



Kooragang LPG Storage Facility

*State Significant
Development
(SSD 8448)*



November 2018

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Cover photo

View onto industrial area of Kooragang Island, Newcastle NSW.

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Glossary

Abbreviation	Definition
ACHAR	Aboriginal Cultural Heritage Assessment Report
Applicant	Sovechles Nominees Pty Ltd
AS	Australian Standard
BAR	Biodiversity Assessment Report
BCA	Building Code of Australia
CEMP	Construction Environmental Management Plan
CIV	Capital Investment Value
Coastal Management SEPP	State Environmental Planning Policy (Coastal Management) 2018
Construction	The demolition of buildings or works, carrying out of works, including earthworks, erection of buildings and other infrastructure on the site
Council	Newcastle City Council
DA	Development Application
DCP	Development Control Plan
Demolition	The removal of buildings, sheds and other structures on the site
Department	Department of Planning and Environment
Development	The development as described in the EIS and RTS for the construction and operation of a LPG storage facility
DoI L&W	Department of Industry Crown Lands and Water Division
EIS	Environmental Impact Statement titled 'New LPG Storage Facility, 130 Cormorant Road, Kooragang (Part Lot 1 DP 1195449), Environmental Impact Statement' prepared by RPS Australia East Pty Ltd dated 22 August 2017
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPA	Environment Protection Authority
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
FSS	Fire Safety Study
GNMP	Draft Greater Newcastle Metropolitan Plan 2036
HIPAP	Hazardous Industry Planning Advisory Paper
HNEPH	Hunter New England Population Health
km	Kilometres
LEP	Local Environmental Plan
LGA	Local government area

LHRS	Lower Hunter Regional Strategy 2006-31
LPG	Liquified petroleum gas
m	Metres
Minister	Minister for Planning (or delegate)
OEH	Office of Environment and Heritage
PHA	Preliminary Hazard Analysis
Planning Secretary	Secretary of the Department of Planning and Environment, or nominee
PoN	Port of Newcastle
RMS	Roads and Maritime Services
RTS	Response to Submissions titled 'Re: Applicant Response, Development Application for Proposed Elgas Facility, Part Lot 1 DP 1195449, 130 Cormorant Road, Kooragang NSW' prepared by Sovechles Nominees Pty Ltd dated 26 February 2018
SafeWork	SafeWork NSW
SEARs	Planning Secretary's Environmental Assessment Requirements
Sensitive receiver	A location where people are likely to work or reside, this may include a dwelling, school, hospital, office or public recreational area
SEPP	State Environmental Planning Policy
SEPP 33	State Environmental Planning Policy No 33—Hazardous and Offensive Development
SEPP 55	State Environmental Planning Policy No 55—Remediation of Land
SEPP 65	State Environmental Planning Policy No. 65 – Advertising Structures and Signage
SEPP 71	State Environmental Planning Policy No. 71 – Coastal Protection
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State significant development
Three Ports SEPP	State Environmental Planning Policy (Three Ports) 2013
WHS Regulation	Work Health and Safety Regulation 2017
WRMF	Waste and resource management facility



Executive Summary

Sovechles Nominees Pty Ltd (the Applicant) has lodged a Development Application (DA) and accompanying Environmental Impact Statement (EIS) seeking consent for the construction and operation of a Liquefied Petroleum Gas (LPG) storage and cylinder filling facility at 130 Cormorant Road, Kooragang in the Newcastle local government area (LGA).

The site is located on Kooragang Island in the Port of Newcastle Lease Area, as identified under State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP). The Three Port SEPP was created following the NSW Government's decision to lease Port Kembla, Port Botany and the Port of Newcastle to private operators. The Three Ports SEPP provides the land use planning and assessment framework for development at the three ports and identifies the Minister for Planning as the consent authority for development within these lease areas. Development within the lease areas are classified as either Part 4 development or State significant development under the *Environmental Protection and Assessment Act 1979* (EP&A Act).

The Applicant holds approximately 22,000 square metres (m²) of SP1 Special Activities zoned land within the Port of Newcastle Lease Area. The Applicant has divided this land into five areas and has sought to develop these areas for various activities. These developments include a service station, a food outlet, a carwash facility and a proposed self-storage facility (under assessment). Each of these proposals has been considered under Part 4 of the EP&A Act, with the Minister for Planning as the consent authority. The proposed LPG facility, subject of this report, is located on the remaining portion of 130 Cormorant Road and is classified as SSD.

The proposed development includes a bulk storage area, overnight truck parking and loading area, cylinder filling dock, associated infrastructure, office building and car park. LPG would be delivered to the site from Port Botany and unloaded into a bulk storage vessel. The LPG would then be delivered to customers in bulk via bobtail tankers or in cylinders via trucks. Earthworks would be at a maximum depth of 1.3 metres (m) and includes excavations for footings for the office building, cylinder storage area and bulk storage vessel. The facility would be connected to the site-wide reticulated water, sewer, stormwater system, electricity and communications services that were completed as part of the separate DA for the service station.

The proposed development has a capital investment value of \$1.89 million and is expected to generate 15 construction jobs and up to 19 operational jobs.

The development is classified as State significant development (SSD) pursuant to section 4.36 of the EP&A Act because it is designated development on land within the Lease Area, which meets the criteria in Clause 27 of the Three Ports SEPP. The proposal is designated development as it meets the criteria in Clause 27 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), being petroleum works located in an area of high watertable. Consequently, the Minister for Planning is the consent authority for the proposed development under section 4.5(1) of the EP&A Act.

The Department of Planning and Environment (the Department) exhibited the EIS for the development from Thursday 14 September 2017 until Monday 16 October 2017. A total of nine submissions were received from government agencies, Newcastle City Council (Council) and Port of Newcastle (PoN). There were no submissions from the public or any objections to the proposed development.

Council, PoN and other government agencies requested additional information relating to biodiversity, Aboriginal cultural heritage, stormwater, groundwater, air quality and odour. Other issues raised related to landscaping and consistency with the Newcastle Development Control Plan 2012 (DCP).

In February 2018, the Applicant provided a Response to Submissions (RTS) to address and clarify matters raised in the submissions. However, the RTS did not address Council and PoN's comments relating to landscaping or include an Aboriginal Cultural Heritage Assessment Report (ACHAR) as requested by the Office of Environment and Heritage (OEH).

To address the landscaping issue, the Applicant provided revised landscaping plans in May 2018 which incorporates species endorsed by Council and PoN. The Applicant also provided an ACHAR in August 2018, following consultation with Registered Aboriginal Parties, to address the concern raised by the OEH.

The Department's assessment of the application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development. The Department has identified the key issue for assessment is hazards and risk.

The proposed development is considered potentially hazardous as the volume of LPG proposed to be stored on-site exceeds the screening threshold quantity outlined under State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33). Accordingly, the EIS included a Preliminary Hazard Analysis (PHA) to identify the relevant hazards associated with the proposed development, estimate the risks and provide recommendations to control this risk.

The PHA estimated that the individual risks for commercial land uses marginally encroaches on the adjacent vacant block and the adjoining service station, however it does not extend to any occupied buildings. As the vacant block and the service station are located on the same property leased by the Applicant (130 Cormorant Road), a condition is recommended to ensure future commercial uses are not located within this encroached area. The Department has also recommended a Risk Reduction Program to be developed and implemented. This program should identify appropriate risk reduction measures to ensure the risk to the adjoining land is minimised. The program must be approved by the Planning Secretary prior to the commencement of construction.

The Department's assessment concludes the development would not increase the risk to the surrounding land uses to unacceptable levels, provided the Department's recommended conditions of consent are implemented and maintained. These include requiring the Applicant to:

- implement all recommendation provided in the PHA
- ensure no commercial development is located within the identified risk area
- develop a Risk Reduction Program to minimise risks to the adjoining land
- prepare evacuation procedures for all developments within the property boundary (Lot 1 DP 1195449)
- prepare various safety studies to mitigate the risks associated with the transport and storage of LPG on-site
- prepare a Fire Safety Study in consultation with and to the satisfaction of FRNSW
- prepare and implement an Operation Traffic Management Plan (OTMP).

The Department's assessment has concluded that the impacts of the development can be mitigated and/or managed to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent. Consequently, the Department has recommended approval of the proposed development, subject to conditions.



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1. Introduction

1.1 The Department's Assessment

This report details the Department of Planning and Environment's (the Department) assessment of the State significant development application (SSD 8448) for the Kooragang Liquefied Petroleum Gas (LPG) Storage Facility. The Department's assessment considers all documentation submitted by Sovechles Nominees Pty Ltd (the Applicant), including the Environmental Impact Statement (EIS) and Response to Submissions (RTS), and submissions received from government authorities and the relevant council. The Department's assessment also considers the legislation and planning instruments relevant to the site and the development.

This report describes the proposed development, surrounding environment, relevant strategic and statutory planning provisions and the issues raised in submissions. The report evaluates the key issues associated with the development and provides recommendations for managing any impacts during construction and operation. The Department's assessment of the Kooragang LPG Storage Facility has concluded that the development is in the public interest and should be approved, subject to conditions.

1.2 Development Background

The Applicant is seeking development consent for the construction and operation of a LPG storage and cylinder filling facility on Kooragang Island in the Newcastle local government area (LGA). The development involves the construction and operation of a LPG facility, including a bulk storage vessel, cylinder storage area, overnight truck parking and loading area, cylinder filling dock, associated infrastructure, office building and car park. The site location in the context of Greater Newcastle is shown in **Figure 1**.



Figure 1 | Site Location

1.3 Site Description

The site comprises 7,984 square metres (m²) of SP1 Special Activities zoned land under the State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP). The site is located at 130 Cormorant Road, Kooragang in the Newcastle LGA. The site is legally described as Lot 1 in DP 1195449.

The site is currently vacant and primarily cleared of vegetation. There is a row of trees along the northern boundary and some scrub. The depth of the watertable varies from 2.1 metres (m) to 3.2 m across the site. A 3.3 m wide easement for electricity is located along Egret Street on the eastern boundary of the site.

The site and its immediate surrounds are shown in **Figure 2**.



Figure 2 | Site and Immediate Surrounds

Kooragang Island was created by combining several smaller islands with dredged material in the 1950s and 1960s, including the former Dempsey Island which sits beneath proposal site. This is evidenced by geotechnical assessments and historic maps which suggest the proposal site is located above the former Dempsey Island on approximately 3 m of fill.

Since the formation of Kooragang Island, the proposal site has remained vacant as evidenced by historic aerial photographs. The area surrounding the site (the southern half of Kooragang Island) has been progressively industrialised.

1.4 Surrounding Land Uses

Kooragang Island supports a wide range of major industrial developments including heavy and light industrial operations, transport and distribution and other port related activities. Notable major companies with facilities at Kooragang Island include Orica, Cargill and Boral.

The Port of Newcastle is immediately adjacent to Kooragang Island and is one of the largest ports in Australia, acting as an economic and global gateway for the Hunter Valley and northern NSW. There are several vessel berths located to the south of the site.

Environmental features near the site include the Hunter River, 300 m to the south, and the Hunter Wetlands National Park, 1.6 kilometres (km) to the north (see **Figure 1**). The Hunter River originates in the Mount Royal Range, enters the sea at the Port of Newcastle and encircles Kooragang Island. The Hunter Wetlands National Park forms part of the Hunter Estuary Wetlands Ramsar site and occupies the northern portion of Kooragang Island.

The closest sensitive receivers are residents located approximately 1.8 km south-west of the site in Mayfield North (see **Figure 2**).

The surrounding land uses are depicted in **Figure 2** and **Figure 3**.



Figure 3 | Local Context Map

1.5 Port Lease Area

The site is located on Kooragang Island in the Port of Newcastle Lease Area, as identified under the Three Ports SEPP. The Three Port SEPP was created following the NSW Government's decision to lease the Port Kembla, Port Botany and the Port of Newcastle to private operators. The Three Ports SEPP provides the land use planning and assessment framework for development at the three ports and identifies the Minister for Planning as the consent authority for development within the lease areas. Development within the lease areas is classified as either Part 4 development or State significant development (SSD).

1.6 Other Development Approvals

The Applicant is the lessee of 130 Cormorant Road, Kooragang and holds approximately 22,000 m² of land within the Port of Newcastle Lease Area. The Applicant has divided this land into five areas and has sought to develop these areas for various activities. The other developments on 130 Cormorant Road that have been considered under Part 4 of the EP&A Act by the Minister for Planning include:

- a service station and food outlet, granted under a single consent (DA 6563)
- a carwash facility (DA 6988)
- a vacant lot proposed for a self-storage facility, currently under assessment (DA 9465).

The Applicant has sought consent for a LPG facility (SSD 8448) on the remaining area of 130 Cormorant Road. The proposed development is classified as SSD and is the subject of this report.

The location of the approved and proposed development applications (DAs) on 130 Cormorant Road are depicted in **Figure 4**.

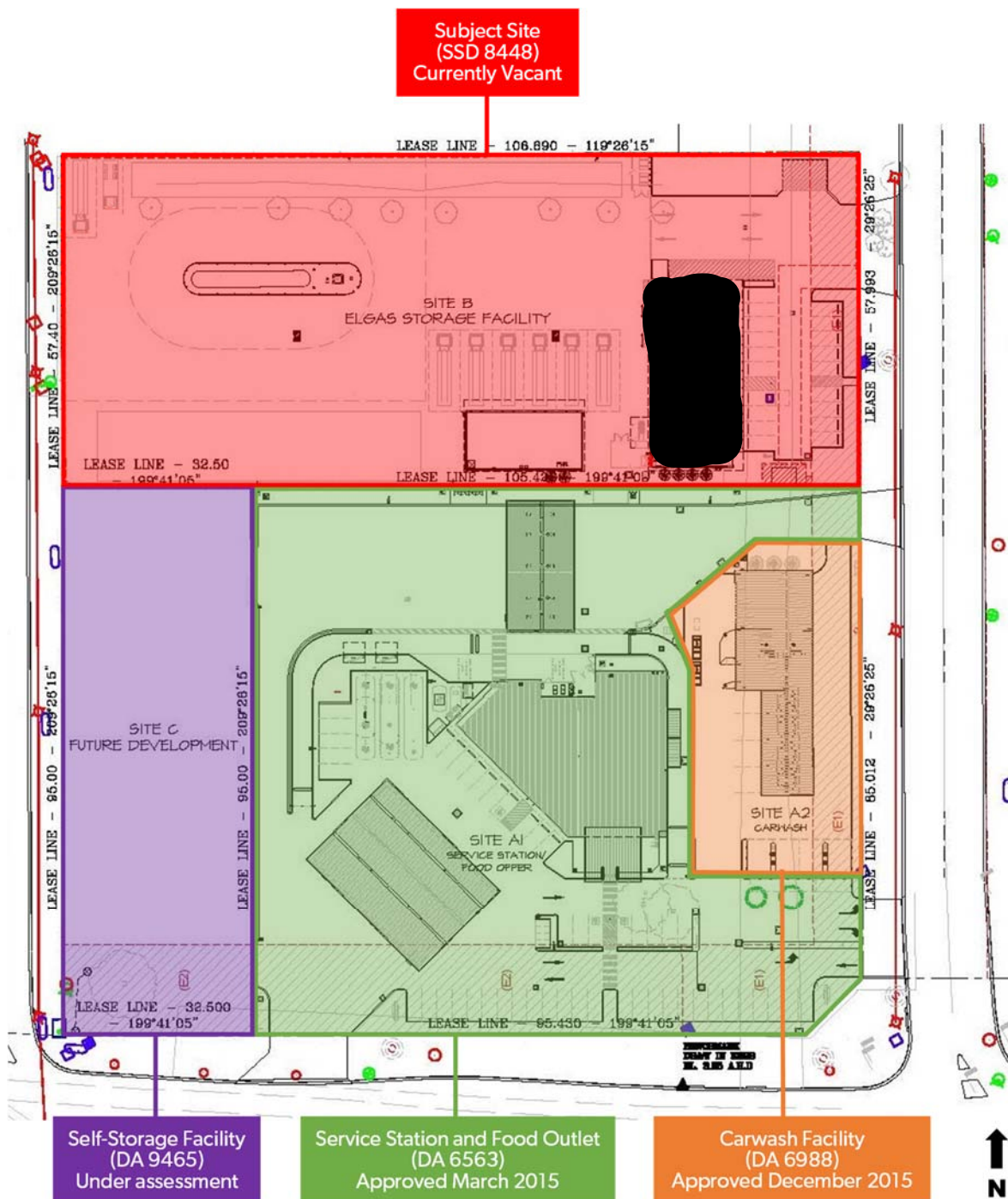


Figure 4 | Developments on 130 Cormorant Road



2. Proposed Development

2.1 Description of the Development

The major components of the proposed development are summarised in **Table 1**, shown in **Figure 5**, and described in full in the Environmental Impact Statement (EIS), included in **Appendix B**.

Table 1 | Main Components of the Project

Aspect	Description
Development Summary	Construction and operation of a LPG facility, including a bulk storage vessel, cylinder storage area, overnight truck parking and loading area, cylinder filling dock, associated infrastructure, office building and car park.
Site area and development footprint	<ul style="list-style-type: none"> total site area of 7,958 m², divided into two main areas: secured yard area and office area secured yard area of approximately 5,851 m², comprising: <ul style="list-style-type: none"> cylinder filling dock – 200 m² LPG storage area – 1,227 m² overnight truck parking & loading – 390 m² LPG storage vessel – 190 m² hardstand pavement – 3,844 m² office area of approximately 2,107 m², comprising: <ul style="list-style-type: none"> office – 378 m² yard operator facility – 52 m² car park – 430 m² delivery bay & turning area – 78 m² landscape area – 442 m² hardstand pavement – 727 m²
Earthworks, civil works and services extension	<ul style="list-style-type: none"> excavations for footings for the office building, cylinder storage area and bulk storage vessel earthworks no greater than 1.3 m below ground level connection to reticulated water, sewer, electricity and communications completed as part of DA 6563
Stormwater Infrastructure	<ul style="list-style-type: none"> connection to existing stormwater system that was designed and installed as part of DA 6563 to accommodate the entirety of Lot 1 DP 1195449
Site access	<ul style="list-style-type: none"> vehicle access to the site off Egret Street via a two-way driveway located approximately 150 m north of the Egret Street and Cormorant Road intersection all vehicle movements, including B-double tankers, will utilise the driveway
Landscaping	<ul style="list-style-type: none"> landscaped buffer along the frontage of Egret Street
Traffic	<ul style="list-style-type: none"> 20 heavy vehicle movements per day (10 inbound and 10 outbound), comprising: <ul style="list-style-type: none"> B-Double tanker x 5 per week Bobtails (6 and 9 tonne (t) tankers) x 3 per day B-Double line-haul cylinder distribution x 5 per week Cylinder trucks (flat top) x 5 per day 2-3 inbound after-hour deliveries per week 38 light vehicle movements per day (19 inbound and 19 outbound)
Hours of construction	<ul style="list-style-type: none"> 7 am – 6 pm, Monday to Friday 8 am – 1 pm, Saturdays no construction activities on Sundays and Public Holidays
Hours of operation	<ul style="list-style-type: none"> 8 am – 5:30 pm, Monday to Saturday no operation on Sunday
Operation	<ul style="list-style-type: none"> LPG delivered to the site by tankers from the Elgas Cavern facility at Port Botany and unloaded using a gas compressor into the storage tank LPG from the storage tank would be loaded into 6-9 t bobtails using the depot pump cylinder filling for delivery to customers in 8.5, 15, 18 and 45 kilogram (kg) cylinders

Aspect	Description
Capital investment value (CIV)	<ul style="list-style-type: none"> \$1,896,441
Employment	<ul style="list-style-type: none"> 15 construction jobs up to 19 operational jobs, comprising 8 drivers, 2 cylinder filling operators and 7-9 office staff

2.2 Applicant's Need and Justification for the Development

The Applicant states that Elgas was required to move from their previous location in Hamilton due to an expired tenure and potential re-zoning issues. In the interim, Elgas has relocated to two smaller sites in Kooragang (not the proposal site) and Bennetts Green.

Elgas decided to source a greenfield site where a purpose-built facility could be constructed based on the requirements of their existing customer base as well as market growth projections. The Applicant advises that the selected site is appropriately zoned, is located in an industrial area separated from residents, is suitable for long-term tenure and would allow Elgas to meet market and logistical requirements.

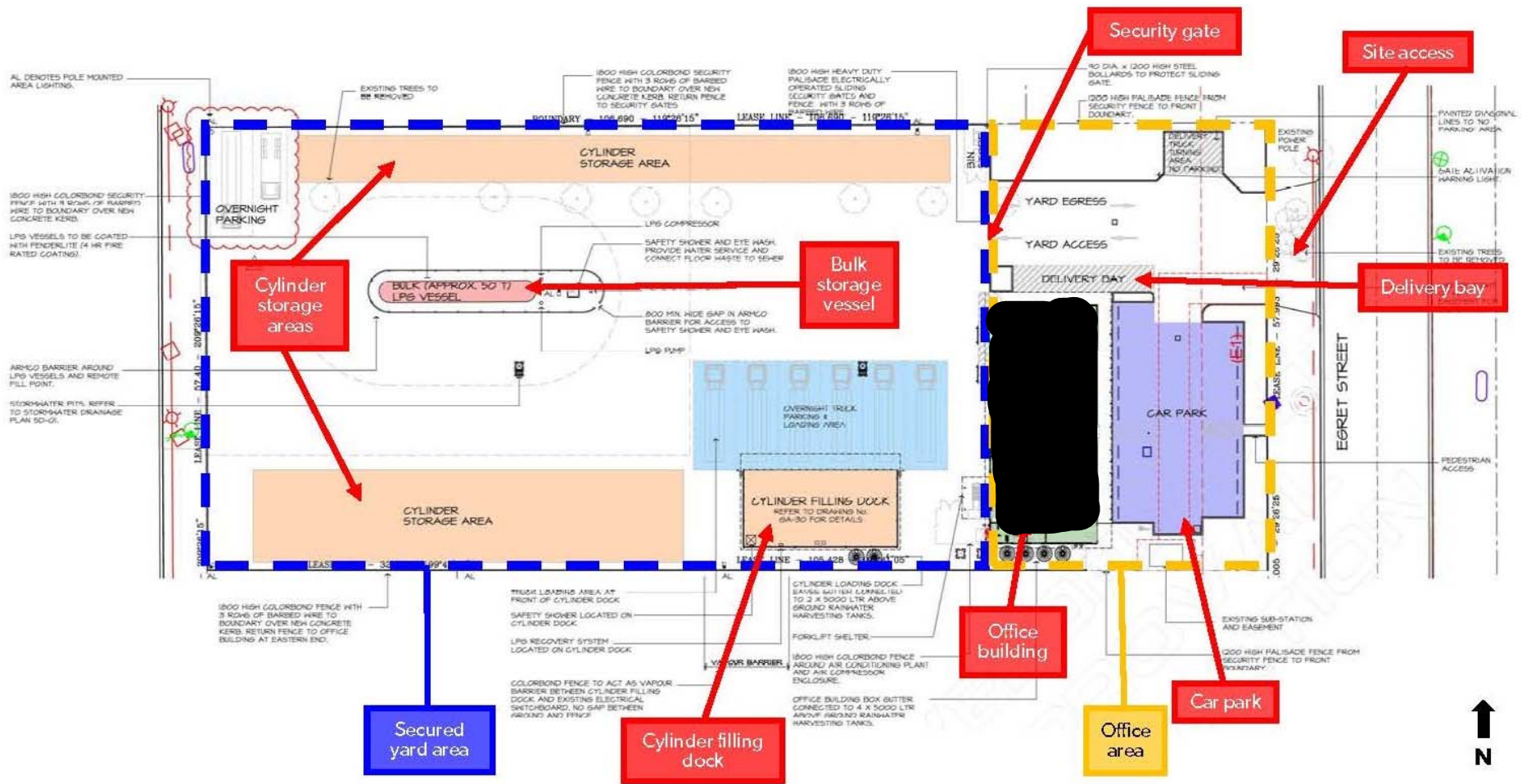


Figure 5 | Project Layout



3. Strategic Context

3.1 Hunter Regional Plan 2036

The Hunter Regional Plan 2036 outlines a vision to grow and diversify the Hunter economy over the next 20 years so that it remains the largest and most productive regional economy in Australia. The proposed development is consistent with the visions, goals and directions outlined in the Hunter Regional Plan 2036 as it is:

- appropriately located within an established industrial area, separated from residential and other sensitive areas (Direction 13)
- located close to regional transport networks and global gateways to improve efficiencies and make the region more attractive for investment (Direction 24).

3.2 Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan 2036 (GNMP) provides the framework and actions to deliver the vision for the Hunter set out in the Hunter Regional Plan 2036. The proposed development would contribute to Strategy 3 of the GNMP as it represents a domestic trade opportunity at Newcastle Port, being the distribution of LPG to homes and businesses in the Newcastle, Lake Macquarie and Hunter Valley regions.

3.3 Lower Hunter Regional Strategy 2006-31

The Lower Hunter Regional Strategy 2006-31 (LHRS) is a land use planning document which outlines the provisions for ensuring that sufficient, appropriately placed housing and employment land is available to cater for the region's estimated population growth projections over the next two decades. It is the NSW Government's current key strategic planning document for the Lower Hunter region.

The site is located on land identified as employment land in the LHRS. The proposed development is consistent with the strategy as it would employ around 15 people during construction and 19 people during operation in the Newcastle area. The proposed development would support employment on a broader scale as it would provide LPG to services centres, homes and businesses across the Newcastle, Lake Macquarie, Port Stephens, Maitland and Cessnock local government areas.

3.4 Newcastle Employment Lands Strategy 2013

The Newcastle Employment Lands Strategy was prepared by Hill PDA on behalf of the City of Newcastle. The strategy seeks to identify employment lands in strategic areas in the Newcastle LGA in order to meet the Lower Hunter Regional Hunter Strategy.

The site is located on Kooragang Island which has been identified as strategic industrial land in the strategy. The proposed development is consistent with the strategy as it is an industrial land use that would provide additional employment opportunities for people in the Newcastle area.



4. Statutory Context

4.1 State Significant Development

The proposal is SSD pursuant to section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) because it is designated development on land within the Lease Area, which meets the criteria in Clause 27 of the Three Ports SEPP.

The proposal is designated development as it meets the criteria in Clause 27 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), being petroleum works located in an area with a high watertable. Under the EP&A Regulation, high watertable is defined as those areas where the groundwater depth is less than three metres below the surface at its highest seasonal level. The groundwater depth of the proposal site varies from 2.1 to 3.2 m deep, qualifying as an area with a high watertable.

4.2 Permissibility

The site is located within the SP1 Special Activities zone under the Three Ports SEPP. The proposed development is not defined under the Three Ports SEPP, however Clause 4 states that the words and expressions within the Three Ports SEPP have the same meaning as they have in the standard instrument.

Under the Standard Instrument—Principal Local Environmental Plan, the proposed development would be defined as a liquid fuel depot which is a type of heavy industrial storage establishment. Heavy industrial storage establishments are permissible with consent in the SP1 zone as an innominate land use. Therefore, the Minister or a delegate may determine the carrying out of the development.

4.3 Consent Authority

The Minister is the consent authority for the development under section 4.5 of the EP&A Act. On 11 October 2017, the Minister delegated the functions to determine SSD applications to the Executive Director, Key Sites and Industry Assessments where:

- the relevant local council has not made an objection and
- there are less than 25 public submissions in the nature of objections and
- a political disclosure statement has not been made.

Council did not object to the development and no public submissions were received. No reportable political donations were made by the Applicant in the last two years, and no reportable political donations were made by any persons who lodged a submission.

Accordingly, the application can be determined by the Executive Director, Key Sites and Industry Assessments under delegation.

4.4 Other Approvals

Under section 4.42 of the EP&A Act, other approvals may be required and must be approved in a manner that is consistent with any Part 4 consent for the SSD under the EP&A Act.

In its submission, the EPA advised that the development does not constitute a scheduled activity under the *Protection of the Environment Operations Act 1997* (POEO Act), therefore an Environment Protection Licence (EPL) is not required. The EPA also advised that if any future tenancies include scheduled activities, an EPL would be required prior to undertaking the activity.

SafeWork NSW must be notified where hazardous chemicals are used, handled or stored on a premise in quantities that exceed the criteria of Schedule 11 of the Work Health and Safety Regulation 2017 (WHS Regulation).

4.5 Mandatory Matters for Consideration

Considerations under Section 4.15 of the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department's consideration of these matters is set out in **Section 6** and **Appendix F**. In summary, the Department is satisfied the proposed development is consistent with the requirements of section 4.15 of the EP&A Act.

Environmental Planning Instruments

Under section 4.15 of the EP&A Act, the consent authority, when determining a development application, must take into consideration the provisions of any environmental planning instrument (EPI) and draft EPI (that has been subject to public consultation and notified under the EP&A Act) that apply to the proposed development.

The Department has considered the development against the relevant provisions of several key EPIs including:

- State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP)
- State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 – Advertising Structures and Signage (SEPP 65)
- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71).

As the site is located within land identified under the Three Ports SEPP, the Newcastle Local Environmental Plan 2012 (LEP) does not apply. Consequently, the Newcastle Development Control Plan 2012 (DCP) also does not apply to the site. Further, section 1 of the Newcastle DCP specifies that it does not apply to land within the Port of Newcastle lease area.

Detailed consideration of the provisions of all EPIs that apply to the development is provided in **Appendix F**. The Department is satisfied the proposed development generally complies with the relevant provisions of these EPIs.

Objects of the EP&A Act

In determining the application, the consent authority must consider whether the development is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 5 of the Act. The Department has fully considered the objects of relevance to the merit assessment of this application in **Appendix F**.

Ecologically Sustainable Development (ESD)

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle*
- (b) inter-generational equity*
- (c) conservation of biological diversity and ecological integrity*
- (d) improved valuation, pricing and incentive mechanisms.*

The potential environmental impacts of the development have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended.

As demonstrated by the Department's assessment in **Section 6** of this report, the development is not anticipated to have any adverse impacts on native flora or fauna, including threatened species, populations and ecological

communities, and their habitats. The Department considers that the development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Under the EPBC Act, assessment and approval is required from the Commonwealth Government if a development is likely to impact on a matter of national environmental significance, as it is considered to be a 'controlled action'. The biodiversity assessment for the proposed development concluded that the site is highly disturbed and contains no native vegetation or threatened species habitat. As such, the Applicant determined a referral to the Commonwealth Government was not required.



5. Engagement

5.1 Department's Engagement

Prior to the lodgement of the DA, the Department met with the Applicant to discuss the proposed development. Matters discussed at the pre-lodgement meeting included the potential assessment issues, the studies that would likely be required, the assessment process and the next steps.

After accepting the DA and EIS for the application, the Department:

- made it publicly available from **Thursday 14 September 2017** until **Monday 16 October 2017**:
 - on the Department's website
 - at the Department's Sydney office (320 Pitt Street, Sydney)
 - at Newcastle City Council (282 King Street, Newcastle)
- notified landowners in the vicinity of the site about the exhibition period by letter
- notified and invited comment from relevant State government authorities and Newcastle City Council by letter
- advertised the exhibition in the Newcastle Star.

5.2 Summary of Submissions

Newcastle City Council (Council) did not object to the proposal and provided a number of comments relating to the proposal's adherence to the Newcastle DCP. These comments related to screening requirements, building setbacks, loading and servicing areas, landscaping, vehicular manoeuvrability and access, bicycle parking and stormwater management. Council also raised concerns relating to air quality and odour, noting that limited information was provided in the EIS.

The **Office of Environment and Heritage (OEH)** did not object to the proposal and was satisfied with the flooding assessment prepared by the Applicant. However, OEH raised concerns relating to biodiversity and recommended the preparation of a biodiversity impact assessment in accordance with the Framework for Biodiversity Assessment. The EIS relied on a 2006 heritage assessment, therefore the OEH requested further assessment of Aboriginal cultural heritage impacts and recommended the preparation of an Aboriginal Cultural Heritage Assessment Report.

The **Department of Industry Crown Lands and Water Division (Dol L&W)** raised no objection to the proposal however requested additional information regarding dewatering to assist in the assessment of licensing requirements during the construction phase.

Fire and Rescue NSW (FRNSW) recommended conditions requiring the Applicant to prepare a Fire Safety Study (FSS) for approval by FRNSW.

Hunter New England Population Health (HNEPH) recommended the preparation of a Mosquito Management Plan to prevent the breeding of nuisance biting mosquitos and disease transmitting mosquitos.

Hunter Water raised no objection to the proposed development and advised there are two Hunter Water pipeline easements along the site boundary.

Roads and Maritime Services (RMS) raised no objection to the proposed development as it considered there would be no significant impact on the nearby State road network.

The **Environment Protection Authority (EPA)** advised the proposal is not a scheduled activity under the POEO Act and therefore provided no comments.

The **Port of Newcastle (PoN)** provided its support for the proposal as the lessee of the proposed development site. PoN noted the unique nature of the site being port land within the Three Port SEPP lease area. PoN requested that the proposed landscaping be amended to include plant species that are low maintenance, drought and salt tolerant and native to the area.

5.3 Response to Submissions

In February 2018, the Applicant provided a Response to Submissions (RTS) on the issues raised during the exhibition of the development (see **Appendix D**). The RTS included updated site plans, an Odour Impact and Greenhouse Gas Emission Study, a Biodiversity Assessment Report (BAR), a Mosquito Management Plan. The RTS also included additional information regarding stormwater management, water licence requirements, vehicular manoeuvrability and adherence to the Newcastle DCP. The Applicant advised that an Aboriginal Cultural Heritage Assessment Report (ACHAR) was being prepared and would be provided at a later date.

The RTS was made publicly available on the Department's website and was provided to key agencies to consider whether it adequately addressed the issues raised. A summary of the agencies responses is provided below:

- Council re-iterated its concerns raised regarding adherence to the Newcastle DCP, particularly regarding setbacks and landscaping. However, Council acknowledged the Newcastle DCP does not apply to SSD or Three Port SEPP land. Therefore, the extent to which the Newcastle DCP should be applied is at the discretion of the consent authority.
- PoN re-iterated its landscaping requirements.
- DoI L&W recommended conditions of consent, including the preparation of a Water Management Plan and a Construction Environmental Management Plan (CEMP).
- FRNSW, Safework NSW and HNEPH advised the RTS addressed their submission and raised no further comments.
- OEH advised it was satisfied with the BAR.

Revised landscaping plans were provided in May 2018 to incorporate species endorsed by Council and PoN. An ACHAR was provided in August 2018, following consultation with Registered Aboriginal Parties, to address the remaining concern raised by the OEH.



6. Assessment

The Department has considered the EIS, the issues raised in the submissions, the Applicant's RTS and supplementary information in its assessment of the development. The Department considers the key assessment issue is hazards and risk.

A number of other issues have also been considered. These issues are considered to be minor and are addressed in **Table 3** under **Section 6.2** of this report.

6.1 Hazards and Risk

The handling and storage of combustible and flammable liquids presents various hazards and risks to the surrounding environment. LPG is a dangerous good Class 2.1 flammable gas that is liquified and stored under pressure. The main hazards related to the storage and handling of LPG are fire and explosions which poses a risk to the surrounding land uses.

A maximum aggregate capacity of 178 t of LPG will be stored on-site at any one time. The maximum storage capacity is calculated by taking the maximum water capacity of all vessels and cylinders used on-site, with the capacities summarised in **Table 2**.

Table 2 | LPG Storage Capacity

Site Storage	Water Capacity (Litres)	Tonnes
Main vessel	100,000	51
Vapour recovery vessel	2,000	1
Elgas road tanker – 9 t	23,000	12
Elgas road tanker – 6 t	14,000	7
Cylinder filling dock	40,593	21
Cylinder storage A (BBQ cylinders)	148,964	76
Cylinder storage B (various)	19,929	10
Total	348,486	178

Under the WHS Regulation, the quantity of proposed LPG storage on-site does not exceed the threshold for a major hazard facility (MHF). However, the proposed quantities of dangerous goods to be stored on-site does require notification to SafeWork NSW.

The proposed development is deemed a potentially hazardous industry under the provisions of SEPP 33, as the type and quantity of hazardous materials stored on-site will exceed the minimum screening threshold for dangerous goods Class 2.1 (LPG). Therefore, a Preliminary Hazards Analysis (PHA) is required.

Arriscar Pty Ltd prepared a PHA as part of the EIS to assess the potential risk to people, property and the environment as a result of the development. Based on the quantities of dangerous goods proposed to be stored, a Quantitative Risk Analysis (QRA) (level 3 risk assessment) was undertaken. The required level of analysis for preparing a PHA is provided in the Department's 'Multi-Level Risk Assessment' guidelines. The Applicant undertook a Quantitative Risk Analysis (QRA) (level 3 risk assessment). The Department considers the selected level of analysis appropriate based on the quantities of dangerous goods proposed to be stored.

The PHA was prepared in accordance with the Department’s Hazardous Industry Planning Advisory Paper (HIPAP) No. 6 – Guidelines for Hazard Analysis. The purpose of the PHA is to identify potential hazards, analyse consequences and the likelihood of occurrence, then estimate the resultant risk to surrounding land uses. The risks are then compared with the relevant land use safety risk criteria defined in the Department’s HIPAP No. 4 – Risk Criteria for Land Use Safety Planning.

The PHA identified and considered the relevant hazards associated with the proposed development, which include fires and explosions. The PHA also provides safeguards and recommendations to reduce the likelihood of an incident. These include:

- coating the main LPG storage vessel with a cementitious fireproofing material (Fendolite M11)
- providing fixed firewater monitors to cover the tanker loading/unloading area
- night-time monitoring to ensure there are no leaks during unstaffed hours (LPG is odourised so that leaks are detectable to humans)
- the preparation of an operational traffic management system to ensure vehicle collisions on-site are avoided.

The PHA estimated the individual fatality risk associated with the development, with the results depicted in **Figure 6**. The contours represent the risk levels of 0.5, 1, 5 and 10 chances per million per year (pmpy) for certain land uses. The individual fatality risk of the development for industrial land uses (50 changes pmpy) was found to be minimal as it did not generate a contour and therefore would be fully contained on the proposal site. The adjacent Boral cement works and other industrial operations in the area would not be affected.

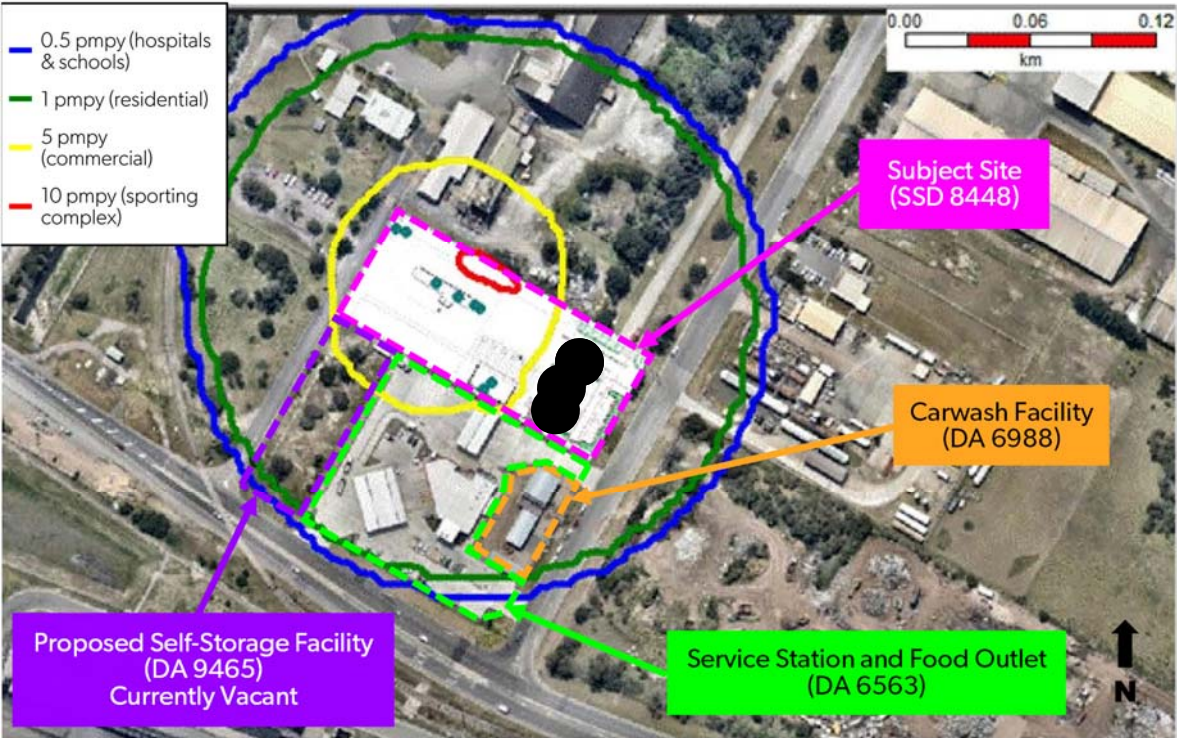


Figure 6 | Fatality Risk Contours

The PHA showed the 5 chances pmpy risk contour (commercial land uses) marginally encroaches onto an adjacent vacant block (proposed for a self-storage facility) and a portion of the adjoining service station (DA 6563). However, the two areas encroached by the contour are located on the same property leased by the Applicant (130 Cormorant Road) and the contour does not extend to any occupied buildings. The vacant block is currently subject to a separate application (DA 9465) and the issues associated with the contour encroaching this site will

need to be considered as part of this separate application process. The service station (and its associated ancillary buildings) mainly serves to support the existing port uses. The encroached area of the service station is currently a thoroughfare and therefore unlikely to be occupied. As such, the Department considers the risks from the development are minimal. In addition, the Department has recommended a range of conditions to further reduce the potential risks from the proposed development and to establish emergency procedures for the lot.

The Department has recommended a condition to restrict any commercial development within the 5 chances pmpy risk contour on 130 Cormorant Road (Lot 1 DP 1195449). This condition would ensure that no future commercial uses are located within the encroached areas of both the vacant block and the service station. To manage off-site risk, the Department has also recommended a Risk Reduction Program to be developed and implemented. This program should identify appropriate risk reduction measures to ensure the risk to the adjoining land is minimised. The program must be approved by the Planning Secretary prior to the commencement of construction.

In addition, the Department has recommended conditions requiring the Applicant to prepare a number of safety and emergency plans to mitigate the risks associated with proposed development. Among these conditions is the requirement for a Fire Safety Study (FSS) to be prepared. FRNSW also recommended the Applicant prepare FSS for their approval following a review of the EIS. The Applicant would be required to consult with FRNSW during the detailed design of the facility's fire systems.

Also recommended is a condition requiring a facility emergency response plan which addresses the evacuation procedures for all developments within 130 Cormorant Road (Lot 1 DP 1195449). These developments include the carwash, food outlet and service station. The plan would ensure appropriate actions are undertaken in the event of an emergency.

The Department's assessment concludes the development would not increase the risk to the surrounding land uses to unacceptable levels, provided all risk reduction measures included in the PHA and the Department's recommended conditions of consent are implemented and maintained.

6.2 Other Issues

The Department's assessment of other issues is provided in **Table 3**.

Table 3 | Assessment of Other Issues

Issue	Assessment	Recommended Condition(s)
Aboriginal Cultural Heritage	<ul style="list-style-type: none"> Ground disturbance during construction has the potential to impact upon Aboriginal cultural heritage. The EIS referred to a preliminary Aboriginal Cultural Heritage Assessment Report (ACHAR) completed in 2006 for the adjacent Newcastle Coal Infrastructure Group (NCIG), however the OEH considered it outdated and that consultation with the Aboriginal community was needed. The RTS includes an ACHAR prepared in accordance with relevant OEH guidelines. The ACHAR assessed the potential impacts upon Aboriginal cultural heritage, documented consultation activities and recommended mitigation measures. The ACHAR found the site was historically located on the edge of Dempsey Island, would have been surrounded by rich estuarine resources and would be a likely location for Aboriginal occupation. However, the site was dredged and reclaimed to form Kooragang Island in the 1950s and 1960s. The ACHAR utilised information available from three test pits dug for the geotechnical assessment of the site. The geotechnical test pits found sandy fill at depths greater than 3 m, suggesting Dempsey Island is located at least 3 m below the current surface. The ACHAR concluded the earthworks for the proposed development would be a maximum depth of 1.3 m, therefore potential archaeological deposits would not be impacted. 	<p>Require the Applicant to:</p> <ul style="list-style-type: none"> install a plaque acknowledging the past occupation of the Awabakal and Worimi peoples prepare an unexpected finds protocol ensure all staff undertake a heritage induction.

Issue	Assessment	Recommended Condition(s)
	<ul style="list-style-type: none"> The ACHAR concluded no Aboriginal objects were identified and potential archaeological deposits would not be impacted by earthworks. However, the Registered Aboriginal Parties (RAPs) identified the site as culturally significant. The ACHAR provided four recommendations to avoid and mitigate potential impacts to Aboriginal cultural heritage, including the installation of a plaque acknowledging the traditional occupation of Awabakal and Worimi peoples. The ACHAR also recommended protocols to follow if Aboriginal objects are discovered during earthworks and construction. The RAPs and OEH are satisfied with the findings and recommendations of the ACHAR. The Department's assessment concludes the potential impacts upon Aboriginal cultural heritage can be avoided and mitigated through the recommendations of the ACHAR. These recommendations have been formalised in the recommended conditions of consent. 	
Site Maneuverability	<ul style="list-style-type: none"> The EIS included swept path diagrams prepared by RJ Sinclair which depict the movements of the largest vehicle proposed to use the site. The site comprises two main areas: the secured yard area (where LPG is handled and stored) and the office area. All vehicles associated with the proposed development would utilise a single access driveway located on Egret Street, approximately 150 m north of Cormorant Road. Vehicles that would access the site include heavy vehicles for transporting LPG, delivery vehicles for the office-based staff and light vehicles. Vehicular access to the secured yard would be restricted by an electronically operated security gate. The Applicant advises the security gate is located approximately 50 m from Egret Street, which would allow all vehicles to enter and exit the site in a forward manner. Council raised concern regarding site manoeuvrability and the potential for on-site vehicle collision, particularly around the office delivery bay. In the RTS, the Applicant highlighted the delivery bay would be utilised at a low frequency (two to three deliveries per week) primarily for the delivery of office supplies. The Applicant also emphasised the site would be a controlled environment given the hazardous nature of the proposed development. Council has accepted the Applicant's response, provided the Applicant prepare and implement an Operational Traffic Management Plan (OTMP) to prevent potential vehicular conflicts. The Department acknowledges that adequate separation distances from the LPG storage area are necessary due to the hazardous nature of LPG. However, the Department agrees with Council's site manoeuvrability concerns. The Department has recommended a condition requiring the Applicant to prepare and implement an OTMP. The OTMP must be approved by the Planning Secretary prior to the commencement of operation. The OTMP would include traffic control measures to minimise the risk of collisions between LPG delivery vehicles, office delivery vehicles and light vehicles. Further, the OTMP would include a protocol for periodic review and revision as necessary. The Department's assessment concludes the site manoeuvrability is satisfactory subject to the preparation and implementation of an OTMP. 	Require the Applicant to prepare and implement an OTMP.
Groundwater Management	<ul style="list-style-type: none"> The EP&A Regulation defines high watertable as those areas where the groundwater depth is less than 3 m below the surface at its highest seasonal level. The site's watertable varies from 2.1 m to 3.2 m. The EIS included a review of the potential impact upon groundwater from an accidental release of LPG on-site. The review concluded little to no LPG would penetrate the ground following the release of LPG. Approximately 78% of the released LPG immediately becomes vapour and is dispersed. The remaining 22% of LPG pools on the ground where it would evaporate until it is also dispersed. Further, the secured yard area would be entirely covered by a concrete surface. In its submission, Dol L&W requested additional information on dewatering during construction and details of the proposed groundwater monitoring measures. In the RTS, the Applicant advised that excavation would be limited to the footings for the office building, cylinder storage area and bulk storage vessel and therefore no groundwater would be encountered. 	Require the Applicant to: <ul style="list-style-type: none"> incorporate groundwater monitoring in the Water Management Plan prepare a Groundwater Contingency Plan prior to the commencement of construction.

Issue	Assessment	Recommended Condition(s)
	<ul style="list-style-type: none"> • DoI L&W raised no further issues and recommended several groundwater related conditions. • The Department considers that groundwater is unlikely to be encountered as the proposal involves minor earthworks and excavation to no deeper than 1.3 m. • The Department is satisfied with the Applicant's conclusion that in the event of a spill, little to no LPG will enter the groundwater system. • The Department has incorporated DoI L&W's comments in the recommended conditions of consent. To address groundwater, a condition has been recommended which requires the preparation of a Groundwater Contingency Plan prior to construction. 	
Landscaping	<ul style="list-style-type: none"> • The landscape plan included in the EIS incorporates landscaping in the office area, along the perimeter of the car park and north of the access driveway. No landscaping is included in the secured yard area. • Council raised concerns regarding adherence to the Newcastle DCP, including open space facilities for staff and shade trees within the car park. • Both Council and the PoN advised the selection of plant species were unsuitable for Kooragang Island. Plant species should be low maintenance, drought and salt tolerant and be native to the area. • The Department requested the Applicant amend their landscaping plan to incorporate species endorsed by both Council and PoN. • The Applicant's RTS included a revised landscape plan that was prepared in consultation with the PoN and in consideration of Council's submission. The revised landscape plan removes the Magnolia Little Gem tree (<i>Magnolia grandiflora</i>) and instead incorporates the Tuckeroo tree (<i>Cupaniopsis anacardioides</i>). • The Department acknowledges Council's reference to car park shade trees requirements in the Newcastle DCP. The landscape plan includes shade trees along the northern and southern site boundaries, but not in the car park or along Egret Street. • The Department notes the secured yard area (where the LPG is handled and stored) requires adequate separation for safety purposes, constraining the amount of space available for the office area and car park. Further, the Newcastle DCP does not apply to the site as it is SSD and located within the Lease Area of the Three Port SEPP. As such, the use of shade trees within the car park or compliance with the DCP is not considered necessary. • The Department's assessment concludes the revised landscape plan incorporates suitable plant species for Kooragang Island and satisfies both Council and PoN's requirements. • The Department has recommended conditions of consent requiring the Applicant to ensure landscaping is planted in accordance with the revised landscape plan. 	Require the Applicant to ensure landscaping is planted in accordance with the revised landscape plan.
Biodiversity	<ul style="list-style-type: none"> • The proposed development would remove all existing vegetation on the site. • The EIS did not include a BAR on the basis that the subject site consists of disturbed, reclaimed land. • In response to OEH concerns that native vegetation and/or threatened species may still exist, the Applicant's RTS includes a BAR of the proposal that was prepared in accordance with the Framework for Biodiversity Assessment (FBA). • The assessment concluded the site contains no native vegetation and no threatened species habitat, therefore biodiversity offsets are not required. • The OEH was satisfied with the biodiversity impact assessment and provided no further comment. • The Department is also satisfied with the findings of the biodiversity impact assessment. Further, the recommended conditions require the Applicant to utilise native plant species in the landscaping for the proposed development. • The Department's assessment concludes the proposed development is not likely to impact upon native vegetation or threatened species habitat. 	No conditions are required.
Acid Sulfate Soils	<ul style="list-style-type: none"> • The EIS included a geotechnical investigation, prepared by RCA Australia, which assessed the surface and subsurface conditions at the site. • The Acid Sulfate Soils (ASS) Map included in the Newcastle LEP identifies the lands surrounding the proposal site as Class 1 and Class 2 ASS. The geotechnical investigation confirmed the proposal site contains potential ASS. 	Require the Applicant to: <ul style="list-style-type: none"> • prepare an ASS Management Plan • prepare an unexpected finds protocol.

Issue	Assessment	Recommended Condition(s)
Odour	<ul style="list-style-type: none"> The Applicant has committed to the preparation of an ASS Management Plan for all excavations that may disturb clay soils at the site. The Department has formalised this commitment in the recommended conditions of consent. <hr/> <ul style="list-style-type: none"> As a safety measure, ethyl mercaptan (EM) is added to LPG to give it an odour detectable by humans. Council's submission raised concern that the EIS did not adequately assess the potential odour issues of the proposed development. Council also stated the odour assessment was not prepared by an independent expert. The RTS included an Odour Impact Study, prepared by Arriscar, which looked at the potential sources and volumes of LPG releases at the proposed development. The only source of odour is the odourant added to the LPG, which is 25 grams (g) of EM per t of LPG. The odour assessment estimated odour emissions utilising dispersion modelling software endorsed by the EPA with the estimated LPG emissions per year and the required odourant volumes. The odour assessment criteria for urban areas provided in <i>The Technical framework: Assessment and management of odour from stationary sources in NSW</i> is 2 odour units (Ou). The odour assessment found that 2 Ou was reached approximately 80 m from the site. The closest residential receivers are located over 1 km away. Council was satisfied the odour assessment addressed their comments. The Department's assessment concludes the potential odour emissions of the proposed development would not exceed the 2 Ou criteria at sensitive receivers. The Department notes that LPG is odourised off-site as a statutory safety requirement. The Department does not consider specific odour related conditions of consent are required. 	No conditions are required.
Greenhouse Gas	<ul style="list-style-type: none"> Council's submission indicated the EIS did not include a greenhouse gas assessment. The RTS included a Greenhouse Gas Emission Study, prepared by Arriscar, which estimated the pollutant emissions based on emission rates from other Elgas LPG facilities. The assessment estimated emissions of 61.64 kg per annum of volatile organic carbon (VOC). Council was satisfied the assessment provided in the RTS addressed the comments raised in its submission. The Greenhouse Gas Emission Study outlines the mitigation measures to minimise the release of LPG utilised at all Elgas LPG depots in Australia. The Department considers the estimated contribution of VOC to be negligible and therefore manageable by the existing mitigation measures currently utilised at other Elgas LPG facilities. 	No conditions are required.
Mosquito Management	<ul style="list-style-type: none"> HNEPH raised concerns regarding the risk of both nuisance biting and disease transmitting mosquitoes affecting employees, visitors and local population. It was recommended the Applicant prepare a Mosquito Management Plan. In its RTS, the Applicant provided a Mosquito Management Plan which included details about mosquito control programs and the mitigation measures to be implemented. The Applicant has committed to implementing this plan for the development. HNEPH was satisfied with the Mosquito Management Plan and had no further comments. The Department's assessment concludes the risk of both nuisance biting and disease transmitting mosquitoes would be managed via the Mosquito Management Plan and has recommended conditions of consent to formalise the Applicant's commitment. 	Require the Applicant to implement the Mosquito Management Plan.



7. Evaluation

The Department's assessment of the application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ESD.

The proposed development is considered potentially hazardous under SEPP 33. Accordingly, the EIS included a PHA to identify the relevant hazards associated with the proposed development, estimate the risks and provide recommendations to control this risk.

The PHA estimated that the individual risks for commercial land uses marginally encroaches on the adjacent vacant block and the adjoining service station. However, the contour does not extend to any occupied buildings. Additionally, as the vacant block and the service station are located within the property leased by the Applicant, the risks associated with the proposed development can be managed through a range of conditions. These conditions include requiring the Applicant to:

- implement all recommendations provided in the PHA
- ensure no commercial development is located within the identified risk area
- develop a Risk Reduction Program to minimise risks to the adjoining land
- prepare evacuation procedures for all developments within the property boundary (Lot 1 DP 1195449)
- prepare various safety studies to mitigate the risks associated with the transport and storage of LPG on-site
- prepare a FFS in consultation with and to the satisfaction of FRNSW.

The Department's assessment therefore considers the development would not increase the risk to the surrounding land uses to unacceptable levels provided the Department's recommended conditions of consent are implemented and maintained.

The Department recognises the required separation distances for LPG storage vessels and the resulting limitations for the site. The proximity of the site access, delivery bay and security gate and the potential for vehicular conflicts was a concern raised by the Department and Council. An OTMP was recommended in the PHA and by Council. As such, the Department included the requirement of a OTMP in the recommended conditions of consent to address on-site vehicular manoeuvrability.

Prior to being dredged and reclaimed to form Kooragang Island, the site was a likely location for Aboriginal occupation and identified as culturally significant to the RAPs. Along with the preparation of an unexpected finds protocol, the Applicant has committed to installing a plaque acknowledging the traditional occupation of the Awabakal and Worimi peoples. The RAPs and OEH were satisfied with these commitments which have been formalised in the recommended conditions of consent.

To address the additional stormwater run-off that would result from the proposed development, the Applicant has demonstrated the site-wide stormwater system would meet the requirements of Council. In addition, stormwater would be further managed through the preparation and implementation of a Water Management Plan.

While the site has a high watertable, only minor earthworks are required during construction. The Department has recommended a condition requiring the preparation of a Groundwater Contingency Plan to address the potential for groundwater interception during construction.

The development's landscaping plan was revised by the Applicant to address the concerns raised by both Council and PoN. Site landscaping would incorporate native plant species that are low maintenance and drought and salt tolerant.

The Department has also recommended conditions for the payment of development contributions and to ensure any access or road works are at the expense of the Applicant.

The Department's assessment concluded there would be some potential impacts during operation of the LPG storage facility. However, these impacts can be mitigated and/or managed to ensure an acceptable level of environmental performance via the recommended conditions of consent. In summary, the development:

- is appropriately located in an established industrial area that is connected to the regional road network, at least 1.8 km away from sensitive receivers
- would provide up to 34 jobs and represent an investment of \$1.89 million in an area strategically identified as employment lands
- would represent a low risk to the surrounding environment which would be further safeguarded through the implementation of an OTMP and various hazard studies
- would connect to the site-wide stormwater system which meets the water quality requirements of Council
- would not impact upon or intercept groundwater
- would incorporate low maintenance, native plant species that are suitable to Kooragang Island
- would allow Elgas to meet their projected market for LPG, in a location suitable for long-term tenure.

Consequently, the Department has recommended approval of the proposed development, subject to conditions.



8. Recommendation

It is recommended that the Executive Director, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **accepts** and **adopts** the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **agrees** with the key reasons for approval listed in the notice of decision
- **grants consent** for the application in respect of the Kooragang LPG Storage Facility (SSD 8448)
- **signs** the attached development consent (see **Attachment F**).

Recommended by:

Recommended by:

 7/11/18

Kane Winwood
Team Leader
Industry Assessments

 7/11/18.

Chris Ritchie
Director
Industry Assessments



9. Determination

The recommendation is: **Adopted / Not adopted by:**

 23/11/18

Anthea Sargeant
Executive Director
Key Sites and Industry Assessments



Appendices

Appendix A – List of Documents

The Department has considered the following material:

- the Environmental Impact Statement, prepared by RPS Australia East Pty Ltd, dated 22 August 2017 and its accompanying appendices
- the Response to Submissions, prepared by Sovechles Nominees Pty Ltd, dated 26 February 2018 and its accompanying appendices
- the following updated plans:
 - Office Building Elevations (Project No. 14-002, Drawing No. GA-20, Amendment DA2), prepared by R.J. Sinclair Pty Ltd, dated 13 March 2015
 - Landscape Site Plan (Project No. 14-002, Drawing No. L-01, Amendment DA2), prepared by R.J. Sinclair Pty Ltd, dated April 2014
 - Landscape Bedding Plans (Project No. 14-002, Drawing No. L-02, Amendment DA2), prepared by R.J. Sinclair Pty Ltd, dated April 2014
- the Aboriginal Cultural Heritage Assessment Report, prepared by RPS Australia East Pty Ltd, dated 23 August 2018
- all submissions provided to the Department in respect of the application by Council, the Port of Newcastle and Government agencies
- the relevant environmental planning instruments, policies and guidelines
- the relevant requirements of the EP&A Act.

Appendix B – Environmental Impact Statement

Available on the Department's website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8448

Appendix C – Submissions

Available on the Department's website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8448

Appendix D – Response to Submissions

Available on the Department’s website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8448

Appendix E – Community Views for Draft Notice of Decision

The Department exhibited the Environmental Impact Statement for the project from Thursday 14 September 2017 until Monday 16 October 2017 (32 days). The Department did not receive any community submissions, and the submission from Newcastle City Council (Council) did not make comments representing views of the community.

Appendix F – Statutory Considerations

Considerations under Section 4.15 of the EP&A Act

Section 4.15 of the EP&A Act requires that the consent authority, when determining a development application, must take into consideration the matters listed in **Table 4**.

Table 4 | Considerations under Section 4.15 of the EP&A Act

<p>(a) the provisions of:</p> <ul style="list-style-type: none"> (i) any environmental planning instrument, and (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and (iii) any development control plan, and (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and <p>that apply to the land to which the development application relates,</p>	<p>Detailed consideration of the provisions of all environmental planning instruments (including draft instruments subject to public consultation under this Act) that apply to the proposed development is provided below.</p> <p>The Applicant has not entered into any planning agreement under section 7.4.</p> <p>The Department has undertaken its assessment of the proposed development in accordance with all relevant matters as prescribed by the regulations, the findings of which are contained within this report.</p>
<p>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</p>	<p>The Department has considered the likely impacts of the development in detail in Section 6 of this report. The Department concludes that all environmental impacts can be appropriately managed and mitigated through the recommended conditions of consent.</p>
<p>(c) the suitability of the site for the development,</p>	<p>The proposed development is located on SP1 Special Activities zoned land under the Three Ports SEPP. The development is a type of heavy industrial storage establishment which is permissible with development consent in the SP1 zone as an innominate land use.</p> <p>The site is located in an established industrial area, separated from sensitive receivers and connected to the regional road network. These site attributes make it suitable for the proposed development as it involves the storage and distribution of LPG.</p>
<p>(d) any submissions made in accordance with this Act or the regulations,</p>	<p>All matters raised in submissions have been summarised in Section 5 of this report and given due consideration as part of the assessment of the proposed development in Section 6 of this report. Consideration of community views is provided in the Notice of Decision.</p>
<p>(e) the public interest.</p>	<p>The development would generate 15 jobs during construction and up to 19 jobs during operation. The development represents a \$1.89 million capital investment in the Newcastle area that would contribute to the provision of local jobs.</p> <p>The environmental impacts of the development would be appropriately managed via the recommended conditions. On balance, the Department considers the development is in the public interest.</p>

Environmental Planning Instruments

State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP)

Port Kembla, Port Botany and the Port of Newcastle were leased to private port operators in 2013. The Three Ports SEPP sets the land use planning and assessment framework for development at these three ports. The Three Ports SEPP applies to both a 'Lease Area' as well as surrounding land to be maintained for port related and industrial uses.

The proposed development is located within the Port of Newcastle Lease Area, which is discussed further in **Section 1.5** of this report. The statutory framework which applies to the proposed development is discussed in **Section 4** of this report.

The NSW Government is proposing to make changes to the Three Ports SEPP, which is on public exhibition from 20 September 2018 to 3 December 2018. The proposed site is located within the SP1 Special Activities zone, which allows a broad range of development. One of the proposed changes includes amending the land use table for this zone to prohibit land uses that are inadvertently permitted but considered inappropriate. The proposed changes to the Three Ports SEPP would not impact the permissibility of the proposed development (heavy industrial storage establishments) within the SP1 zone.

State Environmental Planning Policy 33 – Hazardous and Offensive Development (SEPP 33)

SEPP 33 aims to identify proposed developments with the potential for significant off-site impacts, in terms of risk and/or offence (odour, noise, etc). A development is defined as potentially hazardous and/or potentially offensive if, without mitigating measures in place, the development would have a significant risk and/or offence impact on off-site receptors.

The proposed development involves the handling and storage of LPG, which is a dangerous goods Class 2.1 flammable gas that is stored under pressure. Consistent with clause 33 of SEPP 33, the Applicant provided a Preliminary Hazard Analysis (PHA) as part of the EIS. The PHA identified that the quantities of LPG to be transported to and stored on-site would exceed the threshold limits established by SEPP 33 and therefore constituted a potentially hazardous industry. The Department has assessed the PHA and concludes it has satisfied Applying SEPP 33 Guidelines (DOP 2001a). The Department's detailed assessment of hazards and risk is contained in **Section 6** of this report.

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application. The EIS included a baseline environmental site assessment for the site to determine the extent and distribution of contamination on the site. The Applicant's assessment found that a remedial action plan would not be required. The Department has included specific conditions for managing any potential contamination found during construction works.

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64)

SEPP 64 aims to ensure that outdoor signage:

- is compatible with the desired amenity and visual character of an area
- provides effective communication in suitable locations
- is of high quality design and finish.

The proposed development includes a business identification sign located on the office building, oriented towards Egret Street. The proposed sign contains the text 'ELGAS' (3 m wide by 0.9 m tall) and the Elgas 'e' logo (2 m wide by 2 m tall). The proposed sign is depicted in **Figure 7**.

Under SEPP 64, a consent authority must be satisfied the signage subject of a DA satisfies the objectives of SEPP 64 as well as the assessment criteria specified in Schedule 1 of SEPP 64. Part 3 of SEPP 64 does not apply as the proposal consists of business identification signage.

The Department has assessed the proposed signage in **Table 5**. The Department's assessment concludes the proposed signage would not detract from the surrounding locality, would provide suitable tenant identification from Egret Street and would be consistent with the aims and objectives of SEPP 64.

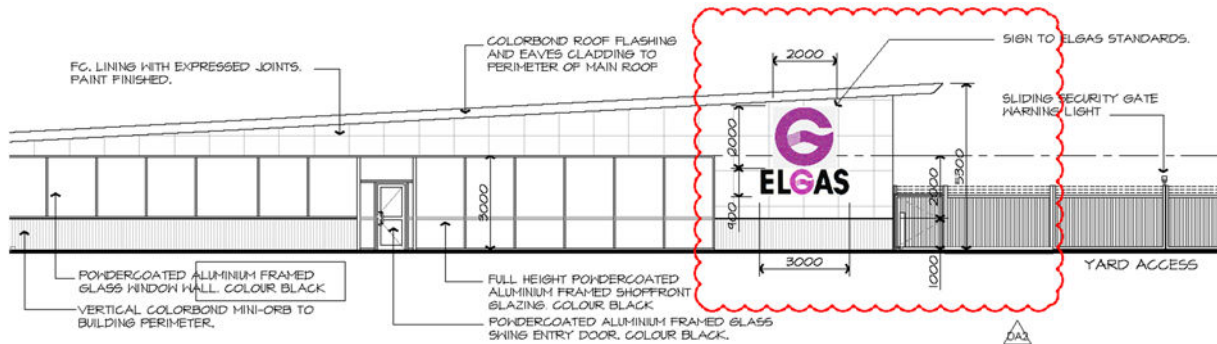


Figure 7 | Proposed Business Identification Sign

Table 5 | Assessment against SEPP 64 Criteria

Criteria	Compliance
Character of the Area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes, the proposed business identification sign is compatible with the character of the area. The immediate surrounds are industrial in nature and have been strategically identified as employment lands.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes, the proposed sign is consistent with other business identification signage in the area being an established industrial precinct.
Special Areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No, the proposed sign would not be visible from any special areas. The closest residential receivers are located 1.8 km south-west and the Hunter Wetlands National Park is located 1.6 km to the north of the site.
Views and Vistas	
Does the proposal obscure or compromise important views?	No, the proposed sign would not obstruct important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	No, the proposed sign is located on the office building façade and therefore would not have an impact on the skyline or on any vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes, the proposed sign would not obstruct any existing signage.
Streetscape, setting and landscape	

Criteria	Compliance
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes, the proposed sign is located within an industrial area comprising large development blocks.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes, the proposed sign contributes an appropriate level of visual interest.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Not applicable as no advertising signage is proposed.
Does the proposal screen unsightliness?	Not applicable as the proposed sign is located on the office building façade.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No, the proposed sign would be wholly located on the office building façade.
Does the proposal require ongoing vegetation management?	No, the proposed sign would be located separately from vegetated areas.
Site and Building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes, the proposed sign is compatible with the scale and industrial character of the site and area.
Does the proposal respect important features of the site or building, or both?	Yes, the proposed sign is consistent with the features of the office building.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed sign demonstrates an appropriate level of imagination and innovation. The sign is located to clearly identify the site's operations and would reflect its industrial context.
Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not applicable as the proposed development does not include advertisements or advertising structures.
Illumination	
Would illumination result in unacceptable glare?	No, the proposed sign has been designed to avoid unacceptable glare. The sign would be internally illuminated with LED lighting.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No, the proposed sign would not include flashing or external lighting. Further, the sign would only be visible from Egret Street, which is not heavily trafficked by vehicles or pedestrians.
Would illumination detract from the amenity of any residence or other form of accommodation?	No, the closest residential area is 1.8 km from the site.
Can the intensity of the illumination be adjusted, if necessary?	No, the sign's illumination would be static.
Is the illumination subject to a curfew?	No curfew would apply to the proposed sign.
Safety	
Would the proposal reduce the safety for any public road?	No, the proposed sign would not affect road safety.
Would the proposal reduce the safety for pedestrians or cyclists?	No, the proposed sign would not impact pedestrian or cyclist safety.

Criteria	Compliance
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No, the proposed sign will not obstruct pedestrian sight lines or cause any disruption from public areas.

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

SEPP 71 was repealed on 3 April 2018 under Clause 9(c) of State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP). However, the DA was lodged prior to its repeal. SEPP 71 still applies to the development in accordance with the savings and transitional provisions under Clause 21 of the Coastal Management SEPP.

The proposed development is located within the coastal zone, as identified in the *Coastal Protection Act 1979*. SEPP 71 aims to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast. The EIS included an assessment of the proposed development against the matters for consideration identified under Clause 8 of SEPP 71.

The Department is satisfied the proposed development would be consistent with several applicable matters for consideration, particularly:

- the protection and preservation of Aboriginal cultural heritage
- ensuring the type, location and design of development is appropriate for the location
- the protection of the water quality of coastal waterbodies.

The Applicant has committed to implementing the recommendations of the ACHAR, including the installation of a plaque and the preparation of an unexpected finds protocol. The proposed development is located within an industrial area, separated from sensitive receivers. As a distribution facility, it is appropriately located in proximity to the regional road network (via Cormorant Road). Further, the proposed development would connect to the site-wide stormwater system designed and approved as part of the Service Station and Food Outlet (DA 6563). The stormwater system has been designed to meet the requirements of Council.

Objects of the EP&A Act

In determining the application, the consent authority must consider whether the development is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 5 of the Act. The objects of relevance to the merit assessment of this application include:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The Department has fully considered the objects of the EP&A Act, including the encouragement of Ecologically Sustainable Development (ESD), in its assessment of the application (see **Table 6**).

Table 6 | Considerations Against the EP&A Act

Object	Consideration
5(a)	The proposal would ensure the proper management, development and conservation of natural resources. The proposal site is disturbed, reclaimed land, however had the potential to contain areas of native vegetation and/or threatened species habitat.
5(b)	Consideration of relevant economic, environmental and social considerations is included in the Department's assessment of the proposal (see Section 6).
5(c)	The proposal would ensure the orderly and economic use of the land, as it would utilise an established industrial site and its water management infrastructure. The proposal is also located within the Port of Newcastle, a significant economic and trade gateway, and would supply LPG to homes and businesses in the Newcastle, Lake Macquarie and Hunter Valley regions.
5(e)	The Applicant's biodiversity assessment concluded the site contains no native vegetation and no threatened species habitat. No biodiversity offsets are required for the proposed development.
5(f)	The Applicant included an ACHAR as part of its development application to ensure the sustainable management of built and cultural heritage. The assessment concluded that no Aboriginal objects were identified and potential archaeological deposits would not be impacted by earthworks, however the RAPs identified the site as culturally significant. The Applicant committed to the recommendations of the ACHAR, including unexpected finds protocols and the installation of a plaque.
5(h)	The Applicant has undertaken appropriate hazard and risk studies to ensure the development will be designed and operated in accordance with relevant codes, Australian Standards and statutory regulations and recommended mitigation measures as identified in the PHA. The Department also consulted with SafeWork and FRNSW during its assessment as the proposal involves the storage and transport of hazardous chemicals. Both SafeWork and FRNSW raised no concerns with the proposed development, subject to recommended conditions of consent.
5(i)	The Department has assessed the proposal in consultation with, and giving due consideration to, the technical expertise and comments provided by Council and other Government authorities.
5(j)	The Department exhibited the DA and EIS for the proposal for a period of 30 days and received submissions from Council and Government authorities. The Department's assessment has considered the issues raised in submissions.

Appendix G – Recommended Instrument of Consent