



# ***Port Botany Expansion Modification 17***

*State Significant  
Development  
Modification Assessment  
(DA-494-11-2003i MOD  
17)*

September 2019

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## Glossary

Abbreviation	Definition
Consent	Development Consent
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPL	Environment Protection Licence
Minister	Minister for Planning and Public Spaces
MOD	Modification
SSD	State Significant Development



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# 1. Introduction

This report provides an assessment of an application to modify (MOD 17) the State Significant Development Consent (SSD) for the Port Botany Expansion project (DA 494-11-2003i).

The modification application seeks consent to amend several administrative errors within the development consent. The application was lodged on 1 November 2018 by NSW Ports (the Applicant) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## 1.1 Background

The Port Botany Expansion (PBE) area comprises approximately 63 hectares (ha) of land, of which 45 ha is leased to Sydney International Container Terminal Pty Ltd (SICL). 18 ha of the site is known as 'the Knuckle' and is leased to Patrick Stevedores (Patrick). Modification 16, which was approved in October 2017, permitted the continued use of Hayes Dock for temporary uses. The Hayes Dock area is approximately 360m<sup>2</sup>. The location of the site is shown in **Figure 1** and **Figure 2**.



**Figure 1** | Site Location (Source: Google Maps, 2019)





**Figure 2** | detailed site overview (Source: Sixmaps 2019)

## 1.2 Approval History

Planning approval was obtained by Sydney Ports Corporation (Sydney Ports) from the then Minister for Planning under the former section 80 the EP&A Act, as follows:

- On 13 October 2005 for Stage 1 of the development which involved the construction and operation of a new container terminal.
- On the 22 August 2006, Stage 2 works were approved for the construction and operation of a berthing facility for up to three tugs at Hayes Dock.

Sixteen modifications have since been made to the development consent. Details are provided in **Table 1** below. All modifications were granted consent by the Department of Planning, Industry and Environment (the Department) under the Minister's delegation. Subject to changes to the EP&A Act, the project was considered a transitional Part 3A project, under Schedule 6A and modifications to the project were sought under section 75W of the EP&A Act for MODs 11 through to 16.

**Table 1** | Summary of Modifications

Mod No.	Summary of Modifications	Type	Approval Date
MOD 1	Modification to correct various minor errors and incorrect descriptions and to clarify various conditions	Part 4 96 (1A)	11 September 2007
MOD 2	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	Part 4 96 (1A)	11 September 2007
MOD 3	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	Part 4 96 (1A)	11 September 2007
MOD 4	Modification to alter the timing of various studies (conditions C2.20 and C2.25)	Part 4 96 (1A)	17 September 2007

MOD 5	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	Part 4 96 (1A)	21 September 2008
MOD 6	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)	Part 4 96 (1A)	12 December 2008
MOD 7	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.	Part 4 96 (1A)	20 March 2009
MOD 8	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain	Part 4 96 (1A)	30 May 2009
MOD 9	Modification to allow additional dredging to be undertaken at the high spot off Molineux Point outside the primary silt curtain	Part 4 96 (1A)	18 June 2009
MOD 10	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain	Part 4 96 (1A)	13 July 2009
MOD 11	Modification to alter the approved location, footprint and height of the Operation building and Maintenance building as part of Terminal 3	75W	21 November 2011
MOD 12	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	75W	6 June 2012
MOD 13	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")	75W	8 February 2013
MOD 14	Modification to allow temporary uses at the northern tip of Hayes Dock, while awaiting a development as a tug berthing facility	75W	11 June 2013
MOD 15	Modification to allow penetration of the obstacle limit surface of Sydney Airport by cranes	75W	8 July 2013
MOD 16	Modification to allow for the continued ongoing operation of interim use (and installation of temporary structures) at the northern tip of Hayes Dock, until the permanent use of the Deck for Tugs commences, as well as to continue low potential impact Port, maritime and waterway uses to operate from this area	75W	24 October 2017



## 2. Proposed Modification

The Applicant is seeking to amend a number of administrative errors within the development consent. These errors are associated with MOD 16 which required new / updated conditions, however the old superseded conditions were not deleted which has resulted in duplicate conditions within the consent. The proposed modification seeks to achieve the intent of MOD 16 by removing the duplicate conditions. Due to the nature of this modification request the Department also intends to update the consent to reflect the most up to date State agency and council titles. **Table 2** outlines the changes required to correct the consent. The Department notes that no changes to the use or operation of the site are proposed as part of this modification.

**Table 2** | Proposed amendments to the Development Consent

Proposed amendment	Summary of intent of amendment
Delete subcondition (u) from condition A1.1 and insert the following subconditions:  (u) Modification application DA-494-11-2003-I Mod 16, accompanied by assessment report titled 'Port Botany Expansion Modification Application 16 to DA-494-11-2003i Permanent Uses Hayes Dock Services Area and Administrative Changes to Some Conditions', prepared by Lendlease for NSW Ports and dated September 2016; and  (v) the conditions of this consent.	Condition A1.1 currently contains duplicate (u) subconditions, and a correction is required to ensure (u) refers to MOD 16 documents.
Delete conditions C1.2, C1.2A, C1.2B and C1.2C and insert new conditions C1.2A, C1.2B, C1.2C, C1.2D, C1.2E and C1.2F.	The existing consent includes numbering errors which require conditions to be renumbered.
Insert C3.1 into condition C1.2A to repeat complaint handling reporting to the Department.	Complaint handling for Hayes Dock is governed under two conditions, and should be governed under solely under the management plan required under condition C1.2A.
Delete conditions C2.15A and insert new conditions C2.15 and C2.15A.	Condition C1.15 was deleted and should be reinstated. There are two conditions labelled condition C2.15A, with the original C2.15A superseded and requiring deletion.
Delete conditions C2.17 and insert new condition C2.17.	There are two conditions labelled condition C2.17, with the original C2.17 superseded and requiring deletion.





## 3. Statutory Context

### 3.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minor errors under section 4.55(1) of the EP&A Act as the modification would not result in changes to the operation or use of the site.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1) of the EP&A Act rather than requiring a new development application to be lodged.

### 3.2 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 11 October 2017, the Director, Social and Infrastructure Assessments, may determine the application as:

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



## **4. Engagement**

### **4.1 Department's Engagement**

The Department made the modification application available on its website from 1 November 2018. Due to the minor administrative nature of the modification application, the Department did not formally seek submissions on the application.

Therefore, no submissions were received by the Department relating to the proposed modification.



## 5. Assessment

The Department notes that the consent currently includes a number of duplicate conditions which do not achieve the intent of MOD 16. This modification application seeks address the administrative errors that have occurred in the drafting of previous modifying instruments. Further this proposal does not intend to change the use or operation of the site.

The Department's consideration of the proposed amendments is outlined in **Table 3** below. It should be noted that these amendments were previously assessed as part of MOD 16 but errors in the instrument of modification did not give full effect to the recommended changes. This modification is intended to give effect to the assessment and recommendations of MOD 16 and make consequent changes to improve cross-referencing within the consent.

**Table 3 | Consideration of amendments**

Proposed amendment	Issue with existing consent	Department's consideration
<p>Delete subcondition (u) from condition A1.1 and insert the following subconditions:</p> <p>(u) Modification application DA-494-11-2003-I Mod 16, accompanied by assessment report titled 'Port Botany Expansion Modification Application 16 to DA-494-11-2003i Permanent Uses Hayes Dock Services Area and Administrative Changes to Some Conditions', prepared by Lendlease for NSW Ports and dated September 2016; and</p> <p>(v) the conditions of this consent.</p>	<p>Condition A1.1 currently contains duplicate (u) subconditions, and a correction is required to ensure (u) refers to MOD 16 documents.</p>	<p>The Department considers that condition A1.1 should be deleted and a new condition inserted to amend the errors and incorporate the modification application documents submitted as part of the MOD 17.</p>
<p>Delete conditions C1.2, C1.2A, C1.2B and C1.2C and insert new conditions C1.2A, C1.2B, C1.2C, C1.2D, C1.2E and C1.2F.</p>	<p>The existing consent includes numbering errors which require conditions to be renumbered.</p>	<p>The intent of MOD 16 was to delete condition C1.2 to C1.2F and replace with new conditions C1.2 to C1.2F. However, drafting of the final instrument did not delete the superseded conditions and only inserted the new C1.2 to C1.2F conditions resulting in a duplication of conditions.</p> <p>To address the drafting errors, the Department recommends to delete the duplicate conditions and insert correctly numbered new conditions per the intent of MOD 16.</p>
<p>Insert C3.1 into condition C1.2A to repeat complaint handling reporting to the Department.</p>	<p>Complaint handling for Hayes Dock is governed under two conditions, and should be governed under solely under the management plan required under condition C1.2A.</p>	<p>Condition C1.2A identifies certain conditions which are not required to be complied with for activities associated with Hayes Dock Services Area. As the Hayes Dock Services Area has its own condition requiring complaint handling (i.e C1.2E) it is considered appropriate to exclude the requirement for complaints handling under condition C3.1.</p> <p>It is recommended that condition C1.2A now includes a reference to C3.1 to the avoid repetition of complaint handling.</p>
<p>Delete conditions C2.15A and insert new conditions C2.15 and C2.15A.</p>	<p>Condition C2.15 was deleted and should be reinstated. There are two conditions labelled condition C2.15A,</p>	<p>Condition C2.15 was deleted by mistake. The Department supports reinstating this</p>

	with the original C2.15A superseded and requiring deletion.	condition as it relates to the discharge limits and compliance with the EPL requirements.  The Department supports removing both conditions C2.15A and inserting correct condition C2.15A as intended by MOD 16.
Delete conditions C2.17 and insert new condition C2.17.	There are two conditions labelled condition C2.17, with the original C2.17 superseded and requiring deletion.	The intent of MOD 16 was to delete and inset a new condition C2.17. However, the modifying instrument did not delete the old condition and therefore there are duplicate conditions.  The proposed amendments is supported as it will remove the duplicate conditions and will insert the correct condition C2.17 as intended by Mod 16.
	The list of abbreviations currently contains duplicate and out of date conditions.	Changes to the list of abbreviations are required to correct references to current government agency titles, delete duplicate conditions and include acronyms used throughout the consent.
	Condition 3.1 contains formatting and typographical errors.	This amendment is required to correct minor formatting and typographical errors only.
The Department has considered a series of consequent changes required to give effect to the MOD 16 determination.	Condition C4.3 requires that an Environmental Representative be employed for the duration of operations, which is considered to be no longer necessary given the existing regulatory functions in the consent and other licenses including the independent operational licensing, auditing and reporting requirements The consent currently includes references to "the Proponent" and "the Applicant" in reference to the entity responsible for operating under the consent.	It is considered that condition C4.3 can be deleted.  It is considered that adopting Applicant across the consent would not alter the intent of the conditions and consistency across the consent.

Based on its assessment, the Department is satisfied that the changes:

- are largely administrative in nature involving corrections to typographical errors and duplicate condition.
- are minor and will not change the nature of the approved project or the Applicant's environmental obligations under the approved conditions of consent.
- would not result in any additional environmental impacts.

The corrections would not permit the Proponent to undertake any additional works than those approved in previous modifications. Therefore, the proposed changes do not raise additional matters for consideration under section 4.15(1) of the EP&A Act.



## 6. *Evaluation*

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is minor in nature and is required to correct minor errors within the existing consent. The Department considers that the proposed changes are appropriate as:

- the proposed changes are administrative in nature.
- the condition changes are consistent with the intent of the Department's assessment of MOD 16 which, owing to errors in the MOD 16 instrument of modification, was not correctly implemented under that approval.
- the changes would not result in any additional environmental impacts that require consideration under Section 4.15(1) of the EP&A Act.





## 7. Recommendation

It is recommended that the Director – Social and Other Infrastructure Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application DA 494-11-2003i MOD17 falls within the scope of section 4.55(1) of the EP&A Act
- **forms the opinion** under section 7.17(c) of the *Biodiversity Conservation Act 2016* that a biodiversity development assessment report is not required to be submitted with the application as the modification will not increase the impact on biodiversity values on the site
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modify** the consent DA-494-11-2003i
- **signs** the attached approval of the modification (Attachment C).

Recommended by:

**Lauren Rose**

Planning Officer

Transport Assessments

Recommended by:

**Dominic Crinnion**

Team Leader

Water and Intermodal Assessments



## 8. Determination

The recommendation is: **Adopted by:**

19/9/2019

**Karen Harragon**

Director

Social and Infrastructure Assessments



# Appendices

## Appendix A – List of Documents

The Department has considered the:

- Modification Application
- existing conditions of consent;
- relevant environmental planning instruments, policies and guidelines; and
- relevant requirements of the EP&A Act.

## Appendix B – Consolidated Consent

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=513](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=513)

## Appendix C – Notice of Modification

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=513](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=513)