



**Planning &
Infrastructure**

MODIFICATION REQUEST:

***Headland Park and Northern Cove – Main
Works (MP 10_0048 MOD 2)***



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

April 2012

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EXECUTIVE SUMMARY

This report is an assessment of a modification application (MP10_0048 MOD 2) lodged under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act), by the Barangaroo Delivery Authority (the proponent) seeking approval to delete and re-word conditions that were imposed in the Instrument of Approval for the Barangaroo Headland Park and Northern Cove Main Works project application. The then Minister for Planning approved the project on 3 March 2011.

The approval permits the redevelopment of the northern part of the Barangaroo site for a new public park in the form of a naturalistic headland, with a future cultural space and car parking within the headland, and the creation of a new water intervention - the Northern Cove.

Given the minor nature of the modification request, the application was not publicly exhibited, but was made publicly available on the department's website. The department received submissions from City of Sydney Council (council) and the Environment Protection Authority (EPA), who did not object to the application. No public submissions were received.

The department has assessed the merits of the application and considers that the changes are mostly administrative in nature and do not permit any construction works over and above those already approved. The amendments clarify what has been approved, who is the relevant road authority, and remove unnecessary requirements.

The department is satisfied that the proposed changes to do not give rise to additional environmental issues or impacts, and works associated with the development can still be adequately managed by existing conditions and the proponent's statement of commitments.

The department considers the modification request to be in the public interest, and it is recommended that the application be approved, subject to the conditions outlined in the Instrument of Modification

1. BACKGROUND

1.1 The Site

Barangaroo is located on the north-western edge of the Sydney CBD. The site is bounded by the Sydney Harbour foreshore to the west and north, Hickson Road and Millers Point to the east and Kings Street Wharf / Cockle Bay / Darling Harbour to the south. Barangaroo has a site area of 22 hectares and a 1.4 kilometre harbour foreshore frontage. It is a flat and long site, being a reclaimed concrete slab, and is largely devoid of buildings.

The project area adjoins the curtilage of the relocated Moores Wharf to the north-east and the sandstone cliff of Millers Point to the east, which rises approximately 18m above the site. Sydney Harbour is located immediately north and west of the site and Hickson Road runs along the eastern edge of the site. Further to the east above Hickson Road is the historic Millers Point precinct, which is predominantly a residential area characterised by small terraces.

Further to the east are a range of commercial and tourism uses, including Observatory Hill and the Bond Building. To the south, the site is adjoined by Darling Harbour Wharf 5 which is currently being used as an interim Cruise Passenger Terminal.

The Barangaroo Foreshore Walk, which was opened in late 2009, traverses the site adjacent to the harbour's edge. The walkway is an interim structure to allow public access to Barangaroo as the site develops and evolves. The walkway connects King Street Wharf to the south with Towns Place to the north and provides a series of east-west connections. The Walk is delineated by temporary fencing, which runs the length of the site and which can be moved as required (including when passenger cruise ships are in berth). **Figure 1** below shows the location of the Headland Park in the context of the entire Barangaroo site.



Figure 1: Headland Park, Northern Cove, Barangaroo Central and South

1.2 Approval History

Approved Concept Plan

The then Minister for Planning approved the Barangaroo Concept Plan (MP 06_0162) on 9 February 2007. The Concept Plan approved a set of built form principles to guide development within the mixed use zone.

The Concept Plan has been modified four times since approval. The most current version of the Concept Plan (MOD 4) was approved by the then Minister for Planning on 16 December 2010. In this regard, MOD 4 permits:

- a mixed use development involving a maximum of 563,965m² gross floor area (GFA) comprised of:
 - (a) a maximum of 128,763m² and a minimum of 84,595m² residential GFA;
 - (b) a maximum of 50,000m² GFA for tourist uses;

- (c) a maximum of 39,000m² GFA for active uses in the Public Recreation zone (3,000m² of which will be in Barangaroo South); and
- (d) a minimum of 12,000m² GFA for community uses (10,000m² of which will be in Barangaroo South)
- approximately 11 hectares of new public open space/public domain, with a range of formal and informal open spaces serving separate recreational functions, and including a 2.2km public foreshore promenade
- built form design principles, maximum building heights and GFA for each development block within the mixed use zone
- public domain landscape concept, including parks, streets and pedestrian connections
- works to the existing seawalls and creation of a partial new shoreline to the harbour

Headland Park Early Works

The project application (MP10_0047) for the Headland Park Early Works was approved by the then Minister for Planning on the 8 November 2010.

The project application comprised the following early works for the creation of the Barangaroo Headland Park:

- Demolition of above ground structures and establishment of a construction compound including sheds and site hoardings
- Bulk earthworks, including placement of fill as part of the formation of the final landform
- Extraction of approximately 60,000m³ of sandstone from beneath the existing concrete apron for reuse within the Barangaroo site
- Heritage protection, including relocation of the existing Sewage Pumping Station.

Headland Park and Northern Cove Main Works

The project application (MP10_0048) for the Headland Park and Northern Cove Main Works was approved by the then Minister for Planning on the 3 March 2011.

The project application comprised the following main works for the creation of the Barangaroo Headland Park:

- Land formation utilising fill from Stage 1, ranging from the 150,000m³ identified in the Early Works application to approximately 230,000m³
- Construction of structural earth retaining walls utilising sandstone based materials
- Creation of a naturalistic shoreline and northern cove through excavation and formation of retaining walls using boulders
- General landscaping and planting
- Construction of a network of pedestrian pathways connecting the foreshore
- Construction of a shoreline promenade
- Jetty / viewing platform and public wharf extending into the Northern Cove
- Construction of a car park totaling up to 300 spaces within the headland
- Construction of a space for a future use (cultural facility)
- Site remediation.

2. PROPOSED MODIFICATION

Modification Description

The Headland Park and Northern Cove Main Works modification (MP10_0048 MOD 2) proposes the following amendments to the project approval:

- the deletion of Condition A3(b) to permit the use of the contours proposed in the Headland Park and Northern Cove Main Works Environmental Assessment (EA)
- the re-wording of Condition A5 to reflect the recent approval of the Remedial Action Plan (RAP) and Human Health Ecological Risk Assessment (HHERA) for the Barangaroo Headland Park
- the re-wording of Condition A8 to clarify that separate approval is required for the use of the floor area associated with the cultural facility but not for the use of the 300 space car park

- modifications to Conditions B8, B17, B19, B31, B37(1) to reference the relevant roads approval authority (now Barangaroo Delivery Authority and not council)
- the deletion of Condition 37(3)(b) to remove the reference to roads located outside the project area
- the re-wording of Condition B20 to clarify the role of the Office of Environment and Heritage (OEH) (formerly Department of Climate Change and Water) in assessing the Construction Framework and Environmental Management Plan (CFEMP)
- the re-wording of Conditions B21, B22 and B23 to clarify that minor works such as the erection of hoardings, signage, site offices, CCTV cameras and the like can be undertaken prior to the finalisation of the waste, noise and vibration and water management plans
- the deletion of paragraph two of Condition B22(4) to remove an unnecessary drafting note
- the re-wording of Condition B24(6) to insert the correct cross reference to the air management condition contained in Part B of Schedule 2.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The proposal is a modification request under section 75W of the EP&A Act, to modify the project approval for the Headland Park and Northern Cove Main Works Project (MP10_0048). In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

The department is of the view that the application to modify the project application approval may be considered and approved as an application to modify under section 75W of the EP&A Act having regard to the following matters:

1. the development will still be for the main works associated with the creation of the Headland Park and Northern Cove
2. the modification provides greater clarity in relation to compliance with the approved Remedial Action Plan and Human Health Ecological Risk Assessment
3. the modification would permit the Barangaroo Delivery Authority to approve road works where it is the relevant roads authority
4. the issues that arise from consideration of the modification request are generally consistent with the issues considered during the assessment of the original project application.

Given all the above, the department considers the Minister could reasonably form the view that the modification request is within the scope of section 75W of the EP&A Act and is capable of being approved as a modification under section 75W of the EP&A Act.

3.2 Environmental Assessment Requirements

In accordance with section 75W(3) of the EP&A Act, the Director-General did not consider that environmental assessment requirements with respect to the proposed modification were required.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The department placed the modification on its website on 28 February 2012. This satisfies the requirements of section 75X(2)(f) of the EP&A Act.

The department also forwarded a copy of the proponent's modification request to the Environment Protection Authority (EPA) and notified City of Sydney Council (council).

4.2 Submissions

Neither the council nor the EPA have raised objection to the proposed modifications.

5. ASSESSMENT

The department considers the key issues for the proposed modification are those outlined below.

5.1 Modifications to Condition A3(b)

The proponent seeks approval to delete (b) of Condition A3 on the basis that the contours depicted in the plans and documentation approved under Condition A2 are critical to the implementation of the project. Condition A3(b) currently reads as follows:

- "b) *No approval is expressed or implied to the contours of the Headland Park and Northern Cove as depicted on the submitted plans detailed above in Condition A2 - Development in accordance with plans and documentation.*"

The department has reviewed the wording of Condition A3(b) and concurs that the implementation of the contours identified in the approved plans and documentation are critical to the construction of the main works approved under MP 10_0048. The condition was originally imposed because there were uncertainties whether a naturalistic landform could be constructed. While there were concerns originally about a naturalistic shape, a review of the plans reveals that they do represent a naturalistic landform. On this basis, the department recommends the deletion of Condition A3(b).

5.2 Modifications to Condition A5

The application seeks approval to re-word Condition A5 in order to reflect the approved RAP and HHERA for the Headland Park. The current wording of Condition A5 reads as follows:

"A5 REMEDIATION ACTION PLAN (RAP) AND HUMAN HEALTH ECOLOGICAL RISK ASSESSMENT (HHERA)

Prior to the commencement of any works under the RAP identified in the Preferred Project Report- Barangaroo Headland Park Main Works:

- a) *the HHERA and RAP must be prepared in accordance with guidelines produced or approved under s105 of the Contaminated Land Management Act, 1997.*
- b) *the HHERA must be approved by DECCW, in accordance with guidelines produced or approved under s105 of the Contaminated Land Management Act, 1997.*
- c) *the RAP must be approved jointly by DECCW and a NSW EPA accredited Site Auditor, in accordance with guidelines produced or approved under s105 of the Contaminated Land Management Act, 1997.*
- d) *The RAP must be approved by the Minister for Planning as the approval authority."*

The proponent's suggested wording is as follows:

"A5 REMEDIATION ACTION PLAN (RAP) AND HUMAN HEALTH ECOLOGICAL RISK ASSESSMENT (HHERA)

All works within the site are to be undertaken in accordance with the approved RAP (Remedial Action Plan, Barangaroo Delivery Authority, Barangaroo Headland Park, Hickson Road, Sydney, NSW, JBS Environmental Pty Ltd, 8 November 2011, known as 'JBS41181-16382 Rev 3) and HHERA (Human Health Ecological Risk Assessment, Barangaroo Delivery Authority, Barangaroo Headland Park, Hickson Road, Sydney NSW, JBS Environmental Pty Ltd, 19 August 2011 known as 'JBS41181-16411 Rev 1)."

The RAP for the Headland Park was approved by the Minister for Planning and Infrastructure on 19 January 2012 (with the RAP and HHERA approved by OEH on 21 November 2011). While BDA has requested the condition be re-worded, the department considers that Condition A5 should remain in a similar form as it is still a relevant requirement of the original approval, and should any design assumptions change throughout the course of the project, the proponent may need to re-visit and resubmit the HHERA and potentially the RAP. This is an issue that is also shared by the EPA. Under the circumstances, it is not considered appropriate to delete and replace Condition A5 as suggested.

This notwithstanding, the department is of the opinion that the original wording of Condition A5 should be altered slightly to include a reference to the relevant remediation and human health guidelines. Thus, the department's preferred wording for a revised Condition A5 reads as follows:

"A5 REMEDIAL ACTION PLAN AND HUMAN HEALTH ECOLOGICAL RISK ASSESSMENT"

Prior to the commencement of any remediation works:

- a) A Remedial Action Plan (Amended RAP) must be prepared in accordance with the contaminated land planning guidelines under section 145C of the EP&A Act and relevant guidelines produced or approved under section 105 of the Contaminated Land Management Act 1997.
- b) The Human Health Ecological Risk Assessment must be approved by DECCW in accordance with the relevant guidelines produced or approved under section 105 of the Contaminated Land Management Act 1997.
- c) The RAP must be approved by DECCW and approved through the issue of a Section B Site Audit Statement by a NSW EPA accredited Site Auditor.
- d) After the RAP is approved by DECCW and the Site Auditor it must be submitted to the Minister for Planning for approval.

Note: The current guidelines under section 145C of the EP&A Act are the guidelines "Managing Land Contamination, Planning Guidelines, SEPP 55 – Remediation of Land" 1998."

5.3 Operation and Use of the Car Park (Condition A8)

The application seeks approval to re-word Condition A8 to remove the requirement for the proponent to obtain a separate project approval for the use of the car park.

The wording of Condition A8 is as follows:

"A8 SEPARATE PROJECT APPLICATIONS"

Separate project applications are required for the use of the proposed 300 space car park and floor area associated with the Cultural Facility".

The proponent's preferred wording is as follows:

"A8 SEPARATE PROJECT APPLICATIONS"

A separate project application is required for the use of the proposed 300 space car park and floor area associated with the Cultural Facility".

Further, in order to address arrangement for the ongoing operation and management of the proposed car park, the proponent is proposing to amend Commitment 30 of their approved Statement of Commitments which relates to the preparation of a plan of management for the Headland Park. Commitment 30 is proposed to be amended to read (the modifications are depicted in bold italics):

*30. A plan of management will be prepared to guide the ongoing operations and management of the Headland Park. **This plan is to include arrangements for the ongoing operation and management of the car park within the Headland.** The plan of management will be prepared in consultation with the City of Sydney.*

The department has reviewed the proposed application changes to Condition A8 and Commitment 30, and considers that the letter provided by MG Planning, dated 24 February 2012, does not adequately address management issues associated with the operation of the car park facility, particularly in relation to:

- the standard hours of operation for the car park and operational provisions for special events
- whether the car park will be free of cost or paid parking during standard operating hours and special events.

Notwithstanding, the department considers that a separate project application for the use of the car park is not necessary as it has already been approved, but its specific operations would be subject to its operation being managed via the implementation of a plan of management.

In order to ensure an appropriate plan of management is in place prior to the operation of the car park, the department recommends the following modifications to Condition A8 and imposition of a new Condition A8(2) as follows:

"A8 SEPARATE APPROVALS

A separate development approval is required for the use of the proposed floor area associated with the Cultural Facility.

A8(2) PLAN OF MANAGEMENT

A plan of management is to be prepared to guide the ongoing operations and management of the Headland Park. This plan is to include arrangements for the operation of the car park within the Headland and must:

- a. provide details on the hours of operation of the car park on weekdays, weekends and during special events;*
- b. detail any proposed fee structures in the event that a car parking fee is levied; and*
- c. provide details on the ongoing use and management of the car park.*

The plan of management is to be prepared in consultation with the City of Sydney and be submitted to the Director-General for approval prior to the opening of the Headland Park to the public (including the car park)."

5.4 Modifications to Conditions B8, B17, B19, B31 and B37

The application seeks approval to delete the reference to council in Condition B8(a) Stormwater and drainage – Major development. The reason outlined for this change is that the BDA state that council is not the approval authority for the works. The department acknowledges that while council is not required to approve the stormwater details, they still bear responsibility for stormwater management in their local government area. As such, the condition will be reworded so that BDA will be required to prepare their stormwater plans in consultation with council and in accordance with council's requirements, and submitted to the Certifying Authority for approval.

The application also seeks approval to re-word Conditions B17 Vehicle footway crossing, B19 Alignment levels, B31 Barricade levels and 37(1) Paving materials to require the approval of the applicable 'road approval authority' for all approved road works, and not the council, as the council is not the applicable road authority for all roads located within the project area. In addition, the application seeks approval to delete Condition B37(3)(b) as it refers to roads that are not located within the project area.

The department has reviewed the proposed changes to the abovementioned conditions and considers them appropriate given that they correct administrative errors.

5.5 Modifications to Condition B20

The re-wording of Condition B20 is sought to clarify the role of the Office of Environment and Heritage (OEH) (formerly Department of Climate Change and Water) in assessing the Construction Framework and Environmental Management Plan (CFEMP).

Condition B20 currently provides that:

"Prior to commencement of the works, the Proponent shall prepare a Construction Framework Environmental Management Plan (CFEMP) to be submitted to DECCW for review and endorsement and to the Director General for approval..."

It is proposed that B20 be amended to read (the modifications are depicted in bold italics):

*"Prior to commencement of the works, the Proponent shall prepare a Construction Framework Environmental Management Plan (CFEMP) to be submitted to DECCW for review and **comment endorsement** and to the Director General for approval..."*

The OEH has previously indicated that it did not consider it appropriate that they endorse the CFEMP, preferring to have a consultative role in order to assist the Director-General of DoPI, where final approval rests. The department is therefore supportive of this proposed amendment to Condition B20.

5.6 Modifications to Conditions B21, B22 and B23

The application seeks approval to re-word Conditions B21, B22 and B23 to insert words that would permit the erection of site perimeter hoardings and signage, site facilities such as offices, ablutions, first aid, storage and the installation of CCTV cameras, prior to the waste, noise and vibration and water management plans being finalised. The current and preferred wording of Conditions B21, B22 and B23 is as follows:

Current wording of Condition B21:

"B21 WASTE MANAGEMENT"

Prior to the commencement of each stage of the works, the Proponent must develop and submit to DECCW for review and comment a revised Waste Management Plan. The Plan must include (but not be limited to..."

The proponent's preferred wording of Condition B21 is (the modifications are depicted in bold italics):

"B21 WASTE MANAGEMENT"

Prior to the commencement of each stage of the works (with the exception of site establishment works such as erection of site perimeter hoardings and signage, erection of site facilities including offices, ablutions, first aid, storage, installation of CCTV cameras and the like), the Proponent must develop and submit to DECCW for review and comment a revised Waste Management Plan. The Plan must include (but not be limited to:..."

Current wording of Condition B22:

"B22 NOISE AND VIBRATION"

The proponent must prepare and implement a detailed Construction Noise and Vibration Management Plan (CNVMP), to be approved by the Director General of the Department of Planning before the commencement of works, that includes but is not necessarily limited to:..."

The proponent's preferred wording of Condition B22 is (the modifications are depicted in bold italics):

"B22 NOISE AND VIBRATION"

The proponent must prepare and implement a detailed Construction Noise and Vibration Management Plan (CNVMP), to be approved by the Director General of the Department of Planning before the commencement of works (with the exception of site establishment works such as erection of site perimeter hoardings and signage, erection of site facilities including offices, ablutions, first aid, storage, installation of CCTV cameras and the like), that includes but is not necessarily limited to:..."

Current wording of Condition B23:

"B23 WATER"

1. *Prior to the commencement of works, the proponent must develop and provide to the DECCW for comment, a comprehensive Stormwater and Management Plan...."*

The proponent's preferred wording of Condition B23 is (the modifications are depicted in bold italics):

"B23 WATER"

1. *Prior to the commencement of works (with the exception of site establishment works such as erection of site perimeter hoardings and signage, erection of site facilities including offices, ablutions, first aid, storage, installation of CCTV cameras and the like), the proponent must develop and provide to the DECCW for comment, a comprehensive Stormwater and Management Plan...."*

The department has reviewed the proposed changes to Conditions B21, B22, B23 and considers that it would be appropriate to permit the BDA to undertake preliminary site establishment works prior to the finalisation of the waste, noise and vibration and water management plans as the works are not dependent on the submission of the detailed plans. In this regard, the management plans relate to Headland Park construction works rather than the initial site preparation works. The department also notes that noise, waste and water matters are also already regulated by Environment Protection

Licence 13336, and therefore any potential impacts associated with the pre works can be appropriately controlled and regulated. The department therefore raises no objection to the proposed modification of Conditions B21, B22 and B23.

5.7 Modifications to Condition B22(4)

The application also seeks to delete the second paragraph of Condition B22(4) as the paragraph appears to be a drafting note rather than a condition requirement. The modified condition is outlined below:

"...4. Vibration caused by Construction and received at any sensitive receiver outside the project must be assessed against the guidelines contained in the DECCW publication "Environmental Noise Management – Assessing Vibration: a technical guideline" and in accordance with the CNVMP.

~~In addition to the conditions above, it is normal practice for DoP to impose "Construction Noise Management" conditions for example conditions 31-34 in the project approval for the City West Cable Tunnel (http://www.planning.nsw.gov.au/asp/pdf/05_0178_dgreport.pdf). These conditions are also recommended for imposition in any project approval for the Barangaroo site.~~

When drafting the original instrument of approval, paragraph two was inadvertently imposed due to a minor error. The department agrees that this reference is a drafting note and this section of the condition should be deleted.

5.8 Modifications to Condition B24(6)

The application seeks approval to re-word Condition B24(6) to correctly cross reference the requirement to prepare a revised air quality impact assessment as outlined in B24(5). The current and preferred wording of Condition B(24)(6) is outlined below:

"...6. The Air Quality Management Plan must not be approved until after the revised air quality impact assessment required in Condition 1.5 (above) has been completed to the satisfaction of the Director General, in consultation with the Department of Environment, Climate Change and Water."

The proponent's preferred wording is:

*"...6. The Air Quality Management Plan must not be approved until after the revised air quality impact assessment required in Condition 4.5 **B24(5)** (above) has been completed to the satisfaction of the Director General, in consultation with the Department of Environment, Climate Change and Water."*

The department has reviewed the proposed change to Condition B24(6) and agrees that proposed change will ensure that the correct requirement is cross referenced.

References to DECCW do not need to be amended to its current name of Office of Environment and Heritage or the Environment Protection Authority as the Instrument of Approval contains a notation referencing DECCW..." or its successors".

6. DELEGATION

On 23 February 2012 the Minister delegated his functions to determine requests under section 75W to the Deputy Director-General, Development Assessment and Systems Performance where:

- (a) a political disclosure statement has not been made in relation to the application, and
- (b) there are less than 25 public submissions in the nature of objections, and
- (c) the approval as modified would be generally consistent with the approved Barangaroo Concept Plan (MP 06_0162) current at the time of determination.

There have been no submissions received from the public and there has been no political disclosure statement made for this application. The proposed modifications are considered administrative in nature and therefore the proposal generally is consistent with the approved Barangaroo Concept Plan (as amended).

It is noted that council has not objected to the modification request.

Accordingly the application is able to be determined by the Deputy Director-General, Development Assessment and Systems Performance under delegation.

7. CONCLUSION

The department has assessed the merits of the modification and is generally satisfied that the suggested modifications (as amended) do not permit any works over and above those already approved, and impacts of the works are adequately covered via existing conditions of approval as well as the modified conditions, where required. Furthermore, the department is satisfied that modifying the remaining conditions will provide improved clarity on the relevant road authority.

All statutory requirements relating to the proposed modification have been met, and the department considers the modification application warrants support and should be approved.

8. RECOMMENDATION

It is recommended that the Deputy Director-General Development Assessment and Systems Performance:

- a) **consider** the findings and recommendations of this report
- b) **determine** that the proposed modification falls within the scope of section 75W of the EP&A Act
- c) **approve** the modification under section 75W of the EP&A Act
- d) **sign** the attached Instrument of Modification.



17/4/12

**Acting Director
Metropolitan and Regional Projects North**



**Acting Executive Director
Major Projects Assessment**

17/4/12

APPENDIX A APPLICATION FOR MODIFICATION FROM MG PLANNING

APPENDIX B MODIFICATION OF MINISTER'S APPROVAL
