

ASSESSMENT REPORT
Section 75W Modification
d'Albora Marina The Spit, MP08_0046 MOD 1

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval for the d'Albora Marina located at the Spit Bridge (MP08_0046 MOD 1) which is located in the Mosman local government area. The request has been lodged by d'Albora Marinas Pty Ltd, the proponent, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks approval to modify the location of the fuel wharf, relocate the floating pedestrian link between B Arm and C Arm and create a floating berth finger at the end of D Arm.

2. SUBJECT SITE

The site is located on the western side of the Spit Road, Mosman, approximately seven kilometres north-east of the Sydney CBD (**Figures 1 and 2**). Directly south is the Spit West Reserve which accommodates parking and open space.



Figure 1: Site Location

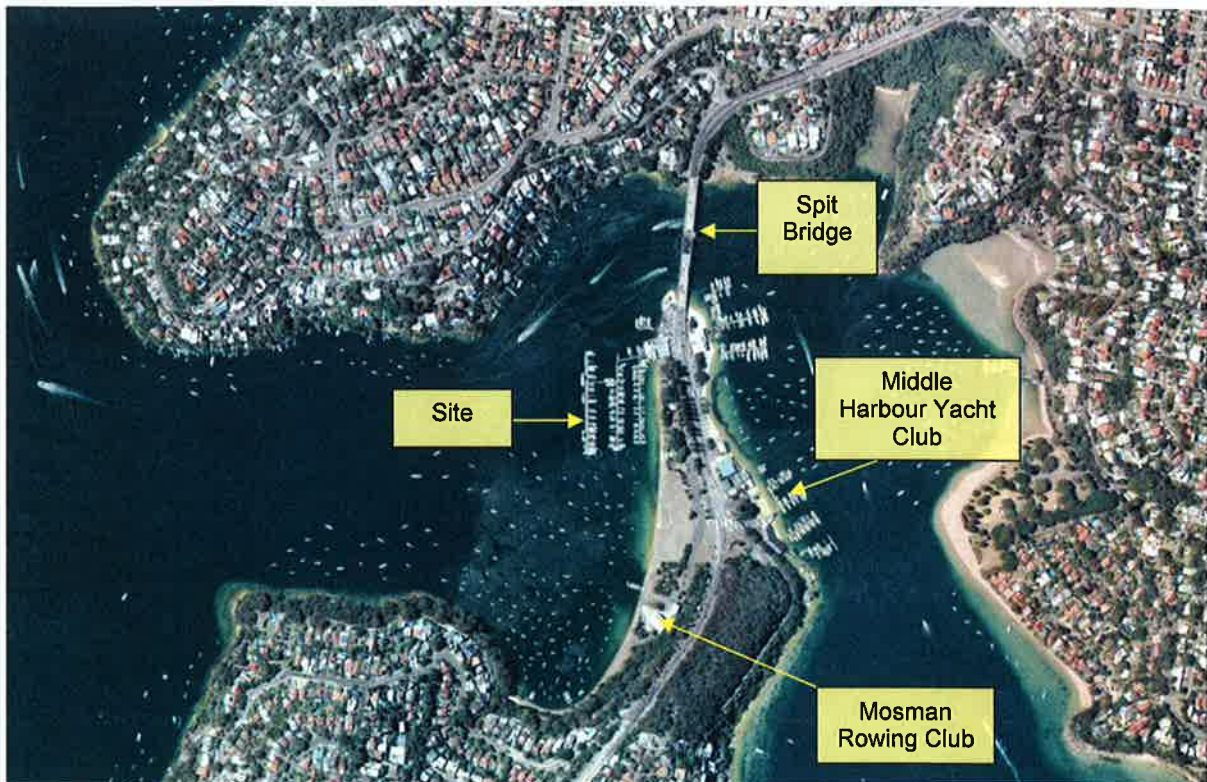


Figure 2: Subject Site

3. SITE HISTORY

On 12 March 2012, the Planning Assessment Commission approved MP08_0046 for the following alterations to the existing marina:

- 35 additional berths (from 165 to 200);
- Replacement of the existing slipway with a new travel lift;
- Car park and garbage storage area;
- Relocation of underground storage tanks;
- Relocation of sewage pumpout and fuel wharf; and
- Extension to the existing service workshop and storage area.

4. PROPOSED MODIFICATION

On 26 May 2015, the Proponent submitted a section 75W modification request seeking approval to modify the location of the fuel wharf, relocate the floating pedestrian link between B Arm and C Arm and create a floating berthing finger at the end of D Arm (see figure 3).

The floating pedestrian link between B Arm and C Arm currently exists in the marina. There is approval to construct N Arm and then D Arm (which included the fuel wharf location) and the hardstand area in a later stage. This modification request seeks to relocate the fuel wharf before construction commences.

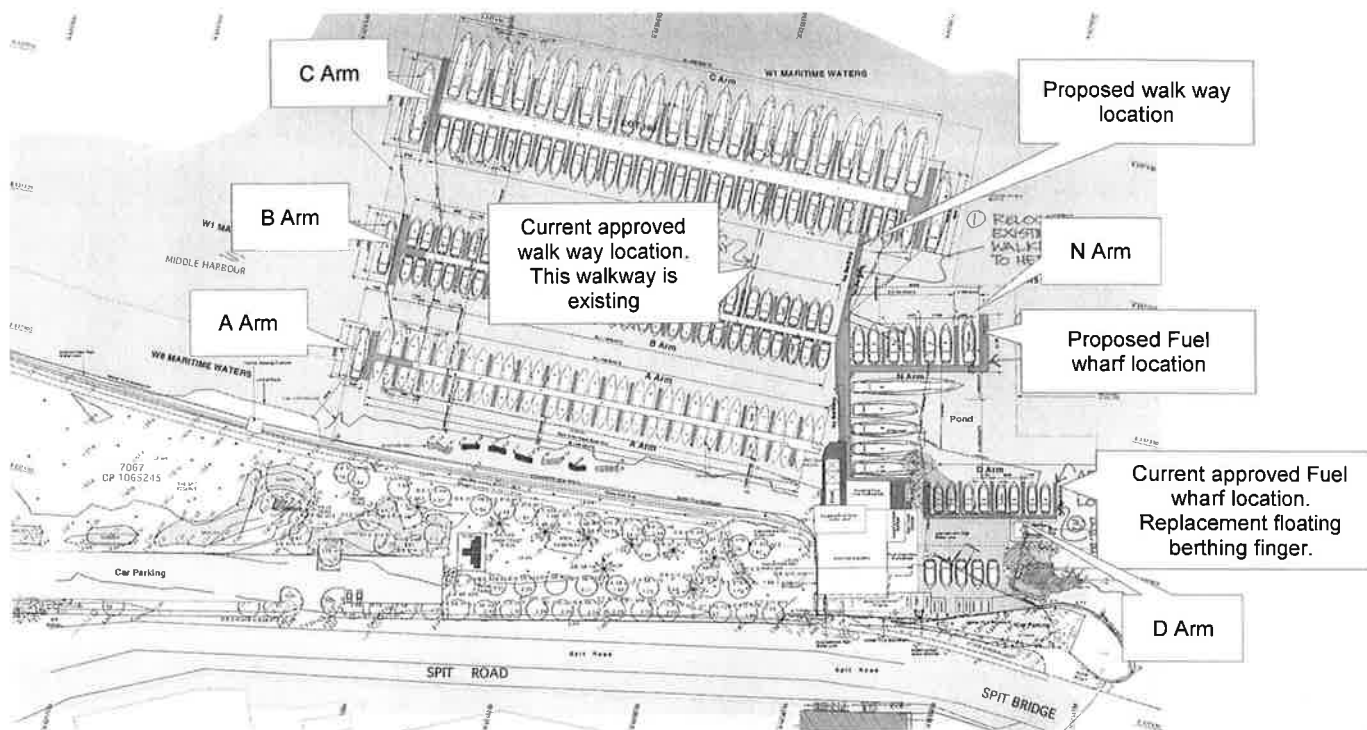


Figure 3: Proposed modifications

5. STATUTORY CONSIDERATION

5.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to Section 75W modification requests to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original Project Approval. As the modification request seeks to modify Condition A2 of the Project Approval, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or delegate) has the ability to determine the modification request.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or delegate) may approve or refuse of the modification of the project under section 75W of the EP&A Act.

5.2 Delegated Authority

Under the Instrument of Delegation dated 16 February 2015, the Minister for Planning delegated responsibility for the determination of section 75W modification requests to Directors and Managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Mosman Council and Manly Council did not object to the proposal, a political disclosure statement has not been made in relation to the request, and no public submissions were received in the nature of objections. Accordingly, the Manager, Industry Assessments may determine the request in accordance with the Minister's delegation.

5.3 Consultation

Under section 75X(2)(f) of the EP&A Act, the Secretary is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the EP&A Reg, the modification request was made publicly available on the Department's website on 27 May 2015, and was referred to Mosman Council and Manly Council, Roads & Maritime Services (RMS) and NSW Environment Protection Authority (EPA) for comment. Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

Mosman Council had no comments or objections on this request.

Manly Council did not object to this request however, made the following two points:

1. Public access to the fuel and sewage facilities should be maintained; and
2. In relation to the minor rearrangement of 9 parking spaces (not part of this request) that there is no loss in vehicular access and there is improved egress to parking and truck access.

The proponent addressed Manly Council's concerns regarding the parking and access as part of the original approval. The approved parking configuration will not be implemented until the hardstand stage of the project is completed. Current and access parking is maintained. Council was satisfied with this response.

The EPA requested that Condition B9 should remain unchanged and in force. This condition relates to the need for the fuel wharf to comply with the Environmental Protection Licence and *Protection of the Environment Operations Act 1997* (POEO). The proponent has not sought to modify this condition and it will apply to the proposed relocation of the fuel storage wharf on N Arm.

RMS Maritime had no comments or objections to this request.

There were no **public submissions** received.

6. ASSESSMENT

In its assessment of the modification request, the Department has considered the following:

- the EA provided to support the proposed modification (see **Appendix A**);
- all submissions received by the Department (see **Appendix B**); and
- the Director-General's assessment report for the original Project Application.

The key issues with respect to this modification relate to visual amenity, impacts on seagrasses and navigation.

With respect to visual amenity, the Department's assessment of the original application considered this issue and found that the marina expansion is not considered likely to alter the character, attractiveness of the harbour, or be detrimental to the general visual amenity of Middle Harbour. The modification proposes to relocate the pedestrian walkway between B Arm to C Arm and the location of the fuel wharf. The Department's assessment concludes this change will not significantly alter the look of the marina. The Department is satisfied with this change.

The Department's assessment of the original application looked at the impact of the floating

marina with respect to seagrass and found seagrass was not located in the area of the outer marina arms. There are no seagrass beds identified in the floating marina area for C Arm and B Arm and therefore the proposed relocation will have no impact.

The connecting walkway between B Arm and C Arm is being relocated to line up with the main access from the marina buildings. There will be improved passive surveillance on the pedestrian access along the marina.

It is proposed to relocate the fuel wharf into deeper water. This will allow for improved navigation and larger vessels to access. RMS Maritime have no issues with the proposed fuel wharf position and the proponent must comply with navigation regulations.

With the relocation of the fuel wharf to N Arm, it is proposed to construct a replacement floating berthing finger replacing the approved fuel wharf location at D Arm. This reconfiguration does not alter the approved berth numbers. The Department notes RMS has conditioned there is no berthing on the outside of the proposed end floating berthing finger of D Arm.

7. CONCLUSION

The Department has assessed the proposed alterations to the marina and is satisfied that it is consistent with the intent of the original Project Approval and will not result in any additional environmental impacts.

8. RECOMMENDATION

It is recommended that the Manager, Industry Assessments, as delegate of the Minister for Planning, under section 75W of the EP&A Act, approve the MP08_0046 MOD 1 as set out in the recommended Instrument of Modification (see **Appendix B**).

Prepared by: Nicola Chisholm
Planning Officer

Endorsed by:

 21/7/15
Joanna Bakopanos
Team Leader
Industry Assessments

Approved:

 21/7/15
Chris Ritchie
Manager
Industry Assessments

APPENDIX A: MODIFICATION REQUEST 08_0046 MOD 1

Refer to http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7083

APPENDIX B: INSTRUMENT OF MODIFICATION
