

12 November 2020

The Secretary
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2000

Dear Sir/Madam,

Re: Audit Report Pre-Construction & Construction
Elgas LPG Facility
SSD 8448
Part Lot 1 DP 1195449
130 Cormorant Road, Kooragang NSW.

Sovechles Nominees Pty Ltd obtained approval for the development of a liquefied petroleum gas (LPG) storage and distribution facility to be located at Kooragang. The development consent, State Significant Development (SSD) 8448 was granted by the Minister for Planning on 23 November 2018. The development comprises the construction and operation of a LPG facility for bulk and cylinder distribution, office building and associated car park, and is located at the rear of 130 Cormorant road, Kooragang.

In a letter dated 4 August 2020 and in accordance with Schedule 2, Part A condition A3 of the consent for SSD 8448, the Planning Secretary issued written direction requesting that an Independent Audit of the development be carried out for the pre-construction and construction phases, and submitted to the Department by close of business on 31 October 2020. The Secretary has since granted an extension to 13 November 2020.

Sovechles Nominees Pty Ltd engaged JBS&G Australia Pty Ltd trading as Consentium to undertake an independent audit of development works for the pre-construction and construction of the Kooragang LPG storage facility as requested by the Planning Secretary.

Sovechles Nominees Pty Ltd advised the Department of Consentium's engagement and approval was granted on the 21 August 2020.

The independent audit has been undertaken in accordance with the Department of Planning and Environment (2018) *Independent Audit Post Approval Requirements*. The audit team have assessed the environmental performance and compliance status of the pre-construction and construction phases of the development. The adequacy of environmental management strategies and plans were also assessed.

The project was assessed to be non-compliant with nine conditions. Recommendations were made for one consent condition. Two actions to address non-compliant conditions were identified and no action was required for the remaining non-compliant conditions which relate to the pre-construction and construction phases of the development.

No evidence of detrimental impact to the environment was identified.

The findings and recommendations for this independent audit are documented separately in the Consentium audit report. The audit report concluded, *“Overall, notwithstanding the recommendations and action identified, the environmental management system and plans currently in place have been adequate in addressing environmental management of the project. Consideration of improving public access to project documentation is recommended as the development moves into the operational phase.”*

Out of a total of 100 development consent conditions, 38 conditions have not been triggered. Of the consent conditions that have been triggered, nine non-compliances were identified. Action is required to be undertaken to address two non-compliant conditions. Recommendation was made for one consent condition that was compliant.

As set out in Part 4.3 of Department of Planning and Environment (2018) *Independent Audit Post Approval Requirements*, the proponent is required to submit their response to the audit findings to the Department in a separate document. The Summary Table below sets out the compliance issues, audit findings and recommendations copied from the Consentium Audit report, with an additional column added to include Applicant Response.

Summary of Compliance with Development Consent Conditions

Approval (ID)	Audit Findings and Recommendations	Compliance Status	Applicant Response
Terms of Consent Condition A2	Action: Address non-compliant condition B3 as indicated in the Independent Audit Table.	Non-compliant	Please refer to individual responses below.
External Walls and Cladding Condition A22	No evidence was available of provision of documentation to the Planning Secretary within the seven-day period of acceptance by the Certifying Authority. Action: None required.	Non-compliant	The builder, Brown Building, sent all the required documentation for the external wall construction to the Private Certifier Authority (BCA Solutions) on the 7.5.20 as per Consent Condition A21 and the Auditor has assessed this as compliant. Consent Condition A22 requires the Applicant to provide a copy of the documentation given to the PCA under A21 to the Planning Secretary within 7 days of it being sent to the PCA. The Applicant emailed a copy of the relevant information to DPIE on the 29.5.20. Both the PCA & the DPIE have accepted the documentation sent by the builder (relating to the cladding) but although we have contacted and emailed the PCA direct on numerous occasions, we have not been able to get confirmation (from the PCA) to confirm exactly what date they accepted the documentation, therefore we haven't been able to supply evidence of this date to the Auditor. The Auditor has then deemed this condition as non-compliant, even though both the certifier and the DPIE have received and accepted the data sent to them.

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Pre-construction Condition B3	<p>Approval of the Fire Safety Study by FRNSW were not provided.</p> <p>Action: The documentation as requested by DPIE is required to be provided.</p>	Non-compliant	<p>As the Applicant we sent the relevant documentation to Fire & Rescue NSW as required on the 6.11.2019.</p> <p>Fire & Rescue NSW sent an email reply on the 11.11.2019 and acknowledged receipt of our application and supplied the following reference numbers: Project Reference: FRN17/953 Job Number: BFS19/3651 (8000009443)</p> <p>We have sent 4 follow up emails to Fire & Rescue NSW on the 18.11.2019, 14.5.2020, 27.10.2020 & 12.11.2020 and also made 3 phone calls on 9742 7434 where we left voice messages quoting the project reference and Job number seeking their final position and to date we have not had a reply.</p> <p>The Auditor has cited copies of these email communications but has assessed this part of the condition as Non-complaint. As the Applicant we have exhausted every avenue. To date Fire & Rescue have not replied to our emails or returned our phone calls.</p> <p>In addition to the above the Certifier has issued the applicable Fire Safety Schedule & Certificates as part of the certifying process and we have also sent copies of these onto Fire & Rescue NSW on the 21.5.2020.</p> <p>I can also confirm that Elgas as the site operator has been in contact with Fire & Rescue NSW for a mandatory site inspection. This has been completed and a full review of their operation and Emergency procedures was actioned and Fire & Rescue NSW have issued a formal communication on the 24.9.2020 approving the Elgas Fire and Emergency plan and this has been acknowledged by the Auditor.</p> <p>Fire & Rescue NSW issued a Safe Work reference number: NDG2000406</p>
Groundwater Management Condition B29	<p>The Groundwater & Soil Contingency Plan (which forms part of the CEMP) does not meet conditions B29c and B29d applicable if the Groundwater Contingency Plan is triggered.</p> <p>As construction is complete, the plan is no longer required. Action: None required.</p>	Non-compliant	<p>The Builder as part of their contract supplied all their own relevant operational and management plans and a Groundwater & Soil Contingency Plan (which formed part of the CEMP) was included. The Auditor has assessed that because this particular plan doesn't 'spell out' every action required the plan doesn't meet conditions B29c and B29d which become applicable if the Groundwater Contingency Plan is triggered.</p> <p>As the Applicant, I am confident that if Groundwater was intercepted, the appropriate measures would have been actioned as the Plan clearly states that if Groundwater was intercepted on the site, works were to stop, report the issue to management and an impact investigation needs to be conducted by an engineer or specialist in groundwater management before any further works can proceed.</p>

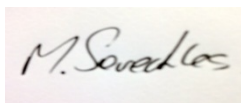
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			<p>Part of this investigation would include the requirements detailed in item B29c & B29d as this would fall within the responsibility of the specialist being engaged.</p> <p>In addition to the above, there were site specific Environmental, Geotech & Groundwater assessments completed prior to the build and these specialists' reports were all included in the EIS lodged with the original development application. These reports confirmed that the groundwater is located between 2.2m to 3m and the footings will be positioned at 1.3m which is well above the level of the Groundwater and also confirms there would be no adverse effects on groundwater during construction. These findings have been accepted by the relevant authorities during the application process.</p> <p>I can also confirm that no Groundwater was intercepted at any time during the entire build.</p>
Groundwater Management Condition B30	<p>Groundwater & Soil Contingency Plan was not submitted to the Planning Secretary.</p> <p>As construction is complete, the plan is no longer required. Action: None required.</p>	Non-compliant	<p>A Construction Environmental Management Plan (CEMP) which included a Groundwater & Soil Contingency Plan was completed but not submitted to the planning secretary.</p> <p>The DPIE issued a show cause notice to the applicant on the 21.7.2020. The applicant supplied a formal response to the Department on the 24.7.2020. After reviewing the response the Department issued a Penalty Notice on the 4.8.2020 to the Applicant for failing to comply with Schedule 2 Part C, Conditions C2 & C4 of SSD8448 by failing to prepare a CEMP to the satisfaction of the Planning Secretary and commencing construction without a CEMP approved by the Planning Secretary. The Applicant paid the fine.</p>
Contamination Condition B44	<p>The Groundwater & Soil Contingency Plan does not state any requirements for the disposal of contaminated soil.</p> <p>As construction is complete, the plan is no longer required. Action: None required.</p>	Non-compliant	<p>The Builder supplied their own Groundwater & Soil Contingency Plan (which formed part of the CEMP). The Auditor has assessed that because the plan does not state any requirements for the disposal of contaminated soil, the condition is not met. If any contamination was found we are of the belief the contingency plan would more than suffice as it clearly states that if any contamination in the soil is found on site, the works are to stop and an impact investigation would need to be conducted by an environmental engineer with no further works to proceed. As the Applicant (not the builder) I am confident that if any contamination in the soil was found the Groundwater & Soil Contingency Plan in place would have met all the required conditions as engaging a specialist and reporting to the relevant authorities (as detailed in the plan) confirms this.</p>

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			<p>In addition to these actions, in the EIS that was lodged with the development application all the Environmental, Geotech & Groundwater reports indicated there would be no adverse effects on the soil or groundwater during construction as the development and footings will be positioned well above the level of the Groundwater. These findings have been accepted by the relevant authorities and the DPIE.</p> <p>The proposed contingency plan was put in place for managing any unforeseen adverse impacts on surface and or groundwater quality.</p> <p>I can also confirm that no Groundwater was intercepted at any time during the entire build.</p>
Environmental Management Plan Requirements Condition C1	<p>The WHS Management Plan forms a portion of the Construction Safety Study which was adopted as the Environmental Management Plan during construction of the development. The WHS Management Plan does not appear to have been kept up to date during construction and has not included contact details of the site supervisor. References are made to forms which were provided separate to the WHS Management Plan.</p> <p>As construction is complete, no action is required in relation to environmental management plans for the construction phase.</p> <p>Action: None required.</p>	Non-compliant	<p>A Construction Environmental Management Plan (CEMP) and supporting documentation were used and implemented by the builder during construction as confirmed by the Auditor, but the CEMP documentation was not sent to the Planning Secretary for approval as required.</p> <p>The DPIE issued a show cause notice to the applicant on the 21.7.2020. The applicant supplied a formal response to the Department on the 24.7.2020. After reviewing the response the Department issued a Penalty Notice on the 4.8.2020 to the Applicant for failing to comply with Schedule 2 Part C, Conditions C2 & C4 of SSD8448 by failing to prepare a CEMP to the satisfaction of the Planning Secretary and commencing construction without a CEMP approved by the Planning Secretary. The Applicant paid the fine.</p>
Construction Environmental Management Plan Condition C2	<p>The Construction Safety Study and Construction Environmental Management Plan do not address all the requirements of condition C1. The Construction Environmental Management Plan was not approved by the Planning Secretary.</p> <p>As construction is complete, no action is required in relation to environmental management plans for the construction phase.</p> <p>Action: None required.</p>	Non-compliant	<p>A Construction Environmental Management Plan (CEMP) and supporting documentation were used and implemented by the builder during construction as confirmed by the Auditor, but the CEMP documentation was not sent to the Planning Secretary for approval as required.</p> <p>The DPIE issued a show cause notice to the applicant on the 21.7.2020. The applicant supplied a formal response to the Department on the 24.7.2020. After reviewing the response the Department issued a Penalty Notice on the 4.8.2020 to the Applicant for failing to comply with Schedule 2 Part C, Conditions C2 & C4 of SSD8448 by failing to prepare a CEMP to the satisfaction of the Planning Secretary and commencing construction without a CEMP approved by the Planning Secretary. The Applicant paid the fine.</p>
Construction Environmental Management Plan Condition C4	<p>The CEMP was not submitted to the Planning Secretary for approval.</p>	Non-compliant	<p>A Construction Environmental Management Plan (CEMP) and supporting documentation were used and implemented by the builder during construction as confirmed by the Auditor, but the CEMP documentation was not sent to the</p>

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	<p>As construction is complete, no action is required in relation to environmental management plans for the construction phase.</p> <p>Action: None required.</p>		<p>Planning Secretary for approval as required.</p> <p>The DPIE issued a show cause notice to the applicant on the 21.7.2020. The applicant supplied a formal response to the Department on the 24.7.2020.</p> <p>After reviewing the response the Department issued a Penalty Notice on the 4.8.2020 to the Applicant for failing to comply with Schedule 2 Part C, Conditions C2 & C4 of SSD8448 by failing to prepare a CEMP to the satisfaction of the Planning Secretary and commencing construction without a CEMP approved by the Planning Secretary. The Applicant paid the fine.</p>
Access to Information Condition C21	<p>Project documentation is available to the public on the DPIE Planning Portal or through visiting the site although not all documentation required under the consent condition is available remotely on the Planning Portal.</p> <p>Recommendation: Consideration should be given to how to improve public access to documents that are not available on the Planning Portal.</p>	Compliant	<p>We note the recommendation in relation to improving public access to documents that are available on the planning portal. For all future projects we have decided that in addition to having all the relevant documentation available on site, with the builder, and in the public domain, we will create a specific website to advertise all Project documentation.</p> <p>As the Applicant I can also confirm that there was no contact direct or indirect from any local business, resident, community member or any group requiring any information or documentation relating to this development at any time during the entire build.</p>

We trust that this letter comprehensively addresses the Applicant response requirements as set out in Part 4.3 of Department of Planning and Environment (2018) *Independent Audit Post Approval Requirements* and we note the opportunity for improvement in relation to public access to project documents. We also seek the Department's guidance with respect to the practical measures required to ensure we comply with the requirements of Condition C19 (c) - making each Independent Audit report and response publicly available no later than 60 days after submission to the Department.

Yours Faithfully



Mitchell Sovechles
Director
Sovechles Nominees Pty Ltd