

Port Botany Expansion Mod 18

State Significant Development Modification Assessment Report (DA-494-11-2003i MOD 18)

July 2026





Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Port Botany Expansion Mod 18 (DA-494-11-2003i MOD 18) Assessment Report

Cover photo: Port Botany expansion area (Source: NSW Ports)

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Executive Summary

This report details the Department's assessment of Modification 18 of DA494-11-2003-I. This report will be provided to the Independent Planning Commission (IPC) as the delegate of the Minister for Planning and Public Spaces (the Minister) for determination of the modification application.

Overarching Project

The Port Botany Expansion Project (the project) involved the construction and operation of a container terminal and associated infrastructure in the north-western part of Port Botany, approximately 12 kilometres south of the Sydney central business district. The site is leased from the NSW Government by Port Botany Lessor Pty Limited (NSW Ports). The project is characterised by port activities, including container terminal operations, maritime and waterway uses.

Modification

In October 2025, NSW Ports (the Applicant) lodged a modification application (Modification 18 of DA494-11-2003-I) (the modification) and an accompanying Modification Report, seeking to update references to legislation, streamline operational conditions for improved efficiency, remove redundant conditions and amend the frequency and scope of compliance based conditions.

The modification would contemporise the development consent to represent the current operations on the site, noting that dredging and reclamation of the site has been completed.

Statutory context

The modification application was lodged under the then section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Schedule 6, Section 34A of the Environmental Planning and Assessment Regulation 2021 includes savings and transitional provisions provide that changes under the *Environmental Planning and Assessment Amendment (Planning System Reforms) Act 2025* do not apply to modification applications lodged before the provisions commence. The Department is satisfied that the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and can be assessed and determined under this section.

The Independent Planning Commission is the delegate of the Minister for Planning and Public Spaces for the determination of the modification application as the Applicant has reported political donations.

Engagement

The modification application was placed on the Department's website and notification was made to relevant public authorities and relevant councils. The Department received advice from NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW), Bayside Council and Randwick Council.

- DCCEEW raised concerns about removing conditions relating to Penrhyn Estuary water quality and Penrhyn Estuary Habitat Enhancement Plan
- Bayside Council sought confirmation all approved works had been completed, occupational certificates issued, and monitoring of the wave and wind climate be considered as the project has had impacts on Lady Robinsons Beach
- Randwick City Council considers the application is not a minor modification, does not support deletion of conditions relating to Penrhyn Estuary Habitat and Hydrodynamic and Coastal Processes, and did not support amendments to the Community Consultative Committee.

Transport for NSW, Port Authority of NSW, and Sydney Water had no comments or supported the proposed modification.

Assessment

Overall, the Department's assessment concludes that the:

- modification does not alter activities approved under the consent or the timeframe in which those activities are approved to be undertaken
- modification would delete conditions which have been addressed and align compliance and auditing conditions to current standard conditions
- modification would have no impacts associated with the proposed modification beyond those already approved.

As such, the Department considers the proposed modification is in the public interest and is approvable, subject to the recommended conditions.

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1 Introduction

1.1 The proposal

1. NSW Ports (the Applicant) proposes to amend and delete various conditions in the Port Botany Expansion (PBE) State significant development (SSD) consent DA494-11-2003-i. Proposed amendments include:
 - updating legislation references
 - streamlining operational conditions to improve efficiency
 - removing redundant conditions that have been closed out
 - amending the frequency / scope of compliance based conditions.
2. The modification application was lodged on 29 October 2025 under the then section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). An overview of the modification is provided in **Section 2**.

1.2 Project background

3. The PBE project comprises an extension of Brotherson Dock North to its west and northwest, and the construction of the Port Botany boat ramp adjacent to Foreshore Drive to the north of the extension area. The port extension area totals approximately 63 hectares (ha) of land, which is leased by the Applicant to Sydney International Container Terminal Pty Ltd (operated by Hutchison Ports Sydney) and Patrick Stevedores (Patrick), as container terminals. The northern part of the extension area, known as Hayes Dock, is used for ancillary port services. The location of the PBE project in the regional and local context is shown in **Figure 1** and **Figure 2**.
4. The surrounding land uses consist of industrial port activities or industrial uses in Botany and Matraville. The nearest residential development is located to the north of Foreshore Park in Botany and to the east in Matraville. Land uses in the surrounding areas are shown in **Figure 3**.

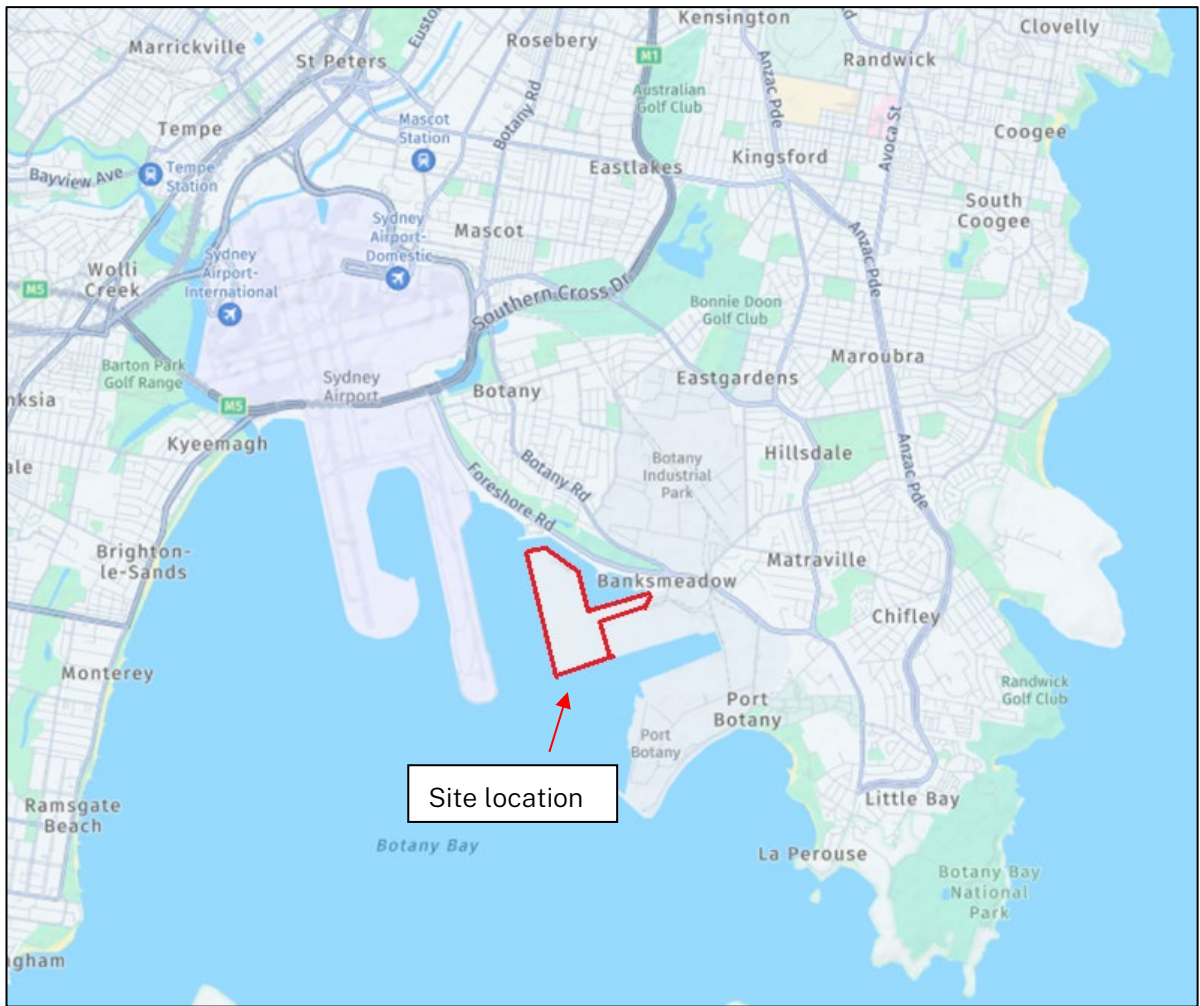


Figure 1 | Site location regional context (Source: Nearmaps, 2025)

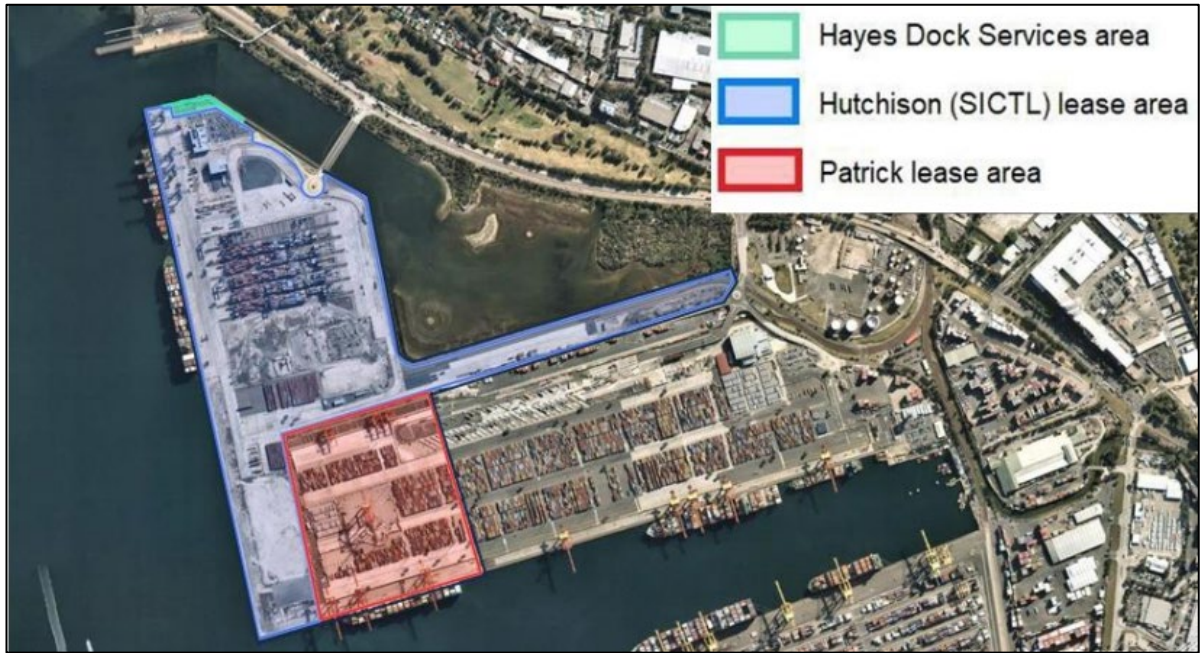


Figure 2 | Site area (operating port) overview (Source: Modification Report 2025)



Figure 3 | Site and surrounding land uses (Source: Modification Report 2025)

1.3 Approval history

5. The consent for the State significant development (SSD) DA494-11-2003-i was granted by the then Minister for Planning on 13 October 2005 under the then section 80 of the EP&A Act. The development consent was for:
 - Stage 1, which involved the construction and operation of a new container terminal, comprising 1530 metres of berth face and approximately 51 hectares of land; and
 - Stage 2, which involved the construction and operation of approximately 12 hectares of additional container terminal area and 320 metres of additional quayline to the north of the Stage 1 development, and subject to further development consent.
6. Stage 2 was subsequently approved on 22 August 2006.
7. The development consent has been modified on seventeen occasions; details of the modifications are provided in **Table 1**.

Table 1 | Summary of modifications

Modification	Description	Decision-maker	Type	Date
MOD 1	Modification to correct various minor errors and incorrect descriptions and to clarify various conditions	Executive Director	Part 4 s.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	Executive Director	Part 4 s.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	Executive Director	Part 4 s.96 (1A)	11 September 2007
MOD 4	Modification to alter the timing of various studies (conditions C2.20 and C2.25)	Executive Director	Part 4 s.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	Executive Director	Part 4 s.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)	Executive Director	Part 4 s.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, while 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.	Director General	Part 4 s.96 (1A)	20 March 2009

Modification	Description	Decision-maker	Type	Date
MOD 8	Modification to allow additional dredging to be undertaken within the ship turning area outside the primary silt curtain	Executive Director	Part 4 s.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	Director	Part 4 s.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	Director	Part 4 s.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	A/Director	Part 3A s.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	A/Director	Part 3A s.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”)	A/Director	Part 3A s.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	A/Director	Part 3A s.75W	11 June 2013
MOD 15	Modification to allow penetration of the obstacle limit surface of Sydney Airport by cranes	A/Director	Part 3A s.75W	8 July 2013

Modification	Description	Decision-maker	Type	Date
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	Executive Director	Part 3A s.75W	24 October 2017
MOD 17	amend a number of administrative errors within the development consent	Director	Part 4 s.4.55(1)	19 September 2019

1.4 Current operations

8. Container terminal and associated infrastructure (road and rail links) operate in the PBE area in accordance with the development consent. There are two areas in the Hutchinson Ports lease area that are currently undeveloped (as shown in **Figure 2**). These areas have consent for container operations; however, the timeframe for their development is not known.

2 Project

2.1 Proposed modification

10. The Applicant proposes to modify the development consent conditions, as it has been operational for approximately 20 years, and several conditions are outdated or redundant. Minor amendments are required to improve the administrative and procedural efficiency of the port operations.
11. The key changes proposed by the Applicant include updating references to legislation, streamlining operational conditions for improved efficiency, removing redundant conditions, and amending the frequency and scope of compliance-based conditions.
12. The proposed modifications can be categorised into topics which are outlined in **Table 2**.

Table 2 | Key topics of the modification

Topic	Description
Contemporising conditions	• updating legislative references • updating conditions to current standards and requirements • provision of certain documents / reports to the Planning Secretary • combine various related conditions into one condition.
Dredging	• remove and or amend conditions that relate to dredging as capital dredging and reclamation works have been completed.
Community Consultative Committee (CCC)	• deletion of the Rail Noise Working Group (the CCC covers reporting requirements for rail noise) • change the attendees of CCC meetings • allow for online meetings to occur.
Deletion of various conditions	Conditions proposed to be deleted as they have been satisfied and no longer required.

13. The Department has recommended minor administrative changes to definitions to reflect current agency names, updating the definition of the Minister and the Secretary, and adding definitions for an incident and a non-compliance in accordance with the Department's

standard compliance and auditing conditions. The Department has corrected grammatical, formatting, and transcription errors associated with Modification 16.

3 Statutory context

3.1 Permissibility and assessment pathway

14. Details of the legal pathway under which the modification is sought, and the permissibility of the project, are provided in **Table 3**.

Table 3 | Permissibility and assessment pathway

Consideration	Description
Public authority for the purposes of Chapter 5 of the Transport and Infrastructure SEPP	NSW Ports (the Applicant) is a ‘public authority’ for the purposes of Chapter 5 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (the Transport and Infrastructure SEPP), as the Port Operator of Port Botany. Section 5.2(1) of the Transport and Infrastructure SEPP states that a reference to a ‘public authority’ in Chapter 5 of the Transport and Infrastructure SEPP includes the Port Operator. Additionally, section 5.2(1) of the Transport and Infrastructure SEPP states that in relation to Port Botany, ‘Port Operator’ effectively has the same meaning as in the <i>Ports and Maritime Administration Act 1995</i>. On 2 May 2013, NSW Ports was declared the port operator of the private port of Port Botany under section 3(1) of the <i>Ports and Maritime Administration Act 1995</i>. Therefore, NSW Ports is a public authority for the purpose of development activities within the Port Botany Lease Area under Chapter 5 of the Transport and Infrastructure SEPP.
Assessment pathway	On 15 December 2025, section 4.55(1A) of the EP&A Act was amended to apply only to modifications which have minimal environmental impact. In accordance with the savings and transitional provisions in Schedule 6, section 34A of the Environmental Planning and Assessment Regulation 2021 changes to the EP&A Act do not apply to modification applications lodged before, but not finally determined, before the provisions commence. The modification application was lodged on 29 October 2025 under then section 4.55(1A) of the EP&A Act. The Department is satisfied the proposed modification is within the scope of the former section 4.55(1A) of the EP&A Act, as the modified development is the same development as the development for which consent was originally granted and has no environmental impact and does not constitute a new development application.

Consideration	Description
	Accordingly, the Department considers that the application should be assessed and determined under the former section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.
Decision Maker	The Minister for Planning and Public Spaces is the consent authority under section 4.5(a) of the EP&A Act.
Reportable Political Donations	The Applicant has made a declaration under section 10.4 of the EP&A Act that it has made reportable political donations in the two-years prior to the lodgement of the application.
Delegate	Independent Planning Commission In accordance with Schedule 1 and 2 of the Minister’s Instrument of Delegation dated 14 September 2011 (the 2011 Delegation), the Minister’s determination functions under the EP&A Act can be delegated to the Independent Planning Commission (the IPC) to determine the request to modify the Minister’s approval. However, the 2011 Delegation does not apply to applications (including reportable political donation applications) made by a public authority (Schedule 2). While the Applicant is considered a ‘public authority’ for the purposes of Chapter 5 of the Transport and Infrastructure SEPP, they are not considered a ‘public authority’ for the purposes of the 2011 Delegation to the IPC. The 2011 Delegation applies the definition of a ‘public authority’ in the EP&A Act, and the Applicant is not considered a public authority under the EP&A Act definition in relation to this modification request.

3.2 Mandatory matters for consideration

3.2.1 Matters of consideration required by the EP&A Act

15. In determining the modification, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development the subject of the application. The consent authority must also consider the reasons given by the consent authority for the grant of the consent that is sought to be modified. The Department’s consideration of these matters is shown in **Table 4** below.

Table 4 | Matters for consideration

Matter for consideration	Department's assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Appendix C
EP&A Regulation	Appendix C
Likely impacts	Section 5 - Assessment
Suitability of the site	Section 1.2 - Modification background, and Section 5 - Assessment
Public submissions	Section 4 - Engagement and Section 5 - Assessment
Public interest	Section 4 - Engagement, Section 5 - Assessment and Section 6 - Evaluation

3.2.2 Objects of the EP&A Act

16. In determining whether or not to modify the consent, the consent authority should consider whether the modified project is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ecologically sustainable development. Consideration of those factors is described in **Appendix C**.
17. The Department is satisfied that the development is consistent with the objectives of the Act and the principles of ecologically sustainable development.

3.2.3 Biodiversity development assessment report

18. Section 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 requires all SSD modifications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the authority or person determining the application is satisfied that the modification will not increase the impact on biodiversity values (as identified in the *Biodiversity Conservation Act 2016* and in the Biodiversity Conservation Regulation 2017).
19. The modification does not remove additional vegetation on-site. The Department is satisfied that the modification will not increase the impact on biodiversity values. Consequently, a BDAR is not required.

4 Engagement

4.1 Notification of modification application

4.1.1 Department’s engagement

- 20. The Department did not exhibit the modification application. However, it notified and invited comments from relevant government agencies, Bayside Council and Randwick City Council.
- 21. The modification application was made live on the Department’s Major Projects website on 30 October 2025.

4.1.2 Summary of advice received from government agencies

- 22. The Department received advice from four government agencies on the modification application.
- 23. A summary of the agency advice is provided in **Table 5**. A link to the full copy of the advice is provided in **Appendix B**.

Table 5 | Summary of agency advice

Agency	Advice summary
Port Authority of NSW (Port Authority)	Supports the proposed administrative amendments as they relate to operational matters.
Transport for NSW (TfNSW)	The consent should be updated to refer to TfNSW and not previous names.
Conservation Programs, Heritage and Regulation Group (CPHR) - NSW Department of Climate Change, Energy, the Environment	<u>Dredging and reclamation</u> • Provide further information on the planning approval pathway and regulatory requirements for future capital dredging and reclamation works. <u>Penrhyn Estuary water quality and Penrhyn Estuary Habitat Enhancement Plan (PEHEP)</u> • For condition B2.30, further information was requested to demonstrate that the predicted water quality outcomes in Penrhyn Estuary were achieved • Proposed deletion of Condition B2.31 should not proceed until discussions regarding condition B2.32 are resolved.

Agency	Advice summary
and Water (NSW DCCEEW))	<u>Hydrodynamic and Coastal Processes</u> Supports the removal of conditions B2.40 and B2.40A.
Sydney Water	No objection to the proposed removal of conditions B2.13 and B2.40A.

4.1.3 Summary of council comments

24. Bayside Council and Randwick City Council provided comments.
25. A summary of the comments provided by the council's is provided in **Table 6** and a link to both submissions in full is provided in **Appendix B**.

Table 6 | Summary of issues raised by council

Council	Submission summary
Bayside Council	Confirm all approved works have been completed and the relevant Occupation Certificates have been issued, before the relevant conditions are deleted. Consideration should be given where any "monitoring of the wave and wind climate" conditions which are proposed to be deleted, as the port expansion has had significant detrimental impacts on Lady Robinsons Beach.
Randwick City Council	Considers the modification application should be considered under section 4.55(2) of the EP&A Act. Does not support the deletion of conditions relating to the rehabilitation and management of Penrhyn Estuary Habitat. Does not support the deletion of condition B2.40 as there will not be any baseline data to compare future coastal erosion. Does not support proposed amendments to the Community Consultative Committee (CCC) conditions, as it seeks to reduce the scope and representation of members and is not consistent with the Department's CCC Guidelines.

4.1.4 Summary of issues raised in feedback received on the application

26. The Department received feedback on the modification application from a community member in November 2025. The feedback raised concerns about community consultation and conservation of the marine environment in Botany Bay.

27. The feedback stated in May 2021 the Port Botany Community Consultative Committee was informed that there would be an administrative modification but there was no discussion on what it would cover. The community member said it was misleading to suggest that consultation had occurred.
28. The feedback noted the modification stated that there would be no further reporting on Penrhyn Estuary and Foreshore Beach. The community member noted the targets for bird species in the Penrhyn Estuary offset were not met and that there was no accountability for the health of Botany Bay.

4.2 Response to council comments and agency advice

29. On 1 December 2025, the Department asked the Applicant to respond to Council's comments and agency advice. The Applicant provided a response to these matters which were published on the NSW Planning Portal on 3 March 2026 (see **Appendix A**).

4.3 Request for further information

30. On 27 November 2025 (see **Appendix A**), the Department requested the Applicant to provide further information relating to:
- management and delivery of undeveloped land
 - the status of the approved Rail Line corridor parallel to Foreshore Road, including a rail bridge and culverts, as shown in Schedule 3 of the consent, i.e. will this rail infrastructure be constructed in the future, and likely construction timeframe
 - Condition B2.27 –Port Traffic and Rail Noise Management Plan
 - implications to undeveloped land and port infrastructure should this condition be deleted
 - management of port traffic and noise, should this condition be deleted
 - how will undeveloped land be managed / landscaped should condition B2.37 be deleted
 - clarification of the proposed operation of the community consultative committee
 - retention or deletion of condition B4.3 – Environmental Representative
 - additional justification about the adoption of the Department's current compliance / auditing conditions.
31. On 3 March 2026, the Applicant provided a response to address the Department's comments.

32. On 1 June 2026 (see **Appendix A**), the Department requested the Applicant to provide further information to address matters relating to:
- Condition B2.37 – visual amenity plan
 - ongoing responsibility for the management of the public recreation and ecological areas covered by these plans
 - Condition B2.15 – Road Safety Audit
 - scope of road upgrades undertaken, and whether further upgrades to the road network are required
 - Condition B3.4 - community enhancement
 - advise whether the \$3 million funding allocation has been fulfilled
 - are there any remaining liabilities for NSW Ports or the Port Authority e.g. ongoing maintenance or funding arrangements.
33. On 2 July 2026 (see **Appendix A**), the Applicant provided a response to address the matters raised by the Department on 1 June 2026 (see above).

5 Assessment

34. The Department considered the modification report, the views of councils and agencies, the Response to Submissions and response to requests for further information, and community feedback, in its assessment of the modification. This report assesses the proposal to contemporise conditions and delete conditions which have been satisfied and have no ongoing construction or operational requirements. The assessment has classified the intent of the modification into four topics, discussed below.

5.1 Contemporising conditions

35. The Applicant proposes to update legislation references in the consent as, following 20 years of operation, several conditions have become outdated, and the EP&A Act has been amended. The Applicant considers an update is necessary to ensure continued accuracy and relevance of the PBE conditions.
36. The Department's approach to conditions has evolved since the project was approved in 2005. It is recommended that various administrative conditions be updated or included to address these changes where appropriate and they do not burden the project with additional requirements. These include updating:
- compliance reporting and auditing requirements, how non-compliance incidents are reported and recorded
 - current terminology for project staging
 - legislative references and guideline material to current standards
 - to reflect current agency names.
37. Due to the scale and low environmental risk of potential construction activities occurring in future (i.e. development of vacant land within the container terminal), it is considered appropriate to either combine or delete environmental management plans and/or require performance outcomes to reflect the reduced scope of potential future construction activities.
38. **Table 7** provides the Department's consideration of contemporising and updating legislative references of conditions within the consent.

Table 7 | Conditions to be contemporised

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
Schedule 1			
In respect of: Land described as: Lot 2 DP 1009870, Lot 6 DP 1053768, Lots 301 & 302 DP 712992, Part of Crown Reserve R91288, Lots 203 & 205 DP 712991 and Lot 401 DP 816961, Botany Bay Local Government Area. <u>In respect of: Land described as: Lot 1 DP 1165618, Lot 200 DP 1183399, Lot 201 DP 1183399, Lot 202 DP 1183399, Lot 208 DP 1183399, Bayside Council Local Government Area.</u> For the following: The construction and operation of a new container terminal and associated infrastructure. Development Application: Development Application DA-494- 11-2003-i, lodged with the Department on 26 November 2003, accompanied	Update to list correct Lot and Deposited Plans of the subject site and correct Local Government Area. Update to reference updated sections of the EP&A Act.	<u>Lot and DPs</u> Updating the Lot and DP references to refer to current property descriptions is supported as it identifies the actual parcels of land the consent applies to. <u>Legislation references</u> The proposal to update Schedule 1 of the consent to replace repealed sections of the EP&A Act with the current equivalent section is not supported, as the determination was made under those provisions and not current provisions, which are not relevant to the determination. However, the Department supports the amendment of Schedule 1 legislative references by:	In respect of: Land described as: <u>Lot 1 DP 1165618, Lot 200 DP 1183399, Lot 201 DP 1183399, Lot 202 DP 1183399, Lot 208 DP 1183399, Bayside Local Government Area.</u> For the following: No change. Development Application: No change.

¹ Deleted text in ~~strike through~~ and additional text in underline.

² Additional text in underline.

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
by Port Botany Expansion Environmental Impact Statement (ten volumes), prepared by URS Pty Ltd and dated November 2003; State Significant Development Under Section 76A(7) 4.36(2) of the <u>Environmental Planning and Assessment Act 1979</u>, the development is classified as State Significant development <u>as the land is within a 'lease area' under Clause 5.27(1)(a) State Environmental Planning Policy (Transport and Infrastructure) 2021</u>, by virtue of a declaration made by the Minister for Planning on 29 June 2001 for berths for shipping, shipping terminals and associated buildings, structures and works within certain lands within the Botany Bay Bayside Council Local Government Area. Commission of Inquiry The development was subject to a Commission of Inquiry under <u>the former</u> section 119 of the <i>Environmental Planning and Assessment Act 1979</i>. The primary		- adding the words 'the former section' to sections of the EP&A Act that have been repealed; and - providing context to the current EP&A Act by adding the current equivalent section, identified by the words "now section"). <u>Council names</u> Since the consent was approved in 2005, the former Botany Council was amalgamated with the former Rockdale Council, forming Bayside Council. Updating references to the current council's name is supported. However, reference to City of Botany within the Commission of Inquiry report, should not be updated to reflect the current council name, as the City of Botany was the relevant council at the time the Commission of Inquiry was held and the former council name is contained in the title of the Commission of Inquiry's report. <u>Date of commencement</u> It is considered that the actual dates the consents were approved / signed	State Significant Development: Under <u>the former</u> section 76A(7) <u>(now section 4.36(2))</u> of the <i>Environmental Planning and Assessment Act 1979</i>, the development is classified as State Significant development by virtue of a declaration made by the <u>then</u> Minister for Planning on 29 June 2001 for berths for shipping, shipping terminals and associated buildings, structures and works within certain lands within the <u>former</u> Botany Bay Local Government Area <u>(now Bayside Local Government Area)</u>. Commission of Inquiry The development was subject to a Commission of Inquiry under <u>the former</u> section 119 of the <i>Environmental Planning and Assessment Act 1979</i>. The primary session of the Inquiry was held from 19

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
session of the Inquiry was held from 19 to 28 October 2004. The reply session of the Inquiry was held from 14 to 18 February 2005. The Commission's recommendations following the Inquiry are detailed in Report to the Honourable Craig Knowles MP, Minister for Infrastructure and Planning, Minister for Natural Resources – Proposed Port Botany Expansion, City of Botany, Sydney Ports Corporation, dated May 2005. Staged Consent In accordance with Section 80(4) and (5) 4.37 and 4.16(4) and (5) of the <i>Environmental Planning and Assessment Act 1979</i>, this consent only permits works associated with Stage 1 of the development as defined in Schedule 2, Subschedule A. Stage 2 works will require the issue of further development consent. Appeal Rights There is no right of appeal to the Land and Environment Court under section 97 8.7 or section 98 8.8 of the		should be refenced instead of the date when the determination documents were made available on the planning portal. It is recommended that the date of commencement makes reference to the date the development consent was granted on 13 October 2005 as a note.	to 28 October 2004. The reply session of the Inquiry was held from 14 to 18 February 2005. The Commission's recommendations following the Inquiry are detailed in Report to the Honourable Craig Knowles MP, Minister for Infrastructure and Planning, Minister for Natural Resources – Proposed Port Botany Expansion, City of Botany, Sydney Ports Corporation, dated May 2005. Staged Consent In accordance with the former Sections 80(4) and (5) (now sections <u>4.37 and 4.16(4) and (5)</u>) of the <i>Environmental Planning and Assessment Act 1979</i>, this <u>development</u> consent only permits works associated with Stage 1 of the development as defined in Schedule 2, Subschedule A. Stage 2 works will require the issue of further development consent. Appeal Rights There is no right of appeal to the Land and Environment Court under <u>the former</u> section 97 or <u>the former</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
<i>Environmental Planning and Assessment Act 1979</i>, as the development is a State Significant Development into which a Commission of Inquiry was held. Commencement of Consent Pursuant to section 83(1)(b) 4.20 of the <i>Environmental Planning and Assessment Act 1979</i>, this consent operates from the date that is endorsed on the notice of determination given to the Applicant, because a Commission of Inquiry has been held into the development of the original approval which is available on the Planning Portal. Lapse of Consent Pursuant to section 95 4.53 of the <i>Environmental Planning and Assessment Act 1979</i>, this development consent is liable to lapse five years after the date from which it operates unless the use of any land, building or work the subject of the			section 98 (<u>now sections 8.7 and 8.8</u>) of the <i>Environmental Planning and Assessment Act 1979</i>, as the development is a State Significant Development into which a Commission of Inquiry was held. Commencement of Consent Pursuant to <u>the former</u> section 83(1)(b) (<u>now section 4.20</u>) of the <i>Environmental Planning and Assessment Act 1979</i>, this <u>development</u> consent operates from the date that is endorsed on the notice of determination given to the Applicant, because a Commission of Inquiry has been held into the development. <u>Note: The above referenced notice was provided on 13 October 2005.</u> Lapse of Consent Pursuant to <u>the former</u> section 95 (<u>now section 4.53</u>) of the <i>Environmental Planning and Assessment Act 1979</i>, this development consent is liable to lapse five years after the date from which it operates unless the use of any land,

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
consent is actually commenced before the date on which the consent would otherwise lapse.			building or work the subject of the consent is actually commenced before the date on which the consent would otherwise lapse.

Schedule A: Overall scope of development works and general provisions

A1. General			
A1.1 <u>w) modification application DA494-11-2003-I MOD 18, accompanied by assessment report titled 'Port Botany Expansion Modification Application 18 to DA-494-11- 2003i 'Amendments to Conditions of Approval', prepared by Keylan Consulting on behalf of NSW Ports and dated October 2025;</u>	Insert Modification 18 Assessment Report into condition A1 and update numbering to reflect this amendment.	Adding the Modification documents to condition A1.1 would ensure the modified development is carried out in accordance with these modification documents. It is standard practice to include reference to the latest modification applications in the modified consent.	Update condition A1.1 to include reference to the modification 18 report, response to submissions document and the Applicant's responses addressing the Department's requests for further information.
A1.2 In the event of an inconsistency between: a) the conditions of this consent and any document listed from condition A.1.1a) to w <u>x</u>) inclusive, the conditions of this consent shall prevail to the extent of the inconsistency; and b) any	Amend to reflect the numbering change in condition A1.1.	Amendment supported as this change reflects the updates to condition A1.1	In the event of an inconsistency between: a) the conditions of this consent and any document listed from condition A.1.1a) to <u>y</u>) inclusive, the conditions of this consent shall prevail to the extent of the inconsistency; and b) any document listed from condition A1.1 a)

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
document listed from condition A1.1 a) to w <u>y</u>) inclusive, the most recent document shall prevail to the extent of the inconsistency.			to <u>y</u>) inclusive, the most recent document shall prevail to the extent of the inconsistency.
Port Throughput Capacity Limits A1.4 — Port throughput capacity generated by operations in accordance with this consent shall be consistent with the limits specified in the EIS, that is, a maximum throughput capacity at the terminal of 1.6 million TEUs per annum and a total throughput at Port Botany of 3.2 million TEUs. These limits may not be exceeded by the development without further environmental assessment and approval. Sydney Ports Corporation shall prepare, or have prepared on its behalf, such further environmental assessment for the determination of the Minister.	The condition has no effect as section 32 (2)(c) of the <i>Port Assets (Authorised Transactions) Act 2012</i> applies to the consent and states that cargo throughput limits do not apply to Port Botany	Following the date of the consent, Port Botany, Port Kembla and Port of Newcastle were privatised and leased to private consortiums. As part of the privatisation process section 32(1) of the <i>Port Assets (Authorised Transactions) Act 2012</i> was introduced, which amongst other matters, removed current (and future) planning decisions which had the ability to restrict capacity and throughput at Port Botany. To acknowledge this legislative amendment, it is recommended that a note be inserted immediately following condition A1.4 to clarify that the condition no longer applies, unless and until section 32(1) of the <i>Ports Assets (Authorised Transactions) Act 2012</i> is repealed or amended.	Retain condition A1.4 but add a note to clarify that the <i>Port Assets (Authorised Transactions) Act 2012</i> overrides capacity limits in the consent. <u>Note: This condition has no effect as section 32(1) of the <i>Port Assets (Authorised Transactions) Act 2012</i> states that a planning control is of no effect to the extent that it would operate to impose a cargo throughput limit for Port Botany.</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
B1. General Requirements			
B1.3 The Applicant shall prepare a Construction Environmental Management Plan (CEMP) which, must be approved by the Secretary prior to the commencement of any site preparation or construction works. The CEMP must: - <u>Require preparation of an Environmental Training Program prior to any construction works which shall be developed and implemented to establish a framework in which relevant employees will be trained in environmental management and the operation of plant and equipment, including pollution control equipment, where relevant;</u> (note only the proposed amendment is shown)	To incorporate the training programs required under condition B4.4 are consolidated in condition B1.3. This would ensure that training for future construction related activities forms part of the CEMP requirements.	The initial condition B4.4 required a training course to be developed relating to dredging, reclamation and construction. As condition B4.4 which deals with training requirements is proposed to be deleted, it is considered appropriate to amend condition B1.3 (the CEMP requirements) to include construction worker training requirements. This approach is supported as training requirements will be captured under the overarching CEMP. The requirement to prepare a CEMP has also been updated to reference the Departments Environmental Management Plan (EMP) guideline. This will ensure future CEMPs are consistent with current Department guidance material.	Only the recommended changes to condition B1.3 are included: The Applicant shall prepare a Construction Environmental Management Plan (CEMP) <u>having regard to the Environmental Management Plan Guideline for Infrastructure Projects (Department of Planning, Industry and Environment, 2020). The CEMP must be approved by the Secretary prior to the commencement of any site preparation or construction works. The CEMP must:</u> - <u>require preparation and implementation of an Environmental Training Program prior to undertaking any construction works. The Program must include a framework for training employees in environmental management and the operation of plant and equipment, including pollution control equipment, as relevant;</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
			- include specific consideration of measures to address any requirements of the EPA, <u>TfNSW</u>, <u>DPIRD Fisheries</u>, <u>CPHR</u>, <u>Water Group</u> and the Council during site establishment and construction (where relevant); - <u>details of how the environmental performance of the construction works will be managed and monitored, and what actions will be taken to avoid and/or address identified adverse environmental impacts;</u>
B2. Construction Environmental Performance			
The following amendments are proposed by the Department. B2.4 (Dust Management Plan), B2.5 (Soil and Water Management Plan), B2.6 (Acid Sulphate Soils), B2.14 (Construction Traffic Management Plan), B2.20 (construction noise management plan), B2.33 (construction waste management plan).	N/A	The Department recommends the deletion of the following construction environmental management plans: B2.4 (Dust Management Plan), B2.5 (Soil and Water Management Plan), B2.6 (Acid Sulphate Soils), B2.14 (Construction Traffic Management Plan), B2.20 (construction noise management plan), B2.33 (construction waste management plan).	Replace conditions B2.4, B2.5, B2.6, B2.14, B2.20, B2.33 with new conditions which require performance outcomes to be met during construction.

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
		The Department considers that due to the limited scale of potential future construction, being primarily finalisation of hard stands, the management plans required by these conditions have been replaced with performance outcomes which better reflects the scale of future construction on the approved but not yet developed portion of the container terminal. Although these plans have been amended to require the Applicant to meet performance outcomes, an overarching CEMP is still required to be prepared to manage future construction activities.	
B2.35 All wastes and material generated on the site during construction and operation shall be classified in accordance with the EPA's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes Waste Classification Guidelines prior to transporting the	Amend condition to reference EPA Waste Classification Guidelines.	Supported as the amendment refers to the current guidance protocol for classification of waste.	All wastes and material generated on the site during construction and operation shall be classified in accordance with the <u>Protection of the Environment Operation (Waste) Regulation 2014, Waste Classification Guidelines Parts 1-4 (EPA, 2014) (as applicable) and Addendum to Part 1: Classifying Waste (EPA, 2016), or any future guideline that may supersede</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
waste off site and be disposed of to a facility that may lawfully accept the waste.			the 2014 Guidelines and 2016 Addendum, prior to transporting the waste off site and disposing of it <u>at</u> a facility that may lawfully accept the waste.
Hazards and Risk Management Construction Safety Study B2.41 The Applicant shall prepare a Construction Safety Study prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure, in accordance with Hazardous Industry Planning Advisory Paper No. 7 – Construction Safety Study Guidelines <u>2011</u> (DoP, 1992). The commissioning portion of the Construction Safety Study may be submitted two months prior to the commencement of commissioning. The Study shall be submitted for the approval of the Secretary prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure.	Amended to reflect new guideline and stage construction.	Supported as the amendment refers to the current guidance protocol for hazards and risk management. As there are areas of undeveloped land, the condition has been amended to make reference to staged construction to ensure future stages of construction are required to prepare a Construction Safety Study.	The Applicant shall prepare a Construction Safety Study prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure, in accordance with <i>Hazardous Industry Planning Advisory Paper No. 7 – Construction Safety Study Guidelines</i> (DoP, <u>2011</u>). The commissioning portion of the Construction Safety Study may be submitted two months prior to the commencement of commissioning. The Study shall be submitted for the approval of the Secretary prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure.

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
		The Department recommends similar amendment to condition B2.41 to require a Fire Safety Study for any stage of the construction and updated to refer to the Department's current Hazardous Industry Planning Advisory Paper.	Fire Safety Study B2.42 The Applicant shall prepare a Fire Safety Study prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure, in accordance with <i>Hazardous Industry Planning Advisory Paper No. 2 – Fire Safety Study Guidelines</i> (DoP, 2011). The Study shall be submitted for the approval of the Secretary and the Commissioner of the NSW Fire Brigades prior to the commencement of <u>any stage of the</u> construction of the terminal operations infrastructure.

B1 (compliance certificate), B4 & C4 Environmental management, reporting and auditing

Construction and operational compliance reporting and auditing Delete conditions B1.4, B1.5, B4.2, B4.5, C1.4 and C1.5, and amend conditions C1.2F, C4.2 and C4.5	Main stage of the construction programme is completed and compliance reporting and auditing is no longer required. Condition C1.2F requires annual reporting on the compliance of Hayes Dock Services Area. Recommend	Construction requirements The Applicant proposes to delete these reporting requirements because most construction has been completed. However, the Department does not consider this is the case as the site	Delete conditions B1.4, B1.5, B4.2, B4.5, C1.2F, C1.4, C1.5, C4.2, C4.5 and replace with the Department's current auditing and compliance reporting requirements. <u>A4.Auditing And Reporting</u>
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Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
	change to reporting every two years due to small scale of operations. Ongoing operational environmental compliance reporting is still being undertaken by C4.2 and C4.5. Amend condition C4.2 so preparation of an Annual Environmental management report is required every 3 years instead of every 12 months.	includes areas of land that are yet to be developed. Although, the project may have areas of vacant land that are yet to be constructed, it is considered that the requirements for auditing must be maintained. It is recommended that the condition be updated to reflect the Department's current auditing and compliance reporting regime. This will ensure that the Applicant is reporting in accordance with the Department's current auditing guidelines. Operational requirements It is acknowledged the Applicant still intends to undertake compliance auditing during the operation of the project. The continued approach to compliance reporting is supported; however, it is recommended that environmental audit reporting be undertaken in accordance with the Department's current auditing and compliance reporting requirements.	<u>A4.1 Independent Environmental Audits of the development must be conducted and carried out in accordance with the Independent Audit Post Approval Requirements in force at the time the audit commences, as approved by the Secretary and published on the Department's website.</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
		It is recommended that the compliance and auditing conditions be deleted and replaced with the Departments current approach to environmental auditing.	
-	-	It is recommended that the conditions B4.1 and C4.1 relating to incident reporting are deleted and replaced with the Departments current approach to incident reporting.	Delete conditions B4.1 and C4.1, and replace with incident reporting requirements in accordance with the Departments current regime. Insert new condition A4.2 – A4.5, and new Schedule 5 that sets out written incident notification and reporting requirements.
Delete Condition B4.3 which requires an Environmental Representative to be employed for the duration of construction.	The condition was a requirement within the pre-construction phase and was completed. Construction activities under this consent are now completed.	As most of the approved project have been constructed and are operational, it is considered this condition can be deleted. The Department considers that the completion of the hardstands in the vacant land is unlikely to have significant environmental impact. Further, the land is subject to the State Environmental Planning Policy (Transport and Infrastructure) 2021 (the Transport and Infrastructure SEPP) provisions and any activities or uses on the whole site will require	Delete condition B4.3 as the environmental risk profile of remaining construction activities is low.

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
		compliance with the relevant exempt or complying provisions and requirements.	
Environmental Training B4.4 Prior to the commencement of any dredging, reclamation and construction an Environmental Training Program shall be developed and implemented to establish a framework in which relevant employees will be trained in environmental management and the operation of plant and equipment, including pollution control equipment, where relevant. The Program shall include, but not necessarily be limited to: a) identification of relevant employment positions associated with the development that have an operational or management role related to environmental performance;	There is no requirement for this condition as a standalone condition. Environmental training is proposed to be added to General CEMP condition – B1.3.	It is accepted that the training requirements of this condition can be incorporated into the general overarching CEMP requirements under condition B1.3. The deletion of condition B4.4 is supported.	Delete and move the requirement for training to form part of condition B1.3.

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
b) details of appropriate training requirements for relevant employees; c) a program for training relevant employees in operational and/or management issues associated with environmental performance; and d) a program to confirm and update environmental training and knowledge during employment of relevant persons.			
Maintenance and Management Plan for Expanded Area B4.6 Within 1 month of full reclamation, or as otherwise agreed to by the Secretary, the Applicant shall prepare a Maintenance and Management Plan for the expanded area to address maintenance issues including safety, vegetation management, feral pest management and other issues identified by the Applicant in consultation with DOP/DPIE. The preparation and implementation of the	Condition satisfied – operational area has been leased.	This condition requires a maintenance plan to be prepared should the project area not be leased by a port operator. As the project area is currently leased this condition is not required. Should the lease be terminated in the future, the management of the land will ultimately be the responsibility of the Applicant until another lease is made. The Department considers that a requirement for a plan is not necessary as a performance based	Replace condition B4.6 with the following: <u>The Applicant must ensure that maintenance issues including safety, vegetation management, feral pest management and other issues identified by the Secretary, are managed in the expansion area.</u>

Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
Plan is required in the event that the expanded area is not leased to a new operator immediately upon completion of construction. The Plan of the developed area is required until such time as a lease is signed.		condition would serve a similar outcome.	

C1 General requirements

The Department has recommended an amendment to condition C1.3	N/A	The requirement to prepare an Operational Environmental Management Plan (OEMP) has been updated to reference the Departments Environmental Management Plan (EMP) guideline. This will ensure future OEMPs are consistent with current Department guidance material. Amend condition C1.3 to require the OEMP to be prepared to have regard to the Department's EMP guideline.	The Applicant shall prepare an Operational Environmental Management Plan (OEMP) <u>having regard to the Environmental Management Plan Guideline for Infrastructure Projects (Department of Planning, Industry and Environment, 2020).</u> The OEMP must be approved by the Secretary prior to commencement of any operations at the terminal.
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C2 Operational environmental performance

The Department has recommended an amendment to condition C12.13A	N/A	The Department has recommended an amendment to condition C12.13A Waste Management On-site to refer to	Amend condition C2.13A as follows: The management of waste for uses and activities not subject to an
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Applicant's Proposal ¹	Applicant's Justification	DPHI consideration	Recommended condition ²
		current guidance protocol for classification of waste.	Environmental Protection Licence, shall be managed and disposed of in accordance with the Protection of the Environment Operation (Waste) Regulation 2005 2014 and the Waste Classification Guidelines (DECCW 2009) (Parts 1-4 as applicable) (EPA, 2014) and the <u>Addendum to Part 1: Classifying Waste</u> (EPA, 2016), or any future guideline and addendums that may supersede that document the <u>2014 Guidelines and 2016 Addendum</u> . All waste materials removed from the site shall only be directed to a waste management facility lawfully permitted to accept the materials.
Obstacle Limitation Surface C2.22 The Applicant shall ensure that all operation equipment is below the obstacle limitation surface, unless otherwise permitted by an approval under the Airports Act 1996 9 and Airports (Protection of Airspace) Regulation 1996 9 .	Update to reference correct legislation.	The Department support the amendment of the condition to refer to the correct legislation.	Condition C2.22 is amended as follows: The Applicant shall ensure that all operation equipment is below the obstacle limitation surface, unless otherwise permitted by an approval under the <i>Airports Act 1996</i> and Airports (Protection of Airspace) Regulation 1996.

5.2 Removal of dredging related activities

39. The Applicant states that a number of conditions were tied to the original construction and establishment phases of the project, including dredging and reclamation. These works are complete, and the outcomes accepted by the consent authority.
40. As such, these conditions are now redundant.
41. **Table 8** below provides the Department's consideration to the removal of conditions relating to dredging activities.

Table 8 | consideration of removing dredging related activities

Applicant's Proposal ³	Applicant's Justification	DPHI consideration	Recommended condition ⁴
B2. Construction Environmental Performance			
Delete conditions B2.2, B2.3, B2.8, B2.9, B2.10, B2.10A, B2.10B, B2.11, B2.12, B2.22 and B2.22A	All capital dredging and slewing activities associated with the approval have been completed. Sediment sampling completed prior to the main stage construction program. As all these activities have been completed, it is recommended to delete the conditions that have been satisfied and to insert a new condition that make it clear that no further capital dredging or reclamation works will occur under this consent. Any future capital dredging would be subject to separate planning approval pathway.	As all capital dredging and slewing activities associated with the consent has been completed, the deletion of conditions associated with these activities is supported. It is noted that the conditions proposed to be deleted require: • conditions B2.2 and B2.3 monitoring for odour impacts and sediment sampling • condition B2.8 protection of seagrass beds in the vicinity of the dredge area • conditions B2.9, B2.10, B2.10A, B2.10B, B2.11 and B2.12 relates to the impact of dredging on water quality • conditions B2.22 and B2.22A provides construction noise criteria for dredging activities.	Delete conditions B2.2, B2.3, B2.8, B2.9, B2.10, B2.10A, B2.10B, B2.11, B2.12, B2.22 and B2.22A. Amend conditions B2.19 and B2.19A to remove references to dredging.

³ Deleted text in ~~strike through~~ and additional text in underline.

⁴ Additional text in underline.

Applicant's Proposal ³	Applicant's Justification	DPHI consideration	Recommended condition ⁴
		A copy of the consolidated consent conditions (original consent and modifications 1-17) is contained in Appendix 1 of Appendix A. Maintenance dredging of channels and berths is carried out in accordance with Chapter 5 of the Transport and Infrastructure SEPP and is not an activity covered by the consent. As such, the Department supports the deletion of the dredging conditions for the following reasons: • All dredging and land reclamation has been completed under the development consent. The dredging conditions B2.2, B2.3, B2.8, B2.9, B2.10, B2.10A, B2.10B, B2.11, B2.12, B2.22 and B2.22A. are no longer relevant or required. • A new condition B2.7A has been proposed to clarify that no further dredging and slewing activities are permitted under this consent. • Future dredging and slewing activities would require a separate	

Applicant's Proposal ³	Applicant's Justification	DPHI consideration	Recommended condition ⁴
		assessment and approval under the EP&A Act. Any future capital or maintenance dredging would be subject to the Transport and Infrastructure SEPP.	
Impact of Dredging B2.8 All activities associated with dredging and reclamation works shall be carried out in a manner that protects seagrass beds between the dredge area and Foreshore Beach, and between the dredge area and the Parallel Runway. <u>Dredging and reclamation</u> <u>B2.8</u> <u>All capital dredging and reclamation works have been completed. No further capital dredging or reclamation works will occur under this consent. Any future capital dredging would be subject to separate planning approval pathway.</u>	Capital dredging and reclamation works have been completed.	The Department notes that capital dredging and reclamation works permitted under the consent have been completed. No further dredging and reclamation is required or proposed under the consent. The Department considers that future capital dredging and reclamation works would be subject to an appropriate assessment and planning approval pathway under the EP&A Act. The Department has recommended a new condition which states that no further dredging and reclamation of land is permitted under the development consent.	Insert new condition: <u>Dredging and reclamation</u> <u>B2.7A</u> <u>No capital dredging or reclamation works are permitted under this consent.</u>

5.3 Community Consultative committee and community complaints

42. The Applicant seeks to amend the requirements for consultation with community, and remove duplication where certain conditions and outcomes are reported on various other forums (such as through the community consultive committee, and community complaints).
43. **Table 9** below provides the Department's consideration of community consultive committee, and community complaint processes.

Table 9 | Department's consideration of community consultative committee, and community complaints.

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
B2. Construction Environmental Performance			
Rail Noise Working Group B2.28 While expansion will generate an increase of trains on freight rail lines, the manager of the freight line RailCorp is subject to an Environment Protection licence with the EPA. The Applicant must establish a Rail Noise Working Group prior to the operation of the development. The Rail Noise Working Group shall address all associated rail noise issues and shall include but not be limited to RailCorp, ARTC, SPC, DPIE, relevant councils and representatives of Community Consultative Committee and is required to consult with relevant regulatory authorities including EPA.	Port Botany Community Consultative Committee - condition C3.2 covers reporting requirements for all rail noise.	The Department notes that operational rail noise issues are considered by the Port Botany Community Consultative Committee (CCC) and that a separate Rail Noise Working Group is no longer required. The Department notes that Transport for NSW did not provide any advice on the deletion of the Rail Noise Working Group condition. The proposed deletion of this condition is supported as rail noise is addressed as a standing agenda item for CCC meetings. Further, this amendment was considered in the Department's assessment of Mod 16. However, it appears the actual condition was not deleted / identified in the Mod 16	Delete condition B2.28

⁵ Deleted text in ~~striketrough~~ and additional text in underline

⁶ Additional text in underline

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
		instrument of modification. As this condition was previously accepted to be deleted under Mod 16, the Department will rectify this error by deleting this condition as part of this modification application.	
B2.29 Rail Noise Assessment Prior to construction of Stage 4 – rail duplicated line, a noise assessment should be conducted by the <u>Community Consultative Committee</u> Rail Noise Working Group to identify potential impacts on residents along duplicated line and to recommend mitigation measures, including identification of responsibility for implementation of such measures.	Amend to reflect the new committee title. It is noted, a Community Consultative Committee (CCC) has been established in accordance with condition B3.2 of this consent. As indicated by item 4 of the Port Botany Expansion Rail Noise Working Group meeting minutes 2 May 2014, the Rail Noise Working Group have an agenda item within each CCC meeting to discuss the PBE rail line and noise matters	Although the Applicant seeks to delete this condition, this condition was previously deleted under Mod 16. As such, no further action is required because this condition was previously removed.	N/A.
B3 & C3 Community information, involvement and consultation			
Community Information and Complaints Handling B3.1 & C3.1	The community may register comments, enquiries or complaints regarding Foreshore Beach and the Penrhyn Estuary Habitat with the Port Authority of NSW via a 24- hour	The Department notes that complaints about port operations are reported at each CCC meeting and the EPA receive copies of the CCC minutes.	Amend conditions B31. And C3.1 to require: <u>a copy of the complaints in the Complaints Register to be provided to the Department and the EPA upon</u>

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
The Applicant must meet the following requirements in relation to community consultation and complaints management: • all monitoring, management and reporting documents required under the development consent shall be made publicly available; • provide means by which public comments, inquiries and complaints can be received, and ensure that those means are adequately publicised; and • includes details of a register to be kept of all comments, inquiries and complaints received by the above means, including the following register fields: - the date and time, where relevant, of the comment, inquiry or complaint; - the means by which the comment, inquiry or complaint was made (telephone, fax, mail, email or in person);	telephone line, facsimile, email and/or by post. All contact details for the community are provided on the Port Authority's website and at publicly accessible locations. Complaints are recorded in the Port Authority's Complaints Register and managed by the Port Authority's Community Relations Manager. Details recorded in the Complaints Register comply with the requirements of this condition. Annual complaint numbers related to Foreshore Beach and the Penrhyn Estuary Habitat are routinely less than 5 per year. Further, operational complaints are reported through to the CCC (as per condition C1.2E). NSW Ports manages complaints and enquiries related to the terminal operations. NSW Ports has its own process to manage complaints and enquiries which is available on the NSW Ports website.	The OEMP also requires complaints to be reported and actioned, refer to condition C3.1. As complaints are recorded under various conditions of the consent, it is considered that conditions B3.1 and C3.1 should be amended to require that the complaints register is provided to the Department and EPA upon request. This is consistent with current practice that complaints and other matters are identified and recorded by the Applicant, and such reports are to be provided to the Department on request.	<u>request, and within seven days of the request being made.</u>

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
- any personal details of the commenter, inquirer or complainant that were provided, or if no details were provided, a note to that effect; - the nature of the complaint; - any action(s) taken by the Applicant in relation to the comment, inquiry or complaint, including any follow-up contact with the commenter, inquirer or complainant; and - if no action was taken by the Applicant in relation to the comment, inquiry or complaint, the reason(s) why no action was taken. • Provide quarterly reports to the Department and EPA, where relevant, outlining details of complaints received <u>Provide a copy of the Complaints Register to DPHI on request.</u>			

Applicant’s Proposal ⁵	Applicant’s Justification	DPHI consideration	Recommended condition ⁶								
Community Consultative Committee											
Amend conditions B3.2 and B3.3 (construction phase) and conditions C3.2 and C3.3 (operation phase) relating to the operation of the Community Consultative Committee	Amend the operation of the Community Consultative Committee (CCC) to reflect current needs of the operational port. The proposed amendments are consistent with the Department’s Community Consultative Committee guideline for State Significant projects: <table><tr><th>Guideline Requirement</th><th>Proposal</th></tr><tr><td>up to 3 representatives appointed</td><td>1 Applicant representative</td></tr><tr><td>a representative from each relevant council</td><td>1 Council representative</td></tr><tr><td>up to 7 (in total) community and stakeholder group representatives</td><td>3 representatives from the local community</td></tr></table>	Guideline Requirement	Proposal	up to 3 representatives appointed	1 Applicant representative	a representative from each relevant council	1 Council representative	up to 7 (in total) community and stakeholder group representatives	3 representatives from the local community	It is acknowledged that the project’s CCC was established prior to the publication of the Department’s Community Consultative Committee (CCC) Guideline (2023), and that the existing conditions requirements for the establishment of a CCC generally align with the intent of the updated guideline. Although the Department’s CCC guideline requires the provision of suitable facilities for committee meetings, it is silent as to whether meetings can occur online. The proposal for online meetings is supported as current technologies allow for it.	Amend conditions B3.2, B3.3, C3.2 and C3.3 to reflect the amendments proposed by the Applicant and allow for online meetings to occur. Allow for Randwick Council to be a member of the CCC. Delete the requirement to forward minutes and recommendations to the Department, as the minutes are publicly available on the Applicant’s project website and the Department has no operational role in the CCC beyond approving the chair and community members. Allow for online meetings to occur.
Guideline Requirement	Proposal										
up to 3 representatives appointed	1 Applicant representative										
a representative from each relevant council	1 Council representative										
up to 7 (in total) community and stakeholder group representatives	3 representatives from the local community										

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
	the Planning Secretary will appoint the community and stakeholder group representatives the Planning Secretary will appoint the community and stakeholder group representatives Request to restrict CCC meetings to occur in accordance with the agenda Propose that there is a requirement to allow for online meetings to be held if members of the CCC cannot attend on site meetings or if an online meeting preferred.		
C1 General Requirements			
C1.2E A complaint handling procedure shall be implemented for the Hayes Dock Services Area. Annual reports shall be provided to the Department <u>upon request</u>, outlining details of the complaints received. A register of complaints shall be kept and include the following:	Complaints are reported to the CCC and will be reported in the Hayes Dock Services Area Annual Environmental Management Report (AEMR).	It is noted that complaints management is required by various conditions and the CCC. As considered in the proposed change to condition B3.1, the Department supports the amendment to provide the complaints register on request. This will ensure that duplicative reporting on complaints is not occurring.	A complaint handling procedure shall be implemented for the Hayes Dock Services Area. A register of complaints shall be kept and include the following: - date and time, where relevant, of the comment, inquiry or complaint, - how the comment, inquiry or complaint was communicated,

Applicant's Proposal ⁵	Applicant's Justification	DPHI consideration	Recommended condition ⁶
- date and time, where relevant, of the comment, inquiry or complaint, - how the comment, inquiry or complaint was communicated, - any personal details of the commenter, inquirer or complainant that were provided. If no details were provided this should be recorded, - the nature of the comment, inquiry or complaint, - any actions taken by the Applicant in relation to the comment, inquiry or complaint, including any follow-up contact, and - if no action was taken, record the reason(s) why.			- any personal details of the commenter, inquirer or complainant that were provided. If no details were provided this should be recorded, - the nature of the comment, inquiry or complaint, - any actions taken by the Applicant in relation to the comment, inquiry or complaint, including any follow-up contact, and - if no action was taken, record the reason(s) why. <u>Copies of the complaints in the Complaints Register must be provided to the Department and the EPA upon request, and within seven days of the request being made.</u>

5.4 Deletion of various conditions

44. The Applicant seeks to remove and delete various conditions that have been satisfied and completed. These conditions range across various aspects of the project from delivery of permanent infrastructure to the rehabilitation of Penrhyn Estuary.
45. The Department's consideration of whether certain conditions should be deleted is presented in **Table 10**.

Table 10 | Department's consideration to remove and delete various conditions that have been completed

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
A2. Staging and Timing of Works			
A2.1 Pursuant to sections 80(4) and (5) of the Act, the development shall be undertaken in stages as follows: a) Stage 1 comprising the construction and operation of a container terminal and associated infrastructure within the development application area as described in Schedule 1, and generally consistent with the development layout and envelope shown in Schedule 3 <u>(which has been completed)</u> and described as follows: • Additional 550m plus 980m of berth face and approximately 51 hectares of land to the west of Brotherson Dock North	The footprint of Stage 1 has been constructed and all works related to this condition have been completed. Any works outside this condition will be subject to a separation development application.	Although the Applicant considers this condition can be amended because the development specified in condition A2.1(a), being Stage 1 of the development, has been completed, the Department does not agree with this amendment for the following reasons: • The original EIS had a different project description and footprint • Following a Commissions of Inquiry review (held in October and November 2004, and a second in February 2005) and Departmental assessment an alternative (similar) project footprint was recommended for approval and described in condition A2.1. • The Commission of Inquiry recommended an alternative project design, which the	Amend condition A2.1 to reflect the project as constructed as a result of Mod 7. Insert a new note explaining the amendments under Mod 7. Update schedule 3 figure of the consent to reflect Mod 7. Amend condition A2.1 to include references to the built elements of the project as identified in conditions, B2.23, B2.23A and B3.5 which are recommended to be deleted. Refer to conditions B2.23, B2.23A and B3.5 below for the justification supporting this amendment.

⁷ Deleted text in ~~strike through~~ and additional text in underline.

⁸ Additional text in underline.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
○ Provision for an extra 4 nominal berths ○ Dedicated road access to Foreshore Road via a bridge across the channel separating the terminal from the existing shoreline ○ Rail access to the new terminal area by means of an extension of the existing Botany Freight Rail Line parallel to Foreshore Road including a rail bridge and culverts ○ Two new rail sidings ○ An inter-terminal access road and two additional rail storage sidings parallel to the northern boundary of the Patrick Terminal ○ Reclamation adjacent to Foreshore Road to create a recreational boat ramp, tug and support vessel facility ○ Restoration and enhancement of Foreshore Beach and adjoining landscape area; and,		Department did not adopt. An alternative project layout was recommended for the Minister's approval. • This section provides the legal description of the project. If removed there will be no other legal document that details the extent of the project footprint and the approved development and its components. • As this project is captured under the SSD pathway, any future modifications are required to be the same or substantially the same development as the development for which the consent was originally granted, under section 4.55 of the EP&A Act. • By deleting the description of the project, it may be difficult to determine if any future modification are the same or substantially the same development.	

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Ecological habitat mitigation and enhancement works within Penrhyn Estuary. b) Stage 2 comprising the construction and operation of approximately 12 hectares of additional terminal area and approximately 320m of additional quay line to accommodate a nominal fifth berth located at the northern end of the Stage 1 development.		The Department does not consider that sufficient justification has been provided for the proposed amendment and on balance considers that condition A2.1(a) must be retained as it provides details of the approved Stage 1 development. However, certain elements of this condition are required to be updated to reflect Mod 7, approved on 20 March 2009. Mod 7 modified the approved rail configuration to allow the then Sydney Ports Corporation to pursue either the originally approved rail configuration or an Alternate Rail Configuration along the Inter-Terminal Road Access Corridor. The Alternative Rail Configuration was ultimately pursued and subsequently completed. As such, there is no intention or ability to construct the originally approved rail siding parallel to Foreshore Road, as this element is effectively no longer included in the approved design. The Department also recommends that certain built elements identified in conditions B2.23, B2.23A and B3.5 be included in the description of Stage	

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
		1 as these conditions are proposed to be deleted.	
A2.2 Stage 2 works will be, with the approval of the Minister, the subject of a separate consent. Prior to the Minister considering granting consent for Stage 2 works: a) The Applicant shall submit, for the endorsement of the Minister, a report, prepared by an independent panel of experts appointed by the Minister and funded by the Applicant, that investigates and evaluates the following: ○ environmental impacts and economic feasibility of an extension (eastern or western) to Brotherson Dock South to accommodate an additional shipping berth; and, ○ an evaluation of the environmental and economic merits of an extension of Brotherson Dock South against	Works relating to this condition have been completed and submitted to the Department. Further, as Stage 2 works have been completed, the note included in condition A2.3 makes this condition redundant.	The Department supports the deletion of this condition for the following: • This condition set up the planning assessment framework for stage 2 of the project which at the time of the Department's assessment was deferred subject to future consideration. • The report and findings for the outcomes of stage 2 were submitted, and development consent was given on 22 August 2006. • This element of the project has since been constructed.	Delete condition A2.2.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Stage 2 of the development (Brotherson Dock North). b) The report shall be submitted to the Minister within 3 months of the date of this consent or as otherwise directed by the Minister. The requirements of the report in terms of its scope and level of assessment shall be determined by the Secretary.			
A2.3 In seeking the Minister's approval for Stage 2 consent, the following matters must be demonstrated to the Minister's satisfaction: a) The provision of additional quay line for a nominal fifth berth would not preclude or hinder the introduction of an additional stevedore operation at the port; and b) That the environmental and economic benefits of an expansion in this location outweighs the benefits of providing additional quay line in the form of an	Works relating to this condition have been completed, therefore the note included in this condition makes this condition redundant.	See above, as per condition A2.2 the Department supports the deletion of this condition.	Delete condition A2.3.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
extension to Brotherson Dock South. <i>Note: under the provisions of Section 80(5) of the Act, the development subject to the Stage 2 consent has been assessed as part of DA 49411-2003-i and would not require a separate development application to be lodged.</i>			
A2.4 Prior to the commencement of construction, the applicant shall prepare, and submit, for the approval of the Minister, a Port Freight Logistics Plan which: (a) examines existing container freight logistics and identifies areas for improvement in the efficiency of container movements and rail interfacing through operational, technological or administrative changes; (b) proposes and develops an implementation program to maximise the use of rail infrastructure;	Pre-construction condition completed and approved.	Although this plan was submitted and approved, there have been consequential improvements to the surrounding road network (Sydney Gateway, WestConnex) and rail upgrades (Botany Rail Duplication and Cabramatta Rail Loop), technological improvements that have improved port operations, and the sizes of trucks have increased over the years allowing for more movement of freight. In addition, it is considered that the port operators will continue to evolve to keep up with market demand, as it is within their best interests to operate as efficiently as possible. The Alternate Rail Configuration of Modification 7, was also the result from the outcomes of the Port Freight	Delete condition A2.4.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
(c)proposes and develops measures to improve the scheduling and utilisation of container truck movements so as to minimise the number of trucks attending the port and truck turnaround times; and (d)proposes an implementation program (including deliverable milestones and efficiency indicators) so as to ensure efficient and advanced Port freight logistics consistent with best practice. The plan must be submitted and approved.		Logistics Plan (PFLP) which was submitted for approval in August 2007. The then Minister on 21 May 2008 advised the PFLP was approved.	

B2. Construction Environmental Performance

Consultation with Sydney Water B2.13 Prior to commencement of construction, the Applicant is required to consult with Sydney Water regarding the likely requirements from Sydney Water to obtain a section 73 Compliance Certificate.	Sydney Water works for the site are completed. Any future works will be undertaken as part of a separate DA.	The Department referred the modification application and modification report to Sydney Water for advice. Sydney Water advised they have no objection to this condition being deleted. As such this condition is recommended to be deleted.	Delete condition B2.13.
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Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Safety Audit B2.15 The Applicant must undertake a safety audit in accordance with TfNSW (RMS) guidelines upon completion of works but prior to operation to ensure the safety of any road works, traffic management facilities, cycling and pedestrian provisions undertaken as part of the proposed works.	All works affecting other road users and pedestrians are completed. The safety audit is no longer necessary.	Road infrastructure delivered as part of the PBE project included the construction of internal roads within the reclamation area, a new road bridge connection from Foreshore Road via Sirius Road, and the signalisation of this intersection. The project also involved the grade separation of Penrhyn Road to facilitate both rail and road access to other port precincts. Additional road and transport improvements comprised the extension of Hale Street to Foreshore Road, the development of a public boat ramp and associated parking facilities, a pedestrian bridge linking to Sir Joseph Banks Park, and the construction of a pedestrian overpass across the Botany Freight Rail Line at Banksia Street. The Department notes public roads located outside the Lease Area are under the jurisdiction and responsibility of State and local government authorities. In recent years improvements have been made to the surround road network, such as	Delete condition B2.15.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
		Sydney Gateway and WestConnex. These improvements to the road network have occurred post operation of this project. As such the Department considers that road safety audits are no longer required.	
Port Traffic Handbook B2.16 Prior to construction the Applicant must prepare a handbook and distribute it to drivers of construction related vehicles providing information on accepted routes, constraints to traffic and preferred hours of use and amenities on such routes to ensure that the impact of traffic growth on local traffic is minimised.	Handbook is complete and any updates will be managed within the construction contract.	The proposed deletion of this condition is accepted because the proposed amended condition B2.14 requires the implementation of measures to minimise the impact of traffic generated during construction of the development on Foreshore Road and Botany Road traffic movements. As construction traffic is addressed via B2.14, this condition is a duplicate and can be deleted.	Delete condition B2.16.
Rail Siding Capacity B2.17 To maximise the increase in rail mode share associated with the expansion of the Port, rail siding capacity shall be provided in accordance with the	The Plan required by condition A2.4 has been completed.	Modification 7, approved on 20 March 2009, modified the approved rail configuration to allow the then Sydney Ports Corporation to pursue either the originally approved rail configuration or an Alternate Rail Configuration along the Inter-Terminal Road Access	Delete condition B2.17. Update schedule 3 to reflect the Alternative Rail Configuration which was pursued and constructed.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Plan required by condition A2.4 of Schedule A.		Corridor. The Alternative Rail Configuration was ultimately pursued and subsequently completed. As such the Applicant has advised they have no intention or ability to construct the originally approved rail siding parallel to Foreshore Road, as this element is effectively no longer included in the approved design.	
Rail Access to New Terminal B2.18 The Applicant shall ensure that Grade separation of Penrhyn Road over the rail access to the new berth includes the grade separation of the inter-terminal road over the rail access to Patrick's terminal. This is required to ensure efficient operation of both road and rail access to all existing and proposed new berths.	Grade separation works have been completed.	This work has been constructed. This condition can be deleted as no further action is required.	Delete condition B2.18.
Construction of Noise Barrier B2.23 To help minimise the impact of operational noise on the surrounding area, a noise barrier shall be	Noise barrier works completed.	The noise barriers identified in this condition have been constructed. As such this condition has been satisfied and can be deleted.	Delete condition B2.23.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
constructed by the Applicant along northern and eastern boundaries of the site prior to the commencement of operations. The applicant must seek appropriate independent expert advice to ensure the design of the noise barrier has regard to the flight path requirements of bird species using the area.		To ensure the constructed noise barriers are appropriately captured as part of the approved project, it is proposed to delete this condition and update condition A2.1 to reference the noise barriers, thereby incorporating them into the overall project description.	Amend condition A2.1 to include reference of the noise barriers as part of the Stage 1 development.
B2.23A Subject to the alternative rail option being implemented as described within the report listed in condition A1.11), the Applicant shall construct a three metre high noise barrier along the northern edge of the Inter-terminal Access Road Corridor prior to the commencement of operations. The bottom two metres of the barrier shall be opaque and the top one metre shall be of transparent material sufficiently patterned to minimise impacts to bird species utilising the adjacent Penrhyn Estuary.	Noise barrier works completed.	The noise barrier identified in this condition has been constructed. As such this condition has been satisfied and can be deleted. To ensure the constructed noise barriers are appropriately captured as part of the approved project, it is proposed to delete this condition and update condition A2.1 to reference the noise barriers, thereby incorporating them into the overall project description.	Delete condition B2.23A. Amend condition A2.1 to include reference of the noise barrier as part of the Stage 1 development.
Port Traffic and Rail Noise Management Plan	Condition completed.	This amendment is supported as it was considered in the Departments	Delete condition B2.27.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
B2.27 Within two years of commencement of terminal operations at the development, a Port Traffic and Rail Noise Management Plan shall be prepared by the Applicant in consultation with relevant stakeholders, including the Community Consultative Committee, EPA, DPIE, Botany Council, SSROC and RailCorp. The Plan shall include consideration for traffic re-routing, traffic clustering and traffic rescheduling.		assessment of Mod 16. However, it appears the actual condition was not deleted / identified in the Mod 16 instrument of modification. As this condition was previously accepted to be deleted under Mod 16, the Department will rectify an error and remove this condition as part of this modification application. At the time the Department considered Mod 16, its position was that noise impacts associated with the approved use of the site had been adequately addressed, assessed, and managed through the OEMPs required under the approval, taking into account those already in place. Additionally, the Department supports the deletion of the condition on the basis that any ongoing noise-related matters will continue to be addressed and discussed through the CCC.	
Penrhyn Estuary (aquatic and terrestrial, surface water quality and related issues)	Pre-construction condition completed. This condition was covered by the Penrhyn Estuary Habitat Enhancement Plan, including Appendix K – flushing protocol which was approved in March	Randwick City Council does not support the deletion of conditions B2.30 and B2.31 because these conditions require sediment control and ongoing habitat maintenance to	No changes proposed.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Terminal Design and Flushing of Penrhyn Estuary B2.30 Prior to the commencement of construction, the Applicant must demonstrate to the satisfaction of the Secretary that the detailed terminal design will achieve predicted water quality outcomes in Penrhyn Estuary. Where appropriate, measures such as culverts, pipes or other water channelling devices shall be incorporated into the design to ensure enhanced flushing and maximum maintenance of water quality in Penrhyn Estuary.	2007, under which monitoring, and activities have now been completed.	uphold perpetual offset obligations and project the ecological values of Botany Bay. CPHR requested further information to demonstrate that water quality outcomes in Penrhyn Estuary have been achieved under condition B2.30. This advice remains outstanding. Taking into account the above comments from Council and CPHR, the Department considers that the condition should not be deleted.	
Penrhyn Estuary Habitat Enhancement Plan B2.31 Prior to the commencement of enhancement works, the Applicant shall prepare a Penrhyn Estuary Habitat Enhancement Plan in consultation with Botany and Randwick Councils and the Community Consultative Committee,	Condition has been completed. The Penrhyn Estuary Habitat Enhancement Plan (PEHEP) was completed in accordance with condition B2.31 and approved in 2007 (Federal Approval dated 20 March 2007. State Approval dated 23 March 2007). Construction of the Penrhyn Habitat estuary was completed in	Randwick City Council does not support the deletion of B2.31 because this condition requires ongoing habitat maintenance to uphold perpetual offset obligations and project the ecological values of Botany Bay. Community member feedback also raised concerns noting noted the targets for bird species in the Penrhyn Estuary offset were not met and that	No changes proposed.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
to be agreed between SPC, EPA, DPI (Fisheries), DNR and DPIE. The Plan is to include: — details of the proposed enhancement works, including design, staging and timing for completion of key tasks and timeframe for completion of works; — staging to include definition of completion of Stage 1 for purposes of evaluation of success; — details of success criteria for enhancement works, including measurement of impacts on bird numbers in accordance with a monitoring plan, levels and concentrations of food organisms required for birds, acceptable saltmarsh cover; use of existing environmental status as the benchmark for 'no negative impact' together with comparison of relevant reference sites; — agreement on time periods for determination of success;	2011. No further construction is required in the estuary. A comprehensive post-construction 5-year environmental monitoring program was undertaken by Cardno from 2012 to late 2018 in accordance with the PEHEP. All environmental monitoring required under the PEHEP was completed. The Annual Environmental Management Report (AEMR) 2020, submitted to the Department under condition B4.2, provided the details of the results of the PEHEP environmental monitoring and completion of the monitoring program in the End of Project Monitoring Report.	there was no accountability for the health of Botany Bay. CPHR is also currently in discussions with the Applicant and Port Authority regarding the satisfaction of Success Criterion 1 - Shorebird Usage under the PEHEP. CPHR has requested the retention of condition B2.31 until discussions regarding condition B2.32 have been resolved. This is because the outcomes of condition B2.31 can influence the offsetting under condition B2.32. Should the works under condition B2.31 not be deemed successful and that further works would also be unlikely to be successful, the Applicant would be required to provide funding for compensatory conservation outcomes that are consistent with the Green offsets paper (EPA, 2002). Due to the complexity and the linkage between B2.31 and B2.32 it is considered that condition B2.31 should	

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
—details of contingency plans for specific components for example, erosion of sand/mudflats; —inclusion of a Vegetation Management Plan, providing details of method for mangrove removal and control —inclusion of Marine Mammal Management Plan, prepared in consultation with EPA and DPI (Fisheries); —details of management and monitoring requirements including management and monitoring of surface water quality and groundwater (in liaison with EPA); —details of monitoring of extent, expansion and condition of estuary seagrass, including impact of turbidity, and required management responses; —details of responsibilities for ongoing maintenance of estuary, including maintenance of Stormwater Quality Improvement Devices (SQIDS);		not be deleted or amended until condition B2.32 has been resolved.	

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
—any other requirements identified and agreed on between the Applicant and relevant agencies. The plan must be submitted and approved by the Secretary prior to the commencement of construction and all works undertaken to the satisfaction of the Secretary.			
Visual Amenity Plan B2.37 Prior to the commencement of construction, the Applicant is to prepare a Visual Amenity Management Plan in consultation with Botany and Randwick Councils, SSROC and the Community Consultative Committee. The Plan shall include a Public Recreation and Ecological Plan as described in the EIS, and details of other measures to reduce the visual impact of the development. The Plan shall include details of: —landscaping plans;	Pre-construction condition completed and approved April 2007.	The removal of this condition is appropriate. The main justification for this consideration is because the project is located near Sydney Kingsford Smith Airport, which means the port has restrictions on the type of lighting, height of cranes, landscaping that does not attract birds, and containers stacked to certain heights. Further should port operations in the future extend to the undeveloped land in the project area, they would be subject to the above operating restrictions. The overarching intent of this Plan has been implemented through the delivery of key components within the Foreshore Beach and Penrhyn Estuary area, including the public boat ramp,	Delete condition B2.37.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
design of pedestrian bridge linking Foreshore Beach with Sir Joseph Banks Park; quay crane specification; container stacking heights; terminal lighting; materials and colours; and noise wall design.		amenities, footbridge, pedestrian pathways and associated works. The Plan does not identify any ongoing obligations.	
Hydrodynamic and Coastal Processes B2.40 To ensure that any impacts of the development on hydrodynamics and coastal processes over time is understood, a monitoring program, as outlined in the EIS, is to be implemented which will include: continuous recording of the wind and wave climate in Botany Bay and offshore; beach profiling or aerial photographic record / photogrammetric analysis of Silver Beach, Towra Beach, Spit Island,	Condition has been completed and relates to the Construction phase (B2 Construction Environmental Performance), not the operation. Dredging, reclamation and construction of the terminal footprint infrastructure works were completed in 2011. Monitoring of wind and wave data was undertaken from May 2007 to August 2014. Beach surveys were undertaken by Port Authority after construction between January 2012 and June 2016 (Port Authority, 2016). Port Authority's ongoing assessment of sand accumulation at the Mill	Both councils have raised concerns with deleting this condition due to claimed impacts on Lady Robinsons Beach. Sydney Water, DCCEEW and Port Authority of NSW raised no objection to the proposed deletion of this coastal monitoring related condition. The Department considers the monitoring requirements of this condition have been completed, and that ongoing management of these areas is the responsibility of the Port Authority.	Delete condition B2.40.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
Lady Robinsons Beach and nearshore shoals; and - ongoing assessment of the need for removal of accumulated sand at the groyne and any replenishment required at the new boat ramp.	Stream groyne revealed that sand removal was required, which was undertaken in 2012. The sand removed was distributed over the length of Foreshore Beach. Subsequently, Port Authority's ongoing monitoring revealed that sand migration and beach erosion has significantly impacted the Foreshore Beach shoreline. As a result, 3 new groynes were installed at Foreshore Beach in 2016 to reduce the impact of sand migration and beach erosion (for further details refer to condition B2.40A). Sand nourishment was carried out following completion of groyne construction which restored the beach amenity to a high standard. Based on the assessment of the above works no further monitoring was considered necessary for Silver Beach, Towra Beach, Spit Island, Lady Robinsons Beach. However, the Port Authority will continue to review the performance of Foreshore Beach, which is the only beach where the Port Authority has retained responsibility for maintenance, until such time as it		

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
	is satisfied that the beach has sufficiently stabilised to inform any ongoing mitigation measures.		
B2.40A A In the event that monitoring indicates that wave action at Foreshore Beach intensifies beach erosion in a manner that adversely impacts on seagrasses, the Proponent shall identify in consultation with DPI, and submit for the approval of the Secretary, additional protection measures (such as wave energy dissipation devices) that the Proponent will implement to address these adverse impacts. The Proponent shall specify the scope and timing of additional protection measures, and shall implement those measures to the satisfaction of the Secretary, within such period as the Secretary may require.	Condition has been completed. Port Authority's ongoing monitoring of Foreshore Beach revealed that sand migration and beach erosion has significantly impacted the beach shoreline. A comprehensive solution to the erosion issue would need to include suitable treatment of the two stormwater outlets discharging along the beach. To address this issue, the applicant construction of three groynes with two of the groynes incorporating the stormwater pipes which are extended seawards within those groynes. The proposal was submitted on 22 October 2015 to the Secretary who approved it in correspondence dated 1 December 2015. The 3 groynes were installed between June and December 2016.	It is considered this condition can be deleted as the additional measures required by this condition have been approved and constructed. As this condition sets up the process for the consideration of additional measures, and that these measures have since been installed, the condition does not require further actions. As such it is considered that the condition has been met and can be deleted.	Delete condition B2.40A.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
B2.43 The Applicant shall develop an Emergency Response and Incident Management Plan in consultation with DEC, DOP, Council and the Community Consultative Committee. The Plan must be approved by the Director-General prior to the commencement of construction and shall detail: — terminal security and public safety issues; — effective spill containment and management; — effective fire fighting capabilities; — effective response to emergencies and critical incidents; and - a single set of emergency procedures, consistent with the existing Port Botany Emergency Plan, should be developed that can be scaled as appropriate for any incident or emergency.	As construction works are completed, this is covered under C2.20 (terminal operations) of the consent. Any works outside this condition will be subject to a separation development application. NSW Ports has an overarching Emergency Response and Incident Management Plan (ERIMP) which applies to all NSW Ports' managed lands within the Port Botany Precinct. Even the port operators have their ERIMPs.	A similar condition C2.20 remains in place for operational matters, and all activities port tenants have their own ERIMP. The Applicant has an overarching ERIMP which covers the Port Botany Precinct, including any undeveloped land. Considering ERIMPs are in place by port tenants and NSW Ports, this condition can be deleted.	Delete condition B2.43.

Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
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B3. Community information, involvement and consultation

Community Enhancement B3.4 Prior to the commencement of construction of terminal footprint infrastructure, the Applicant shall prepare and submit for the approval of the Secretary, a Community Enhancement Program (CEP) to fund (or provide in kind) community infrastructure and services in the vicinity of Port Botany. The CEP shall include a contribution toward the development of a multi purpose hall / gymnasium at Mascot High School. The Applicant establish a fund and contribute to it the sum of \$3 million for the purposes of implementing the CEP. In preparing the Community Enhancement Program the Applicant shall consult with the Community Consultative Committee, Botany Bay City Council and Randwick City Council.	The Community Enhancement Program (CEP) has been finalised and approved by the Secretary. The Applicant established a fund and \$3 million for the purposes of implementing the CEP.	The total funding allocation of \$3 million was directed towards the provision of a new gymnasium at J.J. Cahill Memorial High School. The gymnasium was officially opened in May 2010 by the then Premier. No ongoing maintenance or funding arrangements are in place in relation to this program. It is acknowledged that this condition has been completed. As such it can be deleted.	Delete condition 3.4.
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Applicant's Proposal ⁷	Applicant's Justification	DPHI consideration	Recommended condition ⁸
B3.5 As part of terminal footprint infrastructure construction, the Applicant shall construct a pedestrian bridge accessible to wheelchairs over the Botany Freight Rail line at Banksia Street. Note: the pedestrian bridge required in condition B3.5 does not form part of the Community Enhancement Program in Condition B3.4	The pedestrian bridge required by the condition has been constructed.	Deletion of this condition is supported as the pedestrian bridge has been constructed. However, to ensure the constructed pedestrian bridge is appropriately captured as part of the approved project, it is proposed to delete this condition and update condition A2.1 to reference the pedestrian bridge, thereby incorporating them into the overall project description.	Delete condition B3.5. Amend condition A2.1 to include reference to the pedestrian bridge as part of the overall Stage 1 development.

6 Evaluation

46. The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ecologically sustainable development (**Section 3 and 5**), advice from government agencies and local councils (**Section 4**).
47. The Department has reviewed the modification, the Applicant's response to agency advice and Department's requests for further information, and assessed the merits of the proposed modification.
48. If approved, the modification would
 - update references to legislation, streamline operational conditions for improved efficiency, remove redundant conditions and amend the frequency and scope of compliance based conditions
 - contemporise the development consent to represent the current operations on the site, noting that dredging and reclamation of the site has been completed.
49. The Department has recommended a range of amendments to conditions to facilitate these outcomes and formed the opinion that the modification should be approved, subject to amendments in the Instrument of Modification (**Appendix D**).

Glossary

Abbreviation	Definition
Applicant	NSW Ports
BDAR	Biodiversity Development Assessment Report
CEMP	Construction Environmental Management Plan
CPHR	Conservation Programs, Heritage and Regulation Group of the NSW Department of Climate Change, Energy, the Environment and Water
Council	Bayside Council and Randwick City Council
DCCEEW	Department of Climate Change, Energy, the Environment and Water
Department	Department of Planning, Housing and Infrastructure
DPIRD – Fisheries	Fisheries - Department of Primary Industries and Regional Development NSW
EIS	Environmental impact statement
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPI	Environmental planning instrument
EPL	Environment protection licence
ERIMP	Emergency Response and Incident Management Plan
ESD	Ecologically sustainable development
IPC	Independent Planning Commission
Minister	Minister for Planning and Public Spaces

Abbreviation	Definition
MOD	Modification
OEMP	Operational Environmental Management Plan
PBE	Port Botany Expansion
Planning Systems SEPP	State Environmental Planning Policy (Planning Systems) 2021
SEARs	Planning Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning, Housing and Infrastructure
SEPP	State environmental planning policy
SSD	State significant development
TfNSW	Transport for NSW
Transport and Infrastructure SEPP	State Environmental Planning Policy (Transport and Infrastructure) 2021

Appendices

Appendix A – List of referenced documents

The following supporting documents and supporting information to this assessment report can be found on the NSW Major Project Portal via the following link

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-18-operational-administrative-amendments> as follows:

- Modification Report
- Appendix 1 – current consolidated consent
- Appendix 2 – Proposed amendments
- Appendix 3 – Emergency Response Plan
- Appendix 4 – SSI Template Conditions of Approval (Liner Infrastructure)
- Response to Request for Additional Information (Modification 18 of the Port Botany Expansion (DA494-11-2003-i-Mod-18) – letter dated 3 March 2026
- Response to Submission Report DA494112003IMod18 – dated March 2026
- Architectural plan (Alternate Rail Configuration)
- Response to Second Request for Additional Information (Modification 18 of the Port Botany Expansion (DA494-11-2003-i-Mod-18) letter dated 2 July 2026.

Appendix B – Submissions and government agency advice

All submissions, council comments and government agency advice can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-18-operational-administrative-amendments>

Appendix C – Statutory considerations

Objects of the Act

A summary of the Department's consideration of the relevant objects section 1.3 of the EP&A Act and matters listed under section 4.15(1) of the EP&A Act are provided in **Table 11** and **Table 12** below.

Table 11 | Objects of the EP&A Act and how they have been considered

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	By contemporising the development consent the management of the state's resources are improved.
(b) to promote the supply, delivery and maintenance of housing, including affordable housing,	Not applicable.
(c) to promote productivity through the development and management of the State and its resources,	The proposed amendments will provide for administrative efficiencies in the operation of the port facilities
(d) to protect the environment, including the conservation of threatened species of native animals and plants and ecological communities and their habitats,	The project is built and operational. The modification does not require any land clearing.
(e) to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention,	Not applicable as the project is built and operational.
(f) to promote the sustainable management of built and cultural heritage, including Aboriginal cultural heritage,	The modification would not directly impact Aboriginal cultural heritage or historic heritage.

Object	Consideration
(g) to promote good design, amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings,	The modification would not require material changes to the existing built environment, except for vacant land on the site that would be subject to future hard stand construction.
(h) to provide opportunities for participation in environmental planning and assessment,	- The modification application was placed on the Department's Major Projects website. Subscribers to the website were notified via email of the application. - The Department did not exhibit the modification application. However, it notified and invited comments from relevant government agencies, Bayside Council and Randwick City Council.
(i) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The modification is a continuation of a longstanding historical land use.
(j) to promote a proportionate and risk-based approach to environmental planning and assessment,	The proposed modification and recommended modifying instrument of consent takes into consideration a risk based assessment to update references to legislation, streamline operational conditions for improved efficiency, remove redundant conditions and amend the frequency and scope of compliance based conditions.
(k) to promote the orderly and economic use and development of land.	- The modification represents a continuation of a longstanding historical land use which is permissible on the subject land. The modification would not require additional land clearing and would result in no additional impacts to built or natural features, beyond what is already approved. - The Department considers this represents an orderly and economic use of the land.

Table 12 | Matters for consideration under section 4.15 of the EP&A Act

Matter	Consideration
(a) the provisions of	
(i) any environmental planning instrument, and	The Department has considered the relevant environmental planning instruments in its assessment of the modification detailed in Appendix C .
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	N/A.
(iii) any development control plan, and	N/A.
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	N/A.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	The Department has assessed the proposed modification in accordance with relevant matters prescribed by the EP&A Regulation.
(v) repealed	N/A.
that apply to the land to which the development application relates,	
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department considered the likely impacts of the modification in detail in Section 5. The proposal does not propose any physical amendments or changes. The changes relate to • updating legislation references

Matter	Consideration
	- streamlining operational conditions to improve efficiency - removing redundant conditions – that have been closed out - amending the frequency / scope of compliance based conditions.
(c) the suitability of the site for the development,	The modification is permissible with consent, the site is suitable as it is located on SP1 Special Activities zoned land and RE1 zoned land under State Environmental Planning Policy (Transport and Infrastructure) 2021 and is considered to have no adverse impact on surrounding uses.
(d) any submissions made in accordance with this Act or the regulations,	Matters raised in advice received from government agencies and councils have been summarised in Section 4 and considered as part of the assessment of the proposed modification in Section 5 .
(e) the public interest.	The Department considers the proposed modification to be in the public interest as it enables the continued use of port facilities and result in a more efficient operation of the port.

Environmental Planning Instruments (EPIs)

To satisfy the requirements of section 4.15(1)(a)(i) of the EP&A Act, the following considers the relevant provisions of the EPIs that govern the carrying out of this project and have been taken into consideration in the Department's environmental assessment:

- State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP); and
- State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP).

The modification remains consistent with the applicable zoning controls. No changes are proposed to the nature or scale of the approved operations on the project site. Instead, the modification seeks

to improve the efficiency of the existing consent conditions, thereby supporting the ongoing and effective operation of the project. **Table 13** provides further consideration.

Table 13 | Consideration of SP1 Zone Objectives under the Transport and Infrastructure SEPP

Objective	Department's Consideration
To provide for special land uses that are not provided in other zones	The proposed modification allows for continued use of current operations within the Port Botany Expansion area.
To provide for sites with special natural characteristics that are not provided for in other zones	The proposed modification will enable the continued use of waterfront areas in the Port Lease Area.
To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises adverse impacts on surrounding land	The proposed modification allows for continued use of current operations within the Port Botany Expansion area.
To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities.	The proposed modification allows for continued use of current operations within the Port Botany Expansion area.
To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure.	The proposed modification allows for continued use of current operations within the Port Botany Expansion area.
To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle.	The proposed modification would continue to support operations at Port Botany.
To facilitate development that by its nature or scale requires separation from residential area and other sensitive land uses.	The proposed modification would continue to support operations at Port Botany.
To encourage employment opportunities	The proposed modification would continue to support operations at Port Botany.

Resilience and Hazards SEPP

The site is mapped as a coastal environment area and as a coastal use area under the Resilience and Hazards SEPP. However, section 2.5(2) of the SEPP outlines that Chapter 2 of the SEPP does not apply to Lease Areas identified in State Environmental Planning Policy (Three Ports) 2013 (now the Transport and Infrastructure SEPP). The site is identified as being in the Port Botany Lease Area under the Transport and Infrastructure SEPP. Therefore, Chapter 2 of the Resilience and Hazards SEPP does not apply.

Chapter 3 considers hazardous and offensive developments; however, the proposed modification does not make changes to development that would introduce new hazards or intensify the volume of hazards on site. The proposed modification only updates the reference to the Department's current Hazardous Industry Planning Advisory Guidelines (DoP 2011).

The proposed modification does not require land to be remediated as the modification seeks administrative amendments to the consent.

Appendix D – Recommended modifying instrument of consent

The recommended modifying instrument can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mod-18-operational-administrative-amendments>