

Modification of Development Consent

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*

As delegate for the Minister for Planning and Public Spaces, under delegation executed on 26 April 2021, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions outlined in Schedule 2.



Clay Preshaw
Executive Director
Energy, Resources and Industry Assessments

Sydney

24 December 2021

File: EF19/22916

SCHEDULE 1

Development Consent

Development Consent: DA-282-11-2004-i granted by the then Minister for Planning on 21 December 2005

For the following: Construction and operation of a commercial aquaculture facility and associated seawater supply works

Modification 4

Modification Application: DA-282-11-2004-I-Mod-4

The modification involves additional bulk earthworks, the installation and use of short-term staff accommodation units, the cultivation of additional aquaculture species and administrative amendments to the development consent

Applicant: Australian Bay Lobster Producers Limited

Consent Authority: Minister for Planning and Public Spaces

Land: 9484 Tweed Valley Way, Chinderah

SCHEDULE 2

This consent is modified as follows:

1. In the “For the following:” section in Schedule 1, delete the phrase “Australian Bay Lobster”.
2. Delete all references to “Dreamtime” and replace with the word “Kingscliff”.
3. Delete the definition for “*Thenus* spp.” and insert the following definitions in alphabetical order:

biosecurity event	has the same meaning as “biosecurity event” as defined under the <i>Biosecurity Act 2015</i>
marine vegetation	has the same meaning as “marine vegetation” as defined under the <i>Fisheries Management Act 1994</i>
notifiable matter	has the same meaning as “notifiable matter” as defined under the <i>Biosecurity Regulation 2017</i>
prohibited matter	has the same meaning as “prohibited matter” as defined under the <i>Biosecurity Act 2015</i>
<i>Thenus</i> spp.	specifically, <i>Thenus orientalis</i> and <i>T. indicus</i> , which are more commonly known as Moreton Bay Bugs, Slipper Lobsters or Bay Lobsters (the latter being the internationally recognised name for these species) and includes the animal at any stage of its life history (whether alive or dead) and/or any part of the animal
4. In the definition of “Modification Assessments”, renumber modification application b) to modification application c).
5. Insert a new modification application b) into the definition of “Modifications Assessments” after a) as follows:

b) DA-282-11-2004-I-Mod-4 – The modification report titled ‘SSD Modification Application to DA 282-11-2004-i MOD 4’, prepared by North Point Advisory, dated June 2019; the letter titled ‘Response to submissions – Australian Bay Lobster Producers Limited Facility – Modification 4 to DA 282-11-2004-I’, prepared by Australian Bay Lobster Producers Limited, dated 15 February 2021; the letter titled ‘Response to further submissions’, prepared by Australian Bay Lobster Producers Limited, dated 9 July 2021; and the additional information email titled ‘RE: Modification 4’, prepared by Australian Bay Lobster Producers Limited, dated 20 July 2021; and
6. In the definition of “operation”, insert the phrase “fish and marine vegetation species, including ” immediately after the phrase “commercial quantities of”.
7. Delete condition 1.3 and replace with the following:

1.3 This consent permits the tank-based aquaculture cultivation and research of fish and marine vegetation species including, but not limited to, *Thenus* spp., as authorised under an aquaculture permit issued in accordance with the *Fisheries Management Act 1994*.
8. In condition 1.4, insert the phrase “or marine vegetation species ” immediately after both instances of the phrase “fish ”.

9. In condition 4.1b, insert the phrase "operation of " immediately after the phrase "commencement of ".
10. In condition 4.4, delete the phrase "600 kilolitres (kL) per day for each stage of the development" and replace with the phrase "1,800 kilolitres (kL) per day".
11. In condition 4.4, delete the "Note" section.
12. In condition 4.11, delete the phrase "the Applicant may capture and store roof water for use at the development site." and replace with the following:

the Applicant may:

 - a) direct all stormwater runoff permitted to be discharged from the site to the on-site stormwater retention dam/s (see conditions 8.3 a) and 8.5 a) of this consent); and/or
 - b) capture and store roof water for use at the development site.
13. In condition 4.13, delete the phrase "In this regard, an impervious perimeter bund around the main aquaculture development site is to be constructed to a height of 4.0m AHD." and replace with the following:

In this regard, either:

 - a) an impervious perimeter bund is to be constructed around the main aquaculture development site to a height of 4.0m AHD; or
 - b) the main aquaculture development site is to be filled to a height of 4.0m AHD.
14. In condition 4.15, delete the phrase "The area inside the perimeter bund" and replace with the phrase "In the event a perimeter bund is constructed (see condition 4.13 a) of this consent), the area inside the perimeter bund that is below a height of 4.0m AHD".
15. In condition 4.16, delete the phrase "is to be landscaped" and replace with the phrase "and/or the perimeter batters (see condition 4.13 of this consent) are to be landscaped".
16. Insert new conditions 4.16a and 4.16b immediately after condition 4.16 as follows:

Flood Emergency Response Plan

- 4.16a Prior to the occupation of the existing on-site accommodation units, the Applicant must prepare a Flood Emergency Response Plan (FERP) for the on-site accommodation units to the satisfaction of the Planning Secretary. The Plan must include details of:
 - a) the flood emergency response procedures which would be implemented for the accommodation units (see condition 4.74 of this consent);
 - b) predicted flood levels in the vicinity of the accommodation units;
 - c) flood warning time and flood notification procedures;
 - d) assembly points and evacuation routes;
 - e) evacuation protocols; and
 - f) awareness training for employees and contractors.
- 4.16b The Applicant must:
 - a) not occupy the existing on-site accommodation units until the FERP required by condition 4.16a is approved by the Planning Secretary;
 - b) ensure the FERP is reviewed on an annual basis and/or following a flood event greater than the 1 in 20 year ARI flood level; and
 - c) implement the most recent version of the FERP approved by the Planning Secretary for the duration of the development.
17. In condition 4.19, delete the first word "Water" and replace with the word "Groundwater".

18. Insert new conditions 4.38a and 4.38b immediately after condition 4.38 as follows:

Updated Traffic Management Plan

- 4.38a Within 3 months of the date of approval of DA-282-11-2004-I-Mod-4, the Applicant must update the Traffic Management Plan for the main aquaculture development site to the satisfaction of the Planning Secretary. The updated plan must:
- a) be submitted for the approval of the Planning Secretary;
 - b) detail the measures which would be implemented to:
 - (i) protect decelerating vehicles turning left into the site access road from collisions with southbound through traffic (see condition 4.34 of this consent);
 - (ii) inform operational staff of peak fill haulage periods; and
 - c) include an updated Traffic Guidance Scheme prepared in accordance with the relevant TfNSW guidelines.

Access Road Turn Radius

- 4.38b Within 24 months of the date of approval of DA-282-11-2004-I-Mod-4 (unless otherwise agreed to in writing by the Planning Secretary), the Applicant must complete the guardrail relocation works shown in Figure 6.2 of the Traffic Impact Assessment prepared by CRG Traffic Pty Ltd, dated 12 April 2021 (Version 4) to the satisfaction of TfNSW.

Note: The Applicant must obtain approval from TfNSW for the works under section 138 of the *Roads Act 1993*.

19. Delete condition 4.51 and replace with new conditions 4.51 and 4.51a as follows:

- 4.51 The Applicant must comply with the construction hours detailed in Table 1a below.

Table 1a. Construction Hours

Activity	Day	Time
Earthworks and construction (main aquaculture site)	Monday – Friday Saturday	7 am to 6 pm 8 am to 1 pm
Earthworks and construction (seawater intake pipeline)	Monday – Saturday	7 am to 6 pm

- 4.51a Construction works outside of the hours identified in condition 4.51 may be undertaken in the following circumstances:
- a) works that are inaudible at the nearest sensitive receivers;
 - b) works agreed to in writing by the Planning Secretary;
 - c) for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or
 - d) where it is required in an emergency to avoid the loss of lives, property or to prevent environmental harm.

20. Delete condition 4.53 and replace with new condition 4.53 as follows:

4.53 The Applicant must comply with the hours of operation detailed in Table 1b below.

Table 1b. Hours of Operation

Activity	Day	Time*
Operation (excluding seawater truck deliveries)	Monday – Sunday	24 hours
Seawater truck deliveries	Monday – Friday Saturday	6 am to 7 pm 8 am to 1 pm

* All hours of operation are in Australian Eastern Standard Time (AEST).

21. In condition 4.59, insert the phrase “or marine vegetation species ” immediately after the phrase “fish”.

22. Delete condition 4.61 and replace with new condition 4.61 as follows:

- 4.61 ¹The Applicant must notify the Department of Primary Industries within 24 hours of:
- the discovery of any disease listed as a prohibited matter under Schedule 2 of the *Biosecurity Act 2015*;
 - the discovery of any disease listed as a notifiable matter under the Biosecurity Regulation 2017;
 - a biosecurity event declared under the Biosecurity Regulation 2017.

Note: At the time of determination of DA-282-11-2004-I-Mod-4, the following biosecurity events are of relevance to the aquaculture facility: - an unexplained and significant increase in a mortality rate or morbidity rate in plants or animals; - an unexplained and significant fall in production relating to plants or animals; and - the appearance of other unexplained and significant clinical signs in animals including, but not limited to, unexplained neurological signs or conditions.
--

23. Delete condition 4.62 and replace with new condition 4.62 as follows:

- 4.62 ²Where any prohibited matter, notifiable matter or any other disease exists, or is reasonably suspected of existing on the site, the Applicant must carry out any direction so ordered by the Director General of the Department of Primary Industries for the treatment or destruction of fish and marine vegetation species including quarantine of the site. Any such order must remain in effect until revoked by the Director General of the Department of Primary Industries in writing.

24. Delete condition 4.63 and replace with new condition 4.63 as follows:

- 4.63 ³The Applicant must not sell, give away, or otherwise supply or release into waterways, any fish or marine vegetation species if it is known or suspected to be infected with a prohibited matter or a notifiable matter. The Applicant must take all precaution as specified

¹ Incorporates a Department of Primary Industries General Term of Approval (21)

² Incorporates a Department of Primary Industries General Term of Approval (22)

³ Incorporates a Department of Primary Industries General Term of Approval (23)

in writing by the Director General of the Department of Primary Industries to prevent the escape of fish and marine vegetation species or disease from the site.

25. In condition 4.66, delete the phrase “below the substrate surface and must not be visible at any point.” and replace with the following:

primarily below the substrate surface and must not be visible at any point. Those elements which may be located above the substrate surface are shown in plan set D05-2001, prepared by Willow + Sparrow, dated 12 February 2021 (Rev E).

26. In condition 4.68, insert the phrase “or marine vegetation species ” immediately after the phrase “fish ”.

27. Insert new conditions 4.71 to 4.75 and their associated sub-headings immediately after condition 4.70 as follows:

On-site Accommodation Units (Existing and Future)

- 4.71 The on-site accommodation units are only to be occupied by persons employed by the Applicant and/or associated with the activities described in condition 4.73 a), and must not be occupied or let for any other purpose.
- 4.72 The maximum length of stay for any individual within the on-site accommodation units is 28 consecutive days.
- 4.73 The Applicant must:
- a) ensure the on-site accommodation units are only used for the purposes described in DA-282-11-2004-I-Mod-4;
 - b) keep accurate records of each time the accommodation units are used (including the purpose of the stay and the number of nights);
 - c) reproduce these records in the development's AEMR (refer to condition 9.3 of this consent); and
 - d) make these records available to the Planning Secretary or Council upon their request.
- 4.74 Notwithstanding condition 4.73 a), the Applicant must ensure the on-site accommodation units are not used if flood waters in the area immediately surrounding the main aquaculture development site are predicted to exceed the 1 in 20 year ARI flood level.

Note: The 1 in 20 year ARI flood level in the vicinity of the main aquaculture development site is approximately 2.3m AHD.
--

Existing Accommodation Units

- 4.75 Prior to the occupation of the existing on-site accommodation units, the Applicant must:
- a) obtain all necessary building information certificate(s) from Council for these units;
 - b) ensure that any alterations or additions to the units that are required as part of Council's building information certificate process are constructed in accordance with the relevant requirements of the BCA; and
 - c) provide copies of the obtained building information certificate(s) to the Planning Secretary.
28. In subpoint d) of condition 8.5, delete all references to the phrase “Disease Prevention Program” and the word “Program” and replace with the phrase “Biosecurity Plan”.
29. In subpoint d) of condition 8.5, insert the word “aquaculture” immediately before the phrase “disease outbreaks”.

30. In condition 9.3, delete the full stop at the end of subpoint h) and replace with the following words and new subpoint i) as follows:

; and

- i) a copy of the development's staff accommodation register (refer to condition 4.73 b) of this consent) for the preceding twelve-month period.

31. Insert new conditions 9.6 and 9.7 and their associated sub-heading immediately after condition 9.5 as follows:

Revision of Strategies, Plans and Programs

9.6 Within three months of:

- a) the submission of an AEMR under condition 9.4;
- b) the submission of an incident report under condition 9.1;
- c) the submission of an Independent Audit under condition 5.7;
- d) the approval of any modification of the conditions of this consent;
- e) the issue of an aquaculture permit under the *Fisheries Management Act 1994*; or
- f) the issue of a direction of the Planning Secretary under condition 2.5 which requires a review,

the strategies, plans and programs required under this consent must be reviewed.

9.7 If necessary to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised, to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review required under condition 9.6, or such other timing as agreed by the Planning Secretary.

Note: This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.

32. Delete Appendix A and replace with new Appendix A as shown in Appendix 1 of this instrument.
33. Insert new Appendix D as shown in Appendix 2 of this instrument.
-

APPENDIX 1

APPENDIX A – DECLARED DISEASES

<Deleted>

APPENDIX 2

APPENDIX D – CONCEPTUAL SITE MASTERPLAN

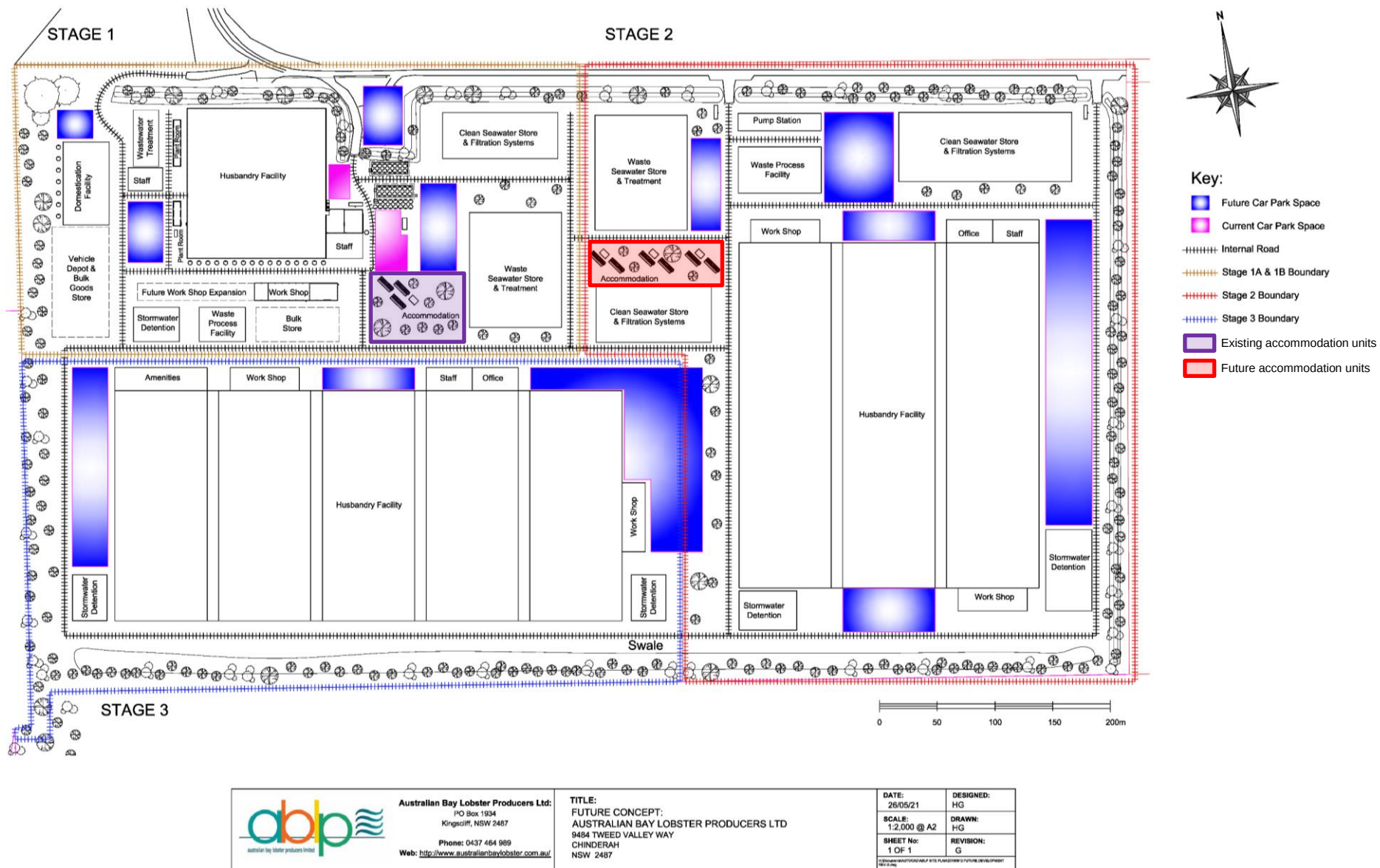


Figure 2: Conceptual master plan – Main aquaculture development site