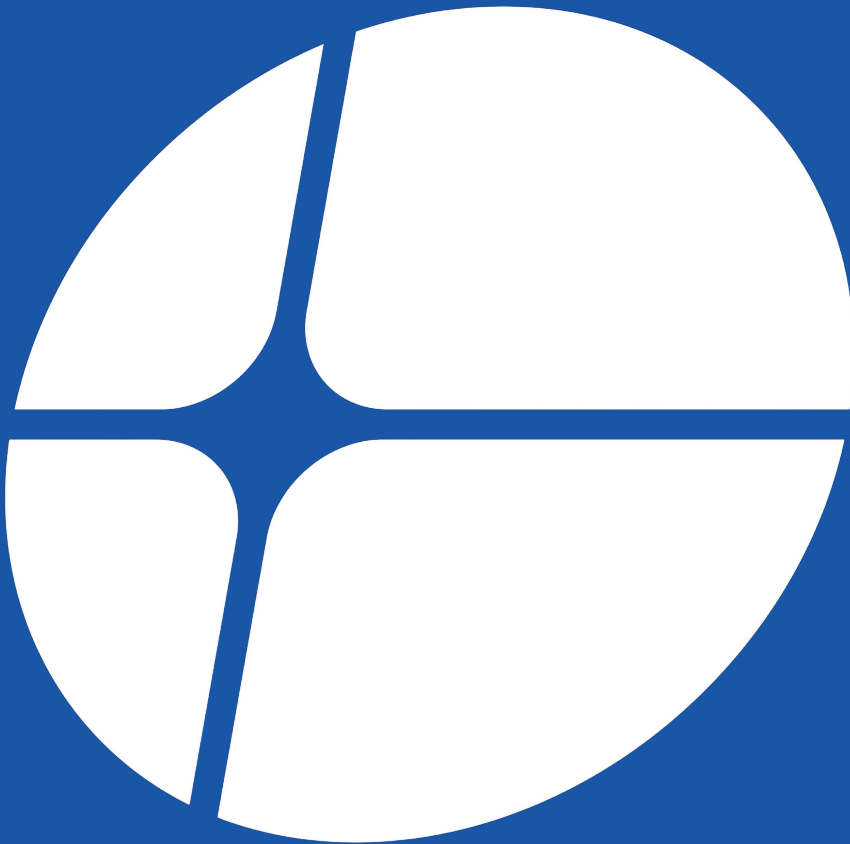


Modification Report

Section 4.55(1A)

Modification



Port Botany Expansion
Penrhyn Road, Banksmeadow

DA 494-11/2003i

Prepared for NSW Ports

Submitted to Department of Planning, Housing and Environment

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1 Introduction

This Modification Report has been prepared by *Keylan Consulting Pty Ltd* (Keylan) to accompany an application to modify DA 494-11-2003-i (the Development Consent).

The application has been prepared on behalf of *NSW Ports* (the Applicant) and is submitted to the Department of Planning, Housing and Infrastructure (DPHI) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

DA 494-11-2003-i was approved on 13 October 2005 for the construction and operation of a new container terminals, referred to as the Port Botany Expansion (PBE). The approved works included:

- Stage 1 – construction and operation of a new container terminals (approval granted 13 October 2005)
- Stage 2 – construction and operation of a berthing facility for up to three tugs at Hayes Dock (approval granted 22 August 2006)

This application is the 18th modification sought to DA 494-11-2003-i. A copy of the consolidated Development Consent is provided at Appendix 1.

The proposal seeks approval to:

- update legislation references
- streamline operational conditions to improve efficiency
- remove redundant conditions
- amend the frequency/scope of compliance-based conditions based on the completed works

A list of the proposed amendments and associated justification is provided in Appendix 2.

It is considered that the proposed modification to DA 494-11-2003-i is acceptable as:

- the development remains substantially the same as that originally approved
- the proposed amendments are minor and are primarily administrative in nature
- the amendments will not result in any physical changes to the approved development
- the modification does not give rise to any additional environmental impacts either on the site or surrounds

Accordingly, we recommend that the proposed modification is supported by Department of Planning, Housing and Infrastructure.

1.1 Structure of the Report

Section	Overview
1. Introduction	Introduction to the modification
2. The Site and Locality	A description of the site, context and an assessment of the opportunities and constraints presented by the site
3. Modification History	A description of previous modifications at the site
4. Proposed Modification to the Development Consent	A description of the proposed modifications to the existing consent
5. Consultation	A description of the consultation undertaken by the project team
6. Statutory Planning Framework	An assessment against relevant statutory planning issues
7. Environmental Planning Assessment	An assessment against relevant issues
8. Conclusion	A concluding statement considering the assessment of the proposal and a recommended course of action

2 The site and locality

2.1 Site description

The site is located within the suburb of Port Botany in the Bayside Council Local Government Area and is approximately 14.4km's from the Sydney Central Business District.

Reference to 'the site' throughout this report should be taken to be the land described in Table 1 and shown indicatively in Figure 1 below.

Lot	DP	Land ownership	Site description
1	1165618	TfNSW (formally RMS)	Port Botany boat ramp and car parking area, pedestrian/cycle path, various foreshore landscaping treatments, seabed and seagrass transplanting
200	1183399	Port Botany Lessor Pty Limited (NSW Ports)	Hutchison terminal area
201	1183399	Port Botany Lessor Pty Limited (NSW Ports)	Hutchison terminal area
202	1183399	Port Botany Lessor Pty Limited (NSW Ports)	Patrick terminal area
208	1183399	Port Botany Lessor Pty Limited (NSW Ports)	Hutchison terminal area

Table 1: Land subject to Modification 18 and DA-494-11-2003i



Figure 1 Site area (Source: NSW Ports)



Figure 2: Legal descriptions of the site (Base source: Nearmap)

The site is approximately 63 hectares in size and it is characterised by industrialised port activities including container operations, maritime and waterway uses as described below:

- Penrhyn Estuary and Foreshore Beach (see Figure 1)
- 48 hectares leased to Sydney International Container Terminal Pty Ltd (SICTL) (operated by Hutchison Ports Sydney)
- 17.5 hectares leased to Patrick Stevedores (Patrick Terminals)
- 0.3 hectares for the Hayes Dock Services Area leased to Ausport and Ausbargo to provide ancillary port services

The areas operated by Hutchison Ports Sydney, Patrick Terminals and various lines boats services within the Hayes Dock Services Area are indicatively outlined in the figure below.



Figure 3: NSW Ports tenant lease areas with PBE approval site (Source: NSW Ports)

2.2 Surrounding locality

The site is located in an industrial area characterised by port facilities and related infrastructure. The wider locality is characterised by a variety of land uses, including:

North

- the Penrhyn Estuary and estuary channel directly to the north
- further north is the Port Botany foreshore, comprising Foreshore Road, Botany Golf Course and Sir Joseph Banks Park

East

- land belonging to NSW Ports directly to the east, low density residential dwellings are located further east in Matraville

South

- Port Botany to the south

West

- Port Botany adjoining the western boundary of the site, with Sydney Kingsford Smith International Airport further west.



Figure 4: Site and surrounding context (Base source: Near Maps)

3 History

On 13 October 2005, the Minister for Planning approved DA-494-11-2003i (the PBE approval) under the then in force Section 80 of the EP&A Act. The approval comprised:

- Stage 1: construction and operation of a new container terminal
- Stage 2: construction and operation of a berthing facility at Hayes Dock (up to 3 tugs)

DA-494-11-2003i has been modified 17 times. The modification history is summarised in the table below.

Modification Number	Description	Status
Mod 1	Modification to correct various minor errors and incorrect descriptions and to clarify various conditions	Approved 11 September 2007
Mod 2	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 seagrass	Approved 11 September 2007
Mod 3	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	Approved 11 September 2007
Mod 4	Modification to alter the timing of various studies (conditions C2.20 and C2.25)	Approved 17 September 2007
Mod 5	Modification to allow the penetration of the obstacle limitation surface subject to approval under the Airports Act /996 and to alter the timing of the Bird Hazard Management Plan	Approved 21 September 2008
Mod 6	Modification to allow construction works that are not subject to an Environment Protection License to be permitted outside specified construction hours only if they are inaudible at the closest residential receiver (conditions B2. 7 9, B2. 7 9A and B2.79B)	Approved 12 December 2008
Mod 7	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	Approved 20 March 2009
Mod 8	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain	Approved 30 May 2009
Mod 9	Modification to allow additional dredging to be undertaken at the high spot off Molineux Point outside the primary silt curtain	Approved 18 June 2020
Mod 10	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain	Approved 13 July 2009

Modification Number	Description	Status
Mod 11	Modification to alter the approved location, footprint and height of the Operation building and Maintenance building as part of Terminal 3	Approved 21 November 2011
Mod 12	Modification to alter the stormwater management system from the approved first flush system to the construction of stormwater quality improvement devices (SQID) in the area leased by Sydney International Container Terminals (SICTL) and known as the Northern Expansion Area	Approved 6 June 2012
Mod 13	Modification to change the stormwater management system from first flush system to the construction of stormwater quality improvement devices (SOID) in the Southern Expansion Area (also referred to as the "Knuckle"	Approved 8 February 2013
Mod 14	Modification to allow temporary uses at the northern tip of Hayes Dock, while awaiting a development as a tug berthing facility	Approved 11 June 2013
Mod 15	Modification to allow penetration of the obstacle limit surface of Sydney Airport by cranes	Approved 8 July 2013
Mod 16	Modification to allow for the continued ongoing operation of interim use (and installation of temporary structures) at the northern tip of Hayes Dock, until the permanent use of the Deck for Tugs commences, as well as to continue low potential impact Port, maritime and waterway uses to operate from this area	Approved 24 October 2017
Mod 17	Modification to amend a number of administrative errors within the development consent	Approved 19 September 2019

Table 2: Historic applications relating to the site

A copy of the consolidated PBE Consent is provided in Appendix 1.

4 Proposed modification to the Development Consent

The consent has been in operation for 20 years, and as a result, several conditions have become outdated or redundant. Minor amendments are now proposed to improve administrative and procedural efficiency of the Port.

Attachment 1 contains a detailed table outlining each proposed modification together with a justification for the change. The key modifications proposed include updating references to legislation, streamlining operational conditions for improved efficiency, removing redundant conditions and amending the frequency and scope of compliance-based conditions. These modifications are discussed further below.

4.1 Updating legislation references

Following 20 years of operation, several conditions within the consent have become outdated. An update is therefore necessary to ensure continued accuracy and relevance within the consent.

4.2 Streamline operational conditions

Many of the existing conditions are in a highly prescriptive manner that no longer reflects operational or environmental management practices at Port Botany. This modification proposes to reframe these conditions so that they are consistent with best practice for other major port operations

The streamlined conditions will provide NSW Ports and its tenants with greater certainty of compliance obligations while referencing only appropriate conditions.

4.3 Remove redundant conditions

A number of conditions were tied to the original construction and establishment phases of the PBE project, including: dredging, reclamation, and habitat enhancement works. These have been completed and the outcomes accepted by the consent authority. As such, these conditions are now redundant.

The modification proposes to delete these conditions.

4.4 Amend the frequency/scope of compliance-based conditions

Some ongoing conditions require reporting or monitoring at a frequency that is no longer considered necessary or proportionate to the approval, particularly where environmental risks have been addressed through long-term management programs or regulatory changes.

This modification seeks to recalibrate these conditions by adjusting their frequency or scope and aligning them with best practice and level of environmental risk (if any). These refinements will reduce unnecessary administrative burden, however continue to ensure that essential compliance obligations remain in place.

The proposed amendments are set out in detail in Appendix 2, which provides a schedule of conditions proposed to be modified or deleted. Importantly, these changes will not result in any additional environmental impact beyond those already approved but instead update the approval conditions to ensure they remain clear, relevant and enforceable into the future.

5 Consultation

NSW Ports and Keylan have undertaken external consultation to inform the amendments proposed within Modification 18. The table below identifies the stakeholders which have been consulted and if feedback has been received to date.

We note Port Authority NSW, Hutchison Ports and Patricks are identified as key stakeholders as several conditions of consent directly apply to their operations.

As outlined in the table below, feedback from these stakeholders was received in 2023. Given the extent of time that has passed since the first round of consultation, an additional opportunity was provided in June 2025 for the stakeholders to review their initial feedback and provide any further comments.

The outcome of consultations are prescribed in table below:

Stakeholder	Date of consultation	Date feedback was received
Port Botany Community Consultative Committee (PBCCC) Includes: representatives from: - the local community - NSW Ports - Port Authority of NSW - Bayside Council - Randwick Council - Environment Protection Authority - NSW Ports tenants.	11 May 2021	N/A
Hutchison Ports Sydney	26 September 2023	5 October 2023
	24 June 2025	25 July 2025
Port Authority of NSW	26 September 2023	16 October 2023
	24 June 2025	8 July 2025
Patrick Terminals	20 October 2023	17 November 2023
	24 June 2025	7 July 2025

Table 3: Consultation summary

All feedback has been considered by NSW Ports and integrated into the proposed modifications outlined in Appendix 2.

6 Statutory Planning Framework

6.1 Environmental Planning and Assessment Act 1979

The EP&A Act sets out the statutory planning framework for NSW. The Act aims to promote the orderly and economic use and development of land, facilitate ecologically sustainable development and integrate economic, environmental and social considerations as part of the decision-making processes for environmental planning and assessment matters.

6.1.1 Section 4.55(1A) of the EP&A Act

The provisions under Section 4.55(1A) of the EP&A Act are required to be considered by the consent authority in determining a modification application. Section 4.55(1A) of the EP&A Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

Section 4.55(1A) Provision	Response
(a) <i>it is satisfied that the proposed modification is of minimal environmental impact, and</i>	The proposed modification and amendments are of minimal impact, noting that the proposed changes are minor in nature. The proposed changes will streamline the existing conditions with new conditions to benefit the operation of the consent which has been ongoing for 20 years.
(b) <i>it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	The proposed modification will not result in any additional environmental impacts. The proposed modifications relate primarily to administrative amendments i.e. conditions which have been completed (and therefore redundant) and updating operational procedures. These changes will result in a more efficient operation of the approval for the future.
(c) <i>it has notified the application in accordance with:</i> <i>i. the regulations, if the regulations so require, or</i> <i>ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i>	The Department will notify the modification application in accordance with the regulations.
(d) <i>it has considered any submissions made concerning the proposed modification within any period</i>	Consideration will be given to any submissions (if required) to the application.

prescribed by the regulations or provided by the development control plan, as the case may be.

Table 4: Section 4.55(1A) Assessment

The modification is administrative in nature, seeking to update the instrument of approval by streamlining the conditions of consent and removing conditions that have already been completed. Importantly, the modification does not alter the scope of the approved development and does not result in any new or additional environmental impacts beyond those previously assessed under DA-494-11-2203i, as modified.

6.1.2 Section 4.55(3) of the EP&A Act

Section 4.55(3) of the EP&A Act states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The following section of the report provides an assessment against the statutory environmental planning instruments relevant to the development. The section also includes discussion and evaluation of the key issues and matters for consideration under section 4.15(1) of the EP&A Act.

6.1.3 Section 4.15(1)(a) Planning Instruments

This section provides an assessment against section 4.15(1) of the EP&A Act.

Relevant Provision	Comment
(a) <i>the provisions of:</i>	
(i) <i>any environmental planning instrument, and</i>	The relevant environmental planning instruments are addressed at Section 6.
(ii) <i>any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	The relevant proposed environmental planning instruments are addressed at Section 6.
(iii) <i>any development control plan, and</i>	No Development Control Plan applies to the site.
(iiia) <i>any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i>	There are no planning agreements relevant to the modification.

Relevant Provision	Comment
(iv) <i>the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i>	The requirements of the EP&A Regulations are addressed in Section 6.4.
(v) <i>(Repealed)</i>	N/A
(b) <i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	The impacts of the proposal are addressed in Section 7.
(c) <i>the suitability of the site for the development,</i>	Site suitability is addressed at Section 7.1.
(d) <i>any submissions made in accordance with this Act or the regulations,</i>	Any submissions made on this subject development application will be duly considered and addressed by Keylan. In addition, the Department will consider any public submissions relating to the proposal during its assessment.
(e) <i>the public interest.</i>	Public interest is addressed at Section 7.3.

Table 5: Section 4.15(1) Assessment

6.2 State Environmental Planning Policies

The primary environmental planning instrument applying to the development was the *State Environmental Planning Policy (Three Ports) 2013*. This SEPP was subsequently repealed and replaced by the *State Environmental Planning Policy Transport and Infrastructure SEPP (2021)* (T&I SEPP). An assessment against the equivalent parts of the T&I SEPP is included below.

6.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The T&I SEPP aims to facilitate the effective delivery of transportation facilities and infrastructure across NSW, including the provision of port and maritime facilities.

Chapter 5 (Three Ports – Port Botany, Port Kembla and Newcastle) of the SEPP applies to the site and aims to allow for the efficient development, redevelopment and protection of land at Port Botany, Port Kembla and the Port of Newcastle for port purposes.

Under Chapter 5, Part 5.2, Section 5.11 of the Transport and Infrastructure SEPP, the site is zoned SP1. The objectives of the SP1 Special Activities zone are as follows:

- *To provide for special land uses that are not provided for in other zones.*
- *To provide for sites with special natural characteristics that are not provided for in other zones.*
- *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.*

- *To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities.*
- *To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure.*
- *To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle.*
- *To facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses.*
- *To encourage employment opportunities*

The proposal remains consistent with the applicable zoning controls. No changes are proposed to the nature or scale of the approved operations on the site. Instead, the modification seeks to improve the efficiency of the existing consent conditions, thereby supporting the ongoing and effective operation of the PBE.

6.4 Environmental Planning and Assessment Regulation 2021

There are no known matters prescribed by the *Environmental Planning and Assessment Regulation 2021* that are relevant to the consideration of this application. The proposal will remain compliant with the BCA.

7 Environmental Planning Assessment

The modification is consistent with the intent and conclusions of the original approval and does not introduce any new or different environmental impacts. In accordance with Section 4.15(1) of the EP&A Act 1979, consideration has been given to the environmental, social and economic impacts of the proposal.

The proposal remains consistent with the applicable zoning and does not alter the scale of approved operations at the site. Rather, the modification improves the efficiency and effectiveness of the consent. After 20 years of operation, a number of conditions have become outdated or redundant, requiring minor administrative refinements to ensure the instrument of approval remains relevant.

The modification addresses this through three key themes:

Theme	Comment
1. Streamline operational conditions	Existing conditions are too prescriptive and, in some instances, are not consistent with operational practices after Stage 1. The modification proposes refinements to clarify, simplify, and standardise these conditions, thereby enhancing the efficiency of compliance and ongoing operations.
2. Remove redundant conditions	A significant number of the conditions relate to the original construction and establishment of the PBE. These obligations have been satisfied, verified and reported to the consent authority. Retaining such conditions in the approval is unnecessary and creates administrative issues. The modification proposed the deletion of non-relevant conditions.
3. Amend the frequency/scope of compliance-based conditions	Some ongoing compliance obligations require reporting or monitoring at a frequency that is no longer proportionate to the environmental risk or necessary to achieve the intent of the conditions. The modification seeks to recalibrate these conditions to ensure that reporting requirements are aligned with actual risks and best practices, while reducing unnecessary administrative work.

Table 6: Key themes

Attachment 1 provides a detailed table of proposed amendments, with justification for each change. Collectively, these amendments modernise the instrument of approval, improve operational efficiency and maintain the integrity of the environmental safeguards established under the original approval.

7.1 Suitability of the site for the development

The site remains suitable for the proposed development for the reasons outlined in the SEE submitted with the original DA.

7.2 Submissions

The proposed development will be notified in accordance with the Department's notification policy. The Department will consider any submissions received prior to the determination of the application.

7.3 Public interest

The proposal continues to be in the public interest as the modification will result in a more efficient operation of the port.

In addition, DPHI will consider any public submissions relating to the proposal during its assessment. Accordingly, it can be concluded that the proposed development is entirely in the public interest.

8 Conclusion

The modification seeks to amend the conditions of approval without introducing any additional environmental impacts beyond those already considered and assessed in the original DA 494-11-2003i approval, as subsequently modified.

The proposed amendments will remove redundant conditions and streamline the approval process, aligning with more recent determinations.

Following a detailed consideration of the proposal in its legislative and physical context, the modification is considered warranted on the basis that:

- The proposal remains consistent with the SP1 Special Activities zone objectives, continuing to facilitate the established use of the PBE while aligning with the site's strategic purpose
- The modification will streamline operational conditions, ensuring the consent better reflects current operations and enhances efficiency
- Redundant conditions are to be removed, providing clear and more contemporary consent requirements and reducing the administrative duplication for both the operator and consent authority
- Adjustments to the frequency and scope of compliance-based conditions will maintain appropriate regulatory oversight, whilst minimising unnecessary reporting obligations
- The changes are administrative in nature, with no physical works or changes to approved activities, ensuring there are no additional environmental or amenity impacts
- By improving efficiency and transparency of the consent, the modification will support the ongoing role of the PBE as critical infrastructure and is therefore in the public interest

Consequently, we recommend that the proposed modification is supported by Department of Planning, Housing and Infrastructure.