



***MODIFICATION REQUEST:
Port Botany Expansion
Proposed Modification to the Location
and Heights of the Operation and
Maintenance Buildings
(DA-494-11-2003-i MOD 11)***

Description of Modification Request

Amendments to the location and height of both the Operations and Maintenance Buildings at the new Terminal No.3.

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

November 2011

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EXECUTIVE SUMMARY

Sydney Ports Corporation (SPC) received development consent for the construction and operation of a new container terminal and associated infrastructure within Port Botany on 13 October 2005. Stage 2 of the development involving the construction of a fifth berth was approved on 22 August 2006.

The development consent included the construction and operation of an operations building and a maintenance building as part of the new terminal. SPC has recently awarded the operation of the new terminal to the Sydney International Container Terminals Pty Limited (SICTL). As part of the terminal operations and to better accommodate the operational and maintenance requirements of the approved development, SICTL is proposing to alter the location and building heights of the approved operations and maintenance buildings. Director-General requirements for the modification application were issued by the Department on 4 May 2011.

The modification proposal involves the reorientation and repositioning of both the operations and maintenance buildings to a more southerly location within the terminal footprint. The operations building is also proposed to be increased in height to a maximum of 20.55 metres above ground level (a maximum height of 24.07 metres AHD) and the maintenance building to 19 metres above ground level (a maximum height of 26.075 metres AHD).

The modification request was not publicly exhibited due to its minor nature, but was referred to the Botany Bay Council and the Office of Environment and Heritage and also made publicly available on the Department's website.

The Department has reviewed the modification request and supporting Environmental Assessment and does not consider that the proposal would result in additional impacts when compared to the approved development. The reorientation and repositioning on the buildings would improve the visual outcome of the development and also slightly widen the path available for shorebirds to fly in and out of the Penrhyn Estuary. The Department therefore recommends that the modification be approved.

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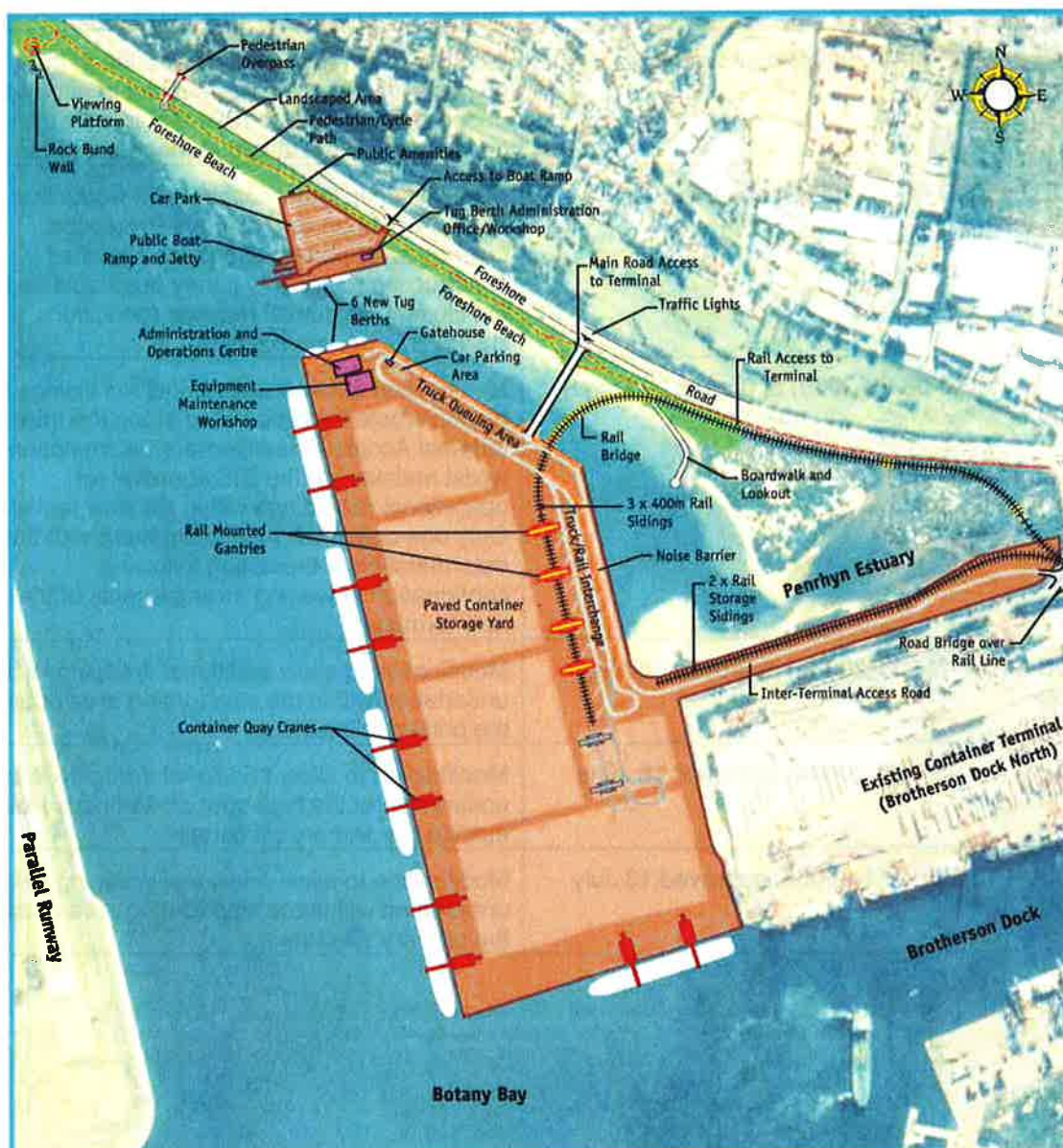
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1. BACKGROUND

On 13 October 2005, the then Minister for Planning granted staged development consent for a new container terminal and associated infrastructure at Port Botany, commonly referred to as the Port Botany Expansion. The development consent permitted the immediate implementation of "Stage 1" of the Port expansion, being a four berth extension to the northern end of Brotherson Dock North. "Stage 2", involving a fifth berth, was the subject of a separate development consent approved on 22 August 2006.

The port expansion, involving the reclamation of land adjacent to the existing Port Botany container berths to construct a third terminal (Terminal 3), was completed on 17 June 2011. Sydney Ports Corporation (SPC, the Proponent) recently appointed Sydney International Container Terminals Pty Limited (SICTL) to be the operator of the new terminal. The approved project is shown in **Figure 1**.

Figure 1: Project Location and Approved Layout



A number of modifications have been made to the approval since the initial consent was granted, as outlined in Table 1.

Table 1: Previous Modifications

Modification	Description
MOD 1 (MOD-27-2-2006-i) approved 11 September 2007	Modification to correct various minor errors and misdescriptions and to clarify various conditions.
MOD 2 (MOD-134-11-2006-i) approved 11 September 2007	Modification to permit alternative wharf structure designs. An additional condition was added (B2.40A) regarding wave action and erosion at Foreshore Beach and impact on seagrasses.
MOD 3 (MOD-149-12-2006-i) approved 11 September 2007	Modification to permit land based activities associated with dredging to be undertaken at night and for dredging activities to be undertaken within specific turbidity limits.
MOD 4 (MOD-78-9-2007-i) approved 17 September 2007	Modification to alter the timing of various studies (conditions C2.20 and C2.25).
MOD 5 (MOD-60-9-2008-i) approved 21 September 2008	Modification to allow the penetration of the obstacle limitation surface subject to approval under the <i>Airports Act 1996</i> and to alter the timing of the Bird Hazard Management Plan.
MOD 6 (MOD-68-12-2008-i) approved 12 December 2008	Modification to allow construction works that are not subject to an Environment Protection Licence to be permitted outside specified construction hours only if they are inaudible at the closest residential receiver (conditions B2.19, B2.19A and B2.19B).
MOD 7 (MOD-08-03-2009) approved 20 March 2009	Modification to allow operational rail sidings to be constructed and operated along the Inter-terminal Access Road Corridor, as an option, whilst maintaining the EIS approval for operational rail sidings within the new terminal. Only one option will be implemented with the determination of the option following confirmation of leasing arrangements of the new terminal.
MOD 8 (DA-494-11-2003-i) approved 30 May 2009	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain.
MOD 9 (DA-494-11-2003-i) approved 18 June 2009	Modification to allow additional dredging to be undertaken at the high spot off Molineux Point outside the primary silt curtain.
MOD 10 (DA-494-11-2003-i) approved 13 July 2009	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain.

2. PROPOSED MODIFICATION

2.1 Modification Description

SICTL, the operator of Terminal No. 3, is seeking a modification under section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the approved location, footprint and height of both the operations and maintenance buildings. The modifications are required to better accommodate the operational and maintenance requirements of the project.

As shown in **Figure 2**, both buildings are proposed to be reoriented and repositioned to a more southerly location on the new terminal.

Figure 2: Proposed Modified Layout



The project Environmental Impact Statement (EIS) indicated that the operations building would be a two or three storey structure with a height in the order of 12 metres. The revised operations building is to include a rooftop outdoor observation level, barbeque area and roof installed flagpoles. The building height above ground level is proposed to be increased from that indicated in the EIS to the following levels:

- 16.950 metres to the top of the parapet enclosing the rooftop plant and observation areas;
- 17.950 metres to the top of the lift overrun enclosure; and
- 20.550 metres to the top of the flagpoles installed on the roof (i.e. a maximum height of 24.07 metres AHD).

The EIS described the equipment maintenance workshop building to comprise a steel structure with metal cladding in the order of about 18 metres in height. The

highest element of the revised maintenance building is proposed to be the ridge height of the roofline at 19.00 metres above ground level (i.e. a maximum height of 26.075 metres AHD).

The changes to the operations building are required to accommodate both office and site based staff, while changes to the maintenance building are necessary to allow access of high vehicles with overhead cranes and to provide workshop, service bays and office facilities.

Design perspectives of the modified buildings are provided as **Figure 3**.

Figure 3: Design Perspectives



Design Perspective for Operations Building



Location and Perspective of Operations and Maintenance Buildings

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The modification request was submitted under section 75W of the Act pursuant to clause 8J(8)(c) of the *Environmental Planning and Assessment Regulation 2000*. This clause provides that for the purposes of modification only, a development consent granted by the Minister under Part 4 of the Act (relating to a State Significant Development) under clause 89 of schedule 6 of the Act (i.e. determination was pending at the commencement of Part 3A of the Act on 1 August 2005) is taken to be an approval under Part 3A of the Act and section 75W applies. As the project falls into this category, this section applies to the modification application. The existing consent following modification would remain a consent under Part 4 of the Act.

Transitional arrangements are in place as a result of the repeal of Part 3A of the Act. Clause 12 of Schedule 6A states that section 75W of the Act continues to apply to modifications of development consents referred to in clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000* and applies whether an application for a modification is made before or after the commencement of this clause.

Section 75W(2) of the Act provides that a Proponent can request the Minister to modify the approval of a project, where the subject modification is not consistent with the approval. This is the case in this instance and therefore an assessment in accordance with section 75W of the Act is considered appropriate.

3.2 Environmental Assessment Requirements

In accordance with section 75W(3) of the Act, the Director-General notified the proponent of environmental assessment requirements for the proposed modification, which were issued to the Proponent on 4 May 2011. The Department is satisfied that these requirements have been complied with.

3.3 Delegated Authority

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the Act to Directors in the Major Projects Assessment Division where the following applies:

- the relevant local council has not made an objection, and
- a political disclosure statement has not been made, and
- there are less than 10 public submissions in the nature of objections.

As all these criteria are met with respect to the modification proposal, the Director, Infrastructure Projects, may determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

The modification request was not publicly exhibited due to its minor nature. However, in accordance with section 75X(2)(f) of the Act, it was made publicly available on the Department's website from 4 October 2011.

4.2 Consultation by the Proponent

The Director-General's requirements for the modification required the Proponent to consult with Airservices Australia regarding the potential impact of the increased heights of the buildings on the Obstacle Limitation Surfaces of Sydney Kingsford Smith Airport.

Airservices Australia has confirmed that the proposed building heights are below the 51.00 metre AHD limit so no further assessment is required with regard to flight path procedures.

The Proponent also consulted with the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) as well as Sydney Airport Corporation Limited (SACL). SEWPaC indicated that the proposed modification would not necessitate any variation to the conditions of approval for the project under the *Environment Protection and Biodiversity Conservation Act 1999*. SACL indicated that it has no objection to the proposed modification as the proposed heights of the buildings would not exceed the maximum height limit of 24.07 metres AHD for the operations building and 26.075 metres AHD for the maintenance building, inclusive of all lift overruns, vents, chimneys, aerials and TV antennae.

4.3 Consultation by the Department

The Department consulted with both the Office of Environment and Heritage (OEH) and Botany Bay City Council on the modification application.

Both the OEH and Botany Bay City Council did not raise any concerns regarding the modification request.

5. ASSESSMENT

The Department has reviewed the Proponent's Environmental Assessment and considers the key issues for the proposed modification to be:

- Visual impacts.
- Ecological impacts, particularly bird flight paths.
- Changes to noise attenuation.

5.1 Visual Impacts

The reorientation and repositioning of the operations and maintenance buildings and the proposed increases to their height have the potential to result in visual impacts to surrounding lands as the terminal is visible from areas around Botany Bay (including Foreshore Beach and Sydney Airport), from watercraft on the bay and surrounding suburbs (Banksmeadow, Botany and Kurnell).

The immediate visual landscape is dominated by existing container terminals and other industrial uses associated with Port Botany and therefore, the Department considers the visual quality of the locality to be relatively low. The proposed reorientation and repositioning of the buildings to a more southerly location would have the effect of increasing the setback of the buildings from the northern edge of the terminal and also increase the separation distance between the two buildings compared to the approved development. The Department considers that these changes would result in a positive impact on the visual environment.

The Department also considers that the design of the buildings has taken into consideration surrounding land uses and the increased heights would not result in adverse visual impact or additional impact over and above the approved development as they would not form the prominent visual feature on the terminal and would be smaller than adjacent container handling equipment such as crane rail beams.

5.2 Ecological Impacts

Penrhyn Estuary provides a significant habitat for migratory and non-migratory shorebirds, many of which are listed as threatened species under the *Threatened Species Conservation Act 1995* (TSC Act). The Department was initially concerned that the increased height of buildings on the terminal may have an impact on bird flight paths in and out of the channel between Botany Bay and the estuary adjacent to the new terminal.

The Department understands from the specialist avian and wetlands ecological assessment report prepared by Avifauna Research and Services Pty Ltd (Appendix B of the Proponent's assessment report) that the repositioning of the operations and maintenance buildings on the terminal, away from the mouth of the channel, would result in a slightly more open aspect to the channel mouth. The Department therefore considers that this outcome would offset the potential barrier effect of the increased height of the buildings and the available area for shorebirds to fly in and out of the Penrhyn Estuary would be slightly widened as a consequence.

The Department also notes the assessment of significance undertaken for the nine species of shorebirds and one species of tern which are listed as threatened under the TSC Act. This assessment concluded that the proposed modification would

result in a marginal change to the available flight path of shorebirds and that it was unlikely to change the potential for bird hazards at Port Botany.

The Department also notes that the OEH raised no concerns in relation to this matter and it is therefore satisfied that the proposed modification will not result in additional ecological impacts compared to the approved development.

5.3 Changes to noise attenuation

The proposed modification has the potential to change the attenuation of noise from the terminal. The Department understands, however, that the operations and maintenance buildings are not likely to be a source of noise within the terminal area, with other noise sources dominating the acoustic environment, as follows:

- loading and unloading of containers from trucks, ships and trains by quay cranes, straddle carriers, gantries, forklifts and reach stackers,
- repositioning and stacking of containers within the terminal, and
- transport of containers on trucks and trains to and from the terminal.

The repositioning of the operations and maintenance buildings to a more southerly location within the terminal would result in these buildings being located at a slightly further distance from the closest residential receivers in Banksmeadow. The Department, however, does not consider that the change in the location and building heights would significantly change the noise emissions from the port when compared to the approved development. The Department therefore concurs with the Proponent that no additional noise mitigation measures are considered necessary as a result of the proposed modification.

5.4 Other Issues

The Department does not consider potential aviation impacts as an issue of concern based on the correspondence received from both Airservices Australia and SACL regarding the proposed modification.

In addition, the Department does not consider that the proposed changes in location or heights of the buildings would have any impact on the operability of the port when compared to the approved development because portside and landside freight operations would not be altered.

6. CONCLUSION AND RECOMMENDATIONS

SPC has approval to construct and operate a new container terminal and associated infrastructure within Port Botany. The Port Botany Expansion is still under construction and, once operational, will provide significant additional capacity to meet projected long term growth in container trade.

The proposed modification involves changes to the location, orientation and height of the operations and maintenance buildings to allow for the efficient operation of the new terminal by SICTL.

The Department, in its assessment of the proposal, reviewed the modification request and supporting Environmental Assessment, including the results of consultation with SEWPaC, Airservices Australia and SACL.

The key potential environmental impacts from the proposed modification relate to visual and ecological impacts and noise attenuation changes. Potential aviation impacts associated with the operation of the adjoining Sydney Airport were not considered to be issues of concern based on the advice provided by Airservices Australia and SACL, both of which raised no objections to the modification request.

The Department's assessment found that the proposed modification would not result in additional environmental impacts above those already approved as part of the development. In fact, the Department considers that the proposed modification may result in improved environmental outcomes in the following areas:

- improved visual impact with the reorientation, relocation and separation of the operations and maintenance buildings; and
- a slightly widened flyway channel for shorebirds flying into and out of Penrhyn Estuary.

Given that the approved development included the construction and operation of both an operations and maintenance building, the Department considers that there is no need to modify any existing conditions of the development consent, apart from condition A1.1 which relates to the scope of the development. The Department has recommended that condition A1.1 be modified to include the changes to the location and height of the operation and maintenance buildings. Condition A1.2 also requires modification as a result of the proposed changes to condition A1.1.

The Department supports the proposed modification and has recommended that the Director, Infrastructure Projects approve the modification request, subject to the recommended conditions of approval.

RN 21.11.11
Prepared by Ingrid Ilias
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Glenn Snow
A/ Director
Infrastructure Projects

APPENDIX A - MODIFICATION REQUEST

See the Department's website at www.planning.nsw.gov.au

APPENDIX B - ENVIRONMENTAL ASSESSMENT

See the Department's website at www.planning.nsw.gov.au

APPENDIX C - RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation from the Minister enforced from 1 October 2011, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Glenn Snow
A/Director
Infrastructure Projects

Sydney

2011

SCHEDULE 1

Development Consent:	DA 494-11-2003-i granted by the Minister for Planning on 13 October 2005
For the following:	Proposed construction and operation of a new container terminal and associated infrastructure.
Modification:	DA 494-11-2003-i MOD 11 involving changes to the location and height of the operations and maintenance buildings at the new terminal.

SCHEDULE 2

A1. GENERAL

Scope of Development

1. replacing existing condition A1.1p) with the following:
 - A1.1p) modification application DA-494-11-2003-i MOD 11, accompanied by an assessment report titled *"Sydney Port Botany Terminal No. 3 PKG-17.1 Planning Section 75W Modification Operations Building and Maintenance Building"* dated 14 September 2011; and
 - q) the conditions of this consent.
2. replacing existing condition A1.2 with the following:
 - A1.2 In the event of an inconsistency between:
 - a) the conditions of this consent and any document listed from condition A1.1(a) to (p) inclusive, the conditions of this consent shall prevail to the extent of the inconsistency; and
 - b) any document listed from condition A1.1(a) to (p) inclusive, the most recent document shall prevail to the extent of the inconsistency.