



New South Wales Government
Independent Planning Commission

Shoalhaven Starches Modification 17

06_0228 MOD 17

Statement of Reasons for Decision

Andrew Hutton (Chair)

23 October 2020

Shoalhaven Starches Modification 17 (06_0228 MOD 17) Final Report ©
State of New South Wales through the Independent Planning Commission 2020

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DEFINED TERMS

ABBREVIATION	DEFINITION
Applicant	Shoalhaven Starches Pty Ltd
ARP	Department's Assessment Report Paragraph
Commission	Independent Planning Commission of NSW
Council	Shoalhaven City Council
Department	Department of Planning, Industry and Environment
Department's AR	Department's Assessment Report (dated July 2020)
EP&A Act	<i>Environment Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
EPA	The NSW Environment Protection Authority
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
LEP	Local Environmental Plan
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in paragraph 37
Modification Request	Proposed Modification 17 as described in the SEE and accompanying documentation, the Addendum Submission dated 19 June 2020, and the RFI Response dated 28 July 2020.
Project	The development permitted under the Project Approval
Project Approval	The original approval granted under MP 06_0228 on 28 January 2009 as modified up to and including Modification 15
SEE	The submitted Statement of Environmental Effects and Planning Statement, prepared by Cowman Stoddart (dated December 2019)
SEPP	State Environmental Planning Policy
Site	As described in paragraph 6 of this Statement of Reasons
SLEP	Shoalhaven Local Environmental Plan 2014
SRD SEPP	SEPP (State and Regional Development) 2011
SSD	State Significant Development
STOP Reg	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>

1 INTRODUCTION

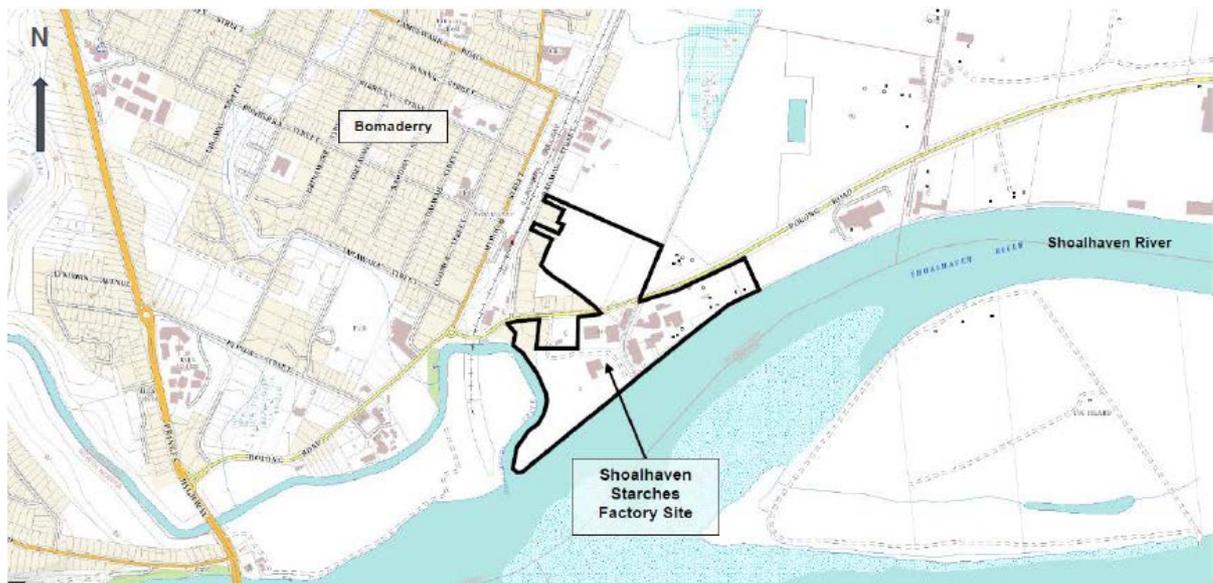
1. On 21 September 2020, the NSW Department of Planning, Industry and Environment (**Department**) referred a modification request (06_0228 MOD 17) (**Modification Request**) from Shoalhaven Starches Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Modification Request seeks to modify the Shoalhaven Starches Expansion Project (MP 06_0228) and relates to the existing Shoalhaven Starches facility in the Shoalhaven Local Government Area (**LGA**).
3. The Modification Request proposes the relocation of an approved baghouse, installation of service lifts, use of woodchips as boiler fuel source, relocation and addition of car parking spaces from north and west of the Maintenance Building to the north side of Bolong Road, extension of the existing sifter room, extension of the product dryer building including the installation of an additional product dryer, addition of bulk chemical storage tanks, increase in the building footprints of the Product Dryer Building and Specialty Products Building, partial demolition of an existing Maintenance Office and Stores Building, installation of a wet-end processing plant within the Product Dryer Building, and installation of a control room and amenities in an existing building.
4. The Modification Request was submitted pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* because the Applicant made reportable political donations.
5. Mary O’Kane AC, Chair of the Commission, nominated Andrew Hutton (**Chair**) to constitute the Commission in determining the Application.

2 THE MODIFICATION REQUEST

2.1 Site and Locality

6. The Shoalhaven Starches facility is located on Bolong Road, Bomaderry. The Modification Request relates to the main factory site, including Lot 1 DP 838753, Lot 241 DP 1130535 and Lot 143 DP 1069758, and a portion of the environmental farm at Lot 141 DP1069758 (**Site**).
7. The location of the Site is illustrated in Figure 1 below.

Figure 1: Site Location (source: Department's Assessment Report dated August 2020)



2.2 Background

8. The Department provides a background to the Modification Request at ARP 1.2.1. The Applicant has operated this factory in Bomaderry since 1979, producing flour, gluten, glucose, starch and ethanol for food, beverage, paper and fuel products. The factory operates 24 hours a day, 7 days a week and has approximately 300 employees.
9. The Shoalhaven Starches Expansion Project (MP06_0228) (**Project Approval**) was approved in January 2009 under the now repealed Part 3A of the EP&A Act to consolidate the previous planning approvals for the site in order to simplify regulation and compliance (ARP 1.3.2). The Project was a transitional Part 3A project under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (STOP Reg)*. On 7 September 2018, the Project was declared to be State significant development (**SSD**) under clause 6 to Schedule 2 of the STOP Reg.
10. ARP 1.3.6 describes how the Project Approval has been modified on 16 occasions. Table 1 of the Department's AR outlines these modifications. In addition, Modification 18 was approved by the Commission in September 2020.
11. Commissioner Hutton was also Chair of the Panel that determined Shoalhaven Starches Modification 18 and has had the benefit of previous briefings on the Site from the Applicant and the Department during that determination process.

2.3 Summary of the Modification Request

12. The Department's AR describes the Modification Request at ARP 2.1.
13. A summary of the proposed modifications is provided in Table 1 below.

Table 1 Summary of the proposed modifications (Source: Department's AR)

Modification	Description
Baghouse relocation	Relocation of approved baghouse from western side of starch dryer building to the northern side of the building.
Service lift installation	Installation of service lift adjacent to western wall of the Starch Dryer No. 5.
Elevation of service conduit	Elevation of underground service conduit to ground level.
Boiler fuel source	Use of woodchips as an alternative fuel source for coal-fired boiler No. 2 and 4.
Noise limit	Modification to Condition 14J(e) which applies to Flour Mill B.
Product Dryer Building	Increase in building footprint. Addition of 4 new bulk specialty products tanks.
Specialty Products Building	Increase in building footprint. Installation of approved Product Dryer No. 9 within the building.
Demolition and repurpose of Maintenance Office and Storage building	Demolition of part of the existing Maintenance Office and Storage building. Repurposing remaining part of the building for use as staff amenities and Plant Operation Control Rooms.
Sifter room extension	Extension of sifter room to a height of 15.7m and building footprint of 13.6 m x 6.5 m.
Addition and relocation of car parking	Relocation of existing car parking (48 spaces) to north of Bolong Road. Addition of new car parking (69 spaces) north of Bolong Road.
Employment	Up to 80 construction jobs, 5 operational jobs.
Capital Investment	\$7.8 million.

3 THE DEPARTMENT'S CONSIDERATION OF THE MODIFICATION REQUEST

3.1 Strategic Context

14. At ARP 3.1.1, the Department states:

The Department has considered the strategic context of the site and is satisfied the modification is consistent with relevant strategic planning documents including the Illawarra Shoalhaven Regional Plan (ISRP) 2015.

15. At ARP 3.1.2 the Department notes the employment generation arising from the Modification Request and states:

the modification would enable Shoalhaven Starches to maintain an efficient and competitive manufacturing business that contributes to the local and regional economy.

3.2 Statutory Context

16. As described in paragraph 9, the Project Approval has been declared to be SSD under clause 6 of Schedule 2 of the STOP Reg. Therefore, the Project Approval is taken to be an SSD consent under Part 4 of the EP&A Act and can be modified under section 4.55 of the EP&A Act.
17. The Department's AR summarises the statutory context of the Modification Request and confirms that the Department is satisfied that the Modification Request is within the scope of section 4.55(1A) of the EP&A Act (ARP 4.1.2).

3.3 Department's Engagement

18. As described at ARP 5.1.1, the Modification Request does not require notification pursuant to clause 117(3B) of the *Environmental Planning and Assessment Regulation 2000 (EP&A Reg)*; however, it was made available on the Department's Major Projects website on 13 January 2020. The Department also referred the Modification Request to Shoalhaven City Council (**Council**), the Environment Protection Authority (**EPA**), and Fire and Rescue NSW (**FRNSW**).
19. The Department did not receive any submissions from the public or interest groups. Council provided recommended conditions with respect to flood engineering, the EPA provided comments on noise and air quality, and FRNSW requested clarification regarding the proposed chemical storage tanks.
20. The Department's AR summarises the key issues raised in submissions at ARP 5.3.1:

The EPA noted there was inconsistencies in the Air Quality Impact Assessment (AQIA) prepared by GHD regarding monitoring data used to compare boilers No. 2 and 4. Furthermore, the EPA required emissions comparisons of the current fuel sources with the proposed woodchip and coal fuel mix.
21. ARP 5.4.1 states that the Applicant provided a revised AQIA on 31 March 2020. The EPA reviewed the revised AQIA and advised that its previous comments had been adequately addressed by the Applicant subject to conditions requiring post-completion verification of air quality impacts.
22. ARP 5.5.1 states that the Modification Request was subsequently amended on 19 June 2020, and the Modification Request was re-notified to Council, EPA and FRNSW.
23. ARP 5.5.3 states that Fire and Rescue NSW requested clarification regarding proposed chemical bulk storage and the propagation measures proposed.
24. ARP 5.5.4 states that Council advised the Department it had no objections to the amendments to the modification and provided recommended conditions.

25. ARP 5.5.5 states that the Department requested additional information on hazard and risk analysis regarding the proposed chemical bulk storage analysis on 23 July 2020.
26. ARP 5.5.6 states that the Applicant provided additional information on 28 July 2020, responding to FRNSW and the Department.
27. FRNSW provided a response to the Department on 21 October 2020, which was forwarded to the Commission as part of the Department's response to questions on notice. The FRNSW response confirmed that their earlier comments had been adequately resolved, as discussed at paragraph 47.

3.4 The Department's Assessment and Recommendation

28. Section 6 of the Department's AR identified the key issues as air quality and hazards and risks associated with the production, storage and handling of hazardous materials – including potential for explosions, fires and release of corrosive substances to the environment. Other issues considered by the Department include noise, visual impacts, flooding, and traffic, access and parking.

29. At ARP 7.1.1 the Department states:

The Department has assessed the modification in accordance with the relevant requirements of the EP&A Act. On balance, the Department considers the modification is appropriate on the basis that the:

- *modification is consistent with relevant strategic plans for the Illawarra-Shoalhaven region*
- *modification would result in minimal environmental impact beyond the approved development*
- *air quality would be maintained through implementation of mitigation measures to ensure compliance with air emissions limits.*
- *operation of the overall factory, with new and relocated plant and equipment, would meet existing noise limits at residential receivers.*
- *modification would have minimal impact on flooding and visual amenity.*

30. At ARP 7.1.2 the Department concludes:

the proposal is in the public interest and the modification is approvable, subject to conditions.

4 THE COMMISSION'S CONSIDERATION

4.1 The Department's Assessment Report

31. Under section 4.6 of the EP&A Act, certain functions of the Department are to be exercised by the Planning Secretary on behalf of the Commission, including "*undertaking assessments of the proposed development and providing them to the Commission (but without limiting the assessments that the Commission may undertake)*" (section 4.6(b)). The Planning Secretary's assessment of the Modification Request is set out in the Department's AR.

4.2 The Commission's Meetings

32. As part of its determination, the Commission met with the Applicant and the Department, as set out in Table 2. These meetings were held via videoconference due to COVID-19 restrictions. Council was also offered an opportunity to meet with the Commission; however, Council declined the invitation after reviewing the Department's AR and recommended conditions and advised that it did not wish to make further submissions to the Commission. All meeting transcripts have been made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript Available on
Department	13 October 2020	16 October 2020
Applicant	13 October 2020	20 October 2020

4.3 Site Inspection

33. There is no statutory requirement for the Commission to conduct a site and locality inspection when carrying out its functions. A decision was made by the Chair of the Panel not to conduct a site inspection during the current COVID-19 circumstances given the nature of the Modification Request and the ability to make an informed decision based on meetings with stakeholders and the material provided and identified in paragraph 37 (**Material**).

4.4 Public Comments

34. The Modification Request was made available on the Commission website on 21 September 2020, providing an opportunity for submission of written comments to the Commission until 16 October 2020.
35. The Commission received two comments on the Modification Request from the public. One submission was in objection to the proposal but did not include any written comment or any details of the reason for the objection. The other submission was a comment neither supporting nor objecting to the proposal, stating:

Please keep the environment in the Minnamurra and Shoalhaven areas pristine. No sandblasting or mining.

36. The public comments were considered by the Commission in making its decision on the Modification Request.

4.5 Material considered by the Commission

37. In this determination, the Commission has carefully considered the following material (**material**):
- the Applicant's Statement of Environmental Effects (**SEE**) and Planning Report, prepared by Cowman Stoddart, dated December 2019, and accompanying documentation
 - agency submissions to the Department during its assessment, as set out in paragraphs 18 - 27
 - the Department's request for information, dated 31 January 2020
 - the Applicant's Addendum Submission dated 19 June 2020
 - the Department's request for further information (RFI), dated 23 July 2020

- the Applicant's RFI response dated 28 July 2020
- the Applicant's revised Preliminary Hazards Analysis, dated 28 July 2020
- the Department's AR, dated August 2020
- the Department's draft Instrument of Modification, undated
- transcripts for the meetings identified in Table 2
- the Department's presentation for the stakeholder meeting, identified in Table 2.
- the Applicant's response to the Commission's question on notice, dated 16 October 2020
- the Department's responses to the Commission's question on notice, dated 21 October 2020

4.6 Key Issues

4.6.1 Air Quality

Applicant's Consideration

38. The Applicant submitted a revised AQIA prepared by GHD and dated June 2020, that assessed the potential off-site odour and air quality impacts associated with the Modification Request. The AQIA included an assessment of impacts associated with the addition of a new product dryer, installation of an additional stack to Starch Dryer 5, change in fuel use, and changes to the location of the baghouse for Starch Dryer 5. The AQIA concluded that predicted air quality impacts are acceptable.

Department's Assessment

39. At ARP 5.4.2, the Department notes that the EPA reviewed the revised Air Quality Impact Assessment (**AQIA**) provided by the Applicant and provided recommended conditions of consent. At ARP 6.2.8, the Department describes the recommended conditions, which require post-commissioning monitoring and verification of polycyclic aromatic hydrocarbon levels emitted from boilers No. 2 and 4, and revised discharge limits for boilers No. 2 and 4 as a result of the proposed fuel mix.

40. At ARP 6.2.13, the Department states:

While the modification will result in an increase in emissions of PAH and VOC concentrations, the Department notes emissions will remain compliant with the impact assessment criteria. Furthermore, the Department agrees with the recommendations of the EPA and considers post-commissioning monitoring and verification of boilers No. 2 and 4 as imperative as it will ensure boiler emissions achieve the emissions criteria limits specified in the EPL and are appropriately managed. Furthermore, the Department considers existing conditions of consent requiring the Applicant comply with the discharge limits of the EPL for all boiler stacks is acceptable in addressing the EPA's recommended changes to discharge limits for boilers No. 2 and 4.

41. At ARP 6.2.14, the Department concludes

the modifications to Shoalhaven Starches facility will remain below the existing impact assessment criteria and can be effectively managed through the imposition of the recommended modifying conditions.

42. In the meeting with the Commission noted at Table 2, the Department stated:

One of the things that was demonstrated in the applicant's assessment was that there was an exceedance of PM₁₀ that happened in the last quarter of monitoring and that exceedance occurred at commercial receiver C1 which you can see identified just north of the facility....EPA recognise that the – the modifications to the site particularly the alternate fuel source being used was not considered to be contributed directly to these exceedances.

And 73 per cent of these exceedances was a result of other aspects on the site which has since been raised by the EPA and they are planning to amend the EPL or the Environmental Protection Licence of the facility to create a study, essentially, for the applicant to look at and find the direct sources of where these exceedances are happening and the methodologies to, essentially, improve the site. So EPA was satisfied with moving ahead.

Commission's Findings

43. In its meeting with the Department noted at Table 2, the Commission sought confirmation that both PM₁₀ and odour exceedances identified in the submitted AQIA would be addressed through a planned site-wide air-quality audit. The Department confirmed that was the case, stating:

Yes. So the – the PM₁₀ is being – will be handled – the PM₁₀ issues that have been identified from the pellet plant are going to be handled through the EPL by the EPA ... the issues with the odour were similar to the PM₁₀ where they experienced higher quarterly monitoring results for similar circumstances and it was considered that the pellet plant again looked like to be the – the normal source... And I believe that a part of this study will also look into that – into the odour issues as well.

44. The Commission notes the proposed Condition 9I regarding post-commissioning testing of the proposed plant and Condition 9J regarding mitigation measures and agrees with the Department's findings that air-quality impacts from the proposed modifications can be appropriately managed through existing and proposed conditions.

4.6.2 Hazards and Risks

Applicant's Consideration

45. The Applicant submitted a Preliminary Hazard Analysis (**PHA**) prepared by Pinnacle Risk Management that assessed the potential hazardous events and corresponding risks associated with the Modification Request. The preliminary assessment included consideration of risks associated with the production, handling and storage of hazardous materials and the potential hazardous events involving these materials. The PHA did not identify any unacceptable risks from the proposed development.

Department's Assessment

46. The Department notes at ARP 6.3.6 that the PHA was reviewed by the Department's Hazards Specialist, and states:

“Based on the information provided, and assuming all safeguards are in place and maintained, the Department is satisfied the development does not impose an unacceptable risk to surrounding land uses...The Department recommends the Applicant update the existing hazard studies and plans for the factory to include the modification as required by the existing conditions of consent. This includes the Site-Wide Fire Safety Study, Emergency Plan and Safety Management System. The modifications must also be included in subsequent hazard audits of the factory. The Department’s assessment concludes the hazards and risks of the modification would be appropriately managed through the existing conditions of consent subject to updating the relevant hazard studies and plans.”

Commission’s Findings

47. In its meeting with the Department listed at Table 2, the Commission also asked the Department if FRNSW had provided comments on the revised PHA. In their response to questions on notice, the Department provided an email from FRNSW which confirmed that their earlier submissions had been adequately addressed, stating:

...FRNSW does not consider the proposed additional bulk chemical storage (caustic soda, hydrochloric acid, and cationic reagent) to present a fire risk given the chemicals are non-flammable and non-combustible, and subsequently do not affect the fire risk profile for the site. As such, FRNSW are satisfied that all agency submissions have been adequately addressed and offer no further comment.

48. The Commission requested examples of the types of measures to be implemented to control hazards associated with the proposed modifications. The Department identified fire rated walls around Dryer 9 and a dust explosion vent as examples and noted that there is an existing verification process for confirming implementation of appropriate risk management measures after completion of works
49. The Commission notes the existing conditions of consent requiring further assessment and control of hazards and risks, including condition 36 (pre-construction), 37 (pre-commissioning), 38 (hazard audit) and 39 (further requirements), all of which are applicable to the Modification Request. Condition 36 requires the Applicant to prepare updated hazard studies and plans prior to construction of the proposed modifications, including Fires Safety Study, Hazards and Operability Study, Final Hazards Analysis and Construction Safety Study. Condition 37 requires the Applicant to prepare updated hazard studies and plans prior to commissioning, including Transport and Hazardous Materials, Emergency Plan, and Safety Management System.
50. The Commission agrees with the Department’s finding that the hazards and risks associated with the modification would be appropriately managed through existing conditions of consent.

4.6.3 Noise

Applicant’s Consideration

51. The Applicant submitted a revised Noise Impact Assessment (NIA) prepared by Harwood Acoustics and dated 12 June 2020 that assessed the noise impacts associated with the Modification Request and demonstrate compliance with the existing noise limits of the consent. The NIA identified the primary sources of noise as the product dryer equipment, SPB processing plant and equipment, and the packing plant and equipment. The NIA predicted that the operational noise levels would comply with existing noise limits subject to recommendations, including 150mm wall and roof thickness and acoustically treated ventilation points.

52. The SEE describes existing Condition 14J(e) imposed on Modification 16 requiring individual exhaust fan silencers for flour mill B not exceed a sound pressure level of 65dB(A) when measured from 3m.
53. As part of this Modification Request, the Applicant seeks to modify Condition 14J(e) to instead specify a sound pressure level of 74dB(A) for all Flour Mill B fans combined, rather than individually.
54. At section 7, the NIA concludes:

the level of noise emission from the modification to this approved proposal will be within the noise design goals derived from Environment Protection Licence 883 noise limits at each receptor location...The level of noise emission from the construction phase of the project will be within the noise management levels set by the NSW EPA's Interim Construction Noise Guideline with the exception of piling activity on some occasions.

Department's Assessment

55. The EPA submitted a letter to the Department dated 15 July 2020 which noted that construction noise during piling works is predicted to exceed Noise Management Levels by 2dB at Coomera Street and 4dB at Meroo Street, Bomaderry, as stated by the revised Noise Impact Assessment (NIA). The EPA recommended:

Should the proposal be approved, the proponent should ensure that a Construction Noise Management Plan ('CNMP') be prepared prior to construction. The CNMP should contain all reasonable and feasible noise mitigation measures that will be taken to minimise impacts on nearby sensitive receivers.

56. Table 3 of the Department's AR states:

The modification would comply with the existing noise limits subject to the implementation of the recommendations outlined in the NIA... The Department notes existing conditions requiring design verification prior to construction and noise validation monitoring after operation are sufficient in ensuring the noise limits will not be exceeded by the modification. The Department's assessment concludes the modification would not increase noise levels from the factory above existing limits. The Department is satisfied existing conditions of consent are suitable in managing the modification

57. Regarding the proposed modification of Condition 14J(e), Table 3 of the Department's AR states:

The Department considers modifying condition 14J(e) will not alter the objective of the condition which is to limit the operational noise impacts of four mill B exhaust fans...The Department's assessment concludes the proposed modification of condition 14J(e) is acceptable and will retain the original intent of the condition imposed and recommends it be included in the modifying conditions.

Commission's Findings

58. The Commission notes that the existing Condition 13A which is considered to address the EPA's requirements regarding construction noise mitigation (emphasis added).

Condition 13A

The Applicant shall implement a Construction Noise Management Plan (CNMP) to manage the noise impacts of construction of the Development and each modification. The CNMP shall:

- a. be prepared in accordance with the EPA's Interim Construction Noise Guideline;*
- b. be approved by the Secretary prior to the commencement of piling works;*
- c. include procedures for notifying affected residences of the timing and duration of piling works, including scheduled respite periods; and*
- d. include procedures for proactively responding to noise complaints and implementing all reasonable and feasible work practices to limit construction noise impacts*

59. The Commission agrees with the Department's finding that the existing conditions of consent are sufficient to ensure noise limits at the site will not be exceeded, and that the alteration of Condition 14J(e) retains the original intent of that condition.

4.6.4 Visual Impacts

Applicant's Consideration

60. The Applicant's submitted document titled Clause 4.6 Written Request Shoalhaven LEP 2014, prepared by Cowman Stoddart, describes the proposed height exceedances at the site:

The modification proposal will result in plant and buildings that will exceed the 11 m building height limit under Clause 4.3(2A) as follows:

- The relocated baghouse associated with No. 5 Starch Dryer will have a maximum height of 30 m.*
- The proposed services lift (adjacent to the western wall of the No. 5 Starch Dryer) will have a maximum height of 24.4 m, and*
- The cable stayed pipe bridge upon which the elevated services conduit will be situated on the northern side of Bolong Road will have a maximum height of 14.5 m.*

A light tower illuminating this area of the site will have a maximum height of 27 m. The plant outlined above are at heights which exceed the building height limit of 11 m imposed by Clause 4.3(2A) of the Shoalhaven LEP 2014.

61. To justify these exceedances, the report confirms that the existing built form at the site is taller than the proposed structures and the nature of the proposed additions are relatively minor. The Applicant's Clause 4.6 Written Request states:

The proposed works will not be dissimilar to existing structures within the existing Shoalhaven Starches complex. The building forms, heights, shapes and characteristics are also similar to those that presently exist on the site, and will conform to the visual character of the site, i.e. it is industrial development within an industrial setting. Indeed, the proposed baghouse will be lower by 6 metres (a proposed height of 30 m than that approved under Modification No. 16 (36.0 m)).

Department's Assessment

62. The Department's AR notes that the Council did not raise concerns in their submission regarding visual impacts arising from the modification, and states:

The Department is therefore satisfied the proposed modifications will blend in with the existing industrial character of the site and would have minimal visual impact.

Commission's Findings

63. The Commission notes the increase to the bulk and scale of the buildings as part of this application; however, it agrees with the Department's findings that the proposed modifications would have minimal visual impacts, noting that the height of the proposed buildings is consistent with the existing site and that the majority of proposed works are contained within the footprint of the factory footprint.
64. The Commission has also considered the visual impacts arising from the proposed expanded carpark to the north of Bolong Road and considers that the visual impacts will be minor in the context of the adjacent factory site. The Commission notes that the car park is proposed to be used for car parking only and any other uses would necessitate approval and further consideration of visual impacts.
65. The Commission notes the existing built form at the site, and the minor visual impacts associated with the proposed modifications and finds that the Applicant has adequately justified the exceedance of Clause 4.6 of the SLEP.

4.6.5 Flooding

Council Comments

66. At Table 3, the Department's AR notes that the Council provided recommended conditions of consent requiring engineer reporting on the structural adequacy of proposed buildings in the event of flooding.

Applicant's Consideration

67. The Applicant submitted a Flood Impact Assessment (**FIA**) prepared by WMA Water that assessed potential impacts on flood levels, flows and velocities. The FIA did not identify any increase to the 1% AEP flood level offsite, and noted that the proposed elevation of service conduit would reduce the peak flood levels downstream of Bolong Road by 0.1 m.

Department's Assessment

68. At Table 3, the Department's AR notes that the existing conditions of consent require the Applicant to provide a structural engineer's report to the Planning Secretary demonstrating that structures are designed to withstand flooding, prior to the commencement of construction, and also require the Applicant to update the Flood Mitigation and Management Plan prior to the operation of each modification. The Department states:

The Department considers the modifications to the Shoalhaven Starches facility will not result in an increase in the 1% AEP flood level offsite and can be appropriately managed through the existing conditions of consent.

Commission's Findings

69. The Commission notes the existing Condition 26A:

The Applicant shall update the Flood Mitigation and Management Plan for the development to include each modification. The plan shall:

a) be prepared in consultation with Council and submitted to the Secretary prior to operation of each modification;

b) detail the procedures for managing flood risks during construction, demolition and operation, including flood recovery measures, procedures for ensuring the protection of infrastructure and human safety;

c) identify assembly points, emergency evacuation routes, flood warning alarms and evacuation procedures.

d) describe the controls to be implemented to ensure plant, equipment and stockpiles do not become floating debris during flood events

e) demonstrate the development will not unduly increase the dependence on emergency services.

If a modification does not require an update of the plan listed above, the Applicant shall provide written justification to the satisfaction of the Secretary.

70. The Commission agrees with the Department's findings that flood risk associated with the proposed modifications can be appropriately managed through the existing conditions of consent.

4.6.6 Parking

Applicant's Consideration

71. The Applicant has proposed a new carpark adjacent to the gas depot on the northern side of Bolong Road, stating that these comprise of spaces relocated from the footprint of the proposed SPB along with new contractor and overflow spaces.

Department's Assessment

72. At Table 3, the Department notes that Council did not provide comments regarding parking, and states:

The Department considers the proposed additional parking is acceptable as it will accommodate the 48 car parking spaces required to be removed due to modifications to the SPB building and the provision of surplus parking for the facility...the modification retains an acceptable amount of parking space at the facility and recommends approved site plans be updated to reflect the changes to the car parking layout.

Commission's Findings

73. In the meeting with the Department identified at Table 2, the Commission sought clarification regarding the number of car-parking spaces proposed. The Commission also requested details of the potential impacts of the proposed car park, through an email dated 16 October 2020. The Department responded by indicating that after the relocation of 48 car parking spaces due to the modifications to the SPB building, there would be a net increase of 117 new car parking spaces.

74. The Applicant's response to questions on notice, dated 16 October 2020, clarified the number of car parking spaces proposed, stating:

Attached to this submission is a revised drawing No. MN6927-008 which identifies the car park extension associated with Mod 17 in question and identifying:

- *The relocation of 13 spaces approved under Mod 16*
- *The proposed relocation of the 48 spaces under Mod 17*
- *The provision of 46 overflow and contractor parking spaces. In this regard the parking layout has been amended by reducing the overall number of overflow/contractor spaces to improve manoeuvring areas and driveways within the car park.*

75. The Applicant's response to questions on notice also provided a detailed justification for the provision of expanded car parking, stating:

The proposal will not unduly impact on the rural landscape character of the land given it involves an extension to an existing approved car park and adjoins the BOC Plant located on the adjoining Lot 241 DP 1130535. The proposal will not impact on the agricultural production of the overall land given the relatively small area associated with these works and it does not fragment this resource given it is located within the south-western corner of the land. Furthermore, given the nature of the use, it would be relatively simply to reverse the use of the land if need be and will therefore not sterilise the land for future agricultural use if it is ever required.

76. The Department's response to questions on notice, dated 21 October 2020, noted the Applicant's response, and stated:

The Department can confirm the proposed car parking relocation under MOD 17 is located within Lot 141 DP 1069758 and is identified as part of the original Project Approval under Schedule 1 of the Project Approval for 06_0228.

Section 4.55(1A) requires the consent authority to consider if the modified development is substantially the same as development originally granted consent. The Department considered the modification application to fall within the scope of a Section 4.55(1A) modification as outlined in the Department's Assessment Report.

77. Noting the revised carparking plan and the Applicant's justification, the Commission agrees with the Department's finding that the modification, including the revised car-parking provision, falls within the scope of section 4.55(1A) and is acceptable.

4.7 Mandatory considerations

78. Clause 3BA(6) in Schedule 2 of the STOP Reg includes provisions relating to modifications of projects previously categorised as transitional Part 3A projects, modifications of which were formerly made under the former section 75W of the EP&A Act. Clause 3BA Schedule 2 of the STOP Reg provides that in the application of section 4.55(1A) of the EP&A Act to such projects:

the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W).

Therefore, as described by the Department's AR at Table 1, Modification 15 was the last modification issued under section 75W and, as such, the Commission must be satisfied that the Modification Request is substantially the same as the Project Approval up to and including Modification 15.

79. The Commission has considered the scope of the proposed changes and finds that the Modification Request can be determined under section 4.55(1A) and is substantially the same as the development approved under the Project Approval, for the reasons outlined below:

- the proposed modifications are accommodated within the approved footprint, with the exception of the proposed carpark which is considered to be ancillary to the factory site;
- the proposed infrastructure and changes to the site's production do not materially change the approved industrial land use;
- the proposed structures would not result in a significant change to the scale and character of the approved development;
- the Modification Request would not involve changes to the approved hours of operation;
- the proposed modifications would not involve any changes to the proposed access arrangements.

80. In accordance with section 4.15(1) of the EP&A Act, the Commission has also taken into consideration such of the following matters as are of relevance to this Modification Request (**Mandatory Considerations**):

- the provisions of:
 - any environmental planning instrument;
 - any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the Commission (unless the Planning Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved);
 - any development control plan;
 - any planning agreement that has been entered into under s 7.4 of the EP&A Act, and any draft planning agreement that a developer has offered to enter into under s 7.4;
 - the *Environmental Planning and Assessment Regulations 2000 (Regulations)* to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act;that apply to the land to which the Application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for the development;
- submissions made in accordance with the EP&A Act and Regulations; and
- the public interest.

81. The Commission has also considered the reasons for the granting of consent of the Project Approval.

4.7.1 Relevant Environmental Planning Instruments (EPIs)

82. The Commission has taken into consideration the following EPIs which apply to the Site:

- State Environmental Planning Policy No. 33 – Hazards and Offensive Development

(SEPP 33)

- State Environmental Planning Policy No. 55 - Remediation of Land (**SEPP 55**)
- State Environmental Planning Policy (Coastal Management) 2018 (**Coastal SEPP**)
- State Environmental Planning Policy (State and Regional Development) 2011 (**SRD SEPP**)
- Shoalhaven Local Environmental Plan 2014 (**SLEP**)

83. The Commission has considered the Environmental Planning Instruments relevant to the Modification Request and, noting that the Modification Request involves no new land uses (with the exception of the expanded Area 3 Car Park), and only minor modifications to built form and operations, finds that the Modification Request accords with these instruments.

84. The Commission notes the Modification Request includes a departure to the height development standard in clause 4.3 of SLEP. This matter is considered in further detail in paragraph 60 - 65 of this Statement of Reasons.

4.7.2 Any Development Control Plan

85. Pursuant to clause 11 of SRD SEPP, development control plans do not apply to SSD.

4.7.3 Relevant Planning Agreements

86. The Commission is satisfied there are no executed or draft Voluntary Planning Agreements relevant to this Site or the Modification Request.

4.7.4 Applicable Regulations

87. The Commission is satisfied the Application meets the relevant requirements of the EP&A Reg and the STOP Reg as they apply to the Modification Request.

4.7.5 Likely Impacts of the Development

88. In determining this Modification Request, the Commission has considered the following to be key issues to address. These issues are considered in section 4.6 of this Statement of Reasons:

- Air Quality
- Hazards and Risks
- Noise
- Visual Impacts
- Flooding
- Parking

4.7.6 Suitability of the Site

89. The Commission has considered the suitability of the Site for the Modification Request, noting it would not represent a material change of use of the Site and would not result in an increase to the Site area. Therefore, the Commission finds that the Modification Request is consistent with the existing industrial site use and the Site remains suitable.

4.8 The Public Interest & Objects of the EP&A Act

90. At ARP 7.1.2 the Department concludes "*the proposal is in the public interest*".

91. In determining the public interest merits of the Application, the Commission has had regard to the objects of the EP&A Act.
92. Under section 1.3 of the EP&A Act, the relevant objects applicable to the Project are:
- 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 [ESD] 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,*
 - g) promote good design and amenity of the built environment,*
 - h) promote the proper construction and maintenance of buildings, including the protection of 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, and*
 - j) to provide increased opportunity for community participation in environmental planning and assessment.*
93. A key relevant object of the EP&A Act to the Application is the facilitation of Ecologically Sustainable Development (**ESD**). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* provides that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, 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; and
 - d) improved valuation, pricing and incentive mechanisms.
94. The Commission finds that the Application is consistent with principles of ESD, the objects of the EP&A Act and the public interest, because the Application:
- promotes the orderly and economic use and development of land as it would not involve any works outside already approved development areas and will be within the factory site, with the proposed car parking relocation under MOD 17 located within Lot 141 DP 1069758 being identified as part of the original Project Approval under Schedule 1 of the Project Approval for 06_0228. Carparking is considered ancillary to the factory use;
 - protects the environment and integrates economic, environmental and social considerations for the decision-making about environmental planning and assessment, as it:
 - would have minimal adverse impacts relating to air quality and odour

- would have minimal impact on flooding, visual amenity, riverbank stability, contamination and acid sulphate soils;
- would not have adverse impacts on the road network;
- would meet existing noise limits at sensitive receivers;
- has plans in place to address the Clean Energy Regulator's requirements;
- promotes the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, as cumulative risk from the additional infrastructure would be acceptable and the overall factory would continue to comply with the NSW land use safety risk criteria;
- promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, as government agencies have been invited to comment and make recommendations on the Application; and
- provides opportunity for community participation in environmental planning and assessment, as the Department made the Application available on the Major Projects website.

5 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

95. The Commission has carefully considered the Material before it (paragraph 37).
96. The Department's recommended conditions were revised by the Commission to correct references to appendices and maintain consistent wording, and the changes were agreed by the Department.
97. For the reasons set out in this Statement of Reasons, the Commission determines the Modification Request should be approved subject to the Department's Recommended Conditions as revised by the Commission, which the Commission finds have been designed to:
- prevent, minimise and mitigate adverse impacts; and
 - set standards and performance measures for acceptable environmental performance; and
 - provide for the ongoing environmental management of the development.
98. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 October 2020.



Andrew Hutton (Chair)
Member of the Commission