

## ASSESSMENT REPORT

### Maritime Facility, Pyrmont MP 11\_0001 MOD 2

#### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval for a new maritime facility at Bank Street, Pyrmont. The request has been lodged by UrbanGrowth NSW (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend the conditions of approval to allow the construction of the water based components of the project to proceed independently of the land based works.

#### 2. SUBJECT SITE

The subject site is located below the deck of the ANZAC Bridge. It has land and water based components and is located in the City of Sydney Local Government Area (refer to **Figure 1** and **2**).

The land component is legally described as Part Lots 19, 20 21 and 22, DP 803159. It is irregular in shape with a 43.6 metre frontage to Bank Street and a 102.4 metre frontage to Blackwattle Bay. The site has an area of 4,642 m<sup>2</sup>.

The water component extends westward from the land component into Blackwattle Bay and is legally described as Part Lot 1 DP 1049334 and Part Lot 107 DP 1076596. It has an area of 11,210 m<sup>2</sup>.

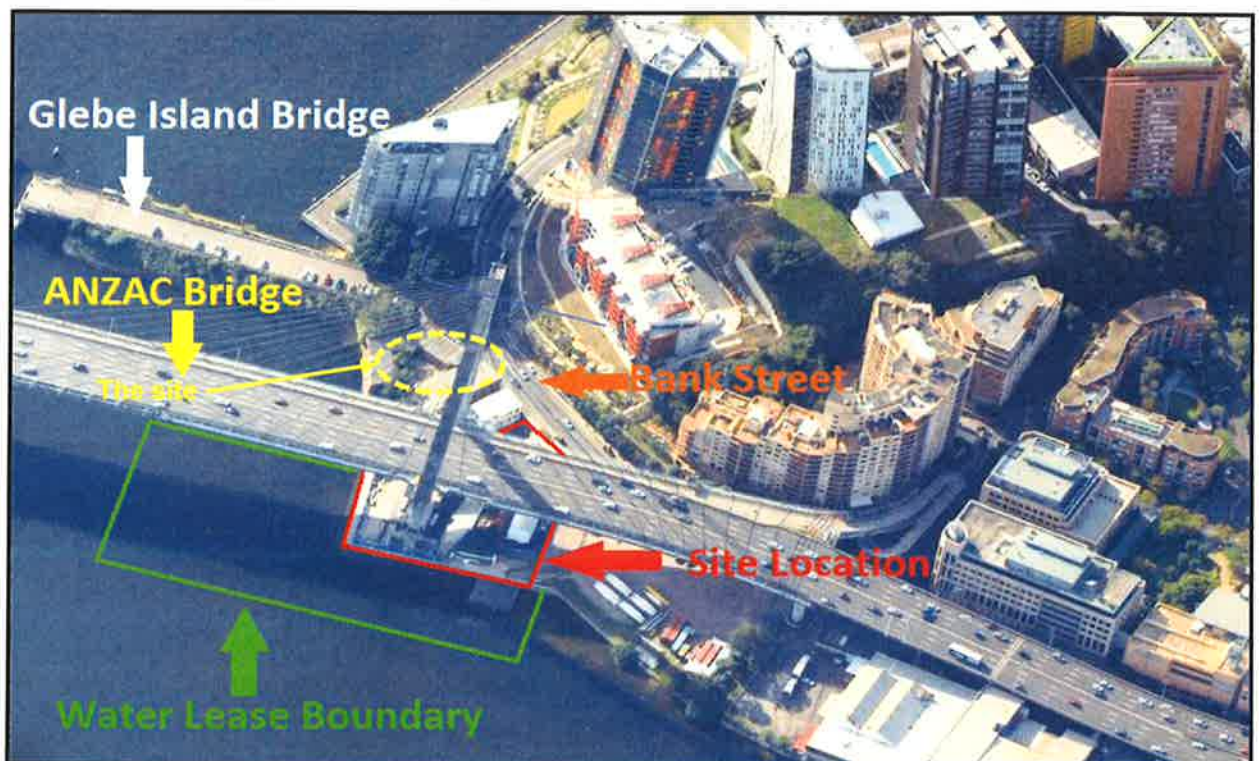
#### 3. APPROVAL HISTORY

On 26 March 2014, the Planning Assessment Commission (the Commission) granted Project Approval for:

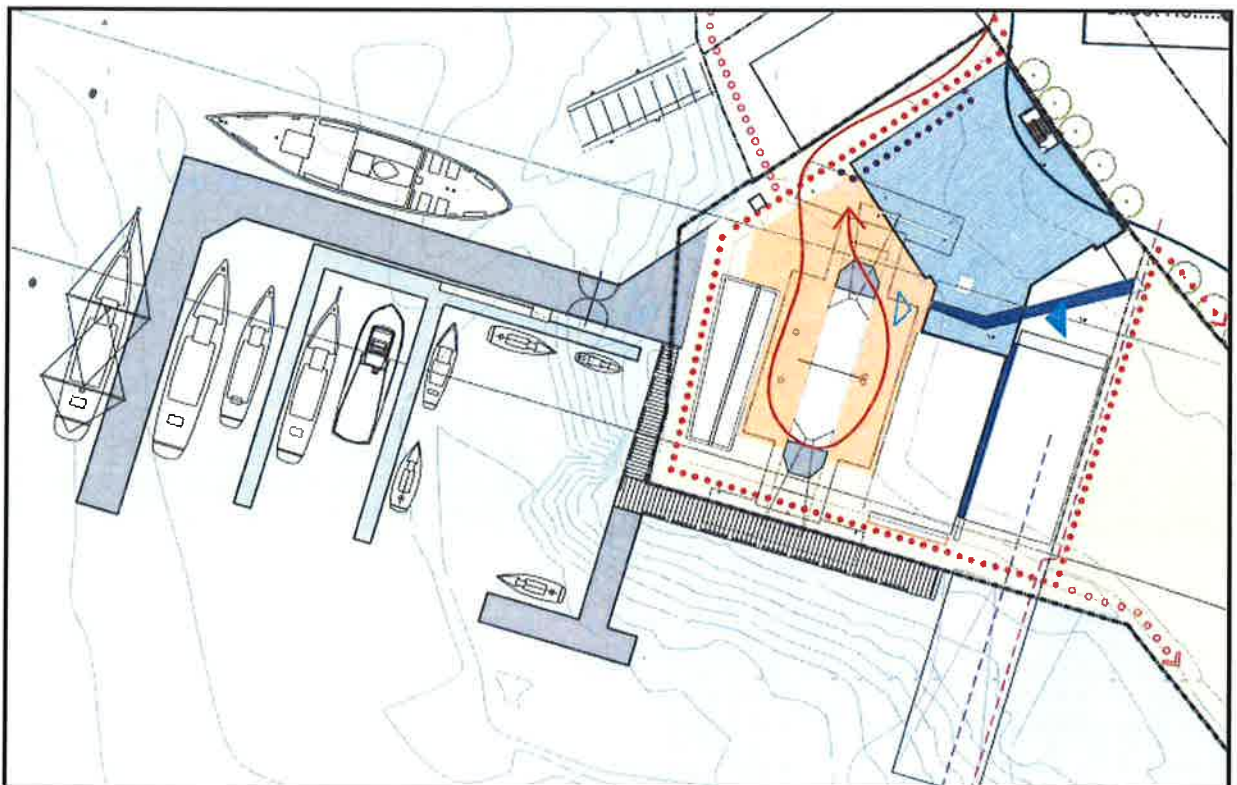
- a new maritime facility, with a land-based and a water-based component, to be used as the operational base for the Fleet's collection of historic vessels, a museum and exhibition space;
- the land-based component comprised a part two / three-storey building and a separate detached exhibition pavilion, incorporating an ancillary kiosk;
- the water-based component comprises an 85 metre long fixed wharf with attached floating pontoons to accommodate 11 vessels ranging in size from 15.2 metres to 51 metres; and
- public access to the foreshore of the site.

The approved site layout is shown in **Figure 2**.

The proposal has been modified on one occasion to amend the timing of a condition relating to the remediation of land.



**Figure 1:** Site location (Source: DPE assessment report 2014)



**Figure 2:** Approved Site Layout (subject to some future modifications required by condition).

#### **4. PROPOSED MODIFICATION**

On 23 November 2016, the Proponent lodged a section 75W modification application (MP 11\_0001 MOD 2) seeking approval to amend certain conditions and Statement of Commitments (SoCs) to allow the construction of the water based components of the project to proceed independently of the land based works.

Currently, there are a number of conditions which are required to be satisfied prior to the issue of any Construction Certificate (CC). These include:

- C6 Modified plans to be Approved by the Director-General
- D1 Access from Bank Street;
- D2 Landscaping of the Site;
- D5 Flooding impacts;
- D6 Stormwater and drainage;
- D8 Water conservation and re-use measures;
- D9 Alignment levels;
- D10 Public Domain Plan;
- D14 Reflectivity; and
- D17 Service vehicles.

The Proponent seeks to amend the timing of the above conditions to specify that they must be satisfied prior to the issue of a CC relating to the land based components of the project. This would allow the water based component of the project to be constructed first. The Proponent has advised that it intends to lodge a further modification application to change the design of the approved land based works. This modification would enable the water based works to commence while the final design for the land based works is resolved.

The Proponent is also seeking approval for minor administrative changes to other conditions and the SoCs to reflect the current ownership/responsibility over the site, correct typographical errors and to change the timing for the provision of an environmental protection licence.

The Proponent has also confirmed that, if approved, the water-based works will be constructed but will not be operational until details of the land based component are resolved. The only land-based works required at this stage will be temporary works relating to the construction of the water-based works.

#### **5. STATUTORY CONSIDERATION**

##### **5.1 Section 75W**

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

##### **5.2 Approval Authority**

The Minister for Planning is the approval authority for the application. However, the Director, Modification Assessments, may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and

- there are no public submissions in the nature of objections.

## 6. CONSULTATION

The Department made the modification application publicly available on its website, and consulted with City of Sydney Council, Roads and Maritime Service (RMS) and the Environment Protection Authority (EPA) about the proposed modification.

**Council** did not object to the proposal but raised concern regarding the proposed timing of Condition D9 (Alignment levels) and D10 (Public Domain Plan). Council recommended these conditions be complied with prior to the commencement of any works to ensure the correct alignment levels are achieved between the land and water based components of the project and to ensure the design of the spaces work together to provide a cohesive public domain and publicly accessible area.

The **EPA** suggested that the recommendations of a Site Audit Statement submitted as part of MOD 1 should be included as conditions of the development consent. The EPA raised made no comments about the proposed change to the timing of the Environmental Protection License (EPL).

The **RMS** advised of some minor administrative matters relating to owners consent and minor suggested changes to some conditions and commitments.

The Proponent submitted a Response to Submissions (RtS) on 22 December 2016 to address the matters raised in submissions. The RtS also provided clarification, in relation to the EPA submission, that the recommendations of the Site Audit Statement are already incorporated into the conditions of approval.

There were no **public** submissions received on the proposal.

## 7. ASSESSMENT

The Department considers the key issue associated with the proposal is the timing of Conditions D9 (Alignment levels) and D10 (Public Domain Plan). Other issues associated with the proposal have been considered in **Table 1**.

### 7.1 Timing of Conditions D9 (Alignment levels) and D10 (Public Domain Plan)

The proposal seeks approval to modify certain conditions of approval to allow the construction of the water based components of the project to proceed independently of the land based works. Under the current approval, the Proponent cannot commence works on the water based components of the project until certain conditions are satisfied, which relate to the land based components of the project.

The Proponent seeks to resolve this by amending the timing of certain conditions to specify that they must be satisfied prior to the issue of a CC relating to the land based components of the project. This would allow the water based component of the project to be constructed first, with the details of the land based component to be resolved later.

Council did not object to the proposal but recommended the requirements of Conditions D9 (Alignment Levels) and D10 (Public Domain Plan) be satisfied prior to the issue of a CC for both land based works and water based works related to the 'fixed wharf' and 'publicly accessible timber boardwalk'. The Council advises these details are required to ensure the works would be constructed to correct levels to marry into the adjoining publicly accessible areas, and the design of the spaces work together to provide a cohesive public domain and publicly accessible area.

The Proponent advised it is committed to achieving correct and aligned levels between the land and water based elements, however, a requirement to prepare a whole site Public Domain Plan prior to the issue of a Construction Certificate for the water based works would add significantly to the timeframe required to commence water-based works.

The Department notes the environmental assessment for the original proposal clearly outlined that construction of the project was anticipated to occur in two key stages, with the water component being constructed first and the land component second. Further, staging was not raised as an issue in submissions or the Department's assessment. The Department is therefore satisfied the proposal was intended to be constructed in two stages and the conditions which have been drafted in such a way as to restrict this staging, was done so unintentionally.

In response to Council concerns, the Department considers that it is important for the Proponent to provide certainty that the publically accessible areas of the water based works are designed to appropriately interface with the levels of the land based public domain works, in particular, the walkway required to be provided along the length of the foreshore. The Department notes that further details of the foreshore walkway are required to be submitted in accordance with Condition C4.

The Department therefore recommends Condition D9 (Alignment Levels) be modified, as follows:

#### ***Alignment Levels***

D9 (a) *Footpath alignment levels for the building must be prepared by a registered surveyor and must be in accordance with the Council's Public Domain Manual. Plans detailing compliance with the above must be submitted for the approval of the Certifying Authority prior to the issue of a Construction Certificate relating to the land-based component as described in B1(a)-b).*

***(b) Prior to the issue of a construction certificate for publically accessible areas of the water based works, plans demonstrating that these works have been designed to interface with the future alignment levels of the foreshore walkway (required by Condition C4), are to be submitted to the Certifying Authority. The alignment levels of the publically accessible areas of the water based works and the foreshore walkway are to be prepared by a registered surveyor and must be in accordance with Council's Public Domain Manual.***

The Department considers the condition, as modified, would achieve an appropriate balance between allowing the Proponent to commence construction of the water based component of the project while ensuring the alignment levels at the land and water interface achieve an appropriate outcome.

The Department is satisfied Condition D10 (Public Domain Plan) relates more relevantly to the land based works and it is not necessary to require a public domain plan to be approved prior to the commencement of the water based component of the project.

The Department's assessment therefore concludes that allowing the water based components of the project to be constructed first is acceptable subject to the Proponent demonstrating the alignment levels at the land and water interface correctly align.

## 7.2 Other issues

**Table 1: Assessment of Other Issues**

<b>Issue</b>	<b>Consideration</b>	<b>Recommendation</b>
<b>Contamination</b>	<ul style="list-style-type: none"><li>• The proposal seeks approval to delete Condition A1 of the approval. Condition A1 is a deferred commencement condition which requires the submission of a Site Audit Statement certifying that the land is suitable for the proposed use (maritime facility) and if remediation is required a plan of remediation is to be submitted, and approved by the Department.</li><li>• On 17 August 2015, the Department approved the Proponent's Site Audit Statement and plan of remediation which satisfies the requirements of the condition.</li><li>• The EPA recommended the requirements the Site Audit Statement be included as conditions of the development consent. However, the Department notes the recommendations of the Site Audit Statement have already been incorporated into the terms of approval (Condition F33) as a part of MOD 1.</li><li>• The Department is therefore satisfied the Condition can be deleted as the requirements of the condition have been met and Condition F33 already requires remediation to be carried out in accordance with the approved Site Audit Statement.</li></ul>	No additional conditions or amendments necessary.
<b>Administrative amendments</b>	<ul style="list-style-type: none"><li>• The proposal seeks approval to make minor administrative changes to the conditions of approval and SoCs.</li><li>• The Department notes Council and agencies do not object to the proposed changes and the administrative edits suggested by RMS were appropriately addressed in the Proponent's RtS and revised SoC's.</li><li>• The Department considers the proposed changes are acceptable, however the proposed change to the timing of conditions D5 (c-e) are not recommended as they relate to flooding issues associated with the water based component of the proposal and as such should not be deferred to a later stage.</li><li>• The Department is satisfied that all of the other proposed changes are administrative in nature and would not change the intent of the conditions and are therefore acceptable.</li></ul>	The Department has recommended modified condition to update the proposed administrative changes and SoCs in the Instrument of Modification.

## 8. CONCLUSION

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 appropriate on the basis that:

- it would allow the project to be constructed in two stages consistent with the staging outlined in the original EA; and
- the recommended conditions would allow the water based works to commence while at the same time ensuring that the publicly accessible areas at the land and water interface correctly align.

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

## 9. RECOMMENDATION

It is RECOMMENDED that the Director Modification Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **approves** the application under section 75W, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).

Prepared by:  
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Natasha Harras  
**Team Leader**  
**Modification Assessments**

 15/3/17

Anthony Witherdin  
**Director**  
**Modification Assessments**

## **APPENDIX A: NOTICE OF MODIFICATION**

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A copy of the notice of modification can be found on the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8102](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8102)

## APPENDIX B: SUPPORTING INFORMATION

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

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8102](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8102)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8102](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8102)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8102](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8102)