

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant infrastructure
Application number and project name	SSI-10049 Kamay Ferry Wharves
Applicant	Transport for NSW
Consent Authority	Minister for Planning

Decision

The Minister for Planning has, under section 5.19 of the *Environmental Planning and Assessment Act 1979 (the Act)* approved the infrastructure application subject to the recommended conditions.

A copy of the infrastructure approval and conditions is available here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves>

A copy of the Planning Secretary's Assessment Report is available here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves>

Date of decision

21 July 2022

Reasons for decision

The following matters were taken into consideration in making this decision:

- the matters listed in the statutory context section of the Planning Secretary's Assessment Report
- the objects of the Act
- all information submitted to the Department during the assessment of the application
- the findings and recommendations in the Planning Secretary's Assessment Report
- the views of the community about the project (see **Attachment 1**).

The findings and recommendations set out in the Planning Secretary's Assessment Report were accepted and adopted as the reasons for making this decision.

The key reasons for approving the application are as follows:

- the project would:
 - provide an accessible transport connection between Kurnell and La Perouse which would enable access to multiple destinations including the Kamay Botany Bay National Park
 - provide a new type of experience for visitors travelling around the Kamay Botany Bay National Park
 - increase visitation to the area and the creation of new commercial and recreational opportunities
 - enhance Aboriginal cultural values
 - improve amenity and placemaking outcomes through the wharf design and provision of footpaths, landscaping and signage
 - provide additional car parking
- the project has been endorsed by the NSW Government and is a key component of:
 - South East Sydney Transport Strategy
 - Kamay Botany Bay National Park Plan of Management
 - Kamay Botany Bay National Park Master Plan
- the impacts on the community and the environment can be appropriately managed, minimised, or offset to an acceptable level, in accordance with applicable NSW Government policies and standards
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through the Proponent's response to submissions and environmental management commitments, and the recommended conditions of approval
- weighing all relevant considerations, the project is in the public interest.

Attachment 1 – Consideration of Community Views

The Environmental Impact Statement (EIS) was publicly exhibited from Wednesday 14 July 2021 until Wednesday 11 August 2021 (a total of 28 days) on the Department's website. The Department received 107 community submissions (including various organisations and community interest groups), three local council submissions and advice from 11 State government agencies. Randwick City Council and 79 community and interest group submissions objected to the proposal.

The Department also undertook the following consultation activities:

- a site visit in November 2021 after the EIS exhibition
- attendance at four virtual Community Information Sessions held during EIS exhibition
- attendance at agency briefings conducted by TfNSW
- meetings with local councils and community members.

The key issues raised by the community and considered in the Planning Secretary's Assessment Report and by the decision maker include biodiversity, heritage, noise and vibration, traffic and transport, place and urban design and soil and water contamination.

Issue	Consideration
<u>Biodiversity</u>	<i>Assessment</i>
<ul style="list-style-type: none"> • concerns over negative impacts of construction on threatened seagrass beds, White's Seahorse and other marine biodiversity • lack of assessment of all marine species • ferry swept path impacts on squid breeding • lack of adequate offsetting to protect threatened species • loss of biodiversity and lack of impact mitigation measures • lack of inclusion of all bird species likely to be impacted • potential impacts on Towra Point Nature Reserve 	<ul style="list-style-type: none"> • The Department has assessed the biodiversity impacts of the project in consultation with the then Environment, Energy and Science Group of the Department, Department of Primary Industries (DPI) - Fisheries and the then Commonwealth Department of Agriculture, Water and the Environment (DAWE) and considers the residual impacts are acceptable subject to offsetting and ongoing management • The project has been planned and designed to avoid and minimise impacts on threatened ecological communities and threatened habitats in the study area • The proposal would directly impact <i>Posidonia australis</i> and <i>Zostera</i> seagrass meadows, reducing the amount of habitat for the threatened White's Seahorse and key fish habitat present • The Proponent has committed to addressing impacts on Threatened Ecological Communities (TECs) and threatened species through implementing a Marine Biodiversity Offset Strategy (MBOS), preparing and implementing a Biodiversity Management Plan, undertaking general pre-clearing surveys, implementing unexpected threatened species finds procedures, and identifying and protecting sensitive areas • The Proponent's MBOS outlines mechanisms to rehabilitate seagrass habitat, relocate White's Seahorses prior to construction and provide artificial habitat for seahorses • The direct impacts to threatened species and threatened ecological communities would require offsetting, through the securing of ecosystem and species credits. The Proponent has committed to offsetting direct and indirect impacts in accordance with the Biodiversity Offset Scheme • The Department is satisfied that the Proponent has adequately included all bird species that are likely to occur within the project area listed under the EPBC Act and BC Act • The Department has determined that as the Towra Point Nature Reserve occurs approximately 1km southwest of the proposed Kurnell wharf construction boundary, the proposal is unlikely to impact on the ecological character of the wetland.
	<p><i>Recommended Conditions/Response</i></p> <ul style="list-style-type: none"> • Offset the impacts to plant community types and threatened (species credit) species • Prepare a Terrestrial and Marine Biodiversity CEMP Sub-plan to implement construction management measures such as pre-survey clearing and protecting retained vegetation

- Implement the Marine Biodiversity Offset Strategy to rehabilitate seagrass habitat and provide artificial habitat for seahorses
- Establish a Marine Biodiversity Offset Strategy Implementation Reference Panel and the review of the Marine Biodiversity Offset Strategy based on the recommendations of this panel.
- Consult with DPI Fisheries regarding proposed ferry swept path/navigation channels for all traffic using the wharves prior to the commencement of ferry services to mitigate potential impacts on marine biodiversity including scouring.

Aboriginal heritage

- concerns over potential impacts to cultural heritage of the area, particularly due to the design of the proposal
- further engagement is required with local Aboriginal groups

Assessment

- Construction of the project would result in direct impacts to Aboriginal heritage including the loss of two Aboriginal heritage sites of low archaeological significance and the partial loss of one Aboriginal heritage site of high archaeological significance
- The Department concurs with Heritage NSW's consideration that the proposed mitigation measures for Aboriginal cultural heritage impacts are proportionate to the degree of impact and has strengthened these commitments so that Aboriginal cultural heritage values and items are preserved
- The design of the project has been developed through extensive consultation with local Aboriginal groups and Aboriginal artists have been engaged to develop a culturally sensitive design response.

Recommended Conditions/Response

- Inform Registered Aboriginal Parties (RAPs) at regular intervals on the construction of the SSI and continue to consult with RAPs on the Aboriginal cultural heritage management requirements of the SSI throughout construction
- Prepare an Aboriginal Cultural Heritage Excavation Report to document the outcomes of Aboriginal cultural heritage test and salvage excavations
- Cease work if the Aboriginal engraving at Site 6 – La Perouse is identified, and develop an appropriate methodology to ensure protection of the site
- Develop the Urban, Design and Landscape Plan in consultation with the La Perouse LALC and local Registered Aboriginal Parties to ensure Aboriginal heritage values are considered in the design.

Non-Aboriginal heritage

- concerns regarding potential damage to non-Aboriginal archaeological sites and heritage values
- values of Bare Island's heritage listing has not been considered
- need to retain historic ferry shelter at Kurnell
- desire to remove all existing exotic plantings at Kurnell

Assessment

- The project would have a minor impact to the nationally listed Kurnell Peninsula Headland (NHL 105812), the state listed Kamay Botany Bay National Park and Towra Point Reserve and the locally listed Kurnell history
 - The Department has reviewed the ferry wharves design and considers that certain design refinements can be incorporated to preserve the coarse sea stone wall, which has a high historical significance to the Kurnell Peninsula Headland national heritage place
 - The relocation of the Captain Cook watering well and Landing Place memorial would be temporary and necessary to avoid impacts during construction
 - Whilst the proposal would require the removal of a large portion of the Monument track, the track will be reinstated following the completion of construction
 - The wharf at Kurnell has been designed to minimise impacts to the landform and views from Captain Cook Drive, Alpha House and from nearby monuments and would be sympathetic with the historical setting of the area
 - The Department is satisfied that the heritage structures on Bare Island would not be directly or indirectly impacted by the project
 - The Proponent has clarified that the historic ferry shelter at Kurnell would remain in place and any indirect vibration impacts would be mitigated
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- The Proponent has committed to measures to manage impacts to local and state listed heritage items through the preparation of a Heritage Management Plan, Archaeological Research Design, site inductions and an archival recording program.
- Potential archaeological impacts would be managed through the Proponent's commitment to archaeological investigation, management and salvage requirements after detailed design.

Recommended Conditions/Response

- Nominate an Excavation Director to direct the Archaeological program and ensure archaeological investigations are undertaken adequately
- Prepare an Archaeological Research Design and Excavation Methodology to guide the archaeological program. Archaeological investigations would occur under the direction of a suitably qualified Excavation Director and outcomes would be documented in a Final Excavation Report.

Noise and vibration

- noise and vibration would impact people working from home
- concerns regarding operational noise from ferries and commercial vehicles
- potential increased noise from cars at La Perouse
- underwater noise impacts to divers and marine species
- inconsistencies with the noise and vibration impact assessment
- uncertainties regarding methods to control noise

Assessment

- Construction noise and vibration impacts are unavoidable due to the proximity of residents and sensitive land uses
- The proposed out-of-hours works are considered necessary for some construction activities to ensure a safe work environment during calm water periods
- The Proponent has committed to a range of management measures to manage construction noise and vibration. These measures, along with the proactive and community-focused approach to managing noisy and out-of-hours works, should ensure that noise and vibration impacts are minimised.
- The operation of the ferry service should not result in any discernible increases in noise levels at nearby residences.

Recommended Conditions/Response

- Active and ongoing community consultation with the community regarding out-of-hours works
- Conduct vibration testing before and during vibration generating activities that have the potential to impact heritage items to identify minimum safe working distances
- Undertake an assessment of the noise impacts of the ferry vessels selected compared to the noise performance assumptions presented in the EIS and identify additional mitigation measures if the results of the final vessels indicate a worsening of impacts.

Traffic and transport

- concern over increased vehicle traffic that would result from the development, particularly around La Perouse
- potential increased demand for carparking and exacerbated on-street parking impacts on local streets
- inadequate traffic surveys and proposed carparking shortfall
- access to private property
- potential to restrict the activities of water users and the recreational enjoyment of Botany Bay

Assessment

- Traffic generation during construction is expected to be minor as construction vehicle movements can be easily accommodated by the surrounding road network with a good level of service being maintained
 - Adverse traffic impacts during operation are not anticipated as the wharves would function to minimise the number of induced trips at La Perouse and Kurnell through encouraging public transport use
 - Impacts on the temporary loss of parking during construction would be mitigated through the provision of construction worker parking at construction ancillary sites
 - The proposal would provide additional parking through reconfiguring existing parking to provide additional spaces at La Perouse and providing additional parking spaces within the National Park at Kurnell
 - Property access would generally not be restricted during construction and, if required, it would be for a limited duration and affected property owners would be consulted
 - The Proponent has clarified that consultation with recreational fishing groups has been carried out and would be further explored to determine the exact
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pathway of ferry vessels, so that important recreational areas can be avoided as much as possible

- Impacts to marine traffic can be effectively managed.

Recommended Conditions/Response

- Prepare a Traffic Management CEMP Sub-Plan to effectively manage construction traffic
 - Contain all construction parking within construction sites
 - Provide additional parking within the La Perouse parking loop through the reconfiguration of existing parking bays
 - Establish additional parking spaces within the Kamay National Park before the operation of the wharves commences.
 - Undertake line delineation along the Anzac Parade loop to allow for improved traffic movements, supported by formal marking and signage.
 - Prepare a Vessel Traffic Management Plan and Operational Maritime Risk Management Plan to ensure potential conflicts between vessels and shipping operations are minimised.
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Place and Urban Design

- inappropriate size, scale and design, resulting in a high visual impact
- the use of materials including concrete and steel are inconsistent with the historic character and buildings of La Perouse
- the accessibility of the wharves and surrounding areas within Botany Bay
- compatibility with cycling

Assessment

- The wharf structures would alter the existing visual character of La Perouse and Kurnell. However, visual impacts are likely to be positive due to the high-quality architectural design of the wharves that would have sympathetic connections to the open recreation and shared zones
- The design of the project has been developed through extensive consultation with local Aboriginal groups and Aboriginal artists have been engaged to develop a culturally sensitive design
- The Department agrees with the NSW Government Architect's position that, considering the visually prominent location and historical significance of the site, particularly to First Nations' people, the final design should be verified through independent review to develop a robust and sensitive urban design
- The ferry wharves will assist in promoting La Perouse and Kurnell as recreational spaces by completing the Botany Bay active transport loop and providing bicycle parking
- The Proponent has prepared a Urban, Design and Landscape Plan to incorporate design objectives with supporting principles that take into consideration the local landscape character, with a particular focus on Aboriginal heritage values.

Recommended Conditions/Response

- Establish a Design Review Panel to provide advice and recommendations on detailed design and architecture, heritage, urban and landscape design and artistic aspects of the proposal
 - Update the Urban, Design and Landscape Plan to address the consideration provided by the Design Review Panel as well as consultation with Aboriginal stakeholders
 - Ensure bicycle storage is available on ferry vessels
 - Provide or upgrade shared pathways connecting the ferry wharves to the nearest bus stops at Kurnell and La Perouse to complete the Botany Bay active transport circuit
 - Consider the inclusion of neutral external colour schemes and finishes that avoid reflection to reduce visual impacts to the heritage setting in the design development of the ferry wharves.
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Contamination

- potential risk of fuel and oil leaks from commercial and recreational vessels

Assessment

- The Proponent has advised that all marine vessel operators are required to comply with the NSW Transport for NSW Boating Handbook, which outlines measures for protecting the environment and avoiding the pollution of waterways
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- call for independent review of contamination impacts
 - concerns regarding human health risks associated with contamination
 - the construction method should include best practice for piling installation to minimise disturbing sediment, using floating booms to contain silt
 - In its submission on the EIS, the EPA acknowledged concerns raised by the community regarding potentially contaminated land and subsequently has recommended the appointment of a NSW EPA accredited site auditor to review project documentation, including a Remedial Action Plan (if required), and oversee construction. The EPA's recommendations are supported by the Department and have been included as conditions of approval
 - The Department is satisfied that the conditions of approval would allow contamination risks, including risks to human health to be independently reviewed and residual impacts to be appropriately managed
 - The Department is satisfied that the Proponent's proposed piling methods would minimise the mixing between marine and groundwater, reducing the potential impact to groundwater quality. The Proponent has committed to storing, testing and appropriately disposing of groundwater encountered, in accordance with a soil and water management plan.

Recommended Conditions/Response

- Prepare and implement soil and water management plan during construction
- Engage an NSW EPA accredited site auditor during construction to undertake an independent review role and oversee further testing if required
- Obtain site audit statements and prepare and implement a Remedial Action Plan if remediation is required
- If remediation is undertaken, prepare a Site Audit Statement and Report to certify that the remediation works have determined the land suitable for the intended use.

Project design

- concern that the selected option is not the most appropriate for the area
- concern that the wharf design/length is too large
- loss of visual sightlines across Botany Bay
- concern that the proposal would lead to overdevelopment and threaten the natural and relaxing ambience of La Perouse

Assessment

- A ferry service between La Perouse and Kurnell is listed as a major initiative in section 1.3 of the South East Sydney Transport Strategy (Transport for NSW, August 2020)
- The proposal would provide an accessible transport connection between Kurnell and La Perouse which would enable access to multiple destinations including the Kamay Botany Bay National Park
- The Proponent has advised that the wharf length is required to ensure sufficient and safe depth for ferry vessels and the width of the wharves would provide disability access. The wharves at La Perouse and Kurnell would respectively extend 180 metres and 230 metres from the shorelines. As the La Perouse berth is at an angle to the jetty, the total wharf would extend about 100 metres perpendicular to the shoreline.
- Visual impacts are likely to be positive due to the high-quality architectural design of the wharves that would have sympathetic connections to the open recreation and shared zones
- The Department consulted with the NSW Government Architect for advice on the design within the context setting. The NSW Government Architect recommended that the final design should be verified through independent review.
- The Department considers that reduced amenity and potential interruptions to tourism activities during construction would create socioeconomic impacts for the surrounding community, however, these would be temporary and confined to the short construction period.

Recommended Conditions/Response

- Erect boundary screening to minimise visual impacts on adjacent sensitive land uses and incorporate Indigenous artwork wherever visible
 - Manage amenity related impacts through the CEMP and relevant sub-plans to minimise and reduce impacts on the community
 - Establish and utilise a Design Review Panel to ensure the final design is verified through independent review
 - The Proponent's Urban Design and Landscape Plan will be reviewed by the DRP and Heritage NSW, RAPs and La Perouse LALC may be invited to the
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meetings of the Panel as observers or to provide feedback on key design elements of the SSI.

Project justification and cost

- concern that there is not enough demand for the proposal
- queries relating to the proposal's business case and cost benefit analysis
- concerns regarding the sources of project funding
- concern the proposal would form part of a future Cruise Ship Terminal

Assessment

- The objective of the Department's assessment is to assess the environmental impacts of the project. Funding and consideration of the cost benefit analysis is a matter for the Proponent and NSW Government
- Use of the wharves by cruise passenger ships either docking or tendering passengers to shore is not proposed as part of this project. A cruise terminal project would be subject to a separate assessment process and is independent of this project.

Community and stakeholder consultation

- inadequate consultation has been undertaken
- consultation to date inaccurately represents community concerns
- lack of consultation with all stakeholders including beach/recreational users
- concerns with approach to consultation due to COVID-19

Assessment

- The Department is satisfied that consultation has been undertaken in accordance with the legislative requirements of the Environmental Planning and Assessment Act 1979, as amended by the Legislation Amendment (Emergency Measures) Act 2020 introduced during the Covid-19 pandemic and the Secretary's Environmental Assessment Requirements
- The Proponent has also advised that consultation with the community and stakeholder groups would continue throughout construction and prior to operation of the wharves to determine operational needs and requirements for all interested user groups
- The Proponent would continue to consult with recreational fishing groups to determine the exact pathway of the ferry vessels so that important recreational areas can be avoided as much as possible.

Recommended Conditions/Response

- Prepare a Community Communication Strategy to provide mechanisms to facilitate communication about the construction and operation of the project.

Water users

- the proposal would prevent the enjoyment of Botany Bay, Little Bay, Yarra Bay and Fisherman's island
- amenity impacts to beach/recreational users
- the proposal would create safety risks for water users due to the functioning of ferry vessels

Assessment

- The Proponent has considered the needs of recreational and beach users by locating the ferry wharves away from popular swimming locations to provide recreational swimmers with a safe buffer from the operation of the ferry service
- The proposal would also assist in promoting La Perouse and Kurnell as recreational spaces through placemaking improvements, completing the Botany Bay active transport circuit and providing recreational fishers with a safe landside location to fish from
- The Department is satisfied that potential amenity impacts to beach users from spills or reduced water quality due to sediment dispersion and deposition would be adequately managed through the Proponent's mitigation measures. The Department has implemented conditions related to sediment and erosion controls to further ensure amenity for beach goers is not reduced
- The Department has also recommended that the Urban Design and Landscape Plan is updated, based on the advice of a Design Review Panel, to deliver improvements to visual amenity and placemaking for the community
- All waterborne activities, including large commercial vessels, are required to operate under existing maritime safety rules
- The Proponent has committed to implementing a Marine Works Management Plan to establish necessary exclusion zones and include mooring plans and a communication protocol to ensure the safety of all recreation users within Botany Bay.

Recommended Conditions/Response

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- Prepare a Vessel Traffic Management Plan to provide guidance for vessels to ensure that all commercial shipping operations take precedence over ferry movements to enhance marine and navigation safety when entering, exiting and operating in Botany Bay
 - Prepare an Operational Maritime Risk Management Plan to demonstrate how vessel movements will interact with recreational vessels.
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Project assessment

- concerns that the Secretary's Environmental Assessment Requirements have not been met
- concerns cumulative impacts have not been assessed
- concerns operational and maintenance impacts and costs have not been assessed

Assessment

- The Department is satisfied that the Proponent has addressed the Secretary's Environmental Assessment Requirements in the EIS, RtS and additional information provided during the assessment of the project
- The Department is satisfied that the cumulative impacts of the proposal have been adequately assessed by the Proponent and can be managed through the implementation of the Proponent's mitigation measures and the recommended conditions of approval
- The Proponent has advised that the maintenance and operational costs have been estimated across the serviceable life of the wharves. The NSW Government would pay these costs. The Government does not subsidise the cost of maintaining the ferry vessel, this would be borne by the operator.

Recommended Conditions/Response

- Prepare and implement a Construction Environmental Management Plan and Sub-plans
 - Undertake management and routine maintenance for design elements and landscaping work to ensure the success of the design and landscape outcomes for the life of the project.
-