



ASSESSMENT REPORT

Marine Structures Renewal, Cockle Bay, Darling Harbour SSD 6611 MOD 1

1. BACKGROUND

1.1 Introduction

This report provides an assessment of a section 96(1A) modification application lodged by Environet Consultancy Pty Ltd (the Applicant) seeking to modify a State significant development application (SSD 6611) for the renewal of marine structures at Cockle Bay, Darling Harbour within the City of Sydney local government area.

The application seeks approval to extend the floating pontoon walkway (23.9 m long by 3 m wide) under the Pyrmont Bridge, adjacent to the Australian National Maritime Museum as shown in **Figure 1**.

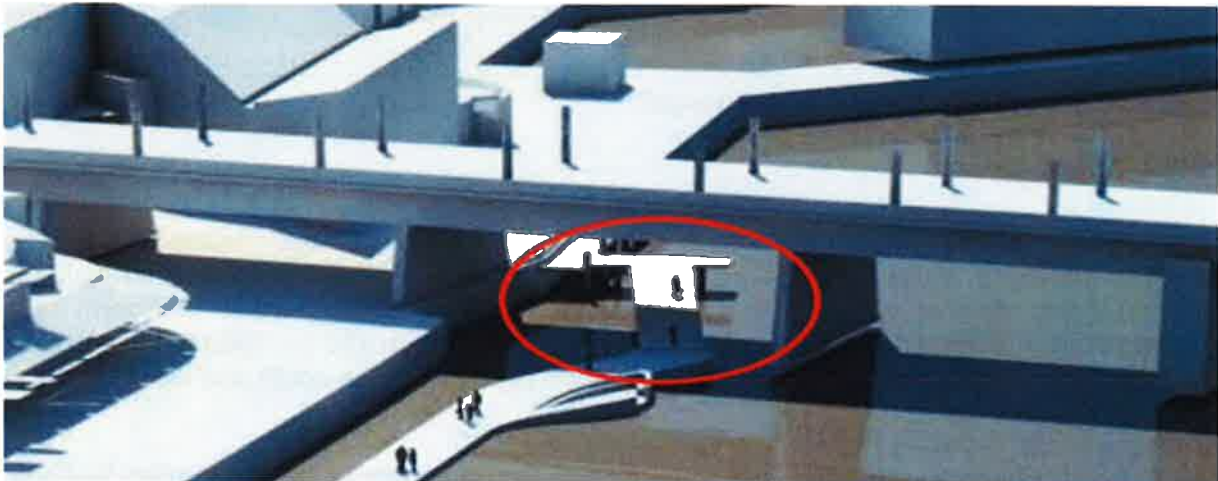


Figure 1: Model view of the proposed extension to the floating pontoon walkway located under the Pyrmont Bridge, adjacent to the Australian National Maritime Museum (Source: Applicant's SEE).

1.2 The site

The site is located at Cockle Bay, Darling Harbour between Pyrmont and the Sydney CBD (**Figure 2**). Cockle Bay has an area of approximately 6.4 hectares and a perimeter of approximately 1 km which is defined by Pyrmont Bridge to the north and the public promenade and surrounding foreshore land to the south, east and west. The site is legally described as Lot 11 in DP 1082970, Lot 1010 in DP 1147364 and Lot 63 in DP 1009964.

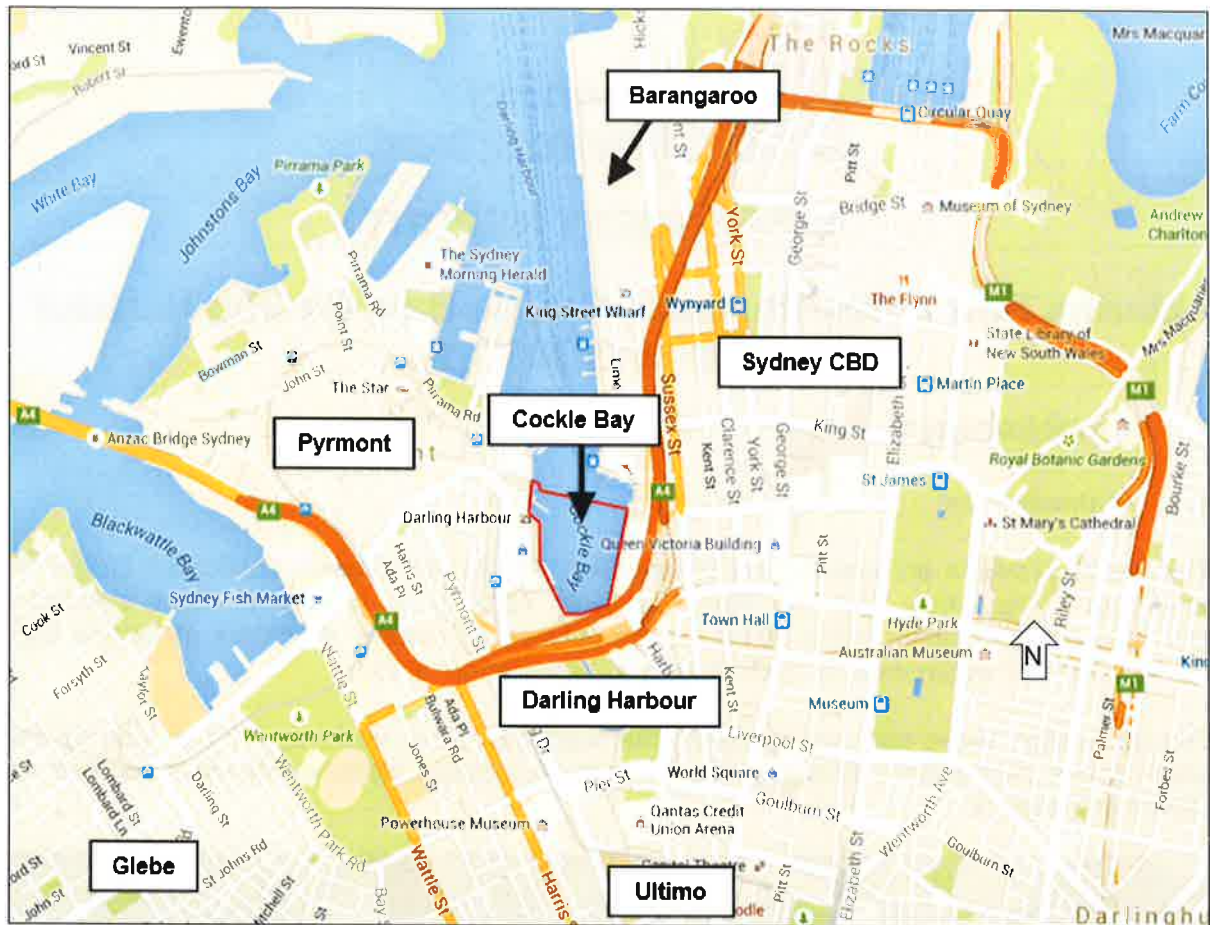


Figure 2: Site location (Base Source: Google).

1.3 Site context

The broader Darling Harbour precinct is currently undergoing a transformation as Sydney's premier gathering place and leading urban entertainment precinct. The precinct includes notable developments including the Four Points Hotel redevelopment to the north-east, Darling Walk and IMAX redevelopment (the Ribbon) to the south and the Sydney International Convention, Exhibition and Entertainment Precinct (SICEEP) to the south and west.

Cockle Bay, as shown in **Figure 3**, is surrounded by:

- Pyrmont Bridge to the north, beyond which is Sydney Harbour, the Australian National Maritime Museum (ANMM), existing development at King Street Wharf and Barangaroo
- Cockle Bay Wharf Complex to the east, beyond which is the Western Distributor
- the Western Distributor and the IMAX building (subject to redevelopment) to the south, beyond which is the site of the Sydney International Convention Exhibition and Entertainment Precinct (SICEPP)
- Harbourside Shopping Centre to the west and existing development in Pyrmont.

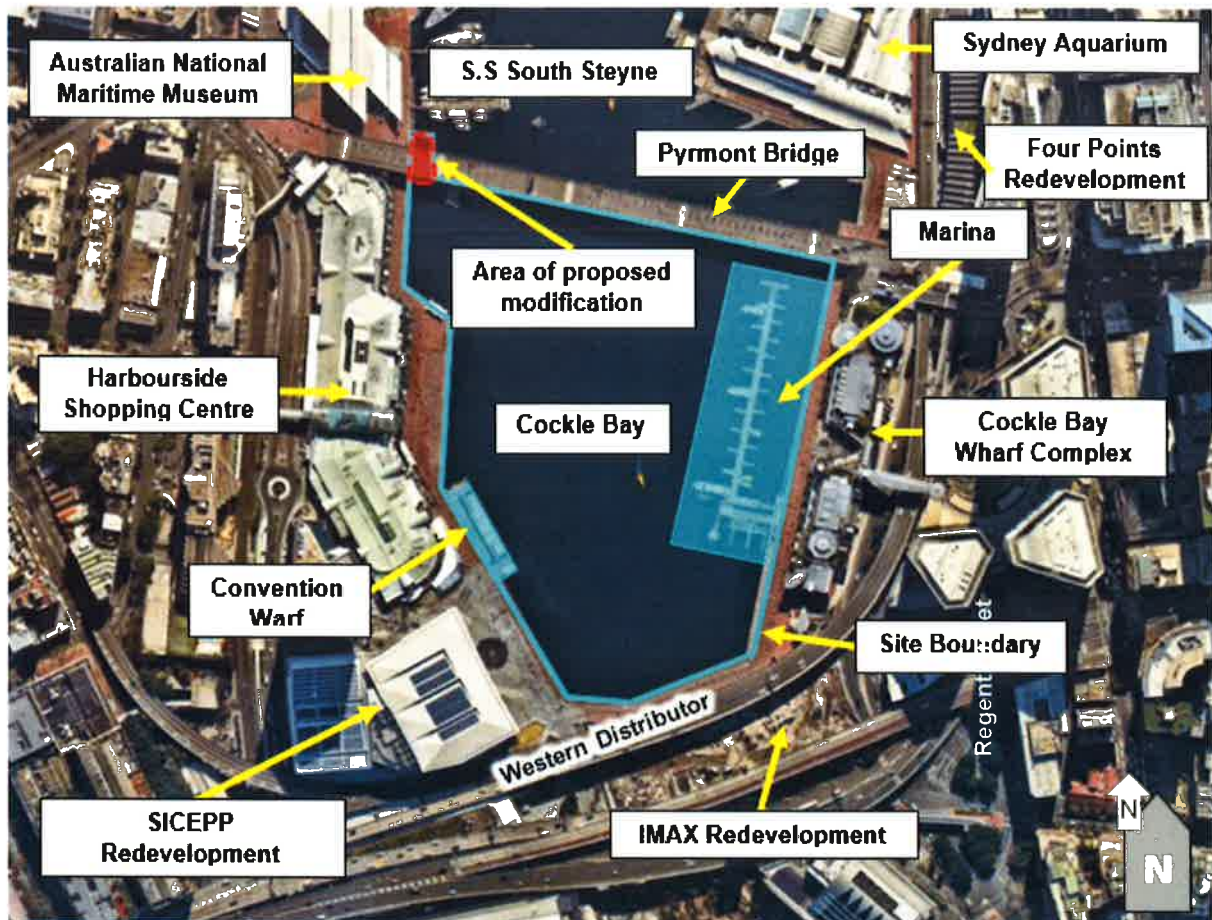


Figure 3: Subject site and surrounding development (Base source: Nearmap).

1.4 Approval History

On 13 November 2015, SSD 6611 was approved by the Acting Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning, for the renewal of marine structures at Cockle Bay, Darling Harbour.

The approved works included:

- demolition and removal of the harbourside jetty, promenade and steps, convention wharf and marina
- construction of a floating pontoon pedestrian walkway on the western side of Cockle Bay incorporating a 45 m pick-up and drop-off facility for passengers of charter and tourism vessels, private water transport services and water taxis
- construction of a floating pontoon marina on the eastern side of Cockle Bay providing 40 short-stay berths, a water taxi pick-up and drop-off zone, and an event staging and event barge storage area.

The development originally proposed the subject extension under the Pyrmont Bridge (**Figure 4**). The ANMM objected to the original application on the basis the walkway and ramp were within the ANMM water licence area and the Applicant did not have landowner's consent from the ANMM for this element of the proposal. The walkway was subsequently deleted from the application in the Response to Submissions. The Department's original assessment noted the amended design would enable this section of the walkway to be reinstalled in the future, if required.

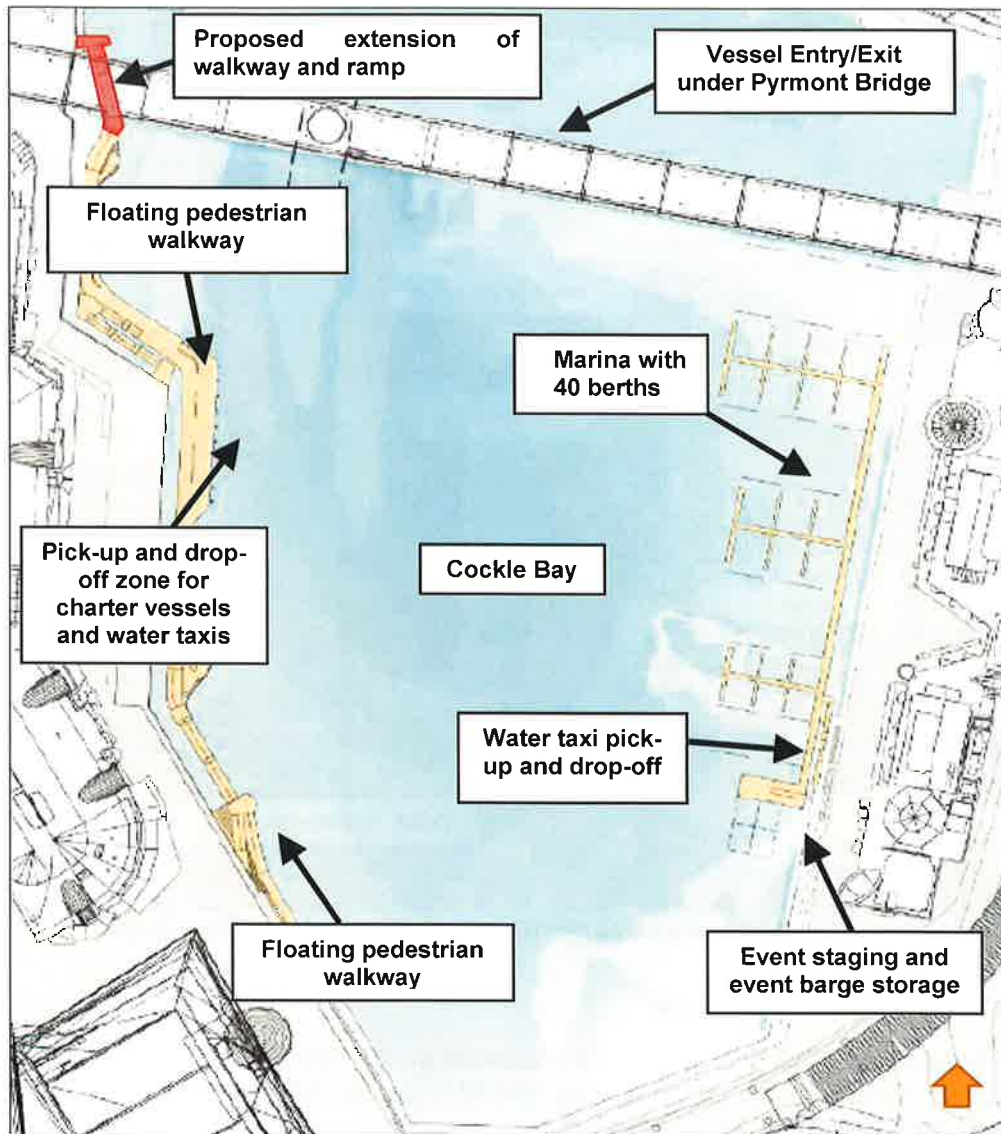


Figure 4: Approved development (Base Source: Original EIS).

2. PROPOSED MODIFICATION

The proposed modification (MOD 1) seeks approval under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) to extend the floating pontoon walkway (23.9 m long by 3 m wide) under the Pymont Bridge, adjacent to the Australian National Maritime Museum.

The proposed floating pontoon walkway beneath Pymont Bridge will connect the northern end of the approved floating walkway on the western side of Cockle Bay to the existing timber boardwalk in front of the ANMM (refer to **Figure 4** to **Figure 6**).

The walkway would be designed in two prefabricated sections and supported by four timber and steel piles. The piles would be installed first, followed by the two pre-fabricated floating sections of walkway which would be transported to the site by barge, unloaded by crane and fixed into position.



Figure 5: Overview of proposed walkway (Source: Applicant's EIS).

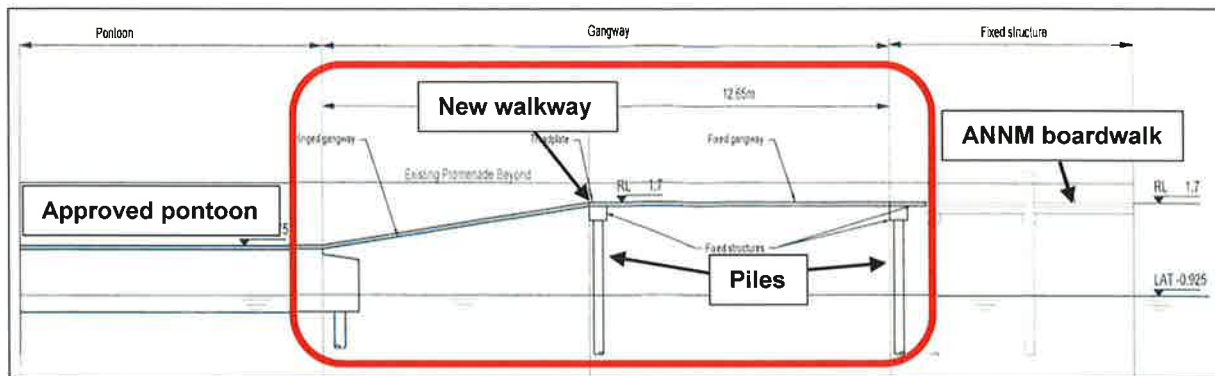


Figure 6: Section of proposed walkway (Source: Applicant's EIS).

3. STATUTORY CONTEXT

3.1 Modification of approval

A consent authority may modify the consent if it is satisfied the proposed modification application meets the requirements of section 96(1A) of the EP&A Act. An assessment of the proposed modification application against the requirements of section 96(1A) of the EP&A Act is in **Table 1**.

Table 1 – Assessment of the proposal under section 96(1A) of the EP&A Act.

Section 96(1A)	Comment
S96(1A)(a) that the proposed modification is of minimal environmental impact.	Section 5 of this report provides an assessment of the impacts associated with the proposal. As the proposal involves a minor extension to the approved walkway, the Department is satisfied the proposed modifications will have minimal environmental impact.
S96(1A)(b) that the development to which the consent as modified 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).	As the proposal relates to a minor extension (of approximately 11% of the walkway), the Department is satisfied it would result in a development that is substantially the same as that originally approved.

S96(1A)(c) The application has been notified in accordance with the regulations.	The modification application was notified in accordance with the Regulations as detailed in Section 4 of this report.
S96(1A)(d) it has considered any submission made concerning the proposed modification has been considered.	The Department received two agency submissions regarding the proposal. Consideration of these submissions is provided in Section 5 of this report.

3.2 Environmental Planning Instruments

The following EPIs and guidelines are applicable to the development:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No. 55 – Remediation of Land
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Darling Harbour Development Plan No. 1.
- Sydney Harbour Foreshores and Waterway Area DCP 2005 (DCP 2005)
- Draft State Environmental Planning Policy – Environment (Environment SEPP).

An assessment of compliance with the EPIs and DCP 2005 were considered in the original application. The Department has considered the modification application against the objectives and aims of these instruments, and is satisfied that the modified proposal remains consistent with the provisions of these EPIs.

The Department notes that the Explanation of Intended Effect for the Environment SEPP is currently on exhibition until the 15 January 2018. The Environment SEPP proposes to simplify the planning rules for the protection and management of the natural environment by consolidating seven existing SEPPs, including the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The relevant matters for consideration and the general provisions relating to the Sydney Harbour are proposed to remain in accordance with those in the current SEPP and therefore the proposed modification application would be consistent with the intended effect of the Environment SEPP.

3.3 Delegated Authority

In accordance with the Minister for Planning's delegation dated 11 October 2017, the Director, Key Sites Assessments can determine the section 96(1A) application as:

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

4. CONSULTATION AND SUBMISSIONS

4.1 Notification

The modification application and accompanying information was made publicly available online and notified in accordance with the *Environmental Planning and Assessment Regulation 2000*. The Department notified the application for 14 days from 31 August 2017 to 14 September 2017.

The Department also notified the City of Sydney Council (Council), the Environment Protection Authority (EPA), the Heritage Council of New South Wales (Heritage Council), the Department of Primary Industries (DPI), the ANMM, the Port Authority of NSW and the Foreshores and Waterways Planning and Development Advisory Committee in writing.

4.2 Public Authority Submissions

Council advised that they have no comments on the application.

The **EPA** raised concerns that:

- piling could generate significant noise impacts and noted that unless a jack-up barge is used the works may need to be undertaken at night when calm conditions occur
- the application relies on the original noise impact assessment despite numerous residences (e.g. at Barangaroo) having recently moved in nearby
- the current consent conditions are not consistent with the EPA's recommended standard hours of construction on Saturdays
- there is a typographical error in current consent in Condition E8.

The **Heritage Council** raised concern that no archaeological investigation had been undertaken for the area associated with subject extension. The Heritage Council requested following information:

- an underwater dive inspection of the area beneath Pyrmont Bridge be undertaken by a suitably qualified maritime archaeologist
- a Heritage Impact Statement detailing the findings of the inspection, assessing the heritage impact of the works and detailing mitigation measures be submitted to the Heritage Council for comment and the Department for approval.

DPI advised the application adequately addresses matters of regulatory interest to the organisation.

4.3 Public Submissions

No submissions from the public were received.

4.4 Response to Submissions

On 13 November 2017, the Applicant lodged its Response to Submissions (RTS) for the proposed development. The RTS included the following additional information:

- Cockle Bay Marine Structures Redevelopment: Addendum – Heritage Impact Statement prepared by Cosmos Archaeology Pty Ltd
- Noise Assessment Addendum Report prepared by Wilkinson Murray
- additional plans demonstrating the proposed NMM link has a fixed gangway from the NMM timber boardwalk to the new piles, then a variable/floating gangway to the new marine structure.

The Heritage Impact Statement was referred to the Heritage Council and the Noise Assessment Report was referred to the EPA. In light of the additional information the Heritage Council provided that the proposal is unlikely to have an impact on the local heritage significance of the potential maritime archaeological remains and no objection was raised to the proposed modification of the application. No responses was received from the EPA.

5. ASSESSMENT

The Department has considered the proposed modifications, the issues raised by the EPA and the Heritage Council and the Applicant's response to those issues in its assessment of the application. The key items for assessment relate to heritage and archaeological impacts, construction noise impacts, scenic quality and visual impact and marine ecology and water quality. These issues are discussed separately below.

5.1 Heritage and archaeological impacts

The Maritime Archaeological Survey and Statement of Heritage Impact Report submitted with the original application identified that the Cockle Bay seabed has a high potential for the presence of archaeological deposits relating to historic wharf structures (c. 1830-1970) and the 150 years of continuous maritime commerce and trade activity at Cockle Bay.

The Heritage Council advised that further information was required to assess the likely impacts from the newly proposed piling locations on potential archaeological relics. In response, the Applicant submitted a Heritage Impact Statement. The document presents the findings of a maritime archaeological survey conducted under Pymont Bridge and assesses the impact of the four new piles proposed under the modification application. The report assessed the cultural heritage significance, impact area and undertook archaeological recordings. Based on this assessment and notably the total additional impact area of 0.52 m², the Heritage Council considered the proposed piles will have minimal impact to the identified maritime archaeological remains and no further mitigation is required.

The Department notes, conditions of consent contained within the original approval require post-approval documentation demonstrating that the location of the piles have been adjusted to avoid the footprint of any former wharves and jetty structures dating from before 1850 as documented in the *Cockle Bay Marine Structures Redevelopment – Response to Heritage Council’s Comments* by Cosmos Archaeology Pty Ltd. As a safeguard, the Department recommends the condition of consent is amended to include the pile locations of the new extension as part of this documentation.

The Department is satisfied that the proposal will result in an acceptable level of impact to potential archaeological deposits in Cockle Bay. The subject modification application relates to four additional piles to the previously approved 56 piles, being a minor increase to the overall development. Furthermore, the recommended amendment to the condition of consent will manage the impact of the newly proposed piles on any potential archaeological relics consistent with the previously approved piles.

5.2 Construction noise

The proposed modification seeks to extend the walkway and as a result, the construction noise impact will also be extended. The EPA raised concerns regarding the noise from piling construction, receiver locations and the current development consent providing for construction hours outside the EPA’s standard hours.

In response, the Applicant provided an addendum to the Noise Assessment Report that addressed the impact of construction noise associated with the extended walkway. The report clarified the piles are to be screwed in with a final tap into bedrock. This method is consistent with the construction noise management conditions contained within the original approval requiring the adoption of screw piling instead of driven piling. Therefore, the continued use of this method as a noise mitigation strategy is considered acceptable.

The report also concluded that at some receivers, noise levels will result in minor exceedances to the Noise Management Levels in accordance with the *Interim Construction Noise Guideline* (ICNG). This includes commercial receivers at the Australian National Maritime Museum and residential receivers at One Darling Drive (up to 4dB) and 55 Lime Street (up to 2dB).

The conditions of consent contained within the existing approval are considered sufficient to address the potential noise impacts under the modification application. This includes restricting the hours of construction to 7 am and 6 pm Monday to Friday and 7 am to 3 pm Saturdays with no work on Sundays or public holidays. There are also conditions for

construction noise management, including a noise respite period from 12 pm to 2 pm, notification to surrounding receivers prior to works commencing and other mitigation strategies. In addition to these conditions, the Department will also require an updated Construction Noise Management Plan that addresses the newly proposed portion of the development.

The Department also notes that construction works for the previously approved portion of the floating pontoon have already commenced and no complaints have been received. This provides for reasonable justification that the mitigation strategies in the conditions of consent have been effective thus far.

The Department acknowledges the issue raised by the EPA that the current consent allows for construction on Saturdays between 7 am and 3 pm, more than the recommended standard construction hours of 8 am to 1 pm. The Department notes however that the previously approved portion of the development is currently under construction and there have been no complaints. As the current approved hours comprise of a minor extension (one hour earlier in the morning and two hours later in the afternoon) and there have been no complaints, it is considered reasonable to continue construction consistent with the approved hours.

For the reasons above, the Department is satisfied that the conditions of consent will continue to effectively manage the impacts from construction noise.

5.3 Scenic quality and visual impact

The proposed floating pontoon walkway will be viewed from the foreshore and from the waterway within Cockle Bay, Darling Harbour. The Department has considered the potential visual impact of the structures on the scenic quality of the Sydney Harbour and the surrounding public promenade and foreshore land. The proposed modification will complete the previously approved wharf structures and contribute to the wider transformation of the Darling Harbour as Sydney's premier gathering place and leading urban entertainment precinct.

Given the minor increase of the extension and its location under the Pyrmont Bridge, the Department is satisfied it will not result in any additional visual impacts on the scenic quality of Darling Harbour.

5.4 Marine ecology and water quality

The proposed modification comprises of four additional piles and an extension of the floating pontoon of 23.9 m long by 3 m wide (approximately 11% of the previously approved walkway). Under the assessment of the original application, a Flora and Fauna impact assessment was submitted that concluded the proposed level of disturbance was minor and would result on negligible impacts to the aquatic habitat within Cockle Bay.

The conditions of consent contained within the original approval include mitigation measures to reduce the impact of construction on the disturbance of sediments and contaminants in the Cockle Bay seabed. This includes requiring locally mobilised sediments to be contained within silt curtains, undertaken by a suitably qualified maritime construction contractor familiar with seabed conditions in Sydney Harbour and Cockle Bay.

With regards to the typographical error raised by the EPA, Condition E8 refers to sewerage rather than sewage. The EPA clarified that sewerage means a system of sewers in which sewage is conveyed. It is therefore agreed that the condition should be reworded.

The Department considers that given the minor scale of the proposed extension, the additional works can be effectively managed by the existing conditions of consent with regards to marine ecology and water quality. It is also recommended the typographical error in Condition E8 of the consent is amended.

6. CONCLUSION

The modification application has been assessed in accordance with the matters for consideration under Part 4 of the EP&A Act, and is considered to comply with all relevant standards and requirements.

The Department's assessment has found the proposed extension will complete the walkway development and contribute to the overall setting of Cockle Bay. The proposal has adequately demonstrated the minimal additional impact beyond the previously approved development can be suitably managed with regards to heritage, noise, visual impact, marine ecology and water quality.

The Department's assessment concludes the proposed modification is acceptable, is in the public interest and is substantially the same development. The Department recommends the application be approved, subject to conditions.


7. RECOMMENDATION

It is recommended that the Director, Key Sites Assessments:

- (a) **consider** the findings and recommendations of this report
- (c) **approve** the modification under section 96(1A) of the EP&A Act
- (d) **sign** the attached Instrument of Modification.

Prepared by: Ellen Mannix
Planning Officer
Key Sites Assessments

Recommend by:




12/12/17

Cameron Sargent
Team Leader
Key Sites Assessments

DECISION

Approved by:



12/12/17

Ben Lusher
Director
Key Sites Assessments

APPENDIX A –MODIFICATION CONSENT

A copy of the Notice of Modification 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=6611

APPENDIX B – MODIFICATION APPLICATION

The supporting documents and information to this assessment report can be found on the Department of Planning and Environment's website as follows:

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