

Department of Planning and Environment

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# Kamay Ferry Wharves – MOD 1 Administerial Modification

State Significant Infrastructure Modification Assessment Report (SSI-10049-Mod-1)

December 2023





# Acknowledgement of Country

The Department of Planning and Environment 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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Modification 1 of Kamay Ferry Wharves (SSI-10049-Mod-1) Assessment Report

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# Preface

This assessment report provides a record of the Department of Planning and Environment's (the Department) assessment and evaluation of Modification 1 of the State significant infrastructure (SSI) application for the Kamay Ferry Wharves located at La Perouse and Kurnell in Botany Bay lodged. The modification application has been submitted by Transport for New South Wales. The modification involves amendments to correct cross-referencing and typographical errors as well as the amendment of Condition E106 to include a reporting timeframe. The report includes a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the approval should be modified.

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# 1 Introduction

This report provides an assessment of an application to modify the State significant infrastructure approval for Kamay Ferry Wharves (SSI-10049).

On 21 July 2022, Transport for NSW (TfNSW, the Proponent) was granted approval for the construction of two new ferry wharves – one at La Perouse and one at Kurnell - and operation of a ferry service between the wharves. The wharves include a berth for passenger ferries, a multi-user berth for commercial and recreational vessels, and sheltered waiting areas.

TfNSW has noted inconsistencies in the summary of reporting requirements with the conditions of approval, cross referencing and typographical errors, and the absence of a reporting timeframe in Condition E106 in the instrument of approval.

A request to modify the project approval was lodged on 16 November 2023 by TfNSW pursuant to section 5.25 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to correct the inconsistencies, typographical and cross-referencing errors, and include a reporting timeframe for Condition E106.

## 1.1 Project location

The approved project is located at La Perouse and Kurnell on the northern and southern headlands of Botany Bay in the Randwick City and Sutherland Shire local government areas (LGA) (Figure 1). Both sites are located in the Kamay Botany Bay National Park.

**Figure 1** | Project location (Source: EIS)



## 1.2 Approval history

On 21 July 2022, approval was granted by the then Minister for Planning for the Kamay Wharves project (SSI-10049). The project is State significant infrastructure under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

This is the first modification of the approved project.



## 2 Proposed modification

### 2.1 Modification overview

The modification seeks to amend typographical and cross-referencing errors in the table *Reports and Notifications that must be submitted to the Planning Secretary*, and in conditions A15, A21, A29, A32, C12, C19, E34, E44, E51 and E78.

The request also seeks to include a reporting timeframe to Condition E106. This condition requires the Proponent to fund the ongoing maintenance and operation costs of urban design, open space, landscaping and recreational items and work implemented as part of the approval until arrangements have been made to transfer the asset to the relevant authority. It also requires the Proponent to advise the Secretary of the date of transfer of the asset(s) to the relevant authority. However, there is no timeframe in which the advice is to be provided. The proposed change will require the Proponent to notify the Planning Secretary within one month of the transfer of assets.

The original application also sought to amend the terrestrial biodiversity credits in Table 1, Condition E4 based on advice TfNSW received from the Environment and Heritage Group in April 2023. This advice indicated that there was an inconsistency in the credit numbers in Table 1, Condition E4 and the Biodiversity Development Assessment Report (April, 2022).

The Environment and Heritage Group has since advised that the credits in the instrument of approval are correct (refer Section 4.1.1). As such, TfNSW is no longer seeking to have the credits in Table 1, Condition E4 amended.

# 3 Statutory context

## 3.1 Scope of modification and assessment pathway

Details of the legal pathway under which modification is sought and are provided in Table 3-1 below.

**Table 3-1** | Permissibility and assessment pathway

Consideration	Description
<b>Scope of modification</b>	<p>In accordance with section 5.25 of the EP&amp;A Act, a proponent may request the Minister to modify the approval for State significant infrastructure. The Minister’s approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval. The addition of a reporting timeframe to Condition E106 and administrative changes to conditions A15, A21, A29, A32, C12, C19, E34, E44, E51 and E78 are not considered consistent with the existing approval. Consequently, modification of the Minister’s approval under section 5.25 of the EP&amp;A Act is required.</p>
<b>Approval Authority</b>	<p>Minister for Planning and Public Spaces</p> <p>The Minister continues to be the approval authority under 5.25(4) of the EP&amp;A Act and has the capacity to modify the approval of the project.</p>
<b>Minister’s delegate as determining authority</b>	<p>Delegate position</p> <p>Under the instrument of Delegation dated 9 March 2022, the functions and powers of the Minister for Planning under section 5.25 of the EP&amp;A Act to determine a modification of the Minister’s approval may be delegated where:</p> <ul style="list-style-type: none"><li>• the maximum fees which apply to the modification request are those set out in item 6.5(a) or (b) of Part 6 to Schedule 4 of the EP&amp;A Regulation</li><li>• the modification request has not been made by a person who has disclosed a reportable political donation under section 10.4 of the EP&amp;A Act in connection with the modification request;</li><li>• there are no public submission objections (other than a council) in the nature of objections, and</li></ul>



Consideration	Description
	<ul style="list-style-type: none"> <li>the council has not made a submission by way of objection under the mandatory requirements for community participation in Schedule 1 of the EP&amp;A Act.</li> </ul> <p>The proposed modification meets the terms of this delegation. As such, the Director, Transport and Water Assessments has the delegated authority to determine the modification request.</p>

## 3.2 Other approvals and authorisations

There are no other approvals or authorisations required that govern the changes proposed by the modification.

### 3.2.1 Biodiversity development assessment report

Section 7.17(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSI 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 BC Act and in the Biodiversity Conservation Regulation 2017).

The Department is satisfied that the modification will not increase the impact on biodiversity values and consequently a BDAR is not required to accompany the modification application at this stage.

# 4 Engagement

## 4.1 Department's engagement

In accordance with section 5.28(1)(g) of the EP&A Act and the EP&A Regulation, the Department made the modification application publicly available on the Department's website on 16 November 2023.

The modification was also forwarded to the Environment and Heritage Group (EHG) for advice as it requested a change to the biodiversity offset credits.

### 4.1.1 Summary of advice received from government agencies

EHG (Biodiversity Conservation Division) advised that the ecosystem credit requirements in Table 3-1 of the Modification Report (which replicate Condition E4, Table 1) are correct and that the proposed modification to Condition E4 is not required.

## 5 Assessment

The Department has reviewed the proponent's request to modify the approved project and assessed the potential impacts of the modification. The proposed amendment of typographical and cross-referencing errors is considered administrative and minor in nature as the amendments will not result in impacts that were not already considered in the assessment for SSI 10049 Kamay Wharves Environmental Impact Statement (EIS) and supporting documentation.

The proposed inclusion of reporting timeframe in Condition E106 is recommended as it would provide certainty as to when the Proponent will need to advise the Planning Secretary of the date of transfer of assets to the relevant authority.

## 6 Evaluation

The Department's assessment has considered the relevant matters as well as advice from EHG. The proposed administrative changes have no impacts in regards to the Department's consideration of the objects of the EP&A Act that was undertaken as part of the assessment of the project approval (SSI-10049).

The modified conditions would not result in a change to impacts on the community and environment beyond those assessed in the project approval.

The Department has formed the opinion:

- the modification request complies with relevant statutory provisions and remains consistent with the EP&A Act
- the modification should be approved subject to modified conditions, and
- no additional conditions are required.

# 7 Recommendation

It is recommended that the **Director, Transport and Water Assessments**, as delegate of the Minister for Planning and Public Spaces:

- considers the findings and recommendations of this report
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies the approval** for the Kamay Ferry Wharves (SSI 10049) as amended, subject to the modified conditions in the attached instrument of modification, and
- signs the attached instrument of modification (Appendix C).

Recommended by:



**Natalie Froud**  
Planning Officer  
Transport & Water Assessments

Recommended by:



**Mary Garland**  
Team Leader  
Transport & Water Assessments

## 8 Determination

The recommendation is adopted by:

A handwritten signature in blue ink, appearing to be 'Glenn Snow', written over a light blue horizontal line.

**Glenn Snow**

Director Transport and Water Assessments

Infrastructure Assessments

As delegate for the Minister of Planning and Public Spaces

# Glossary

Abbreviation	Definition
<b>Department</b>	Department of Planning and Environment
<b>EHG</b>	Environment and Heritage Group of the Department of Planning and Environment
<b>EIS</b>	Environmental impact statement
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>Minister</b>	Minister for Planning and Public Spaces
<b>Proponent</b>	Transport for NSW
<b>SSI</b>	State significant infrastructure
<b>TfNSW</b>	Transport for NSW



# Appendices

## Appendix A – List of referenced documents

All proponent supporting documents and advice can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves-mod-1-administrative-modification>

## Appendix B – Submissions and government agency advice

Agency advice can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves-mod-1-administrative-modification>

## Appendix C – Recommended instrument of modification

The Assessment Report and Instrument of the Modification can be found here:

<https://www.planningportal.nsw.gov.au/major-projects/projects/kamay-ferry-wharves-mod-1-administrative-modification>