

14 January 2015

PAC Determination – Shell Clyde Terminal Conversion (SSD-5147)

1. BACKGROUND

Viva Energy Australia (Viva – formerly the Shell Company of Australia Limited) has owned and operated the Clyde Refinery on the Camellia Peninsula since 1928. The Clyde Refinery has operated as a crude oil refinery and petroleum products storage and distribution facility for over 80 years until refinery operations ceased in late 2012. Since ceasing refinery operations, Viva has operated the site solely as an import, blending, storage and distribution facility for finished petroleum products and is referred to as the Clyde Terminal.

Viva supplies approximately 40% of NSW's fuel requirements and the Clyde Terminal is one of a few key fuel supply operations within NSW. The Clyde Terminal receives finished petroleum products including gasoline, diesel and jet fuel via a connecting pipeline from the Gore Bay Terminal at Greenwich, which is the Company's ship unloading facility. Once the finished petroleum products are received at the Clyde Terminal, they are stored, tested and blended to ensure the products meet the required specifications and are fit for their intended use. Products are then transferred via existing pipelines to:

- The road gantry at the adjacent Parramatta Terminal (a joint venture with BP) for distribution via road to customers;
- Sydney's airport, via the jet fuel pipeline;
- Newcastle; and
- The nearby Caltex and Mobil Silverwater Terminal.

The current storage capacity at the Clyde Terminal is 638 mega litres (ML) of petroleum product at any one time. Storage of crude product and intermediate petroleum products formed a significant proportion of the entire storage capacity of the facility. The storage capacity of finished product is 264 ML out of the total storage capacity of 638 ML.

Since 1949, the Proponent has obtained around 215 development consents from either Parramatta City Council, or the Minister for Planning. These include expansions and construction of specific items of equipment and infrastructure, including a major upgrade of the fluidised catalytic cracking unit in 2007 and the hydro-desulphurisation unit in 2008 which were both granted by the Minister for Planning.

In addition to these consents, the site is also regulated by the Environmental Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997* through an Environmental Protection Licence (EPL) No. 570. The EPL was amended in October 2012 to reflect the change from refining operations to the storage of finished petroleum products. The terminal is also registered as a Major Hazards Facility (MHF) and is licensed by WorkCover NSW under the *Work Health and Safety Regulation 2011*.

2. PROJECT APPLICATION

The Proponent (Viva Energy Australia) proposes to convert the existing Clyde Refinery facility into a terminal that imports, blends, stores and distributes finished petroleum products (referred to as Clyde Terminal).

There are three key components to the proposed development:

- Demolition of the redundant refinery processing equipment and storage tanks;
- Construction works to improve efficiency and provide capacity to meet future growth in demand for fuel products, including:
 - Conversion of existing storage tanks to store finished fuels;
 - Upgrade of electrical, fire-fighting, wastewater, lighting and safety shutdown systems; and
 - Repair of bunds and spill management infrastructure;
- On-going operation as a finished petroleum products terminal, to ensure continuity of fuel supply to its customers.

The proposal will result in an overall reduction in the operational footprint of the Clyde Terminal. The storage capacity of finished petroleum products will remain at the current level of 264 ML.

The Proponent also proposed as part of this SSD application to replace all previous Council and Ministerial consents with a single consent covering the demolition, construction and on-going operation of the Clyde Terminal.

3. DELEGATION TO THE COMMISSION

On 9 September 2014, the State Significant Development assessment (SSD-5147) was referred to the Planning Assessment Commission (the Commission) for determination. While less than 25 objections from members of the public were received, the Department of Planning and Environment (the Department) chose to refer the application to the Commission, given the level of public interest in the project.

For this determination, Mr David Johnson and Mr Alan Coutts constituted the Commission for this project. Mr Johnson chaired the Commission.

4. DEPARTMENT'S ASSESSMENT REPORT

The Department's Assessment Report has considered the key issues of this proposal as:

- Hazards and risks;
- Demolition and management of asbestos;
- Noise and vibration;
- Air quality;
- Flooding; and
- Traffic.

The Department's Assessment Report considers each issue with respect to each phase of the development, including the impacts of concurrent phases, e.g. demolition works and on-going operations.

Other issues that the Department has assessed include: contamination; soil and water; waste management; the Gore Bay pipeline and the Gore Bay Terminal; biodiversity; heritage (both non-Aboriginal and Aboriginal); greenhouse gas emissions; development contributions; on-going consent regime; and socio-economic impacts.

The Department has concluded that the development has merit and can be granted consent subject to a number of strict conditions. The conditions that the Department has recommended include measures to manage hazards and risks, procedures for asbestos removal and demolition, noise limits, air quality monitoring, flooding and emergency response, water, biodiversity and heritage management.

5. COMMISSION'S MEETINGS

The Commission met separately with the Proponent and the Department of Planning and Environment. Summaries of the issues discussed in these meetings are attached in **Appendix 1**.

The Commission met with the Proponent (Viva, formerly the Shell Company of Australia Limited) on 18 November 2014 for a briefing and site inspection. The briefing broadly covered:

- Previous operations on site, including the refinery, storage and blending of finished petroleum products;
- Current operations on site, including the decommissioning works that have already been undertaken;
- Proposed operations on site;
- The works included in the SSD application; and
- Works and areas, which are not included in the SSD application, which includes land owned by the Proponent, leased to other organisations.

During the site inspection, the Commission saw the tank farms that have already been decommissioned and the refining plant that is to be removed as part of the SSD application. The Commission also saw the wetland that will be upgraded as a requirement of the Commonwealth Department of Environment's EPBC controlled action approval.

Although the application received less than 25 objection submissions the Commission decided to hold a public meeting to hear the community's view of the application before a decision is made.

The public meeting was held on the 20 November 2014 at the Mercure Sydney Parramatta, Rosehill. A total of 14 speakers presented to the Commission. A list of speakers is presented in **Appendix 2**. All those seeking to be heard were heard. All speakers at the public meeting were objecting to the development.

The main issues raised by the speakers were: the planning process, both the Clyde Terminal and Gore Bay Terminal should be assessed as one development, as they are dependent on each other and cannot be considered separately; and the risks and hazards of transporting finished petroleum products through the connecting pipeline, compared with crude oil. A summary of the issues raised at the public meeting is presented in **Appendix 2**.

The Commission met with the Department of Planning and Environment on 21 November 2014 for a briefing of the key issues of the project. The briefing covered the hazards and risks of transporting refined petroleum products as compared to crude oil. The Commission also sought clarification on the issue of the assessment of this project in isolation of the Gore Bay Terminal and the connecting

pipeline. These two topics, while not part of this SSD application, were raised on numerous occasions by speakers at the public meeting. (A summary of issues discussed at the meeting is provided in **Appendix 1.**)

6. COMMISSION'S CONSIDERATION

6.1. Hazards and Risks

The import, blending, storage and distribution of finished petroleum products present various hazards and risks. The facility is identified as a Major Hazard Facility under the *Work Health and Safety Act 2011* and the proposed development is deemed a 'potentially hazardous industry' under the provisions of *State Environmental Planning Policy No. 33 Hazardous and Offensive Development* (SEPP 33).

As part of the Environmental Assessment, a Preliminary Hazard Assessment (PHA) was undertaken by Sherpa Consulting. The purpose of the PHA is to identify the potential hazards, analyse consequences and the likelihood of occurrence, then estimate resultant risk to surrounding land uses. In comparison to the previous refinery operations, the PHA found that the end-state operations have: significantly reduced fatality risk profile; the risk profiles for almost all risk remain within the boundary of the site, except for the residential land use criteria, however it remains well clear of any residential areas.

The Department engaged Lloyds Register (Lloyd's) to undertake an independent assessment of the PHA, to ensure a robust assessment process. Further information and clarification of the PHA, was requested by both the Department and Lloyd's including; *"how the relevant recommendations from the Buncefield Major Incident Investigation Board would be addressed for the development."* The Buncefield Major Incident occurred in December 2005, at the Buncefield Oil Storage Depot, Hemel Hempstead, England. A number of explosions tore through the facility, causing extensive damage to both commercial and residential properties in the vicinity of the facility. The investigation of this incident and the recommendations made by the Investigation Board, have become the industry benchmark for hazardous industry regulation and control. The supplementary information provided by the Proponent has adequately addressed both the Department and Lloyd's concerns.

As the site is also regulated by WorkCover NSW; WorkCover reviewed the PHA and the supplementary information provided by the Proponent. The Commission notes that WorkCover has advised the Department that it is satisfied with the information provided, and has recommended conditions to be included in the consent. These recommended conditions are directed to the implementation of the relevant recommendation of the Buncefield investigation and details of the LPG vessel failure modes and their frequency, are included in the Final Hazard Analysis (FHA). The Commission notes that the Department has incorporated WorkCover's recommended conditions into its recommended conditions of consent for the Commission's consideration.

The Commission acknowledges that while the PHA did not investigate the potential for the concurrent demolition and construction activities, it notes that the Department has recommended that the Proponent *"prepares a Construction and Demolition Safety Study prior to the commencement of any construction and demolition works."* The Commission considers that the requirement of a Construction and Demolition Safety Study for the Department's approval before any works can commence is satisfactory.

The Commission notes that the Department, Lloyd's and WorkCover are all satisfied with the PHA and supplementary information provided by the Proponent. The Commission further notes that both

the Department and Lloyd's are satisfied that the methodology used to determine the risks are appropriate.

The Department concludes that based on the information provided within the PHA and the supplementary information, that the development would reduce risks in the local area. The Commission agrees with the Department's conclusion that the hazards and risks associated with a finished products terminal compared to a refinery are reduced. Further the Commission is satisfied that the recommended conditions adequately address the risks and hazards associated with the conversion and on-going operations of the Clyde Terminal.

6.2. The Gore Bay Terminal and connecting pipeline

A number of speakers at the public meeting contended that the Department's assessment of the Clyde Terminal Project is incomplete because it fails to assess the impacts (both environmental and social) on the Gore Bay Terminal and the connecting pipeline. Section 79C (1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) requires the consideration of matters that are relevant to the proposed project including the likely "environmental impacts on both the natural and built environments".

The Proponent's overall operation includes three elements, which are the Clyde Terminal, the Gore Bay Terminal and the underground pipeline connecting the two terminals. The contention made by several speakers at the public meeting is that the three elements are inter-connected and the issues related to them should be assessed concurrently.

The Commission was advised that a separate SSD application will be submitted in early 2015 by the proponent for planned works at the Gore Bay Terminal. Objectors submitted that the issues surrounding the Gore Bay Terminal and the pipeline connecting the two facilities must be thoroughly examined in the subject application for the Clyde Terminal.

The Commission notes the issue of the pipeline and Gore Bay Terminal was raised in public submissions and the Department's Assessment Report considered the issue on pages 39 and 40. Although Viva's operation involves three elements, the Gore Bay Terminal, the Clyde Terminal and the pipeline, the Department concluded that the Clyde Terminal application could be considered on its merit in accordance with the EP&A Act. According to the Assessment Report the Proponent intended to lodge two separate SSD applications for the Gore Bay Terminal and the Clyde Terminal concurrently. However, the Proponent decided to proceed with the Clyde Terminal application due to the delay of the Gore Bay Terminal application, which requires further refinement to its technical assessment to support the application.

As to the pipeline, the Assessment Report confirmed that it is regulated separately by WorkCover under the *Work Health and Safety Regulation 2011*. The regulation does not require development consent for any change to the types of material to be transferred through the pipeline. The Assessment Report concluded that:

Since no physical development is proposed to the pipeline and changes to the type of petroleum transported through the pipeline do not require development consent, Shell has not included it within the scope of the SSD application. As such, the Department does not consider it necessary to consult with Councils and landowners along the length of the pipeline as it does not form part of the application.

The Department concludes that the pipeline is appropriately regulated and does not require consideration under the SSD process.

The Commission notes that in the Response to Submissions (page 24), the Proponent states that “the pipeline is not included in the SSD application for Clyde or Gore Bay because its use and function remain unchanged and there are no infrastructure changes planned to the pipeline that require a development application”. The Proponent provided the Commission with a letter from WorkCover to the Hunter’s Hill Council dated 10 April 2014, which states that WorkCover are the regulatory authority for the pipeline, and that:

WorkCover has been in regular contact with Shell Australia regarding Gore Bay and Clyde during the assessment of the safety cases for the facilities in consideration of licensing them as Major Hazard Facilities under Part 9.7 of the Regulation.

During this process, Shell Australia has kept WorkCover notified of any changes in relation to the transfer of hazardous chemicals through the pipeline connecting the Gore Bay and Clyde facilities.

The Commission is satisfied that the connecting pipeline is adequately regulated. Given no physical development is proposed to the pipeline; the Commission accepts that the pipeline is outside the scope of this SSD application.

Following the public meeting, the Proponent, by letter dated 28 November 2014, responded to the presentations made at the meeting in relation to the need to consider the Gore Bay Terminal and the connecting pipeline as part of the Clyde Terminal application (**Appendix 3**).

The Proponent pointed out that the Clyde Terminal application proposes the following works:

1. The demolition of the redundant refinery processing equipment and storage tanks;
2. Construction works to upgrade storage, electrical, fire-fighting, wastewater, lighting and safety systems; and
3. On-going operation as a finished petroleum products terminal.

The approval of these works will have no consequence to the increase in throughput or environmental or hazard impacts at the Gore Bay Terminal. It further advised that:

...even if the PAC were to decline approval for the Clyde Project, our existing facilities at Clyde would be sufficient to meet and exceed forecast market demand over the next fifteen years, albeit in a considerably less efficient manner than if the Clyde Project were approved. (Further, if the PAC were to decline approval for the Clyde Project, we would be unable to implement our sought after safety, environmental and visual improvements.)

The Proponent also advised that the approval of the Clyde Terminal Project:

1. Will have no impact on the types of petroleum products stored or any associated environmental impacts at the Gore Bay Terminal;
2. Will not change the nature and current use of the pipeline;
3. Will not change the current status quo that no crude is received at the Gore Bay Terminal;
4. Will have no impacts on the current manner of handling or storing any petroleum product at the Gore Bay Terminal;
5. Will have no impacts on the number of ship movements in Gore Bay;
6. Will not change whether gasoline is received at Gore Bay or not, though the Proponent has publicly committed that gasoline will not be stored at the Gore Bay Terminal; and
7. Will not have any impact on air quality at the Gore Bay Terminal.

Following the public meeting, Ms Karen Coleman provided additional written comments to the Commission. Ms Coleman contended that section 79C(1)(b) requires the assessment of likely impacts of a development on both the natural and built environments and its social and economic

impacts in the locality. The likely impacts of the Clyde Terminal project include the impacts of the proposed development on the Gore Bay Terminal and its surrounds because it will change the operations and the proposed redevelopment/modification of the Gore Bay Terminal. The Department's assessment of the Clyde Terminal project fails to meet the requirements of s79C(1)(b) because impacts on the Gore Bay Terminal and its surrounds have not been assessed.

The Commission sought further advice from the Department. By letter dated 8 January 2015, the Department advised that its assessment concluded that the Clyde Terminal Conversion Project will have no environmental or social impacts at the Gore Bay Terminal. The proposed modification of the operations at the Gore Bay Terminal will proceed, if approved, in substantially the same form irrespective of whether or not the Clyde Terminal conversion Project proceeds. The two projects are separate and not contingent upon one another. They will not have any likely construction/operation impacts on each other. **(Appendix 4)**

The Commission has carefully considered the submissions and views expressed at the public meeting and relevant documents submitted. It agrees with the Department's conclusion that there is no reason why this application should not be considered on its merits in accordance with the EP&A Act as the approval of this application will not change the nature or current use of the Gore Bay Terminal or the pipeline. It is also noted that the proposed upgrade of the storage facility does not include any increase in storage capacity of the finished petroleum products. The storage capacity will remain at the current level of 264ML.

The Commission also wishes to make it clear that the approval of this Clyde Terminal Project does not mean it endorses any future proposal at the Gore Bay Terminal, which should be subject to its own merit assessment.

6.3. Other Issues

The Commission considers that the Department's Assessment Report has adequately addressed all other issues raised in council, agencies and public submissions. The Commission notes the extensive recommended conditions that were provided by the Department, to formalise the single consent, and the Commission considers that these adequately address any residual issues identified in the Department's Assessment Report.

The Commission notes that the Commonwealth Department of Environment has issued a Controlled Action (EPBC 2013/6878 on the 17 April 2014) under the *Environmental Protection & Biodiversity Conservation Act 1999* for the works, which addresses the concerns raised regarding the threatened Green and Golden Bell Frog.

7. COMMISSION'S DETERMINATION

The Commission has carefully considered the application and associated documents, the Department's Assessment Report and submissions, the discussions held with the Department and the Proponent, the presentations made at the public meeting and written comments provided following the meeting, the Proponent's response to the public meeting, and advice from the Department.

The Commission notes that since 1949, about 215 development consents have been issued by either Parramatta City Council or the Minister for Planning. The approval of this application (Clyde Terminal Project) will consolidate all previous consents into a single consent covering the demolition, construction and on-going operations of the Terminal. The Commission supports the consolidation

as this will provide a simple and modern approval that is easier for the relevant authority to monitor compliance.

The Commission also agrees with the Department's conclusion that:

the proposed development would improve the environmental performance of the site and appropriately manage risks associated with the storage of finished petroleum products in line with current best practice.

...

In addition, the proposal would make a large parcel of residual land available on the Camellia Peninsula for future economic use and employment purposes, consistent with the strategic planning currently being undertaken for the area.

The application is approved as recommended subject to the recommended conditions with minor amendments to the applicant's name in Schedule A and Condition C26 to make it clear that blasting is not permitted on Saturday. The proponent requested to amend Condition C22, so that they can undertake works on Saturday from 8am until 5pm, instead of 1pm. The Commission agrees with the request, and subsequently has amended Condition C22.



David Johnson
Chair of the Commission



Alan Coutts
Member of the Commission

Notes of meeting with the Proponent – 18 November 2014

The purpose of the meeting is to have a briefing about what the project is, and what is included and excluded from the project, and to have a site inspection.

A summary of the key topics discussed are provided below.

Project Overview

- Viva Energy Australia now owns all Shell Australia's downstream business
- Previous operations; current operations; and proposed operations of the Terminal – the proposed operations will lead to a reduction in the footprint on site
- The current application, if approved, will reduce the number of approvals that cover the works on the site to a single modern development approval – this will make it easier for the site manager to know what the conditions of consent are and what are the reporting requirements
- Excluded from the Project:
 - All areas leased to other companies, including the Parramatta terminal, which is a joint venture with BP.
 - The Gore Bay Terminal and the connecting Pipeline, as the development at Clyde has no impact of either of these two sites.
 - The connecting pipeline is regulated by WorkCover NSW under the *Work Health and Safety Regulation 2011*, specifically, Part 7.1 Division 9 Pipelines, clauses 389-391.

Environmental Assessment Overview

- Hazard and risk – hazard will be reduced with the conversion, and the risk associated with the terminal is less than that associated with refining operations
- Biodiversity – the Green and Golden Bell Frog – the wetland will be upgraded as required under the EPBC Controlled Action – and water logged areas within the tank farm bunds will be checked for the frogs before regrading – frogs found will be relocated to the wetland – other species will also be checked before demolition (Grey-headed Flying Fox and other microbat species)
- Contamination – the demolition works will be to ground level only, so minimal chance of exposing contaminated material – site contamination/remediation works will be undertaken for the surplus land in the future, though already discussing this with the relevant regulators
- Flooding – should be no impact on flooding, as removing infrastructure – information on the location and height of the infrastructure will be provided to Parramatta City Council, to allow Council to update its catchment modelling
- Noise – minor breaches of the INP, only during the blasting of the 5 stacks, otherwise the works will be well under the INP limits, the draft recommended conditions reflect the modelled noise levels (will be lower than the INP limits)
- Air – worst-case predicted emissions are below criteria both on-site and off-site, draft recommended conditions require an Operational Air Quality Monitoring Program

Recommended conditions

- The Proponent is generally satisfied with the recommended conditions, the number of conditions is large, though this is a reflection of the consolidated nature of having a single modern development consent
- The recommended conditions are very detailed on the pre-start requirements of the demolition

Documents tabled at meeting/to be provided: A hard version of the presentation and a letter from WorkCover NSW to the Hunter's Hill Council regarding regulators of the pipeline between the Gore Bay facility and the Clyde terminal.

Notes of meeting with the Department of Planning and Environment – 21 November 2014

The purpose of the meeting is discuss the key elements of the project and clarify the issues raised at the Public Meeting

A summary of the key issues discussed are provided below.

Hazards and risks

The PAC so clarification on the risks and hazards of piping crude oil as compared with finished petroleum products – while this is not part of the project being assessed it was raised by a number of speakers at the Public Meeting.

Approvals and assessing independently

The need to concurrently assess the Gore Bay Terminal and the connecting pipeline with the subject application (Clyde Terminal Project).

- Historically the Clyde Refinery, Gore Bay Terminal and the pipeline had separate approvals, and are stand-alone operations.
- The pipeline is regulated by WorkCover, and given no change to the nature and use of the pipeline, no development consent is required.

Given that they are separate operations, covered by separate approvals, and the Clyde Terminal Project will not result in any change or impact on the Gore Bay Terminal or the connecting pipeline, the Clyde Terminal Project can be determined on its merit.

Documents tabled at meeting/to be provided: NIL

Notes of meeting with the Department of Planning and Environment –12 January 2015

It was a brief meeting for the Department to provide a hard copy of its letter to the Commission dated 8 January 2015. The Department advised that it had considered Ms Coleman's contention carefully. The Department's assessment concluded that the proposed Clyde Terminal project will have no environmental or social impacts on the Gore Bay Terminal as they are two separate projects and not contingent on each other.

Documents tabled at meeting: letter from the Executive Director, Infrastructure and Industry Assessments of the Department of Planning and Environment to the Planning Assessment Commission dated 8 January 2015.

Planning Assessment Commission Meeting

Shell Clyde Conversion, SSD-5147, Camellia Peninsula

Date & Time: Thursday 20 November 2014, 4pm

Place: Mercure Sydney Parramatta, 106 Hassall Street, Rosehill

List of Speakers

1. Phil Bradley, Parramatta Greens
2. Elizabeth Boesel
3. Meredith Southwood
4. Karen Coleman
5. Dr Liz Gill
6. Ian Meller
7. Arthur Chesterfield Evans (on behalf of Alice Beauchamp)
8. Elizabeth Boesel, Parramatta Climate Action Network
9. John Southwood
10. Meredith Southwood, Greenwich Community Association
11. Arthur Chesterfield Evans
12. Michael Rynn
13. Penny Mabbutt, Friends of Gore Bay
14. Garry Draffin

Summary of issues presented at the public meeting

Planning Process

- The SSD application for Clyde Terminal should be deferred until such time as the SSD application for Gore Bay Terminal is submitted, so that the assessment of both facilities can occur at the same time.
- Determination of the SSD application for the Clyde Terminal pre-empts the process for the Gore Bay Terminal and connecting pipeline.
- Assessment of the Clyde Terminal is limited in scope – it does not take into consideration the impacts to Gore Bay Terminal and the connecting pipeline.
- Variation in the Clyde Terminal EPL, though no variation to the Gore Bay Terminal EPL.

Hazards and Risks

- The different petroleum products have different flash points compared to crude oil – questioned when the risk assessment was conducted for the pipeline.
- Learnings from the Buncefield incident in 2005 – the buffer zones are inadequate.
- The future of the ‘spare’ land at Clyde Terminal – the site has asbestos.
- Environmental risks if the pipeline were to burst and have a spill of finished petroleum product.
- Storage of product at Gore Bay – capacity at Clyde is being reduced; therefore more products will be stored at Gore Bay; and there will be an increase in ship movements in Gore Bay.
- Are there evacuation plans for both Clyde Terminal and Gore Bay Terminal – what about the resident surrounding the Gore Bay Terminal.
- Fuel security into the future.

Environmental Impacts

- Impacts to the waterways from any spill of finished petroleum product.
- Threatened species that live in the wetland on the Clyde Terminal site, what protection will this be given – noted that the Green and Golden Bell Frog habitat (the wetland) is being upgraded as part of the development, but what about other threatened species
- Flooding issues on site, asbestos and contaminated water flowing into the waterways.
- Air quality, odour and noise issues surrounding the Gore Bay Terminal.

Proponent's letter of Response to the Public Meeting – 28 November 2014

28 November 2014

BY EMAIL

David Johnson
Chair
NSW Planning Assessment Commission
pac@pac.nsw.gov.au

Dear Mr Johnson

D330/14 - Shell Clyde Terminal Conversion SSD 5147

1. The purpose of this letter is to respond to the submissions made at the public meeting held by the NSW Planning Assessment Commission (PAC) on 20 November 2014 regarding the Clyde Terminal Conversion Project (the **Clyde Project**) by Ms Karen Coleman and others.
2. In this letter itself we respond to the contention by Ms Coleman and others that the Clyde Project will have likely impacts for the Gore Bay Terminal which have not been assessed, by further clarifying statements in the EIS for the Clyde Project. **Appendix 1** to this letter is an Ashurst memorandum which responds to the legal argument made by Ms Coleman.
3. In summary, it is Viva Energy's position that the Clyde Project will have no likely impacts for the Gore Bay Terminal or the pipeline which connects the Clyde and Gore Bay Terminals.

Impacts on the Gore Bay Terminal suggested by the community

4. The table below sets out impacts on the Gore Bay Terminal that members of the community have suggested may flow from the Clyde Project.

Suggested impact		Reference
1	The approval of the Clyde Project would have the likely impact that throughput at the Gore Bay Terminal would increase, with consequential environmental impacts at the Gore Bay Terminal.	Response to Submissions, paragraph 4.2
2	The approval of the Clyde Project would have the likely impact that jet fuel will be stored at the Gore Bay Terminal.	Ms Coleman's written submissions presented at the PAC public meeting, paragraph 6.7
3	The Clyde Project has implications for the pipeline connecting the Clyde and Gore Bay Terminals which should be assessed as part of the Clyde Project.	Response to Submissions, paragraphs 2.5, 3.2, 4.3, 4.4, 4.8
4	Approval of the Clyde Project has the consequence that only finished petroleum products, rather than crude oil, will be received at the Clyde Terminal. This	Ms Coleman's written submissions presented at the PAC public meeting, paragraph 9.7

Suggested impact		Reference
	has implications for the Gore Bay Terminal, because products destined for the Clyde Terminal first pass through the Gore Bay Terminal.	
5	The Clyde Project will result in decreased storage for petroleum products at Clyde and increased storage of petroleum products at the Gore Bay Terminal.	Ms Coleman's written submissions presented at the PAC public meeting, paragraph 9.7 and Ian Meller's submission at the PAC public meeting
6	The Clyde Project will result in risks at the Gore Bay Terminal arising from the handling and storage of gasoline, diesel, and jet fuel.	Ian Meller's submission at the PAC public meeting
7	The Clyde Project will result in an increase in ship movements in Sydney Harbour and Gore Bay.	Liz Gill's submission at the PAC public meeting
8	The Clyde Project will result in gasoline being handled at the Gore Bay Terminal rather than crude oil and hence the Gore Bay Terminal will become a higher risk site.	Arthur Chesterfield Evans' submission at the PAC public meeting
9	The Clyde Project will result in air quality impacts at the Gore Bay Terminal which have not been assessed	Penny Mabbutt's submission at the PAC public meeting

Suggested impact 1: Increased throughput at the Gore Bay Terminal

5. We wish to be very clear. No aspect of the development which constitutes the Clyde Project will have the consequence that throughput of finished petroleum products at the Gore Bay Terminal will increase.
6. The development which constitutes the Clyde Project consists of:
 - (a) the demolition of the redundant refinery processing equipment and storage tanks;
 - (b) construction works to upgrade storage, electrical, fire-fighting, wastewater, lighting, and safety systems; and
 - (c) on-going operation as a finished petroleum products terminal.
7. None of these activities, if approved by the PAC, will have the consequence that throughput at the Gore Bay Terminal (or at the Clyde Terminal for that matter) will increase. That is because the throughput of the Gore Bay Terminal is a product of market demand. If the NSW market's demand for our finished petroleum products increases (as it is forecast to do over the medium term), so too will throughput at the Gore Bay Terminal. If the forecasts are wrong and market demand for our products declines, so too will throughput at the Gore Bay Terminal.

8. It has been suggested that the upgrades to terminal infrastructure as part of the Clyde Project will enable us to handle the forecasted increase in demand for our products over the next fifteen years and that this will enable throughput at the Gore Bay Terminal to increase. We acknowledge that section 5.2.1 of the EIS for the Clyde Project may have contributed to confusion in this regard, and we wish to correct this. The accurate position is this – **whether or not the PAC approves the Clyde Project, we will have capacity at Clyde above and beyond what is necessary to meet anticipated growth in demand for our finished petroleum products over the next fifteen years.** That is, even if the PAC were to decline approval for the Clyde Project, our existing facilities at Clyde would be sufficient to meet and exceed forecast market demand over the next fifteen years, albeit in a considerably less efficient manner than if the Clyde Project were approved. (Further, if the PAC were to decline approval for the Clyde Project, we would be unable to implement our sought after safety, environmental and visual improvements.)
9. It is therefore reasonable for the PAC to conclude that no change in the throughput at Gore Bay Terminal, or any associated environmental or hazard impacts, will occur as a result of the Clyde Project.
10. As it may be said that the above statement – that the Clyde Terminal has the capacity to meet and exceed forecast market demand for the next fifteen years whether or not the Clyde Project is approved by the PAC – is inconsistent with section 5.2.5 of the EIS for the Clyde Project, we will explain why that is not the case here.
11. Section 5.2.5 of the EIS provides [italicisation added]:

5.2.5 Do Nothing Approach

The Clyde Terminal is a critical piece of infrastructure providing an advantageous storage and distribution location for fuel supply to and beyond the growing urban area west of the Sydney metropolitan area and into regional NSW. In the event that Shell did not propose to convert the Clyde Terminal and modify the Gore Bay Terminal, Shell's operations would be confined to its existing storage, resulting in an inefficient supply chain for finished petroleum products.

This would be an inefficient arrangement, bearing significant additional costs *and being unable to support the anticipated NSW finished petroleum product market growth*. On many occasions the Clyde Terminal and associated distribution systems would be susceptible to shipping delays, potentially leaving the current market short of fuel and being unable to support growth within NSW. The Australian Institute of Petroleum predicts that growth in demand for fuel will continue in Australia – predominately for Diesel and Jet fuel – and that this would be largely met by imports in the future, further strengthening the price relationship with Asian fuel prices. It is therefore imperative for Shell to act now in order to remain competitive in the Australian fuel market (refer to Section 4.2) and to ensure sufficient capacity is available in the supply chain to meet current and future fuel demand.

The do nothing approach also ignores the economic realities of Shell maintaining an efficient and viable long term storage and distribution centre in the west of Sydney from which to supply the Sydney metropolitan area and into NSW. The current supply chain is inefficient and costly and cannot adequately support the NSW economic growth forecasts. Continuing these operations unchanged is not a viable financial option. As Shell supplies around 40 percent of Sydney's and NSW total fuel needs, and a significant proportion to the NSW market generally, jeopardising the future of these facilities can be expected to threaten the security of the local fuel market and limit growth of Sydney Airport.
12. To clarify the intention of section 5.2.5, the statement that Viva Energy would be "unable to support the anticipated NSW finished petroleum product market growth" is not a reference to a scenario where Viva Energy does nothing only at the Clyde Terminal. Rather, as is made clear in the final sentence of the first paragraph of section 5.2.5, that statement relates to a scenario where Viva Energy "did not propose to convert the Clyde Terminal and modify the Gore Bay Terminal [emphasis added]".

13. In the quite different scenario where Viva Energy "does nothing" to upgrade facilities only in respect of the Clyde Terminal, as is made clear in elsewhere section 5.2.5, the consequences for the Clyde Terminal would be that operations are carried out less efficiently, with considerable and unnecessary costs being incurred. It is the avoidance of this inefficiency which Clyde Project proposes. As section 5.3 of the EIS, which immediately follows section 5.2.5, puts it: "The Project would enhance the viability of infrastructure required to facilitate the efficient import of finished petroleum products".

Suggested impact 2: Storage of jet fuel at the Gore Bay Terminal

14. We wish to clarify to the PAC that the storage of jet fuel at the Gore Bay Terminal is not an element of the Clyde Project. We acknowledge that section 19.1 of the EIS for the Clyde Project may have contributed to the confusion in this regard. That section relevantly states:

To increase the efficiencies of Shell's Gore Bay Terminal and to hasten ship discharges – limiting impacts that ships have on the local Gore Bay community - some intermediate storage of Jet fuel and Diesel would be required at the Gore Bay Terminal prior to its transfer to the Clyde Terminal

15. This passage was intended only to provide context. It describes a change in operations which Viva Energy is considering at the Gore Bay Terminal, rather than an element of the Clyde Project. We acknowledge that this could have been made clearer in the EIS.
16. We wish to state clearly here we do not consider a change in the types of petroleum products stored at the Gore Bay Terminal to be an element of the Clyde Project. Should the PAC approve the Clyde Project that approval would have no impact the types of petroleum products stored at the Gore Bay Terminal. Decisions around the types of petroleum products stored at the Gore Bay Terminal are relevant to questions of efficiency for Viva Energy's operations, rather than the PAC's determination of the Clyde Project.
17. For instance, the temporary storage of jet fuel in two of the existing tanks at the Gore Bay Terminal may speed up ship discharges. This temporary storage of jet fuel at the Gore Bay Terminal is not contingent on the Clyde Terminal being approved. Such temporary storage could occur today, subject to any need for development consent to enable any necessary equipment modifications at the Gore Bay Terminal to facilitate such temporary storage.
18. It is therefore reasonable for the PAC to conclude that no change in the types of petroleum products stored at the Gore Bay Terminal, or any associated environmental impacts, will occur as a result of the Clyde Project.
19. Although it is not relevant to the determination of the development application for the Clyde Project, it should be noted that it is Viva Energy's intention to operate the Gore Bay Terminal in an efficient manner which minimises the environmental impacts on the locality and the temporary storage of jet fuel at the Terminal may assist this by reducing the noise and any ship-sourced emissions associated with ship discharges.

Suggested impact 3: The Clyde Project has implications for the pipeline

20. We rely on what we have said about this issue in our Response to Submissions, and will not repeat it at length here. Suffice it say that whether or not the Clyde Project is approved by the PAC, the nature of the use to which the pipeline is put will not change. That is, whether the PAC grants or refuses development consent for the Clyde Project, the pipeline will still be used to transmit petroleum products (and not crude oil) between the Gore Bay and Clyde Terminals.
21. As a side note, although it is not relevant to the determination of the development application for the Clyde Project, we reiterate that the cessation of the transmission of crude oil through the pipeline in 2012 has resulted in a reduction in the hazards associated with the pipeline.

Suggested impact 4: The Clyde Project means that only finished petroleum products, rather than crude oil, will be received at the Gore Bay Terminal

22. The cessation of receiving crude oil at the Gore Bay Terminal is not an impact of the development constituting the Clyde Project. Under the status quo, no crude is received at the Gore Bay Terminal. Whether or not the PAC approves the Clyde Project, that situation will continue.

Suggested impact 5: Decreased storage for petroleum products at Clyde and increased storage of petroleum products at the Gore Bay Terminal

23. As noted at paragraph 8 above, we will have capacity at Clyde above and beyond what is necessary to meet anticipated growth in demand for our finished petroleum products over the next fifteen years, whether or not the PAC approves the Clyde Project.
24. An increase in the volume of petroleum products stored at the Gore Bay Terminal is not an element of the Clyde Project. The PAC's decision in determining the development application for the Clyde Project will not have any impact on the volume of petroleum products stored at the Gore Bay Terminal.

Suggested impact 6: Risks at the Gore Bay Terminal arising from the handling and storage of gasoline, diesel, and jet fuel

25. It is not an element of the Clyde Project that any aspect of the handling or storage of any petroleum product at the Gore Bay Terminal will change. The PAC's decision whether or not to approve the Clyde Project will have no impact on Viva Energy's current manner of handling or storing any petroleum product at the Gore Bay Terminal.
26. Further, we note that gasoline, jet fuel, and diesel are all presently received at the Gore Bay Terminal and have been for many years.

Suggested impact 7: Increased ship movements in Sydney Harbour and Gore Bay

27. Increased ship movements are not an element of the Clyde Project. Should the PAC decide to approve the Clyde Project, that approval would have no impact on the number of ship movements in Gore Bay. Ship movements at the Gore Bay Terminal, similarly to throughput as discussed in paragraphs 5-9 above, are a product of market forces, rather than the PAC's determination of the Clyde Project.

Suggested impact 8: Handling of gasoline at the Gore Bay Terminal, which is more hazardous than handling crude oil

28. Gasoline is presently received at Gore Bay and has been for many years. That will not change depending on whether or not the PAC approves the Clyde Project.
29. Further, and though it is not relevant to the determination of the development application for the Clyde Project, we note that, as part of ongoing consultation and responsiveness to community concerns in respect of the separate SSD5148 project for the Gore Bay Terminal, Viva Energy has publically committed that gasoline will not be stored at that Terminal.

Suggested impact 9: Unassessed air quality impacts for the Gore Bay Terminal

30. The PAC's decision whether or not to approve the Clyde Project will not affect air quality at the Gore Bay Terminal in any way. The two matters are unrelated. For that reason, no assessment of air quality at the Gore Bay Terminal is necessary for the purposes of the assessment of the development application for the Clyde Project.

We trust that this letter will be helpful to the PAC in resolving matters arising from the submissions of Ms Coleman and others at the public meeting.



Julie Seymour
Clyde Terminal Conversion Project Manager

Department of Planning and Environment letter to the PAC – 8 January 2015

Mr David Johnson
Planning Assessment Commission
GPO Box 3415
SYDNEY NSW 2001

15/01281

Dear Mr Johnson

Shell Clyde Terminal Conversion (SSD 5147)

The purpose of this letter is to respond to the issue raised in a submission made at the public meeting of the Planning Assessment Commission (PAC) held on 20 November 2014 by Ms Karen Coleman, in relation to the application before the PAC with respect to the Clyde Terminal Conversion Project.

This letter is submitted to the PAC with the intention that it be considered by the PAC *in addition to* the letter submitted by Ms Seymour of Viva Energy Australia Ltd (**Viva**) dated 28 November 2014, which also responds to the issue raised by Ms Coleman.

Summary of Ms Coleman's contention

The Department considers that the essence of Ms Coleman's contention is as follows:

- in assessing the State significant development (SSD) application for the Clyde Terminal Conversion Project the PAC, as delegate of the Minister, is required to consider "the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality" of the proposal under section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*;
- the "likely impacts" of the Clyde Terminal Conversion Project include the impacts of the proposed development at the Gore Bay Terminal and its surrounds because a likely result of the Clyde Terminal Conversion Project proceeding will be: (i) changes in the operations carried out at the Gore Bay Terminal; and (ii) redevelopment or modification of the Gore Bay Terminal, which is being progressed through a separate SSD application; and
- the Department (and consequently the PAC) has failed to assess all of the "likely impacts" of the Clyde Terminal Conversion Project, as required by section 79C(1)(b) of the EP&A Act, because the impacts on the Gore Bay Terminal and its surrounds have not been assessed and are instead proposed to be assessed under the separate SSD application.

The Department notes that Ms Coleman refers to the Court of Appeal decision in *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349 (**Hoxton Park**) in support of her contention.

The Department's response

The Department has made enquiries of Viva in connection with Ms Coleman's contentions. A copy of the relevant email correspondence is **attached**.

Based on that email correspondence and the response in Viva's letter, the Department is of the view that the following factual findings are open to the PAC on the material that has been provided to it and should be made by it:

1. the approval and execution of the Clyde Terminal Conversion Project will have no environmental or social impacts at Viva's Gore Bay Terminal. Viva will continue to operate the Gore Bay Terminal and meet market demand in the same manner as it does today regardless of whether or not the Clyde Terminal Conversion Project is approved (and carried out) or refused; and
2. Viva's present intention is that the proposed modification of the operations at Viva's Gore Bay Terminal will proceed in substantially the same form irrespective of whether or not the Clyde Terminal Conversion Project proceeds – the proposed modification of operations at the Gore Bay Terminal is not contingent on the Clyde Terminal Conversion Project proceeding.

If the above factual findings are made, then the Department considers that the PAC should not accept Ms Coleman's contention for the following reasons.

The Clyde Terminal Conversion Project will not have any "likely impacts" within the meaning of section 79C of the EP&A Act at the Gore Bay Terminal. To consider that proposition, it is useful to distinguish operational impacts from construction impacts.

As to operational impacts, if the SSD application for the Clyde Terminal is approved, and the Clyde Terminal Conversion Project proceeds, the Gore Bay Terminal will continue to be operated in the same manner as it does today.

As to construction impacts, Viva has stated in para 4.2 of its Response to Submissions that the Clyde Terminal Conversion Project and the proposed modifications at the Gore Bay Terminal are not "contingent" upon one another. That position is confirmed by the recent email correspondence. Accordingly, at this stage, the Gore Bay Terminal modifications will proceed irrespective of whether the Clyde Terminal Conversion Project is approved and proceeds. Any construction impacts at the Gore Bay Terminal in connection with the modification of the Gore Bay Terminal will be experienced whether or not the Clyde Terminal Conversion Project proceeds.

The present situation is sharply distinguished from the position in *Hoxton Park*, where the Court found that the bridge would only be built *if* the proposed school development was approved and proceeded, and that *if* the proposed school development was approved and proceeded the bridge was certain to be built because it provided a "missing link" in the school development, was "inextricably bound up" in it and it was a

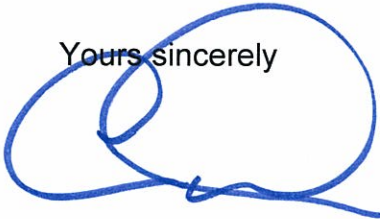
condition of consent that the connecting road be completed prior to occupation of stage one of the school development: *Hoxton Park* at [37]-[42].

The Department's position is that the PAC has and should consider the material before it with respect to likely impacts at the Gore Bay Terminal rather than treat such impacts as matters to be separately assessed. The PAC has ample basis to find that the Clyde Terminal Conversion Project will not have any "likely impacts" at the Gore Bay Terminal.

Accordingly, Ms Coleman's contentions do not provide a reason to refuse approval of the application or to require further assessment with respect to the Gore Bay Terminal.

Should you have any further enquiries, please contact Chris Ritchie, Manager – Industry Assessments at the Department on (02) 9228 6413.

Yours sincerely



8.1.15

Chris Wilson
Executive Director
Infrastructure and Industry Assessments

Deana Burn

From: Julie M Seymour <Julie.Seymour@vivaenergy.com.au>
Sent: Tuesday, 6 January 2015 5:25 PM
To: Deana Burn
Cc: Christopher Ritchie
Subject: RE: Shell

Hi Deana,

In response to your question below: Viva Energy will continue to operate the Gore Bay Terminal and meet market demand in the same manner as it does today regardless of whether or not the Clyde Project is approved or refused.

Regards,
Julie

From: Deana Burn [mailto:Deana.Burn@planning.nsw.gov.au]
Sent: Tuesday, 6 January 2015 3:07 PM
To: Seymour, Julie M
Cc: Christopher Ritchie
Subject: Re: Shell

Hi Julie

Following our discussion this morning, can you please clarify whether Viva Energy will continue to operate the Gore Bay Terminal in the same manner as it does today regardless of whether or not the Clyde Project is approved or refused?

Thank you
Deana.

From: Julie M Seymour [mailto:Julie.Seymour@vivaenergy.com.au]
Sent: Wednesday, 17 December 2014 6:46 PM
To: Christopher Ritchie
Subject: Re: Shell

Chris,

Yes that is our current intention.

Regards,
Julie

On 17 Dec 2014, at 3:33 pm, Christopher Ritchie <Chris.Ritchie@planning.nsw.gov.au> wrote:

Julie

Thank you for your response.

Can Shell confirm that it is Viva's present intention for the Gore Bay modifications to proceed whether or not the Clyde project proceeds?

Kind regards,
Chris

From: Julie M Seymour [<mailto:Julie.Seymour@vivaenergy.com.au>]
Sent: Tuesday, 16 December 2014 9:09 AM
To: Christopher Ritchie
Subject: RE: Shell

Dear Chris,

Please find below our responses to the questions asked in your email yesterday:

- (1) If the Clyde Project is approved and proceeds, what will be the environmental and social impacts of the operation of the Clyde terminal at Viva's Gore Bay terminal?
- (2) If the Clyde Project is refused, what will be the environmental and social impacts of the continued operation of the Clyde terminal at Viva's Gore Bay terminal?

Response to (1) and (2):

The approval and execution of the works at Clyde will have no environmental or social impacts at Viva Energy's Gore Bay terminal. Viva Energy will continue to operate the Clyde Terminal and meet market demand in the same manner as it does today regardless of whether or not the Clyde Project is approved or refused.

- (3) Will the proposed modification of the operations at Viva's Gore Bay terminal proceed in substantially the same form irrespective of whether the Clyde Project proceeds or not?

Response to (3):

The proposed modification of the operations at Viva Energy's Gore Bay Terminal are the subject of a separate proposed development consent application. Those proposed modifications can proceed in substantially the same form irrespective of whether or not the Clyde Project proceeds. A Viva Energy decision to not proceed with an application for modifications (in substantially the same form as currently proposed) at Gore Bay Terminal can also be made independently of Department of Planning consent or refusal of the Clyde development application.

- (4) At this stage, what does Viva understand to be the potential environmental and social impacts of the proposed modification of the operations at Viva's Gore Bay terminal?

Response to (4):

The proposed modification of the operations at Viva Energy's Gore Bay Terminal are the subject of a separate proposed development consent application. Viva Energy does not consider the potential impacts of those proposed modifications to be relevant to the determination of the Clyde Project development application.

Regards,
Julie

<image003.jpg>

Julie Seymour / Clyde Terminal Conversion Project Manager
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E julie.seymour@vivaenergy.com.au

Viva Energy Australia Ltd (ABN 46 004 610 459)
GPO Box 872, Melbourne VIC 3001, Australia

From: Christopher Ritchie [<mailto:Chris.Ritchie@planning.nsw.gov.au>]
Sent: Monday, 15 December 2014 9:03 AM
To: Seymour, Julie M
Cc: Deana Burn
Subject: Shell

Dear Julie,

We refer to the submission made by Ms Karen Coleman to the Planning Assessment Commission in relation to the Clyde Terminal Conversion Project (SSD 5147) (the **Clyde Project**) and to Viva Energy Australia Ltd's (**Viva**) response to that submission. To enable us to better understand the matters raised by Ms Coleman, we would be grateful if you could provide further information in relation to the following:

- (1) If the Clyde Project is approved and proceeds, what will be the environmental and social impacts of the operation of the Clyde terminal at Viva's Gore Bay terminal?
- (2) If the Clyde Project is refused, what will be the environmental and social impacts of the continued operation of the Clyde terminal at Viva's Gore Bay terminal?
- (3) Will the proposed modification of the operations at Viva's Gore Bay terminal proceed in substantially the same form irrespective of whether the Clyde Project proceeds or not?
- (4) At this stage, what does Viva understand to be the potential environmental and social impacts of the proposed modification of the operations at Viva's Gore Bay terminal?

Please do not hesitate to contact me if you would like to discuss.

Kind regards,
Chris

Chris Ritchie
Manager
Industry Assessments

Department of Planning & Environment
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chris.ritchie@planning.nsw.gov.au

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