

National Competition Council

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Ref: 1530.3A

27 October 2011

Richard Davis
Partner
HWL Ebsworth

By email: richard.davis@hwlebsworth.com.au

Dear Richard

Application for declaration of jet fuel supply infrastructure services provided by the Caltex pipeline facility, Sydney airport

We refer to the above application made by the Board of Airline Representatives Australia Inc (BARA) and received by the Council on 27 September 2011.

The service

There may be some ambiguity in the service for which declaration is sought and the facility said to provide this service, particularly when regard is had to the definition of service in paragraph 4.1 of the application, the description of the facility at 5.1 of the application and the definition of the Caltex Pipeline at 2.1.

It appears that while the "facility" is described in terms of the full length of the Caltex Pipeline from the Kurnell Refinery to the Sydney JUHI, the "service" may only engage that part of the pipeline which runs from Port Botany to the JUHI. This may be what the applicant intends, but for the avoidance of doubt a statement to that effect would be of assistance.

It may also be that it is desirable to better describe the injection and exit point(s) envisaged by the applicant and to ensure these are within the scope of the service for which declaration is sought. In our view, it is not necessary for specific injection points to be specified but any points would need to be within the scope of the service.

We invite the applicant to provide more detailed descriptions of the service applied for, including injection and exit points and the size, length and any other particulars of the facility directly referable to the service applied for and how this relates to any extended facility that the applicant considers provides the relevant service.

Commercial developments in the marketplace

The application refers to proposals of Shell Australia in respect of its Clyde refinery and Gore Bay terminal. We note that Shell has now committed to a proposed course of action in this regard¹. The application does not appear to address any implications of Shell's proposals (now confirmed) for the analysis of the declaration criteria. In particular the Sydney Jet Fuel Infrastructure Working Group Report which provides the factual background for much of the application was completed before Shell's plans were announced and therefore does not address this issue. Based on our preliminary consideration of BARA's applications, it appears possible that this development may, at some time, enhance the ability of the Shell pipeline to transport jet fuel to the Sydney JUHI and possibly also free up capacity on the Caltex Pipeline should Shell reduce its use of that pipeline.

The Council invites the applicant to update and, if necessary, to supplement its application on the impact of this development. To the extent that an update may also be necessary for the application concerning the Sydney JUHI from this development please advise accordingly.

We would appreciate your response to the first issue raised in this letter as soon as possible and, in any event, no later than Friday 4 November 2011. We appreciate some additional time may be required to address the second issue, however, in order to enable other parties to consider any information provided a response in regard to this issue should be provided by Friday 11 November 2011.

Please note that the Council intends to publish this request and the responses received on its website with the applications.

Yours sincerely



John Feil
Executive Director

¹ Shell Australia Media release (27 July 2011) – Shell to cease refining at Clyde– copy attached.

MEDIA RELEASE

Shell to cease refining at Clyde

27/07/2011

Shell today announced its decision to stop refining operations at its 79,000 barrel-per-day Clyde Refinery in Sydney, Australia, and convert it and the Gore Bay Terminal into a fuel import facility before mid 2013.

The decision recognised the Clyde Refinery was no longer regionally competitive against Asian mega-refineries.

Shell's vice-president Australia downstream, Andrew Smith, said the company would continue to grow its New South Wales business through its strategic infrastructure assets at Clyde and Gore Bay.

He said Shell remains committed to servicing its customers through a reliable supply of fuel into the state.

"While this is a sad day for Shell's operations in New South Wales and many of our employees at the refinery, the decision to convert Clyde into a terminal is consistent with Shell's strategy to focus its refining portfolio on larger assets, and to build a profitable downstream business here in Australia," he said.

Mr Smith said this news would be very difficult for many employees and Shell was committed to supporting them through the transition.

"Everyone at Shell acknowledges the valuable contribution made by Clyde and Gore Bay employees in servicing New South Wales customers for around 100 years, and Shell will look to identify redeployment opportunities where possible," he said.

"The decision follows a proposal made in April and consultation with more than 94% of employees at Clyde and Gore Bay, along with their representatives. In making this decision, Shell took into account all of the views expressed and alternatives proposed during consultation."

Refining at Clyde will cease prior to mid 2013. The process to convert Clyde refinery and Gore Bay into terminal operations will cover four stages:

- design of the new facilities;
- transition from refining to terminal operations;
- works to improve efficiency and operability of the terminal; and
- preparation for future development of up to 40 hectares of refinery land.

The decision about Clyde's future is not related to Shell's Geelong Refinery and was not reached as a result of any government policy – including any proposed price on carbon.

- Ends -

Media inquiries: Paul Zennaro, senior media adviser, 0417-007-344.