

18 April 2019

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Dear Patrick

Viva Energy Clyde Conversion Project: SSD 5147 Modification 1 - Response to Submissions

Thank you sending through submissions on Viva Energy Pty Ltd's (Viva Energy) proposed modifications to the Clyde Conversion Project (SSD 5147 MOD1). Submissions were received from the following organisations:

- Office of Environment and Heritage (OEH) – Heritage Division - submission dated 24 January 2019
- City of Parramatta Council - submission dated 01 February 2019
- NSW Environment Protection Authority (EPA) - submission dated 05 February 2019
- Greater Sydney Branch (Communities and Greater Sydney Division) in the OEH - submission dated 11 February 2019
- Department of Industry – Office of Water – submission dated 14 February 2019
- Department of Industry - Lands & Water and Department of Primary Industries submission dated 14 February 2019
- Safework NSW - submission dated 15 February 2019

Apart from the City of Parramatta submission all of the other submissions either had no comment or confirmed that the works were in line with previously agreed controls. As such this letter has only responded to the comments made by City of Parramatta Council (the Council).

The Council's response made comments under four headings. These comments are summarised below. Responses to each comment summary have been provided.

Comment 1 – Tree Removal

The Council noted that the modification application stated that there is a need for tree removal but provided no details on the extent of tree removal or nature of the trees to be removed. It was the view of the Council that *"approval should not be granted without details of the tree removal as a proper assessment of their removal cannot be appropriately undertaken."* CPC stated that *"an Arboricultural Impact Assessment (AIA) and Tree Protection Plan (TPP) prepared by an AQF Level 5 arborist must be provided for assessment."* The comment went on to outline the information that should be provided with the AIA and TPP.

Comment 1 – Response

There is no formal requirement to produce an AIA or TPP for this modification application. The requirement to complete an AIA and TPP is not requested within the *Parramatta Local Environment Plan 2011* (LEP). 'Tree permits' and the need for a supporting 'arboriculture report' are outlined in the *Parramatta Development Control Plan 2011* (DCP); however as noted in Clause 11 of the *State Environmental Planning Policy (State and Regional Development) 2011*, the requirements of DCPs do not apply to state significant developments. Council permits for clearing of vegetation in non-rural areas are also required under Part 3 of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*; however a permit is only required for the clearance of vegetation declared in the relevant DCP. As noted, the provisions of the DCP do not apply to SSD. As such Viva Energy does not agree that an AIA and TPP must be provided.

Nevertheless Viva Energy has reviewed the works required at the State Office Building and can confirm that up to 31 trees are likely to be removed to allow the structure's demolition to take place. The removal of these trees is required to allow safe access to the State Office Building for its proposed demolition. Please note that the demolition of this building is only down to grade and does not involve excavation.

The trees that require removal are listed in Table 1. These trees are located to the east and north of the State Office Building (refer to Figure 1 below). These trees were inspected by a suitably qualified and experienced ecologist to confirm their species and other key characteristics.

Table 1: Trees requiring removal

Species	Number of individuals	Diameter at breast height (cm)
<i>Eucalyptus piperata</i>	7	40, 35, 35, 40, 50, 45, 40
<i>Eucalyptus sideroxylon</i>	5	75, 20, 100, 40, 70
<i>Corymbia citriodora</i>	1	50
<i>Corymbia maculata</i>	5	55, 75, 45, 60, 75
<i>Melaleuca quinquenervia</i>	11	5, 8, 15, 4, 2, 30, 45, 40, 45, 30, 20
<i>Callistemon citrinus</i>	2	5, 5
TOTAL	31	

Figure 1 Trees proposed for removal to demolish the State Office Building



The trees proposed for full removal include a range of commonly planted landscaping species. None of these are listed as threatened in NSW and none of the trees were found to contain substantial habitat such as hollows, though it is noted that these individuals would provide casual habitat value for mobile species such as birds. The only fauna observed utilising these trees during the site visits were noisy miner and Australian raven.

No other works (pruning etc.) are proposed to any trees that would be retained. Existing mitigation measures in place for the protection of flora outline measures to protect vegetation that is to be retained through the use of, for example, signage, barrier fencing and tree guards,

The details provided within the modification application regarding the extent of the tree removal are considered sufficient for the purpose of the application. These trees are located over 175 m from the boundary of the Site and are completely contained within Viva Energy's property. The trees have only minor amenity, landscape, heritage or environmental value, having been planted in the late 1980s as part of the landscaping around the now redundant State Office Building.

A review of the questions in the DCP used to assess the amenity value of trees to be removed further justifies this conclusion (refer to Table 2 below).

Table 2: DCP questions

DCP Question	Response
Is the tree prominent in the streetscape?	No. The trees are 175 m from the nearest public street.
Does the tree have heritage significance or contribute to the significance of a place?	No. The trees were planted in the 1980s as part of the landscaping for an office building on private property and over 175 m from the nearest boundary with publically accessible land.
Is the tree a contributory item to a heritage place or conservation area?	No. The Site does not have any relevant heritage listings.
Does the tree represent a typical planting of the era of the associated building or park's construction or creation?	Yes. The tree planting around the State Office Building is typical of the landscaping associated with numerous commercial and other public developments throughout Sydney.
Does the tree contribute to an established streetscape?	No. The trees do not contribute to an established streetscape being over 175 m from the nearest public street.
Does the tree have high aesthetic value?	No. The trees do not have high aesthetic value as there are no public or private visual receptors with any view to these particular trees. The office building they surround is proposed for demolition.
Is the tree indigenous or endemic species?	The trees are native to NSW but only one, <i>Eucalyptus piperata</i> , typically occurs within the Sydney basin. This is an extremely common species and is not threatened.
Is the tree part of a remnant endemic collection of trees or vegetation?	No. The trees are part of a late 1980s landscape plantings associated with the State Office Building.
Does the tree have the potential to provide a habitat for native fauna?	All trees were inspected for habitat features such as hollows. No such features are present, though it is noted that the trees would provide casual habitat value for common urban-adapted species such as noisy miners.
Is the tree part of a threatened ecological community listed under the Threatened Species Conservation Act 1995*? If yes, a Seven Part Test may be required.	No, the trees in this location are not part of a threatened ecological community.

* This reference should be to the *Biodiversity Conservation Act 2016* but the exact text of the DCP has been stated in the table.

The information provided as part of this response is considered appropriate for understanding the value of the trees and potential impacts for the purpose of the modification application.

Comment 2 - Protection of Duck River/Wetlands/Riparian Vegetation

The Council stated that *“The tank, spheres and gantry to be demolished are located in close vicinity to the wetlands/saltmarsh/riparian areas. Appropriate protection of these areas are required to be implemented and there is to be no removal/damage to vegetation. As well as being of ecological value, they are also listed local heritage items.*

Duck River and the wetlands/riparian vegetation are to be protected at all times, with appropriate measures in place to protect from any potential contamination during demolition works including drainage runoff, dust accumulation and the like. It is noted that the existing management plans for the site may already cover these matters.”

Comment 2 - Response

As the Council correctly notes, Viva Energy already have in place a number of environmental management plans for the demolition works to protect against potential impacts to the wetlands, saltmarsh and riparian areas. An overview of the environmental management plans for the demolition works is provided within Section 15.2 of the Modification Report for SSD 5147 MOD1. Copies of the management plans are also provided on the Viva Energy website¹. A number of these plans have been produced in consultation with Council and would continue to be implemented until the Project is complete.

Comment 3 - Potential Presence of Microbats

The Council stated that the EIS for SSD 5147 had *“identified historical anecdotal evidence of microbats nesting within structures on the site.”* The Council goes on to state that the additional structures to be demolished may provide suitable habitat for microbats and that these *“structures should be assessed by a suitably qualified ecologist to check for the presence of microbats prior to commencement of any works. Should any microbats be detected then appropriate relocation measures will need to be implemented prior to the commencement of works.”*

Comment 3 - Response

Chapter 12 of the Modification Report provides an ecological impact assessment for the modification works. As part of this ecological assessment, a field assessment of the additional structures proposed for demolition was undertaken by a qualified and experienced ecologist (refer to Section 12.2 of the MR). This inspection included considering whether the additional structures proposed for demolition were likely to provide roosting habitat for microbats. The results of this assessment are presented in Appendix C of the MR which provides the ‘Species Likelihood of Occurrence’ assessment. The likelihood of occurrence of various microbat species is concluded to be low. As such it is considered that the Project as a whole (i.e. with the modification works) would not have a significant effect on the microbats or any other flora and fauna in the vicinity of the Project Area.

Nevertheless Viva Energy have committed to the following management and mitigation measure:

Prior to demolition works, inspection of exterior casings and insulations on towers (i.e. potential habitat where microbats have historically been observed) is to be undertaken regularly for signs of microbat occurrence. Regular inspections would also be undertaken of buildings scheduled for demolition.

As noted in the final sentence *“Regular inspections would also be undertaken of buildings scheduled for demolition”*. This requires an inspection of the State Office Building for microbats prior to demolition.

Comment 4 - Modification to Conditions

The Council has stated that *“conditions should not be deleted as a result of the condition being met (unless the condition is satisfied through a new plan/documentation which is now incorporated into the modified consent).”* *“The condition should remain on the consent as it was a requirement of the consent. If conditions are deleted then it is as if the condition never existed at all. It is recommended that all of these conditions should remain as they were relevant at the time of the approval.”*

¹ <https://www.vivaenergy.com.au/operations/clyde/conversion-project>

Comment 4 - Response

It is the view of Viva Energy that the conditions of consent for a project should be a live document that is relevant to the work and/or operation taking place at a site at a point in time. Conditions and/or mitigation measures that are no longer relevant or have been completed should be removed or amended.

Over the past number of years the Department of Planning and Environment have gone through a process of updating and streamlining the consents for various operations at a number of sites across NSW. This process has involved reviewing the various development consents and their conditions and then incorporating relevant conditions into the new development consent and surrendering the previous development consents. This process was completed for the Clyde Terminal as part of SSD 5147, resulting in at least 23 previous development consents and many other approvals being surrendered. The redundant conditions were not retained as part of this process. A similar process was completed at Caltex's Kurnell Terminal under SSD 5544, Incitec Pivot Ltd's Kooragang Island Site under SSD 4986 and at Suez's Lucas Heights Resource Recovery Park under SSD 6835. In addition, the retention of redundant conditions and/or mitigation measures on development consents also increases the time taken and effort involved to audit these conditions.

In short there is no practical reason for retaining completed or redundant conditions and/or mitigation measures on an active consent. Where works are complete (e.g. construction, demolition etc.) the relevant conditions should be removed or amended to ensure that development consent for the project is up to date and relevant for the activities taking place on site. As such, Viva Energy request that where conditions or mitigation measures have been completed or are no longer relevant that they are removed from the consent as part of this modification.

Conclusion

The submissions and the responses provided do not require any changes to the proposed modification works.

Given the responses provided, Viva Energy requests that the modification application for SSD 5147 MOD1 is swiftly assessed and favourably determined.

Yours sincerely



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