

ASSESSMENT REPORT

**Section 75W Modification
National Biodiesel - Soybean Processing and Biodiesel Production Facility
(08_0083 MOD 3)**

1. BACKGROUND

On 5 May 2009, the then Minister for Planning approved a Part 3A project application (MP 08_0083) by National Biodiesel Pty Ltd (National Biodiesel) for the construction and operation of a soybean processing and biodiesel facility at Port Kembla in the Wollongong Local Government Area (refer to Figure 1).



Figure 1: Regional Context (Project sites outlined in red)

National Biodiesel has experienced significant growth since 2009 and through existing facilities, currently supply biodiesel and diesel to approximately 80 customers including Caltex, Mobil, United and SITA. National Biodiesel are recognised by State and Commonwealth Governments as a leading supplier of premium sustainable fuel.

The approved facility is located on land lying within the operational area of Port Kembla, which is owned and managed by the Port Kembla Port Corporation (PKPC). The Port area is serviced by internal roads, a rail network and shipping berths and includes a number of existing industrial operations, including the Port Kembla Coal and Car Terminals, BlueScope Steelworks, Australian Amalgamated Terminals (AAT) and GrainCorp.

In the period following the project approval, PKPC identified that one of the four land allotments included within the original project approval was no longer available for reasons outside of National Biodiesel's control and that a land swap would be required.

As such, the project approval was modified on 14 March 2013 (MP 08_0083 MOD 1) to rectify the land tenure issue and make associated site layout and design amendments. National Biodiesel took this opportunity to include additional storage facilities and ancillary structures.

The project approval includes a lapsing provision which requires the proponent to physically commence the building, engineering or construction works associated with the project within 5 years (being 5 May 2014).

However, the Global Financial Crisis, prevailing market conditions and the project modification necessitated by the change in land tenure, has resulted in delays in finalising the detailed design of the facility and difficulties in securing investment. As a result, no physical works have occurred.

On 2 May 2014, under the delegation of the Minister of Planning, the then Director – Industry, Key Sites and Social Projects approved a modification to extend the lapsing date of the project approval by one year (MP 08_0083 MOD 2).

The extension to the lapsing date (MP 08_0083 MOD 2) allowed the proponent to identify their preferred project financing partner in early 2014. However, commercial discussions have been protracted and have delayed the preparation of the necessary post approval requirements and management plans. As such, the proponent has advised that work will not physically commence on the site before the current lapsing date and is therefore seeking a further extension of time.

2. PROPOSED MODIFICATION

Condition 5 of the project approval includes a lapsing provision which requires the proponent to substantially commence the building works associated with the project within 5 years, being 5 May 2015.

On 9 March 2015, National Biodiesel lodged a Section 75W modification request to further extend the lapsing provision by one year to 5 May 2016.

3. STATUTORY CONSIDERATION

Section 75W

In accordance with Clause 12 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under Section 75W of the EP&A Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification; and
- the environmental impacts associated with the project would remain unchanged and would be appropriately managed through the existing or modified conditions of consent.

Therefore, it is considered that the proposed modification is within the scope of section 75W of the EP&A Act. Consequently, the Department is satisfied that the request should be assessed and determined under Section 75W of the EP&A Act rather than requiring a new development application to be lodged.

Approval Authority

On 16 February 2015, the Minister delegated the functions to determine a modification request made under section 75W of the EP&A Act, to Directors and Managers in the Planning Services Division in cases where:

- where the relevant local Council/s has not made an objection;
- where a political donations disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

No objection was received from council, no political disclosure statement was made and there were no relevant public submissions. Therefore, the Manager, Industry Assessments may determine the modification request under delegated authority.

Consultation

Under Section 75W of the EP&A Act, the Minister is required to make the request publicly available on the Department's website. The request was placed on the Department's website and following a review of the request, the Department did not believe formal public notification of the request was necessary.

4. ASSESSMENT

The modification is primarily administrative and seeks to modify Schedule 2, Condition 5 which relates to the lapsing date of the project approval (being 5 May 2015).

As outlined earlier, the Global Financial Crisis, prevailing market conditions and the project modification necessitated by the change in land tenure, resulted in delays to finalise detailed design and difficulties in securing investment. As a result, no physical works have occurred.

At the time of assessment of MP 08_0083 MOD 2, the Proponent advised the Department that the development industry had since recovered and a potential investor had been found to finance the project. The Proponent believed that the one year extension to the lapsing provision would be sufficient to commence construction.

Whilst the preferred project financing partner was identified in early 2014, commercial discussions have been protracted. As such, the proponent has advised that work will not physically commence on the site before the current lapsing date and is therefore seeking a further extension of time.

The Department notes that the Proponent has progressed with detailed civic and tank design and has prepared a number of the management plans required under the project approval including the Environmental Management Strategy, Construction Traffic Management Plan and the Stormwater Management Plan.

The Department notes that the project would have substantial social and economic benefits for the region as it would:

- provide an alternative option of sustainable fuels;
- optimise the use of existing infrastructure at Port Kembla;
- attract \$166.8 million worth of investment to the region; and
- generate 500 jobs during the construction phase and 235 jobs once operational.

The Department is therefore supportive of the project and is satisfied that the extension to the lapse date would provide National Biodiesel with additional time to finalise the detailed design of the project and to complete the necessary post approval documentation to allow the site to be developed. This would assist National Biodiesel in providing important employment and economic opportunities to the region.

5. CONCLUSION

The Department has assessed the proposed modification in accordance with the requirements in Clause 8B of the EP&A Regulation. This assessment has found that the proposed modification would not have any additional environmental impacts and represents an opportunity for the site to be developed as intended. The project approval will enhance the economy and provide employment opportunities for the region with a total capital investment value of \$166.8 million and generate employment for an estimated 235 people once fully operational. Consequently, the Department is satisfied that the modification should be approved.

6. RECOMMENDATION

Under delegation of the Minister, it is RECOMMENDED that the Manager, Industry Assessments:

- approve of the proposed modification under Section 75W of the EP&A Act; and
- sign the attached instrument (tagged A).

Ashley Cheong
Planning Officer
Industry Assessments



Chris Ritchie
Manager
Industry Assessments

4/5/15.