

3 August 2020
OUR REF: 2004
Your Ref: SSD 8448

Chris Ritchie
Director Industry Assessment
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Sir,

RE: SSD 8448 - 130 CORMORANT ROAD KOORAGANG (Lot 1 in DP 1195449) - LIQUIFIED PETROLEUM GAS STORAGE AND DISTRIBUTION FACILITY: SECTION 4.55(1A) APPLICATION TO MODIFY DEVELOPMENT CONSENT

1. Introduction

Please find enclosed for your consideration and determination, an application made under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, to modify the development consent granted by the Minister to SSD 8448 on 23 November 2018, for a liquified petroleum gas storage and distribution facility at the above address.

The proposed modifications as detailed in this submission are of minimal environmental impact and will result in substantially the same development as that approved by the consent. Metroplan Services has been engaged by the applicant to prepare the supporting information for the Section 4.55(1A) application.

The Section 4.55(1A) application seeks approval to remove conditions B26 and B27 as set out below:

2. Current Approval

B26. Water Management Plan

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:*
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- (i) baseline data on groundwater levels and quality; and
- (ii) a program to monitor groundwater levels and quality.

B27. Water Management Plan

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.*

3. Proposed Modification

Conditions B26 and B27 to be removed.

4. Discussion

Planning Context

The original application was designated development pursuant to Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) because of locational requirements set out in Clause 10(b)(ii) of Schedule 3 in relation to Chemical storage facilities. Clause 27(1) of State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP) sets out that development within the lease area of the port of Newcastle (which includes Lot 1 DP 1195449), and that is not permitted without development consent under Part 4 of the EP&A Act, and is designated development pursuant to Schedule 3 of the EP&A Regulations, is declared to be State significant development for the purposes of the EP&A Act.

Groundwater Conditions

The original Geotechnical Investigation prepared by RCA Australia as part of the EIS in support of the proposed development set out that groundwater was encountered on the site between 2.1m and 3.0m below ground level at the time of the field investigation work, and may be shallower than this, depending on tidal and climate influences.

During construction, excavation on the site was limited to footings for the office building, cylinder storage area and bulk storage vessel, and did not exceed a depth of 1.9m. No groundwater was intercepted during construction.

It should also be noted that the yard area on the western side of the office building and the car park is concrete paved throughout. Permeable areas are limited to the landscape zones at the front of the site, which are outside the operational area. There are no permeable areas in the operational area. The following design and operational measures for preventing LPG release into the soil or mitigating its effects have also been incorporated into the design:

- Tank and pipework are designed to required Australian Standards for integrity (AS 1210 for vessel and AS 1596 for pipework);

- Emergency shutdown (ESD) system in place to minimise LPG releases;
- Concrete pavement of the entire yard, which prevents LPG ingress into ground;
- Inspection and maintenance program to ensure mechanical integrity of the plant and equipment to minimise accidental releases.

In addition to the above, a review of the potential impact on the water table and soils from accidental LPG release was prepared by Arriscar as part of the original EIS. The Arriscar report drew the following conclusions from the review:

- Only large LPG releases that are downward oriented and impinge on the ground can form a liquid pool with a potential for ground penetration (approximately 22% of the release);
- The ground is paved with concrete, which prevents ingress of LPG;
- Any penetration through the pores of the concrete would result in the freezing of trapped moisture in the concrete (propane pool is at - 42 degrees C) and block ingress;
- The propane pool would vaporise and disperse into atmosphere;
- There would be no adverse impact on the water table at the site, provided the concrete surface integrity is maintained.

ELGAS has also advised that it does not use or require any water above or below ground water as part of its operations, with the exception of water that is used in its general internal amenities and for the fire system - refer Appendix F of ELGAS Environmental Management Plan dated June 2020 and ELGAS additional information letter dated 3 July 2020, both submitted via the Planning Portal.

Stormwater and Hydraulic Management Systems

As required by C24, a stormwater management system has been designed by a suitably qualified and experienced person, installed in accordance with the detailed design then approved by City of Newcastle Engineers. The stormwater management system meets the stormwater quantity and water quality criteria within Newcastle Development Control Plan 2012. The work as executed stormwater drainage plan is included at **Attachment 1**.

With respect to water that is used for general internal amenities and for the fire system, hydraulic services work as executed drawings are included at **Attachment 2**.

5. Relevant Provisions of Section 4.55

Section 4.55 of the Environmental Planning and Assessment Act, 1979 states as follows:

***“(1A) Modifications involving minimal environmental impact.** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.”

In relation to 4.55(1A)(a) and (b), the Minister can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent, for the following reasons:

- The proposed modification relates to the need for a Water Management Plan. There will be no changes to the existing physical form of the development;
- No groundwater was intercepted during construction of the facility;
- ELGAS has advised that it does not use or require any water above or below ground water as part of its operations, with the exception of water that is used in its general internal amenities and for the fire system;
- A stormwater management system which meets the stormwater quantity and water quality criteria within Newcastle Development Control Plan 2012 has already been designed, approved and installed.
- The environmental impacts resulting from the proposed modification are similar to those impacts for the already approved and constructed development.

Section 4.55(3) further states as follows:

“In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.”

Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15 (1) (a) requires the consent authority to take into consideration of:

“(a) the provisions of:

- (i) *any environmental planning instrument, and*

- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,”*

The proposed development in its modified form will continue to be permitted in the current SP1 Special Activities zone pursuant to the Three Ports SEPP.

There are no draft instruments or planning agreements which would affect the proposed modification.

Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1) (b) requires the consent authority to consider:

- “(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”*

The relevant matters are addressed above.

Impacts on the Natural Environment

There will be no additional issues relating to stormwater and flooding (including coastal hazards and sea level rise), erosion and sediment or flora and fauna from the modification.

Impacts on the Built Environment

There will be no impacts on the existing built environment as a result of the modification.

Social and Economic Impacts

There will be no additional social or economic impacts as a result of the modification.

Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

- “(c) the suitability of the site for the development.”*

The site has already been approved for development and the facility has been constructed. The site is able to accommodate the proposed modification.

Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”.

Any relevant representations will need to be considered by the Minister.

Section 4.15(1)(e) – Public Interest

Section 4.15(1)(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The modification as proposed will not result in any additional environmental impacts and is therefore considered to be in the public interest.

6. Supporting Documentation

This correspondence forms part of the Section 4.55(1A) Application. Accompanying this correspondence are the additional supporting documents outlined below. All correspondence and supporting documentation has been attached to this letter for ease of reference and comprises the following:

- A completed Section 4.55(1A) application form;
- Work as executed stormwater drainage plan - **Attachment 1**;
- Work as executed hydraulic services plan – **Attachment 2**.

7. Payment

With respect to application payment, please contact Mitchell Sovechles on 0417 422 512 or mitch_ovechles@bigpond.com.

8. Conclusion

This Section 4.55(1A) application seeks approval to remove conditions B26 and B27 of the development consent granted by the Minister to SSD 8448 on 23 November 2018 in relation to a liquified petroleum gas storage and distribution facility.

In relation to S4.55(1A)(a), the Minister can be satisfied that the requested modifications will have minimal environmental impacts and that the development as proposed to be modified will still be substantially the same development as that approved under the Consent for the reasons set out in 5 above.

In relation to S4.55(1A)(b), the development will remain substantially the same as that approved under SSD 8448, and the modifications for which consent is now sought do not alter the original findings made in relation to SSD 8448 regarding the reasonableness and appropriateness of the proposal when considered in the light of the matters listed in Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The Minister is therefore respectfully requested to approve the proposed modifications.

Should you require any further details, please do not hesitate to contact the undersigned. We trust that you will find the application acceptable and look forward to your favourable determination.

Yours sincerely



Andrew Biller
DIRECTOR METROPLAN SERVICES

Attachments

1. Work as executed stormwater drainage plan;
2. Work as executed hydraulic services plan.

ATTACHMENT 1

Work as executed stormwater drainage plan

ATTACHMENT 2

Work as executed hydraulic services plan