

Kooragang LPG Storage Facility Modification 1

State Significant Development Modification Assessment
(SSD-8448-Mod-1)

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Glossary

Abbreviation	Definition
Applicant	The Trustee for the Kooragang Property Trust
BC Act	<i>Biodiversity Conservation Act 2016</i>
BDAR	Biodiversity Development Assessment Report
Council	Newcastle City Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
LPG	Liquified Petroleum Gas
Minister	Minister for Planning and Public Spaces
SEE	Statement of Environmental Effects
SEPP	State Environmental Planning Policy
Site	130 Cormorant Road, Kooragang
SSD	State Significant Development
Three Ports SEPP	State Environmental Planning Policy (Three Ports) 2013

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1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the **Department's**) assessment of an application to modify the State significant development (**SSD**) consent for the Kooragang Liquified Petroleum Gas (**LPG**) Storage Facility (SSD 8448).

The modification application seeks consent to remove the requirement to prepare and implement a Water Management Plan during operation of the development.

The application was lodged on 7 August 2020 by the trustee for the Kooragang Property Trust (the **Applicant**) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

1.1 Background

The Applicant has recently constructed an LPG storage and cylinder filling facility at 130 Cormorant Road, Kooragang (the **site**) in the Newcastle local government area (**LGA**) (see **Figure 1**). The site will be operated by ELGAS, who is Australia's largest marketer of LPG and who operate more than 40 service centres across the country. ELGAS will use the site to deliver and exchange gas bottles to homes and businesses across the Newcastle, Lake Macquarie and Hunter Valley regions.

The site is located on Kooragang Island in the Port of Newcastle Lease Area, as identified under State Environmental Planning Policy (Three Ports) 2013 (the **Three Ports SEPP**).



Figure 1 | Site location

Kooragang Island supports a wide range of major industrial developments including heavy and light industrial operations, transport and distribution and other port related activities. Notable major companies with facilities at Kooragang Island include Orica, Cargill and Boral.

Environmental features near the site include the Hunter River, 300 metres (m) to the south, and the Hunter Wetlands National Park, 1.6 kilometres (km) to the north (see **Figure 1**). The Hunter River enters the sea at the Port of Newcastle and encircles Kooragang Island. The Hunter Wetlands National Park forms part of the Hunter Estuary Wetlands Ramsar site and occupies the northern portion of Kooragang Island.

The closest sensitive receivers are residents located approximately 1.8 km south-west of the site in Mayfield North (see **Figure 2**).

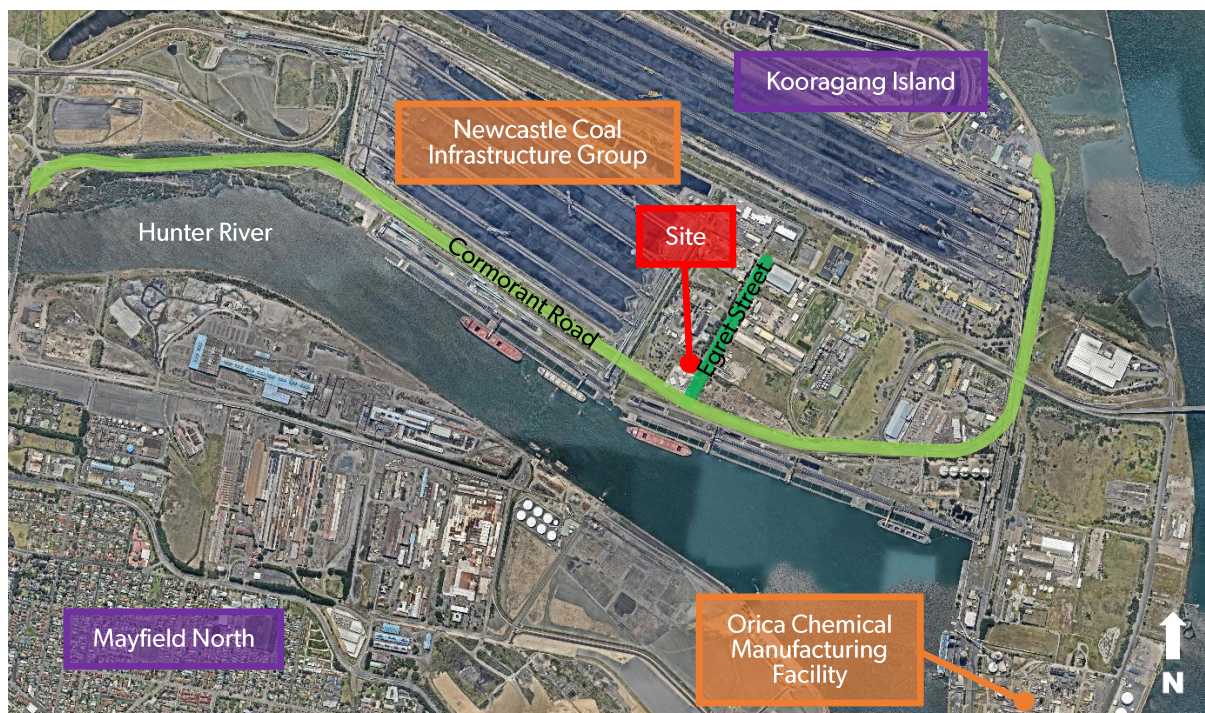


Figure 2 | Local context

1.2 Approval history

On 23 November 2018, development consent was granted by the then Executive Director, Key Sites and Industry Assessments for the Kooragang LPG Storage Facility (SSD 8448). The development consent permits the construction and operation of an LPG facility, including a bulk storage vessel, cylinder storage area, overnight truck parking and loading area, cylinder filling dock, associated infrastructure, office building and car park.

At the time of writing this report, the Applicant has completed construction of the development and ELGAS is undertaking final commissioning works.

2 Proposed modification

On 7 August 2020, the Applicant lodged a modification application under section 4.55(1A) of the EP&A Act to modify development consent SSD 8448. The modification is described in full in the Statement of Environmental Effects (**SEE**) included in **Appendix B**.

The modification seeks to remove conditions B26 and B27 from the development consent, which require the preparation and implementation of a Water Management Plan during the development's operation. As part of the Water Management Plan, the Applicant is also required to implement an ongoing groundwater monitoring program. The conditions are reproduced below:

- B26. Prior to the commencement of operation, the Applicant must prepare a Water Management Plan to the satisfaction of the Planning Secretary. The Water Management Plan must form part of the OEMP required by Condition C5. The Water Management Plan must:
- (a) be prepared by a suitably qualified and experienced person(s) whose appointment has been endorsed by the Planning Secretary;
 - (b) be prepared in consultation with DoI;
 - (c) detail water use, metering, disposal and management on-site;
 - (d) detail the management of wastewater streams on-site; and
 - (e) contain a Groundwater Monitoring Plan which includes:
 - i) baseline data on groundwater levels and quality; and
 - ii) a program to monitor groundwater levels and quality.
- B27. The Applicant must:
- (a) not commence operation until the Water Management Plan required by Condition B26 is approved by the Planning Secretary; and
 - (b) implement the most recent version of the Water Management Plan approved by the Planning Secretary for the duration of the development.

The Applicant has advised that a Water Management Plan is not warranted in this instance, as the development will not use or require any water above or below ground during operation, with the exception of water used within general internal amenities (bathrooms, staff breakroom, etc) and for the fire management system.

3 Statutory context

3.1 Scope of modifications

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 development 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
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of consent.

Therefore, 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.

3.2 Consent authority

The Minister for Planning and Public Spaces (the **Minister**) is the consent authority for the application under section 4.5(a) of the EP&A Act.

However, under the Minister's delegation dated 9 March 2020, the Director, Industry Assessments, may determine the application under delegation as:

- the application has not been referred to the Independent Planning Commission prior to the date of the delegation and
- a political disclosure statement has not been made and
- there are no public submissions in the nature of objections.

3.3 Mandatory matters for consideration

The Department undertook a comprehensive assessment of the development against the mandatory matters for consideration as part of the original assessment of SSD 8448. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act or conclusions made as part of the original assessment.

3.4 Biodiversity Conservation Act 2016

Section 7.17 of the *Biodiversity Conservation Act 2016* (the **BC Act**) specifies that if the determining authority is satisfied a modification will not increase the impact on biodiversity values, a biodiversity development assessment report (**BDAR**) is not required.

The modification relates to an administrative matter and does not require any physical works or changes to the development's footprint. As such, the Department is satisfied the modification will not increase the impact on biodiversity values and a BDAR is not required.

4 Engagement

Under the Environmental Planning and Assessment Regulation 2000, there is no requirement for section 4.55(1A) modifications to be publicly exhibited. In addition, the Department's Community Participation Plan notes that the exhibition requirements for section 4.55(1A) modifications are discretionary, and based on the urgency, scale and nature of the proposal.

Given the proposed modification would result in minimal environmental impacts and relates to substantially the same development as the original development consent (see **Section 3.1**), the application was not publicly exhibited.

However, the application was made publicly available on the Department's website and was referred to Newcastle City Council (**Council**) and the relevant public authorities for comment. The Department received three submissions, none of which objected to the proposed modification.

Council advised it had no objections in relation to the removal of conditions B26 and B27, as Council did not recommend the preparation of a Water Management Plan in its submission on the original development application.

The Department's **Water Group** and the **Natural Resources Access Regulator** advised they had no objections in relation to the removal of conditions B26 and B27.

The Department's **Crown Lands Division** advised it had no comments in relation to the modification as no Crown land would be affected.

5 Assessment

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
- submissions received from State government authorities and Council
- documentation and assessment report for the original development application
- existing conditions of consent
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department's assessment of the modification application is provided in **Section 5.1** below.

5.1 Removal of the water management plan

The modification application proposes to remove conditions B26 and B27 from the development consent, which require the preparation and implementation of a Water Management Plan during the development's operation and which incorporates a groundwater monitoring program.

The Department's original assessment report notes Conditions B26 and B27 were put in place to manage potential impacts to groundwater, given the site is located in an area of high watertable. The site's watertable varies from 2.1 m to 3.2 m.

The Applicant's SEE advised that a Water Management Plan is not warranted in this instance, as the development will not use or require any water above or below ground during operation, with the exception of water used within general internal amenities (bathrooms, staff breakroom, etc) and for the fire management system.

In addition, the Applicant noted that no groundwater was encountered during construction, and the development has been designed to minimise the potential for LPG to be released into the sub-surface. In the event of a leak or accidental release, the released LPG would immediately vaporise and be dispersed throughout the atmosphere.

In their submission, the Department's Water Group and the Natural Resources Access Regulator did not raise any concerns regarding the removal of the Water Management Plan during operation.

The Department has reviewed the SEE and considers the Applicant has provided further information confirming the potential impacts to groundwater during operation would be minimal.

The Department notes the entire site is covered with a 200-millimetre-thick concrete slab, with stormwater being treated and discharged to Council's existing kerb inlet pit in Cormorant Road. In addition, both the on-site stormwater and hydraulic management systems have been designed in accordance with the requirements of the Newcastle Development Control Plan 2012 and would ensure water used during the operation of the development does not impact upon groundwater.

The Department's assessment concludes the imposition of a Water Management Plan is not warranted in this instance and that measures to avoid impacts to groundwater would be appropriately managed through the other existing conditions of consent. The Department has subsequently recommended conditions B26 and B27 be removed from the development consent.

6 Evaluation

The Department has assessed the modification application and accompanying SEE, and considered the submissions provided by Council and the relevant public authorities. The Department has also considered the objectives and the relevant considerations under section 4.55 of the EP&A Act. The Department considers the proposed modification is appropriate on the basis that:

- the development will continue to deliver up to 19 operational jobs within the Newcastle LGA and the broader Newcastle, Lake Macquarie and Hunter Valley regions
- the site-wide stormwater management system will continue to ensure the development does not impact upon or intercept groundwater during operation
- the modification will not result in any additional environmental impacts beyond those assessed under the original development application.

Consequently, the Department is satisfied the modification application should be approved, subject to the recommended modifying conditions of consent.

7 Recommendation

It is recommended that the Director, Industry Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application SSD-8448-Mod-1 falls within the scope of section 4.55(1A) of the EP&A Act
- **forms the opinion** under clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 that a BDAR is not required to be submitted with this application as the application will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent SSD 8448
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



23 September 2020

Patrick Copas
**A/Senior Environmental
Assessment Officer
Industry Assessments**

Recommended by:



24 September 2020

Joanna Bakopanos
**Team Leader
Industry Assessments**

8 Determination

The recommendation is **adopted** by:



20 October 2020

Chris Ritchie

Director

Industry Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

The Department has relied upon the following key documents during its assessment of the modification:

Modification application

- Section 4.55(1A) modification (Modification 1) to SSD 8448 and attachments, prepared by Metroplan Services, dated 3 August 2020.

Submissions

- submissions received from Council and the relevant public authorities.

Strategic documents

- Hunter Regional Plan, prepared by the Department of Planning and Environment, dated October 2016
- Greater Newcastle Metropolitan Plan, prepared by the Department of Planning and Environment, dated September 2018.

Statutory documents

- relevant environmental planning instruments, policies and guidelines
- relevant requirements of the EP&A Act.

Other documents

- Environmental Impact Statement and attachments, prepared by RPS Australia East Pty Ltd, dated 22 August 2017
- Response to Submissions letter and attachments, prepared by Sovechles Nominees Pty Ltd, dated 26 February 2018
- Kooragang LPG Storage Facility: State Significant Development Assessment (SSD 8448), prepared by the NSW Department of Planning and Environment, dated November 2018
- existing conditions of consent in SSD 8448.

Appendix B – Relevant supporting information

The relevant supporting information for the subject modification may be found on the Department's website at: <https://www.planningportal.nsw.gov.au/major-projects/project/39496>

Appendix C – Modifying instrument

The modifying instrument for the subject modification may be found on the Department's website at:
<https://www.planningportal.nsw.gov.au/major-projects/project/39496>