

# Modification of Infrastructure Approval

## Section 5.25 of the *Environmental Planning & Assessment Act 1979*

I, David Gainsford, Executive Director, Priority Projects Assessments, as delegate of the Minister for Planning under Instrument of Delegation dated 11 October 2017, approve the modification of the infrastructure approval referred to in schedule 1, subject to the conditions in schedule 2.



David Gainsford

**Executive Director, Priority Projects Assessment**

Sydney *7th November* 2018

---

### SCHEDULE 1

**Infrastructure Approval:**

SSI 7734 granted by the Minister for Planning on 5 July 2017

**For the following:**

The proposed infrastructure includes:

- dredging of approximately 231,500m<sup>3</sup> of in-situ material from the bed of Snug Cove/Two-fold Bay;
- extension of the existing Breakwater Wharf by approximately 95m;
- installation of three mooring dolphins and two berthing dolphins;
- installation of three mooring bollards on the existing wharf;
- extension of existing services (lighting, potable water and emergency fire-fighting water);
- installation of navigation aids; and
- operation of the extended wharf for use by up to 60 cruise ships per annum and associated land-based facilities and services for management of passenger visitation including disembarkation, embarkation and transport.

**Modification:**

SSI 7734 MOD 1: Modification of operational noise and air quality conditions.

## SCHEDULE 2

### In SCHEDULE 1:

1. In the Description of State Significant Infrastructure, replace the last dot point with the following:
  - operation of the extended wharf for use by up to 60 cruise ships per annum and associated land-based facilities and services for management of passenger visitation including disembarkation, embarkation and transport.

### DEFINITIONS

2. In Table 2: Definitions, insert the following in alphabetical order:

cruise season	arrival of the first cruise ship in the last half of a calendar year until departure of the last cruise ship in the first half of the following calendar year.
MARPOL (short for Marine Pollution)	MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973: (a) as corrected by the Procès-Verbal of Rectification dated 13 June 1978, and (b) as affected by any amendment made under Article 16 of MARPOL, other than an amendment not accepted by Australia or that has not entered into force in Australia, and (c) as modified and added to by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as affected by any amendment to that Protocol made under Article VI of that Protocol other than an amendment not accepted by Australia or that has not entered into force in Australia.
MARPOL Annex VI	Regulations for the prevention of air pollution from ships
MOD 1	<i>Eden Breakwater Wharf Extension Modification Request to Infrastructure Approval SSI 7734 (2 July 2018)</i>
MOD 1 Addendum	<i>SSI 7734 Mod 1 – Addendum Modification Report (14 October 2018)</i>
Refined SO <sub>2</sub> Emission Modelling	<i>Appendix C to the Eden Breakwater Wharf Extension Modification Request to Infrastructure Approval SSI 7734 (2 July 2018)</i>
relevant Maritime Acts	Commonwealth Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and Commonwealth Navigation Act 2012 as amended from time to time, or the relevant Act(s) applying at the time.

### SUMMARY OF REPORTING REQUIREMENTS

3. In Table 2: Reports and Notifications that must be submitted to the Secretary, insert in numerical order:

A23(g)	Five Year Operational Compliance Summary Reports	Within 3 months of the end of each five years of operation	Information
D10	Air Quality Operation Monitoring Program	At least one month prior to operation	Approval

4. In Table 2: Reports and Notifications that must be submitted to the Secretary, replace requirements under A21 and D5 with the following:

A21	Construction and Operation Compliance Reports	6-monthly from the date of commencement of Construction  One month from the end of the first calendar year of Operation and one month after the end of the 2019/2020 cruise season and following that, one month after the end of the cruise season	Information
D5	OEMP and OEMP Sub-plans	One month prior to commencement of Operation or within another timeframe agreed with the Secretary  Five Year Revision within one month of submission of the Five Year Operation Compliance Summary Reports	Approval

## In SCHEDULE 2:

### GENERAL

5. Replace condition A1 with the following:
- A1 The SSI must be carried out:
- in compliance with the conditions of this consent;
  - in accordance with all written directions of the Planning Secretary;
  - generally in accordance with the EIS and Response to Submissions:
    - The *Eden Breakwater Wharf Extension State Significant Infrastructure – Environmental Impact Statement*, dated 3 November 2016,
    - Response to Submissions Report Eden Breakwater Wharf Extension*, dated 24 February 2017; and
  - generally in accordance with Modification Assessments:
    - Eden Breakwater Wharf Extension Modification Request to Infrastructure Approval SSI 7734*, dated 2 July 2018;
    - letter titled “Re: Eden Breakwater Wharf MOD 1 – Response to Submissions – Air Quality and Noise”, dated 17 August 2018;
    - Response to Submission Eden Breakwater Wharf Extension MOD 1* (SSI 7734), dated 3 September 2018; and
    - SSI 7734 Mod 1 – Addendum Modification Report*, dated 14 October 2018.
6. Replace condition A2 with the following:
- A2 The SSI must be carried out generally in accordance with all procedures, commitments, preventative actions, performance criteria and mitigation measures set out in the documents referred to in conditions A1(c) and A1(d) unless otherwise specified in, or required under, this approval.

7. Replace condition A4 with the following:
 

A4 The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in condition A1(c) or A1(d). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in condition A1(c) and A1(d), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.
8. Replace condition A21 with the following:
 

A21 **Construction Compliance Reports** must be prepared and submitted to the Secretary for information every six months from the date of the commencement of Construction and **Operation Compliance Reports** must be prepared and submitted to the Secretary for information after the first calendar year of operation, the end of the 2019/2020 cruise season and following that, after the end of each cruise season, or within another timeframe agreed with the Secretary.
9. Replace condition A23 with the following:
 

A23 **Construction and Operation Compliance Reports** must include:

  - (a) a results summary and analysis of environmental monitoring;
  - (b) a summary of the **Complaints Register** required under **Condition A28** including the number of any complaints received, a summary of main areas of complaint, action taken, response given and proposed strategies for reducing the recurrence of such complaints;
  - (c) details of any review of, and minor amendments made to, the **CEMP** or **OEMP**;
  - (d) a register of any consistency assessments undertaken and their status;
  - (e) results of any independent environmental audits and details of any actions taken in response to the recommendations of an audit;
  - (f) a summary of all incidents notified in accordance with **Condition A33** and **Condition A34** of this approval including actions taken to address the cause or impact of an incident;
  - (g) a **Five Year Operational Compliance Summary Report** every five years from commencement of Operation, unless otherwise agreed by the Secretary, which includes:
    - i. the name and size of visiting cruise ships and date of visits,
    - ii. the number and nature of complaints in relation to specific cruise ships,
    - iii. results of air quality monitoring and any noise monitoring undertaken to investigate repeated noise complaints,
    - iv. identification of any issues that need to be addressed through revision of the OEMP and/or OEMP Sub-plans; and
  - (h) any other matter relating to compliance with the terms of this approval or as requested by the Secretary.

## COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

10. Replace conditions B2, B3 and B5 with the following:
 

B2 A Report endorsed by the Community Consultative Committee is to be submitted to the Secretary five years after commencement of Operation of the SSI, reporting on whether the purpose of the Committee has been achieved and completed, and recommending a timeframe for continued operation.

Where disbandment of the committee is recommended, it is to be replaced with a community-based forum, as provided for in the **Community Communication Strategy**, operating for the life of the SSI unless otherwise agreed by the Secretary. The Community Consultative Report recommending disbandment must be submitted to the Secretary for consideration and include:

  - (a) minutes of the Community Consultative Committee meeting documenting member agreement to disbandment; and
  - (b) proposed membership of the community-based forum.

*Note: the community-based forum must include local residents and may be an existing community liaison group.*

- B3 A **Community Communication Strategy** must be prepared to provide mechanisms to facilitate communication between the Proponent, the ER, the relevant Council, the Community Consultative Committee and/ or community-based forum, others directly impacted by the SSI during Construction of the SSI and for the life of the Operation of the SSI, unless otherwise agreed by the Secretary.
- B5 The **Community Communication Strategy** must:
- (a) identify people to be consulted during Construction and Operation;
  - (b) set out procedures and mechanisms for the regular distribution of accessible information about or relevant to the SSI;
  - (c) provide for the formation of community-based forums that focus on key environmental management issues for the SSI arising from **Compliance Reports**; and
  - (d) set out procedures and mechanisms:
    - i. through which the community can discuss or provide feedback to the Proponent;
    - ii. through which the Proponent will respond to enquiries or feedback from the community; and
    - iii. to resolve any issues and mediate any disputes that may arise in relation to environmental management and delivery of the SSI.

## **OPERATIONAL ENVIRONMENTAL MANAGEMENT**

11. Replace D2(d) to (h) with the following:

- (d) details of how the Operation of the SSI will be carried out under the **OEMP** and **OEMP Sub-plans** to:
  - i. achieve the environmental performance outcomes identified in the EIS/Submissions Report;
  - ii. implement the mitigation measures identified in the EIS/Submissions Report and any additional measures recommended in **Compliance Audits** or to address any issues identified in the **Five Year Operational Compliance Summary Reports**;
  - iii. comply with the relevant terms of this approval; and
  - iv. address issues during Operation, as identified through the **Community Consultative Committee**, community-based forums provided for under **Condition B5, Complaints Register** or **Monitoring Programs**, through a process of continual improvement;
- (e) an inspection program detailing the activities to be inspected and frequency of inspections;
- (f) a description of the roles and environmental responsibilities of the Proponent's employees and their relationship with the Relevant Maritime Authority and Council including roles and responsibilities for management of any matters which are to be reported in the **Operation Compliance Reports** required under **Condition A21**;
- (g) for training and induction for employees, including contractors and sub-contractors, in relation to environmental and compliance obligations under the terms of this approval;
- (h) a mechanism for communicating the environmental and compliance obligations under this approval to cruise ship operators; and
- (i) for periodic review and update of the OEMP and all associated plans and programs.

12. Replace D5 with the following:

- D1 The **OEMP** and **OEMP Sub-plans** must be submitted to the Secretary for approval no later than one month prior to the commencement of Operation unless another timeframe is agreed with the Secretary. Revised OEMP and OEMP sub-plans resulting from the findings of **Five Yearly Compliance Summary Reports** are to be submitted to the

Secretary for approval no later than one month following submission of the **Five Yearly Compliance Summary Reports**.

#### **OPERATION MONITORING PROGRAM**

13. Replace condition D12 with the following:

D12 The **Air Quality Operation Monitoring Program**, as approved by the Secretary, and amended from time to time, must be implemented during cruise seasons for five years from commencement of Operation of the SSI or another time period as agreed or directed by the Secretary. From commencement of Operation to the end of the 2019/2020 cruise season, real-time air quality monitoring results during the cruise season must be available on the website required under **Condition B6**.

#### **NOISE AND VIBRATION**

14. Replace condition E9 with the following:

E9 Construction (except for dredging and offshore disposal activities) must only be undertaken during the following standard construction hours:  
(a) 7:00am to 6:00pm Mondays to Fridays, inclusive;  
(b) 8:00am to 1:00pm Saturdays; and  
(c) at no time on Sundays or public holidays.

except in the following circumstances:

- i. for the delivery of materials required by the NSW Police Force or other authority for safety reasons;
- ii. where it is required in an emergency to avoid injury or the loss of life, to avoid damage or loss of property or to prevent environmental harm;
- iii. where different construction hours are permitted or required under an EPL in force in respect of the Construction, in which case those construction hours must be complied with;
- iv. for the works described in the *SSI 7734 Mod 1 – Addendum Modification Report*, dated 14 October 2018, which may be carried out until 10pm Mondays to Fridays inclusive; and
- v. with the approval of the Secretary.

15. Replace condition E17 with the following:

E17 The **Noise Management OEMP Sub-plan** must identify measures to reduce noise impacts on Sensitive Receivers including:  
(a) no deck announcements and music from open decks while berthed at the Breakwater Wharf Extension, with the exception of safety announcements;  
(b) ship engine, generator, exhaust and ventilation systems including air conditioning must be maintained and operated efficiently to reduce noise emissions while in the Port of Eden;  
(c) ships must run on the minimum generator/engine power required while at the berth;  
(d) in the event of an overnight berth due to extenuating circumstances, community information and notification; and  
(e) a procedure for management of non-compliant cruise ships including details on proposed actions, timeframes and consequences in the event of non-compliance with (a) to (c) in this condition.

16. Replace condition E18 with the following:

E18 Where a complaint is received from a Sensitive Receiver in relation to a specific cruise ship at the Breakwater Wharf Extension, the source and nature of the noise must be investigated while the ship is at berth (unless this is not possible due to the timing of

the complaint or imminent departure of the ship) and corrective actions implemented as required.

If there are further complaints or the investigation indicates ongoing exceedance of the noise levels predicted in the EIS and Modification Assessments on the return of the cruise ship, future visits must be managed in accordance with the requirements of the **Noise Management OEMP Sub-plan** and specific actions, timeframes and consequences agreed by the Secretary in the event of repeat non-compliance.

## AIR QUALITY

17. Replace condition E20 with the following:

E20 The **OEMP Air Quality Management Sub-plan** must include the following measures to reduce emissions from cruise ships:

- (a) prior to 1 January 2020:
  - i. no more than 20 cruise ship visits to the Breakwater Wharf Extension (which represents the “typical operations” modelled in the Refined SO<sub>2</sub> Emission Modelling); and
  - ii. emissions from cruise ships berthed at the Breakwater Wharf Extension must not result in an exceedance of the maximum cumulative SO<sub>2</sub> concentration at the most affected sensitive receiver as predicted in the Refined SO<sub>2</sub> Emission Modelling for “typical operations”;
- (b) from 1 January 2020, cruise ships must meet emission restrictions specified under MARPOL Annex VI, as implemented through the relevant Maritime Acts, or more stringent emission restrictions under these Acts;
- (c) ship engine, generator, exhaust and ventilation systems must be maintained and operated efficiently to reduce air emissions while at berth at the Breakwater Wharf Extension; and
- (d) a procedure for management of non-compliant cruise ships including details on proposed actions, timeframes and consequences in the event of non-compliance with (a)ii, (b) and (c) in this condition.

18. Replace condition E22 with the following:

E22 Where a complaint is received from a Sensitive Receiver in relation to a specific cruise ship at the Breakwater Wharf Extension about dark smoke emissions or offensive odours, the source and nature of the dark smoke emission or offensive odour must be investigated while the ship is at berth (unless this is not possible due to the timing of the complaint or imminent departure of the ship) and corrective actions implemented as required.

If there are further complaints and the investigation indicates exceedance of emission restrictions (being those restrictions described in **Condition E20**) on return of the cruise ship, future visits must be managed in accordance with the requirements of the **OEMP Air Quality Management Sub-plan** and specific actions, timeframes and consequences agreed by the Secretary in the event of repeat non-compliances.