

15 June 2018

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Dear Pamela,

## **Section 4.55 (1A) Modification - Extension of Time for SSD 5544 MOD 1 Demolition Works**

### **1.0 Introduction**

Caltex Petroleum Australia Pty Ltd (Caltex) has been undertaking the conversion of the Kurnell Refinery to finished product terminal over the past four years. Over the past 18 months Caltex have been investigating options for the potential retention and reuse of the butane assets at the Kurnell Terminal site (the Site). Following a detailed internal review Caltex has decided not to retain any of the butane assets at the Site and intends to demolish these assets as originally consented under MOD1 to SSD 5544.

It is recognised that the period for carrying out of demolition works under MOD1 commenced on 10 August 2015 and is required under condition B7A to cease on 10 August 2018. The delay in demolishing the butane assets has meant that the works proposed under SSD 5544 MOD1 (the demolition works) will not be able to be safely completed in this timeframe. As such Caltex is seeking a ten month extension to the period consented for demolition under MOD1, taking the final date for the completion of demolition to 10 June 2019.

This letter outlines the background of the proposal and seeks consent for the modification of SSD 5544 and specifically condition B7A under Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* to allow for the above extension of time to complete the demolition works.

### **2.0 Site Context**

The Kurnell Terminal (the Site) is located on the Kurnell Peninsula within the Sutherland Shire Local Government Area (SS LGA), approximately 15 km south of Sydney's Central Business District (CBD). The Site is approximately 187 ha in size and consists of a number of lot and deposited plans. Between 1956 and 2014 the Site was used as both an oil refinery and a fuel terminal. In 2014 refining ceased and now the main purpose of the Site is as a fuel import terminal, although other ancillary and related operations are also ongoing.

The development consent to convert the Site to a fuel import terminal was granted in January 2014 (Application Number SSD 5544). This is now the dominant consent for the Site.

SSD 5544 has since been the subject of three modifications. These modifications have been, in order:

- Modification 1 – Demolition works (SSD 5544 MOD1) consented 10 August 2015;
- Modification 2 – Asbestos contaminated soil (ACS) management works (SSD 5544 MOD2) consented 27 October 2017; and
- Modification 3 – Tank 101 demolition (SSD 5544 MOD3) consented 17 November 2017.

The development application documentation for the original consent and subsequent modifications are provided on the Department of Planning and Environment's Major Projects Website. This modification application does not proposal any changes to the proposed works outlined and consented within these applications.

### 3.0 The Project

Caltex currently operates the Kurnell Terminal (the Site) on the southern side of Botany Bay, in Kurnell, NSW. Between 1956 and 2014 the Site was used as both an oil refinery and a fuel terminal. In July 2012, Caltex announced that it would progress with converting the refinery to a finished product terminal (the 'Project'). In 2014 refining ceased and now the main purpose of the Site is as a fuel import terminal, although other ancillary and related operations also occur.

The process to convert the refinery to a terminal has involved a number of related activities including numerous upgrades and changes to operational infrastructure, as well as the removal and demolition of redundant infrastructure. This process is ongoing. The objective of the Project was and remains "to establish a viable, safe, reliable and sustainable finished product import terminal at Kurnell". This includes providing a safe working environment at the terminal and also ensuring that the operation is not burdened by unnecessary costs.

The Project has been divided into two phases:

1. converting infrastructure to allow the Site to operate as a terminal and shutdown the refinery (the conversion works); and
2. demolition and removal of redundant infrastructure (the demolition works).

Caltex received development consent to complete the conversion works (SSD 5544) and demolition works (SSD 5544 MOD1). Two other modifications to this consent, the 'ACS management works' (SSD 5544 MOD2) and 'Tank 101 demolition works' (SSD 5544 MOD3) have also been consented. The works being completed under these consents all form part of the Project.

### 4.0 Proposed modification

As noted above, the Site had been operating as an import terminal since late 2014 and since that point Caltex has been reviewing the quality and reliability of the fuels imported from overseas. In 2016 the outcomes of this review suggested that one approach to maintaining high quality of fuels into the NSW and ACT markets would be to dose the fuel being stored at Kurnell with butane to increase the Reid Vapour Pressure (RVP) of the product. Previously the Kurnell Refinery had produced, stored and mixed liquid butane into gasoline but this activity ceased when the refinery converted to a terminal in 2014. As such the Site still contains various butane assets including existing pressure vessels, pipelines, injection systems and pumps.

Originally these butane assets were to be removed and demolished as part of the demolition works consented under SSD 5544 MOD1. The review to potentially reuse these assets put their demolition and removal on hold. After a detailed internal review, Caltex has decided that retention and use of the existing butane assets was not a viable option and therefore these assets are no longer required. As such they would like to demolish and remove these assets in line with SSD 5544 MOD1.

The uncertainty regarding the future butane assets and the confirmation regarding their proposed removal has resulted in a delay to demolition works program. Caltex has removed or demolished the majority of the above ground redundant infrastructure and is in the process of demolishing certain buildings, completing various civil works (e.g. below ground infrastructure removal, grading land etc.) and waste management activities across the Site to finalise the demolition works prior to 10 August 2018. The need to now demolish the butane assets has meant that these assets now need to be removed prior to the remaining works at the Site being completed. Completing the works required to remove these assets safely and then completing the remaining civil works is not possible prior to 10 August 2018 in line with Condition of Consent B7A of SSD 5544.

On this basis Caltex is now seeking consent for a further modification of SSD 5544 to extend the duration of the demolition period by an additional ten months. The proposed extension would accommodate both the demolition of the butane assets as well as the remaining activities consented under MOD1. This would allow for the most orderly, safe and economic programming of demolition works across the Site. This proposed change would be considered modification four (MOD4) to the original consent (SSD 5544).

The modification would involve amending condition of consent B7A for SSD 5544. This condition currently states:

“B7A. The demolition works associated with the development shall not extend beyond three (3) years from the date of consent of MOD 1.”

We are seeking consent to amend this condition to state:

“B7A. The demolition works associated with the development shall not extend beyond ~~three (3) years~~ forty-six (46) months from the date of consent of MOD 1.”

The proposed schedule to complete the demolition works prior to 10 June 2019 is provided in **Table 1** below.

**Table 1 Proposed revised demolition works program**

Task	Indicative Dates
<b>Demolition Works</b>	
Demolition of refinery process units (excluding butane assets)	Complete
Demolition of redundant tanks (excluding three tanks listed below)	Complete
Removal of redundant pipelines	Start 2016 to Mid 2018
Demolition and removal of butane assets	May 2018 to September 2018
Demolition of remaining buildings	July 2018 to December 2018
Final tank removals (last three tanks)	January 2019 to February 2019
Final waste processing (scrap, concrete etc.)	October 2018 to March 2019
Final civil works (currently 50% complete)	November 2018 to April 2019

Considerations regarding this proposed modification are discussed below.

### 5.0 Planning Approval Pathway

The extension of the duration of demolition activities is considered a minor change to the activities consented under SSD 5544 in that the proposal is consistent with the ‘demolition works’ consent under SSD 5544 MOD1. Demolition activities proposed to be undertaken within the extension period would include the same type and physical extent of works approved under MOD1 and would retain the same primary objective as the original consent. On this basis the extension of time is considered to be ‘substantially the same development’ as the development consented under SSD 5544 (as modified).

Given this, Caltex proposes that the extension of time be determined as a modification to SSD 5544. This would constitute modification four to this consent.

Modifications to development consents are provided for by section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The two modification pathways that could apply to the extension of time under section 4.55 are:

- Section 4.55(1A) – Modification involving minimal environmental impact; and
- Section 4.55(2) – Other modifications.

To allow a modification application to proceed under section 4.55(1A) or section 4.55(2) the consent authority must be 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)”

Fundamentally the Site would remain a liquid fuel depot as consented by SSD 5544. The extension of time for demolition would not change the final land use at the Site and would be wholly consistent with the original objective of the conversion project. The objective of the conversion project (SSD 5544) was “to establish a viable, safe, reliable and sustainable finished product import terminal at Kurnell”.

The extension of time shares this objective as it would remove infrastructure that is no longer required and eliminate an ongoing maintenance cost.

The location, extent and severity of impacts associated with the activities proposed during this additional ten month window have already been consented as part of MOD1. The proposal would only extend the duration of some of these potential impacts by up to ten months. On this basis it is Caltex's view that the works would result in impacts which are of 'minimal environmental impact' (i.e. impacts that are expected to be within the same scale as those that have been previously approved and would result in 'very small' or 'negligible' overall environmental impacts<sup>1</sup>) and as such should be consented under section 4.55(1A). This conclusion is further explained in **Table 2** below.

## 6.0 Consultation

The Department of Planning and Environment (DPE) (8 May 2018), Sutherland Shire Council (18 May 2018) and NSW Environment Protection Authority (EPA) (15 May 2018) were all contacted by phone prior to lodging this application. No concerns regarding the proposed extension were raised on the phone or subsequently.

DPE asked that Sutherland Shire Council and the EPA were contacted prior to lodgement. They also asked for a clear justification for the proposed extension and a program showing how the remaining demolition works would be completed within the proposed timeframe. This information is provided in **Section 4** above.

Sutherland Shire Council made no comments. The NSW EPA echoed the comments made by DPE.

Caltex will formally communicate the proposed program change to the community at the next quarterly community meeting scheduled for 26 June 2018.

## 7.0 Section 4.15(1) assessment

### 7.1 Legislation, planning policy and approvals

This modification would be consistent with the legislation, planning policy and approvals as presented in MOD1 with the following exceptions:

- *State Environmental Planning Policy (Kurnell Peninsula) 1989* (Kurnell Peninsula SEPP) has been repealed and replaced by the *Sutherland Shire Local Environment Plan 2015* (Sutherland LEP)
- *State Environmental Planning Policy 71 – Coastal Protection* (SEPP 71) and *State Environmental Planning Policy 14 – Coastal Wetlands* (SEPP 14) have been repealed and replaced by *State Environmental Planning Policy (Coastal Management) 2018* (Coastal Management SEPP).

With regard to the Kurnell Peninsula SEPP this policy previously provided the permissibility pathway for MOD1. Upon repeal of the Kurnell SEPP this land has now become subject to the Sutherland LEP.

Under the Sutherland LEP the proposal would be carried out exclusively within land zoned as IN3. The proposed activity (extension of demolition) would be carried out as part of the ongoing conversion of the Site from a refinery to a liquid fuel terminal, which is consistent with liquid fuel depot land use which is permissible in the IN3 zone with consent.

In addition to this, section 2.7 of the Sutherland LEP outlines that "*The demolition of a building or work may be carried out only with development consent.*" This letter constitutes part of the application for development consent for the extension of time for the demolition works.

SEPP 71 and SEPP 14 were both considered in MOD1 and are now replaced by the Coastal Management SEPP. Under the Coastal Management SEPP certain development controls are relevant to development falling within certain areas within the Coastal Wetlands and Littoral Rainforests Area Map. The subject area for this proposal is the same as MOD1. No parts of the Site fall within land identified as "coastal wetlands", though certain portions of the subject area (i.e. the demolition works area) fall within land identified as "proximity area for coastal wetlands".

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<sup>1</sup> King, Markwick, Taylor & Ors v Bathurst Regional Council [2006] NSWLEC 2005

Section 11(1) of the Coastal Management SEPP provides that:

*(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*

*(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*

*(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

As outlined in MOD1 and in **Table 2** below the proposal would not result in a significant impact upon biophysical, hydrological or ecological integrity of the adjacent coastal wetland areas. Further, the proposal would not result in any changes to surface and ground water flows to and from the adjacent coastal wetlands over that assessed and consented as part of MOD1.

It is noted that parts of the demolition works area fall within the boundaries of the Coastal Environment area and Coastal Use area designated by Coastal Management SEPP. The works that fall within these areas will be complete by 10 August 2018 and therefore the requirements under Clauses 13 and 14 of the Coastal Management SEPP are not relevant. Notwithstanding this, the matters listed under these two clauses have been assessed as part of the application for the demolition works and consented under SSD 5544 MOD1.

Therefore in relation to the Coastal Management SEPP there would be no impediment to the consent authority granting development consent for this modification application.

## 7.2 Development control plans

The proposal is state significant development and therefore the Sutherland Shire Development Control Plan 2015 does not apply.

## 7.3 Planning agreements

There are no planning agreements over the Site.

## 7.4 Likely impacts of the proposal

The likely impacts of the proposed extension are outlined in **Table 2** below. The assessment below should be read in conjunction with the SEE for SSD 5544 MOD1 (as modified). It should be noted that all impacts were assessed in SSD 5544 and subsequent consented modifications as being non-significant. This modification seeks only to extend the duration of the demolition period as consented as part of MOD1.

**Table 2 Demolition extension of time impact discussion**

Aspect	Demolition of Butane assets
Hazards and Risk	<p>The environmental assessment of the demolition works included an assessment of the removal of the butane assets as part of the overall demolition program. The extension of time would not alter the location or methodology of demolition, nor would it alter the types of infrastructure to be removed. The removal of all infrastructure would be completed in line with the HAZDEM assessment prepared for SSD 5544 MOD1.</p> <p><b>Impact comparison:</b> Extension of the duration of demolition would not substantially alter the risk profile of the terminal or the demolition works.</p>

Aspect	Demolition of Butane assets
Soils, groundwater and contamination	<p>The demolition activities would remain consistent with SSD 5544 MOD1 with the exception of being undertaken over a longer duration than initially consented. No additional ground disturbance is proposed. All soil, groundwater and contamination management measures would continue to be maintained throughout the extension period in line with SSD 5544 and subsequent modifications.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would include continuation of the same mitigation measures.</p>
Surface water, wastewater and flooding	<p>The extension of time would not alter the physical scope of the demolition works already consented. All surface water, wastewater and flooding management measures would continue to be maintained throughout the extension period in line with SSD 5544 and subsequent modifications.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would include continuation of the same mitigation measures.</p>
Noise and vibration	<p>The scale and physical extent of the activities proposed to be undertaken within the extended demolition period would remain consistent with that already consented. The works would not occur closer to any residential receivers and as such potential noise impacts at residential properties would not increase in magnitude.</p> <p>The proposal would potentially result in an extended duration of potential noise impacts of up to ten months. It should be noted that this period may be less than ten months should site conditions prove favourable. On the basis that residential noise impacts were assessed to be minor during the demolition works the potential impact of extending the duration of the works is considered to be negligible. All demolition activities within the extended period would be undertaken according to the same working hours, consultation requirements and management measures as consented under SSD 5544 MOD1.</p> <p><b>Impact comparison:</b> Potential impacts would be of same magnitude as those previously consented. The duration of potential noise impacts would extend for up to ten months though all management measures would remain in place throughout this period. Overall the extension of impact is considered to be consistent with SSD 5544 as modified.</p>
Air quality and odour	<p>The extension of time would not alter the physical scope of the demolition works already consented. Air quality and odour management measures would continue to be maintained throughout the extension period in line with SSD 5544 and subsequent modifications.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would include continuation of the same mitigation measures.</p>

Aspect	Demolition of Butane assets
Socio-economic	<p>The extension of the demolition period would be for up to ten months (possibly less if site conditions are favourable). The extension would extend potential amenity impacts, particularly around noise and vibration, air quality and traffic. These issues were all assessed as resulting in minor/negligible impact within the SEE for SSD 5544 MOD1 and as such an extension of their duration would not alter the overall significance of socio-economic impact. Further to this, there is a community expectation that Caltex fulfils their original intention to demolish all assets originally indicated in MOD1. This would also allow Caltex's to achieve its proposed Project objective. Equally contractors working at the Site continue to spend money at cafes, restaurants etc. in Kurnell. The extension of the demolition works will means that this small economic benefit will be extended.</p> <p><b>Impact comparison:</b> There is community and regulator support for the overall conversion and associated demolition works. The extension of demolition would prolong some amenity impact but would allow Caltex to fulfil their original intention to remove all assets outlined in SSD 5544 MOD1. Overall the impact is consistent with that previously consented.</p>
Transport and access	<p>The proposed extension of time would involve an extended duration of traffic movements associated with the demolition. The overall number of vehicle movements would not change as the activities that would be undertaken during the extension were already assessed and consented as part of SSD 5544 MOD1 and are significantly less than those that occurred during refinery operation.</p> <p><b>Impact comparison:</b> Potential impacts would be of a similar scale as those that have been previously consented and would require similar mitigation.</p>
Waste management	<p>The extension of time would not alter the physical scope of the demolition works already consented. Waste generated during the proposed ten month extension would not exceed that already consented as part of SSD 5544 MOD1. The management, storage and transport of waste from Site would be undertaken in the same manner as previously consented.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would require similar mitigation.</p>
Heritage	<p>The extension of time would not alter the physical scope of the demolition works already consented. There would be no change to heritage impacts as assessed and consented as part of SSD 5544 MOD1.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would require similar mitigation.</p>
Ecology	<p>The extension of time would not alter the physical scope of the demolition works already consented. There would be no change to ecology impacts as assessed and consented as part of SSD 5544 MOD1.</p> <p><b>Impact comparison:</b> Potential impacts would be of same scale as those that have been previously consented and would require similar mitigation.</p>

## 7.5 Site suitability, submissions and the public interest

No external conditions to the Site have changed substantially since the approval of SSD 5544 MOD1. As such the Site remains suitable for the carrying out of the demolition works.

No submissions were received for SSD 5544 MOD1. Conversations with Sutherland Shire Council and the EPA have not raised any concerns regarding the proposed extension.

The proposed extension would be in the public interest as it would fulfil the public's expectation that Caltex would fully execute SSD 5544 MOD1. This would ensure that all items presenting ongoing safety concerns (such as the butane storage infrastructure) or amenity impacts (such as the visual impact of the butane storage infrastructure) would be fully removed. The proposal would also minimise Caltex's ongoing maintenance costs for the Site and be in line with the Project objective for SSD 5544.

## 7.6 Environmental Planning and Assessment Regulations 2000

The *Environmental Planning and Assessment Regulations 2000* (EP&A Regulation) requires that the modification be assessed against the regulations to the extent that they prescribe matters for the purposes of assessing the proposed development. These are outlined below:

### The precautionary principle

A modification application undergoes a process that allows for better examination of the potential effects of proposed activities or development. Thus, the assessment process can be defined as precautionary in nature. The requirement to assess the impacts of the demolition works is a form of regulation designed to identify and address uncertainty about the effects of these activities.

As outlined in **Table 2**, the risks associated with the proposal have already been assessed in detail as part of SSD 5544 MOD1, or are minor in nature or consequence (e.g. prolonging amenity impacts). As such this assessment is considered appropriately precautionary in nature.

### Inter-generational equity

Inter-generational equity associated with the impacts and benefits of this proposal have been largely assessed as part of SSD 5544 MOD1. This proposal would implement all relevant mitigation and management measures as outlined in MOD1, including rehabilitation. As such inter-generational social equality impacts have been, and would continue to be, adequately addressed.

### Conservation of biological diversity and ecological integrity

This proposed extension would not result in any increase in the extent or magnitude of ecological impacts over and above those assessed and consented as part of SSD 5544 MOD1. As such the proposal would not affect the conservation of biological diversity or ecological integrity.

### Improved valuation, pricing and incentive mechanisms

The value placed by Caltex on environmental resources is evident from the extent of site-specific investigations, planning and environmental safeguards and measures that have been undertaken for SSD 5544 and MOD1 in particular. These measures would continue to be applied throughout the proposed extended duration of demolition works.

## 8.0 Conclusion

Caltex proposes to extend the duration of the demolition works as previously consented as part of SSD 5544 (as modified). Given the discussion above, it can be concluded that the potential impacts associated with the extension of time would be of the same type and scale as those that have been previously consented. The management and mitigation measures that were approved for the demolition works (SSD 5544 MOD1) would continue to apply. Whilst the extension of time would result in a potential extension of temporary amenity impacts associated with noise, air quality and traffic, the full execution of the consented demolition works would be in the interests of both the local community and Caltex's ongoing operations. As such it can be concluded that the proposed extension of time is likely to result in 'very small' or 'negligible' overall environmental impacts. Caltex seeks consent for this modification on this basis.

Yours sincerely



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