of that process, a building survey was recently conducted to satisfy Schedule 2 Condition 6 of the Development Consent, which states that:

Condition 6 - The Applicant shall ensure that:

- (a) *the gross floor area of the main building does not exceed 8055m²;*
- (b) *the height of the main building does not exceed 9.425m; and*
- (c) *the height of milk silos does not exceed 19.5m.*

A recent building survey shows that these limits have been slightly exceeded by the milk processing facility. The results are shown below:

	Current limit of Consent	Building survey result
Gross floor area (GFA) of main building	8055m ²	8072m ²
Height of the main building	9.425m	9.65m
Height of milk silos	19.5m	21.13m

The milk processing facility commenced operations in August 2014 subject to an interim occupation certificate and it is important that a Final Occupation Certificate is obtained to continue operations.

As making alterations to the milk processing facility at this stage to comply with Schedule 2 Condition 6 would be costly and interfere with operations at the milk processing facility, MGC seek to remove Schedule 2 Condition 6 from the Development Consent under this S96(1A) Application.

This is on the basis that:

- First, the development in its current form will remain substantially the same as the development that was originally approved. While the gross floor area and height for the development will be slightly more than initially planned, this is expected to have little (if any) effect on the impact on the site or surrounding neighbours; and
- Secondly, it is MGC's understanding that Schedule 2, Condition 2 of the Development Consent should provide adequate comfort to the Department of Planning and Environment. Schedule 2, Condition 2 provides that (amongst other things) Murray Goulburn will carry out the development generally in accordance with the plans and elevations (being Appendix 2 of Development Consent SSD 6026). As such, following the removal of Schedule 2 Condition 6, the milk processing facility is still required to generally comply with the plans and elevation that were provided in the initial application for Development Consent.

1.3. Owners Consent

The subject site is 111-113 Quarry Road, Erskine Park and is legally described as Lot 1022 in DP 1175670.

The property is owned by MGC. Owners Consent to the lodgment of the Section 96(1A) Application has been granted on the Section 96 Modification Form that is submitted and supported with a letter from Fiona Smith, Company Secretary of Murray Goulburn.

1.4. Description of Proposed Work

The S96 (1A) Application does not involve any modifications to approved plans and supporting documentation.

2. Modification Proposal

This Section 96(1A) modification application proposes to remove Schedule 2 Condition 6 of the Development Consent, which states that:

Condition 6 - The Applicant shall ensure that:

- (a) the gross floor area of the main building does not exceed 8055m²;*
- (b) the height of the main building does not exceed 9.425m; and*
- (c) the height of milk silos does not exceed 19.5m.*

MGC submit that this modification involves minimal environmental impact pursuant to s 96(1A) of the EP&A Act.

This is also supported by an Urban Design, Landscape Strategy and Visual Assessment Report (**Visual Assessment**) (see Attachment C) conducted as part of the Environmental Impact Study during the initial application for the Development Consent.

3. Requirements for Approval

3.1 Relevant Statutes

As the consent authority for this modification application, the Minister is required to take into account the relevant considerations in s 96(1A) and s 96(3) of the EP&A Act prior to granting approval to a modification application under s 96(1A) of the EP&A Act.

We have discussed each of these below.

3.2 Section 96(1A)

MGC submit that the modification application satisfies the requirements of Section 96(1A) of the EP&A Act. This is set out in the table below:

Section 96(1A) Relevant Consideration	How this S96(1A) application satisfies the relevant consideration																
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:																	
(a) it is satisfied that the proposed modification is of minimal environmental impact	The Erskine Park Facility as currently constructed does not significantly exceed the limits set in Schedule 2 Condition 6.																
	<table><tr><th></th><th>Current limit</th><th>Building survey result</th><th>Difference</th></tr><tr><td>Gross floor area (GFA) of main building</td><td>8055m²</td><td>8072m²</td><td>17m²</td></tr><tr><td>Height of the main building</td><td>9.425m</td><td>9.65m</td><td>0.225m</td></tr><tr><td>Height of milk silos</td><td>19.5m</td><td>21.13m</td><td>1.63m</td></tr></table>		Current limit	Building survey result	Difference	Gross floor area (GFA) of main building	8055m ²	8072m ²	17m ²	Height of the main building	9.425m	9.65m	0.225m	Height of milk silos	19.5m	21.13m	1.63m
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	Height of the main building	9.425m	9.65m	0.225m													
Height of milk silos	19.5m	21.13m	1.63m														
As the exceedance of the existing limit is very small, removal of Schedule 2 Condition 6 is expected to have little, if any, environmental impact. The Erskine Park facility as presently constructed is unlikely to cause additional pollution, traffic or noise in any way.																	
The only way in which this exceedance may be of nuisance may be with regard to visual amenity (given the additional 1.63m height of the milk silos). However, in this respect we note that the Erskine Park Facility is located in an industrial facility and the previous Visual Assessment conducted in 2013 showed that there was little visibility of the milk silos at 19.5m. It is unlikely that this additional 1.63m would greatly increase the visibility of the milk silos.																	
However, if required, MGC is willing to conduct a further Visual Assessment Report that shows that there is no significant visual impact.																	

Section 96(1A) Relevant Consideration	How this S96(1A) application satisfies the relevant consideration
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted	<p>Removal of Schedule 2 Condition 6 does not change the nature of the development in any way. There is no material change to the general layout of the development, or the nature and capacity of processes to be carried on within the site. The Erskine Park Facility will still be used for the purpose of milk processing.</p> <p>Furthermore, Schedule 2 Condition 2 of the Development Consent already requires the development of the Erskine Park facility to be <u>generally</u> carried out in accordance with existing plans and elevations and other conditions of the Development Consent.</p> <p>This in itself places a cap on the size of the development as these plans and elevations contain measurements for the Erskine Park Facility. Given the small exceedances in the constructed building facilities, MGC submits that Schedule 2 Condition 2 has been satisfied.</p>
(c) it has notified the application in accordance with the regulations	<p>MGC note that notification of modification applications made under s 96(1A) of the EP&A Act is at the discretion of the Department of Planning.</p> <p>As the measured exceedance of the limits set in Schedule 2 Condition 16 are very small, MGC submits that notification would not be necessary given the relatively minor nature of the proposal.</p>
(d) it has considered any submissions made concerning the proposed modification.	If required, MGC will address and respond to any submissions received should the Department decide to exhibit this modification application.

3.3 Section 96(3) requirements

Section 96(3) requires the Consent Authority to also consider the matters referred to in s 79C(1) of the EP&A Act. These considerations and how they are satisfied are as follows:

s 79C(1) Relevant Considerations	How this s 96(1A) application satisfies the relevant consideration
In determining a development application, a consent authority is to take into account the following matters as being of relevance to the development the subject of the development application:	
(a)(i) any environmental planning instrument;	MGC notes that:

s 79C(1) Relevant Considerations	How this s 96(1A) application satisfies the relevant consideration
(a)(ii) any proposed instrument, proposed instrument, that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)	<ul style="list-style-type: none"> the Erskine Park Facility has previously been assessed against the requirements of all relevant planning controls during the <ul style="list-style-type: none"> initial application for development consent in June 2013; and subsequent modification application in March 2014 and was found to be consistent with all relevant planning controls on both occasions; as previously discussed, the removal of Schedule 2 Condition 6 is expected to have minimal environmental impact and will not result in the development being substantially different; while the Erskine Park Facility, as constructed, will have milk silos that exceed the recommended 15 metre height limit specified for the site under the provisions of Section 6.10 Clause 4.1.2 (b) of the <i>Penrith Development Control Plan 2006</i> (Penrith DCP), this is not something new and has been previously considered during the initial application for development consent. In fact: <ul style="list-style-type: none"> a Visual Assessment was conducted by GM Urban Design & Architecture Pty Ltd and Group GSA as part of the Environment Impact Statement during the initial application for a Development Consent; the drawing and elevation plans for the milk silos at that time estimated that the height of the milk silos would be 19m; under the assumption that the milk silos would be 19m, the Visual Assessment concluded that while the milk silos were not compliant with the numerical building height controls set out in the Penrith DCP, it was nonetheless compliant with the objectives of the Penrith DCP and was appropriate as it would have little visibility within the wider context – particularly from residential areas; as the milk silos that are currently constructed are only 1.63m greater than that contemplated in the initial Visual Assessment, it is unlikely that this conclusion from the initial Visual Assessment would change if this modification application to remove the 19.5m height limit were removed; however, if required, MGC can conduct a new Visual Assessment Report that shows that there is no significant visual impact from the height of the milk silos.
(a)(iii) any development control plan, and	
(a)(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and	
(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	
(a)(v) any coastal zone management plan (within the meaning of the <i>Coastal Protection Act 1979</i>),	<p>Therefore, it is submitted that this relevant consideration is satisfied.</p>

s 79C(1) Relevant Considerations	How this s 96(1A) application satisfies the relevant consideration
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	<p>This modification application is made to remove Schedule 2 Condition 6 as the measured dimensions of the Erskine Park Facility only slightly exceed the limits contained in Schedule 2 Condition 6.</p> <p>This S96 (1A) modification application does not affect any other aspect of the development.</p> <p>The development has already been assessed as having an acceptable impact on the environment during the initial development consent application to construct the Erskine Park Facility.</p> <p>This assessment is unlikely to change following approval of this modification application as this modification application only relates to a small increase in the dimensions of the Erskine Park Facility.</p> <p>In the event that the modification application is rejected, further construction works would be required to amend the size of the buildings at the Erskine Park Facility. This could potentially have negative environmental impact given the additional noise and traffic from such additional works.</p>
(c) the suitability of the site for the development,	<p>The site has previously been assessed as acceptable during the initial development consent application to construct the Erskine Park Facility. This assessment is unlikely to change following approval of this modification application as this modification application only relates to a small increase in the dimensions of the Erskine Park Facility.</p>
(d) any submissions made in accordance with this Act or the regulations,	<p>If required MGC will address and respond to any submissions received should the Department decide to exhibit this modification application.</p>
(e) the public interest.	<p>This modification application is in the public interest as:</p> <ul style="list-style-type: none"> • First, it would avoid causing additional noise and traffic that would be occur if further construction works were required to amend the dimensions of the buildings at the Erskine Park Site; and • Secondly, MGC has a contract with Coles to commence supply of milk which began on 30 July 2014. Rejection of this modification application could potentially jeopardise MGC's ability to adhere to this deadline. This may affect future employment opportunities at the Erskine Park Site in the event that it cannot maintain its obligations to Coles;

4. Conclusion

This s 96(1A) Modification Application has fully considered the requirements under for modification under the Environmental Planning & Assessment Act 1979 (NSW).

Having fully considered each relevant consideration to the grant of approval to this modification application, it is our opinion that the proposed s 96(1A) modification be supported.

We trust that the information contained in this statement is sufficient to enable a prompt assessment of the modification application.

If you have any queries or would like to discuss this matter further please contact the undersigned stephen.davis@davisadvisory.com.au or Dr Andrew Low on andrew.low@davisadvisory.com.au

Yours faithfully



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