



10 July 2019

Caltex Kurnell Refinery Conversion – SSD 5544 MOD 5

1. INTRODUCTION

1. On 27 June 2019, the NSW Independent Planning Commission (**Commission**) received from the former NSW Department of Planning and Environment, since 1 July 2019 known as Department of Planning, Industry and Environment (**Department**) a modification application Mod 5 (**Application**) under section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (**EP&A Act**) from Caltex Refineries (NSW) Pty Ltd (**Applicant**) to modify the development consent SSD 5544 (**Project Approval**) for the Caltex Kurnell Refinery Conversion (**Project**). The Application was accompanied by the Department's Assessment Report dated 12 June 2019 (**Department's AR**).
2. The Commission is the consent authority in respect of the Application under section 4.55 of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)*. This is because:
 - the Project constitutes State significant development under section 4.36 of the EP&A Act as the Project is considered 'chemical, manufacturing and related industries' pursuant to clause 10 – Schedule 1 of SEPP SRD; and
 - the Applicant has made reportable political donations within the last two years.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated herself (Chair) to constitute the Commission determining the Application.

1.1 Project Site

4. According to the Department's AR the Project site (**Project Site**) is described as:

"The terminal is located on the Kurnell Peninsula, within the Sutherland LGA, and is located approximately 15 kilometres (km) south of the Sydney CBD and 4 km south-east of Sydney Airport. The site has an area of approximately 187 hectares and is relatively level and low lying, at an elevation between 5-10 m Australian Height Datum (AHD).

Road access to the site is via Solander Street, off Captain Cook Drive. The site is surrounded by residential and industrial land uses and natural features), including:

- *the community of Kurnell village immediately to the north and north-west*
- *Quibray Bay Aquatic Reserve and Towra Point Nature Reserve (a RAMSAR wetland) to the west*
- *light industrial uses and the Sydney Desalination Plant to the west and south-west*
- *Kamay Botany Bay National Park to the east.*

The closest sensitive receiver to the site is located approximately 30 m to the north of the site on Cook Street. The site is also subject to an existing Environment Protection Licence (EPL) No. 837 issued by the Environment Protection Authority (EPA)."

5. The Commission understands from Figure 1 below and the Material (as described in paragraph 24) that the Project Site also includes the land beneath Prince Charles Parade and the dune area of Silver Beach in the location of the existing cooling water outlet (**CWO**) pipeline.

6. The Project Site is illustrated below in **Figure 1**.

Figure 1 – Project Site and Locality



Source: Department's AR - dated 12 June 2019

1.2 Background to development application

7. According to the Department's AR, the "The Applicant operates a finished fuel product import and distribution terminal (the terminal) at 2 Solander Street, Kurnell in the Sutherland local government area (LGA)."
8. In relation to the history of the Project, the Department's AR stated that:

"On 7 January 2014, development consent was granted by the former Planning Assessment Commission (the PAC) for the Kurnell Refinery Conversion Works (SSD 5544). The development consent permits the conversion of the Kurnell Refinery to a finished product import and distribution terminal, including modification of existing fuel storage tanks and extension of product pipelines for gasoline, diesel and jet fuel."

"The Applicant modified its development consent to undertake the demolition of redundant refinery infrastructure (SSD 5544 MOD 1), which commenced in late 2015 and was originally expected to be completed by mid-2018. The modification permitted the demolition and removal of redundant tanks, pipes and infrastructure within the terminal and on Silver Beach, Kurnell Wharf and various road reserves surrounding the site, including Captain Cook Drive, Prince Charles Parade, and Cook Street."

“The development consent was modified again in late 2017 to allow for the on-site management of ACS [asbestos contaminated soil] via on-site containment. ACS was mainly contained in sections of the redundant pipe network, at depths of around 0.2 0.5 metres (m) below ground level (see Figure 2). The modification permitted the construction of an on-site aboveground containment cell with a maximum airspace capacity of up to 24,500 tonnes (t) of ACS, as well as associated leachate management and groundwater monitoring systems.”

“As of May 2019, the Applicant has completed the majority of the on-site demolition works, including the removal of existing refinery process units, redundant storage tanks and other associated refinery infrastructure. Excavation of ACS in the vicinity of the redundant pipe network is expected to be completed by mid-2019, while the closure of the ACS containment cell will be finalised by November 2019.”

9. A summary of the modification history of the Project is provided below in Table 1:

Table 1

MOD Number	Approval Date
MOD 1	21 August 2015
MOD 2	27 October 2017
MOD 3	17 November 2017
MOD 4	9 August 2018

1.3 Summary of Development Application

10. According to the Department’s AR, the Application was lodged by the Applicant on 11 February 2019 “pursuant to section 4.55(1A)” of the EP&A Act.
11. The Application before the Commission for determination, as detailed by the Department’s AR, includes the following components:
- *“an increase in the final capacity of the ACS containment cell from 15,300 m3 to 22,240 m3*
 - *an extension in the duration of the ACS management works period by seven months, until 30 November 2019*
 - *the retention of portions [35m section] of the CWO pipeline beneath Prince Charles Parade and the dune area of Silver Beach*
 - *the amendment or removal of conditions and management and mitigation measures which have been completed.”* – which includes Conditions B9, C2, C3, C3A, C4A, C5, C6, C7, C7A, C30, C31, C32-C32B, D1, Appendix B and Appendix C. A detailed list is provided within Table 2 of the Department’s AR.
12. The Commission notes that the Department’s AR contained a detailed description of the Application in Section 2.

1.4 Stated need for modification

13. According to the Applicant’s Modification Report, the Application is needed because:

“These proposed modifications relate directly to either the ACS Management Works consented under SSD 5544 MOD 2 or the demolition works consented under SSD 5544 MOD 1. The need for these modifications have resulted from further investigations, detailed design, regulator discussions and contractor discussions that have led to a better understanding of site conditions and efficient construction processes.”

“...this modification application is also recommending the removal and/or amendment to a number of conditions of consent and management and mitigation measures. These measures and conditions are being recommended for removal or amendment as they are either fully or partially complete and are no longer required...”

2. THE DEPARTMENT’S ASSESSMENT OF THE APPLICATION

14. The Department’s AR provided a detailed assessment in section 6.0 which describes the steps taken by the Department as part of its assessment of the Application.
15. In relation to public engagement, the Department’s AR stated that *“Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to SSD. Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department’s website on 15 February 2019.”*
16. Department’s AR stated that three submissions were received from government agencies and that none of the government agencies objected to the Application. It was also stated that no public submissions were received by the Department.
17. In relation to the assessment of the Application the Department’s AR stated that *“The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:*
 - *SEE provided to support the proposed modification (see Appendix B)*
 - *submissions received from State government authorities and Council [Sutherland Shire Council] (see Appendix C)*
 - *RTS [Response to Submissions] and additional information provided by the Applicant (see Appendix D)*
 - *assessment report for the original development application and subsequent modification applications*
 - *existing conditions of consent (as modified)*
 - *relevant environmental planning instruments, policies and guidelines*
 - *requirements of the EP&A Act, including the objects of the EP&A Act.”*
18. The Department’s AR further stated that *“As the modification is primarily minor in nature and does not seek to change the production capacity of the site, the original studies assessed as part of the original development application and subsequent modifications are considered to remain valid for this modification.”*
19. The Department’s AR identified the key impacts/issues relating to the Application to be:
 - increasing the capacity of the ACS containment cell;
 - extension of time for the ACS Management Works. The extension time is for seven months, until 30 November 2019 because ...;
 - retention of a section of the CWO Pipeline beneath Prince Charles Parade and the dune area of Silver Beach; and
 - amendment/removal of ‘completed’ conditions.
20. The Department’s AR concluded that *“the proposed modification is appropriate on the basis that:*
 - *it will not result in any additional environmental impacts beyond the approved finished fuel product import and distribution terminal*
 - *the increase in the capacity of the ACS containment cell is minor in nature, and would provide additional contingency during the finalisation of the ACS management works*

- the extension of the ACS management works period would allow for the completion and closure of the ACS containment cell, reducing any potential risk to the operating terminal, on-site workers, the local community and the surrounding environment
- the retention of the section of the CWO pipeline beneath Prince Charles Parade and the Silver Beach dune area would continue to ensure the potential impacts of the development upon the local community and the environmentally sensitive dune area are minimised.

Following on from its assessment, the Department considers the modification application is approvable, subject to the modification conditions...”.

3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

21. There is no statutory requirement for the Commission to conduct a site inspection or locality tour when determining an application as per the Commission's *Site Inspection and Locality Tour Guidelines*.
22. Under the guidelines, the Panel member decided not to undertake a site inspection on the basis that it was unlikely to assist significantly in assessing or understanding the nature of the likely impacts of the Application.
23. The Commission also decided not to conduct any meetings.

4. THE COMMISSION'S CONSIDERATION

4.1 Material considered by the Commission

24. In this determination, the Commission has carefully considered the following material (**Material**):
 - Kurnell Refinery Conversion SSD 5544 – including the former Department of Planning and Infrastructure 'Environmental Assessment Report - State Significant Development Assessment Caltex Kurnell Refinery Conversion SSD 5544', dated 23 December 2013 and NSW Planning Assessment Commission Determination Report dated 7 January 2014 and Development Consent dated 7 January 2014;
 - Modification Report dated 11 February 2019 prepared by AECOM Australia Pty Ltd;
 - All government agency and Council submissions made to the Department, including in response to the Response to Submissions.
 - Response to Submissions dated 20 March 2019 prepared by AECOM Australia Pty Ltd and subsequent emails to the Department dated 25 March 2019 and 5 April 2019; and
 - Caltex Kurnell Refinery Conversion – State Significant Development Modification Assessment (SSD 6697 MOD 5) dated 12 June 2019 prepared by the former Department of Environment and Planning and its accompanying appendices.

4.2 Mandatory considerations

25. According to the Department's AR, the Application has been lodged pursuant to section 4.55(1A) of the EP&A Act and stated that "*The Department of Planning and Environment (the Department) has reviewed the scope of the modification application and is satisfied the proposed modification would result in minimal environmental impacts, and relates to substantially the same development as the original development consent on the basis that:*
 - *the primary function and purpose of the approved liquid fuel terminal would not change as a result of the proposed modification*
 - *the modification is of a scale that warrants the use of section 4.55(1A) of the EP&A Act*
 - *the approved fuel storage capacity of the liquid fuel terminal would remain unchanged as a result of the proposed modification*

- *any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent.”*
26. The Department’s AR concluded that “...*the Department 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. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.”*
 27. The Commission has considered the scope of the Application and is satisfied that the proposed modification is of minimal environmental impact and accepts the Department’s assessment that the Application is within the scope of section 4.55 (1A) of the EP&A Act because of the reasons given by the Department in paragraph 25.
 28. In determining this Application under section 4.55(1A), the Commission has taken into consideration the following relevant mandatory considerations, as provided in section 4.15 of the EP&A Act (**Mandatory Considerations**):
 - the provisions of all:
 - environmental planning instruments;
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - development control plans;
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4; and
 - 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.
 29. As required by section 4.55(3), the Commission has also considered the Project (as currently approved) and ‘*the reasons given by the consent authority for the grant of the consent*’ which concluded that “...*with the implementation of suitable mitigation measures, the project can be conducted in an appropriate manner.”*
 30. The Commission has considered the assessment of relevant environmental planning instruments (**EPis**) undertaken as part of the Project which included:
 - *State Environmental Planning Policy (State and Regional Development) 2011*
 - *State Environmental Planning Policy (Kurnell Peninsula) 1989*
 - *State Environmental Planning Policy (Infrastructure) 2007*
 - *State Environmental Planning Policy No.33 – Hazardous and Offensive Development*
 - *State Environmental Planning Policy No. 55 – Remediation of Land*
 - *State Environmental Planning Policy No. 71 – Coastal Protection*
 - *Sutherland Local Environmental Plan 2006; and*
 - *Draft Sutherland Local Environmental Plan 2013.*

31. The Commission finds that the assessment undertaken for the Project (as currently approved) and set out in the former Department of Planning and Infrastructure 'Environmental Assessment Report - State Significant Development Assessment Caltex Kurnell Refinery Conversion SSD 5544', dated 23 December 2013 and NSW Planning Assessment Commission Determination Report dated 7 January 2014 and Development Consent dated 7 January 2014 remains applicable and current.

4.3 Likely impacts of the development on both natural and built environments

32. Based on the Material, the Commission finds that the key impacts/issues associated with the Application are consistent with that of the Department, as outlined in paragraph 19.
33. The Department's AR concluded that:
- In relation to the increase in capacity of the ACS containment cell that "*...the amended design would continue to facilitate the safe and efficient containment of on-site ACS, and further support the conversion of the site into a finished product import and distribution terminal.*";
 - In relation to the extension of time for the ACS Management Works that "*...the extension of the approved ACS management works period would ultimately allow for the completion and closure of the ACS containment cell, reducing any potential risk to the operating terminal, on-site workers, the local community and the surrounding environment.*";
 - In relation to the retention of a section of the CWO Pipeline that "*...the retention of this section of the CWO pipeline is acceptable and would continue to ensure the potential impacts of the development upon the local community and the environmentally sensitive dune area are minimised.*" And "*...has subsequently recommended the removal of those conditions which specifically relate to the section of the CWO pipeline located beneath Prince Charles Parade and the Silver Beach dune area.*"; and
 - In relation to the amendment/removal of 'completed' conditions that:
 - The Department has recommended the removal of Condition B9 and Appendix B from the development consent. Under Condition B9 of the development consent (SSD 5544) (as modified), the Applicant is required to surrender all existing development consents for the site in accordance with clause 97 of the EP&A Regulation. According to the Department's AR all required development consents have been surrendered; and
 - The Department does not support the removal conditions relating to hazards, construction and heritage management because the plans and requirements referred to in these conditions and the updated management and mitigation measures would continue to remain relevant beyond the construction and demolition periods of the development, or are directly referenced in other conditions within the consent which contain ongoing requirements.
34. The Commission has considered the Material, including the detailed assessment provided within Section 6 of the Department's AR, and finds that in relation to increasing the capacity of the ACS containment cell, the extension of time for the ACS Management Works, the retention of a section of the CWO Pipeline, and the amendment/removal of 'completed' conditions, the Department's recommendations are appropriate in accordance with the Findings and Recommendations detailed in Table 3 of the Department's AR and as summarised in paragraph 33.
35. The Commission is also satisfied that the Department's proposed conditions of consent, suitably reflect the recommendations contained within Table 3 of the Department's AR.

4.4 Social and economic impacts in the locality

36. The Commission finds that based on the Material there are no additional social or economic impacts generated by the Application because it seeks to make only minor amendments to the existing Project that do not result in a change to the current employment, or the economic output of the Project.
37. The Commission considers that the Application will not result in any additional impacts beyond the current impacts of the Project and is therefore acceptable.

4.5 The public interest

Department's assessment

38. The Department's AR did not specifically address public interest. It did, however, address what the Department considered the relevant objects of the EP&A Act, including ecologically sustainable development (**ESD**), and accordingly stated that:

Commission's determination

39. In determining the public interest of the Application, the Commission has had regard to the objects of the EP&A Act.
40. Under section 1.3 of the EP&A Act, the Commission considers the relevant objects applicable to the Application 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 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,
 - (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
41. A key relevant object of the EP&A Act to the Application, as outlined in paragraph 44, is the facilitation of ESD. The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states 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:
 - the precautionary principle;
 - inter-generational equity;
 - conservation of biological diversity and ecological integrity; and
 - improved valuation, pricing and incentive mechanisms.
42. The Commission finds that the Application, as proposed, is generally consistent with the principles of ESD, the objects of the EP&A Act, and the public interest because the Application will:
 - not result in any additional environmental, social or economic impacts beyond what has already been approved by the Project; and
 - improve the environmental outcomes of the Project through:
 - i. the amended design would continue to facilitate the safe and efficient containment of on-site ACS, as per paragraph 33;

- ii. the extension of the approved ACS management works period would ultimately allow for the completion and closure of the ACS containment cell, reducing any potential risk to the operating terminal, on-site workers, the local community and the surrounding environment, as per paragraph 33; and
- iii. the retention of this section of the CWO pipeline is acceptable and would continue to ensure the potential impacts of the development upon the local community and the environmentally sensitive dune area are minimised, as per paragraph 33.

5. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

43. The Commission has carefully considered the Material before it.
44. The Commission finds that the Application has minimal environmental impact as noted in paragraph 27.
45. The Commission has determined that the consent should be granted, subject to conditions, because the Application is generally consistent with the principles of ESD, the objects of the EP&A Act, and the public interest because it will continue to improve the environmental outcomes of the Project without any additional environmental, social or economic impacts beyond what has already been approved for the Project, as set out in paragraph 42.
46. As noted above at paragraph 45, the Commission has determined that the consent should be granted subject to conditions. These conditions are designed to:
 - prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.



Mary O'Kane AC (Chair)
Chair of the Commission