

## IDAP REPORT – SECTION 4.55(2) MODIFICATION

<b>Property:</b>	1-5 Norfolk Road GREENACRE Lot: 41 DP: 854916 DA2021/101
<b>Proposal:</b>	Section 4.55 (2) application to modify the Certificate of Consent issued on 28 September 1972 to include the receipt, storage and use of recycled glass sand and slag materials in the asphalt mix produced on site.
<b>Applicant:</b>	Bitupave
<b>Owner:</b>	Boral Resources NSW Pty Ltd
<b>Date of lodgement:</b>	29 April 2021
<b>Notification period:</b>	10 to 24 May 2021
<b>Submissions received:</b>	<b>One (1) submission</b>
<b>Assessment officer:</b>	M Rivera
<b>Estimated cost of works:</b>	\$300,000.00
<b>Zoning:</b>	IN1 – General Industrial - SLEP 2012
<b>Heritage:</b>	No
<b>Flood affected:</b>	Yes
<b>Is a Clause 4.6 Variation Proposed:</b>	No
<b>RECOMMENDATION OF OFFICER:</b>	<b>REFUSAL</b>



**Figure 1:** Locality Plan showing subject site (outlined in yellow) and surrounding properties

## **EXECUTIVE SUMMARY**

### **Proposal**

A Section 4.55 (2) Application has been submitted to modify the Certificate of Consent issued on 28 September 1972 to include the receipt, storage and use of recycled glass sand and slag materials in the asphalt mix produced on site.

### **Site and Locality**

The site is identified as No. 1-5 Norfolk Road, Greenacre and has a legal description of Lot 41 in DP 854916. The site is an irregular shaped parcel of land and is located on the northern side of the street. The site has an overall site area of 21,392m<sup>2</sup>. The locality surrounding the subject site contains a mixture of industrial uses including a service station adjoining the western boundary (No. 9-11 Roberts Road), the Enfield Intermodal rail Terminal adjoining the eastern boundary and tyre shops across the road and situated to the south.

### **Strathfield Local Environmental Plan**

The site is zoned IN1 – General Industrial under the provisions of Strathfield Local Environmental Plan 2012 (SLEP 2012) and the proposal is a permissible form of development with Council's consent. The proposal does not satisfy all relevant objectives contained within the LEP.

### **Development Control Plan**

The proposed development fails to satisfy the relevant provisions of Strathfield Consolidated Development Control Plan 2005 (SCDCP 2005). This is discussed in more detail in the body of the report.

### **Notification**

The application was notified in accordance with Council's Community Participation Plan (CPP) from 10 to 24 May 2021, where one (1) submission was received. The following concerns/issues were raised:

- Residential amenity.
- Dust and odour impacts.
- Noise impacts.
- Vehicular damage and costs to repair damage; and
- Health impacts.

### **Issues**

- Failure to achieve provisions under Section 4.55.
- Unresolved environmental impacts in relation to air, noise and water pollution and with regard to traffic congestion from enhanced activities.

### **Conclusion**

Having regards to the heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Development Application 2021/101 is recommended for refusal.

## REPORT IN FULL

### Proposal

Council received an application for the Section 4.55 (2) application to modify the Certificate of Consent issued on 28 September 1972 to include the receipt, storage and use of recycled glass sand and slag materials in the asphalt mix currently produced on site. More specifically, the proposed modification involves:

#### Operations – materials received

The operations of the premises currently involves receiving, processing, storing and using recycled and reclaimed products for the purpose of asphalt manufacture. The specific materials used in the manufacture are recycled glass and steel furnace slag. The proposed modification involves:

- Increasing the amount of reclaimed asphalt pavement (RAP) from 72,000 tonnes per annum (tpa) to 112,500 tonnes per annum received by the premises;
- A maximum amount of 22,500 tpa of glass sand received by the premises; and
- A maximum amount of 31,500 tpa of slag received by the premises.

The applicant did not provide detail on the amount of glass sand and slag currently imported into the premises.

#### Operations – truck movements

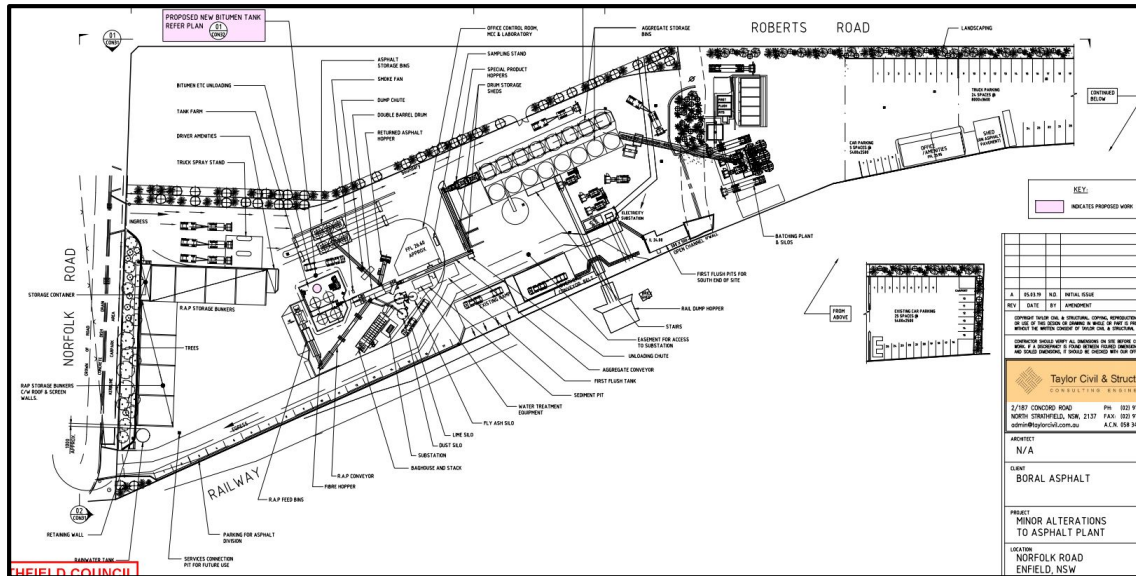
In association with the above materials received, the truck movements are proposed to increase as follows:

- An additional 2.2 truck movements per day for glass sand deliveries;
- An additional three (3) truck movements per day for slag deliveries.

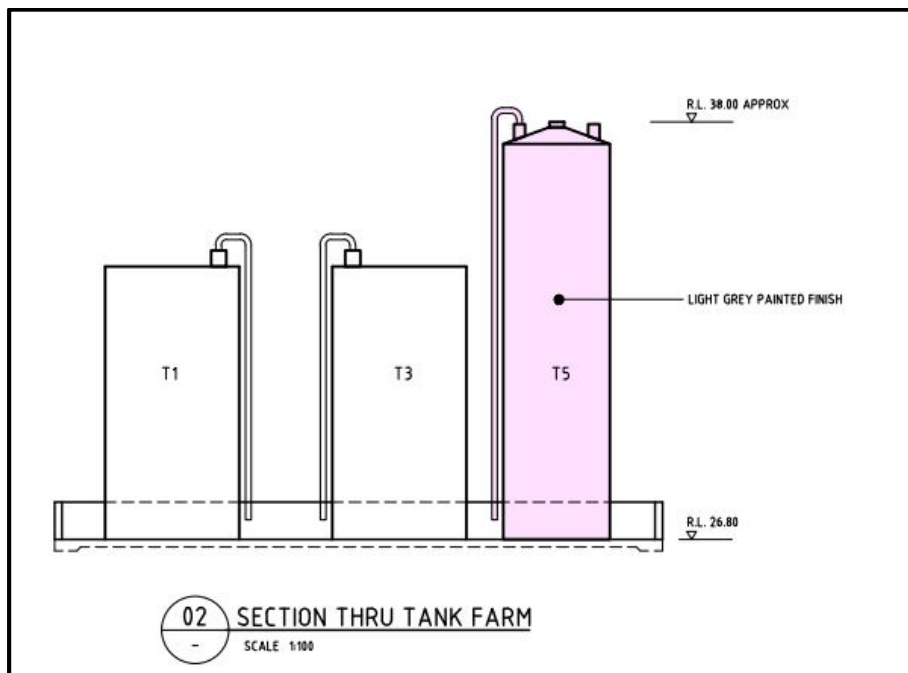
Despite the proposed increase in RAP received by the premises the applicant did not confirm any changes or increases to truck movements in relation to additional RAP deliveries.

#### Bitumen storage tank

The proposed modification involves construction of a new bitumen storage tank. The tank is proposed to be situated within a bunded area containing four (4) existing bitumen storage tanks (refer to Figure 2). This tank will have a capacity of 60,000L and will be 11.2m high and 2.86m in diameter (refer to Figure 3). The tank will have a light matte grey colour.



**Figure 2: Site Plan of proposed modification**



**Figure 3: Section of tank farm showing new bitumen storage tank and existing tanks**

## The Site and Locality

The subject site is legally described as Lot: 41 in DP: 854916 and commonly known as No. 1-5 Norfolk Road, Greenacre. It is located on the northern side of Norfolk Road (refer to Figure 1). The site is irregular in shape and has a total area of 21,392m<sup>2</sup>. The site is currently operated by Boral and consists of an asphalt batching plant, aggregate storage and concrete batching plant and a rail terminal (refer to Figure 2). A number of key elements of the asphalt batching plant are shown in Figures 4 to 7.





**Figure 4:** RAP storage bunkers



**Figure 5:** Conveyor for rail dump hopper



**Figure 6:** Tank farm and RAP conveyor



**Figure 7:** Tank farm

## **Background**

**28 Sept 1972**

A certificate of consent was issued for a bulk rail receiving distribution centre, asphalt, pre-mix concrete and stabilised rock plants, weighbridge, office and laboratory uses at the subject site.

<b>29 April 2021</b>	The subject Section 4.55 Modification application was lodged to modify the certificate of consent issued in 1972.
<b>10 May 2021</b>	The subject modification application was notified for fourteen (14) days, in accordance with Council's Community Participation Plan (CPP), with the final date for public submissions being 24 May 2021. One (1) submission was received during the notification period.
<b>24 June 2021</b>	NSW Environment Protection Authority (EPA) provided a response to a concurrence and referral case.
<b>25 June 2021</b>	A 'Withdraw/Refuse' Letter was sent to the applicant – to advise them to withdraw the application.
<b>29 June 2021</b>	The applicant confirmed with Council that they are intending on seeking further clarification and information from the NSW EPA with regard to their response.
<b>2 July 2021</b>	An online meeting was held via Microsoft Teams between Council officers and the NSW EPA to discuss the application. NSW EPA expressed that a second referral is required to obtain further response from NSW EPA.
<b>19 July 2021</b>	The NSW EPA requested additional time of up to 30 July 2021 to provide the response.
<b>30 July 2021</b>	The NSW EPA provided a second response via the Planning Portal. This response was received by both Council and the applicant.
<b>5 August 2021</b>	A site visit was undertaken by Council officers.

## **Referrals – Internal and External**

### **Internal**

#### **Development Engineer Comments**

Council's Development Engineer offered no objections to the proposal subject to the imposition of conditions. The application does not involve changes to the premises with regard to stormwater management.

#### **Environmental Health and Compliance Manager Comments**

Council's Environmental Health and Compliance Manager provided the following commentary:

"By my reading of the 4.55(2) we cannot issue the DA till the EPA is satisfied.

As the EPA is the approval body that will be issuing a licence for the proposed activity, if they do not give consent then we are not allowed to approve.

The EPA is requesting additional information from the applicant to enable them to undertake their assessment of the application. "



Accordingly, Council's Environmental Health and Compliance Manager objected to the proposal for the reasons established below under 'External Referrals'.

## **External**

### **NSW EPA Comments**

NSW EPA provided the following commentary:

*"The EPA has reviewed the information submitted for the proposed modification including the Statement of Environmental Effects prepared by AECOM Australia Pty Ltd dated 1 April 2021 (the SEE).*

*The EPA is unable to provide recommended conditions and objects to the proposed modification primarily due to the following:*

- 1. Lack of adequate information about the handling and management of wastes and materials.*
- 2. Lack of adequate information about the waste and material types.*
- 3. Concerns in relation to noise impacts and the noise assessment.*
- 4. Concerns in relation to air impacts and the air assessment.*
- 5. Concerns in relation to water impacts and the water assessment.*

*The EPA notes that in accordance with section 4.55(2)(b) of the Environmental Planning and Assessment Act 1979, the development consent cannot be modified by the consent authority if the EPA objects.*

*If Bitupave is able to provide information that addresses the EPA's objection, the EPA will consider a further application.*

*The EPA notes the appropriate planning pathway is yet to be determined by Council as the consent authority. As the EPA previously advised, the EPA considers the proposal to be State Significant Development due to the amount of waste proposed to be received at the Premises.*

*The EPA does not believe the development under the proposed modification is substantially the same as the development for which the consent was originally granted given the proposal involves the operation of a waste facility with a high throughput of waste.*

*However, the EPA acknowledges the decision regarding the planning pathway and whether or not the development is substantially the same as the development for which consent was originally granted is ultimately a matter for Council as the consent authority."*

Accordingly, NSW EPA objected to the proposal in their final correspondence due to several unresolved matters. The applicant confirmed disagreement with the NSW EPA.



## **Section 4.55 of the EP&A Act 1979**

The application has been lodged under the provisions of Section 4.55(2) of the EPA Act. Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* states as follows:

### **4.55 Modifications of consents – generally**

**(2) Other modifications** *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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*(c) it has notified the application in accordance with—*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

As regards subclause 'a', Council is not satisfied that the development to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified (if at all). Council notes that the provided information included in the application is insufficient and limited – particularly with regard to information on key environmental impacts. Council is unable to conclude that the development, as modified, is substantially the same development to which the Certificate of Consent applies given that:

- A substantial increase in volume of RAP (40,500 tpa or 56%) will be received by the premises;
- No information is provided on the current tpa volumes received by the premises with regard to glass sand and slag. Council cannot confirm if the proposed receiving volumes of these materials are substantially the same or comparable to the existing operations;
- There will be changes to truck movements that relate to the changes to the volume of materials received by the premises. The application did not contain any traffic impact assessments to determine the impacts of the additional truck movements on the road

network. Council cannot confirm if traffic impacts resulting from the additional truck movements are considered substantial;

- There is insufficient information to confirm that the changed volume of materials received will require additional infrastructure such as storage bays to accommodate the increase; and
- Insufficient information was provided to ascertain that environmental impacts (namely, air pollution, water pollution, noise and traffic) are comparable to the existing development and therefore, Council cannot determine that the proposed modification is substantially the same development to which the Certificate of Consent applies.

Council sought external legal advice with regard to application meeting the provisions under Section 4.55. It was confirmed that subclause 'a' is not met. In light of the above matters, the applicant fails to demonstrate that the proposed modification will result in materially and substantially the same development as approved and accordingly, development consent cannot be given.

In regards subclause 'b', this does apply as the modification application requires an Environment Protection Licence, which would relate to the proposal and as such concurrence is required from NSW EPA. The NSW EPA confirmed objection to the proposed modification and thus, the proposal fails to meet subclause 'b'.

In regards subclause 'c' and 'd', the application was notified in accordance with Council's CPP and one (1) submission was received.

Section 4.55(3) of the *Environmental Planning and Assessment 1979* also applies to the modification application. Clause 3 states the following:

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

Given that the Certificate of Consent was issued by Council on 28 September 1972 and before the creation and adoption of the *Environmental Planning and Assessment Act 1979* – the reasons for granting consent cannot be determined. In this instance, considering the nature of the proposed modification, Council is unable to affirm that the general reasons for granting consent are applied. This is due to the application failing to meet the 'substantially the same' test as per subclause 'a' above. Accordingly, Council is not satisfied that the application meets Section 4.55(3).

### **Section 4.15 Assessment – EP&A Act 1979**

The following is an assessment of the application with regard to Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*.

#### **(1) Matters for consideration – general**

***In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

##### **(a) the provision of:**

**(i) any environmental planning instrument,**

**Strathfield Local Environmental Plan**

The development site is subject to the Strathfield Local Environmental Plan 2012 (SLEP 2012).

**Aims of the LEP**

The proposed modification fails to achieve key aims of the SLEP 2012 as it is unable to promote the efficient and spatially appropriate use of land and achieve an improved integration of transport and land use, and fails to demonstrate a reasonable outcome in terms of traffic impacts. Council considers the proposed modification as a substantial intensification of the current use and a significant differentiation from the approved development – such that further critical information and assessment would be required to ascertain that the proposed changes and associated environmental impacts can be supported and to confirm that the site is suitable for accommodating the changes.

**Part 2 – Permitted or Prohibited Development**

**Clause 2.1 – Land Use Zones**

The subject site is zoned IN1 – General Industrial and the proposal as modified is a permissible form of development with Council's consent.

**Objectives of the zone**

The proposed modification fails to achieve the objective of the zone in that the proposed changes to the operations of the premises (specifically in relation to the increased volume of imported material and increased truck movements) will result in minimal effects on other land uses. Council is unable to confirm that the proposed changes will have minimal impacts as insufficient information was provided. A Traffic Impact Assessment was not provided to assess the additional truck movements. The NSW EPA's response expressed that the noise, air and water pollution matters have not been resolved by the applicant.

**Part 4 – Principal Development Standards**

The proposed modification does not trigger any provisions under Part 4.

**Part 5 – Miscellaneous Provisions**

**Flood Planning**

The proposed modification is within land identified as being at or below the flood planning level. The application as modified has been reviewed by Council's Development Engineer who has advised that subject to suitable conditions, the development is considered compatible with the flood hazard of the land, will not result in significant adverse effects on flood behaviour or environment and is not likely to result in unsustainable social and economic loss. The proposed development is considered to satisfy the objectives of this clause.

## Part 6 – Additional Local Provisions

### Acid Sulfate Soils

The proposed modification does not involve any substantial ground disturbance and is unlikely to result in the dispersal and exposure of acid sulfate soils or potential acid sulfate soils. The provisions under Clause 6.1 have been satisfied by the proposal.

### Earthworks

The proposal modification does not result in any additional or significant excavation works and will not have any further detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

### Essential Services

The subject site is considered to be adequately serviced for the purposes of the proposed development as modified.

### STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND (SEPP 55)

SEPP 55 applies to the land and pursuant to Section 4.15 is a relevant consideration. The proposed modification will result in the continued operation of the premises as a concrete and asphalt batching plant. There are no historic uses or proposed changes to the current use that would trigger further site investigations. The objectives outlined within SEPP 55 are considered to be satisfied.

### STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of SLEP 2012 relating to the preservation of trees and vegetation.

The intent of this SEPP is consistent with the objectives of the repealed Standard where the primary aims/objectives are related to the protection of the biodiversity values of trees and other vegetation on the site.

The proposed development as modified does not result in the removal or loss of any trees or vegetation subject to the provision of this SEPP.

The aims and objectives outlined within the SEPP are considered to be satisfied.

- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and**

There are no draft planning instruments that are applicable to this site.

- (iii) any development control plan,**

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect



to the proposal satisfying the objectives and controls contained within the DCP, where applicable to the proposed changes.

## **PART D – INDUSTRIAL DEVELOPMENT**

An assessment of the proposal against the objectives and development controls contained within Part D of SCDCP 2005 is included below:

### **1.2: Objectives of Part D**

<b>1.2</b>	<b>Objectives</b>	<b>Satisfactory</b>
<b>A.</b>	<i>To improve the quality of industrial development within the Strathfield Municipality</i>	<b>N/A</b>
<b>B.</b>	<i>To ensure the orderly development of industrial sites to minimise their environmental impact while maximising their functional potential</i>	<b>No</b>
<b>C.</b>	<i>To ensure development is consistent with the principles of Ecologically Sustainable Development</i>	<b>No</b>
<b>D.</b>	<i>To encourage high quality building design and industrial streetscape aesthetics</i>	<b>N/A</b>
<b>E.</b>	<i>To ensure that new industrial development is of a type, scale, height, bulk and character that is compatible with the streetscape characteristics of the surrounding area</i>	<b>Yes</b>
<b>F.</b>	<i>To promote high quality landscape areas which complement the overall development of the site and which assist in enhancing streetscape quality</i>	<b>N/A</b>
<b>G.</b>	<i>To ensure that development will not unreasonably impact upon the amenity of any residential area in the vicinity;</i>	<b>No</b>
<b>H.</b>	<i>To ensure that traffic generated by industrial development does not adversely impact upon local or regional traffic movements</i>	<b>No</b>
<b>I.</b>	<i>To ensure that each development has adequate on-site parking and manoeuvring areas for vehicles</i>	<b>Yes</b>
<b>J.</b>	<i>To encourage employee amenity within industrial developments.</i>	<b>Yes</b>

**Comments:** The proposed modification fails to meet the above objectives as it will result in a significant intensification of the premises. Further, the application fails to adequately address environmental impacts in relation to the proposed intensification. This is clearly highlighted in the response from the NSW EPA.

The proposed modification is considered an unreasonable intensification of the premises that will likely diminish the quality of industrial development within the site, have an inequitable demand and pressure on existing infrastructure and road networks and create undesirable land use conflict within the municipality.

### **2.1: Site Analysis and Design Principles**

<b>2.1</b>	<b>Objectives</b>	<b>Satisfactory</b>
<b>A.</b>	<i>To ensure layout and building design makes best use of the existing characteristics, opportunities and constraints of the site and surrounds to result in a high quality development sensitive to the environment</i>	<b>Yes</b>
<b>B.</b>	<i>To ensure all activities associated with the development do not adversely impact on the environment.</i>	<b>No</b>

<b>2.1 Guidelines</b>		<b>Complies</b>
<b>.1.</b>	Development application includes a site drawing demonstrating the following items:	<b>Yes</b>
	Site	
	(a) Survey details, including changes of levels	<b>Yes</b>
	(b) Easements (drainage or service)	<b>Yes</b>
	(c) Existing vegetation and other significant site features	<b>Yes</b>
	(d) Existing buildings or structures	<b>Yes</b>
	(e) Site orientation and solar access	<b>Yes</b>
	(f) Significant noise sources	<b>Yes</b>
	(g) Views	<b>Yes</b>
	(h) Pedestrian and vehicle access	<b>Yes</b>
	(i) Natural drainage	<b>Yes</b>
	Surroundings	
	(a) Location, height and use of neighbouring buildings (including location of doors or windows facing the site)	<b>Yes</b>
	(b) Predominant built form and character of locality (including fencing and garden styles)	<b>Yes</b>
	(c) Private open space areas adjacent to site	<b>Yes</b>
	(d) Adjacent public open space	<b>Yes</b>
	(e) Location of major trees on adjacent properties	<b>Yes</b>
	(f) Elements of street frontage (street trees, vehicular cross-overs, bus stops etc)	<b>Yes</b>
	(g) Differences on levels between site and neighbouring properties	<b>Yes</b>
	(h) Significant noise sources, such as railway or roads.	<b>Yes</b>
<b>2.1 Design Principles</b>		<b>Complies</b>
	The development is compatible with the predominant height, bulk, scale and character of existing development in the vicinity	<b>No</b>

**Comments:** The subject application comprises a site plan that demonstrates compliance with the above controls. Notwithstanding this, the proposed modification has not been able to clarify whether the proposal is an overdevelopment of the site or demonstrate that environmental impacts resulting from the changes can be minimised and are acceptable. It is noted that the additional storage tank is generally located in the centre of the site and reflects the general bulk and scale of other storage tanks within the premises. On design principles alone, the new storage tank is considered a supportable and acceptable component.

## 2.4: Development Adjoining Residential Zones

2.4 Objectives		Satisfactory
A.	To ensure industrial development does not unreasonably impact or intrude upon any adjoining residential area(s).	No
2.4 Guidelines		Complies
1	The proposed building is sympathetic to the height, scale, siting and character of existing adjoining and/or nearby residential development.	Yes
2	Solar access to the windows of habitable rooms and to the majority of private open space of adjoining residential properties are substantially maintained or achieved for a minimum period of 3 hours between 9.00am and 3.00pm at the winter solstice (June 22).	Yes
3	Windows facing residential areas shall be treated to avoid overlooking of private open space or private windows.	N/A
4	Goods, plant equipment and other materials are to be stored within the proposed industrial building or suitably screened from residential development.	No
5	Noise associated with the premises including plant and equipment will be subject to the NSW Environmental Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and the Protection of the Environment Operations Act 1997.	No
6	Noise generated from fixed sources or motor vehicles associated with the proposed industrial development will be effectively insulated or otherwise minimised.	No
7	The operating noise level of plant and equipment shall generally not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises between the hours of 7.00am and 10.00pm.	No
8	If operating noise levels of plant and equipment are proposed outside the hours of 7.00pm and 10.00pm, the applicant may be subject to a merit based assessment which may need to be supported by an Acoustical Engineers' report.	Yes
9	The development shall not otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting and the like.	No
10	Refer to Section 2.10.8 for details of landscape buffer requirements.	N/A

**Comments:** As per above, the application fails demonstrate that environmental impacts (particularly, noise, water and air pollution and traffic) resulting from the changes can be minimised and are acceptable.

## 2.9: Parking, Access and Manoeuvring

2.9.1 Objectives	Satisfactory
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<b>A.</b>	<i>To ensure sufficient car parking spaces are provided on-site for employees and visitors;</i>	<b>Yes</b>
<b>B.</b>	<i>To ensure the effective design of car parking areas;</i>	<b>Yes</b>
<b>C.</b>	<i>To encourage the provision of parking areas that will integrate with proposed the building(s) and be suitably landscaped to reduce large expanses of hard paving</i>	<b>Yes</b>
<b>D.</b>	<i>To ensure car parking areas are accessible for persons with a disability and safe for all pedestrians to use</i>	<b>Yes</b>

<b>2.9</b>	<b>Guidelines and Requirements</b>	<b>Complies</b>
<b>.1.</b>	<b>Parking</b>	
	1 The design of off-street parking areas meet the requirements of Australian Standard (AS) 2890.1-1993 – Off-street car parking, AS2890.2-1989 – Commercial vehicles and Strathfield Part I - Provision of Off-Street Parking Facilities.	<b>Yes</b>
	Provision of spaces:	
	2 (i) Industry: 1 space per 50m <sup>2</sup> GFA where any office component is under 20%. If the office component is greater than 20% that additional area will be assessed at a rate of 1 space per 40m <sup>2</sup> GFA.	<b>Yes</b>
	(ii) Warehouses: 1 space per 300m <sup>2</sup> GFA	<b>N/A</b>
	(iii) Delivery and service vehicles associated with a development: 1 space per 800m <sup>2</sup> GFA up to 8,000m <sup>2</sup> GFA plus 1 space per 1,000m <sup>2</sup> GFA thereafter.	<b>Yes</b>
	3 Car parking areas located in the front setback for easy access.	<b>Yes</b>
	4 Loading/unloading and parking areas are separated so as not to cause conflict.	<b>Yes</b>
	5 Car parking areas are suitably landscaped which should include trees for shading. (Refer to Section 2.10.13 and 2.10.14 for landscaping requirements)	<b>Yes</b>
	6 No parking shall be located within any proposed buildings (not including underground car parking).	<b>Yes</b>
	7 Pedestrian thoroughfares provided to separate vehicular from pedestrian traffic in large parking areas.	<b>Yes</b>

**Comments:** The parking areas and current arrangements remain unchanged and appear to satisfy the above objectives and suitable to the operations of the premises. The application does not involve changes to the number of employees – although it is noted that additional truck movements are required for the additional material input.

<b>2.9.2</b>	<b>Objectives</b>	<b>Satisfactory</b>
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<b>A.</b>	<i>To ensure that provision is made for safe vehicular ingress and egress having regard to the nature of vehicles likely to patronise the site;</i>	<b>Yes</b>
<b>B.</b>	<i>To ensure satisfactory on-site manoeuvring for vehicles, including the loading/unloading of goods;</i>	<b>Yes</b>
<b>C.</b>	<i>To minimise potential for congestion or hazard on adjoining roads at points of ingress/egress;</i>	<b>No</b>
<b>D.</b>	<i>To ensure that traffic generated by industrial development does not adversely affect local or regional traffic movements</i>	<b>No</b>
<b>E.</b>	<i>To ensure that any traffic generated by the development will not impact unreasonably upon the amenity of any residential areas in the vicinity</i>	<b>No</b>

**Comments:** As mentioned above – the proposed modification fails to address potential traffic impacts in relation to the additional truck movements.

<b>2.9</b>	<b>Guidelines and Requirements</b>	<b>Complies</b>
<b>.3.</b>	<b>Access and Driveways</b>	
	Access to the proposed development is via a non-residential street, unless the proposed development:	
	1 (i) Has no other alternative access	<b>N/A</b>
	(ii) Demonstrates that consideration has been given to the effect of traffic generated from the site	<b>No</b>
	(iii) Identifies an appropriate traffic management scheme	<b>No</b>
	2 The location of driveways is in accordance with AS2890.1-1993 – Off-street car parking, Section 3 – Access driveways to off-street parking areas and queuing areas.	<b>Yes</b>
	3 Separate driveways for ingress and egress provided if expected traffic volumes indicate a possible conflict for vehicles using the site.	<b>N/A</b>
	4 Redundant driveways shall be closed off and/or removed and justification provided if more than one access point and one egress point is proposed for a development.	<b>N/A</b>
	5 Driveway areas visible to the street shall have a featured surface.	<b>Yes</b>
	<b>Site Design</b>	
<b>.4.</b>	1 All vehicles are to enter and leave the site in a forward direction	<b>Yes</b>
	2 Driveways and manoeuvring areas are designed so that all vehicles entering and leaving the site can do so with minimum interference to traffic on adjoining roads.	<b>Yes</b>

	3	Where specific service vehicles are proposed to visit the site, the design/layout of a site provides access for loading and unloading of such vehicles.	Yes
	4	All servicing, including waste collection, is carried out wholly within the site with suitable collection points at convenient locations.	Yes
	5	Entrance and exit points and car parking areas are designed in order to ensure safety for pedestrians within and outside the site.	Yes
	6	Vehicular manoeuvring not permitted within any buildings.	Yes
.5.	Unloading and Loading		
	1	All loading and unloading shall take place within the curtilage of the site.	Yes
	2	If loading areas are undercover, no stormwater pits shall be located in the area and all surface drainage shall be diverted away from the area.	Yes
	3	The design considerations for service vehicles set out in Appendix C of Part I - Provision for Off-street Parking Facilities, applies to all loading and unloading facilities.	Yes
	4	All loading and unloading facilities screened from the street (refer to section 2.10 for landscaping requirements).	Yes

**Comments:** The proposed modification does not involve changes to the existing traffic arrangement and scheme within the premises. However, as mentioned above – the proposed modification fails to address potential traffic impacts in relation to the additional truck movements.

## 2.12: Site Drainage and Water Management

<b>2.12</b>	<b>Objectives</b>	<b>Satisfactory</b>
<b>A.</b>	<i>To ensure that potable water use and stormwater quantities are reduced whilst stormwater quality is improved.</i>	<b>No</b>

2.12	Guidelines and Requirements		Complies
	1	A stormwater drainage concept plan (SDCP) has been submitted demonstrating the feasibility of the proposed drainage system(s) within the site and connection to Council's system. This plan shows the surface flow path treatment, extent of roof and paved areas, any easements required, on site detention (OSD) storages as well as existing and proposed piped systems.	Yes
	2	Development proposals that exceed 2,500m <sup>2</sup> of impermeable surface required to submit a comprehensive water cycle strategy.	Yes
	3	Excess roof stormwater runoff (after being directed to the rainwater tank(s)) and stormwater runoff from all paved surfaces has been	Yes

		connected to the proposed (OSD) system and then discharged by means of a gravity pipe system to Council's drainage system.	
4		Where gravity disposal of stormwater is not available to Council's street drainage system, an easement in favour of the development site/lot shall be obtained over any downstream properties traversed by the gravity drainage line connecting to Council's drainage system.	<b>Yes</b>
5		A Positive Covenant under Section 88E of the Conveyancing Act 1919 shall be created on the title of the property detailing the: surface flow path, finished pavement and ground levels, prevention of erection of structures or fencing and the OSD system incorporated in the development.	<b>N/A</b>
6		All costs associated with providing any additional capacity of stormwater and drainage services are in accordance with Council's requirements.	<b>Yes</b>
7		In accordance with Council's Stormwater Management Code, temporary measures shall be provided and regularly maintained during construction to prevent sediment and polluted waters discharging from the site.	<b>No</b>

**Comments:** The NSW EPA have expressed that the potential water pollution impacts in relation to the proposed modification have not been resolved. Accordingly, Council cannot confirm compliance with control 7 at this point in time.

#### **2.14: Air, Noise and Water Pollution**

<b>2.14</b>	<b>Objectives</b>	<b>Satisfactory</b>
<b>A.</b>	<i>To ensure industrial developments do not create a pollution problem by the discharge of an unacceptable level of air, noise and/or water emissions.</i>	<b>No</b>
<b>2.14</b>	<b>Guidelines and Requirements</b>	<b>Complies</b>
	<i>General</i>	
<b>.1.</b>	1 The emission of any air impurities including offensive odours, the discharge of any waste into any waters or the emission of noise associated with any development shall not contravene the Protection of the Environment Operations Act 1997.	<b>No</b>
	<i>Noise</i>	
	2 The proximity of the proposal to residential areas will influence the type of land use or machinery that will be permissible.	<b>N/A</b>
<b>.2.</b>	3 The proposed building(s) are designed to inhibit the transmission of noise.  Note: Council may require an acoustic report from a suitably qualified acoustic consultant where a proposed development may create excessive noise.	<b>N/A</b>

	4	The use of the premises including plant and equipment will be subject to strict compliance with the NSW Environmental Protection Authority's Environmental Noise Control Manual and the Industrial Noise Policy 2000.	<b>No</b>
<b>.3.</b>	<i>Water</i>		
	5	Details of the types, volumes and method of storage of any chemicals to be used on site shall be submitted with any development application.	<b>Yes</b>
	6	Only clean water shall be discharged to the stormwater system.	<b>Yes</b>
	7	Any discharge to Sydney Water's sewer will need their approval and may involve a Trade Waste Agreement.	<b>Yes</b>
	8	Internal floors of industrial buildings may need to be graded and drained to the sewer in accordance with Sydney Water's requirements if a significant volume of wastewater is generated by processes or cleaning.	<b>N/A</b>
	9	Any wastewater that is generated in this manner is considered as trade waste and may need pre treatment prior to its discharge to the sewer.	<b>Yes</b>

**Comments:** The NSW EPA have expressed that the potential air, water and noise pollution impacts in relation to the proposed modification have not been resolved. Accordingly, Council cannot confirm compliance with the above controls at this point in time.

## 2.16: Waste Management

<b>2.16</b>	<b>Guidelines and Requirements</b>	<b>Complies</b>
	1 Refer to Part H – Waste Management.	<b>Yes</b>

## PART H – Waste Management (SCDCP 2005)

A waste management plan was not submitted as part of the modification application. The applicant did not indicate that the proposed modification involves a change to the amount of waste generated by the premises. In this regard, any waste output will be captured by the Environment Protection Licence (EPL) connected to the premises. If the proposed modification is supported the applicant will need to apply to the NSW EPA to amend their EPL, and the NSW EPA will provide relevant conditions to ensure waste management is undertaken in an appropriate manner.

**(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,**

The provisions of this clause are not relevant to the modification and have been addressed/considered as part of the original development consent.

**(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,**



The proposed development, as modified, is considered a significant intensification of the premises and is not of a scale and character that is in keeping with other developments being constructed in the locality. Accordingly, the proposal is considered to have a significant adverse impacts on the natural and built environment – in particular, impacts relating to noise, air and water pollution and traffic congestion.

**(c) *the suitability of the site for the development,***

The proposed modification is not considered to be suitable to the site due to the issues and impacts relating to the proposed intensification of the premises. The proposed modification fails to demonstrate general compliance with the relevant considerations and provisions under Council policy. Of particular note are the objectives and controls of the SLEP and Part D of the SCDCP 2005. The proposal is considered an overdevelopment of the site.

**(d) *any submissions made in accordance with this Act or the regulations,***

In accordance with the provisions of Council's Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. A single submission was received from No. 11 Callistemon Grove, Greenacre. This submission raised the following issues:

**1. Residential amenity**

Comments: The proposed modification has not adequately addressed matters relating to air and noise pollution. As such, the application fails to satisfy that residential amenity of neighbouring properties can be reasonably preserved.

**2. Dust and odour impacts**

Comments: The NSW EPA confirmed that air pollution matters have not been addressed. Council concurs with NSW EPA with regard to this matter. .

**3. Noise impacts.**

Comments: The NSW EPA confirmed that noise impacts have not been addressed. Council concurs with NSW EPA with regard to this matter.

**4. Vehicular damage and costs to repair damage**

Comments: This is a civil matter that requires resolution between respective parties. In context and location of No. 11 Callistemon Grove, the surrounding residential properties and the property being adjacent or close to other industrial land uses it is difficult to ascertain if dust accumulation on vehicles can only be attributed to the premises alone.

**5. Health impacts**

Comments: As per above and as mentioned in the NSW EPA response.

**(e) *the public interest.***

The proposed development, as modified, is of a scale and character that does conflict with the public interest as it fails to address critical matters in relation to the overdevelopment of the premises and potential environmental impacts.

### Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. This section prescribes in part as follows:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

### STRATHFIELD CONTRIBUTIONS PLAN

Section 7.11/7.12 Contributions are not applicable to the proposed development.

### Conclusion/Recommendation

The application for modification has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, the provisions of the SLEP 2012 and SCDCP 2005.

Pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 and following detailed assessment of the proposed modifications to Development Consent No. 101/2021 for be **REFUSED**.



Signed:  
**Miguel Rivera**  
**Senior Planner**

Date: 23 August 2021

- ☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position;
- ☒ I have reviewed the details of this modified development application and I also certify that Section 7.11/7.12 Contributions are not applicable to this development;

Report and recommendations have been peer reviewed and concurred with.

Signed:  
**Joseph Gillies**  
**Senior Planner**

Date: 24 August 2021

Following detailed assessment it is considered that Development Application No. 2021/101 should be **REFUSED** for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the relevant environmental planning instruments in terms of the following:
  - a) The proposed modification fails to meet the provision under Section 4.55(2)(a) of the *Environmental Planning and Assessment Act 1979* in that Council is not satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.
  - b) The proposed modification fails to meet the provision under Section 4.55(b) of the *Environmental Planning and Assessment Act 1979* in that Council is not satisfied that concurrence is obtained from an approval authority (NSW EPA) as the relevant authority objects to the proposal.
  - c) The proposed modification is considered unacceptable as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting efficient and spatially appropriate use of land. The proposal represents an overdevelopment of the site and does not address the environmental impacts associated with the proposed operational changes.
  - d) The proposed modification is considered unacceptable as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting future development that integrates land use and transport planning. The proposal fails to address the impacts on traffic associated with the proposed operational changes.
  - e) The proposed modification is considered unacceptable as it fails to meet the aim of the IN1 – General Industrial zone under the Strathfield Local Environmental Plan 2012 given that it is unable to demonstrate that the proposed changes to the operations of the premises (specifically in relation to the increased volume of imported material and increased truck movements) will result in minimal effects on other land uses.
2. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:
  - a) The proposed modification is considered unacceptable as it fails to meet the objectives of Clause 1.2 of Part D of the Strathfield Consolidated Development Control Plan 2005.
  - b) The proposed modification is considered unacceptable as it fails to meet the objectives of Clause 2.1 (Site Analysis and Design Principles) of Part D of the Strathfield Consolidated Development Control Plan 2005.
  - c) The proposed modification is considered unacceptable as it fails to meet the objectives and controls of Clause 2.4 (Development adjoining residential zones) of Part D of the Strathfield Consolidated Development Control Plan 2005.
  - d) The proposed modification is considered unacceptable as it fails to meet the objectives and controls of Clause 2.9 (Parking, access and manoeuvring) of Part D of the Strathfield Consolidated Development Control Plan 2005.

- e) The proposed modification is considered unacceptable as it fails to meet the objectives and controls of Clause 2.12 (Site drainage and water management) of Part D of the Strathfield Consolidated Development Control Plan 2005.
  - f) The proposed modification is considered unacceptable as it fails to meet the objectives and controls of Clause 2.14 (Air, noise and water pollution) of Part D of the Strathfield Consolidated Development Control Plan 2005.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is likely to have an adverse impact on the following aspects of the environment:
- a) Noise pollution
  - b) Air pollution
  - c) Water pollution
  - d) Traffic congestion
4. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site is not considered suitable for the proposal for the following reasons:
- a) The proposed modification is considered an overdevelopment of the site as reflected by the proposed increase in volume of material and additional truck movements required as part of the proposed changes. The proposed modification will result in a development that is not materially nor substantially the same development as approved.
5. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is not considered to be in the public interest and is likely to set an undesirable precedent. The proposal is not in the public interest as it fails to meet the objectives, provisions and controls under Strathfield Local Environmental Plan 2012 and the Strathfield Consolidated Development Control Plan 2005 and will have unacceptable adverse impacts in terms of noise, air and water pollution, and traffic congestion. The proposal will set an undesirable precedence by encouraging an overdevelopment of sites and intensification of existing industrial premises, without generating and addressing environmental impacts.