

ATTACHMENT 2 (A)

Newcastle City Council (NCC) letter 19th October 2017

We note NCC's comments and the matters raised. Our response and position are detailed below:

1. Newcastle District Control Plan 2012

NCC Comment:

1. Newcastle Development Control Plan 2012

Council's letter of 6 June 2017 to the Department, which is included in attachment 2 of the Secretary's Environmental Assessment Requirements (SEARS), requires the EIS to consider those sections of the Newcastle Development Control Plan (DCP) 2012 relevant to the proposed development.

While Table 7 of the EIS has addressed Section 3.13 - Industrial Development and Section 7.03 Traffic, Parking and Access of DCP 2012, no specific consideration has been given to the other related sections of the DCP as identified on page 2 of Section 3.13.

Applicant Comment:

Applicability of Newcastle DCP - The Newcastle District Control Plan (DCP) does not apply to the land that is the subject of the application. Section 1.00 Introduction of DCP states that *"This Development Control Plan applies to all land within the Newcastle local government area to which Newcastle Local Environmental Plan 2012 applies and to land outside of the Port of Newcastle lease area to which State Environmental Planning Policy (Three Ports) 2013 applies, unless excluded in whole or part by an EPI, as per Section 74E (3) of the Environmental Planning and Assessment Act 1979."* Further, *"This Development Control Plan applies to all development requiring consent of Council under Newcastle Local Environmental Plan 2012 or State Environmental Planning Policy (Three Ports) 2013."*

In terms of the detailed design and or meeting DCP requirements of the proposed offer on the land the Port of Newcastle (as the lessee of the subject land) requires sub-lessees to develop land in a reasonable and efficient manner encompassing safety, security, environmental amenity, and traffic management amongst other matters, as a minimum requirement. It is not a requirement to meet the Newcastle City Council's DCP guidelines and furthermore Egret Street is a private road and NCC's development controls that apply to a public street are not necessarily appropriate. In this regard, we believe it is vitally important that the assessment accurately reflects the applicable development standards, and not adopt those that do not apply or have been prepared for other industrial areas.

Applicant's Position:

The Newcastle Development Control Plan 2012 (DCP) does not apply to land, including the subject site, located within the lease area as identified under the provisions of State Environmental Planning Policy (Three Ports) 2013.

Further, the DCP does not apply to State significant developments (SSD). Notwithstanding this, specific consideration has been given to other sections of the DCP and examples of this can be found in the body of the EIS document and design plans.

To supply anything additional relating to Newcastle City Council's DCP would be superfluous and the Minister for Planning is the consent authority for development and the Department ultimately decides how much weight is given in the assessment process to the requirements of the DCP.

2. Open Storage and Work Areas

NCC Comment:

2. Open Storage and Work Areas

Planning Control No 2 of Section 3.13.03 of DCP 2012 requires open storage and work areas to be screened by a masonry or metal clad fence having a minimum height of 2m. The development includes a 1.8m high metal clad security fence around the perimeter of the site at the rear of the office building.

It is noted that the Preliminary Hazard Analysis (PHA) submitted in support of the application refers to the above boundary fence as being '*approximately 2m high*'.

Further, the PHA recommends that '*the stacking of cylinder cages must not exceed 2 high for 8.5 and 15-18 kg cylinder cages*'. The EIS, including the Statement of Commitments, has interpreted this recommendation as '*the stacking of the cylinder cages must not exceed 2m high*'.

To assist the Department's consideration of the likely visual impact of the development and the adequacy of the height of the proposed boundary fence, it is recommended clarification be sought from the applicant regarding the overall height of the cylinder cages in accordance with the recommendation of the PHA.

Applicant Comment:

The NCC comments are noted and the proposed perimeter fencing will be amended to a 2.1m high colorbond fence with 3 strands of barbed wire.

3. Building Setbacks

NCC Comment:

3. Building setbacks

Planning Control No 1 of Section 3.13.04 of DCP 2012 requires a development setback of 5m from the front property boundary. Such setback is to be landscaped and not include any car parking spaces. The objective of the control is to reduce the visual impact of the development on the streetscape and to provide adequate area for landscaping.

The proposal has a variable front setback having a minimum width of 3.1m into which nine car parking spaces partly encroach. It is recommended the design of the development is modified to ensure compliance with the above control.

Applicant Comment:

In terms of development, the Newcastle City Council's DCP does not apply to the land that is the subject of the application (as previously detailed), furthermore the main structure closest to the front of the block (other than the car parking area) is the office building and this is set back 21.9mtrs.

The DCP requires a setback of 5 metres and although the car parking does encroach this setback by just over a metre we are offering a setback distance more than 20 meters to the main building. In this regard and due to the fact, the proposed design offers a setback distance in excess to the main building more than 20 metres, we do not believe the amenity of the area, considering it is a heavy industrial area, is or will be negatively affected.

Applicant's Position:

The Newcastle City Council DCP does not apply to the Port Land, including the subject site. Notwithstanding this, the Port of Newcastle (PON) who is the owner of the land, requires sub-tenants to develop land in a reasonable and efficient manner encompassing safety, security, environmental amenity, and traffic management, amongst other matters, as a minimum requirement.

In addition to the above, Egret Street is a private road and NCC's development controls that apply to a public street are not necessarily always appropriate and for the NCC to adopt a blanket approach is considered unreasonable.

It is important that the assessment accurately reflects the applicable development standards, and not adopt those that do not apply or have been prepared for other industrial areas.

4. Loading, unloading and servicing areas

NCC Comment:

4. Loading, unloading and servicing areas

Planning Control No 1 of Section 3.13.05 of DCP 2012 requires that loading and servicing areas located to the side or rear of buildings are effectively screened from the street frontage. The delivery bay located immediately adjacent to the north east elevation of the proposed office building is not screened from the street frontage and the associated vehicle turning movements potentially could be a source of on-site vehicular conflict. It is recommended the bay is relocated to another location which addresses the above concerns. The traffic conflict concerns are discussed further later in this letter.

Applicant Comment:

As previously detailed, the main structure (other than car parking) closest to the front of the subject land is the office building and this is set back 21.9mtrs. The delivery bay is positioned to the north east of the building and this area will only be used by delivery vehicles and couriers that are supplying products for the admin office e.g. paper products, office supplies etc. The number of these deliveries would average less than 1 per day.

Additional points:

- Deliveries will only occur during office hours
- Deliveries will be primarily for administration supplies
- The proposed loading bay is off-set from the delivery entrance and gives safe and adequate access for the delivery personnel
- Delivery access into the building is through a designated door on the North-Eastern side of the building (which does not front the Egret Street)
- It is expected that there will be 2 to 3 deliveries per week utilising this area

All other deliveries relating to the main operation of the proposed offer will be received at the rear of the site and access to this area is controlled by locked security gates 24/7. Furthermore, this area is a 'controlled environment' due to the hazardous nature of the operation and access to the loading bays and filling areas can only be achieved by suitably qualified and inducted personnel.

Applicant's Position:

The requirement to screen the front delivery bay or to move it to the rear of the site to meet the requirement of a DCP as requested by Newcastle City Council is seen to be unwarranted for this location for the following reasons:

1. Very low frequency of deliveries (less than 1 per day)
2. The proposed development is in a heavy industrial area
3. The rear of the site is a 'controlled environment' due to the hazardous nature of the operation
4. Access to the all other loading bays and filling areas can only be achieved by suitably qualified and inducted personnel
5. Newcastle City Council's DCP does not apply to this development

5. Landscaping

NCC Comment:

5 Landscaping

The selection of plant species for the landscape beds is unsuitable for Kooragang and the plant species should be low maintenance, drought and salt tolerant and be native and endemic to the area. Furthermore, the mature height and width of the various species should be appropriate to the purpose of the landscaping. For example, generous shade trees should be planted in the parking area at a rate of one shade tree per six parking spaces.

Also, open space facilities for staff should be provided on site which includes:

- (a) seating, tables and rubbish bin
- (b) accessible staff amenities (e.g. toilets and kitchen area)
- (c) protection from the weather
- (d) safe access to all staff
- (e) separation from public areas
- (f) location away from noisy or odorous activities
- (g) orientation to ensure some exposure to sunlight.

For further information regarding the above matters and Council's other landscaping requirements the applicant should refer to Section 7.02 of the DCP 2012.

Applicant Comment:

Landscaping: All plants selected are low maintenance and have been selected to cope with being near the coast and have been sourced and supplied by Glendale Select Plants, who are a specialist wholesale nursery supplier in the Newcastle region. The selection of plant species proposed for this offer is the same as what has been used for the previous 2 developments for Lot 1 (service station & car wash). The plantings in these initial stages (that were DA approved) are now already established and coping very well. They have shown to survive and are drought and salt tolerant. The selected plants, ongoing maintenance and up keep give the site very good street appeal.

The planting of shade trees in the parking area was also raised by NCC for the previous stages on this site and I can confirm this was not required or adopted. In addition to the above, Egret Street is a private road and NCC's development controls that apply to a public street are not necessarily always appropriate and for the NCC to adopt a blanket approach is considered unreasonable.

Not all car spaces would benefit from the shade and to have trees of a height that would give the required shading them the visual amenity of the building would be compromised.

The Port of Newcastle have clearly communicated to us and the NCC that they do not want large shade trees planted at the front of any new development on land they control.

Applicants Position:

We can confirm that the landscape design and plant selections are consistent with Stage 1. All plants selected are low maintenance and have been selected to cope with the relevant conditions and the selection of plant species proposed for this stage will very much suit the offer as they have in the 2 previous developments for Lot 1 (service station & car wash).

The plantings in these initial stages (that were DA approved) are now already established and coping very well. They have shown to survive and are drought and salt tolerant and we see no reason to change the proposed design and respectfully request the department to accept the design without further change.

Staff Facilities: The following facilities and amenities are offered in the proposed design and will be provided for all staff:

- (a) Seating, tables, and rubbish bin
- (b) Male & Female Toilets & Unisex Accessible
- (c) Protection from all weather
- (d) Safe access to all staff
- (e) Separation from public areas
- (f) Location away from noisy or odorous activities

- (g) Orientation to ensure some exposure to sunlight
- (h) Air-conditioning
- (i) Separate toilets
- (j) Kitchenette
- (k) Dining area

In addition to the above the following staff facilities are also offered for the commercial drivers:

1. Shower & Toilet
2. Additional Toilets
3. Kitchenette
4. Eating Area
5. Air conditioning
6. 24hour access
7. Secure locked compound
8. Security Cameras
9. Nightly security

Applicants Position:

There has been a huge commitment from all interested parties to make sure the staff are well catered for as detailed above. The option for open space facilities was offered to Elgas and they have advised they have no desire to have open space facilities for their staff. Therefore, it is not being included in this offer.

6. Section 94A Development Contributions Plan 2009

NCC Comment:

6. Section 94A Development Contributions Plan 2009

Council's Section 94A Development Contributions Plan 2009 applies to the proposed development.

Under the planning legislation the Minister, as the consent authority for State significant development is obliged to consider the requirements of Council's Section 94A Plan. Under the Plan, a levy of 1% of the development costs applies to development having a cost greater than \$200,000. It is recommended an appropriate condition is imposed on any consent granted by the Minister requiring the applicant to pay to Council the development contribution provided for by Council's Plan.

Applicant Comment:

It is noted that the consent authority for the State Significant Development is obliged to consider the requirements of Council's Section 94A Plan.

7. Traffic and Parking

NCC Comment:

7. Traffic and parking

7.1 Delivery bay

In Council's previous letter concern was raised in relation to the potential for vehicular conflict associated with the operation of the delivery bay due to its proximity to the car park and the site access off Egret Street. The EIS and associated Traffic Impact Statement (TIS) have not satisfactorily responded to the above concern.

It is therefore recommended that the delivery bay be relocated sufficient clear of the car park and site access from Egret Street. This requirement will result in the relocation (setting back) of the gate.

Applicant Comment:

As previously detailed, in Item 4 above, the office building is the closest structure to the front of the block and this is set back 21.9mtrs. The delivery bay referred to in the NCC's comment above is positioned to the north east of the building and this area will only be used for the delivery of general office supplies for the admin building e.g. paper products, office supplies etc. and all other deliveries relating to the main operation will be received at the rear of the site. This access (to the rear of the site) will be controlled by locked security gates and every driver and visitor must be inducted.

The estimated number of deliveries for the front Delivery bay would average less than 1 per day. Furthermore, the area at the rear of the site is a 'controlled environment' due to the hazardous nature of the operation and the request to move the general delivery bay to the rear of the site which would then allow general delivery vehicles and couriers (although very low in numbers) access would be unworkable.

The current plan does not allow access for general delivery vehicles to the rear of the site (as detailed above) the only suitable positioning of the delivery bay is towards the front of the site. The proposed location is also away from the designated car spaces.

Vehicles accessing the delivery bay will only occur during office hours and therefore interaction with office staff and other employees would be very rare as typically these employees would have already arrived onsite and parked in the designated areas prior to any deliveries arriving.

Additional points:

- a) The number of deliveries for the front delivery bay are expected to be around 2 to 3 a week.
- b) Interaction with the larger LPG delivery vehicles would be almost non-existent as these deliveries are generally scheduled for after hours to enhance safety and efficiencies on route.

- c) Due to the very low number of delivery vehicle movements (less than 1 per day) interaction with any Elgas trucks during daylight hours will all but never occur.
- d) There is adequate line of sight for either the delivery vehicle leaving the site or for vehicles entering the site. This was considered when the plant selection for the garden beds was determined.
- e) The proposed development is in a heavy industrial area.
- f) The rear of the site is a 'controlled environment' due to the hazardous nature of the operation

Applicant Position:

Due to the low frequency of deliveries (less than 1 per day) and that the proposed development is in a heavy industrial area, and Newcastle City Council's DCP does not apply to this development, the requirement to screen the subject delivery bay or to move it to the rear of the site to meet the requirement of a DCP as requested by Newcastle City Council is seen to be unwarranted for this location.

NCC Comment:

7.2 Egret Street intersection

The TIS recommends that a physical restriction (median) be utilised to prevent the right turn out from Egret Street at Cormorant Drive rather than signage. While this intersection falls under the control of NSW Roads and Maritime Services it is advised the median islands are required to remain open to facilitate the right turn by 'B Double' trucks from Cormorant Drive into Egret Street.

Developer Comment: The median was upgraded to prevent any vehicles making a right turn out from Egret Street onto Cormorant Drive in 2013 and we agree with Newcastle Council comment that their preferred position is to remain with the existing configuration.

NCC Comment:

7.3 Vehicle access

As you would be aware, the vacant parcel of land to the west of the service station, known as lease area Site C, is the subject of a development application (DA7177) for industrial units. It is understood the Department's consideration of this application has effectively stood deferred since mid-2015 waiting on the applicant to respond to the various issues raised in the submissions received, including the submission from Council.

In Council's letter of 6 June 2017 it was recommended that vehicle access for the development of Site C be resolved prior to any development on the subject lease site and the determination of this application. The proximity of the service station, truck refuelling station and Cormorant Road vehicle entry to Site C increase the potential for vehicle conflict and may require egress from Site C to be relocated north of the truck refuelling station and therefore within the site of the proposed development.

A statement made in the TIS (dated 27 July 2017) indicates approval has been granted for a proposed self-storage facility on site C which is 'currently under design'. However, according to Table 8 of the EIS (dated 22 August 2017), the applicant proposes to respond to this concern by either:

- withdrawing the development application for industrial units on lot C, or
- changing the proposed use to self-storage units (less intensive use)

The removal of the DA for Site C does not resolve the issue and could restrict the future development of this portion of the site. Similarly, while a change of use from industrial to self-storage units does reduce traffic generation it does not remove the potential for vehicle conflict.

Applicant Comment:

Our final position for Site C is to withdraw the current DA for the Industrial Units and we now believe the best and only way forward is to finalise this matter when a new application is finalised and lodged.

Applicant Position:

We understand that any new development on Site C will be reviewed by the Department of Planning and Environment, RMS and all relevant agencies and will either be approved or not, based on the merits of the design that is finally submitted (as with any development application).

We accept there can be no further access granted to the site off Cormorant Road and due to the relatively low traffic volumes predicted for the site, we believe a suitable option can be found using the existing ingress off Cormaorant Road.

NCC Comment:

7.5 Bicycle facilities

While the development incorporates a bicycle rack, Section 7.03 of NDCP 2012 requires the provision of a Class 2 Bicycle Storage facility whereby bicycles are locked to a rack in a secure room, enclosure, a compound or cage.

It is recommended the design of the development is modified to include the provision of a Class 2 Bicycle Storage Facility.

Applicant Comment:

The use of bicycles for staff to travel to work (especially in non-daylight hours) along both Cormorant Road and Egret Street is not a viable option due to the safety concerns with the high usage and interaction with heavy vehicle traffic and the speeds associated with Cormorant Road.

Applicant Position:

The decision not to include bicycle facilities is in line with the tenant's requirements. We had offered this as an option and Elgas had advised this is not a requirement, primarily due to the safety concerns of their staff and the location of the proposed facility.

There is ample room to house cycles if required behind the main admin building and it is also a secured area.

8. Flood Management

NCC Comment:

8. Flood Management

The site is located in a flood prone area (i.e. Hunter River) but it is not affected by a floodway or flood storage area. It is noted a copy of a Flood Information Certificate issued by Council has been provided (Appendix 9) in the EIS.

The Probable Maximum Flood Level of the Hunter River is estimated at 4.4m AHD and the site is above the 1% Annual Exceedance Probability (i.e. 1 in 100 year) flood level with ground levels typically above 4m AHD. As such flooding is not expected to be an issue for the subject site. Furthermore, for large flood events Kooragang would be evacuated by emergency services.

Applicant Comment:

NCC's comments noted and no further action required.

9. Stormwater and Groundwater Management

NCC Comment:

9. Stormwater and Groundwater Management

While a stormwater plan has been provided in support of the application no associated report or calculations have been provided demonstrating compliance with the requirements of DCP 2012 for sites larger than 5,000m². The applicant should be required to provide additional information demonstrating compliance with the requirements for the control of stormwater quantity and water quality criteria as per Section 7.06 of the DCP 2012. A MUSIC model should also be provided demonstrating compliance with the water quality requirements.

It is noted stormwater from the development will discharge to the existing pits on the neighbouring service station site. Drainage easements will need to be created in favour of this site if a subdivision for lease purposes is proposed.

Developer Comment: The subject site is identified as Lot 1, 130 Cormorant Road, Kooragang. The proposed area to be developed for this facility falls within the land of Lot 1 as clearly identified in the development application.

The original Stormwater design and Stormwater Management System that was installed for Stage 1 was designed to service all of Lot 1 and not just the development footprint at that time. Therefore, the Stormwater pits, drains, piping, the Humes Humeceptor® STC18 and Humes JellyFish® JF2400-9-2 were designed, selected, and sized to accommodate all the stormwater collected across all stages of the development of Lot 1.

Further to Newcastle City Council's request, we commissioned RJ Sinclair to produce a Letter report outlining all the relevant details relating to the Stormwater design and installation. Please see for your reference a copy of the RJ Sinclair report - Attachment 2B.

Document Reference No.: 14002

Date: 18.12.2017

10. Air Quality & Odour

NCC Comment:

10 Air quality & Odour

In relation to air quality and odour, the SEARs required the EIS to provide:

- *A quantitative assessment of the potential air quality, dust and odour impacts of the development in accordance with relevant Environmental Protection Authority Guidelines;*
- *A greenhouse gas assessment; and*
- *Details of proposed mitigation, management and monitoring measures.*

The extent of quantitative assessment of air quality provided appears to be limited to an odour assessment (Appendix 19) which constitutes a brief qualitative letter of opinion rather than a quantitative technical report with supporting data. The letter was drafted by an ELGAS employee rather than an independent external consultant. This is not considered to be best practice. Also, the required green house gas assessment does not appear to have been undertaken and limited information is provided in the EIS concerning proposed mitigation, management and monitoring measures.

As Council does not regulate these types of facilities it is not known if the level of odour risk the facility would pose to air quality and whether this level of reporting would be considered acceptable. Given the above concerns it is considered the requirements of the SEARs in relation to air quality have not been satisfactorily addressed by the EIS.

If you have any questions in relation to the various matters raised in this submission, please contact me by gmansfield@ncc.nsw.gov.au or on 02 4974 2767.

Applicant Position:

Further to Newcastle City Council's request, Elgas has commissioned Arriscar Pty Ltd to produce an Air Quality and Odour assessment. Please see for your reference a copy of the report - Attachment 2C.

Document Reference No.: J-000030-ELG-OU

Date: 26.2.2018

Revision: 0

ATTACHMENT 3

Environmental Protection Authority (EPA) letter 18th September 2017

We note EPA's comments (copy below) and our position is detailed and addressed below:

1. **EPA's position as per written communication to the Department on the 18th September 2017**

PROPOSED ELGAS STORAGE FACILITY – 130 CORMORANT ROAD, KOORAGANG NOTICE OF EXHIBITION (SSD 8448)

Reference is made to your email to the Environment Protection Authority (EPA) received on 12 September 2017 advising the exhibition of the Development Application (DA) and Environment Impact Statement (EIS) prepared in support of the above proposed development.

The EPA understands that the proposal involves the construction and operation of a liquefied petroleum (LPG) storage, cylinder filling and truck loading facility, with a maximum storage of LPG of 180 tonnes.

Under the *Protection of the Environment Operations Act 1997* (POEO Act) the storage of petroleum products is a scheduled activity, and requires an Environment Protection Licence, where there is capacity to store more than 20 tonnes of pressurised gases; 200 tonnes of liquefied gases; or, 2,000 tonnes of chemicals in any other form.

Based on the information provided the proposed development is not scheduled under the POEO Act, and therefore Newcastle City Council is the appropriate regulatory authority for environmental matters under the POEO Act.

Accordingly, the EPA has not reviewed the EIS. It is recommended you contact Council in respect of any requirements they may have in respect of the proposed development under the POEO Act.

Applicant Comment:

We note the comments from the Environment Protection Agency and no specific action or direct communication back to the EPA is required.

ATTACHMENT 4

Department of Primary Industries letter 16th October 2017

We note the Department's comments and the matters raised and please review our position detailed below:

1. Department of Primary Industries

DPI has reviewed the EIS and provides the following recommendations:

- In order to assist in the assessment of licensing requirements for the construction phase, the proponent should provide additional details regarding dewatering including:
 - Information on the site hydrogeology.
 - A description of the current groundwater situation, including groundwater quality and groundwater level.
 - Methods for sampling and treatment of water.
 - Information on proposed water use and disposal.
 - Detail on the monitoring, sampling and recording schedules for during construction (this must include maintaining a daily record of groundwater levels beneath and around the construction site throughout the duration of the dewatering and for a period following cessation of pumping).
 - Predicted groundwater take, inclusive of the calculations supporting this estimate.
 - Discussion on impacts in line with the Aquifer Interference Policy.
- DPI considers that a secondary leak detection system via a monitoring bore network would be appropriate to ensure the integrity of mitigation measures to prevent groundwater contamination. The proponent should provide details of proposed groundwater monitoring measures.

Applicant Comment:

A Groundwater Investigation was conducted by RCA Australia prior to our initial DA lodgement and a copy of this report was attached with our EIS, Refer Appendix 6.

Groundwater was encountered on the site between 2.1m and 3.0m plus below ground level at the time of the field investigation work. The minimum Ground water level at the rear of the site is closer to 3.0m as indicated in the RCA report.

Groundwater will not be encountered at any time during the construction of this entire stage. I can also confirm we did not encounter any groundwater at any time during the last stage (car wash) of construction.

We can also confirm that it is not proposed to harvest water from existing ground water or surface water sources or carry out any aquifer interference activities.

Additional Comment:

1. Site Hydrogeology – Please refer to Groundwater report completed by RCA Australia which was lodged with the Development Application.
2. Groundwater Situation - As detailed in RCA Groundwater Report
3. Methods for Sampling and treatment of Groundwater - A follow up ground water test will be conducted by RCA Australia prior to construction
4. Details of Monitoring Groundwater Levels during construction – Nil
5. Predicted groundwater take - Nil
6. Discussion on impacts – Nil

ATTACHMENT 5

NSW Health – Hunter New England Health letter 12th October 2017

We note NSW Health's comments and the matters raised please review our position is detailed and addressed below:

1. NSW Health feedback.

Hunter New England Population Health (HNEPH) has reviewed the EIS and recommends that a Mosquito Management Plan including a risk assessment should also be included to ensure any potential mosquito breeding sites are identified e.g. natural or constructed wetlands, stormwater drains, lagoons, ponds and low lying areas. The mosquito management plan will also assist to prevent both nuisance biting mosquitoes and disease transmitting mosquitoes affecting workers, employees and visitors to the local area.

Applicant Comment:

Please see Mosquito Management Plan attached.

ATTACHMENT 6

Environment Protection Authority letter 18th October 2017

We note NSW Health's comments and the matters raised and please review our position addressed below:

EPA NSW - Recommendation/Comment

The EPA understands that the proposal involves the construction and operation of a liquefied petroleum (LPG) storage, cylinder filling and truck loading facility, with a maximum storage of LPG of 180 tonnes.

Under the *Protection of the Environment Operations Act 1997* (POEO Act) the storage of petroleum products is a scheduled activity, and requires an Environment Protection Licence, where there is capacity to store more than 20 tonnes of pressurised gases; 200 tonnes of liquefied gases; or, 2,000 tonnes of chemicals in any other form.

Based on the information provided the proposed development is not scheduled under the POEO Act, and therefore Newcastle City Council is the appropriate regulatory authority for environmental matters under the POEO Act.

Accordingly, the EPA has not reviewed the EIS. It is recommended you contact Council in respect of any requirements they may have in respect of the proposed development under the POEO Act.

Applicant Position:

We note the comments detailed above and await the Department's position.

ATTACHMENT 7

Fire & Rescue NSW letter 3rd October 2017

We note Fire & Rescue correspondence and the matters raised and our position is detailed below:

Fire & Rescue NSW - Recommendation/Comment

1. In the event of development consent being granted, it is FRNSW recommendation that a Fire Safety Study (FSS) is developed for the proposal and that the FSS is undertaken in accordance with the recommendations detailed in Hazardous Industry Planning Advisory Paper No.2.

It is also recommended that the FSS be approved by FRNSW to ensure its operational requirements are met.

2. Should the above recommendation be supported by the Department, FRNSW encourage the proponent, and/or their nominated consultant, to engage with FRNSW prior to undertaking the final design of the proposed facility's fire systems. In particular, design and minimum flow rate capability of the fire hydrant system, including critical components such as the location of the fire hydrant booster assembly, fire hydrants and if required, tank firewater supply.

Applicant Position:

We note the comments detailed above and await the Department's position.

ATTACHMENT 8

Hunter Water Corporation Submission 9th October 2017

We note Hunter Water's correspondence and the matters raised and our position is detailed below:

Hunter Water - Recommendation/Comment

Hunter Water as adjoining landowner has no objections to the proposed development. Hunter Water will assess the Development Application under Section 50 of the Hunter Water Act when the developer completes an application for assessment.

Please note that there are two easements for pipeline in favour of Hunter Water along the boundary of Lot 1 DP 1195449. The two easements are for recycled water pipeline and sewer rising main pipeline.

Applicant Position:

We note the comments detailed above and await the Department's recommendation.

ATTACHMENT 9

Office of Environment & Heritage Submission 16th October 2017

We note Department's correspondence and the matters raised and please see below:

Office of Environment & Heritage - Recommendation/Comment

Attachment A

OEH's Recommendations

New LPG Storage Facility, 130 Cormorant Road, Kooragang (Part Lot 1 DP 1195449)

Recommendations

- i. OEH recommends that biodiversity impacts related to the proposed development should be assessed and documented in accordance with the Framework for Biodiversity Assessment, by a person accredited in accordance with s142B(1)(c) of the *Threatened Species Conservation Act 1995*.
- ii. The EIS must identify and describe the Aboriginal cultural heritage values that exist across the whole area that will be affected by the project and document these in an Aboriginal Cultural Heritage Assessment Report (ACHAR). This may include the need for surface survey and test excavation. The identification of cultural heritage values should be guided by the [*Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW \(DECCW, 2011\)*](#) and consultation with OEH regional branch officers.
- iii. Consultation with Aboriginal people must be undertaken and documented in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW). The significance of cultural heritage values for Aboriginal people who have a cultural association with the land must be documented in the ACHAR.
- iv. Impacts on Aboriginal cultural heritage values are to be assessed and documented in the ACHAR. The ACHAR must demonstrate attempts to avoid impact upon cultural heritage values and identify any conservation outcomes. Where impacts are unavoidable, the ACHAR must outline measures proposed to mitigate impacts. Any objects recorded as part of the assessment must be documented and notified to OEH.

Applicant Position:

Further to the Departments request, I can confirm we have commissioned RPS to produce to produce a Aboriginal & Heritage Assessment on the subject site and this report is scheduled to be completed by 14th March 2018 and this will be forwarded to the Department once completed.

OEH's detailed comments

New LPG Storage Facility, 130 Cormorant Road, Kooragang (Part Lot 1 DP 1195449)

OEH has conducted a review of the report titled *New LPG Storage Facility, 130 Cormorant Road, Kooragang (Part Lot 1 DP 1195449) Environmental Impact Statement (EIS)*. OEH has reviewed this report in relation to threatened biodiversity, Aboriginal cultural heritage, and flooding/floodplain matters, and provides the following comments.

The biodiversity impacts of the project should be assessed in accordance with the Framework for Biodiversity Assessment

OEH was not invited to provide input into the Secretary's Environmental Assessment Requirements (SEARs) to the Department of Planning and Environment for this project. As such our standard major project requirement for the assessment to be undertaken according to the Framework for Biodiversity Assessment (FBA) was not included in the SEARs. As such the proponent's EIS has not assessed the impacts of the proposal in accordance with the FBA.

As an FBA assessment has not been provided for the project, OEH is unable to assess the level of impact the project is likely to have on threatened biodiversity. Although OEH concurs that the proposed site has been disturbed, it still contains some areas of potentially native vegetation and threatened species habitat which require assessment. As such, in accordance with other major project assessments OEH requests that biodiversity impacts related to the proposed development are to be assessed and documented in accordance with the Framework for Biodiversity Assessment, by a person accredited in accordance with s142B(1)(c) of the *Threatened Species Conservation Act 1995*.

Recommendation

- i. OEH recommends that biodiversity impacts related to the proposed development should be assessed and documented in accordance with the Framework for Biodiversity Assessment, by a person accredited in accordance with s142B(1)(c) of the *Threatened Species Conservation Act 1995*.

Further assessment is required of the project's potential impacts on Aboriginal cultural heritage

OEH understands that RPS Australia undertook a search of the Aboriginal Heritage Information Management System (AHIMS) database on 5 July 2017 that was provided to support the findings contained within the EIS. OEH also notes that the Aboriginal cultural heritage assessment supplied for review was prepared in 2006. This assessment is significantly outside the timeframes that OEH considers for an assessment to be valid, and does not comply with current best practise guidelines. OEH also notes that there is no evidence supplied that a survey of the project area to determine the presence or absence of Aboriginal objects was undertaken.

The SEARs clearly stipulate that the EIS must assess Aboriginal cultural heritage values, and OEH is of the view that this requirement has not been satisfied by the information that has been provided. OEH notes that no evidence of consultation with the Aboriginal community has been supplied. In order to identify Aboriginal cultural heritage values, which may include intangible values, as required by the SEARs, consultation should be undertaken with Aboriginal people and be documented in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010* (DECCW 2010). The identification of Aboriginal cultural heritage values should be guided by the *Guide to Investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (DECCW 2011).

OEH is unable to access the potential impact of the project on Aboriginal cultural heritage until an assessment is provided that follows OEH's current guidelines which are outlined below.

Applicant Position:

Further to the Departments request, I can confirm we have commissioned RPS to produce a Biodiversity Assessment and this report is enclosed for your reference.

Document Reference: 136556

Date: 26.8.2018