



21 January 2020

Caltex Kurnell Refinery Conversion (SSD-5544-MOD-6)

1 INTRODUCTION

1. On 14 January 2020, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a State significant development modification application (SSD-5544-MOD-6) (**Application**) from Caltex Refineries (NSW) Proprietary Limited (the **Applicant**) under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. The Commission is the consent authority in respect of the Application in accordance with clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* (**SEPP SRD**). This is because a reportable political donation was made by the Applicant in the past two years.
3. Professor Mary O’Kane AC, Chair of the Commission, nominated herself (Chair), to constitute the Commission determining the Application.

1.1 Site and Locality

4. The Department’s Assessment Report (**Department’s AR**) dated 10 January 2020 states that the Caltex Kurnell Refinery (**Project Site**) consists of the operation of a finished fuel product import and distribution terminal at 2 Solander Street, Kurnell, in the Sutherland Local Government Area (**LGA**). The location of the Project Site is illustrated in **Figure 1** below and described further in section 1.2 of the Department’s AR.

Figure 1 – Location of the Project Site (Source: Department’s AR)



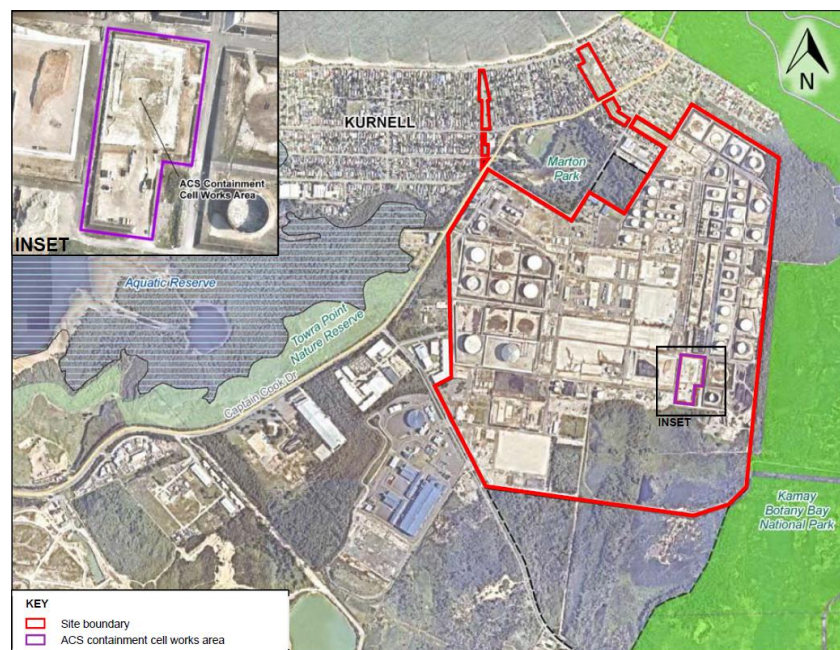
1.2 Background to the Modification

5. The Department's AR states that the Kurnell Refinery Conversion (SSD 5544) has been the subject of five previous modifications. A summary of those previous modifications to SSD 5544 is provided in section 1.3 of the Department's AR.
6. The Department's AR states that:

"Under the development consent (as modified), the Applicant is required to ensure all ACS (asbestos contaminated soil) management works are completed by 30 November 2019. The ACS management works include:

 - *construction of the ACS containment cell*
 - *excavation of ACS from the redundant pipe network and subsequent filling of the ACS containment cell*
 - *closure of the ACS containment cell once full."*
7. The location of the asbestos contaminated soil (ACS) containment cell within the Project Site is illustrated in **Figure 2** below.

Figure 2 – Location of the ACS containment cell (Source: Department's AR)



1.3 Summary of the Application

8. The Department's AR states that:

"The Applicant has completed the majority of the ACS management works, and is currently in the process of closing the containment cell. This involves the installation of a number of capping layers, including the placement and sealing of a High Density Polyethylene (HDPE) liner by specialist contractors"

"due to delays experienced on another project, the specialist contractors employed by the Applicant were unable to complete the installation of the HDPE liner until November 2019, which has delayed installation of the remaining capping layers."
9. The Application seeks to extend the duration of the ACS management works period by an additional four months, from 30 November 2019 to 31 March 2020. This will allow for the installation of the remaining capping layers and to provide additional contingency, should further delays be encountered. No additional or amended physical works are proposed as

part of the Application.

2 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

10. The Department's AR states that 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 the substantially the same development as the original development consent*". The Department's reasons for this conclusion are set out at section 4.1 of the Department's AR.
11. The Department's AR also states 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.*"
12. The Department's AR states 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 and referred to Sutherland Shire Council (Council) and the EPA (Environment Protection Authority) for comment*"
13. According to the Department's AR, a total of two submissions were received during the notification period, from Council and from the EPA.
14. The Commission agrees with the Department's conclusions above for the reasons set out in the Department's AR. Accordingly, the Commission is of the view that the Application would result in minimal environmental impact, relates to substantially the same development as SSD 5544 as originally granted and is therefore within the scope of section 4.55(1A) of the EP&A Act.

3 THE COMMISSION'S CONSIDERATION

3.1 Material considered by the Commission

15. In determining this Application, the Commission has carefully considered the following material (**material**):
 - existing conditions of consent (as modified);
 - the Applicant's Environmental Impact Statement (EIS) dated 14 November 2019 and prepared by AECOM Australia Pty Ltd (AECOM), and its accompanying appendices;
 - the EPA's submission to the Department, dated 29 November 2019;
 - Council's submission to the Department, dated 9 December 2019; and
 - the Department's Assessment Report, dated 10 January 2020.

3.2 Extension of the ACS Management Works Period

Council Comments

16. Council in its submission to the Department stated:

"Council has reviewed the proposal and considers that the modification application can be supported as it relates specifically to the extension of the timeframe of works. Council does not have specific comment at this time but emphasises the specific matters to be satisfied on completion of works; namely the provision of the Containment Cell Final Report, Long-Term Environmental Management Plan and Validation Report for the Pipeways."

EPA Comments

17. The EPA in its submission to the Department during notification stated that “no variations to Environmental Protection Licence (EPL 837) appear to be required for the Project as a result of the proposed extension of time”. The EPA also stated that the Applicant should continue to undertake the remaining works in accordance with the Demolition Environmental Management Plan.

Applicant's Consideration

18. The Applicant stated in the EIS that:

“The modification is important in supporting the evolution of the Site from a refinery to a safe and viable finished fuel import terminal. The modification helps ensure that works previously consented under SSD 5544 MOD1, SSD 5544 MOD2 and SSD 5544 MOD5 can be undertaken and completed in the most efficient way possible”

“The extension of ACS management works duration would result in impacts of the same scale as those assessed in the approved ACS management works modification application (SSD 5544 MOD2)”.

“Existing management and mitigation measures outlined within the various management plans would continue to be implemented to ensure that potential impacts are mitigated, and environmental risks are acceptable”.

“The proposed modification would support the objectives of the Project by supporting Caltex in operating a viable finished products fuel terminal at Kurnell, capable of providing a safe, reliable and sustainable supply of petroleum fuels to NSW and the ACT”.

Department's Assessment

19. The Department's assessment of the proposal is set out in section 6.1 of the Department's AR.
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 extension of the ACS management works period would allow for the completion of the ACS containment cell*
- the ACS containment cell has been capped with a layer of soil, and the Applicant would ensure any residual impacts upon the local community, on-site workers and the surrounding environment associated with the extension are minimised.”*

21. The Department's AR stated that the Department considers the modification application is approvable, subject to the Department's recommended conditions.

Commission's Findings

22. The Commission acknowledges the submissions provided by Council and the EPA referenced in paragraph 16 and 17.
23. The Commission agrees with the Applicant's statement in paragraph 18 that the extension of the ACS management works is necessary to ensure that works under the existing development consent (as modified) can be completed. The Commission agrees that the existing mitigation measures included in the consent (as modified) would continue to apply to ensure that potential impacts associated with the works are mitigated as stated by the Applicant in paragraph 18.

24. The Commission agrees with the Department's assessment of the Application as set out in the Department's AR and the conclusions of the Department extracted in paragraph 20.

4 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

25. The Commission has carefully considered the Material before it. The Commission has determined to approve the Application, subject to the conditions of consent recommended by the Department for the reasons set out this Statement of Reasons.
26. The Commission has imposed the conditions recommended by the Department, as the Commission agrees those conditions have been designed to prevent, minimise and/or offset adverse impacts on the environment and community.
27. The reasons for the Decision are given in this Statement of Reasons for Decision, dated 21 January 2020.



Mary O'Kane (Chair)
Chair of the Commission