



New South Wales Government  
Independent Planning Commission

# **Shoalhaven Starches Modification 18**

## **MP06\_0228 MOD 18**

### **Statement of Reasons for Decision**

Andrew Hutton (Chair)

4 September 2020

Shoalhaven Starches Modification 18 (06\_0228 MOD 18) Final Report ©  
State of New South Wales through the Independent Planning Commission 2020

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## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>Applicant</b>	Shoalhaven Starches Pty Ltd
<b>ARP</b>	Department's Assessment Report Paragraph
<b>Commission</b>	Independent Planning Commission of NSW
<b>Council</b>	Shoalhaven City Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>Department's AR</b>	Department's Assessment Report (dated July 2020)
<b>EP&amp;A Act</b>	<i>Environment Planning and Assessment Act 1979</i>
<b>EP&amp;A Reg</b>	<i>Environmental Planning and Assessment Regulation 2000</i>
<b>EPA</b>	The NSW Environment Protection Authority
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>LEP</b>	Local Environmental Plan
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material set out in paragraph 33
<b>ML</b>	Mega-Litres
<b>Modification Request</b>	Proposed Modification 18 as described in the SEE and accompanying documentation as updated
<b>Project</b>	The development permitted under the Project Approval
<b>Project Approval</b>	The original approval granted under MP 06_0228 on 28 January 2009 as modified up to and including Modification 15
<b>SEE</b>	The submitted Statement of Environmental Effects and Planning Statement, prepared by Cowman Stoddart (dated 18 May 2020)
<b>SEPP</b>	State Environmental Planning Policy
<b>Site</b>	As described in paragraphs 7, 8 and 9 of this Statement of Reasons
<b>SLEP</b>	Shoalhaven Local Environmental Plan 2014
<b>SRD SEPP</b>	SEPP (State and Regional Development) 2011
<b>SSD</b>	State Significant Development
<b>STOP Reg</b>	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>

## 1 INTRODUCTION

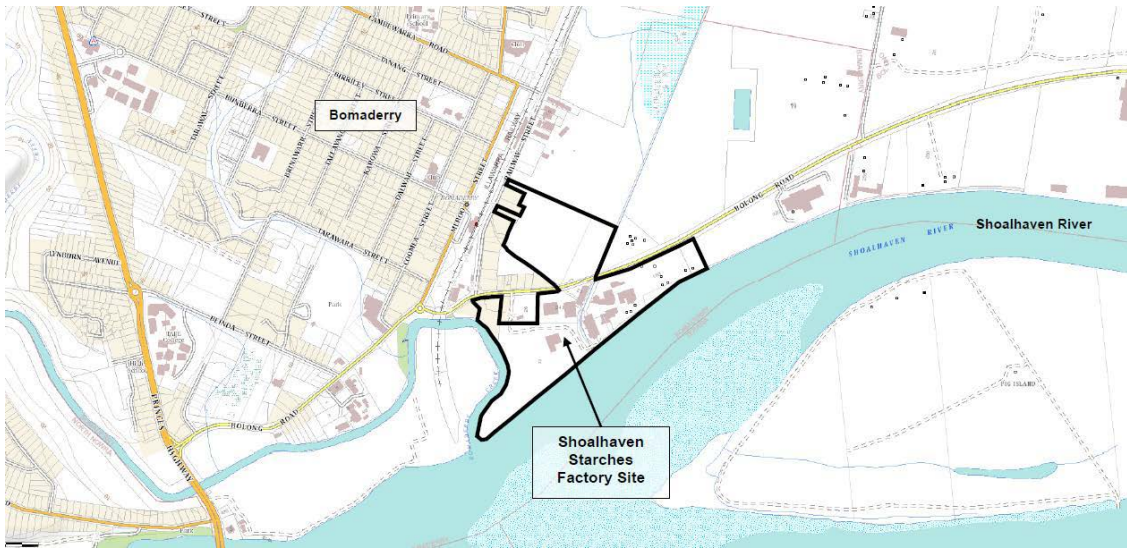
1. On 6 August 2020, the NSW Department of Planning, Industry and Environment (**Department**) referred a modification request (06\_0228 MOD 18) (**Modification Request**) from Shoalhaven Starches Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Modification Request seeks approval for Shoalhaven Starches Modification 18 regarding the production of hand sanitiser and hand sanitiser grade alcohol at the Shoalhaven Starches facility, located in the Shoalhaven Local Government Area.
3. The Modification Request identifies an increased demand for hand sanitiser and hand sanitiser grade alcohol associated with the COVID-19 pandemic and was accompanied by a letter from the Australian Government Department of Industry, Science, Energy and Resources identifying industrial ethanol as a key input to the manufacture of hand sanitiser.
4. The Modification Request proposes the relocation of an approved gas-fired boiler to the eastern extent of the factory site, addition of two storage tanks for hand sanitiser grade alcohol, additions to existing gantries, and construction of new gantries. The proposal includes the production of 120 ML per year of hand sanitiser grade ethanol and 1.5 ML of hand sanitiser, which would not result in an increase to the 300 ML per annum limit for total ethanol production at the site.
5. The Modification Request was submitted pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* because the Applicant made reportable political donations.
6. Mr Peter Duncan AM, Acting Chair of the Commission, nominated Andrew Hutton (Chair) to constitute the Commission determining the Application.

## 2 THE MODIFICATION REQUEST

### 2.1 Site and Locality

7. The Shoalhaven Starches facility is located at Bolong Road, Bomaderry and comprises multiple allotments within an overall site area of approximately 12.5 hectares. The Modification Request relates to the main factory site, including Lot 1 DP 1838753, Part Lot 241 DP 1130535 and Lot 143 DP 11069758 (**Site**).
8. The Department describes the Site and surrounds at Assessment Report Paragraph (**ARP**) 1.2.1, 1.2.2, 1.2.3 and 1.2.4. The Site is shown in Figure 1 below.
9. The Site location is shown in Figure 1 below.

**Figure 1: Site Location** (source: Department's Assessment Report dated July 2020)



## 2.2 Background

10. At ARP 1.2.1 the Department describes how the Applicant has operated this factory in Bomaderry since 1979 to produce flour, gluten, glucose, starch and ethanol for food, beverage, paper and fuel products. The factory operates 24 hours a day, 7 days a week and has approximately 300 employees.
11. The Shoalhaven Starches Expansion Project (MP06\_0228) (**Project Approval**) was approved in January 2009 under the now repealed Part 3A of the EP&A Act to consolidate the previous planning approvals for the site in order to simplify regulation and compliance (ARP 1.3.2). The Project was a transitional Part 3A project under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Reg)*. On 7 September 2018, the Project was declared to be State significant development (**SSD**) under clause 6 to Schedule 2 of the STOP Reg.
12. ARP 1.3.6 describes how the Project Approval has been modified on 16 occasions. Table 1 of the Department's AR outlines these modifications. Modification 17 is currently under assessment by the Department prior to the Commission determining Modification 17 as consent authority.

## 2.3 Summary of the Modification Request

13. The Department's AR describes the Modification Request at ARP 2.1.
14. In summary, the Applicant seeks to modify the Project to install additional infrastructure to facilitate the production of hand sanitiser grade alcohol and hand sanitiser. A summary of the proposed modifications is provided in Table 1, below.

**Table 1** Summary of the proposed modifications (Source: Department's AR)

Modification	Description
Ethanol production	Production of 120 ML of hand sanitiser grade alcohol per year, within the approved 300 ML production limit.

Hand sanitiser production	Repurposing of the existing defatting building and production and storage of 1.5 ML of hand sanitiser.
Boiler relocation	Relocation of approved boiler to eastern extent of factory site. Revised boiler has larger footprint but smaller steam generation capacity and includes a 24.5 m emissions stack.
Gantry additions and extension	Extension of existing gantry and associated steam pipework between gas fired boiler and distillery for steam supply.  Additional pipework to increase height of gantry from 9.75 m to 10.8 m.
Two new storage tanks	Addition of two new 236kL tanks for storage of hand sanitiser grade ethanol.
Storage area	Repurposing of defatting plant for hand sanitiser production storage.
Employment	20 construction jobs, 4 operational jobs.
Capital Investment	\$7.8 million.

15. The Applicant's justification for the Modification Request is summarised at ARP 2.2.1.
16. The Commission notes that condition 7 of the Project Approval requires a staged approval process to incrementally increase the ethanol production limit up to 300 ML per year. At ARP 1.3.4 the Department confirmed it had approved the increase in ethanol production to the maximum volume permitted, being 300 ML per year. With respect to this, the Department provided to the Commission a letter from the Director General dated 4 June 2012 confirming this approval. The letter has been placed on the Commission's website.

### 3 THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION REQUEST

#### 3.1 Strategic Context

17. At ARP 3.1.1, the Department states:

*"The Department is satisfied the proposed modification is consistent with relevant strategic planning documents including the Illawarra Shoalhaven Regional Plan (ISRP) 2015."*

18. At ARP 3.1.2 the Department notes the employment generation arising from the Modification Request and states:

*"the modification would enable Shoalhaven Starches to maintain an efficient and competitive manufacturing business that contributes to the local and regional economy".*

### 3.2 Statutory Context

19. As described in paragraph 11, the Project Approval has been declared to be SSD under clause 6 of Schedule 2 of the STOP Reg. Therefore, the Project Approval is taken to be an SSD consent under Part 4 of the EP&A Act and can be modified under section 4.55 of the EP&A Act.
20. The Department's AR summarises the statutory context of the Modification Request and confirms that it is satisfied the Modification Request is within the scope of section 4.55(1A) of the EP&A Act (ARP 4.1.2).

### 3.3 Department's Engagement

21. As described at ARP 5.1.1, the Modification Request does not require notification pursuant to clause 117(3B) of the *Environmental Planning and Assessment Regulation 2000 (EP&A Reg)*. However, it was made available on the Department's Major Projects website on 20 May 2020. The Department also referred the Modification Request to Shoalhaven City Council (**Council**) and the Environment Protection Authority (**EPA**).
22. The Department did not receive any objections to the Modification Request. Council provided recommended conditions with respect to flood engineering and the EPA provided comments.
23. The Department's AR summarises the key issues raised by the EPA in section 5.3, including:
  - a lack of information regarding the estimated air emissions concentrations for the relocated boiler;
  - that the Applicant should test and analyse the air emissions following commissioning of the relocated boiler to ensure they meet the Group 6 air emission concentration standards outlined in Schedule 4 of the *Protection of the Environment Operations (Clean Air) Regulation 2010*
  - request for calculations of the maximum volume of dangerous goods to be stored in the originally proposed covered storage area and for a fire risk analysis to be undertaken.
24. At ARP 5.4.1, the Department describes the Response to Submissions provided by the Applicant in response to the concerns raised above, noting amendments made by the Applicant to address the EPA's comments.

### 3.4 Department's Assessment and Recommendation

25. Section 6 of the Department's AR identified key issues as air quality, impacts of emissions from the proposed boiler, and hazards and risks associated with the production, handling and storage of hazardous materials – including explosion, fire and release of corrosive substances into the environment. Other issues considered by the Department include visual impacts, noise, flooding and riverbank stability.
26. At ARP 7.1.2 the Department concludes "*the proposal is in the public interest and the modification application is approvable, subject to conditions*".



## 4 THE COMMISSION'S CONSIDERATION

### 4.1 The Department's Assessment

27. Under section 4.6 of the EP&A Act, certain functions of the Department are to be exercised by the Planning Secretary on behalf of the Commission, including “*undertaking assessments of the proposed development and providing them to the Commission (but without limiting the assessments that the Commission may undertake)*” (section 4.6(b)). The Planning Secretary's assessment of the Modification Request is set out in the Department's AR.

### 4.2 The Commission's Meetings

28. As part of its determination, the Commission met with the Applicant and the Department, as set out in Table 2. These meetings were held via videoconference due to COVID-19 restrictions. Council was also offered an opportunity to meet with the Commission; however, Council declined the invitation after reviewing the Department's AR and recommended conditions and advised that it did not wish to make further submissions to the Commission. All meeting transcripts have been made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript Available
Department	20 August 2020	27 August 2020
Applicant	20 August 2020	26 August 2020

29. On 17 August 2020, the Applicant provided a promotional video for the Commission's consideration which showed the Applicant's operations at the Site. On 19 August 2020 the Applicant provided an aerial photograph of the Site. Both the promotional video and the aerial image were considered by the Commission and were uploaded to the Commission's website along with transcripts of the meeting listed in Table 2.

#### 4.2.1 Site Inspection

30. There is no statutory requirement for the Commission to conduct a site and locality inspection when carrying out its functions. A decision was made by the Chair of the Panel not to conduct a site inspection during the current COVID-19 circumstances given the nature of the Modification Request and the ability to make an informed decision based on meetings with stakeholders and the material provided and identified in paragraph 33 (**Material**).

#### 4.2.2 Public Comments

31. The Modification Request was made available on the Commission website, providing an opportunity for submission of written comments to the Commission within seven (7) days of the stakeholder meetings identified in Table 2.
32. The Commission did not receive any comments on the Modification Request from the public.

### 4.3 Material considered by the Commission

33. In this determination, the Commission has carefully considered the following Material:
- the Applicant's Statement of Environmental Effects (**SEE**) and Planning Report,

- prepared by Cowman Stoddart, dated May 2020, and accompanying documentation
- the Applicant's Response to Submissions
- letter from the Australian Government Department of Industry, Science, Energy and Resources to Manildra Group, dated 9 May 2020
- referrals made to the Department during its assessment
- the Department's AR, dated 28 July 2020
- the Department's draft Instrument of Modification, undated
- letter from the Director General to Shoalhaven Starches, regarding staged approval of ethanol production, dated 4 June 2012
- transcripts for the meetings identified in Table 2
- presentations by the Department and the Applicant during the stakeholder meetings outlined above in paragraph 28
- the promotional video and aerial photography outlined above in paragraph 29.

## 4.4 Key Issues

### 4.4.1 Hazards and Risks

#### *Applicant's Consideration*

34. The Applicant submitted a Preliminary Hazard Analysis prepared by Pinnacle Risk management that assessed the potential hazardous events and corresponding risks associated with the Modification Request. The preliminary assessment included consideration of risks associated with the gas-fired boiler, two additional ethanol storage tanks, existing beverage grade ethanol plant, existing ethanol storage, and evaporator, as well as hazardous materials, and potential hazardous incidents. The Preliminary Hazard Analysis did not identify any unacceptable risks from the proposed development.

#### *Department's Assessment*

35. The Department's notes at ARP 6.3.8 that the proposal was reviewed by the Department's Hazards Specialist, and states:

*"Based on the information provided, and assuming all safeguards are in place and maintained, the Department is satisfied the development does not impose an unacceptable risk to surrounding land uses....The Department recommends the Applicant update the existing hazard studies and plans for the factory to include the modification and the implementation of the recommendations and safeguards of the revised PHA. This includes the Site-Wide Fire Safety Study, Emergency Plan and Safety Management System. The Department's assessment concludes the hazards and risks of the modification would be appropriately managed through the updating the existing conditions of consent and the implementation of recommendations provided in the revised PHA."*

36. The Department's Hazards Specialist also attended the Department's meeting with the Commission (Table 2) and reaffirmed the Department's assessment of the safety of the proposed infrastructure and operations, as well as clarifying the reasons for the Applicant removing the outdoor covered storage of hand sanitiser from the proposal.

#### *Commission's Findings*

37. The Commission has considered the Material and agrees with the Department's assessment, set out in paragraphs 35 and 36 above, that the existing conditions are sufficient to monitor, manage and mitigate any hazards and risks.

38. It is further noted that existing conditions 36 and 37 in Schedule 2 of the Project Approval relate to Hazards and require the Applicant to submit a variety of documentation for approval prior to construction and prior to commissioning of any new development. This includes a requirement to submit a Final Hazard Analysis prior to undertaking construction.

#### 4.4.2 Noise

##### *Applicant's Consideration*

39. The submitted SEE references an acoustic assessment prepared in June 2008, which was previously submitted in support of the Project approval. The SEE notes that the design criteria for the approved boiler specified that:

*“the discharge of the duct is to achieve an attenuation of 25 dB(A) so that the sound pressure level from the discharge duct does not exceed 72 dB(A) at 1 metre.”*

40. The SEE also notes that relocation of the boiler will not cause additional noise impacts, stating:

*“Mod 18 only seeks to relocate the approved gas fired boiler from one location on the site to another location of the factory site. As previously described the proposed relocated gas fired boiler will also have a reduced production capacity compared to the approved gas fired boiler. As a result, the proposed relocated gas fired boiler will result in a reduction in noise generation compared to the gas fired boiler as originally approved. Under these circumstances it is not envisaged that the proposed relocated gas fired boiler will increase noise impacts arising from this Modification Application.”*

##### *Department's Assessment*

41. The Department's AR notes that the EPA and Council did not raise concerns in their submissions regarding noise impacts arising from the modification, and at Table 3 states:

*“The Department considers the modification to have a negligible noise impact on the existing amenity as the reduced production rate of the gas fired boiler will subsequently reduce the noise generation of ethanol production in comparison to that previously approved in Mod 12... and can be appropriately managed through the existing conditions of consent”*

##### *Commission's Findings*

42. The Commission notes that the proposed relocation of the approved boiler will bring it in closer proximity (600m) to sensitive receptors currently listed in the Project Approval.
43. Potential noise impacts associated with the revised boiler location were discussed in the Commission's meetings with the Applicant and the Department. Both the Applicant and Department noted that the Project Approval includes multiple interrelated conditions concerning noise and environmental monitoring – including condition 2A in Schedule 2 and conditions 12, 13, 13A, 14M and 14N in Schedule 3 of the Project Approval. Notably, condition 12 of Schedule 2 includes specific noise limits at receptor locations, including Pig Island which has a limit of 40 LAeq(15 minute) dB(A) at all hours. Additionally, condition 14M requires submission of a noise verification report prior to construction of modifications to demonstrate any new plant and equipment accords with the noise limits in condition 12.
44. The Commission finds that the existing conditions of the Project Approval are adequate to prevent unacceptable noise impacts at the identified receptors.

### 4.4.3 Visual Impacts

#### Council Comments

45. Table 3 of the Department's AR states that the Council:

*"indicated it was satisfied with the Applicant's justification for the variation to the maximum building height development standard".*

#### Applicant's Consideration

46. The Applicant's submitted document titled Clause 4.6 Written Request Shoalhaven LEP 2014, prepared by Cowman Stoddart, includes detailed justification of the proposed building heights. The document identifies that the proposed boiler will have a stack with a height of 24.5 m, and the two proposed storage tanks will have a height of 18 m, both of which exceed the development standard in the SLEP, which is 13.5m. To justify these exceedances, the report confirms that the existing built form at the site is taller than the proposed structures and the nature of the proposed additions are relatively minor. The Applicant's Clause 4.6 Written Request states:

*"the proposed relocated gas fired boiler and storage tanks will be sited such that they will be partially screened by existing development and will be within the overall visual "silhouette" of the existing factory complex and individual structures will not be visually prominent. These structures will not extend past the existing skyline created by the existing factory. The works will be sited in the midst of the existing factory complex and will be viewed within this context."*

#### Department's Assessment

47. In Table 3 of the Department's AR the Department notes the Applicant provided justification for the height departure in accordance with the provisions of Clause 4.6 of SLEP. The Department is satisfied the Applicant has demonstrated the SLEP height standard is unreasonable and unnecessary in this case because the facility includes existing structures with heights of 30m. The Department further states:

*"The Department considers the height of the proposed boiler stack and silos would have a minimal impact on visual amenity given the site's existing built form and maximum height of structures at 30 m....The Department concludes the proposed structures are consistent with the existing industrial built form and character of the facility and would have a minimal visual impact".*

#### Commission's Findings

48. The Commission has reviewed the Material and notes that the proposed boiler is located at the eastern extent of the main factory site in an area which does not include approved structures of a comparable scale to the proposed boiler. The positioning of the proposed boiler is considered to contribute to a marginal extension of the factory skyline, as opposed to sitting within it. The other proposed structures including the storage tanks, altered gantries, and proposed new gantries do predominantly fall within the cluster of structures forming the factory. Notwithstanding the siting of the proposed boiler, and noting the scale of the existing development, the Commission agrees with the Department's assessment that the proposed structures would have a minimal visual impact.
49. The Commission is satisfied that the Applicant's written request has adequately addressed the matters prescribed under Clause 4.6 of SLEP and is consistent with the objectives of the

height standard and the IN2 zone, including to minimise visual impact and to not impact other land uses.

#### 4.4.4 Traffic

##### *Applicant's Consideration*

50. At Chapter 3.4 the SEE states:

*“The inclusion of these tanks should not increase the number of road vehicles to or from the facility although will potentially change a number of their destinations. These tanks do not change the production rate of the Beverage grade distillery rather will increase ENA storage on site for the use in hand sanitiser products”.*

51. The Applicant also provided further information to the Commission at its meeting, as outlined in Table 2. The Applicant noted the modification will not impact existing traffic movements because the production limit remains at 300 ML of alcohol per year. The Applicant also confirmed that construction of the proposed infrastructure will rely on a prefabricated structure and, therefore, construction-related traffic will be minimised.

##### *Department's Assessment*

52. The Department's AR does not raise concerns with potential traffic impacts arising from the Modification Request.

##### *Commission's Findings*

53. The Commission is satisfied the Modification Request will not cause any substantive traffic impacts during construction or operation.

#### 4.4.5 Acid Sulfate Soils

##### *Applicant's Consideration*

54. The submitted SEE relies upon an acid sulfate soils assessment prepared in 2016, and states:

*“Whilst the subject site is identified as potentially containing acid sulphate soils - class 3 and 4, the EA that supported Mod 12 and which included the areas of the site associated with this proposal, and particularly the area of the site associated with the proposed location of the relocated gas fired boiler, were subject to an acid sulphate soils assessment carried out by Coffey Geosciences. Coffey's did not specifically identify these sites as being subject to ASS”.*

##### *Department's Assessment*

55. The Department's AR does not raise any concerns relating to acid sulfate soil risk associated with the Modification Request.

##### *Commission's Findings*

56. The Commission notes that condition 21 of the Project Approval requires submission of an Acid Sulfate Soil Management Plan for the development as modified, prior to construction. The condition includes the note:

*“If a modification does not require an updated of the plan listed above, the Applicant shall provide written justification to the satisfaction of the Secretary”.*

57. The Commission finds that the existing condition is adequate to manage any potential acid sulfate soil risk associated with the Modification Request.

#### 4.4.6 Flooding

##### *Council’s Comments*

58. Council’s advice to the Department included recommended conditions relating to flood engineering certification.

##### *Department’s Assessment*

59. At Table 3 of the Department’s AR, the Department acknowledges:

*“the modification will be located within an approved hardstand area and the impacts were previously assessed in Mod 12....The Department considers existing conditions of consent requiring structural engineering reporting to demonstrate flood compatibility to be undertaken for each modification and the preparation of an updated Flood Mitigation and Management Plan (FMMP) for each modification are satisfactory in managing flooding impacts of the modification....The Department’s assessment concludes the modification will have a negligible impact on flooding and can be appropriately managed through the existing conditions of consent”.*

##### *Commission’s Findings*

60. The Commission agrees with the Department’s finding that existing conditions of the Modification Request are adequate to manage any flood risk associated with the Modification Request.

#### 4.5 Mandatory Considerations

61. Clause 3BA(6) Schedule 2 of the STOP Reg includes provisions relating to modifications of projects previously categorised as transitional Part 3A projects modifications of which were formerly made under the then section 75W of the EP&A Act. Clause 3BA Schedule 2 of the STOP Reg provides that in the application of section 4.55(1A) of the EP&A Act to such projects:

*“the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W)”.*

Therefore, as described by the Department’s AR at Table 1, Modification 15 was the last modification issued under section 75W and, therefore, the Commission must be satisfied that the Modification Request is substantially the same as the Project Approval up to and including Modification 15.

62. The Commission has considered the scope of the proposed changes and finds that the Modification Request can be determined under s4.55(1A) and is substantially the same as the development approved under the Project Approval, for the reasons outlined below:

- the proposed modifications are accommodated within the approved footprint;

- the proposed infrastructure and changes to the sites production do not materially change the approved industrial land use, as discussed at paragraph 72 of this Statement of Reasons;
- the proposed structures would not result in a significant change to the scale and character of the approved development;
- the Modification Request would not involve changes to the approved hours of operation;
- the proposed modifications would not involve any changes to the proposed access arrangements; and
- the proposed modification does not involve a change to the approved production limit of 300ML of ethanol per year.

63. In accordance with section 4.15(1) of the EP&A Act, the Commission has also taken into consideration such of the following matters as are of relevance to this Modification Request (**Mandatory Considerations**):

- the provisions of:
  - any environmental planning instrument;
  - any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the Commission (unless the Planning Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
  - any development control plan;
  - any planning agreement that has been entered into under s 7.4 of the EP&A Act, and any draft planning agreement that a developer has offered to enter into under s 7.4;
  - the *Environmental Planning and Assessment Regulations 2000* (**Regulations**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act;
- that apply to the land to which the Application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for the development;
- submissions made in accordance with the EP&A Act and Regulations; and
- the public interest.

64. The Commission has also considered the reasons for the granting of consent of the Project Approval.

#### 4.5.1 Relevant Environmental Planning Instruments (EPIs)

65. The Commission has taken into consideration the following EPIs which apply to the Site:

- State Environmental Planning Policy No. 33 – Hazards and Offensive Development (**SEPP 33**)
- State Environmental Planning Policy No. 55 - Remediation of Land (**SEPP 55**)
- State Environmental Planning Policy (Coastal Management) 2018 (**Coastal SEPP**)
- State Environmental Planning Policy (State and Regional Development) 2011 (**SRD SEPP**)
- Shoalhaven Local Environmental Plan 2014 (**SLEP**)

66. The Commission has considered the Environmental Planning Instruments relevant to the Modification Request and, noting that the Modification Request involves no new land uses

and only minor modifications to built form and operations, finds that the Modification Request accords with these instruments.

67. The Commission notes the Modification Request includes a departure to the height development standard in Clause 4.3 of SLEP. This matter is considered in further detail in paragraph 48 of this Statement of Reasons.

#### **4.5.2 Any Development Control Plan**

68. Pursuant to clause 11 of SRD SEPP, development control plans do not apply to SSD.

#### **4.5.3 Relevant Planning Agreements**

69. The Commission is satisfied there are no executed or draft Voluntary Planning Agreements relevant to this Site or the Modification Request.

#### **4.5.4 Applicable Regulations**

70. The Commission is satisfied the Application meets the relevant requirements of the EP&A Reg and the STOP Reg as they apply to the Modification Request.

#### **4.5.5 Likely Impacts of the Development**

71. In determining this Modification Request, the Commission has considered the following to be key issues to address. These issues are considered in section 4.4 of this Statement of Reasons:

- Hazards and Risks
- Noise
- Visual Impact
- Traffic
- Acid Sulfate Soils
- Flooding

#### **4.5.6 Suitability of the Site**

72. The Commission has considered the suitability of the Site for the Modification Request, noting it would not represent a material change of use of the Site and would not result in an increase to the Site area. Therefore, the Commission finds that the Modification Request is consistent with the existing industrial site use and the Site remains to suitable.

#### **4.5.7 The Public Interest & Objects of the EP&A Act**

73. At ARP 7.1.2 the Department concludes “*the proposal is in the public interest*”.
74. In determining the public interest merits of the Application, the Commission has had regard to the objects of the EP&A Act.
75. Under section 1.3 of the EP&A Act, the relevant objects applicable to the Project are:
- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*



- b) to facilitate ecologically sustainable development [ESD] by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) to promote the orderly and economic use and development of land,*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) to promote the sustainable management of built and cultural heritage,*
- g) promote good design and amenity of the built environment,*
- h) promote the proper construction and maintenance of buildings, including the protection of health and safety of their occupants,*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, and*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

76. A key relevant object of the EP&A Act to the Application, as outlined in paragraph 77, is the facilitation of Ecologically Sustainable Development (**ESD**). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* provides that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:

- a) the precautionary principle;
- b) inter-generational equity;
- c) conservation of biological diversity and ecological integrity; and
- d) improved valuation, pricing and incentive mechanisms.

77. The Commission finds that the Application is consistent with principles of ESD, the objects of the EP&A Act and the public interest, because the Application:

- promotes the orderly and economic use and development of land as it would not involve any works outside already approved development areas and will be within the factory site;
- protects the environment and integrates economic, environmental and social considerations for the decision-making about environmental planning and assessment, as it:
  - can effectively manage additional wastewater within the existing wastewater treatment plant and irrigation areas;
  - would have minimal impact on flooding, visual amenity, riverbank stability, contamination and acid sulphate soils;
  - would not have adverse impacts on the road network;
  - would meet existing noise limits at residential receivers;
  - has plans in place to address the Clean Energy Regulator's requirements;
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, as cumulative risk from the additional infrastructure would be acceptable and the overall factory would continue to comply with the NSW land use safety risk criteria;
- promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, as government

- agencies had been invited to comment and make recommendations on the Application; and
- provides opportunity for community participation in environmental planning and assessment, as the Department made the Application available on the Major Projects website.

## 5 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

78. The Commission has carefully considered the Material before it (paragraph 33).
79. For the reasons set out in this Statement of Reasons, the Commission determines the Modification Request should be approved subject to the Department's Recommended Conditions, which the Commission finds have been designed to:
- prevent, minimise and mitigate adverse impacts; and
  - set standards and performance measures for acceptable environmental performance; and
  - provide for the ongoing environmental management of the development.
80. The reasons for the Decision are given in this Statement of Reasons for Decision dated 4 September 2020.



**Andrew Hutton (Chair)**  
Member of the Commission