



Stockton Boat Harbour Upgrade Modification 1

Part 4 Development
Modification Assessment
(DA-8796-2017 MOD 1)

February 2019

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Cover photo

Exposed section of heritage seawall that forms part of The Ballast Ground (Place) local heritage listing, Source: Plate 1, *Seawall – Statement of Heritage Impact —Addendum Report to: Hereford St Boat Harbour, Stockton Heritage Report* (NGH, 2017) (NGH Environmental, October 2018)

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Applicant	RMS
BCA	Building Code of Australia
CIV	Capital Investment Value
CIP	Community Involvement Plan
Consent	Development Consent
Council	Newcastle City Council
Department	Department of Planning and Environment
DPI	Department of Primary industries
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
OEH	Office of Environment and Heritage
RMS	Roads and Maritime Services
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development
SSI	State Significant Infrastructure
Three Ports SEPP	State Environmental Planning Policy (Three Ports) 2013



Contents

Glossary	iii
1. Introduction	1
1.1 Background	1
1.2 Approval History	3
2. Proposed Modification	5
3. Strategic Context	7
4. Statutory Context	8
4.1 Scope of Modifications	8
4.2 Consent Authority	8
4.3 Mandatory Matters for Consideration	8
5. Engagement	10
5.1 Department's Engagement	10
6. Assessment	11
6.1 Heritage	11
6.2 Other issues	12
7. Evaluation	14
8. Recommendation	15
9. Determination	16
Appendices	17
Appendix A – List of Documents	17
Appendix B – Modification of Development Consent	17



1. Introduction

This report provides an assessment of an application to modify the Part 4 development consent for the Stockton Boat Harbour Upgrade (DA 8796-2017). The application has been lodged by Roads and Maritime Services (RMS - the Applicant).

The modification application seeks approval to remove a 5.3 metre section of existing seawall in the north eastern corner of the site that was not previously part of the demolition works.

The application has been lodged on 31 October 2018 by RMS (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.1 Background

On 10 April 2018, development application DA 8796-2017 was approved by the Director, Social and Other Infrastructure Assessments as delegate of the Minister for Planning. The Minister was the relevant authority in relation to the Part 4 matter as prescribed by the State Environmental Planning Policy (Three Ports) 2013 (the Three Ports SEPP).

The development consent permits redevelopment of the existing Stockton Boat Harbour on land within the Three Ports SEPP. The redevelopment was required as the existing facilities were non-compliant with current Australian Standards and legislation. The approval included the following activities:

- demolition of the existing waterside structures, including the removal of existing berths, piles and posts
- development of facilities within the existing boat harbor and jetty immediately to the north
- reconstruction and reinforcement of revetment walls
- maintenance dredging/excavation to improve the exiting navigational depths within the boat harbor
- increase of the number of berths at the site from 24 to 26.

Figure 1 and **Figure 2** below show the location of the site.



Figure 1 | Site Location (Source Six Maps 2019)



Figure 2 | Aerial view of Stockton Boat Harbour and its surrounds (source: Six Maps 2018)

1.2 Approval History

The Stockton Boat Harbour upgrade works was subject to assessment under two planning pathways: a Development Application under Part 4 of the EP&A Act for works within land covered by the Three Ports SEPP, and a review of environmental factors (REF) under Part 5 of the EP&A Act. The respective areas covered by the DA and the REF are shown in **Figure 3**.

As mentioned above, the works within the Three Ports SEPP boundary (DA 8796-2017) were approved by the Minister for Planning delegate.

The area outside the Three Ports SEPP boundary were separately approved under Part 5 of the EP&A Act, and included the following:

- upgrade of the car park area
- ancillary landscaping
- reconstruction of the eastern foreshore
- structural stability works for the existing seawall
- installation of services
- remediation works.

Construction of the development has commenced and is currently underway.

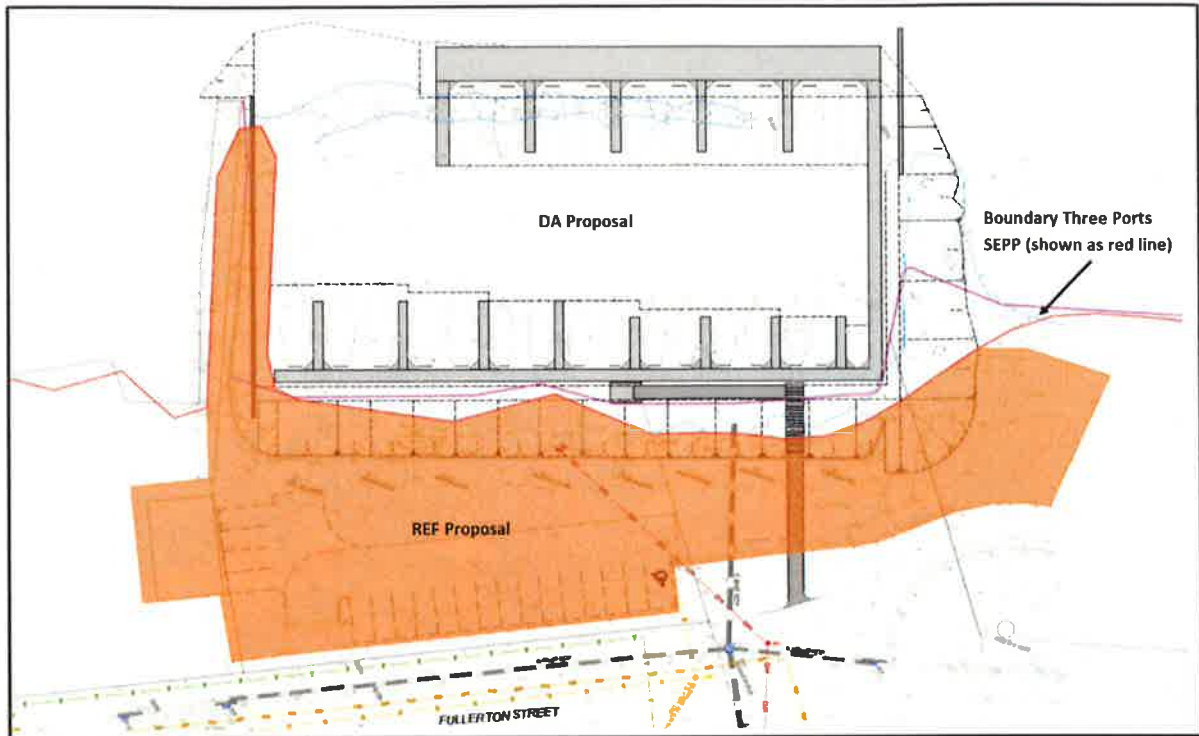


Figure 3 | DA and REF Boundaries, Stockton Boat Harbour (source: Modification Application)



2. Proposed Modification

The modification involves removal of a 5.3 metre section of existing seawall in the north eastern corner of the site not approved for removal under DA 8796-2017.

During excavation works being undertaken as part of the DA 8796-2017, the Applicant uncovered a seawall, which was not identified or surveyed for the original approval, and found to extend further westward than identified in the original application. This small section of seawall straddles the area covered by both the DA and the REF as shown in **Figure 4**. The Applicant has determined that the wall is significantly deteriorated and unable to hold its own weight once the surrounding substrata is removed. The section of seawall cannot be underpinned with a foundation and is unable to be supported or protected by the adjacent proposed rock revetment.

Due to the poor condition of the newly exposed seawall, the Applicant seeks to demolish 5.3 metres of the existing seawall. If the seawall was to remain and be covered up by the rock revetment, it would require the revetment to encroach into the harbour, impacting on a loss of 1 - 2 berths and a redesign for the pontoons berthing. The Applicant asserts that redesign would include substantial cost and changes to the works envisaged under the existing approvals.

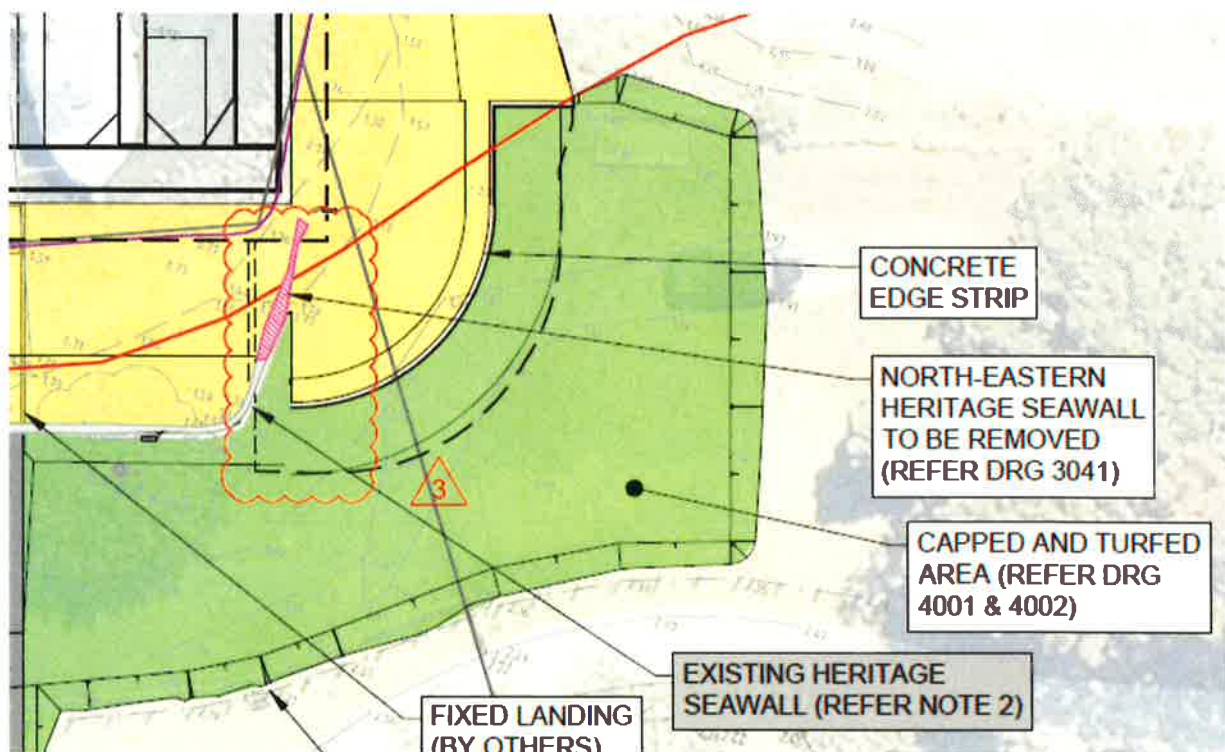


Figure 4 | Proposed section of seawall to be demolished (hatched purple) straddling the Three Ports SEP boundary indicated by the red line. (source: Extract from Modification Application)

The amendment requested by the Applicant to reflect the modified and updated plans is as follows in the red below:

Condition A2. The Applicant shall carry out the development:

- a) *in compliance with the conditions of this consent*

- b) in accordance with all written directions of the Secretary
- c) in accordance with the SEE and its associated plans, *except as amended by the following plans prepared by Royal HaskoningDHV:*

<i>Drawing Number</i>	<i>Drawing Name</i>	<i>Date</i>
<i>PA1479/MA/1003 Rev 2</i>	<i>Demolition Plan</i>	<i>10.10.18</i>
<i>PA1479/MA/1011 Rev 3</i>	<i>Civil Works General Arrangement Plan</i>	<i>10.10.18</i>
<i>PA1479/MA/3041 Rev B</i>	<i>Revetment at North-Eastern Heritage Seawall Inset Plan</i>	<i>10.10.18</i>
<i>PA1479/MA/3042 Rev A</i>	<i>Revetment at North-Eastern Heritage Seawall Long-Section</i>	<i>4.10/18</i>

- d) in accordance with the management and mitigation measures

The Applicant proposes all other conditions are proposed to stay the same.



3. Strategic Context

The Stockton Boat Harbour Upgrade site is located within the Three Ports SEPP boundary area. The site is zoned SP1 Special Activities under the Three Ports SEPP. The zone has the following objectives:

- 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 Department is satisfied that the proposed development modification is consistent with the relevant provisions of the Three Ports SEPP as it supports the upgrade to an existing boat harbour.

The Hunter Regional Plan 2036 was released in October 2016 by the Department. The plan has identified the Port of Newcastle area as a “vital hub” and as “a global gateway”. Goal 3, Direction 18 is to “enhance access to recreational facilities and connect open spaces”. The proposed upgrade and this modification is being conducted to comply with Australian Standards and to increase its safety, which would enhance existing public access to the space. The section of wall proposed to be demolished is expected to slump and not maintain its structure upon exposure, which would impact access to the facility. The Department is satisfied that the proposed modification would contribute to the enhancement of the site for recreational and small commercial users.

The proposed modification is consistent with the original proposal and the Hunter Regional Plan 2036 through the enhancement of recreational facilities.



4. Statutory Context

4.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impact under section 4.55(1A) as the proposal:

- would not increase the environmental impacts of the project as approved
- is substantially the same development as originally approved
- has been notified to Newcastle City Council
- considered comments raised by Newcastle City Council.

The area of the seawall to be removed is approximately 5.3 metres, which represents approximately 4% of the overall seawall. The remainder of the wall is to remain, maintaining the heritage significance of the seawall. The demolition of the small section of seawall would avoid having to redesign the boat harbour and/or significant rebuild of the structural foundation, resulting in a potential loss of functionality. Existing management measures are in place and are proposed to remain as approved under development consent DA-8796-2017.

The Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent Authority

The original application was determined under the delegation of the Minister for Planning; therefore, the Minister remains as the consent authority for any subsequent applications to modify the consent.

Minister's delegate as consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 11 October 2017, the Director, Social and Other Infrastructure Assessments, may determine the application.

The proposed modification meets the terms of this delegation.

4.3 Mandatory Matters for Consideration

Scope of Modifications

Section 4.55(1A) of the EP&A Act provides that 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 Environmental Planning and Assessment Regulation 2000 (Regulations), modify a consent if the following requirements in **Table 1** are met:



5. Engagement

5.1 Department's Engagement

The Department made the modification application available on its website from 1 November 2018. Due to the minor nature of the modification application, the Department did not formally seek submissions from the community on the application. Therefore, no public submissions were received by the Department relating to the proposed modification.

The Department wrote to Newcastle City Council (Council) requesting comments on the proposed modification. Council had no objection, and advised the proposed modification would have a satisfactory impact on The Ballast Grounds heritage item which is located adjacent to the proposed works within the REF approval area. Council also recommended that careful consideration should be given to the location of the boundary of the Three Ports SEPP.

Table 1 | Consideration under Section 4.55(1A) of the EP&A Act

Section 4.55(1A) - Evaluation	Comment
a) That the proposed modification is of minimal impact	Section 6 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impact.
b) 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)	The proposed modification will remove an area of seawall not previously surveyed prior to the original development consent. The amount of seawall to be demolished is approximately 4% of the total wall and is currently buried under soil and debris. No other changes to the design of the development are proposed On this basis, the Department is satisfied that the proposed modification is for development that is substantially the same as the development for which the original consent was granted.
c) The application has been notified in accordance with... the regulations...	Notification is not required under the Regulations; however, the modification application was notified to Newcastle City Council.
d) Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations	A submission was made by Newcastle City Council regarding this modification and has been discussed in Section 5.

Section 4.55(3) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration the matters referred to in section 4.15(1) as 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 Department has considered the relevant considerations under Section 4.15(1) of the EP&A Act in relation to the proposed modification, including the strategic need and justification for the proposal, and the impact upon the receiving environment. The Department's assessment of the modification is outlined further in **section 6** of this report.



6. Assessment

The Department considers that the key assessment issue is the heritage impact of the proposed changes. This is discussed in **Section 6.1** of the report. Other assessment issues considered during the assessment of the modification application are discussed in **Section 6.2**.

6.1 Heritage

The modification seeks the removal of approximately 5.3 metres of seawall which was uncovered as part of works and was not previously identified or detailed as part of the original heritage assessment. It is noted that part of the seawall falls within the Ballast Grounds which is identified as a heritage item under the *Newcastle Local Environmental Plan 2012* (listing ID: A13). The locally listed The Ballast Ground does not extend to within the boundary of the area covered by the Three Ports SEPP.

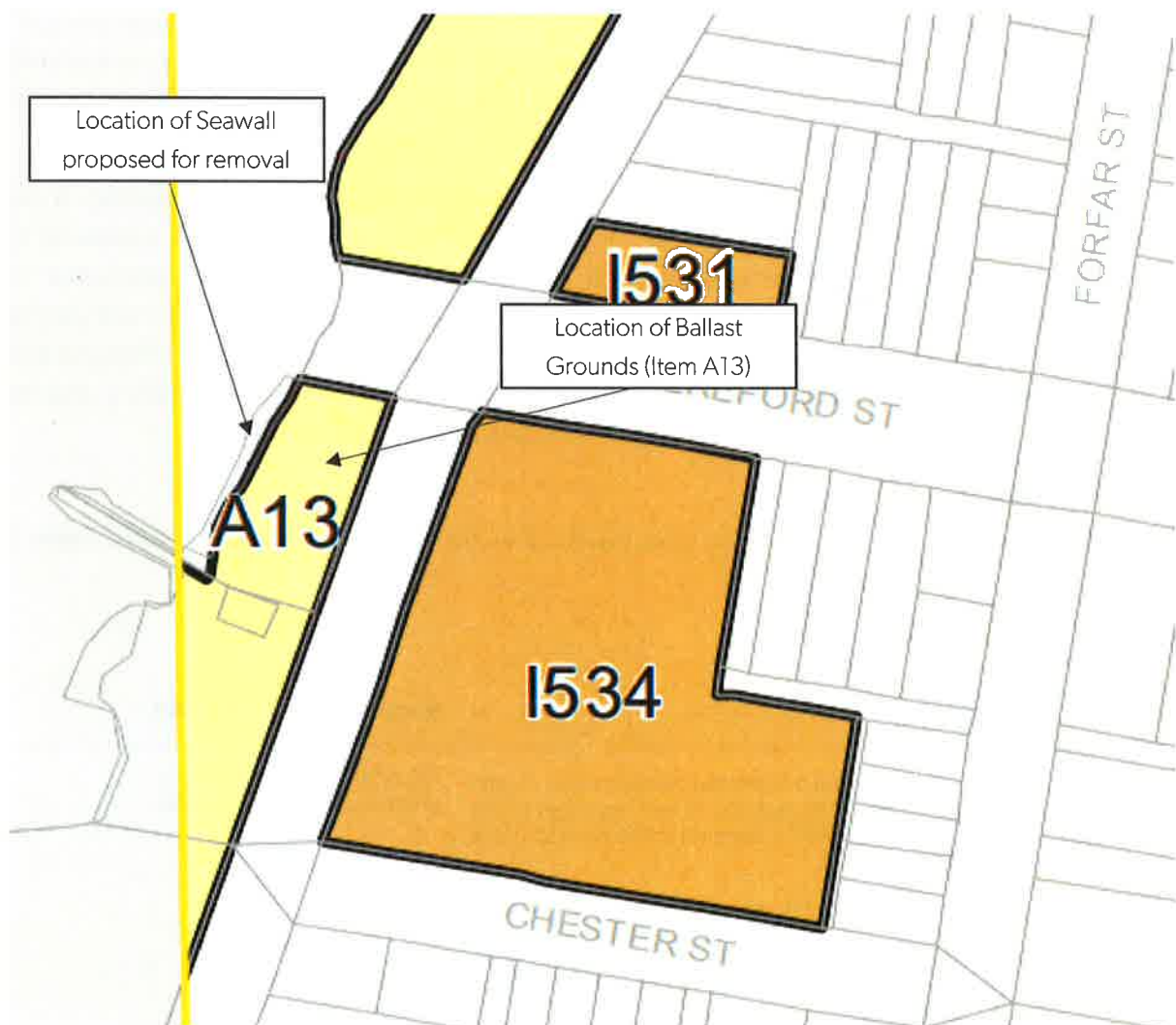


Figure 5 Location of Seawall proposed to be demolished relative to the Ballast Grounds heritage item (source: Newcastle LEP 2012, Sheet HER-004)

The seawall is not identified as being a heritage item on the local, state or NSW Roads and Maritime Services' Section 170 register. An addendum Statement of Heritage Impact (SOHI) was prepared for the section of wall to

be removed, which identified that the seawall was of local heritage significance and that the removal of the 5.3 metre section would result in a minor negative impact to the heritage value of the seawall. The retention and preservation of the remaining portion of the seawall was identified as a positive outcome, as the structural assessment conducted on the item indicated that the remaining seawall may be lost if preservation actions were not taken. The SOHI concluded that the proposal to remove the proposed section of seawall and remediate the remaining section would not impact significantly on the overall assessed heritage values.

The SOHI recommended that photographic archival recording be undertaken of the seawall prior to works impacting the wall and that copies be provided to Newcastle City Council and the Newcastle Regional Library. A further recommendation was provided that some heritage interpretation be provided at the site, prepared in collaboration with Newcastle City Council and Stockton Heritage Society. The Applicant has committed to adopting both recommendations.

In their response, Council stated that they considered the level of impact to The Ballast Ground to be satisfactory if the works are conducted in accordance with the proposed methodology.

The Department considers that the level of impact to heritage values at the site is acceptable because the 5.3 metre section of seawall is not listed as a heritage item. It is noted that the proposed works within the Three Ports SEPP area will not have a direct impact on the locally listed Ballast Ground. However, works subjected to an amended REF may have some impacts. These activities are subject to a separate assessment pathway, and do not form part of the Department's consideration of this modification application.

The Applicant's proposed mitigation measures are supported as they will provide historical recording of the former seawall and heritage interpretation on site. In addition, the proposed works will be undertaken in accordance with the existing mitigation measures which include no impact to Ballast Grounds, preparation of heritage interpretation signage and a comprehensive photographic record of the boat harbour prior to any works occurring and upon completion of works. The Department is satisfied that the existing mitigation measures and supplementary measures proposed as part of this application are sufficient to manage heritage impacts, and has recommended a condition to confirm the Applicant's commitment to archival recording.

6.2 Other issues

The Department also considered the following issues raised in the Council submission, as summarised in **Table 2**.

Table 2 | Summary of other issues raised

Issue	Findings	Recommended Condition
Boundary of Three Ports SEPP	- Council noted that careful consideration should be given to the location of the boundary of the Three Ports SEPP in relation to the portion of the seawall. - The Department notes that a portion of the seawall proposed to be removed under this modification falls within the Three Ports SEPP zoning, requiring approval under Part 4 of the EP&A Act. - The Department considers that the determination of this modification would provide assessment for the proposed modification under Part 4 of the EP&A Act in relation to works for the removal of the seawall within the Three Ports SEPP area.	No additional conditions or amendments are necessary.

Issue	Findings	Recommended Condition
	Any proposed works outside the boundary of the Three Ports SEPP area would require separate approval through the REF process.	



7. Evaluation

Following a review of the proposed modification, the Department is satisfied the proposed changes are of minimal environmental impact and is substantially the same development as the original consent granted.

The Department concludes the following:

- the proposal continues to comply with the Three Ports SEPP
- the Department has assessed the application and followed relevant procedures in accordance with the EP&A Act and the Regulations
- the proposed modifications do not change the use of the site
- the proposal is in the public interest.

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate. This conclusion is based on the fact the proposal is substantially the same development as the original approval, the condition changes proposed do not change the use of the site, and the impacts are minor and subject of acceptable measures including archival recording of removed seawall.

As such, the Department considers the proposed modification to be approvable.



8. Recommendation

It is recommended that the Director, Social and Other Infrastructure Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report; and
- **determines** that the application DA 8796 MOD 1 falls within the scope of section 4.55(1) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application;
- **modify** the consent DA 8796-2017
- **signs** the attached approval of the modification (Attachment X).

Recommended by:

Lloyd Eley-Smith

Senior Case Manager

Recommended by:

Dominic Crinnion

Team Leader, Ports and Water Assessments



9. Determination

The recommendation is: **Adopted** / ~~Not adopted~~ by:



Karen Harragon

Director

Social and Other Infrastructure Assessments

6/2/2019



Appendices

Appendix A – List of Documents

The following supporting documents and supporting information can be found on the Department of Planning and Environment's website:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9700

Appendix B – Modification of Development Consent

The Modification of Development Consent can be found on the Department of Planning and Environment's website:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9700

