



Planning &
Environment

**MODIFICATION REQUEST:
Port Botany Expansion, Hayes Dock
Services Area
(DA 494-11-2003i MOD 16)**

***Continued Temporary Use and Permanent Port,
Maritime and Waterway Related Uses, within
the Northern Tip of Hayes Dock and Changes to
Hazards Management within Port Expansion***



Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

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1. BACKGROUND

NSW Ports (the Proponent) has submitted a request to modify the project approval for the Port Botany Expansion (PBE), specifically within the northern tip of Hayes Dock, to primarily allow for continued temporary uses (by line boats, barges and associated activities) for up to a further two years and permanent port, maritime and waterway related uses.

Planning approval was obtained by Sydney Ports Corporation (Sydney Ports) from the then Minister for Planning on 13 October 2005 for Stage 1 of the development and 22 August 2006 for Stage 2 works (see **Schedule 3, Appendix D**). Stage 1 of the approval involved the construction and operation of a new container terminal, while Stage 2 allowed for the construction and operation of berthing facility for up to three tugs at Hayes Dock.

NSW Ports is the current land manager for Port Botany. The NSW Government entered into a 99 year lease in 2013 with NSW Ports, who took over from the Sydney Ports Corporation.

The PBE comprises approximately 63 hectares (ha) of land, of which 45 ha is leased to Sydney International Container Terminal Pty Ltd (SICTL). 18 ha known as 'the Knuckle' is leased to Patrick Stevedores (Patrick). A third stevedore has also commenced operations in 2014. The Hayes Dock area is approximately 360 m² and is located within the Bayside Council local government area (LGA) (**Figure 1**).



Figure 1: Site location (Base source: GoogleMaps)

The surrounding area comprises Penrhyn Boat Ramp and Foreshore Road to the north and east, Sydney Airport runways to the west and Port Botany shipping facilities to the south. The site is shown in **Figure 2**.

The immediate areas to the south and south east of the Hayes Dock are the areas currently tenanted by SICTL and Patrick (**Figure 3**).



Figure 2: Aerial view of the site and its surroundings (Base image source: SIX Maps 2017)

The Stage 2 consent allows for accommodation of an additional tug berth, located at the northern end of the Stage 1 development (see **Schedule 3** of conditions, **Appendix D**). This has not been constructed to date.

A modification application was later submitted for the northern most area of Stage 2, the Hayes Dock, and subsequently approved to use the northern tip of Hayes Dock for temporary use by line boats, barges and associated activities (MOD 14, approved June 2013).



Figure 3: Approximate boundaries of Stevedores at Port Botany (Base image source: SIX Maps 2017)

Previous modifications have been made to the approval since the initial consent was granted. All of the modifications were granted consent by the Department of Planning and Environment (the Department) under the Ministers' delegation. Details are provided in **Table 1**.

Table 1: Previous modifications

Issue	Consideration
MOD 1 (MOD-107-9-2006-i) approved 11 September 2007	<ul style="list-style-type: none"> Modification to correct various minor errors and incorrect descriptions and to clarify various conditions.
MOD 2 (MOD-134-11-2006-i) approved 11 September 2007	<ul style="list-style-type: none"> Modification to permit alternative wharf structure designs. An additional condition was added (B2.40A) regarding wave action and erosion at Foreshore Beach and impact on seagrass.
MOD 3 (MOD-149-12-2006-i) approved 11 September 2007	<ul style="list-style-type: none"> Modification to permit land based activities associated with dredging to be undertaken at night and for dredging activities to be undertaken within specific turbidity limits.
MOD 4 (MOD-78-9-2007-i) approved 17 September 2007	<ul style="list-style-type: none"> Modification to alter the timing of various studies (conditions C2.20 and C2.25).
MOD 5 (MOD-60-9-2008) approved 21 September 2008	<ul style="list-style-type: none"> Modification to allow the penetration of the obstacle limitation surface subject to approval under the <i>Airports Act 1996</i> and to alter the timing of the Bird Hazard Management Plan.
MOD 6 (MOD-68-12-2008) approved 12 December 2008	<ul style="list-style-type: none"> Modification to allow construction works that are not subject to an Environment Protection Licence to be permitted outside specified construction hours only if they are inaudible at the closest residential receiver (conditions B2.19, B2.19A and B2.19B).
MOD 7 (MOD-08-03-2009) approved 20 March 2009	<ul style="list-style-type: none"> Modification to allow operational rail sidings to be constructed and operated along the Inter-terminal Access Road Corridor, as an option, whilst maintaining the EIS approval for operational rail sidings within the new terminal. Only one option will be implemented with the determination of the option following confirmation of leasing arrangements of the new terminal.
MOD 8 (DA-494-11-2003-i) approved 30 May 2009	<ul style="list-style-type: none"> Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain.
MOD 9 (DA-494-11-2003-i) approved 18 June 2009	<ul style="list-style-type: none"> Modification to allow additional dredging to be undertaken at the high spot off Molineux Point outside the primary silt curtain.
MOD 10 (DA-494-11-2003-i) approved 13 July 2009	<ul style="list-style-type: none"> Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain.
MOD 11 (DA-494-11-2003-i) approved 21 November 2011	<ul style="list-style-type: none"> Modification to alter the approved location, footprint and height of the Operation building and Maintenance building as part of Terminal 3.
MOD 12 (DA-494-11-2003-i) approved 6 June 2012	<ul style="list-style-type: none"> Modification to alter the stormwater management system from the approved first flush system to the construction of stormwater quality improvement devices (SQID) in the area leased by Sydney International Container Terminals (SICTL) and known as the Northern Expansion Area.
MOD 13 (DA-494-11-2003-i) approved 8 February 2013	<ul style="list-style-type: none"> Modification to change the stormwater management system from a first flush system to the construction of stormwater quality improvement devices (SQID) in the Southern Expansion Area (also referred to as the "Knuckle").
MOD 14 (DA-494-11-2003-i) approved 11 June 2013	<ul style="list-style-type: none"> Modification to allow temporary uses at the northern tip of Hayes Dock, while awaiting a development as a tug berthing facility.
MOD 15 (DA-494-11-2003-i) approved 8 July 2013	<ul style="list-style-type: none"> Modification to allow penetration of the obstacle limit surface of Sydney Airport by cranes.

2. PROPOSED MODIFICATION

2.1 Modification Description

The modification seeks to allow for the continued temporary use (by line boats, barges and associated activities) for up to a further two years and permanent Port, maritime and waterway related uses, within the northern tip of Hayes Dock. MOD 16 also seeks to modify and delete some of the existing conditions (see **Table 2**) related to the Port Botany Expansion area (see **Figure 1**) and allow for occasional refuelling and storage of small volumes of dangerous goods at Hayes Dock incidental to the continued site and boat activities.

Temporary Uses

The proposed modification under section 75W of the *Environmental Planning and Assessment Act 1979* (EP & A Act) is to allow for the continued temporary use (and installation of temporary structures) for a period of up to two years, as well as to continue to allow for other low potential impact port, maritime and waterway uses to operate from this area.

NSW Ports proposes the following:

- port, maritime and waterway related uses including mooring for non-trading vessels (i.e. including line boats, barges and tugs)
- allowing these uses to operate 24 hours, seven days a week
- loading/unloading of small volumes of dangerous goods
- temporary storage of small volumes of dangerous goods for minor site, boat maintenance and related activities
- potential installation of refuelling infrastructure (in the future).

The modification would continue to allow the approved use for tug and line boat mooring to commence when port traffic increases with tug/line boat fleet demand.

Changes to Conditions

The modification also requests that several conditions be amended or deleted. These are shown in **Table 2** below.

Table 2: Requested changes to conditions

Condition	Description
<i>Schedule 2 Definitions</i> – replace “temporary uses” and its definition	The proposed definition change from the Proponent being: <i>Port, Maritime and Waterway Related Uses: Permanent and temporary uses of the northern tip of Hayes Dock (referred to as the Hayes Dock Services Area) for the mooring, loading and/or unloading of non-trading vessels, including line boats, barges and tugs including associated activities as outlined in modification application DA-494-11-2003i MOD16</i>
<i>Modify C1.2</i>	Removal of “temporary uses” and replace with <i>Port, maritime and waterway related uses at Hayes Dock Services Area</i>
<i>Modify C1.2A</i>	Removal of the header “Temporary Uses” and replace with <i>Port, Maritime and Waterway Related Uses – Hayes Dock Services Area</i> . Replace reference to “temporary uses” within text with <i>Port, Maritime and Waterway Related Uses</i>

Condition	Description
<i>Modify C1.2B</i>	Change to read 'Temporary uses at the Hayes Dock Services Area shall be limited to a period of two (2) years in each instance/occasion'
<i>Modify C1.2C</i>	Remove reference to "temporary uses" and change header 'Operational Environmental Management Plan – Port, Maritime and Waterway Related Uses Hayes Dock Services Area'
<i>Delete B2.27</i>	Delete Port and Traffic Noise Management Plan due to each operator having their own specific plans
<i>Delete B2.28 – Rail Noise Working Group</i>	Delete Rail Noise Working Group due to the group functions being accommodated in the Port Botany Community Consultative Committee (CCC). Request for C3.2 to formally include rail noise as an ongoing agenda item for the CCC meetings.
<i>Delete B2.29 – Rail Noise Assessment</i>	Delete Rail Noise Assessment Botany Yard Cooks River due to potential duplication of the freight line that is not part of the PBE project
<i>Delete C2.15A – Hazards and Risk Management</i>	References Hazards and Risk Management which says temporary uses shall not involve the loading, unloading and storage of dangerous good
<i>Delete C4.3 – Environmental Representative</i>	Operational Environmental Representative due to the role being incorporated into each Port operator's management team and is considered that an independent audit and reporting review would be 'unnecessary and impractical'
<i>Amend C3.2 – CCC</i>	Community Consultative Committee – in deleting condition B2.28 seeks to approve a new subclause to 3.2 requiring rail noise to be formally an agenda item from CCC meetings
<i>Amend C2.17 – Storage and Reporting Hazardous Goods</i>	The Proponent seeks an amendment to this clause since data regarding 'packaging sizes for each class of dangerous goods' is not made available to the Proponent and its tenants, so it cannot be reported. The change sought is to remove the requirement to report on package size of DGs
<i>Amend C3.1 – Community Information Complaints Handling</i>	The Proponent seeks to delete the requirement for quarterly complaints reported to the Department and EPA, reasoning that annual complaint reporting is required by operator Environmental Protection Licence's and other approval conditions e.g. inclusion of the complaints register in the Annual Environmental Management Report. Complaints received are also discussed at each CCC meeting and included in the minutes
<i>Amend C4.2 – Annual Environmental Management Report</i>	The Proponent seeks to remove the requirement for the Director General to 'approve' each report. The request is that the report is "submitted to the DP & E".

Hazardous Activities

Hazardous activities that have been outlined in 4.1.2 of the modification application include:

(v) *Occasional refuelling of the vessels either by road fuel truck or via on site infrastructure which may be installed at a later point in time (e.g. under the exempt and complying development provisions of the Three Ports SEPP); and*

(vii) Loading / unloading and temporary storage of small volumes of Dangerous Goods (DGs) for the purpose of minor site and boat maintenance and related activities and boat refuelling.

It is noted that Condition C2.15A imposed under the development consent for MOD 14 for the 'temporary uses' at the northern tip of Hayes Dock "*shall not involve the loading, unloading and storage of dangerous goods*". The justification for the change is that small quantities of dangerous goods would be stored and used for minor site and boat related activities and boat refuelling, and that the site is not intended to be used for handling, packing or unpacking of dangerous goods cargo.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The project is considered a transitional Part 3A project, under Schedule 6A of the EP&A Act. The Proponent may therefore seek to modify the project in accordance with section 75W of the Act.

Consideration of the modification request under section 75W of the EP&A Act is appropriate as the proposed modification is not consistent with the project approval, but would have limited environmental consequences beyond those which had been the subject of assessment.

3.2 Delegated Authority

On 16 February 2015, the then Minister for Planning delegated her powers and functions under section 75W of the EP&A Act to Executive Directors in the Planning Services division of the Department in cases where there are:

- less than 10 public submissions (not including submissions from public authorities) in the nature of objections,
- no political disclosure statement has been made, and
- the relevant local council has not made an objection.

The Executive Director, Priority Projects Assessments may determine this modification, as the modification meets the terms of this delegation.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under Section 75X(2)(f) of the EP&A Act, the Secretary is required to make the modification request publicly available. The Department exhibited the modification request (**Appendix A**) for 16 days between Thursday 20 October 2016 and Friday 4 November 2016 (inclusive) on the Department's website, consulted with Bayside Council (Council) and the Environment Protection Authority (EPA).

4.2 Submissions

Council does not object to the proposed modification but raised the following issues for consideration:

- the “temporary use” of the northern tip of Hayes Dock by lines boats, barges and other low impact temporary uses for a period of two years was the subject of Modification 14 to DA-494-11-2003i approved in June 2013
- the proposed site should continue to operate in accordance with the operational environmental management plan (OEMP) (as required by MOD 14). However, if new issues arise from future construction works and operational activities, the OEMP should be amended and a construction environmental management plan (CEMP) prepared. Council noted that the EPA has not reported any environmental impacts, incidents or community complaints
- Condition C2.15A states ‘temporary uses shall not involve the loading, unloading and storage of dangerous goods.’ It is requested by the Proponent that the condition be deleted. Council wants consideration given to the findings of the *Denison Street Land Use Safety Study Review of Planning Controls Report*, in relation to risk. In particular, when dangerous goods are transported from the dock via road, or if there is an increase in dangerous goods passing through the Port. The Hayes Dock Services Area is in proximity to the Botany Industrial Park, and Denison Street which has been identified as a dangerous goods route
- Council had no objections to the continuation of the existing use subject to the Proponent addressing the issues they raised.

EPA does not object to the proposed modification but raised the following issues for consideration:

- **Noise Management:** Noise mitigation measures should be implemented to minimise noise impacts from the use of the dock. These should be addressed and considered in any current or future OEMP and CEMP
- **Dangerous Goods / Chemical Management:** the proponent must ensure environmental risk associated with the storage, possession and handling of hazardous materials and dangerous goods is minimised. Controls for hazardous materials and Dangerous Goods should be implemented and maintained. Any installation of petroleum storage system infrastructure must comply with current regulations and standards
- EPA have no objection to the Rail Noise Working Group being included in the Port Botany CCC, and for rail noise to be included as an agenda item. EPA recommended that the community be reinvited to apply to join the Port Botany CCC if the two groups were incorporated. This is required to occur within six months
- EPA recommended that representatives and stakeholders from the Rail Noise Working Group should join Port Botany CCC where appropriate (e.g. RMS, ARTC).

There were also two **public submissions** received on the proposal, which neither supported or objected to the modification. Key issues raised in public submissions are as follows:

- the need to consider the future possibility of a dry dock facility to cater for a potential ferry from La Perouse to Kurnell
- need to implement restrictions on noise coming from the Port Botany area.

The Department notes that a submission from NSW Health was made directly to the Proponent but not to the Department, noting that they had no additional comments

on the proposed modification, but that they would like a copy of the Annual Environmental Management Report.

Submissions are available at **Appendix B**.

4.3 Response to Submissions

The Proponent provided a response to the issues raised in submissions, in a Response to Submissions report (RtS), which was published on the Department's website (see **Appendix C**).

The comments were as follows:

Response to Bayside Council

- Minor amendments may be required to the OEMP if new issues arise and to acknowledge permanent use(s) and amendments to conditions of approval
- DG concerns were addressed by saying that the site is not a cargo facility but a small berth and service area for small boats. Unloading/loading of DG cargos contained within the shipping containers is not feasible or proposed
- The Proponent does not believe that the development will result in significant risk related impacts to the Denison Street precinct.

Response to EPA

- The distance to the nearest residential receptor to the Hayes Dock Services Area is over 500 m, and the small scale of the operations provide additional evidence of the low potential for noise impacts of the proposed activities.
- The Environmental Management Plan (EMP) for the Hayes Dock Services Area will be updated as required to minimise noise impact risk.
- The loading/unloading of dangerous goods is not proposed, however maintenance activities at the site may involve use of small amounts of chemicals that fall under the definition of dangerous goods.
- The Proponent does not object to EPA's recommendation to specify that rail noise related to the site be discussed at the Port Botany CCC meetings.

Response to NSW Health Public Health Unit

- It is noted that the Department did not receive this submission. It is understood that it went directly to the Proponent. The response from Health indicated that they had no additional comments on the proposed modification.
- In the RtS, the Proponent has committed to providing an annual report to Health. This was an agreement made between Health and NSW Ports, and therefore has not been conditioned.

Response to Public Submissions

- Two public submissions were raised during the exhibition period. One related to the future possibility of a dry dock facility to cater for a potential future ferry from La Perouse to Kurnell. The Proponent noted the submission and noted it was irrelevant to the current modification application
- The second submission raised concerns about the need to implement restrictions on noise coming from the Port Botany area. The Proponent responded that the operations at Hayes Dock Services Area do not generate significant noise. The site is located within an existing industrial area in proximity to operating ship terminals and Sydney Airport. Potential noise from

the site is considered negligible in comparison. The nearest residential receptor is at least 500m from the site.

The Department forwarded the RtS (and supporting information) to Council and the EPA for their consideration.

Further Response to the RtS

The Department received a further submission from Council following publication of the RtS.

Council reviewed the RtS and provided further comments including:

- Council had raised its concerns initially about the risk of transport of DGs, particularly along Denison Street, Hillsdale. Council advised this street is identified as a Dangerous Goods route. Previous studies undertaken have examined risk along this transport route and the proximity to Botany Industrial Park
- Council requested that the Proponent consider the findings of the *Denison Street Land Use Safety Study Review of Planning Controls*, a report which had been commissioned for Council relating to Denison Street being a dangerous goods route
- the Proponent responded "*the occasional movement of small amounts of DGs to/from the Hayes Dock Services area would be insignificant compared to existing and predicted DG traffic movements in Denison Street reported in the Denison Street Safety Study*"
- Council when responding to the RtS indicated that the Proponent has not provided documentation on risk to demonstrate their claims that their potential movement of DG would result in limited impact. The Proponent had not provided any documentation on risk and the consequence of hazardous events in the area.

Furthermore, recommendations of the report prepared for Council related to risk and DGs require:

- a transport risk assessment to be submitted with all future development applications with the potential to directly or indirectly affect DG traffic along Denison Street
- The (location-specific) individual fatality risk and societal risk for fixed facilities to be used to assess risk of the transport of DGs. Established qualitative principles should be considered
- Any proposed changes to the transport of DGs in the study area (including new operations or modifications to existing operations), should be assessed individually and in the context of the cumulative risk presented in most recent available risk assessments for the study area (including individual and societal from mixed facilities and transport of DGs).

Council also requested an assessment of the cumulative effect of fixed installations and DG transport. Council can then review its own planning scheme near Denison Street based on total risk in the area.

5. ASSESSMENT

The key issues considered by the Department are outlined below.

Change to Schedule 2 definitions

Modification 14 allowed for 'Temporary Uses' to be undertaken at the northern tip of Hayes Dock while the area awaits its intended development as a tug boat berthing facility, as part of the Port Botany Expansion and to permit an increase in the maximum number of daily construction vehicles.

The Department recommends that interim uses will continue to be allowed at the Hayes Dock Services Area for the mooring, loading and/or unloading of non-trading vessels. Permanent uses are not approved, since the addition of 'permanent infrastructure' may trigger the need for further consent.

Modification to Conditions C1.2, C1.2A, C1.2B and C1.2C

Temporary use of the Hayes Dock area was permitted by Modification 14, since the approved development as a tug berthing facility had not been completed. The permanent use is unlikely to be constructed until market demand is sufficient to support a new tug facility. Therefore, the Proponent requests that other port, maritime and waterway related uses can be operated from the Hayes Dock Services Area in addition to the current temporary uses of the site.

The Department considers that changing the term 'Temporary Uses' in C1.2 and C1.2A to *Port, Maritime and Waterway Related Interim Uses* is not dissimilar to the use assessed and approved under the current consent. However, it is considered that these uses are still to be temporary or interim in nature until the tug berthing facility is developed.

The Proponent has requested that condition C1.2B state that temporary uses 'shall be limited to a period of two years *in each instance / occasion*'. The Department considers that the conditions should instead be amended to allow interim uses, in accordance with an OEMP, until permanent uses are required. If permanent uses are intended, a further modification will be required. The Department has also recommended a condition requiring an OEMP to be submitted for approval by the Secretary within three (3) months of approval of MOD 16 specifically for the Hayes Dock Services Area.

Modification of condition C1.2C to add Port, Maritime and Waterway related interim uses referring to the OEMP is consistent with the existing and currently approved consent. A noise management plan and compliance assessment is to be provided for the Hayes Dock Services Area Operation as outlined in conditions C1.2C, C1.2D, C1.2E and C1.2F. Further details have been added to ensure noise management and compliance specifically for the Hayes Dock Services Area, since condition 1.2A had turned off conditions for an OEMP and noise management within this specific area.

Deletion of condition C2.15A (dangerous goods)

The Proponent seeks the removal of the condition C2.15A that states 'temporary uses shall not involve the loading, unloading and storage of dangerous goods'. The

Proponent's justification for this deletion is that the site area is not a cargo facility but a small berth and service area, specifically for barges, line boats and tug boats.

A risk assessment was conducted as part of the EIS for the PBE and concluded that the DG risks were acceptable. The storage of small amounts of dangerous goods in accordance with Schedule 1 of the Three Ports SEPP, and the occasional loading/unloading of small amounts of DGs at Hayes Dock were considered by the Proponent to be insignificant compared to the approved movement and handling of DGs at the neighbouring stevedores. Hence, the risk assessment undertaken in the EIS would not change.

Council noted that the Hayes Dock Services Area is in proximity to the Botany Industrial Park which contains a number of hazards. Nearby Denison Street has been identified as a dangerous goods route. The *Denison Street Land Use Safety Study Review of Planning Controls Report* written by Arriscar Pty Limited (Denison Street Report), identifies risk related planning measures surrounding Denison Street, Hillsdale to inform land use safety decisions for existing and future developments.

Council originally requested consideration be given to the findings of the Denison Street Report particularly when DGs are transported via road or if there is an increase in DGs passing through the Port. Council had no objections to the proposal subject to consideration of these issues and management of the site by an OEMP. If new temporary uses are proposed and issues arise, the OEMP must be amended and a CEMP put into place for any related construction works and operational activities.

Based on the Department's review of the condition, previous hazards analyses and review of Council comments it is recommended that an amendment is made to C2.15A rather than deletion. The proposed amendment is as follows:

C2.15A Interim uses within Hayes Dock may involve the loading, unloading and storage of minor volumes of dangerous goods (DGs) for the sole purpose of minor site maintenance; line boat, barge and tug maintenance; related service activities and boat refuelling.

However, the Denison Street Report has not been added to the conditions as the Hayes Dock area is a small berth for tug boats and not expected to be utilised for DG transport. Any significant storage or transportation of DGs associated with this area would require further development consent. The Department referred the recommended condition to Council, and Council confirmed it had no objection to this approach.

Amendment to condition C2.17 Storage and Handling of Dangerous Goods

The Proponent requested that C2.17 Storage and Handling of Dangerous Goods be amended and reporting requirements for dangerous goods be removed, to provide continuity across the port area. The Proponent indicated that they were unable to obtain package sizes of each class of DGs passing through the Port, but could obtain information on the total quantity of DGs in each shipping container and DG class within it.

The Department considers that removal of reporting requirements for DGs should not proceed and has recommended that the amended conditions retain the need to report on dangerous goods quantities based on the following reasons:

- the *Ports and Maritime Administration Act 1995* makes provisions in respect to management of dangerous goods in ports. Requirements under the *Ports and Maritime Administration Regulation 2012* include the requirement for a description of goods, the nature and number of packages, and the mass and volume of the goods to be recorded
- Australian Standard AS3846-2005 “*Handling and Transport of Dangerous Cargoes in Port Areas*”, International Maritime Dangerous Goods Code and Australian Code for the Transport of Dangerous Goods by road and rail indicates the packaging safety requirements including groups, quantities and precautions for handling and storing DGs in Ports
- if an incident occurs the impact of the event is proportional to the quantity of material released. The packaging size defines the maximum quantity of DGs which may be released from a single package and what emergency measures are required
- the Preliminary Hazard Analysis (PHA) *Revision 7, June 2004* report discussed the acceptable package sizes for each class of DGs, undertook an assessment of risk and quantitative modelling for hazards
- toxic gas movement assumptions were identified in the PHA (Revision 7, June 2004).
 - Toxic gases were modelled in the following package sizes: 20 tonne isotainers, 500 kg drums and 100 kg cylinders
 - an isotainer (ISO – International Organisation for Standardisation) are identified as large stainless steel pressure vessels held within a 20-foot frame used for the transport and storage of bulk liquids
 - all movements of isotainers identified were modelled as potentially releasing 20 tonnes of DGs
 - all other movements of greater than 0.5 tonnes have been modelled either as a 100 kg release, a 500 kg release or a 1 tonne release based on typical package size
- risk levels are to be reassessed every 5 years as per the conditions and the Commission of Inquiry findings held in May 2005. The inquiry found that risk associated with toxic gases was likely to be the most significant hazardous aspect of the PBE development. More frequent reviews would be necessary if there is a significant increase in the trade of toxic gases in the future.

The Department concludes that the information of DG class, actual tonnages and the package sizes for each class of DG handled must be available to the stevedores in line with the *Ports and Maritime Administration Act 1995* and the *Work Health and Safety Regulation 2011* (Schedule 18B, Clause 63).

Condition C2.17 considers the level of safety risk management required to ensure that risks from movement and packages sizes (i.e. cylinders, drums, ISOtanks) of DGs particularly related to Class 2.3 remains within the land use safety criteria for Port Botany.

A meeting was held with the Department, the Harbour Master of the Port Authority, TfNSW, SICTL and the Proponent on 17 January 2017 to discuss condition C2.17.

The Proponent engaged a Hazards consultant to provide them with technical advice relating to the Department's redrafting of condition C2.17.

The Proponent subsequently requested that the threshold of tanktainer (bulk) movements be increased by 50% per annum, allowing more DGs to enter the PBE area. The Department considers a 50% increase would significantly increase risk of harm. Existing threshold limits have been measured on individual fatality risk and this fatality risk would increase at 50% per annum. The Department has assessed the data for dangerous goods cumulative risk and applied it to the site. The Department has recommended increasing the thresholds for a twelve month period to 20%.

The recommended amended condition requires that, commencing twelve months after determination of this modification, the Proponent shall submit an annual report to the Secretary with details on dangerous goods movements. A hazards analysis is also to be submitted to the Secretary within six months of an identified threshold exceedance. Compliance is to be assessed in the hazards analysis against the Department of Planning's *Hazardous Industry Planning Advisory Paper (HIPAP) No. 4, 'Risk Criteria for Land Use Safety Planning'* and HIPAP No. 6, *'Hazard Analysis'*.

Delete redundant condition B2.27 Port Traffic and Noise Management Plan

The Proponent seeks to delete condition B2.27, requiring the implementation of the Port Traffic and Noise Management Plan, due to Port traffic and rail noise management matters already being addressed as part of the SICTL and Patrick's OEMPs, both of which have been approved by the Department (condition C1.3). These OEMPs have also been prepared in consultation with relevant stakeholders including the CCC.

The Department is satisfied that the noise issues related to the approved use of this site are able to be adequately addressed, considered and managed as part of the OEMPs required under the approval, and having regard to the approved OEMPs already in place. As such a separate noise management plan is not required.

Additionally, the Department agrees that deletion of the condition is also supported on the basis that ongoing consultation on any noise issues related to this site, will also continue to be addressed and discussed by the CCC as detailed below.

Delete condition B2.28 Rail Noise Working Group and change to condition C3.2 Community Consultative Committee (CCC)

The Proponent proposes to delete condition B2.28 and to amend condition C3.2 adding a new subclause (e) requiring rail noise within the PBE site to be discussed by the CCC and relevant stakeholders, as an ongoing agenda item. The Proponent proposed that there is no longer a need for a separate group (i.e. the Rail Noise Working Group (RNWG)) to deal with rail noise as required by condition B2.28. The Proponent's preference was for rail noise, specifically matters relating to Port rail noise from the PBE site, to be a standing agenda item included on the CCC quarterly meeting agenda which has been occurring to date.

The EPA noted no objection to the RNWG being accommodated in the CCC. The EPA also had no objection to Condition C3.2 being amended to formerly include rail noise as an ongoing agenda item for each CCC meeting.

The Department considers the requested changes to be acceptable and recommends the deletion of condition B2.28 and a new requirement for rail noise to be addressed on the standing CCC agenda.

Delete condition B2.29 Rail Noise Assessment Botany Yard – Cooks River

The Proponent has requested that condition B2.29 is deleted, since the duplication of the rail line was not approved as part of the PBE development approval. A separate development approval will be required which is likely to be undertaken by ARTC. It is assumed that the proponent for the rail duplication project will be required to undertake a noise assessment and there would therefore be an opportunity to review the assessment at that point in time by all stakeholders. The Proponent believes it is not appropriate for the RNWG (or other groups formed under the PBE planning approval) to prepare such an assessment.

The approval of Modification 7 allowed for operational rail sidings to be constructed and operated along the inter-terminal access road corridor as an option. The approval for the proposed rail siding that would cross Sirius Road would be maintained, however only one option could be constructed. The inter-terminal access road corridor was the option chosen and constructed.

As such, the Department considers the deletion of this condition suitable since the development and noise wall are already constructed and operational. It is noted that no other rail line (such as the formerly proposed line along Sirius Road) is approved for construction on the site.

Amendment to Condition 3.1 Community Information Complaints Handling

The Proponent has requested the requirements of condition 3.1 for quarterly complaint reporting to the Department and EPA be removed. The Proponent justified this removal by stating that complaints are reported in the Annual Environmental Management Reports (AEMR) prepared by the operators and submitted to the Department annually.

Complaints are also reported to the EPA by the operator, at each CCC meeting and recorded in the minutes which are also provided to the Department. These are submitted largely for administrative purposes since most reports do not contain complaint details.

The Department considers the reporting of complaints should continue to be implemented as part of the OEMP and at CCC meetings for the benefit of stakeholders. The Department does not consider amending this condition suitable, and reports shall continue to be submitted quarterly, unless otherwise agreed by the Secretary.

Change to condition C4.2 Annual Environmental Management Report (AEMR)

The Proponent seeks to remove the reference to approval by the Director-General (now Secretary) and change it to submission to the Department. The justification put forward that removing the requirement for Secretary approval will help streamline the process, also noting that the AEMR are made publicly available and are subject to independent review by environmental auditors.

The condition has been imposed by the Department, in case there is a non-compliance for any reason. The condition remains unchanged.

However, the Department has recommended a new condition (C4.2A) that, at the Secretary's discretion, requires a noise assessment be conducted as part of the annual review, unless an ongoing environmental protection license (EPL) already imposes a similar requirement. Although an EPL does not currently apply to the Hayes Dock at this time, one previously applied in relation to an earlier use. The intention of the new condition is to provide certainty that a noise assessment will be undertaken annually for the use at this location, but maintains flexibility so that there is not a duplication of the requirement if a similar requirement is imposed in relation to any subsequent EPL. This approach to conditioning ensures that a modification is not required in relation to this approval each time an EPL is issued at this location.

Deletion of condition C4.3 Environmental Representative

The Proponent proposes to have this condition deleted. The justification provided by the Proponent for this deletion indicates that operators at PBE are subject to various regulatory and compliance pathways that ensure approval and environmental obligations are upheld which include annual environmental management reports, annual independent environmental audits, EPLs and lease requirements administered by the Proponent.

The Proponent considers these pathways demonstrate that the terminals are operating in compliance and with good environmental performance records. These responsibilities are also shared amongst staff rather than having a dedicated environmental representative.

The Department considers removing this condition given the existing regulatory functions in this consent and other licenses for the interim uses area of the site.

6. CONCLUSION

The Department has assessed the modification request in accordance with section 75W of the EP&A Act.

The Department has carefully considered the issues of storage and handling of DGs, compliance and temporary uses of the Hayes Dock Services area. The Department is satisfied that interim uses of the Hayes Dock may continue for the mooring, loading and/or unloading of non-trading infrastructure.

Minor volumes of dangerous goods may be loaded, unloaded and stored on the Hayes Dock Services area. The Department's recommendation requires existing package size reporting to be retained.

The Department concludes overall the proposed modification is acceptable subject to the amendments that have been made. The Department has recommended several condition changes to reflect the Proponent's commitments and updated requirements for dangerous goods movements on the site.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

7. RECOMMENDATION

In accordance with section 89E of the *Environmental Planning and Assessment Act 1979*, it is recommended that the Executive Director, Priority Projects Assessments, as delegate of the Minister for Planning:

- **consider** the findings and recommendations of this report;
- **approve** the Proponent's request for modification under section 75W of the EP&A Act; and
- **sign** the attached notice of modification (Attachment A).

Prepared by: Kate Graham
Planning Officer, Ports and Water Assessments

Recommended by:



23/10/17

Dominic Crinnion
Team Leader
Ports and Water Assessments

DECISION

Approved by:



24/10/17

David Gainsford
Executive Director
Priority Projects Assessments
as delegate of the Minister

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7990

APPENDIX B SUBMISSIONS

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7990

APPENDIX C RESPONSE TO SUBMISSIONS REPORT

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7990

APPENDIX D RECOMMENDED MODIFYING INSTRUMENT
