DEPARTMENT OF PLANNING

OFFICE OF SUSTAINABLE DEVELOPMENT ASSESSMENTS AND APPROVALS

For decision

Purpose:
Determination of a development application (DA No.494-11-2003-i) submitted by Sydney Ports Corporation (SPC) for the construction and operation of a new container terminal and associated infrastructure at Port Botany within the Botany Bay local government area, pursuant to section 80 of the Environmental Planning and Assessment Act 1979 (the Act).

Summary:
• The Department recognises the strategic significance of Port Botany to the trade, competitiveness and wider economy of Sydney, New South Wales and the national economy. The port represents critical infrastructure. Provision of adequate infrastructure at the port to accommodate expected growth in container trade is essential to growth of Sydney as a global city and is clearly in the public interest.
• The Department has undertaken a comprehensive environmental impact assessment of the proposed port expansion and taken into consideration the issues raised in submissions and the findings and recommendations of the Commission of Inquiry.
• The Department does not concur with the Commissioner’s findings and recommendations that (particularly in the mid to long term) the majority of port throughput capacity could be accommodated by technological and operational improvements within the existing terminal footprints and that only a minor port expansion is required in the medium to long term. It is the Department’s view that the Commissioner’s recommendations do not provide the NSW Government with certainty nor are a practical outcome for providing future throughput capacity and the conditions to improve competitiveness.
• The Department recommends that the Minister approve an alternative port expansion footprint (refer to Figure 4). The Department’s recommended port expansion footprint is located within the environmental assessment envelope of the SPC proposal, however would, in the Department’s opinion, not only provide sufficient capacity to meet the forecast growth in container trade, but would also provide a greater level of certainty that the risks to the environment are able to be appropriately managed.
• The Department recommends that should the Minister grant consent to the proposal a number of conditions be included to ensure that appropriate environmental and amenity safeguards are put in place, managed and monitored.

Background:
The proposed development:
• On 26 November 2003, Sydney Ports Corporation (the Applicant) lodged a development application with the former Department of Infrastructure, Planning and Natural Resources (the Department) for the construction and operation of a new container terminal and associated infrastructure at Port Botany. The proposal is to increase the available container throughput capacity by 1.6 million twenty foot equivalent units (TEUs) at Port Botany to bring the total container throughput capacity to 3.2 million TEUs at Port Botany by 2025. The proposed port expansion consists of three key components:
  ⇒ Extension of the existing Brotherson Dock North container terminal covering approximately 63 hectares, including reclaiming 57 hectares of land through dredging.
  ⇒ Provision of supporting infrastructure including road, rail and terminal facilities to accommodate up to 1.6 million TEUs; and,
  ⇒ Enhancement of the public and ecological areas adjacent to the proposed new container terminal.
• Maps indicating the location of the site and the proposed port expansion layout are at Figures 1 and 2.
The development would involve capital investment of $576 million and would generate up to 160 jobs during construction and up to 3700 direct jobs when the terminal is in full operation. Sydney Ports Corporation is seeking to expand Port Botany to provide additional berth space to accommodate the expected increase in Sydney’s container trade for the next 20 years and beyond. SPC argues that the additional capacity is needed at the port by 2010 when it estimates that the existing facilities reach capacity. Failure to provide sufficient capacity by this time or shortly after would lead to port congestion and associated economic costs, and reduce the economic competitiveness of Sydney and NSW.

**Statutory Information:**
- The Minister is the consent authority for the proposed development by virtue of a declaration of State significance made by the then Minister for Planning on 29 June 2001 for land within the Botany and Randwick local government areas for “berths for shipping, shipping terminals and associated buildings structures or works”.
- The proposed development is designated development and as such the development application was accompanied by an environmental impact statement (EIS).
The proposed development is not integrated development as the proposed development is “Crown Development” and therefore subject to Part 5A of the Environmental Planning and Assessment Act 1979. Accordingly, the integrated development provisions do not apply.

The proposed development has been declared a “Controlled Action” under the Environment Protection and Biodiversity Conservation Act 1999. As such, approval will be required from the Commonwealth Minister for the Environment. The Commonwealth Minister has accredited the NSW environmental impact assessment process for the development proposal. Therefore the Commonwealth Minister will use the NSW Government environmental impact assessment as the basis for his decision. The Commonwealth Department of Environment and Heritage has been fully consulted by the Department during the assessment process.

Public Exhibition:

The development application and EIS were publicly exhibited for a period of 8 weeks from 28 January until 29 March 2004. A total of 1159 submissions were received during this period including:

⇒ 8 from NSW Government agencies;
⇒ 2 from the Commonwealth Government (Air Services Australia and Department of Transport and Regional Services);
4 from local government or local government organisations; and,
The remainder from the community, and industry groups.

89% of submissions objected to the proposal, 10.6% stated no position but raised issues in relation to environmental impacts and 0.4% supported the proposal.

Key issues raised in submissions included:
- traffic and transport;
- the need for alternative locations to be considered;
- terrestrial ecology impacts;
- risk assessment, contamination and emergency issues;
- recreation and social impacts;
- noise impacts;
- air quality impacts;
- coastal processes and hydrodynamics
- water quality impacts

The Department’s detailed environmental impact assessment including its consideration of these issues is contained in the Primary Submission (tagged “B”) and Submission in Reply (tagged “C”) to the Commission of Inquiry (see below). The Minister’s attention is drawn to the range of issues raised by objectors and associated information as contained in those submissions.

Commission of Inquiry:

On 27 January 2004, the former Minister for Infrastructure and Planning directed that a Commission of Inquiry (COI) be held into the proposal. The Minister’s terms of reference for the COI were:
- justification of the proposal;
- the terrestrial and marine environment;
- the hydrodynamics of Botany Bay;
- the acoustic environment;
- air and water quality, including groundwater;
- safety, both in terms of shipping navigation and the operations of Kingsford-Smith Airport;
- local and regional traffic road and rail networks;
- local and regional infrastructure, including the implications on container movements and growth within NSW;
- recreational opportunities in and around Botany Bay, in particular Foreshore Beach and Reserve;
- cumulative impacts of the proposal in the context of the total Port environs taking into account any relevant strategy for Botany Bay; and
- the social and economic implications of the development, including the implications to the State of not proceeding.

As result of a recommendation by the Parliamentary Inquiry into the Port Infrastructure in NSW, the former Minister amended the terms of reference for the COI on 28 May 2004 to include:
- An analysis of any potentially feasible alternatives at Port Botany to the carrying out of the development, including, the alternative proposed by P&O Ports Limited.

In response to the additional term of reference, SPC lodged a supplementary report which included a review of 11 alternatives to the proposal using Multi-Criteria Analysis.

The Primary Session of the COI was held in October and November 2004. The Session in Reply was held in February 2005.

Department’s Submission to the Commission of Inquiry:

In its Submission in Reply to the COI, the Department’s position was as follows:
- The Department accepts that there is a clear justification for Port Botany to accommodate a throughput of 3.2 million TEUs pa by 2025 and the implications of not facilitating this container throughput will have serious ramifications for the competitiveness of the NSW economy;
- The Department’s view is that a “do nothing” option poses a high risk to the state and national economy and is therefore not in the public interest;
⇒ The Department is satisfied that the proposed expansion of Port Botany to accommodate this throughput is consistent with NSW Government Policy as articulated in the NSW Ports Growth Plan, *Towards a Strategy for Botany Bay* and current work being undertaken into the development of the Metropolitan Strategy and the Port Freight Plan for Sydney;

⇒ The Department was satisfied that the residual environmental impacts of the SPC proposal could be managed with the adoption of appropriate mitigation and management measures.

⇒ The Department has given further consideration to the alternative layout proposals for the proposed expansion at Port Botany. It recommends that Option 8, as indicated in Appendix D of the Multi Criteria Analysis, be recommended as the footprint for port development on a staged development basis.

- The Department’s reasons for recommending its alternative port layout option and implementation framework are outlined later in this submission. The recommended port footprint is shown in Figure 4.

**Commissioner’s findings and recommendations:**

- A full copy of the Commission’s report is attached (tagged “D”) with the executive summary highlighted (tagged “E”). The Minister, in making his decision is required to consider the findings and recommendations of the Commission of Inquiry, together with all submissions. The Minister is not legally or otherwise bound to adopt the Commissioner’s recommendations. The Commissioner recommended the following:

  **Major Recommendation:**
  - Sydney Ports Corporation’s proposed development at Port Botany not be approved; and
  - A smaller expansion of the container handling facilities at Port Botany be approved.

  **Supplementary Recommendations**
  - A development initially providing 30 to 35 hectares of new terminal area and associated berth length to the west of Brotherson Dock North be approved (see Figure 3);
  - Concurrently, a detailed investigation be conducted to determine whether extensions to either or both the eastern and western ends of Brotherson Dock South are feasible; and
  - Adoption of a port management policy that favours early uptake of advanced container handling technology in keeping with port scale and configuration.

The Department does not concur with the Commissioner’s findings and recommendations that (particularly in the mid to long term) the majority of port throughput capacity could be accommodated by technological and operational improvements within the existing terminal footprints and that only a minor port expansion is required in the medium to long term. It is the Department’s view that the Commissioner’s recommendations do not provide the NSW Government with certainty nor are a practical outcome for providing future throughput capacity and the conditions to improve competitiveness.

- The Commissioner’s recommendations were based on a number of findings, a summary of the key findings is tagged “F”.

- The Commissioner proposes that a smaller expansion of the container handling facilities be approved in the form of a 30-35 hectare western addition to Brotherson Dock North. Such an expansion would provide an additional 1,000m of berth length to accommodate 3 new berths.

- The Commissioner argues that such a limited expansion is all that is required to meet the growth in Port Botany container trade to 2015 – 2020. This is over and above technology and operational upgrades within the existing terminal operations during this period. Concurrently, detailed investigations should be undertaken to determine whether extensions to Brotherson Dock South are feasible.

- The proposed expansion recommended by the Commissioner would physically lie within the footprint proposed by SPC (Option 1). The area would provide the 18 hectares optioned to Patrick Stevedores as well as 2 berths for a minor third stevedore operation with provision for an additional two rail sidings. The expansion area would be linked via a road and rail access corridor to the north of the Patrick’s terminal.
Some of the key arguments put forward by the Commissioner to support the alternative proposal are as follows:

⇒ SPC had proposed a similar footprint as a Stage 1 to its preferred option, if developed in 2 stages. The Commissioner is of the view that development of the whole of Option 1 creates too much capacity at the port for a throughput level of 3.2 million TEUs per annum.
⇒ While this is likely to create a competitive imbalance between the 2 existing stevedores in terms of berth space and terminal area, this could be addressed by future extensions to Brotherson Dock South.
⇒ A smaller scale staged development that reduced local and regional environmental impacts could be a compromise acceptable to Botany Bay City Council;
⇒ The proposal would maintain competition between the existing stevedores in the medium term;
⇒ Provision of additional berths, terminal area and road and rail connections for a third terminal operator as envisaged in Options 1 and 8 (the SPC and DIPNR preferred options) would not be precluded in the future subject to market demand and satisfactory environmental and community assessment at the time of any development application.
⇒ Given that there is significant doubt that the market could viably support three operators, the introduction of a third stevedore may not be in the public interest as reduced operator volumes compromise equipment efficiency and could result in a reduction of overall terminal efficiency of all terminals;
⇒ Environmental impacts in Penrhyn Estuary would be reduced as its flushing characteristics would be maintained and the estuary would not be “boxed in”, thus shorebird access would be only marginally affected.
⇒ There would be less impact on local and regional visual amenity.
The Commissioner finds that the provision of extra terminal area and berths for a third operator in line with the SPC preferred option would not be precluded by his proposal and that such expansion could occur in the future subject to further environmental impact assessment and development consent.

Department’s consideration of the Commissioner’s findings and recommendations

- The Department does not concur with the Commissioner’s findings and recommendations.
- The Department recognises the strategic significance of Port Botany to the trade and wider economy of Sydney, New South Wales and the national economy. The port represents critical infrastructure. Provision of adequate infrastructure at the port to accommodate expected growth in container trade is essential to growth of Sydney as a global city and is clearly in the public interest.
- The Commissioner’s recommendation that the majority of required throughput capacity be accommodated largely within the existing port footprint and a scaled back expansion footprint does not provide the NSW Government with certainty nor is a practical outcome for providing future throughput capacity. The Department considers that the recommendations put forward by the Commissioner are akin to the “do nothing” option that was rejected by the Commissioner himself.
- In the Department’s view, the implications of the Commissioner’s recommendations would be:
  - Uncertainty for the Government in terms of the provision of future port infrastructure, its timing and orderly implementation in line with trade growth;
  - Uncertainty that port infrastructure could be provided in a manner that could accommodate or quickly respond to unexpected growth or fluctuations in trade;
  - Uncertainty that the Government’s target of 40% rail mode share could be achieved given the heavy reliance the proposal would place on existing rail infrastructure at the port;
  - Exclusion of future competition at the port, even in the medium to long term, by virtue of the inadequate and/or unworkable provision of berth space, terminal area and linking infrastructure;
- The Department’s key concerns with the Commissioner’s findings and recommendations are outlined in more detail below:

  **Capacity**

  - The Commissioner’s recommendation that a large majority of the required throughput capacity be accommodated within the existing port footprint through technological and operational upgrades, involves considerable risk to the state and national economy:
    - The risk that future productivity improvements and/or technological changes do not occur, or are not put into place in time (given potentially long lead times to implement them). In particular, such initiatives would be commercial decisions of the existing stevedore operators and beyond the direct control of government. There would be no certainty for the Government that such capacity would be created within a timescale or manner that maximises the efficiency of the port in the context of the broader state economy. **Leaving such decisions (as implied by the Commissioner’s recommendation) entirely to the stevedore operators is certainly not in the state / national interest**;
    - The risk that the Government objective of achieving a 40% rail mode split being compromised by relying on the existing two rail sidings at the port to move the additional throughput, which could be up to 78% of the total throughput of Port Botany up to 2020-2025;
    - The risk that actual container trade growth may be in excess of that predicted and that a severely scaled back proposal may not be able to handle future throughputs and the lead time to build adequate infrastructure has been lost.
  - The Commissioner has recommended that SPC adopt a port management policy that favours early uptake of advanced container handling technology in keeping with port scale and configuration. He proposes this be done by some form of policy agreement between the stevedores and SPC. There is uncertainty as to whether such an agreement would be binding or even legal within the terms of a lease arrangement. It is unlikely that SPC would be in a position to force terminal operators to make large capital investment commitments should technological upgrades be needed. This creates further uncertainty, and lacks practicality in implementation.
• SPC in its calculations on throughput capacity, factored in a 15% gap between maximum theoretical capacity (i.e. everything operating at 100%) and maximum practical capacity. The gap reflects the need to plan for discrepancies caused by factors such as
  ⇒ seasonal and annual variations in trade volumes (e.g. pre-Christmas);
  ⇒ reserve capacity for uncertainties in long term trade forecasts; and
  ⇒ maintain competition (cannot be achieved if all terminals at 100% capacity);
• The EIS used a total theoretical capacity planning level of approximately 4 million TEUs to achieve a practical throughput capacity of 3.2 million TEUs. The Commissioner does not appear to have used such an approach in his calculations for throughput capacity. If he has not, his recommended proposal may not deliver the needed throughput capacity within the stated planning timeframe.

Operational aspects of the Proposed New Terminal Expansion Area
• The Department does not consider that the proposed smaller expansion footprint, as proposed by the Commissioner, could practically operate as a stand alone terminal.
• The proposed new terminal would only have two berths (the third berth being optioned to Patrick Stevedores). This is unlikely to be enough to sustain a third terminal commercially. SPC during the COI argued that at least 3 berths would be needed to secure a new terminal operator;
• Even if a third operator could initially sustain only two berths, there would be no approval for, nor certainty of longer term expansion. This would be a disincentive to future expansion and SPC may find it difficult to secure an interested operator;
• There appears to be little or no room for container storage for the new terminal area under the recommended COI option. Eighteen hectares of the expansion area have been optioned to Patrick’s and when this area is added to any separate road and rail connections, the remaining storage areas would be grossly insufficient in area for an efficient operation;
• Apart from being insufficient, the terminal area would be in a dog-leg configuration and impractical;
• The proposed rail and road connections to the new terminal area may have to negotiate through the current road and rail connections to the Patrick’s terminal. This has not really been evaluated and may in itself lead to localised congestion and undermine the achievement of the 40% rail mode target.
• The rail access to the proposed expansion area proposed by the Commissioner would be perpendicular to the quay line. This may create logistical difficulties in terms of the movement containers from ship to rail, thus reducing stevedore efficiency as advocated by the Commissioner.

Shorebirds
• The Commissioner found that a significant degree of uncertainty remains as to whether shorebirds would continue to use Penrhyn Estuary once the port expansion is developed. He placed considerable weight on this uncertainty in terms of his overall recommendations and proposed scaled back design for the port expansion.
• The Commissioner did not seem to specifically comment on the significance itself of the population of shorebirds currently using the Estuary nor weigh this up with the state-wide and national social and economic benefits of the proposal.
• The Department and the Department of Environment and Conservation (DEC) required that an independent peer review be undertaken of the Species Impact Statement (SIS) prepared by SPC. The review was undertaken by Wetlands International Oceania, a specialist consultant selected by DEC and the Commonwealth Department of Environment and Heritage. The terms of reference of the review were to:
  ⇒ Identify and review the likely impacts on migratory and non-migratory shorebirds and relevant migratory seabirds, associated with the proposed port expansion;
  ⇒ Review the likelihood of success of the proposed habitat enhancement plan and terminal layout/operations to mitigate the potential impacts;
  ⇒ Identify the consequences for migratory and non-migratory shorebirds and relevant migratory seabirds of the habitat enhancement not being successful;
  ⇒ Discuss suitable offsets in the event of a high risk of failure of the proposed enhancement plan for Penrhyn Estuary, consistent with requirements in the draft Green Offsets for Sustainable Development Strategy prepared by the NSW Government (EPA 2002)
• The SIS and the independent peer review refer to the local significance of the shorebirds and address this through the enhancement program, but in terms of proportion of flyway populations, both the SIS
and the peer review find there would not appear to be significant effect overall on any of the species. Despite this, the Commissioner places great weight on this issue in making his recommendation not to approve the SPC option. It is not clear what credible evidence the Commissioner relied upon in this regard.

- Some key findings of the independent peer review are as follows:
  - Ramsar criteria identify a site as being of international importance if it supports at least 20,000 migratory shorebirds or at least 1% of the flyway species. **Botany Bay meets neither of these criteria** (although for the Eastern Curlew it supports 0.99% of the flyway population, however none have been recorded at Penrhyn Estuary in the past three years);
  - None of the seven migratory species identified as being the key species using Penrhyn Estuary are listed as vulnerable under the TSC Act;
  - There are four shorebirds listed as vulnerable under the TSC Act that were recorded in the Estuary in the past 3 years. However, their frequency and number are not sufficient for the site to be considered as of importance to the conservation of these highly mobile, widespread species.
  - It is not anticipated that the proposed structures will significantly restrict access by shorebirds to Penrhyn Estuary.
  - It is anticipated that potential negative impacts on shorebirds caused by the port design/layout will be mitigated by the creation of shorebird habitat;
  - Proposed management actions to prevent the colonization of the shorebird habitat by mangroves will address a major existing threat to shorebird use of Penrhyn Estuary

- The DEC was satisfied with the peer review findings in its submission in reply to the COI and noted that it strongly supported the proposed habitat enhancement works as an appropriate mitigation measure for the proposed expansion. DEC made a number of recommendations regarding appropriate conditions of consent should the expansion be approved.

- Recommended conditions of consent would address the detailed design of the enhancement works (in consultation with DEC), the management and on-going monitoring regime for the works, including relevant success criteria and the development of contingency plans for implementation, should the agreed work not meet the agreed success criteria.

**Scope of consent**

- The Commissioner has included in his report the Department’s recommended measures in his report. The recommended measures were provided by the Department, in consultation with DEC and with input from other agencies (NSW Health, Department of Primary Industries (Fisheries), RTA and Railcorp).

- The Department had initially advised the Commissioner that the scope of any consent granted would only apply to the construction of the port expansion envelope and not the operation itself. This was based on a misunderstanding between the Department and SPC that was clarified and the Department accepted that the development application did seek consent for construction and operation of the terminal.

- In the letter to the Commissioner dated 7th April 2005 (tagged “G”), the Department provided clear advice that any consent would apply to the development on the land to which the DA relates and, as such, once the new terminal area was constructed, the consent could transfer from the Applicant to other parties in the future if other parties are responsible for implementing the operational aspects of the consent. Terminal operations would be within the scope of the consent so long as they were carried out in accordance with the consent and any conditions.

- This clarification was not included in the Commissioner’s report.

**Competition**

- During the primary session of the COI, the (then) Treasurer submitted a letter to the Commissioner that clearly articulated the NSW Government’s policy position with regard to the need for the introduction of greater competition at Port Botany. **The Treasurer stated that the government supports a terminal design at Port Botany that facilitates the entry of a new stevedore and / or increases the level of competition between existing market participants.**

- Notwithstanding the Treasurer’s advice, the Commissioner found that he was not satisfied that SPC had provided sufficient evidence to support its claims that a third stevedore would commence operations at the port in the short to medium term. **The Commissioner’s recommendations reflects**
this by providing for a very limited expansion of Brotherson Dock North and encouraging investigations into an expansion of Brotherson Dock South. This, according to the Commissioner would provide for the entry of a small new stevedoring operation while at the same time maintaining competitive parity between the existing stevedores.

- The Commissioner also stated that he considered that the SPC proposal (Option 1) would “provide an irregularly shaped and relatively smaller terminal area per berth for a third stevedore” and that “SPC’s preferred option raises State and National Competition Policy issues as it would confer significant operating advantages on one of the existing stevedores relative to the other”

- Notwithstanding these comments, and the Commissioners comments with regard to impacts on Penrhyn Estuary, the Commissioner finds that the provision of extra terminal area and berths for a third operator in line with the SPC preferred option, would not be precluded by his proposal, and that such expansion could occur in the future subject to further environmental impact assessment and development consent.

- The Department strongly disagrees with the Commissioner’s approach and analysis and is of the view that the Commissioner’s proposed limited expansion is inconsistent with his own advice and critique of the SPC proposal. The Commissioner’s proposed expansion footprint would only provide for 2 additional berths which would not be a viable long term proposition for a new stevedore seeking to increase market share over time. Further, the design of the terminal area to support the 2 berths would, as outlined above be likely to be impractical and unviable. The likely outcome would be its absorption into the Patrick’s terminal as extra berths during high shipping volumes. Therefore it would entrench a duopoly at the port and make it more likely that a competitive imbalance between existing operators would develop.

- The Department acknowledges the Commissioner’s recommendation that investigations into expanding the Brotherson Dock South (P&O Ports) Terminal be undertaken. This would partly address the potential competitive imbalance, and was also recommended by the Department in its Submission in Reply. However, even if such investigations are favourable, a full assessment and approval process would need to be undertaken.

- The Department’s conclusion is that the Commissioner’s recommendation is fundamentally inconsistent with Government policy regarding competition as well as potentially facilitating a monopolistic situation. The Commissioner’s recommendation is inconsistent with his own analysis.

Residual environmental and amenity impacts

- The Commissioner found that the residual environmental impacts relating to air quality, noise amenity, road and rail traffic and hazard and risk are generally consistent with the relevant criteria at the proposed 3.2 Million TEU per annum throughput, subject to the implementation of appropriate management and mitigation measures through conditions of consent.

- The Commissioner’s recommended development option however would re-direct a significant proportion of port activity from the proposed SPC expansion footprint back to within the existing terminal areas. This is likely to change the source and level of impacts from that modelled in the EIS.

- Notwithstanding this, in most respects it is likely that residual impacts will be within the limits modelled in the EIS and therefore within relevant criteria, however, these environmental impacts would need to be considered in the future as part of any development proposals to upgrade technology and infrastructure at the existing terminals.

Department’s Recommended Development Option

- In its Submission in Reply to the COI, the Department recommended that the option referred to as Option 8 in the Multi Criteria Analysis be adopted as the basis of the development footprint for the proposed Port Botany expansion. Following consideration of the Commissioner’s findings and recommendations, the Department continues to support the key components of this option as part of a staged consent framework.

- The staged consent framework would see the Department’s recommended port footprint approved as the first stage. The consideration and determination of the fifth berth at the northern end of the SPC proposal would be deferred as a second stage pending the outcome of investigations into alternative locations for the berth at Brotherson Dock South.
Stage 1 Port Footprint

- The Department’s recommended Stage 1 port envelope contains a common footprint to Option 1 (the SPC proposal) for four of the berths and significant common elements including access and rail infrastructure, albeit that minor modifications may be required in the design of such infrastructure. The envelope also provides sufficient capacity to meet forecast growth in container trade at Port Botany in the short to medium term. The Department’s recommended Stage 1 port footprint is shown at Figure 4.

- In short, the Department’s recommended port footprint involves a western extension of Brotherson Dock North to accommodate four additional berths. The key components of the Stage 1 western extension of Brotherson Dock North are:
  - Additional 550m plus 980m of berth face and approximately 51 hectares of land to the west of Brotherson Dock North. (It should be noted that the Department recommends a footprint 50m wider than proposed in Option 8. This additional area is required to provide greater container storage and handling areas for the new terminal. This is still consistent with the SPC footprint)
  - Provision for an extra 4 nominal berths
  - Dedicated road access to Foreshore Road via a bridge across the channel separating the terminal from the existing shoreline
  - Rail access to the new terminal area by means of an extension of the existing Botany Freight Rail Line parallel to Foreshore Road including a rail bridge and culverts
  - Two new rail sidings
  - An inter-terminal access road and two additional rail storage sidings parallel to the northern boundary of the Patrick Terminal
  - A public boat ramp and jetty and tug berth administration office/workshop.
  - Reclamation adjacent to Foreshore Road to create a recreational boat ramp, tug and support vessel facility
  - Restoration and enhancement of Foreshore Beach and adjoining landscape area; and,
  - Ecological habitat mitigation and enhancement works within Penrhyn Estuary.

- It should be noted that the Department’s recommended Stage 1 port footprint at Brotherson Dock North is within the development footprint of SPC’s Option 1 and accordingly the Department considers that this aspect has been adequately assessed and could be approved.

Stage 2 Investigations

- The Department recommends that prior to a decision being made on the development of a fifth berth at the northern end of the SPC proposal and within three months of the granting of consent (should the Minister do so), an independent investigation should be undertaken and submitted to the Minister into the feasibility of either an eastern or western extension of Brotherson Dock South.

- The key components of the extension of Brotherson Dock South are:
  - Additional berth face and the provision for one extra nominal berth;
  - Potential relocation of existing rail access to Brotherson Dock South to provide 600m rail sidings;
  - Amendments to Brotherson Dock South road access, relocation of terminal operational buildings and provision of off-street queuing for trucks;
  - Potential relocation of part of the inter-terminal access road;

The Department recommends that such investigations be undertaken to evaluate the environmental impacts and economic feasibility of a Brotherson Dock South extension against the environmental impacts associated with the development of the end berth in the SPC proposal. This will enable the Minister to make a more informed decision based on a more comprehensive consideration of alternative options. Key issues that the independent investigations would be required to address include:
  - Freight transport infrastructure and the achievement of an increase in rail mode share
  - Traffic impacts on the surrounding local and regional road network
  - Dredging / reclamation impacts and associated hydrodynamic and coastal process impacts
  - Water quality
  - Impacts on residential amenity including noise, air quality, visual impacts
⇒ Hazard and risk
⇒ Capital and recurrent costs to the Government

• Should the investigations support an extension to Brotherson Dock South as preferable to the development of the additional berth at the northern of the Brotherson Dock North, SPC could submit the study as a concept plan application under part 3A of the Environmental Planning and Assessment Act 1979. This would ensure that a statutory environmental assessment process would apply to the proposal.
• Should the study support the justification for the additional berth and support the Brotherson Dock North option (as proposed by SPC in the EIS) over the Brotherson Dock South options, the Minister could consider and determine the berth in this location as a Stage 2 consent for the current development application.

Proposed Consent Framework

• As stated above, the Department considers that, given a significant proportion of its proposed Stage 1 port footprint (extension to Brotherson Dock North) is common to, or within the development envelope of the SPC proposal in the submitted development application, approval for the construction of these aspects could be granted by the Minister.
• The Department also recommends that should consent be granted, the extensions to the port footprint should be operated as a stand alone terminal (excluding the 18 hectare area already optioned to Patrick Stevedores). This would ensure that the terminal operations would be consistent with the environmental impact assessment, and maintain a viable terminal area that would be available for a third terminal operator to seek to enter a lease for in the future.
• Any extension of Brotherson Dock South, should it be recommended in independent investigations, has not been assessed in the current development application nor is it within the area subject to the development application. Therefore, this component would be required to be subject to an environmental impact assessment by way of a future application for concept approval (under Part 3A of the EP&A Act).
• Should the independent investigations into a fifth berth recommend it be located at the end of the Brotherson Dock North extension (the SPC proposal), this berth could be determined by the Minister as a Stage 2 consent as its environmental impacts have been assessed in the current development application and evaluated further against the Brotherson Dock South extension options.

• The Department therefore recommends that the Minister approve a staged consent framework under Section 80(4) of the Act that would enable the Minister to:
  1. approve, as Stage 1, those aspects of the development application that, in the Department’s opinion, are justified on both environmental and strategic grounds and could be managed with the adoption of appropriate management and mitigation measures;
  2. require the applicant to satisfy the Minister as to the following matters:
     a) Submission and endorsement of a report, prepared by an independent panel of experts appointed by the Minister and funded by the Applicant, that investigates and makes recommendations on the feasibility of an eastern and western extension to Brotherson Dock (South) to accommodate additional shipping berths. The report shall be submitted to the Minister within 3 months of the date of this consent or as otherwise directed by the Minister. The requirements of the report in terms of its scope and level of assessment shall be determined by the Director General.

     Note: Any development by way of an extension to Brotherson Dock South as a result of the recommendations of the report would not form part of this consent but would form the basis of the Minister’s determination of a concept plan under section 75O of the amended EP&A Act 1979.

     b) Submission and endorsement of a report, prepared by the Applicant in consultation with RTA and RIC, that provides the design for minor amendments to configurations or locations for port infrastructure (including rail and road linkages) consistent with the revised Stage 1 port footprint.

  3. not permit the commencement of the construction of terminal operations infrastructure on the area of the approved port footprint shown hatched in Figure “I” until such time as the Sydney Ports Corporation has submitted documentation, to the satisfaction of the Minister, by way of a copy of a contract(s) or agreement(s), by way of lease(s) or similar arrangement, between the Sydney Ports Corporation and any other party or parties, in respect of the construction and operation of new terminal facilities on that area that demonstrate that the area shall operate as a stand alone terminal.

• The environmental impacts associated with the port expansion proposed in the EIS were assessed on the basis of a total throughput capacity of 3.2 million TEUs per annum from Port Botany as a whole, and up to 1.6 million TEU per annum from the terminal operations on the expansion footprint. These limits should be reflected in any consent. This will ensure that terminal operations do not exceed the capacity of the surrounding road and rail infrastructure to accommodate freight movement nor compromise the amenity of residents without a further environmental impact assessment and approval process having been undertaken.

Views of other Key Government Agencies and the Commonwealth Government

• A summary of the issues raised by key State and Commonwealth government agencies is at tagged “H”). In their submissions in reply to the COI, the government agencies recommended various conditions and broadly indicated that their outstanding issues had been resolved.

• As a species Impact Statement was prepared for the development, the Minister is required to consult with the Minister for the Environment, The Hon Bob Debus MP, prior to determining the development application. A letter from Minister Debus to the former Minister is attached (tagged “I”). The Minister raised no objection to the granting of development consent.
Views of the Local Member and Local Councils:

**Local Members**

- The proposed development is located within the State electorate of Heffron, for which Ms Christine Keneally MP (ALP) is the local member. However, following the recent electoral redistribution, from the 2007 State election onwards the development will be located within the electorate of Maroubra.
- Ms Keneally made a submission to the Commission of Inquiry that noted the opposition of Botany Bay City Council and local residents to the proposed expansion. Ms Keneally also raised a number of key issues that should be addressed and resolved such that the amenity of local residents is not impacted, in particular the recreational use of Botany Bay, railway noise and heavy vehicle movements (particularly on Botany Road). Ms Keneally recommended a number of community enhancement proposals for which SPC could make a financial or in kind contribution, should consent be given. These recommendations are supported by the Department and included in the recommended instrument of consent.

**Local Councils**

- The proposed development is within the Botany Bay City Council area. Botany Bay City Council opposes the proposed port expansion.
- While the development proposal for which SPC is seeking consent is located within Botany Bay City Council, a substantial proportion of Port Botany is located within the Randwick local government area. Randwick City Council in its submission recognised the significance of the port’s continued operations for the local area, regionally and nationally but raised a number of significant concerns with the assessment undertaken in the EIS.
- It should be noted that any future development application for an extension to Brotherson Dock South would be within the Randwick LGA. Council would need to be fully consulted as part of the proposed independent investigations into the feasibility of such port extensions and subsequently as part of any associated environmental assessment process.

**Legislative Council Inquiry into Port Infrastructure in NSW – Final Report**

The NSW Parliament Legislative Council (Standing Committee on State Development) undertook an Inquiry into Port Infrastructure in NSW. The purpose of the Inquiry was to examine in detail the provisions of the NSW Ports Growth Plan. As mentioned earlier in this report, the Committee produced an interim report in May 2004 which recommended that the terms of reference for the Commission of Inquiry be broadened to include an analysis of any potentially feasible alternatives at Port Botany to the carrying out of the development. The Minister amended the Terms of Reference accordingly.

The Committee handed down its final report on 17th June 2005. The final report contained 16 recommendations relating to a range of matters associated with port operations in Sydney Harbour, Port Botany, Newcastle and Port Kembla. Two recommendations are of direct relevance to the proposed expansion of Port Botany:

**Recommendation 8**

**That the NSW Government before any future expansion of Port Botany ensures there is:**

- The development of adequate environmental management plans for Penrhyn Estuary, Foreshore Beach and surrounding areas
- An assessment of the potential social impact, particularly in relation to air and noise pollution
- An analysis of the impact of the development on the hydrology of Botany Bay
- A plan for the protection of seagrass beds in the Bay

**Recommendation 10**

**That the NSW Government, before any future expansion of the Port Botany, ensure there is a thorough process of assessment to take account of the environmental and social impacts in relation to the construction and operation of the new facilities.**

The Department is satisfied that the issues raised in the recommendations have been adequately addressed in its assessment of the proposed expansion and during the course of the Commission of
Inquiry and that appropriate measures will be put in place through the recommended conditions of consent.

**Recommended Action:**

In determining the subject development application, the Minister is required to consider the Commissioner’s findings and recommendations; to consider issues raised in public submissions; and to consider the assessment heads of consideration as detailed in the attached assessment documents (the Department’s assessment and the Commissioner’s report). At the time of determination, the Minister must consider all relevant material before him, including representations that may have been made following the release of the Commissioner’s report. All of this information is relevant to the Minister’s decision, and must be assigned a weight in the decision-making process. None of these inputs binds the Minister’s discretion in any way, other than the requirement that each must be considered.

The Department’s advice, accounting for all the relevant information and the appropriate weight of each, is that the balance of the benefits of the proposal to the State and the Sydney region outweighs the residual environmental planning issues, which can be mitigated and managed within acceptable limits subject to the imposition of a staged consent framework and associated recommended conditions.

Accordingly, **it is recommended that the Minister:**

a) consider the findings and recommendations of the Department’s assessment, as detailed in the primary submission (tagged “B”) and reply submission (tagged “C”) to the Commission of Inquiry;

b) consider the major findings and recommendations from the Commission of Inquiry into all environmental aspects of the DA-494-11-2003-i (tagged “D”);

c) consider the Department’s assessment of the Commission’s findings contained in this submission;

d) agree that all outstanding issues identified by the Commission are resolvable through a staged consent framework including further independent investigations, and conditions of consent to an acceptable level and on balance, the merits of the proposal warrant its approval;

e) grant Stage 1 development consent for DA-494-11-2003-i, submitted by Sydney Ports Corporation by signing the attached instrument of consent (tagged “A”).

Sam Haddad                      Frank Sartor
Acting Director-General        Minister for Planning
SUMMARY OF COMMISSIONER’S FINDINGS

Justification and need for port expansion

- The expansion of port facilities to provide a throughput capacity of 3.2 million TEUs per annum is justified on the basis of historical, current and predicted container growth. It is also consistent with the NSW Ports Growth Plan.
- The Commissioner estimates that the total capacity of the existing terminals at Port Botany incorporating currently available productivity improvements is 2.2 - 2.5 million TEUs per year;
- Development of an additional terminal and facilities to provide up to 1 million TEUs per year would be sufficient to ensure an overall port capacity of 3.2 million TEUs per year, consistent with the environmental assessment. A number of the alternative footprints put forward would accommodate this additional throughput within the footprint of the SPC proposal;
- The SPC proposal (Option 1) however, would take the capacity well beyond the 3.2 million TEUs per annum requirement;
- The “do nothing” option has the potential to constrain container trade through the port and would be detrimental to the economy.

Container Trade

- Container trade at Port Botany could exceed 3 million TEUs by 2020

Competition and efficiency

- Container handling charges at Port Botany have fallen by over 30% in real terms since the early 1990s;
- Stevedoring competition of its own would not necessarily result in the lowest container costs as other factors including operational scale and adoption of efficient, advanced container handling technology are relevant;
- SPC’s evidence does not demonstrate that the entry of a third major stevedore would result in lowering container stevedoring costs and other evidence suggests that a consistent balance of operating conditions between stevedores may be a more decisive factor;
- Port Botany requires innovative and technological development to achieve higher container throughput per unit of berth length and terminal area as the area of land available for development is restricted compared to the Ports of Melbourne and Brisbane.
- SPC’s preferred option would provide an irregularly shaped and relatively smaller terminal area per berth for a third stevedore. The provision of effective stevedoring competition, when the number of participants is small requires reasonable equality of berth length and terminal area between stevedores.

Landside container logistics

- Port Botany is a critical transport hub central to the State’s economy;
- 40% rail mode share is feasible by 2010 with current infrastructure provided a metropolitan intermodal terminal network is developed in a timely manner;
- Duplication of the Botany Freight Line between Botany Yard and Cook’s River would be required between 2011 and 2016 to transport 40% of containers by rail;
- Road transport of containers from and to Port Botany would not cause unacceptable traffic impacts on the road network at either a 40% or 20% rail mode share subject to specific intersection upgrades, the implementation of a port freight traffic management plan and appropriate monitoring of intersection performance;
- A container throughput capacity of 3.2 million TEUs per annum would not exceed the environmental capacity of the Botany area subject to mitigation measures, and remedial action if comprehensive monitoring indicates such action is necessary.

Aquatic and foreshore environment

- Penrhyn Estuary provides significant habitat for migratory and non-migratory shorebirds;
- Significant uncertainty remains as to the likelihood of migratory and non-migratory shorebirds returning to the estuary once access to it is substantially restricted;
• Water quality in the estuary would be adversely affected by the proposed development which would reduce flushing
• Inter-tidal and salt marsh habitat values in the estuary would be improved over time by the proposed habitat enhancement however uncertainty remains as to the likely effectiveness of the transplanting seagrass and/or establishing quality seagrass areas in the estuary
• SPC’s proposal is likely to have on-going adverse ecological impacts in Penrhyn Estuary despite the proposed enhancements
• The footprint of the terminals should be minimised to reduce ecological impacts in the estuary
• The foreshore areas of Botany Bay are unlikely to be significantly effected by hydrodynamic and coastal processes by on going monitoring should be maintained.
• The proposed boat ramp and car park would have an adverse effect on the local community’s enjoyment of foreshore beach.

Aircraft surveillance and safety
• Development of alternative surveillance equipment for Sydney Airport should not delay commissioning of any new terminal facilities subject to commitment of funding by SPC and on-going cooperation between Airservices Australia and SPC

General environmental aspects
• Residual environmental impacts relating to air quality, noise amenity, road and rail traffic, and hazard and risk are generally consistent with the relevant criteria at a container throughput of 3.2 million TEUs per annum;
• The balance of socio-economic impacts would be beneficial subject to implementation of the mitigation measures and monitoring;
• Potential cumulative environmental impacts have been adequately addressed by SPC in documentation before the Commission

Alternative development options
• Potentially feasible alternatives that could realistically provide container throughput capacity to meet a trade demand of 3.2 million TEUs per year are variations to a combination of two of Sites A, B and C and Options 1,2,7,8,9 and 10 (in the Multi-criteria Analysis submitted by SPC)
• Options 1, 7, 8 and 9 provide a total port throughput capacity substantially more than the 3.2 million TEUs per year assessed by SPC in the EIS.
• Site C and variations to site C fall within the footprint of the SPC preferred Option1 and would have less environmental impact than Option 1 and could provide additional container capacity of up to 800,000 TEUs through the development of 3 additional berths;
• Alternatives that limit development at the western end of Brotherson Dock North to 30-35 hectares together with enhancement programs would have important ecological benefits for Penrhyn Estuary as well as amenity benefits for users of Foreshore Beach.
Department of Environment and Conservation

- DEC, in its submission to the Department and the Primary session of the COI, raised a number of issues that it considered needed further assessment, or for which it was awaiting the outcome of further assessment, before it could provide definitive advice. The concerns related mainly to:
  - Impacts on Penrhyn Estuary and habitat for migratory and non-migratory shorebirds, in this regard DEC requested an independent peer review be undertaken of the SIS (discussed earlier) and a Risk Analysis on the maintenance of migratory shorebird habitat;
  - Water quality, in particular the potential for deterioration in the estuary once the terminal is completed;
  - Hydrodynamics and the potential to impact on Aboriginal cultural heritage and conservation values of Botany Bay;
  - Operational noise levels
  - Air quality impacts

- In its submission in reply, DEC indicated that the issues of concern had been resolved through the COI process, and recommended a number of measures to be implemented by way of conditions of consent.

Roads and Traffic Authority

- The RTA raised concern with some aspects of the proposal in particular the need for cumulative impact assessment of the proposal with the Green Square development and Sydney Airport expansion and on the wider regional road network in particular the M5 East, and any need for improvements.
- The RTA also raised the need for funding of road network improvements as a result of the expansion if approved.

Rail Infrastructure Corporation

- Railcorp provided “in-principle support for the proposal, in particular the objective of achieving a 40% rail mode share at the port.
- Railcorp provided information on the infrastructure upgrade program for the Botany Rail Freight Line, in particular the duplication of the remaining single track section of the line that is required for the 40% rail mode share to be achieved.
- Railcorp provided recommended conditions of consent regarding rail siding specifications and rail infrastructure provision to the new terminal.

Department of Primary Industries (Fisheries)

- DPI (Fisheries) raised a number of issues with regard to potential aquatic ecology impacts and impacts on recreational fishing. DPI submitted a number of specific recommendations on management and mitigation measures that would need to be developed and implemented prior to any construction activities commencing.

Airservices Australia / Department of Transport and Regional Services (CWTH)

- Both agencies raised the issue of the impact of the proposed port expansion footprint on Sydney Airport’s airspace, in particular the need for further development and acceptance of new technologies such that the footprint would not interfere with radar and other air navigation systems.
- At the submission in reply, Airservices Australia indicated that it had prepared a project plan to determine the expense, timescale and issues to be resolved in order for the required technologies to be put in place in a manner that would not interfere with the port development or the airports operations. Airservices Australia has also submitted a number of recommended measures and caveats that could be incorporated into a consent.