

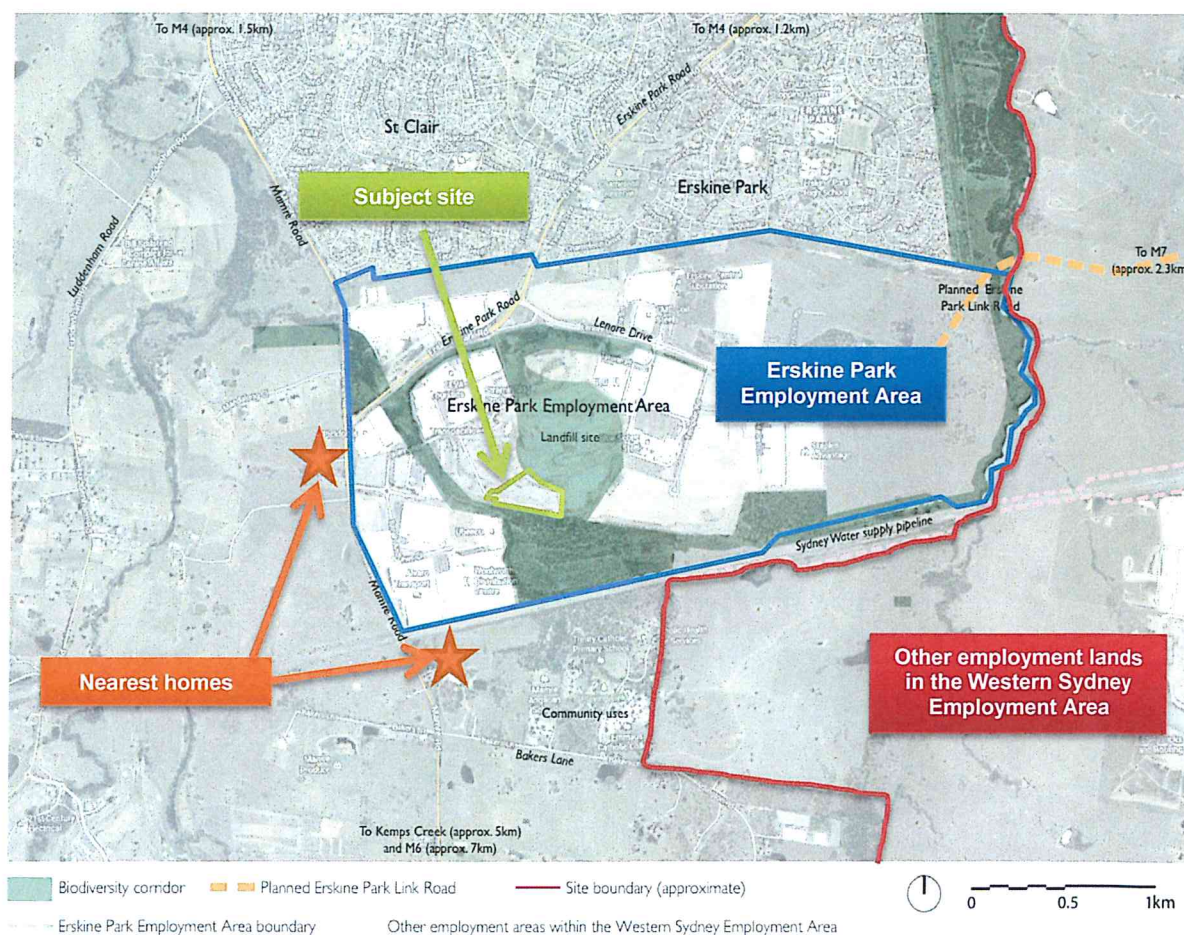
ASSESSMENT REPORT

Section 96(1A) Modification (SSD 6026 MOD 2) Deletion of condition for maximum height and floor area

1. BACKGROUND

Murray Goulburn Cooperative Co. Limited (MGC) received Ministerial consent in December 2013 for a \$64.88 million facility to pasteurise and bottle 150 million litres of milk per year on an industrial site at Erskine Park.

The facility has been constructed and it is currently operating under an Interim Occupation Certificate issued in August 2014. The site is part of the Erskine Park Employment Area, which is itself part of the Western Sydney Employment Area, and the nearest homes are about 800 metres (m) to the south and west (see **Figure 1**).



THE SITE AND WIDER CONTEXT (adapted from Google Earth)

Figure 1: Locality Map

Relevantly, schedule 2, condition 6 of the Ministerial consent specifies that the:

- gross floor area of the main building of the facility must not exceed 8,055m³;
- height of the main building must not exceed 9.425m; and
- height of milk silos must not exceed 19.5m.

MGC commissioned a check survey of the built facility before the Interim Occupation Certificate was issued. The check survey showed the following height and floor area variations from condition 6:

- gross floor area of the main building is 8,072m² (17m² over);
- height of the main building is 9.65m (22.5cm over); and
- height of the milk silos is 21.13m (1.63m over).

The variations from condition 6 appear to have resulted from minor differences in wall and ceiling thickness specifications, and in the case of the milk silos, small differences in the pre-fabricated tank specifications. While minor, the variations have prevented a Final Occupation Certificate being issued for the facility.

2. PROPOSED MODIFICATION

MGC seeks approval to delete condition 6 from the consent. Minor variations are within the scope of another consent condition (schedule 2, condition 2), which requires only that the facility “generally” comply with the approved plans. The deletion of condition 6 would allow a Final Occupation Certificate to be issued for the development.

3. STATUTORY CONSIDERATION

3.1 Authority to determine

The consent for the milk processing facility was granted under Part 4, Division 4.1 of the *Environmental Planning and Assessment Act 1979* (the Act). Therefore, the Minister for Planning is the approval authority for the modification.

The Minister for Planning delegated responsibility for the determination of section 96(1A) applications to Directors and Managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- 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.

The proposal complies with the terms of the delegation as Penrith City Council does not object to the proposal, a political disclosure statement has not been made in relation to the application, and no public submissions were received in the nature of an objection. Accordingly, the Manager – Industry Assessments may determine the application in accordance with the Minister’s delegation.

3.2 Modification

The Department considers that the application can be characterised as a modification to the original development consent and that it satisfies the matters for consideration in section 96(1A) of the Act for a modification involving minimal environmental impact.

In this regard, the Department notes that there is no change to the general layout of the development, or the nature and capacity of processes to be carried on within the site. While it does not comply with the height and floor area specifications in schedule 2, condition 6, the facility would comply with schedule 2, condition 2, which requires only that it be constructed “generally in accordance with the approved plans”.

3.2 Consultation

The modification application was made publically available on the Department's website. The Department also invited Penrith City Council (**Council**) to make a submission. Consultation with other agencies and adjoining landowners was considered to be unnecessary due to the relatively minor nature of the proposal. The submission from Council is attached at **Appendix C** and the issues raised are summarised below.

Council did not object to the modification and recommended that deletion of schedule 2, condition 6 is appropriate given that the construction is already complete. Council noted that the silo is an iconic element to the development and its higher construction does not introduce any negative visual impacts.

No public submissions were received in relation to the modification.

5. ASSESSMENT

In its assessment of the modification, the Department has considered the following:

- the documents accompanying the modification application (see **Appendix B**);
- submissions made in respect of the modification (see **Appendix C**); and
- the Secretary's assessment report for the original development application.

5.1 Deletion of Schedule 2, Condition 6

This condition was imposed to ensure the facility would be constructed in accordance with the height and floor area specifications in the approved plans. However, in the constructed building, height and floor area variations have resulted from minor differences in wall and ceiling thickness specifications, and in the case of the milk silos from a minor difference in the specifications for the pre-fabricated stainless steel tanks.

Such minor variations would comply with schedule 2, condition 2, which requires that the facility be constructed generally in accordance with the approved plans. This is generally the Department's standard condition for its approvals. On review, the degree of construction accuracy required to comply with condition 6 was not intended to be imposed in this case and is rarely imposed on construction projects for other manufacturing facilities.

The documents accompanying the modification have, nevertheless, considered the impact of the variations. They find negligible impact on the visual qualities of the locality, or on views to and over the site. Council also noted in particular, that the milk silo is an iconic element of the development and that a 1.63m increase in its height is acceptable.

The Department considers the height and floor area variations to be minor and inconsequential to the overall impacts of the facility. The Department is satisfied that the development is substantially the same as was originally approved and that there is no materially significant change to the scale of the development or the nature and capacity of processes to be carried out within. Consequently, schedule 2, condition 6 is not warranted and may be deleted.

6. CONCLUSION

The Department has assessed the modification in accordance with the requirements of the Act. The assessment has found that the degree of construction accuracy required to comply with the condition is stricter than is ordinarily required for approved construction projects. In the present case, the Department is satisfied that the height and floor area variations are minor and have not resulted in a change in the scale of the development or the nature and capacity of the processes to be carried out on site. Consequently, schedule 2, condition 6 is not required and may be deleted.

7. RECOMMENDATION

Under delegation of the Minister, it is recommended that the Manager, Industry Assessments:

- **approve** the modification application under section 96(1A) of the Act; and
- **sign** the attached Notice of Modification (**Appendix A**).

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Planner



15.1.15

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23/1/15

Chris Ritchie
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