

LIVERPOOL CITY COUNCIL

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 1 of 11

JRPP Reference Number	2012SYW096
Development Application Number	DA-410/2010/A
Proposed Development:	Modification to Development Consent DA-410/2010 pursuant to Section 96(2) of the Environmental Planning & Assessment Act 1979. The modification seeks to: <ol style="list-style-type: none">1. Amend the car parking design and relocate the car parking area.2. Extend the hours of operation to permit 24 hour operation of the facility.3. Change the layout of the stockpile bins.4. Increase the platform area of the processing area for recovered aggregate.
Address	Lots 4 & 5 DP 24315, Nos 65 – 75 Yarrawa Street (and Illaroo Road) Prestons
Applicant:	Kypter Pty Ltd
Land Owner:	Sydney Invitation Futurity Pty Ltd & Rentail Pty Ltd

EXECUTIVE SUMMARY

The panel at its meeting held 14 February 2013 considered and deferred a decision on a Section 96(2) application proposing to modify the Notice of Determination for DA-410/2010. This DA was issued for the construction and operation on the site of a waste transfer station comprising the demolition of existing buildings and the construction of a materials handling facility incorporating:

1. the storage and stock piling of sand and virgin aggregate;
2. the storage, stockpiling and screening of recovered asphalt product; and
3. the erection of associated workshop, truck service bays, office amenities, car parking and landscaping.

The site generally stores the aforesaid materials for use on another site at Prestons operated by an associated company for asphalt manufacture.

The original development application was determined by the Sydney West Joint Regional Planning Panel on 28 October 2010 where a deferred commencement consent was issued.

The proposed Section 96(2) modification seeks to:

- (A) amend the car parking design and relocate the car parking area;
- (B) extend the hours of operation to permit 24 hour operation of the facility;
- (C) change the layout of the stockpile bins; and
- (D) increase the platform area of the processing area for recovered aggregate.

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

In respect of the proposed Section 96(2) modification, the panel resolved the following:

"This S96 application has been partly recommended in Council planning report for refusal and partly for approval. The Panel unanimously approves Part C of this application for the reasons given in the Council Report.

The Panel grants a deferral as requested by the applicant of Parts A, B & D (whilst noting that Part A is not permissible with the zoning) for the following reasons:

The response to the referral of this matter to the EPA came too late for the applicant to address the issues. The Panel was concerned that as the adjoining residents, and, it seemed, the Council, were aware of breaches of conditions of consent on this site that a deferral would allow two additional actions to occur: the opportunity for the Council and the applicant to assess the response of the EPA, and for the Council to respond to the Panel's request for further information about possible breaches of existing conditions of consent on site.

The Panel recommends to the Council that it initiates (in conjunction with the EPA if possible) investigation into the claims of non-compliance by the current operation with the requirements of relevant agencies and regulations relating to dust and noise omissions, and any breach of conditions of consent.

The Panel will deal with this matter again upon receipt of Council's response to the matter of non-compliance and the applicant's response to the EPA referral. The Panel will endeavour to bring this matter back before it in March 2013."

A copy of the report to the JRPP meeting of 14 February 2013 is appended.

Compliance and enforcement issues are discussed in the following report. In respect of the three outstanding proposed modifications the following is advised:

MODIFICATION A

The applicant has submitted a modified car parking layout that is located clear of land zoned for Environmental purposes and is considered to achieve satisfactory clearances regarding flood levels and overhead electrical conductors. Approval of part A is recommended, subject to the requirements of Endeavour Energy.

MODIFICATION B

The Environmental Protection Authority (EPA) has reviewed the additional acoustic documentation submitted from the applicant and whilst not supporting all proposed changes, raises no objection to extended hours of operation for certain aspects of the development.

Approval of Part B is recommended in the terms specified by the EPA.

MODIFICATION D

Council's Flooding Engineers have re-examined the proposed extension of the filled work platform and maintain that the proposal will have an adverse impact on the floodplain.

Approval of Part D is not recommended.

DETAILS OF THE APPLICATION

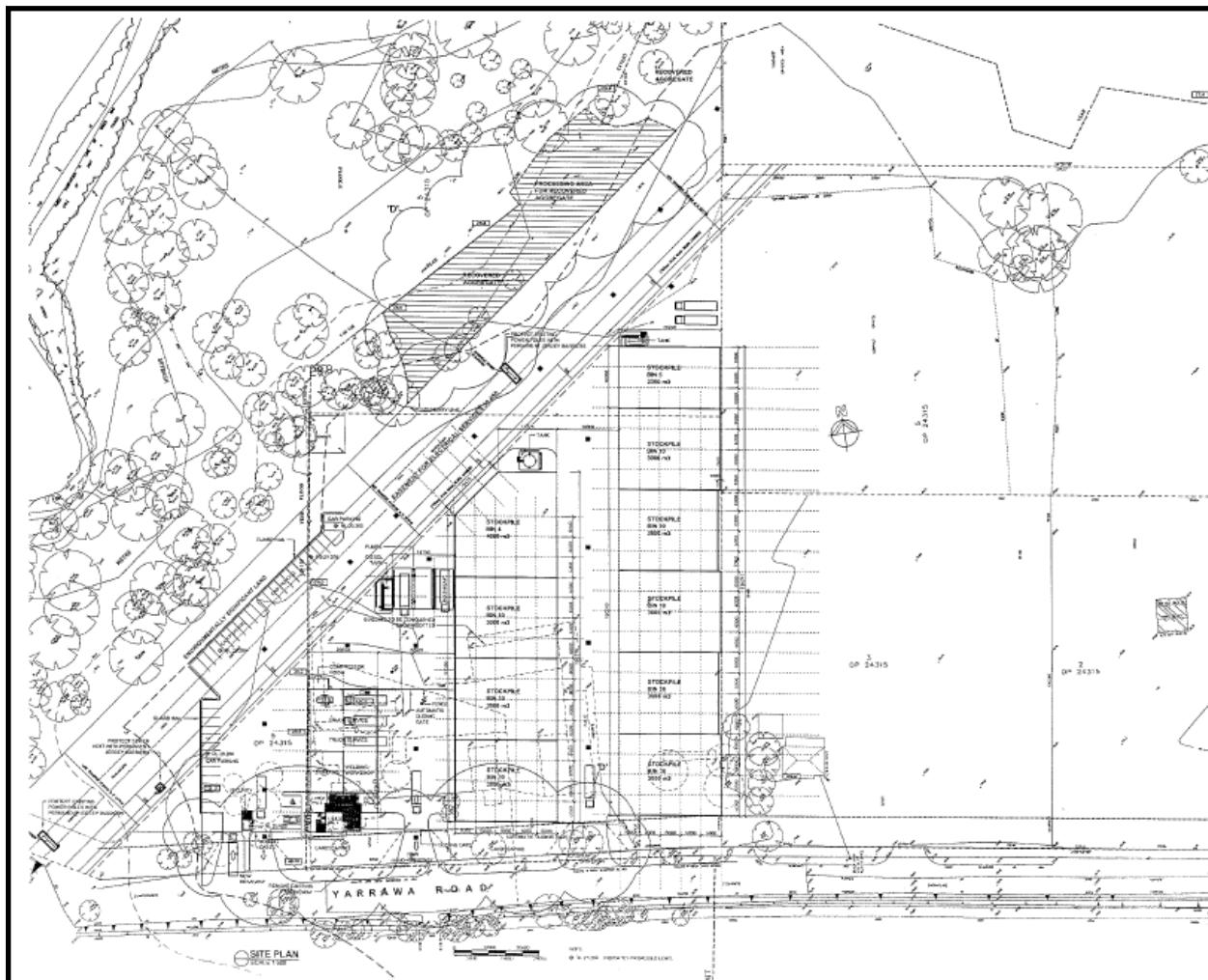


Figure 1. Approved site plan

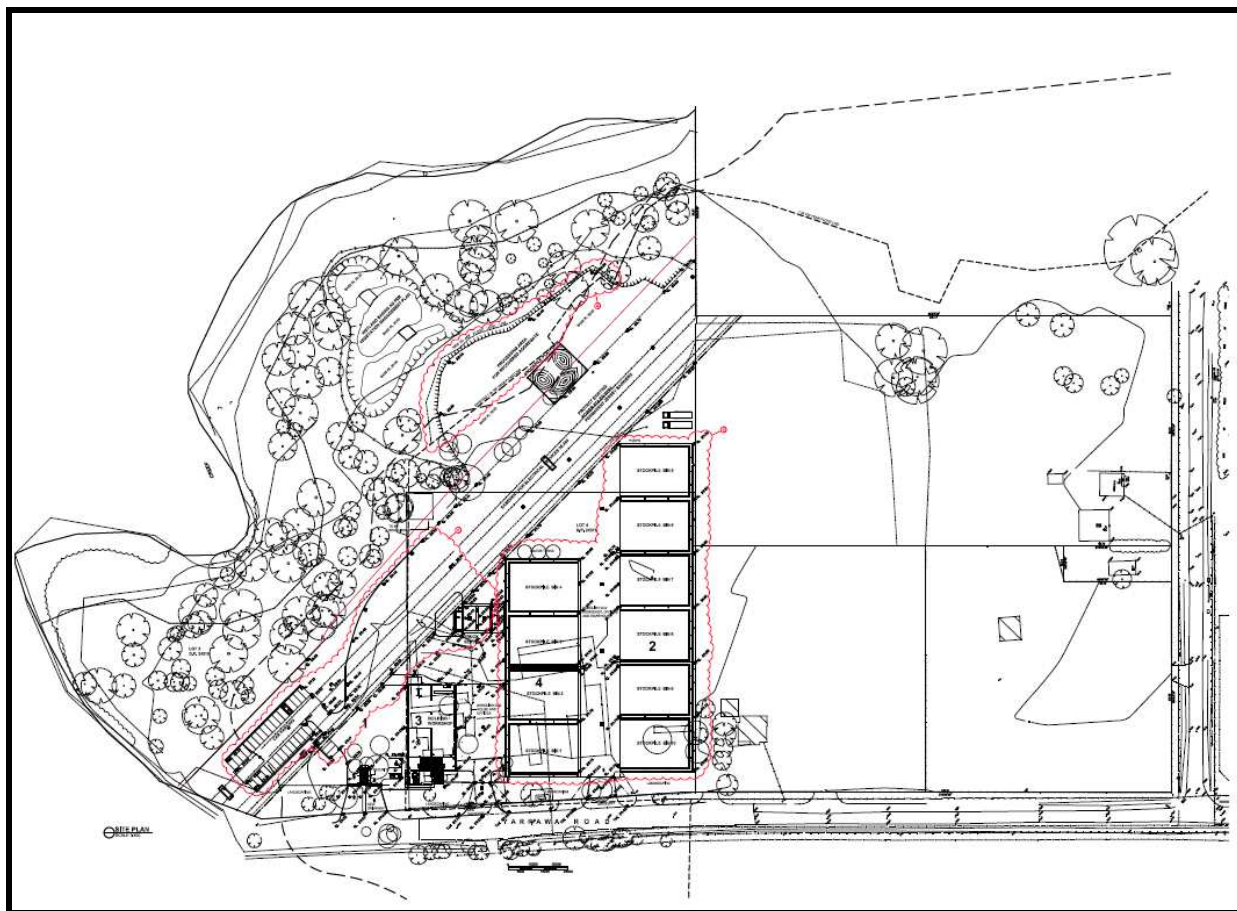


Figure 2. Superseded site plan proposal



Figure 3. Zone boundaries in relation to superseded car park proposal

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 6 of 11

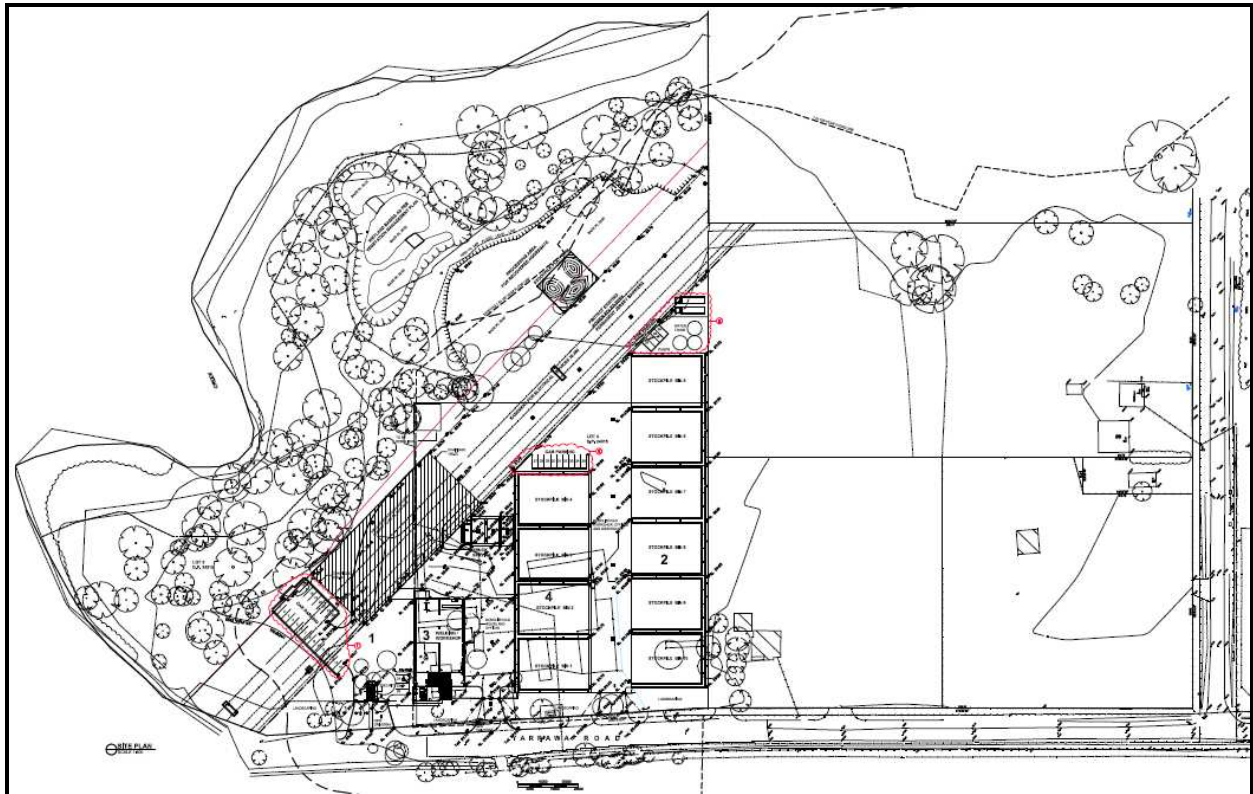


Figure 4. Current proposed site plan

MODIFICATION “A”

The approved 39 space car parking area and associated driveway are located in the 30.48 metre wide electrical easement traversing the site. An application to carry out work within the easement was made to Endeavour Energy by the applicant. This was refused on the grounds that there was insufficient clearance under the electrical conductors.

To overcome this problem, the applicant proposed moving the car park along the electricity easement from a mid-span location between two transmission line supports to a location closer to one support. This location was better able to obtain adequate conductor safety clearance and still meet Council's minimum flood level requirements. The area is already cleared and thus, the altered car parking location would have minimal environmental impact.

However, a significant portion of this cleared area is zoned E2 Environmental Conservation. This zoning does not permit the use of a resource recovery facility. Thus, a significant portion of the car park would now encroach on E2 zoned land and was not permitted. *Clause 5.3 Development near Zone Boundaries* of LLEP 2008 does not apply to E2 zoned land and could not be utilised to achieve flexibility. Thus, refusal of this aspect of the proposal was previously recommended.

The applicant has submitted a modified car parking layout that is located clear of the land zoned for Environmental Conservation purposes and is considered to achieve satisfactory clearances regarding flood levels and overhead electrical conductors.

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 7 of 11

This latest car park design reorientates the parking in the electrical easement to allow for 23 spaces. The balance of 16 spaces has been moved to the northern end of the stockpile bins. These 16 spaces are out the electricity easement, above the flood level and do not obstruct truck and loader movement areas. As these spaces will be utilised by staff and not site visitors the traversing of areas utilised by heavy vehicles is not considered a significant issue.

This amended car park design has been referred to Endeavour Energy for comment however, a response has not been received from Endeavour Energy at the time of finalising this report. Comments are expected by the date of the panel meeting.

Endeavour Energy in commenting on the previous car park layouts advised inter alia that between chainages 150m and 220m that it was crucial that final surface levels do not exceed 28.5m AHD. The current design maintains this clearance by not locating any vehicles in this area. Thus 16 spaces are required to be located in a separate location outside the easement.

Conclusion

Approval of Part A is recommended subject to the requirements of Endeavour Energy.

MODIFICATION “B”

Approval is sought to change the description of the operational hours to permit 24 hour operation of the facility for the loading and unloading of trucks and changes to the full operational hours to start from 7.00am and finish at 6.00pm Monday to Friday and 7.00am to 12.30pm on Saturday.

The applicant submits that the hours for full operation of the site which were originally requested in the Development Application of 7.30am until 4.30pm are proving to be restrictive to business activities because industry standards and construction work site standards begin at 7.00am.

The hours for operation of the site outside of the full operation times are essentially 24 hours except for 7.30am Sunday until 7.30am Monday. The approved activity however is limited to unloading trucks without the use of front end loaders and prevents the loading of vehicles at all during the night-time and after full operation hours.

The EPA previously advised that it did not support the proposed changes to the operating hours and on that basis refusal this aspect of the Section 96(2) modification was originally recommended for refusal. A further submission by the applicant on the acoustic impact of the proposed changes was unable to be considered by the EPA and reported on prior to the last JRPP meeting.

The EPA has now considered the additional information and advises:

“The EPA has assessed the additional documentation provided by Liverpool Council entitled, “Materials Recycling Facility at 4-5 Yarrowa Road, Prestons, Sleep Disturbance Noise Assessment” (Day Design Pty Ltd, 11 February 2013). The assessment indicates that the noise impacts on the closest residential areas will be acceptable provided that:

- 1) The noise criteria included in the development consent and the Licence is not changed; and*

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

- 2) *The condition relating to the hours of operation in the development consent and the Licence is changed to the following: 'The Premises shall operate between the hours of 7.30am to 4.30pm Monday to Friday only and 7.30am to 12.30pm Saturday. Material is not to be sorted or screened outside these hours. Only trucks fitted with tail gate bumpers may enter the site and load and unload outside these hours. Trucks unloading shall not involve the use of any plant or machinery other than the truck and a loader.'*

In relation to the proposed increase to the platform area of the processing area, the EPA also advises that all material is to be contained within the Premises and that no sediment run-off should occur as a result of this modification".

Conclusion

Approval of Part B is recommended in the terms specified by the EPA

MODIFICATION "D"

Previous activity on this site has resulted in the depositing of fill within the electrical easement which is up to 1 metre higher than the safe limits for the proposed activities to be carried out under electrical conductors. This material needs to be removed as does material to be excavated from proposed the wetland basins required by the Vegetation Management Plan.

The excavated material has to be deposited elsewhere on the site without impacting on flood storage levels as required by Condition 6 of the Consent.

The excavated material is proposed to be deposited in the area of the recovered aggregate stockpile platform. This will increase the platform area by approximately 1500m². The applicant submits that this will not reduce flood storage levels.

The applicant submits that the excavated material from the site will exceed the amount of fill proposed to be deposited in the current flood storage area. Therefore, flood storage is to increase as a result of this proposal. Floodlit Pty Ltd was engaged to prepare a Site Emergency Response Flood Plan for the materials handling facility in July 2011. This report was based on the proposed relocated car park, the proposed excavation levels to RS 28.40 under the electrical easement and the stockpile platform extended by the addition of some of the excavated material.

Conclusion

Council's Flood Engineer advises that the site is located adjacent to Cabramatta Creek and is affected by flooding under the 1% Annual Exceedance Probability (AEP) event. In the approved proposal (DA-410/2010), the proposed processing area for recovered aggregate was located outside the 1% AEP flood extent. However, in the modified proposal, the processing area for recovered aggregate has been extended into the 1% AEP flood extent, which has the potential to cause adverse impact.

The flood extent map as presented in Site Emergency Response Flood Plan prepared by Floodmit Pty Ltd (July 2011) for the applicant clearly indicates that the proposed processing area for recovered aggregate has encroached 1% AEP flood extent. Council's updated flood

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 9 of 11

map also indicates that the Processing Area site has extended to the 1% AEP flood extent. Therefore, the proposed modification will involve loss of floodplain storage and it may be hazardous or cause pollution during 1% AEP flood event.

Council requires that the Processing Area for Recovered Aggregate is located outside the 1% AEP flood extent.

This component of the modification is thus recommended to be refused.

COMPLIANCE MATTERS

The original development consent issued on 2 December 2010 contained inter alia the following deferred commencement conditions:

1. *The applicant is to prepare a Management Plan for the staging of the implementation of this consent addressing the transition from the current activities on the site to the approved development. This transition is to be completed within 2 years from the issue of the construction certificate for this development.*
2. *The applicant is to prepare plans for the construction of an enclosure for the screening plant and associated conveyor belts.*

These conditions were fulfilled and the consent deemed to operate from 8 April 2011. The development has been privately certified with a construction certificate being issued by AE & D Consulting dated 15 February 2012. Thus the transition from current activities on the site to the approved development must be completed by 15 February 2014.

Compliance with construction aspects of development are generally referred by Council to the private certifier in the first instance if knowledge of non compliances is obtained.

Screening Plant Enclosure

The "Transition Plan for Integration of Current Operations with the Environmental Construction Management Plan" supplied by the applicant divides the works into 4 stages allowing the current activities to continue on site, subject to environmental controls, until new facilities have been completed within the 2 year time frame.

A copy of the "Transition Plan for Integration of Current Operations with the Environmental Construction Management Plan" is appended.

The screening plant enclosure is identified as a matter to be addressed in Stage 1. The length of each individual stage has not been identified and the enclosure has not been constructed AS yet as the machine is mobile and often off-site at other locations.

The enclosure for the screening machine is open topped and is a fence type enclosure clad with shade cloth material. The design of the enclosure has been influenced by the need for accessibility for the mobile screening machine itself and for the loading equipment which feeds unprocessed material into the hopper and distributes screened material to other storage bins.

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 10 of 11

The enclosure will provide visual screening and act as a wind break thus contributing to the reduction of any wind blown dust.

Noise, Dust and Operating Hours

The site is a Scheduled Premises and compliance with certain operational aspects of the development such as noise, dust and operating hours is typically referred by Council to the EPA for enforcement where those requirements although contained in the consent condition are simply mirroring the conditions in the site's EPA licence.

The most recent complaint in respect of the site received by Council was on the 20 July 2012. This was referred to the EPA. Advice was received from the Environmental Protection Authority on 6 November 2011 which advised Council officer's that the applicant was operating outside of their licence conditions. The EPA issued a penalty notice on 29 January 2013. Advice from the EPA is that the alleged breaches have been rectified.

Council has previously engaged consultants to report on environmental issues associated with the site. The advice has been that silica dust is not present in any significant quantities on the site and that no pollution of Cabramatta Creek can be attributed to the site.

Car Park Construction

Work on the car park as proposed in the originally submitted Section 96 modification has been commenced prior to approval of the modification. The car park design has been further refined and if the Section 96 application is not approved this work will need to be removed. If the revised car park is approved then part of the work will need to be removed. Action to remove the constructed car park has been deferred pending resolution of the current Section 96 modification consistent with Council Enforcement Policy.

Council's policy states that "If the legislation enables the particular matter to be resolved by obtaining relevant approval, such as Development Consent or a Section 96 modification, it may be appropriate to allow a reasonable period of time to seek approval prior to taking enforcement action."

Other Authorities

The conditions of the General Terms of Approval and any Controlled Activity Approval are enforceable by the Office of Water.

Work place health and safety requirements for staff on site are enforceable by WorkCover.

RECOMMENDATION:

That:

1. The Joint Regional Planning Panel approves the proposed Section 96 modification identified as "A" of Development Application DA-410/2010 subject to the requirements of Endeavour Energy.
2. The Joint Regional Planning Panel approves the proposed Section 96 modification identified as "B" of Development Application DA-410/2010 subject to the amended hours approved by the EPA.

LIVERPOOL CITY COUNCIL

JOINT REGIONAL PLANNING PANEL - ASSESSMENT REPORT

PAGE - 11 of 11

3. The Joint Regional Planning Panel reaffirms the approval of the proposed Section 96 modification identified as “C” of Development Application DA-410/2010.
4. The Joint Regional Planning Panel refuses the proposed Section 96 modification identified as “D” of Development Application DA-410/2010
5. An amended plan to be submitted by the applicant for approval stamping showing the proposed modification of the car park and storage bins minus the proposed processing platform area modifications which are recommended for refusal.
6. The persons who made a submission with regard to the proposed development are notified in writing of Council’s decision.

APPENDICES

1. **Council Report to JRPP meeting 14 February 2013**
2. **Transition Plan for Integration of Current Operations with the Environmental Construction Management Plan**