



File Ref: DN25/0020

6 August 2025

Pamela Morales
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PARRAMATTA NSW 2150

Email: pamela.morales@planning.nsw.gov.au

Dear Pamela,

Development Referral No. DN25/0020

Proposal: Notification of Modification Application Kurnell Refinery Conversion Project SSD 5544 MOD 7

Property: 160-166 Captain Cook Drive, Kurnell

I refer to the above development proposal which was referred to Council for comment. Council is supportive of the consolidation of the buildings, equipment and infrastructure from across the site to Zones 1A and 1B. This will allow for the redundant lands identified as Zones 2 and 3 to become available for other uses that are commensurate with the zoning of the land. However, a number of matters and issues are raised, and further clarification and information needs to be provided, and these items are listed below:

Planning

- The plans and shapefiles that have been uploaded to the Planning Portal and the Department's Major Projects/SSD portal are not able to be opened and this is due to their '.shp' file extension format. This has been already drawn to the Department's attention and Mr Altenkamp has confirmed the issue. A full assessment cannot be undertaken, and the applicant must provide all plans using a regular format/file extension so a comprehensive review can be undertaken. The plans must be uploaded using the .pdf file format. The application should not be determined until all necessary plans have been provided.
- Additionally, throughout the report, it is detailed that the location of new buildings, works and the like have not been finalised. This is not supported. The location of all site improvements, buildings, levels, and the like must be confirmed prior to any determination of this application.
- The primary issue with the future use of Zones 2 and 3 is to ensure that the contaminated land is made suitable for future development. The Modification Report details that the land will be capped, and the contamination remain in situ. The department must be mindful of this approach as the latter development of this land may require the capping layer(s) to be broken for the construction of infrastructure (drainage, services, etc.), building foundation systems and possible basement parking. The consent will need to be robust to ensure that future landowners and/or developers are made fully aware of the contamination to ensure that there is minimal disturbance and/or impacts to expose the capped cells.
- The works identified by Stage 4, Section 4 (Page 23) details landform alterations will be undertaken in both Zones 2 and 3 preparing the sites for future use. This is not supported as any landform alterations, except that required to address onsite contamination, is premature and lacks justification. Landform alteration should only be considered when the land is being subdivided or when a separate application is lodged for a land use activity. This also conflicts

with statements made later in the report where levels will either be raised by 300mm. The conflict must be resolved.

- It is noted that during works noise levels will exceed those set by the Environmental Protection License (EPL). Page xi details noise levels will reach 75dbA and this level will only occur for a three month period. As this is only a short timeframe, the breach to the license is supportable but only where works are limited to normal construction hours.
- The Scoping Report for the BESS and the subdivision detailed that a BDAR waiver would be sought for the removal of vegetation. This application now details why a waiver would be sought as 5.36 hectares of vegetation is proposed to be removed. Ideally, this should have been addressed in the Scoping Report.
- Questions are raised regarding the capacity of the Oily Water System (OWS) and whether the system has capacity to cater for the future developments likely to be undertaken within Zones 2 and 3. Further information is needed.
- Page 18 details that crushing and grinding of approximately 40,000m³ of materials is proposed as forming part of the waste management activities in this application. Plans must be provided showing the location of the material storage areas, the location of all plant and equipment and the like to be used throughout the duration of this activity, and reports provided to demonstrate that the operating will have minimal environmental and amenity impacts to adjoining and nearby sensitive uses (refer to Clause 21, Schedule 3 from the Environmental Planning and Assessment Regulation 2021).
- Page 28 details that the location of the new OWS permanent pump will be selected during the detailed design phase. This is not supported. Detailed plans must be provided to enable a comprehensive assessment of potential impacts. The plans must not be limited to the actual pump, but all ancillary infrastructure required to be installed (i.e. pipelines, ancillary pumps, etc.).
- Page 28 details that the installation of the new OWS pump will require excavation up to 4.5m below the ground level, Page 73 details temporary groundwater dewatering would be required during the construction phase and such water will be appropriately treated in the WWTP. It cannot be certain if the excavation will intercept the watertable at this level.
- Page 28 details that the 'if' Firewater Systems (FWS) is removed from Zone 2, it would be relocated to Zone 1 and there are two options for the new location. This is not supported. The location of the FWS must be known to enable a comprehensive assessment of impacts, particularly as the tank would be 12m in height and 22m wide. It is acknowledged that there several tall petroleum tanks located onsite, but the location must be known in order to determine the potential visual, acoustic and other impacts particularly from the adjoining and nearby sensitive receptors.
- Page 29 details that a new 'fit for purpose' warehouse would be constructed in Zone 1, being 32m by 25m. The comment on this page does not specify if the building will be 32m or 25m in height. Further, the location of this building must be known, not a matter to be confirmed following the determination for the same reasons detailed above.
- Page 29 details demolition will be undertaken to the ground level and 'where practical', their slab, foundations and footings will be removed. This is not supported. The applicant must confirm what buildings will be demolished as part of the scope of works. Further, if a building is demolished, all foundation systems, slabs, ancillary and supporting infrastructure must be removed in full, rather than leaving building elements etc. in situ. This will ensure that the latter development of this land is free from any impediment and does not burden a future landowner or developer with unnecessary costs and/or design issues.

- Page 30 details that a new storage shed will be constructed in Zone 1A, and will be approximately 18m x 14m x 4m in height. The application is silent on the use and what will be stored. Details on the future use of the shed is considered necessary to ensure minimal environmental and amenity impacts.
- Further, Zone 1A is located close to the residential zoned land opposite the site and the operation, use and impacts of the shed can be mitigated if located in a more sensitive location where large buffers are required to minimise onsite and offsite impacts.
- Page 40 details that existing ground level are to be maintained, yet the application details that levels will be increased as a result of capping contaminated areas, with the capping layer being 300mm thick (Page 38). Later in the report, it is detailed that '*levels across the project area would remain the same as existing*' and '*grading would allow stormwater flows across Zones 2 and 3 to be directed to the existing SWS at the site and for flows in Zone 1 to be managed either by the SWS or the OWS as required*'. This appears to contradict Figures 4-1 and 7-4 which show a portion of the stormwater being directed towards Zone 4. This must be clarified.

A matrix of cross sections at regular intervals must be provided showing existing ground levels and finished ground levels must be provided, rather than a generic statement.

- The BESS and the subdivision Scoping Report detailed that the remediation component of Modification 7 will take 4 years to complete, contrary to the timeframes detailed in this application. Can this be clarified?
- The stormwater system must be designed to capture and convey stormwater, surface runoff, etc. away from the sensitive vegetations areas mapped as Zone 4. In council's response for the BESS and subdivision draft SEARs, the following was highlighted:
 - *The proposed access road from Sir Joesph Banks Drive located to the south of proposed Lots 5 and 6 will traverse a mapped wetland pursuant to SEPP Resilience and Hazards 2021 and vegetation mapped as comprising biodiversity values pursuant to Biodiversity Conservation Act 2016. This is not supported, and the road must be located to avoid any impacts and/or removal of vegetation. Ideally, the access to Lots 5 and 6 be limited to the central road between Lots 3, 4, 5 and 6 and the southern access deleted altogether.*
 - *The proposed road located east of proposed Lots 4 and 6 is located very close to a same wetland and biodiversity values vegetation referred above. The construction of any access roads must demonstrate and ensure minimal impacts from stormwater runoff and overflow, sedimentation issues arising from vehicle movements and future development. Drainage and other services infrastructure must have large buffers from the vegetation, or the sites designed so stormwater and runoff is captured and conveyed towards the central road.*

- Page 46 details that stormwater will continue to be discharged offsite into three receiving waterbodies; Quibray Bay, Botany Bay and Marton Park. Page 47 then details '*where disconnection and removal of the OWS is proposed, controls to limit peak discharge and ensure appropriate water quality is achieved would be put in place once areas have been remediated.*'

There are no details and/or plans to demonstrate how required water quality levels will be maintained, if not enhanced. What measures and controls will be put in place to achieve a positive environmental outcome given water is being disposed to the waterways and sensitive environments?

Given the scope of works proposed, it is considered an opportune time to revisit the disposal of water from the site to ensure minimal impacts to the receiving waters of the Georges River, Botany Bay, the ocean and Marton Park where Golden Bell Frogs reside.

- The application has not undertaken any assessment against the controls contained in the Sutherland Shire Development Control Plan 2015 (Section 5.1.2 on Page 49). The assessment report must be amended to provide an assessment against the applicable controls.
- At the Focus Meeting on 19 June 2025, the consultant team did raise the matter of the application of the current EPL and whether it will need to be amended to only apply to proposed Zones 1A and 1B, or to the entire site. It seems logical that the EPL should only relate to Zones 1A and 1B so that it does not fetter the future development of land. If a license is required for the future development of land, this will be considered in the assessment and determination of future applications.
- Existing and proposed amendments to conditions use the word 'would' which does not provide any certainty that the condition requires compliance. The word 'would' must be replaced with 'must' to provide certainty and avoid any ambiguity in what is being required or sought. For example, Condition C1 on Page 76, the following is proposed:

Remediated soils and validated crushed clean concrete slabs would be used as backfill where practicable. Imported material would be classified as virgin excavated natural material (VENM), excavated natural material (ENM) as defined by the ENM Order, 2014, or material covered under an NSW EPA specific Resource Recovery Order (RRO). (emphasis added)

- Amendment to Condition C10: there is no justification for the deletion of 'regular inspections of erosion control structures and bunded areas'. The condition must be retained to ensure that the integrity of the existing bunds and the erosion control measures are maintained and fixed if any damage or failing is apparent.

Development Application DA24/0008 sought consent for improvements to the stormwater management system in response to a petrochemical spill in 2022. The application proposed the construction of a new levee and the use of the existing bunded areas to capture and store water prior to treatment and disposal. It is considered essential that the condition is retained to minimise the risk of another spill and/or other impacts.

- It is proposed to amend several conditions to replace Caltex with Ampol. The condition should replace reference to the business identity/name with 'the site operator'. It is considered that referencing a business name in a condition is not consistent with the Newbery principles and will avoid another modification application in the event another operator takes control of the site and/or the operations.
- Condition C34: Acid Sulfate Soils (ASS) are located across the site and excavations up to 4.5mbgl are proposed. The condition proposes to undertake soil sampling following the determination of this application to identify the presence of ASS and where ASS is found, for an Acid Sulfate Soils Management Plan to be prepared. This is not supported. Clause 6.1 from the Sutherland Shire Local Environmental Plan 2015 prescribes that consent cannot be granted unless information is provided prior to the determination of an application. The same should apply in the assessment and determination of this modification application.
- The application fails to provide information and plans of the location and height of the biopiling mounds. The application also does not detail if the mounds will be vegetated and/or what other treatments, measures, etc. will be used to minimise water runoff impacts, prevent windblown impacts.

- Page 89: in Section 5.7.4 regarding Water Quality Impacts, the report details the following: *'The pollution of downstream waters and ecosystems may occur from surface water runoff carrying nutrients, sediments, oil, greases, and organic or inorganic contaminants into drains and watercourses.'* The next two sections detail the list of activities that may lead to impacts.

Later in Section 7.4.5, reference to Section D is listed and a range of actions and measures are proposed, but no plans have been provided showing the location and design of these measures. An assessment of impacts cannot be undertaken in the absence of information. Plans must be provided to understand the location, the extent of works and measures that will occur to minimise the potential impacts.

- Page 90 details measures to be used to minimise the loss of flood storage arising from the proposed works, particularly the retention of the existing bunds in Zone 2 and earthworks being completed in a manner that does not significantly alter the existing ground levels. It is then detailed that areas requiring 300mm of capping would need to be initially excavated by 300mm before capping occurs. This lacks certainty as it cannot be established if additional fill is required to contain the contaminated areas. Greater certainty is required.

- Figure 7-6: to maintain and to improve the environmental qualities of the vegetation and wetlands located on and offsite, the drainage system for Catchment F must be integrated with Catchment E, which proposed to directed stormwater towards Sir Joseph Banks Drive and not to the natural retention basin. This basin is located within a high ecological vegetated area and all necessary steps and works must be undertaken to prevent additional nutrient loadings, stormwater, pollutants and the like being conveyed to this area. This application must future proof the sensitive environmental areas as part of this and future applications which will allow for other land use activities within Zones 2 and 3.

- The report details that Catchment E will increase stormwater flows to Sir Joseph Banks Drive between 10-20%. On Page 93, it is detailed that 1100m³ of onsite detention would be required. The report fails to detail the location and the design of the detention system. Further, has the capacity of the existing drainage system within the road way been investigated to ensure that it has adequate capacity to accommodate the anticipated water volume?

- The deletion of regular inspections of excavated areas and containment cell areas following rainfall events (Condition F2) is not supported.

- As the plans cannot be opened, the location of the heritage items to be demolished cannot be determined.

- On Page 129, the report refers to indicate locations of infrastructure, buildings and the like. The application must confirm the location of all buildings, infrastructure, services, works to be demolished and/or constructed.

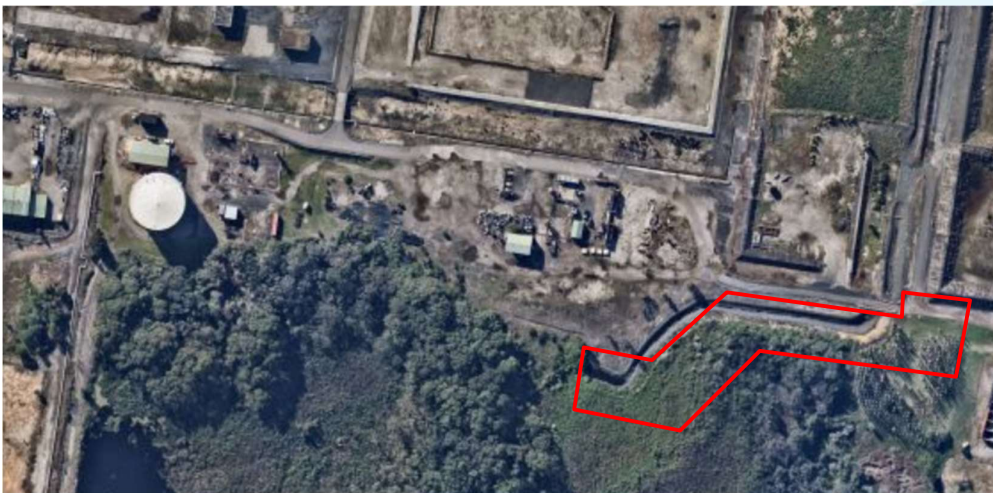
- Proposed amendment to Condition G6 Construction Hours: The condition must be amended to reflect standard hours of construction. Reference to *'less sensitive times of the day'* is not defined and is ambiguous. The adjoining and nearby sensitive uses must have certainty regarding the construction activities and their existing level of amenity must be maintained if not enhanced because of the works.

- Section 7.10: given the substantial works proposed, a proactive rather than reactive dust suppression management program must be implemented to ensure minimal impacts to the adjoining and nearby sensitive receptors.

- Condition H30: it is not understood why a corporation brand and reference to a model type of equipment is incorporated in the condition.

- Amendment to Condition K3: the deletion of Dot Point three is not supported. Stopping works and the relocation of frogs to an area outside of the site is considered essential. There is no justification for the deletion of the condition.
- The application proposes augmentation of infrastructure which is related to the potential future land uses within Zones 2 and 3. As this application does not involve the activation of Zones 2 and 3, it is considered that the works are premature and may prejudice future development applications. These works should form part of the latter BESS and subdivision application where a holistic assessment of impacts can be undertaken.
- As detailed in council's submission for the BESS and the subdivision Scoping Report, a review of aerial photography has revealed that a large rock lined stormwater channel has been constructed without any approval – refer to map extract below and the red highlight. This channel has been constructed in an area mapped as being a wetland pursuant to SEPP Resilience and Hazards 2021.

The future development of land must not rely on the unauthorised drainage channel for any stormwater disposal and the like. Ideally, the channel and all associated works must be removed and the land restored to pre work conditions. A long-term vegetation and land restoration management plan should accompany any future application for the restoration of the wetland environment.



Source: Nearmap (image taken 5 June 2025)



Source: Council's GIS. The yellow line is an approximation of the channel and the solid blue colours represent the mapped wetland area

- Significant and new works are proposed which were never part of the original application. Council is of the opinion that developer contributions should be levied in accordance with council's development contribution plan.

Engineering Comments

- A condition is needed requiring that all parking associated with construction and ongoing operations be contained within the site(s).
- Access to Zone 1A, regardless of whether permission is granted for the storage shed or not, should be conditional as follows:

All heavy vehicle access (for both construction and any ongoing operational use of Site 1A) shall be via Captain Cook Drive and not from Prince Charles Parade. Formalisation of the access point, including appropriate measures to ensure adequate sight distances to vehicles and pedestrians (eg Truck turning signs, No Stopping restrictions and offsetting of gate and adjacent fence line to Council's satisfaction).

Swept path analysis to determine width of footpath crossing and gate sufficient to allow entering and exiting trucks to pass unhindered. Appropriate all weather access and environmental controls to avoid tracking of any spoil onto road network.

Alteration to approved heavy vehicle haulage routes (removal of Silver Beach Road and Prince Charles Parade).

Contamination Comments

Council's Contamination Officer has advised that the conceptual remediation action plan (RAP) proposes a range of remediation methods for the site and all options are considered suitable to address the twelve areas of environmental concern (AEC).

Following the determination, a detailed must be prepared and must detail which remediation method will be used/applied to the AEC. Of particular importance is Section 7.5.3.3 – Asbestos management, which states that all asbestos must be managed in accordance with the relevant WHS legislation.

Section 7.5.3.7 – Offsite disposal (untreated soils) estimates that up to 40,000 m³ of contaminated fill may require offsite disposal. Offsite disposal, and the importation of clean fill material to replace, should be considered a last-resort when all other remediation strategies are found to be unsuitable, and should be applied to as little soil as possible.

Air Quality Comments

The primary potential air pollutant is dust from these activities. There is also a likelihood that the dust generated will carry other pollutants, such as the contaminants described in the conceptual RAP. The air quality impact assessment (AQIA) lists mitigation strategies to control the risks associated with these pollution sources. The handling of contaminated materials has been described in the conceptual RAP and will need to be addressed in the detailed RAP, including the control of asbestos-impacted soil, which must be undertaken in accordance with appropriate NSW EPA and SafeWork NSW codes of practice, guidelines and legislation.

Management measures must include:

- Implementation of an Air Quality Management Plan (AQMP).
 - According to the assessment report, will be provided as part of the CEMP. Must be implemented, either as a section of the CEMP or a separate document.
 - To be implemented alongside the Conceptual RAP and subsequent detailed RAPs.
- Minimisation of surface disturbance, where possible.
- Control of concrete crushing

- Air quality monitoring
 - Must include asbestos air monitoring when undertaking works that may disturb asbestos, as per SafeWork NSW Codes of practice.

Ecological Comments

The report details that a total of 5.36 hectares of vegetation will be removed. The BDAR assessment has identified the impacts that will trigger an offset (discussed in Section 9.1) credits requirements have been correctly calculated. A detailed comprehensive environmental management plan (CEMP) must be prepared following the determination of the application and it must describe the controls for managing the potential effects to nearby ecosystems, and offsetting as per the BOS is required.

Heritage Comments

The report details there are three buildings in Zone 2 retain high or moderate heritage significance associated to the archaeological heritage listing. The previous heritage study (Australian Museum Consulting 2014) recommended that demolition of buildings of exceptional, high, or moderate significance should be a last resort.

The value of these buildings relates to their role as part of the refinery rather than the building itself. These buildings are now somewhat isolated from the operational terminal infrastructure and are used for non-essential storage by Ampol. As they have lost their context, they do not retain heritage value. The retention of the buildings is not considered feasible, owing to the financial burden of renovation and continued maintenance of the buildings, lack of function and inability to be adaptively reused, as well as the inherent limitations of remediation and future use of the land owing to their presence.

Following the demolition of refinery infrastructure, these buildings are now decontextualised remnants of the former refinery's operation. Strategy 7 of the HMS (Australian Museum Consulting, 2014b) states that, in this is scenario, demolition of the buildings is justified:

Demolition of exceptional, high, or moderately significant buildings and infrastructure would only be considered as a last result where there is no conceivable reuse for the building or structure, and where the financial burden of ongoing maintenance or remediation can be proved to outweigh the benefits of retention (Australian Museum Consulting, 2014b:133).

It is considered that these circumstances demonstrate that the burden of their retention outweigh the benefits of their retention.

- Demolition of other Infrastructure

The proposed removal, relocation and/or augmentation of the other existing infrastructure (including pipes, substations and other structures) will have minimal heritage impacts.

- Heritage Management

The Heritage Management Strategy (HMS) and the relevant management strategies within it would continue to be implemented. Page 48 details other measure to be employed during construction/demolition.

Note that there is already a photographic record of the buildings/works to be demolished:

Previous approvals have included conditions to undertake photographic, audio visual, and archival recordings of all buildings and infrastructure while the refinery was in operation, i.e., prior to demolition.

These were undertaken in 2014, and a copy of the 26-volume photographic recording has been viewed by the author in July 2024 in the State Library of NSW (Call numbers HQ 2016/16 and HQ 2015/2318). The photographic recording includes exterior and

interior photographs of all significant buildings prior to the refinery's closure, and has satisfied the requirements of the Heritage NSW guideline, Photographic Recording of Heritage Items Using Film or Digital Capture (Heritage Office, 2006). It is therefore considered that no further recording of the items is required prior to their demolition.

- Recommendation:

Accordingly, the proposed modification works would not cause any additional adverse impacts to the heritage values of the site. Should any unexpected finds relating to historic heritage be identified during works procedures will be followed.

Flooding and Stormwater Comments

It is important that the proposed works has no adverse impact to flood behaviour (e.g. peak discharge leaving site) and/or no adverse impact to stormwater runoff (e.g. pollutants). The following is drawn to your attention:

- A new pump is proposed, however pumping of stormwater is not supported due to the potential failure of pumps (e.g. electricity power outages) in storm events. This will need to be addressed.
- It is noted that additional excavation for capping is proposed to maintain existing surface levels to prevent loss of existing flood storage.
- Cross-catchment flows are not supported. That is, the re-direction of runoff to another sub-catchment by regrading or pipe diversion. This will need to be addressed.
- Peak flood levels (up to the 1% AEP event) must not be higher than existing.
- It is stated a number of times in the report that measures will be used to prevent 'significant changes', but the report does not quantify potential changes to evaluate impacts. This will need to be addressed, and greater certainty provided.
- It is noted that additional OSD is proposed to address peak flowrates, however a potential resultant increase in volume and duration of flow.
- Sediment and erosion controls must be installed and operated in accordance with the 'Blue Book'. This must be incorporated into the conditions.
- Upgrades to the site's stormwater management system following the April 2022 spill must be implemented prior to the commencement of any works proposed in this modification.
- Pollutants in stormwater discharge from the site should not be adversely affected due to changes in operation of the OWS and SWS.

The application in its current form is considered to lack essential information and plans to enable a comprehensive assessment of impacts and this information must be provided prior to the determination of the application. Despite the deficiencies, Council is supportive of the consolidation of the buildings, equipment and infrastructure from across the site to Zones 1A and 1B. This will allow for the redundant lands identified as Zones 2 and 3 to become available for other uses that are commensurate with the zoning of the land.

If you need any clarification of the above comments, please contact Council's Development Assessment Officer Daniel Lukic on 9710 0668 or email dlukic@ssc.nsw.gov.au and quote the application number in the subject.

Yours faithfully



Ben Latta
Development Assessment and Certification Manager