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Independent Planning Commission

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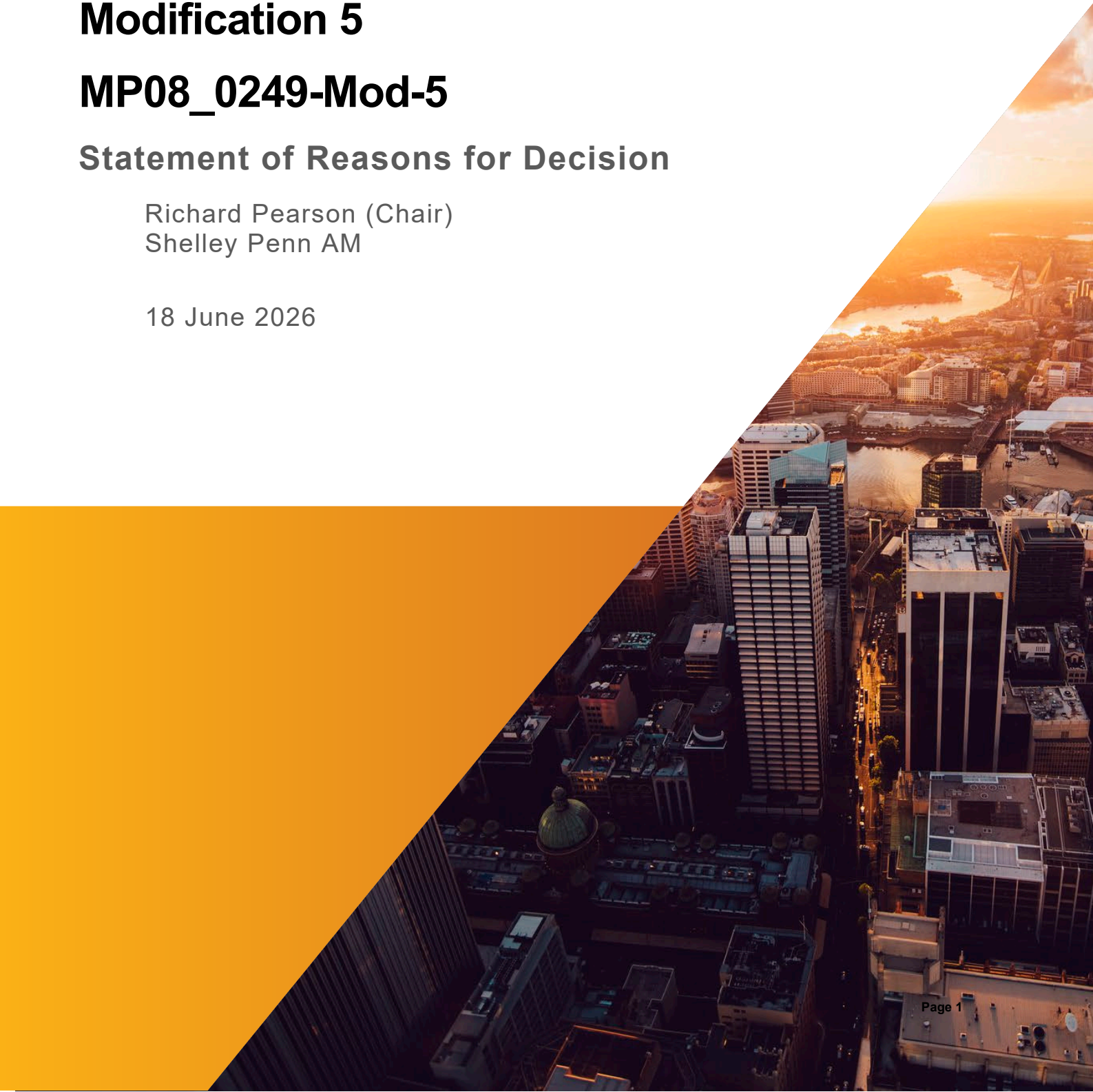
Port Kembla Outer Harbour – Modification 5

MP08_0249-Mod-5

Statement of Reasons for Decision

Richard Pearson (Chair)
Shelley Penn AM

18 June 2026



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1. Introduction

1. On 20 May 2026, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the State significant infrastructure (**SSI**) modification request MP08-0249-Mod-5 (**Request**) from Port Kembla Operations Pty Ltd as trustee for Port Kembla Unit Trust (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Request seeks to modify the Concept Approval and Stage 1 of the Project Approval for the Port Kembla Outer Harbour Reconfiguration (the **Project**) located in the City of Wollongong Council (**Council**) Local Government Area (**LGA**) under section 5.25 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). The Request constitutes SSI as the Concept Approval and Project Approval were transitioned from the former Part 3A to SSI under clause 5 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.
3. In accordance with section 5.25(4) of the EP&A Act, the Minister is the decision maker and has the power to modify the approval of the Project. In accordance with the Minister's Instrument of Delegation dated 14 September 2011, the Minister's function has been delegated to the Commission as the Applicant has made a reportable political donation.
4. Andrew Mills, Chair of the Commission, determined that Richard Pearson (Chair) and Shelley Penn AM would constitute the Commission for the purpose of exercising its functions with respect to the Request.
5. The Department concluded in its Assessment Report (**AR**) that the Request is in the public interest and that it is approvable, subject to conditions.

2. The Site

6. The subject site comprises Port Kembla Outer Harbour within the Wollongong LGA, approximately three kilometres (**km**) south of the Wollongong CBD and 80 km south of Sydney (the **Site**).
7. The Outer Harbour is bordered by established commercial and industrial uses, including Brick and Block (masonry manufacturing), Morgan Cement, NSW Ports, BlueScope Steel, Orica, BHP Billiton, motor vehicle and machinery import terminals, and bulk liquid and gas import facilities. Commercial and residential uses are located at Port Kembla village to the south and southwest of the Site. The Site is also serviced by a network of arterial roads providing access to the Southern Freeway and Princes Highway (AR para 7).
8. Refer to the arrangement of Port Kembla at **Figure 1** below.

Figure 1 – Port Kembla Inner and Outer Harbour (source: Department's AR, Figure 1)



3. The Request

Background

9. On 3 March 2011, the then Minister for Planning granted consent to the Port Kembla Outer Harbour Reconfiguration (MP08_0249), comprising a Concept Plan approval for the staged development of the Site and approval for Stage 1 of the project (**Existing Approval**). **Figure 2** below illustrates the layout of the Existing Approval.
10. The Existing Approval was modified to revise the permissible operational traffic volumes to allow a maximum of 70 vehicle movements per hour for Stage 1, and 121 vehicle movements per hour for the overall Concept Plan (**Mod 1**). Three subsequent modifications (Mods 2-4) were submitted and subsequently withdrawn.

Modification 5

11. The Request seeks approval to modify the Existing Approval to reconfigure the layout and staging of the development. The Request seeks to:
 - amend the Concept Plan approval to reflect the revised concept, including revised berthing facilities and uses; and
 - amend the Stage 1 approval for the revised scope of work which comprises demolition of jetties and tugboat mooring; dredging and land reclamation; and construction of berth structures, civil works (including utility services), and drainage upgrades.

12. The Request aims to provide increased flexibility for future terminal uses, including to support emerging industries, including the renewable energy sector, while retaining the overall multi-stage framework for the development of Port infrastructure. **Figure 3** below illustrates the proposed reconfigured site arrangement.
13. A summary of the key components of the Existing Approval and Request is set out in Table 2 of the Department’s AR.

Figure 2 – Outer Harbour Concept Plan (MP08_0249), approved on 3 March 2011
 (source: Applicant’s presentation to the Commission, 29 May 2026)



Figure 3 – Proposed modification to approved reclamation and dredging area – Stage 1
(source: Applicant's presentation to the Commission, 29 May 2026)



4. Material Considered by the Commission

14. In this determination, the Commission has given consideration to the:
- material and planning framework as set out in [Appendix A – Commission’s Considerations](#); and
 - Department’s whole-of-government assessment as set out in [Appendix B – Department’s Assessment Report](#).
15. The Department’s whole-of-government assessment of the Project was undertaken in consultation with five government agencies, including the Port Authority of NSW, Environment Protection Authority (EPA), Transport for NSW (TfNSW), Department of Primary Industries and Regional Development – Fisheries (DPIRD Fisheries), and Department of Climate Change, Energy, the Environment and Water (DCCEEW) – Conservation Programs, Heritage and Regulation (CPHR). Several of these agencies provided comments on the Request, and none objected to the Request. The Commission has considered this advice in making its determination.

5. Public Consultation

16. The Department publicly exhibited the Request between 15 October and 28 November 2025. No public submissions were received by the Department during this period.
17. As noted above, the Department received agency advice regarding the Request, including advice about the potential change in impacts and recommended amendments to consent conditions. The Applicant submitted a Response to Submissions Report to the Department, dated 18 December 2025, to address the issues raised in the agency advice. Council advised the Department that it had no comment on the modification.
18. The Commission held meetings with the Applicant on 29 May 2026 and the Department on 1 June 2026, and transcripts from these meetings were made publicly available on the Commission’s website. The Commission offered to meet with Council, but Council declined to meet with the Commission in this instance.
19. The Commission invited public submissions on the Request from 21 May 2026 to 4 June 2026. No public submissions were received by the Commission during this period.

6. Reasons for the Decision

20. The Commission finds that the Project should be approved as it will facilitate the timely development of the Port Kembla Outer Harbour – a necessary component of NSW’s port infrastructure – and support its future uses. In particular, the Project is expected to play a role in supporting the growth of the renewable energy sector, which is of strategic importance to the State’s economic and environmental objectives. The Commission is satisfied that the potential impacts of the Project, considered in the following paragraphs, can be effectively managed in accordance with the imposed conditions of consent.

Land use

21. The Request proposes to reconfigure the layout of the reclamation area within the footprint of the Existing Approval. The amended layout is intended to improve operational efficiency and the long-term functionality of the Port without materially increasing the scale of the development. During its meeting with the Commission on 29 May 2026, the Applicant stated (Applicant Meeting Transcript, page 4):

Our purpose and our reason for this changed footprint is largely around the change in

trade demands that we've seen over the last 15 years enquiring and looking to come to Port Kembla. As one operator, NSW Ports, that looks after containers at Port Botany, we don't think a container terminal is necessary in Port Kembla until Port Botany reaches or comes near capacity... in the meantime, we are essentially looking for any other trade that may want to use that land... the trade that's approached us has been the offshore wind industry; they've been looking for port facilities across the East Coast as these offshore wind zones have been declared at a Federal level.

22. The Site is considered suitable for the proposed development for the following reasons:
- the Project remains permissible within the SP1 (Special Activities) zone under the *State Environmental Planning Policy Transport and Infrastructure (SEPP Transport and Infrastructure)*;
 - the Project is consistent with the established industrial land use of Port Kembla, which has previously been deemed suitable through the Existing Approval;
 - the Site has the physical capacity to accommodate the Project without causing additional significant impacts on the natural or built environment, or generating adverse socio-economic effects within the locality;
 - potential impacts on surrounding land uses have been minimised to the greatest extent practicable, with any residual impacts capable of being appropriately mitigated through conditions of the modified development consent; and
 - the Project represents an orderly and economic use of the Site.

Dredging and fill

23. The Project consolidates all dredging and land reclamation into Stage 1. As operational elements of the development are excluded from the current Request and will be assessed separately as part of future requests, the Commission's consideration relates primarily to construction-related impacts and built outcome.
24. The Commission has considered the proposed increase in the dredging area from 26.3 hectares to 33.7 hectares. Although this represents an expanded dredging area, the works remain within the previously assessed project footprint, and dredging impacts and management are consistent with the Existing Approval.
25. During its meeting with the Commission on 29 May 2026, the Applicant confirmed that all dredged material is proposed to be used as fill within the reclamation area or other emplacement areas on Site (Applicant Meeting Transcript, page 7). The Commission has considered the potential for some dredged material to be unsuitable for use within the reclamation area, and how such material would be managed. The Commission is satisfied that, subject to the imposed conditions of consent requiring detailed environmental monitoring and assessment of those sediments and appropriate management of any contaminated material, dredging, reclamation and emplacement activities can be appropriately managed.
26. The Project will also be subject to strict conditions of consent requiring all dredged material to be encapsulated within sediment containment structures (Condition B21). In addition, prior to the commencement of dredging, reclamation or emplacement activities, the Applicant is required to prepare an updated *Containment Structures and Emplacement Report* detailing the proposed emplacement cell design, construction methodology, cell capping, and management of sediment disturbance and relocation (Condition B23).
27. The total reclamation area remains unchanged from the Existing Approval, at approximately 40 hectares, and does not result in additional encroachment into the marine environment. Instead, the Request proposes to reconfigure the layout of the reclaimed area to establish a more continuous and operationally efficient terminal footprint. The Applicant confirmed that the bulk of reclamation fill will be sourced from

dredged material (Applicant Meeting Transcript, page 8). The Applicant also stated that some imported fill would likely be required to supplement dredged material, which could include slag from the adjacent steelworks or other imported fill material such as construction spoil (pages 6 to 8). Imported fill is subject to condition B17, which requires that all imported fill material must be classified as virgin excavated natural materials (**VENM**), unless applied in accordance with the terms of a Resource Recovery Exemption under the *Protection of the Environment Operations (Waste) Regulations 2014*.

Contamination

28. The Site is located within a long-established port environment with a history of industrial activities. Some areas of the Site contain contaminated sediments and materials. The Commission has considered the potential risks associated with disturbing contaminated materials during dredging and reclamation activities, including the release of contaminants into the marine environment. The management of contaminated sediments is explicitly covered as part of the Existing Approval.
29. The Project may disturb and relocate material within the existing emplacement cell, including legacy sediments from earlier Port works, and this creates a potential contamination risk. However, the contamination risks can be effectively managed through existing controls, as modified by this Request, including requirements for the Applicant to:
- prepare a soil contamination report detailing investigation outcomes;
 - assess, classify, manage and dispose of all land-based waste, reclamation and fill materials in accordance with the *Waste Classification Guidelines*;
 - encapsulate all dredged material within sediment containment structures; and
 - prepare and submit to the Planning Secretary a containment structures and emplacement report reflecting the revised project and demonstrating how construction impacts to the emplacement cell will be mitigated and managed.

Noise and vibration

30. The Project does not propose to materially increase noise or vibration impacts, with activities proposed to remain consistent with the Existing Approval. The Department assessed that the noise and vibration impacts will remain acceptable with standard and updated mitigation measures, including marine fauna protections and underwater noise monitoring. The Department recommended amended conditions that expressly permit 24/7 dredging, subject to implementation of reasonable and feasible noise mitigation measures and management through the *Construction Noise and Vibration Management Plan*. With the implementation of the updated noise management measures, the Project's noise and vibration impacts can be adequately mitigated and any residual noise or vibration impact will be acceptable.

Biodiversity

31. The impacts on aquatic biodiversity are expected to remain largely unchanged from the Existing Approval and will generally be minor in nature. Affected habitats (including macroalgal communities on rocky rubble covering soft sediments) are expected to naturally recover after dredging, and no seagrass is proposed to be impacted (AR, page 28). New artificial habitat will be reduced from 2.7km to 1.4km of revetment, but this change mostly occurs in already disturbed areas.
32. Impacts on aquatic fauna are predicted to be localised and temporary. Mobile species are likely to avoid works, and the mitigation measures required by the imposed consent conditions (including surveys, species relocation and implementation of a *Syngnathiformes Management Plan*) are considered sufficient to avoid significant harm. The Commission notes that while White's Seahorse may occur in the area (AR page 27-

- 28), no critical breeding habitat is affected, and its use of the Site is likely low due to existing disturbance from vessel activity.
33. Dredging may temporarily increase water turbidity, thereby reducing light for photosynthesis and affecting nearby organisms, but these effects will be short-term in nature. Additionally, underwater noise impacts from dredging and blasting may temporarily disturb or displace fauna, but the mitigation measures required by the imposed consent conditions (including exclusion zones, monitoring and noise reduction strategies) are expected to minimise impacts. The Project is unlikely to result in additional adverse impacts to aquatic fauna compared to the Existing Approval.
34. The Department, relying on advice from DCCEEW in relation to the SEARs for this Request (letter to the Department dated 21 November 2024), formed the view that the Request will not increase the impact of the Project on terrestrial biodiversity compared to the Existing Approval. Accordingly, relying on this advice, the Department advised the Commission (letter dated 15 June 2026) that a Biodiversity Development Assessment Report (**BDAR**) is not required. The Department's view, which the Commission accepts, is that:

Changes to dredging areas would not affect species that would be subject to a BDAR. The landside component of the project has been substantially reduced compared to the original project and no new elements in areas supporting biodiversity would be affected by the concept or Stage 1 project, therefore a new BDAR is not considered necessary. Further this proposed modification now deals with dredging and reclamation of land, where the previous approved project had greater landside activities (road and rail upgrades) which now do not form part of amended Stage 1 project.

Rail transport

35. The Project is intended to support operations associated with cargo shipping in the future, when Port Botany reaches capacity, including the handling of shipping containers (Applicant Meeting Transcript, page 5). The efficient transport of containers away from the Site is a critical component of the future operations of the Project. Subject to Condition 2.4 of the Concept Approval, 90% of future container movements are intended to be transported by rail (Applicant Meeting Transcript, page 12), however the existing rail network currently does not provide capacity for dedicated freight operations. The Commission considers that upgrading rail infrastructure to support the proposed volume of freight movements will eventually be needed to support the long-term functioning of Port Kembla, and will be critical to ensuring optimal utilisation, operational efficiency, and minimising reliance on road-based freight. This, in turn, will contribute to improved amenity outcomes for surrounding communities by reducing heavy vehicle movements and associated noise impacts. Although the need for rail infrastructure enhancements will not be triggered until sometime in the future, the likely scale of upgrades and associated funding required highlight that this task should be undertaken as a high priority.

Construction traffic

36. There are no operational traffic or rail operations proposed under the modified Stage 1 Request. Construction traffic can be accommodated within the existing road network servicing the Site and impacts on surrounding roads would be consistent with those previously assessed and approved, subject to a maximum of 38 total vehicles per hour under condition C15. Conditions C13–C17 provide a framework to ensure construction traffic impacts are quantified, minimised and managed appropriately.

The Commission's findings

37. In addition to the matters discussed above, the Commission has also considered potential impacts relating to coastal hydrodynamics, stormwater and drainage, terrestrial biodiversity and heritage. The Commission agrees with the Department's assessment of these matters and finds that potential impacts are capable of being managed through the imposed conditions of consent and do not outweigh the public interest served by granting consent to the Request. In making its determination, the Commission has also considered the relevant principles of Ecologically Sustainable Development (**ESD**) and the matters set out in [Appendix A – Commission's Considerations](#).
38. The Request meets the legal requirements, is consistent with NSW Government policies and it can be concluded that the benefits of the Project outweigh its negative impacts. The Commission has therefore determined to grant consent to the Request subject to the conditions of consent in [Appendix C – Instrument of Modification for Concept Approval](#) and [Appendix D – Instrument of Modification for Stage 1 Project Approval](#).
39. The reasons for the Decision are given in the Statement of Reasons for Decision dated 18 June 2026.



Richard Pearson (Chair)
Member of the Commission



Shelley Penn AM
Member of the Commission

Appendix A – Commission’s Considerations

Material considered by the Commission

Appendix B – Table 1: Material considered by the Commission

Document	Date
Secretary’s Environmental Assessment Requirements (SEARs)	26 February 2025
Modification Report and its accompanying appendices	3 October 2025
Government agency advice to the Department	Various
Applicant’s Response to Submissions Report and its accompanying appendices	18 December 2025
Department’s Assessment Report and recommended conditions of consent	19 May 2026
Comments and presentation material from meetings with:	
• Applicant	29 May 2026
• Department	1 June 2026
Department’s advice to the Commission regarding the imposition of conditions	15 June 2026

Planning Framework

Appendix B – Table 2: Strategic and Statutory context

Strategic context	Commission’s consideration
Strategic planning and policy framework	<p>The need for the Project is driven by evolving port, freight and industrial demands, including the spatial flexibility required to accommodate new port uses associated with the renewable energy industry while still preserving capacity for established trade.</p> <p>The Commission has considered the strategic planning and policy framework and is satisfied that the Project is consistent with relevant strategic directions included within the following plans:</p> <ul style="list-style-type: none"> • NSW State Infrastructure Strategy 2022-2042; • NSW Freight and Ports Plan 2018-2023; • Future Transport Strategy 2056; • Illawarra-Shoalhaven Regional Plan 2041; • Wollongong Local Strategic Planning Statement; and • NSW Ports Master Plan 2063.
Statutory context	Commission’s consideration
Objects of the EP&A Act and Ecologically Sustainable Development (ESD)	In its determination, the Commission has carefully considered the objects of the EP&A Act and is satisfied that the Request is consistent with the objects. The Commission also finds that the Request is consistent with ESD principles and would achieve an acceptable balance between environmental, economic and social considerations.
Scope of modification	In accordance with section 5.25 of the EP&A Act, the Applicant has requested the Minister to modify the approval for State significant infrastructure. The Minister’s approval for a modification is not required if the infrastructure as modified will be consistent with the Existing Approval.

	<p>The Applicant has determined that the modification to change the layout of the Outer Harbour and associated works is not consistent with the Existing Approval. Consequently, a request to modify the Minister's approval under section 5.25 of the EP&A was required.</p>
Transition to State significant infrastructure	<p>Clause 5 of Schedule 2 of the <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i> allows the Minister (or delegate) to declare former Part 3A projects as SSI by publishing an order in the NSW Government Gazette:</p> <ul style="list-style-type: none"> the Concept Approval was transitioned to SSI by way of an order dated 19 October 2020 and published 30 October 2020; and the Project Approval was transitioned to SSI by way of an order dated 14 June 2024 and published 21 June 2024.
Delegate	<p>In accordance with Schedule 1 and 2 of the Minister's Instrument of Delegation dated 14 September 2011 (the 2011 Delegation), the Minister's function can be delegated to the Commission to determine the request to modify the Minister's approval.</p> <p>The Minister's function has been delegated to the Commission as the Applicant has declared a reportable political donation, in accordance with section 10.4 of the EP&A Act.</p>
Public authority for the purposes of Chapter 5 of the transport and Infrastructure SEPP	<p>The Applicant is a 'public authority' for the purposes of Chapter 5 of SEPP Transport and Infrastructure as it is the Port Operator of Port Kembla.</p> <p>Although the Applicant is considered a 'public authority' for the purposes of Chapter 5 of SEPP Transport and Infrastructure, it is not considered a 'public authority' for the purposes of the 2011 Delegation to the Commission. The 2011 Delegation applies the definition of a 'public authority' in the EP&A Act, and the Applicant is not considered a public authority under the EP&A Act definition in relation to this modification request.</p>
Permissibility	<p>The Site is located within the Port Kembla Lease Area and is zoned <i>SP1 (Special Activities)</i> under Chapter 5 of SEPP Transport and Infrastructure. The land use table for the SP1 zone permits development for the purposes of port facilities, dredging, wharf and boating facilities and associated maritime infrastructure with consent.</p> <p>The Request comprises works that are integral to the development and operation of the Port's facilities, including dredging, reclamation and associated infrastructure and is therefore permissible on the Site.</p>
Biodiversity Development Assessment Report	<p>Section 7.17(12) of the <i>Biodiversity Conservation Act 2016</i> requires SSI modifications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the authority or person determining the Request is satisfied that the modification will not increase the impact on biodiversity values (as identified in the <i>Biodiversity Conservation Act 2016</i> and <i>Biodiversity Conservation Regulation 2017</i>).</p> <p>As described at paragraph 34, the Commission accepts the Department's assessment and is satisfied that the modification will not increase the impact on biodiversity values, and that a BDAR is not required to accompany the Request.</p>
Other approvals and authorisations	<p>The Department's AR (section 3.2) states that the modified Project:</p> <ul style="list-style-type: none"> will require an environmental protection licence (EPL) issued by the NSW Environmental Protection Authority under section 42 of the <i>Protection of the Environment Operations Act 1997</i>. Activities which may trigger the requirement for an EPL include dredging of soft sediments and rock, and contaminated soil treatment.

	<ul style="list-style-type: none"> • will require Harbour Master's permission before seabed disturbance is undertaken, pursuant to section 110 of the <i>Ports and Maritime Administration Regulation 2021</i>. • may require permits under section 40(2)(e) of the <i>Fisheries Management Act 1994</i> and clause 79-80 of the <i>Fisheries Management (General) Regulation 2019</i> for the use of explosives during dredging.
<p>Relevant environmental planning instruments (EPIs)</p>	<p>The key EPIs for consideration (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>; • <i>Wollongong Local Environmental Plan 2009</i>. <p>The Commission has considered these EPIs as part of its determination.</p>
<p>Relevant matters prescribed by the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Reg)</p>	<p>The Commission has considered matters relevant to the Request, as prescribed by the EP&A Reg.</p>

Appendix B – Department’s Assessment Report

[Link to Department’s Assessment Report, dated 19 May 2026](#)

Appendix C – Instrument of Modification for Concept Approval

[Link to Instrument of Modification for Concept Approval, dated 18 June 2026](#)

Appendix D – Instrument of Modification for Stage 1 Project Approval

[Link to Instrument of Modification for Stage 1 Project Approval, dated 18 June 2026](#)



New South Wales Government
Independent Planning Commission

ipcn.nsw.gov.au

Phone (02) 9383 2100

Email ipcn@ipcn.nsw.gov.au

Mail Level 15 135 King Street Sydney NSW 2001

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