



SECTION 4.55(2) APPLICATION

STATEMENT OF MODIFICATION & ENVIRONMENTAL EFFECTS

NSW Department of Planning,
Infrastructure & Environment

Lots 1010 in DP 1182871 No. 11 Simblist Road, PORT BOTANY

Modification of Development Consent DA-42-10-2007-i (MOD 1) to permit an increase in container stacking height (maximum 7 high empty containers) within an approved container park at Port Botany.

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Issue No	Amendment	Date
A	INITIAL DRAFT REPORT	7 MAY 2021
B	REVISED ISSUE TO CLIENT	17 SEPTEMBER 2021
C	FINAL FOR ISSUE TO CLIENT	20 SEPTEMBER 2021
D	REVISED ISSUE TO DPIE	23 SEPTEMBER 2021

REPORT PREPARED BY:

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BTP (UNSW), CERT T&CP (Ord4), MPIA



DIRECTOR,
KEY URBAN PLANNING

WAIVER

THIS REPORT HAS BEEN PREPARED IN ACCORDANCE WITH AND FOR THE PURPOSES OUTLINED IN THE SCOPE OF SERVICES AGREED WITH KEY URBAN PLANNING AND THE CLIENT (HORNSBY SHIRE COUNCIL). IT HAS BEEN PREPARED BASED ON THE INFORMATION SUPPLIED BY THE CLIENT, AS WELL AS INVESTIGATION UNDERTAKEN BY KEY URBAN PLANNING AND ANY SUB-CONSULTANTS ENGAGED BY THE CLIENT FOR THE PROJECT.

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SUMMARY

1.1 BACKGROUND & PROPOSAL

Key Urban Planning have been engaged to assist Tyne Container Services in gaining approval to permit an increase in container stacking height within an established container park at **Lot 101 in DP 1182871 No. 11 Simblist Road, PORT BOTANY** (the “site”).

Development Consent No. DA-42-10-2007-i (the “DA”) for the “*Construction and operation of an empty container storage depot at Simblist Road, Port Botany, Randwick Local Government Area*” on the site was granted by Minister for Planning on 27 February 2008.

On 22 March 2010 the Director, infrastructure Projects approved a “*Modification to allow the stacking of containers within the site to be increased by one container to a maximum height of six containers*” (DA-42-10-2007-i (MOD 1)).

The site is located with frontage to Simblist Road. The subject site is an irregular shaped allotment comprising a 223.135 metre frontage to Simblist Road with a total area of 1.443ha and is accessible from the northeastern side of the site from Simblist Road. The subject site contains an existing empty container depot. Terminals Pty Limited operates an existing filling station and bulk liquid storage tank to the north east of the site. The subject site is not affected by any significant site constraints and currently operates as a 24-hour empty container depot.

The visual character of the site and surrounding area is predominantly port related activities with the surrounding landscape being dominated by large petroleum tanks and container cranes associated with port-related activities. The site is predominantly screened from view from the foreshore area of Yarra Bay and Frenchman’s Bay by a revetment wall adjoining Prince of Wales Drive which is approximately 8.5 metres high.

The site is in a container park precinct located on the edge of the Port Botany Lease area.

Figure 1 – Prince of Wales Drive revetment wall



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Figure 2 – Aerial Site Plan (courtesy six maps)



On 6 November 2020, State Environmental Planning Policy (Three Ports) Amendment (Shipping Containers) 2020 was gazetted. The amendment inserted a new clause 29A in schedule 1 that states (in part):

"29A Shipping container storage and stacking

(1) The storage and stacking of shipping containers on land shown edged in red and identified as "Port Botany Lease Area" on the Lease Area Map.

(2) The shipping containers must—

(a) not be stored or stacked at a height of more than—

(i) if the shipping containers are empty—7 shipping containers, or

(ii) in any other case—5 shipping containers, and

(b) not contain dangerous goods, and

(c) be located on the site so that surface water run-off drains to a stormwater drainage system or to a landscaped area."

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The clause was inserted in response to import and export restrictions that were occurring in response to the COVID 19 epidemic. Subclause 6 imposed a 'sunset provision' repealing the stacking height variation 6 months after the commencement of the amendment. The proponent seeks to modify the terms and conditions of the current DA to permit the continued stacking of empty containers to the height permitted under the SEPP amendment with container stacking heights as follows:

- if the shipping containers are empty—7 shipping containers

The operator has prepared and implemented a "*container stacking management plan*" as required under clause 29A (3) of the SEPP amendment.

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INTRODUCTION

Peter Fryar (Director) Key Urban Planning has prepared this section 4.55(2) application to Council. Peter is a qualified Town Planner with over 35 years' experience in Local Government and private practice and holds a Degree as a Bachelor of Town Planning (UNSW) and a Certificate (Ord.4) as a Town & Country Planner. He is a Corporate Member of the Planning Institute of Australia (PIA).

In consideration of this matter, we have (amongst other matters):

- Undertaken a recent inspection of the site and surrounding locality.
- Reviewed the Council file relating to the consent (GIPA).
- Consulted with relevant officers of Council and NSW Ports.
- Undertaken a review of the relevant provisions of State Environmental Planning Policy (Three Ports) 2013 (the “**SEPP**”).
- Reviewed relevant planning controls applying to the site; and
- Given consideration to the relevant provisions of the Environmental Planning and Assessment Act, 1979 (the “**Act**”) and the Environmental Planning & Assessment Regulation 2000 (the “**Regs**”).

This Statement has been prepared in accordance with the provisions of Clause 115 of the Environmental Planning and Assessment Regulation 2000.

The Modification Application will result in a development that is substantially the same as the development approved by the Minister for Planning and Planning Spaces is the consent authority for the development.

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THE SITE AND LOCALITY

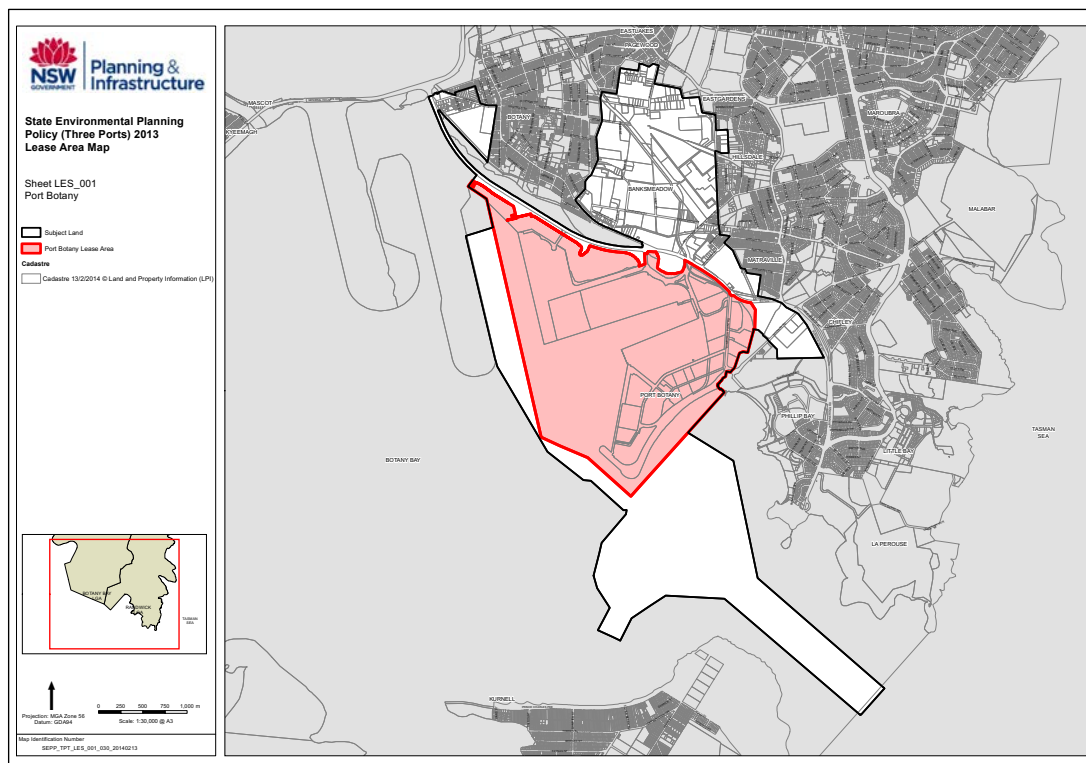
3.1 SITE DESCRIPTION AND PROPOSED DEVELOPMENT

Development Consent No. DA-42-10-2007-i (the “**DA**”) for the “*Construction and operation of an empty container storage depot at Simblist Road, Port Botany, Randwick Local Government Area*” on the site was granted by Minister for Planning on 27 February 2008.

On 22 March 2010 the Director, Infrastructure Projects approved a “*Modification to allow the stacking of containers within the site to be increased by one container to a maximum height of six containers*” (DA-42-10-2007-i (MOD 1)).

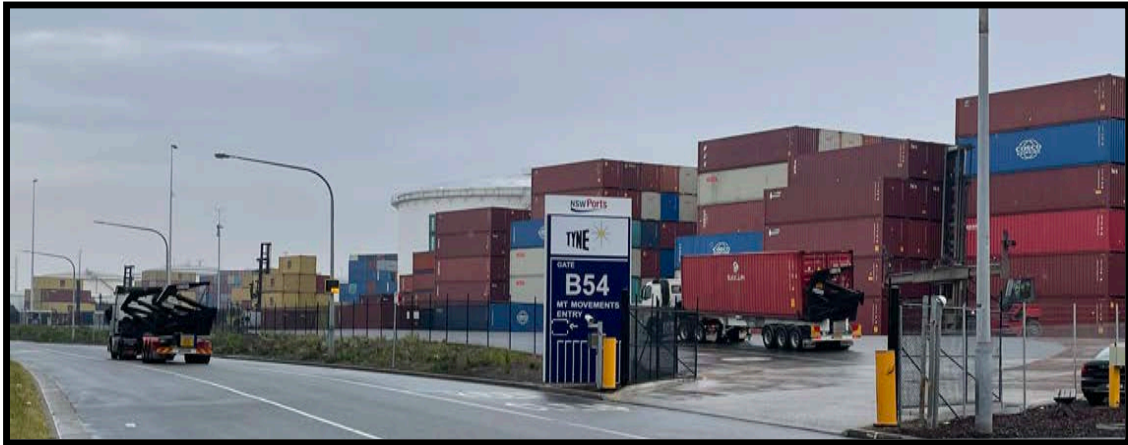
The site is located with frontage to Simblist Road. The subject site is an irregular shaped allotment comprising a 223.135 metre frontage to Simblist Road with a total area of 1.443ha and is accessible from the north - eastern side of the site from Simblist Road. The subject site contains an existing empty container depot. Terminals Pty Limited operates an existing filling station and bulk liquid storage tank to the north east of the site. The subject site is not affected by any significant site constraints and currently operates as a twenty-four (24) hour empty container depot.

Figure 3 – SEPP Extract – Port Botany Lease Area



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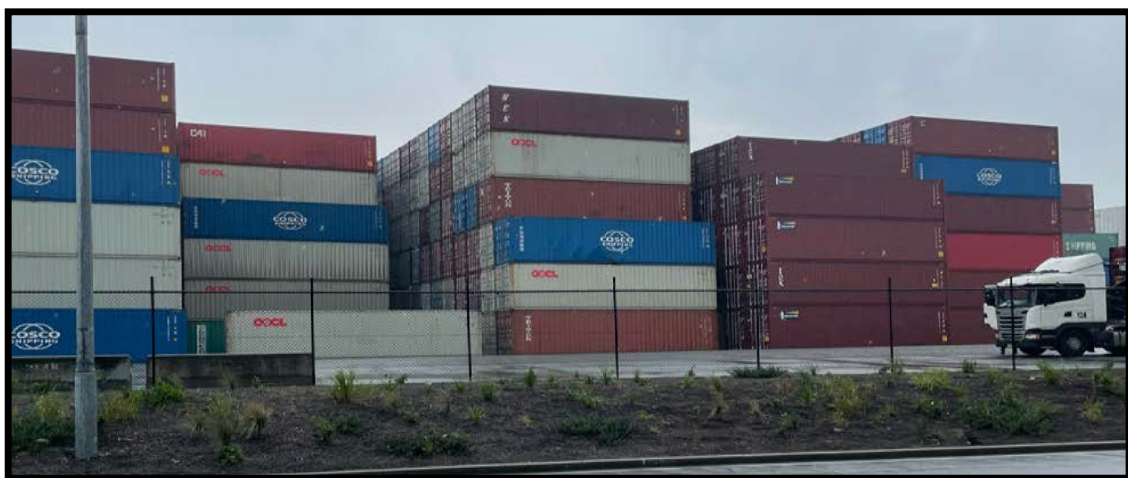
Photograph 1 – View of entry gate from Simblist Road



Photograph 2 – View looking towards adjoining site (south)



Photograph 3 – View looking from Simblist Road



1. Container Stacking Height

The modifications being sought to the terms and conditions of the consent are detailed under section 4 of the SEE. The original consent specified that the containers to be stored within the approved container park were empty containers. The modification being sought is to allow the continuation of the stacking of empty containers as currently permitted under the interim arrangement permitted under the SEPP (7 high). The ability to store empty containers to a height of seven containers has become possible due to improvements in technology whereby the forklifts used for stacking of the containers now can lift empty containers to a stacking height of seven containers. Accordingly, the further modification of the consent sought under the application is to increase the empty container stacking height by one container to a maximum of seven containers.

The current approved plan identifies the stacking of containers 'stepped down' to the outer boundaries of the site. The reason for the lowering of stacking heights was to address safety impacts from winds and for access purposes. Where necessary, containers will be stepped up one container per row for improved access and wind safety purposes. Those containers which face directly into prevailing winds will not be stacked seven high. The visual impact of the container stacking height has been addressed separately under a Visual Impact Assessment that accompanies the application.

The plan submitted with the application identifies the "stepping down" of container stacking height to the north-western boundary of the site. This arrangement is to facilitate access for forklifts for the purpose of lifting containers adjacent to the property side boundary.

2. Traffic Assessment

A traffic impact assessment accompanies the application and addresses the revised access arrangements through the site because of the expansion of the site operations onto an adjoining property. The expansion of the operation onto the adjacent site did not require development consent under the 'Exempt Development' provisions contained in the SEPP.

The Traffic Impact assessment addresses the traffic safety issues associated with the current (revised) traffic arrangements for vehicles entering and leaving the site. The report details heavy vehicle movements onto and off the site as follows:

"On entry into the site there are 3 lanes that heavy vehicles can use:

- Lane 1 is the marshalling lane and the designated truck waiting area.*
- Lane 2 is the through lane that is used by the stacker runner.*
- Lane 3 is the service lane that is used for the top yard loading and unloading.*

All trucks must give way to pedestrians, light vehicles, and forklifts.

All trucks must always travel in a forward direction. Reversing movement is not permitted at any time."

The SEE in support of the modification application (DA-42-10-2007-i (MOD 1)) identified truck and container movements as follows:

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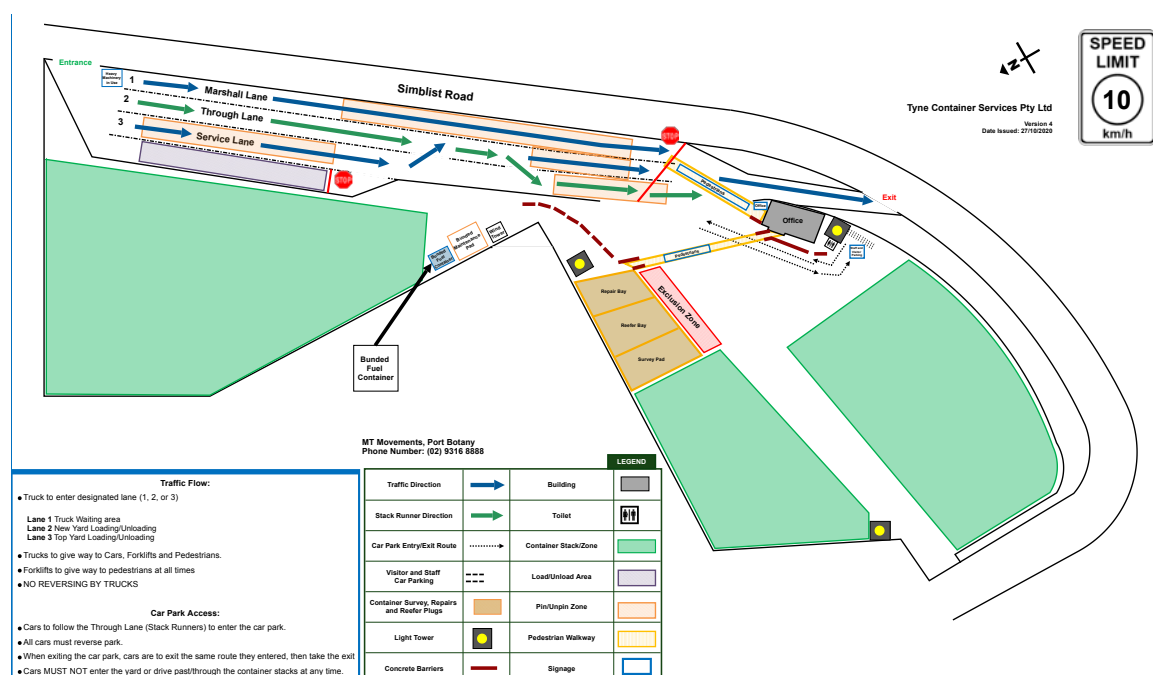
- Fixed bed and articulated container trucks are likely to generate traffic from/to Simblist Road;
- 80 trucks per day (average) with average 8-10 truck/container movements per hour;
- 24-hour operation to reduce congestion at peak periods;
- One-way through site access for improved safety;
- Additional 7 metre wide internal road for forklift access;
- Provision for up to 14 trucks to queue on-site with contingency on-site queuing area available;

The current application will not alter traffic generation rates as currently approved. The proponent is willing to accept a condition on the modified consent limiting average daily truck movements associated with the modified development.

Clarification was sought by DPIE as to the additional storage capacity for containers on the site because of the modified proposal. The existing development consent (as modified) indicates a maximum storage capacity of "1445 x 20' shipping containers (or a lesser combination of 20' and 40' containers)". The modification to allow stacking to six containers high indicated that there would be no increase to the original approved capacity. The proponent estimates a minor increase in the storage capacity by approximately 150-200 20' empty containers (or a lesser combination of 20' and 40' containers). The minor increase in storage capacity will not have any direct correlation to truck movements associated with the container park.

Entry to the site is via the existing entry gate to No.11 Simblist Road and only loading/unloading of containers for the site occurs at No.11 Simblist Road. Any loading/unloading of containers associated with the adjacent operation on the site to the south-east occurs on that site and not on the subject site.

Figure 4 – Traffic Management Plan



3. Geotechnical Assessment

In response to the pre-lodgement meeting with representatives of DPIE, concerns were raised regarding the structural adequacy of the existing surface of the site and the capacity of the site surface to carry the additional weight placed upon the surface because of the additional container storage.

The proponent commissioned Aargus Australia who undertook the previous geotechnical assessment (modified DA) to prepare a further assessment in support of the application. The report prepared by Aargus states (in part) as follows:

"Aargus geotechnical engineer visited the site for general observation and tests, if any. It was observed during the site visit and the observation that the subject site, was currently actively being used to stack the empty containers.

- The site is a standard road-base layer, an asphalt surface of 200mm, of which the active platform of the site below the road-base layer is constituted of ripped sandstone compacted in a successive thickness of 200mm.*
- Aargus, understands, from the available past report that the platform of this subject site is at a designed thickness of 1500mm below the existing surface.*
- The site, as assessed by an assessing geotechnical engineer is characteristically categorised as a relatively strong platform in terms of the material performance, with observable mechanical intactness of the binding material and the aggregates on the surface.*
- No major signs of material distress, fatigue and failures of the surface has been observed. A minor tension cracks and rutting on the asphalt is common in a high traffic area, comparable to this container staking site. The cracks and ruts due to staking and transporting machines is deemed not to undermine on the overall performance of the platform in sufficing the required bearing reaction for the machines.*
- No such subsidence in the site was observed (in the form of surface failures, cracks, ruts, fatigue or subsidised surface intactness) which would impede to impact in the performance of the site.*
- As agreed, Aargus can confirm the platform area is deemed robust enough to provide working space and staking strength for the implied reaction thrust of the seven containers staked on the surface for the next six to ten months from the time of this assessment. Aargus recommends seeking further advice in the event of any change in the surface and or signs of major failures, if any."*

4. Stormwater

The approved plan under the development consent identified a stormwater detention basin in the middle of the site. The stormwater basin has been removed and the works associated were authorised by NSW Ports as 'Exempt Development' under the provisions of the SEPP.

In communication from NSW Ports dated 28 February 2020 it states:

"I have obtained a firm price for WARD to construct a below ground detention basin that would remove the need for the stormwater pit in the middle of your yard at MT Movements, see attached.

The price is and includes all the work required to make the area capable of becoming part

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of your yard, meaning you will be able to stack boxes over the area and also do handling of boxes across the area."

Accordingly, the amended plan submitted as part of the application identifies the removal of the on-site detention basin. The works that have been undertaken include:

1. Excavate Existing Stormwater Pit
2. Install SPEL Stormwater Storm chamber System
3. Pavement Reinstatement

5. Risks, Safety and Wind

The operator has prepared and submitted to NSW Ports a number of 'Safe Operating Procedures' that are attached to this submission.

6. Noise Impacts

The Development Code adopted by NSW Ports contains matters for consideration regarding any noise or vibration generated by a proposed operation within the Port Botany Precinct as follows:

1. *For all new developments, proponents are to identify:*
 - *relevant noise criteria based on the Environment Protection Authority guidelines;*
 - *all sources of noise;*
 - *noise emission levels; and*
 - *proposed mitigation measures.*
2. *All buildings, equipment and operational processes are to be selected or designed to minimise the emission of noise.*
3. *Noise reduction measures for mobile equipment, trucks, other vehicles and machinery are to be implemented, such as through insulation and 'engine off' policies. Audible movement alarms must not be used unless a safety risk assessment has been undertaken to recommend their use.*
4. *Noisy plant and equipment should be located as far as possible from noise sensitive areas, optimising attenuation effects from topography, natural and purpose built barriers.*
5. *Vibration transmitted outside the site during operations must be within acceptable limits based on Environment Protection Authority guidelines.*

Consultation with NSW Ports confirms that the operations on the site that are occurring in accordance with the height and capacity being sought under the application, are not subject to any complaint or known breach of the standards adopted by the EPA. There is no increase in traffic movement being sought under the application. Likewise, there will only be a minor increase in the storage capacity to that identified in the SEE that accompanied the current development consent.

7. Additional Matters

The current site offices are placed in their current location as 'temporary structures'. Schedule 1 of the SEPP defines 'temporary structures' as follows:

"34 Temporary structures

- (1) *The construction or installation, and removal, of a temporary structure, if the structure is*

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used for a period totalling not more than 12 months.

(2) Arrangements for disposal of waste associated with use of the structure must be lawful."

Pursuant to the provisions of clause 24(2) of the SEPP, development specified under Schedule 1 on land within the Port Botany Lease Area is exempt development if it meets the matters prescribed under clause 24.

The portable offices currently placed on the site are identified on the revised traffic management site plan submitted as part of the application (see Figure 4).

8. Public Notification

The Proponent has notified the adjoining property owners. Any submissions received within the time specified on the notification letters will be forwarded to DPIE for consideration as part of the assessment process.

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PERMISSIBILITY UNDER SECTION 4.55(2) OF THE ACT

Pursuant to section 4.55(2) of the Act, a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the Regs, modify a development consent if:

“4.55 Modification of consents—generally

(cf previous s 96)

*(1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.*

Note.

Section 380AA of the [Mining Act 1992](#) provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

*(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.”

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In considering whether a development is substantially the same, the existing development should be considered in its entirety and compared to the proposed development in its entirety.

The proposed modification will result in a development that is “substantially the same” as that which was consented to.

The modifications sought are as follows:

Modification to the site layout plan approved under the DA to increase the empty container stacking height by one container to a maximum of seven containers as follows:

- The increase of empty container stacking heights as shown on the plan accompanying the application by one to a maximum height of seven containers.
- **replacing condition 1.1 d) and inserting a new condition 1.1 e) with the following:**
 - d) modification application DA-42-10-2007-i (MOD 3), accompanied by Proposed Section 4.55(2) Modification to the Approved Stack Height of an Existing Container Depot Statement of Environmental Effects dated 23 September 2021 prepared by Key Urban Planning; and
 - e) the conditions of this consent
- **replacing condition 1.2 with the following:**
 - 1.2 In the event of an inconsistency between:
 - a) the conditions of this approval and any document listed from condition 1.1(a) to (d) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
 - b) any document listed from condition 1.1(a) to (d) inclusive, the most recent document shall prevail to the extent of the inconsistency.
- Inserting in the DA a new condition, condition no 2.19 to read as follows:

“Container Stacking Management Plan
2.19 A container stacking management plan must be prepared in relation to the development and kept at the site.”

The proposed development is substantially the same as the approved development for the following reasons:

- Essentially, only minor modifications are proposed to the approved plans.
- The overall layout and configuration of the development will not be demonstrably changed.
- The external appearance of the development will remain relatively unchanged.
- The stacking height proposed for shipping containers will comply with the interim adopted controls under the SEPP.

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Consideration must be given as to whether the modification proposed to the consent remains substantially the same when compared to the development as currently approved and the development as proposed to be modified. In *Moto projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280, Bignold J made the following comments:

“The relevant satisfaction required by s 96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

Upon an assessment of the proposal as detailed in this SEE, it is considered that the proposal remains substantially the same as that which was originally consented to.

The modification will not result in any material changes to the approved development and can be considered under Section 4.55(2) of the Act.

5/

PROPOSED MODIFICATIONS

5.1 MODIFICATIONS OF CONDITIONS OF CONSENT

Modification to the site layout plan approved under the DA to permit the stacking of containers on the site as permitted under the interim amendment to the SEPP as follows:

The modifications sought are as follows:

Modification to the site layout plan approved under the DA to increase the empty container stacking height by one container to a maximum of seven containers as follows:

- The increase of empty container stacking heights as shown on the plan accompanying the application by one to a maximum height of seven containers.
- **replacing condition 1.1 d) and inserting a new condition 1.1 e) with the following:**
 - d) modification application DA-42-10-2007-i (MOD 3), accompanied by Proposed Section 4.55(2) Modification to the Approved Stack Height of an Existing Container Depot Statement of Environmental Effects dated 23 September 2021 prepared by Key Urban Planning; and
 - e) the conditions of this consent
- **replacing condition 1.2 with the following:**
 - 1.2 In the event of an inconsistency between:
 - a) the conditions of this approval and any document listed from condition 1.1(a) to (d) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
 - b) any document listed from condition 1.1(a) to (d) inclusive, the most recent document shall prevail to the extent of the inconsistency.
- Inserting in the DA a new condition, condition no 2.19 to read as follows:

“Container Stacking Management Plan
2.19 A container stacking management plan must be prepared in relation to the development and kept at the site.”

6/

SECTION 4.15 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

6.1 THE PROVISIONS OF RELEVANT PLANNING CONTROLS

(a) State Environmental Planning Policy (Three Ports) 2013

The site has been identified as being suitable for the development for reasons stated previously in the SEE.

State Environmental Planning Policy (Three Ports) 2013 applies to land that is identified within the 'Land Application Map' contained in the SEPP. The site is located within the area identified under the Land Application Map. Clause 8 of the SEPP identifies Randwick Council as the consent authority.

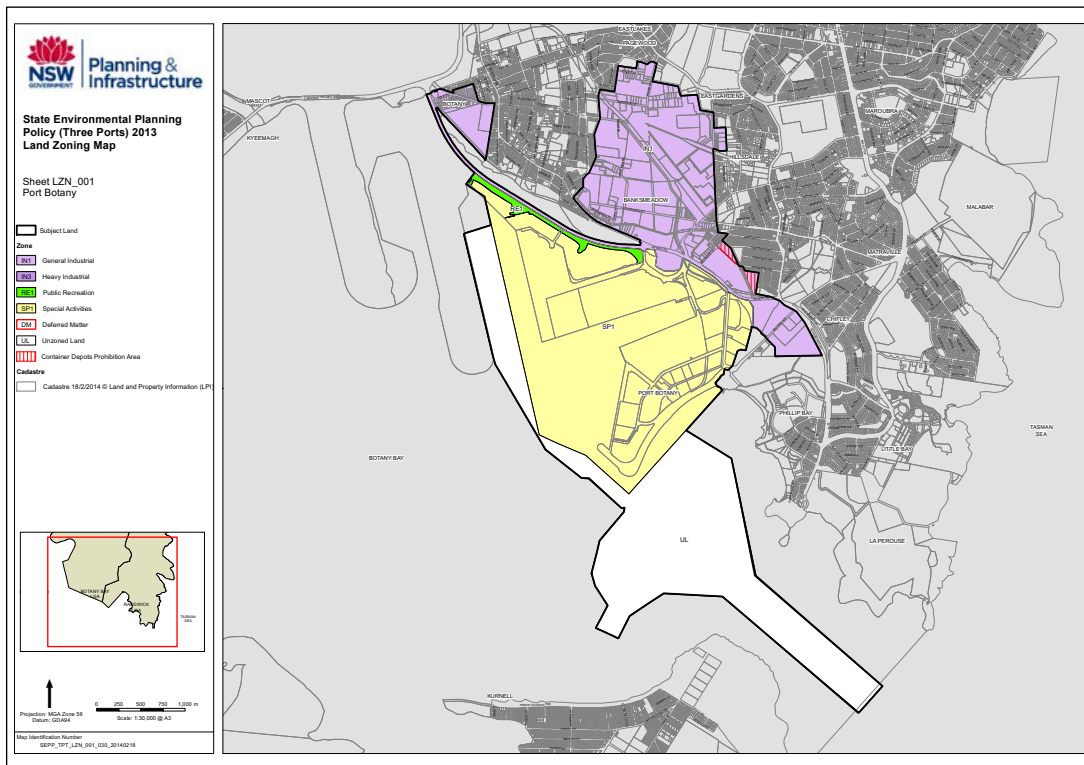
The site is zoned SP1 Special Activities zone under the SEPP. The current approved use of the site is defined as "port facilities" under the Dictionary at clause 4 of the SEPP. The relevant definitions are as follows:

"freight means any item, goods or produce being transported and includes containers (whether empty or otherwise), gases, livestock, liquids, minerals, plant and equipment, raw materials, vehicles and vessels."

"port facilities means facilities on land in the Lease Area used in connection with the carrying of freight and persons by water from one port to another for business or commercial purposes, and includes any of the following—

- (a) facilities for the embarkation or disembarkation of passengers onto or from any vessels, including public ferry wharves,*
- (b) facilities for the loading or unloading of freight onto or from vessels and freight receipt, processing, land transport and storage facilities,*
- (c) wharves for commercial fishing operations,*
- (d) refuelling, launching, berthing, mooring, storage or maintenance facilities for any vessel,*
- (e) sea walls or training walls,*
- (f) administration and port operations buildings and facilities,*
- (g) communication, security and safety facilities,*
- (h) utilities and services, road and rail infrastructure, pipelines and car parks".*

Figure 5 – SEPP Extract – Land zoning map



(b) NSW Ports Masterplan – ‘PORT BOTANY: The next 30 years’

A key strategic plan adopted by NSW Ports is the “*Navigating the Future – NSW Ports’ 30 Year Master Plan*”. More particularly, the master plan contains a vision for Port Botany. Extracts from the master plan that are relevant to the consideration of this modification application are summarised as follows:

1. Trade Demand

“Containers The primary form of trade through Port Botany is containers. Port Botany is expected to become Australia’s largest container port by volume in the next 30 years. Containers are forecast to grow from 2.3 million TEU now to between 7.5 million and 8.4 million TEU per year by 2045.

The key drivers of container growth through Port Botany are domestic demand, population growth, the strength of the NSW economy, the value of the Australian dollar, levels of domestic manufacturing, government trade policies and the location of key distribution centres.”

“Growth of full import containers over the next 30 years will be stronger than full export containers, resulting in an increase in empty container exports from 62 per cent of exports now to more than 74 per cent by 2045.”

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2. Land Use and Utilisation

“Land within the Port Botany precinct is in demand and scarce. It is typically leased for 10 to 30 year periods, depending on the level of capital investment required, resulting in limited turnover of land. Our focus is to improve the productivity and use of underutilised, vacant or underperforming parcels of land.”

3. Empty Container Parks

“Over the next 30 years, empty container exports will grow from about 670,000 TEU to up to 2.9 million TEU as the volume of full import containers grows at a faster rate than full export containers”.

“Over the next 30 years, we will facilitate opportunities to locate empty container parks within or adjacent to stevedore terminals. This is a sustainable outcome that will facilitate return of empty containers by rail and internal gate transfer, to minimise truck movements on internal and surrounding port roads”.

Comment:

The outcomes of the modifications sought under this application are consistent with the statements above and will assist in meeting the desired outcomes detailed in the master plan for Port Botany. The increase in container stacking heights sought under this modification application will maintain the current container storage capacity permitted currently under the SEPP Amendment. To allow a vertical expansion in storage capacity will reduce the need for the lateral expansion by additional land for increased of storage capacity.

6.2 THE LIKELY IMPACTS OF THE DEVELOPMENT

These matters have been addressed above. No adverse impacts will result to the amenity of the surrounding properties as a consequence of the proposed changes.

The likely visual impact of the amendments sought are considered to be negligible as viewed from Botany Bay and the surrounding locality. The stacking heights sought through this modification application will maintain the current heights permitted under the SEPP Amendment.

6.3 THE SUITABILITY OF THE SITE

The proposed modifications will not compromise the suitability of the site for the development. The proposed modifications will improve the functionality and efficiency of the development of the site for layout approved on the approved plan. Traffic safety will not be compromised.

6.4 SUBMISSIONS

This is a matter for Council's consideration under Council's notification requirements.

6.5 THE PUBLIC INTEREST

The public interest is served by developing the land in an efficient and economic way that enhances the character of the area and amenity of the neighbourhood.

6.6 DEVELOPMENT CONTROL PLANS – SECTION 4.15 (3A)

Section 4.15 (3A) of the Act states:

“(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application.*

*In this subsection, **standards** include performance criteria.”*

The Randwick Development Control Plan 2013 does not contain provisions relevant to the proposed modifications.

The outcomes of the modifications sought under this application are consistent with the statements above and will assist in meeting the desired outcomes detailed in the master plan for Port Botany.



CONCLUSION

The merits of the application have been considered in this assessment under Section 4.15(2) of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Three Ports) 2013 and the key strategic plan adopted by NSW Ports “*Navigating the Future – NSW Ports’ 30 Year Master Plan*”.

The proposal satisfies the relevant planning controls for the locality.

The proposal achieves the objectives of NSW Ports planning controls and is considered to be suitable for approval.

Peter Fryar

BTP(UNSW), CERT T&CP(Ord4), MPIA

DIRECTOR,

KEY URBAN PLANNING