



9 August 2018

Dr. Liz Develin
Acting Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Dr. Develin

**Determination of Modification Request
Caltex Kurnell Refinery Conversion Works MOD 4 (SSD 5544 MOD 4)**

1. Thank you for your Department's letter, received on 6 August 2018, referring the modification request above to the Independent Planning Commission NSW (the **Commission**) for determination. The Department has referred the modification request to the Commission for determination due to reportable political donations having been made.
2. On 1 March 2018, the *Environmental Planning and Assessment Act 1979 (EP&A Act)* was amended. Therefore, the Commission is the consent authority under section 4.5(a) and 4.55(2) of the EP&A Act and clauses 8A(1)(a) and 8A(2) of the *State Environmental Planning Policy (State and Regional Development) 2011*. This is because a reportable political donations disclosure has been made by the applicant.
3. Professor Mary O'Kane AC, Chair of Commission, nominated Mr. John Hann (Chair) and Mr. Soo-Tee Cheong to constitute the Commission to determine the modification request.
4. On 7 January 2014, the then Planning Assessment Commission approved the Caltex Kurnell Refinery Conversion Works, see *Figure 1* (the **conversion works**), subject to conditions. The Minister for Planning (or Delegate) has approved three modifications to the approved conversion works since 2014.
5. Caltex Refineries (NSW) Proprietary Limited (the **applicant**) seeks approval to modify the conversion works application to extend the length of the approved demolition works period from 10 August 2018 to 10 June 2019.
6. The Department received the modification application from the applicant on 15 June 2018 and it was made publicly available on their website from 19 June 2018 to 3 July 2018. The Department received no public submissions during this period. The Commission notes that the application was not required to be formally exhibited.
7. The Department received a submission from the Environment Protection Authority (**EPA**) which stated they did not object to the extension of the timeframe for demolition works, as long as the applicant continued to undertake the works in accordance with approved Demolition Environmental Management Plan (DEMP).

8. Sutherland Shire Council, the Office of Environment and Heritage, the Department of Industry – Lands and Water Division, Roads and Maritime Services, Fire and Rescue NSW, SafeWork NSW and Ausgrid provided submissions stating that they did not object to the modification.

Figure 1 – Location of Caltex Kurnell Refinery Conversion Works



Source: Department of Planning and Environment's Assessment Report

9. In determining this modification request, the Commission considered:
- the Planning Assessment Commission's report for the State Significant Development (SSD), Kurnell Refinery Conversion (5544), dated 7 January 2014;
 - the Planning Assessment Commission's report for the Kurnell Refinery Conversion - Demolition Works (SSD 5544 MOD 1), dated 10 August 2015;
 - the Planning Assessment Commission's report for the Kurnell Refinery Conversion - ACS Management Works (SSD 5544 MOD 2), dated 27 October 2017;
 - the Planning Assessment Commission's report for the Kurnell Refinery Conversion - Tank 101 Demolition (SSD 5544 MOD 3), dated 17 November 2017;
 - the applicant's modification application, including Annexures 1-9, dated 15 June 2018;
 - the Department's assessment report, dated 31 July 2018, and the proposed Modification Instrument (SSD 5544 MOD 4);
 - Submissions from Fire and Rescue NSW (19 June 2018), Ausgrid (19 June 2018), Office of Environment and Heritage (20 June 2018), SafeWork NSW (22 June 2018), EPA (26 June 2018), Sutherland Shire Council (dated 27 June 2018), Department of Industry – Lands and Water Division (5 July 2018), and Roads and Maritime Services (17 July 2018); and
 - section 4.55(1A) of the EP&A Act, including but not limited to - the likely environment, social and economic impacts in the locality, and the public interest.

Applicant's consideration

10. In its modification application, the applicant states that it, *"recognised that the period for carrying out the demolition works under MOD 1 commenced on 10 August 2015 and under condition B7A is required to cease on 10 August 2018. The delay in demolishing the butane asset has meant that the works proposed under SSD 5544 MOD 1 (the demolition works) will not be able to be safely completed within this timeframe."*
11. With regard to potential impacts associated with the modification application, the applicant states that in relation to soils, groundwater, contamination, surface water, waste water, flooding, air quality and odour the, *"impacts would be of the same scale as those that have been previously consented and would include continuation of the same mitigation strategies"*. In relation to transport, access, waste management, heritage and ecology, the impacts, *"would be of a similar scale as those that have been previously consented and would require similar mitigation"*.
12. The applicant's modification application concluded that, *"the potential impacts associated with the extension of time would be of the same type and scale as those that have been previously considered. The management and mitigation measures that were approved for the demolition work (SSD MOD1) would continue to apply"*.

Department's consideration

13. In relation to the delay in achieving the consented demolition timeframe, the Department states that:

"Since 2016, the Applicant has been investigating the viability of retaining existing butane infrastructure across the site, to improve the quality and reliability of fuel imported from overseas. The removal of this infrastructure was originally approved under SSD 5544 MOD1, but was placed on hold whilst the retention and re-use of these assets was being considered."

Following the completion of its internal review, the Applicant concluded the retention of butane infrastructure at the site is not financially viable. Instead, these assets will be demolished and removed as originally approved under SSD 5544 MOD1. Given the time taken to complete its internal review, the Applicant has advised it would not be possible to complete all demolition works associated with the development by 10 August 2018".
14. The Department states in its assessment report that it has, *"reviewed the scope of the modification application and is satisfied that the proposed modification would result in minimal environmental impacts, and relates to substantially the same development as the original development consent. The Department further finds that it, "is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application"*.
15. In its assessment report, the Department considers that the modification, *"would have minor environmental impacts"*. The Department's assessment identified that:
 - *"The butane infrastructure which has not yet been demolished is largely located within the eastern section of the site, and is shielded from nearby sensitive receivers;*
 - *Whilst the modification would extend the period in which nearby sensitive receivers may experience potential impacts associated with on-site demolition... such impacts would continue to be effectively managed through the environmental protections measures contained in the development's DEMP works; and*

- *[t]o date, the Applicant has not received any complaints regarding the on-site demolition activities”, and the applicant will also, “continue to update the local community on the demolition works as part of its quarterly community meetings.”*

16. The Commission notes that the Department has retained conditions requiring the applicant to manage the on-site demolition works in accordance with the DEMP, as required by the approval of the conversion works and the subsequent modifications.

17. The Commission also notes the Department has amended the conditions to reflect the new timeframe for demolition works and to incorporate the modification application into the consent.

18. The Department’s assessment report concludes that the modification:

- *“may result in some short-term impacts in relation to air quality, noise, vibration and traffic, the Applicant would continue to manage these impacts under the existing DEMP and in consultation with the EPA, Sutherland Shire and the local community;*
- *would not result in significant environmental impacts to the surrounding environment”;*
- *“is unlikely to increase noise above existing limits”; and*
- *would allow for the removal of all existing butane infrastructure across the site, further minimizing ongoing maintenance costs and reducing any potential risk to the operating terminal, on-site workers, the local community and the surrounding environment”.*

Government Agencies consideration

19. In its submission to the Department, the EPA stated:

- *“Caltex should continue to undertake the proposed demolition activities in accordance with the Demolition Environmental Management Plan and associated sub-plans” and*
- *“that no amendments to Caltex’s Environment Protection License (EPL 837) are required”.*

Commission’s consideration

20. The Commission finds that on the information before it, the modification would not generate a significant change in the environmental impacts which have previously been considered and approved as part of the conversion works and subsequent modifications. This is because:

- while the proposed modification would increase the timeframe for the approved impacts, it would not change the scale or nature of the approved impacts, as outlined in paragraph 14;
- the applicant has implemented a DEMP to manage the potential impacts associated with the demolition, which have been identified by the EPA and the Department as appropriate to mitigate and manage the potential impacts, as outlined in paragraphs 15, 16, 17 and 18; and
- the applicant has established an effective community engagement strategy to address community concerns regarding impacts, including noise and vibration. No community complaints have been received for demolition which have been undertaken to date, as outlined in paragraph 15.

21. The Commission accepts the applicant’s and Department’s finding that the modification would have minimal environmental effects for the reasons set out in paragraphs 10 – 12, 14 and 18. The Commission finds that the proposed changes are within the scope of section 4.55(1A) of the EP&A Act and as a result satisfy the requirements of the section.

22. The Commission is satisfied that the Department’s recommended conditions are appropriate, as discussed in paragraph 16.

23. The Commission is satisfied that the findings in paragraph 19 demonstrate that the modification application is in the public interest because it satisfies the requirements of section 4.55(1A) of the EP&A Act, as outlined in paragraph 20, and is consistent with the objects of the EP&A Act, as listed under section 1.3 (b), (c) and (e) as it satisfies the principles of ecologically sustainable development as the modification would not result in significant environmental impacts, as set out in paragraph 18, is an orderly economic use and development of land, and contributes to environmental protection.
24. Therefore, the Commission has determined to approve the modification request, subject to the attached modification instrument, for the following reasons:
- the modification would have minimal environmental effects and, with current impacts appropriately managed, as outlined in paragraph 21; and
 - the project is in the public interest, as outlined in paragraph 22.
25. The reasons for the Decision are given in this Statement of Reasons for Decision dated 9 August 2018.



Mr John Hahn
Member of the Commission (Chair)



Soo-Tee Cheong
Member of the Commission

cc. The Hon. Anthony Roberts, MP
Minister for Planning
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