



New South Wales

State Environmental Planning Policy (Port Botany) 2013

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

2013 No 228

State Environmental Planning Policy (Port Botany) 2013

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Clause 1 State Environmental Planning Policy (Port Botany) 2013

Part 1 Preliminary

State Environmental Planning Policy (Port Botany) 2013

under the

Environmental Planning and Assessment Act 1979

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Port Botany) 2013*.

2 Commencement

This Policy commences on 31 May 2013 and is required to be published on the NSW legislation website.

3 Aims of Policy

The aims of this Policy are as follows:

- (a) to provide a consistent planning regime for the development and delivery of infrastructure on land in and around Port Botany,
- (b) to allow the efficient development, re-development and protection of land at Port Botany for port purposes,
- (c) to identify certain development as exempt development or complying development,
- (d) to specify matters to be considered in determining whether to grant consent to development adjacent to development for port purposes,
- (e) to provide for development that does not, by its nature or scale, constitute an actual or potential obstruction or hazard to aircraft,
- (f) to identify certain development as State significant development or State significant infrastructure.

4 Definitions

- (1) In this Policy:

Additional Permitted Uses Map means the State Environmental Planning Policy (Port Botany) 2013 Additional Permitted Uses Map.

Australian Dangerous Goods Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, 7th edition, approved by the Australian Transport Council.

capital dredging means dredging that is carried out for the purpose of:

- (a) constructing a new navigational channel, or
- (b) re-opening a discontinued navigational channel, or
- (c) deepening or widening an existing navigational channel (other than for maintenance purposes),

for berthing or navigation purposes.

capital investment value of a development includes all costs necessary to establish and operate the development, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

- (a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or 6A of Part 4 of the Act or a planning agreement under Division 6 of that Part,
- (b) costs relating to any part of the development that is the subject of a separate development consent or is an approved project (within the meaning of Schedule 6A to the Act),
- (c) land costs (including any costs of marketing and selling land),
- (d) GST (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

combustible liquid has the same meaning as in the *Work Health and Safety Regulation 2011*.

Council means:

- (a) in relation to land within the City of Botany Bay area—the Council of the City of Botany Bay, or
- (b) in relation to land within the Randwick City area—Randwick City Council.

dangerous goods has the same meaning as it has in the *Dangerous Goods (Road and Rail Transport) Act 2008*.

dredging means the removal of material from the sea or harbour bed or the bed of a river.

environmental management works means:

- (a) works for the purpose of avoiding, reducing, minimising or managing the environmental effects of development (including effects on water, soil, air, biodiversity, traffic or amenity), and
- (b) environmental protection works.

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Clause 4 State Environmental Planning Policy (Port Botany) 2013

Part 1 Preliminary

freight includes livestock, containers (whether empty or otherwise), liquids, materials, plant and equipment, vehicles and vessels.

Height of Buildings Map means the State Environmental Planning Policy (Port Botany) 2013 Height of Buildings Map.

Land Application Map means the State Environmental Planning Policy (Port Botany) 2013 Land Application Map.

Land Zoning Map means the State Environmental Planning Policy (Port Botany) 2013 Land Zoning Map.

Lease Area Map means the State Environmental Planning Policy (Port Botany) 2013 Lease Area Map.

local heritage item means a heritage item within the meaning of clause 31 that is not a State heritage item.

maintenance dredging means dredging and bed levelling for the purpose of maintaining an existing navigational channel.

navigation and emergency response facilities means facilities for:

- (a) water traffic control, safe navigation and other safety purposes (such as beacons, navigation towers, radar towers, communication facilities, vessel monitoring facilities, lighthouses, buoys, marine markers, pilot stations, jetties, breakwaters or training walls), and
- (b) emergency response, including rescue stations and emergency communication facilities and jetties.

navigational channel includes an access channel, swing basin, berthing box or other navigable area.

Port Botany Lease Area means the area shown edged in red on the Lease Area Map.

Port Botany Operator means the port operator of the port of Botany Bay within the meaning of the *Ports and Maritime Administration Act 1995*.

Port Corporation means a Port Corporation established under the *Ports and Maritime Administration Act 1995*.

port facilities means facilities on land in the Port Botany 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.

public authority includes the Port Botany Operator.

reclamation work means any work (other than work undertaken in connection with maintenance dredging) that involves:

- (a) using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim land submerged by water (whether permanently or intermittently), or
- (b) depositing any such material on land submerged by water (whether permanently or intermittently) for the purpose of constructing anything over that land (such as a bridge but not a seawall, groyne or jetty), or
- (c) draining water from land submerged by water (whether permanently or intermittently) for the purpose of its reclamation.

Referral Area Map means the State Environmental Planning Policy (Port Botany) 2013 Referral Area Map.

State heritage item means an item of State heritage significance, within the meaning of the *Heritage Act 1977*, that is the subject of an interim heritage order in force under that Act or listed on the State Heritage Register under that Act.

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) In this Policy, a reference to development for the purpose of port facilities, navigation and emergency response facilities or wharf or boating facilities includes a reference to the operation of such a facility and any of the following if carried out in connection with such a facility:
 - (a) construction works,
 - (b) routine maintenance works,
 - (c) environmental management works.
- (3) Words and expressions used in this Policy have the same meaning as they have in the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*, unless otherwise defined in this Policy.
- (4) Notes included in this Policy do not form part of this Policy.

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Clause 5 State Environmental Planning Policy (Port Botany) 2013

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5 Land to which Policy applies

This Policy applies to the land identified on the Land Application Map.

6 Relationship with other environmental planning instruments

- (1) Subject to section 74 (1) of the Act and this clause, in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.
- (2) If this Policy and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specify the same development as either exempt or complying development, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* does not apply to that development.
- (3) This Policy does not restrict or prohibit the carrying out of any development that is permitted to be carried out with or without development consent, or that is exempt development, under *State Environmental Planning Policy (Infrastructure) 2007*.

7 Same development

- (1) For the purposes of this Policy, 2 or more instruments are taken to specify the same development if they specify that development for the same purpose may be carried out on the same land, even though there may be some differences in the specifications or development standards for that development.
Note. For example, "deck" is a development, even if the size of the deck or its location varies in different instruments.
- (2) The Director-General may certify in writing, for the purpose of this Policy, that 2 or more instruments do, or do not, specify the same development and any such certificate has effect according to its tenor.
- (3) Notice of any certification by the Director-General under subclause (2) must be published in the Gazette.

8 Consent authority

The consent authority for the purposes of this Policy is:

- (a) the Minister, for development on land within the Port Botany Lease Area or land that is unzoned, or
- (b) the Council, for development on any other land to which this Policy applies.

9 Maps

- (1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Policy to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Policy, a map may be in, and may be kept and made available in, electronic or paper form, or both.

Note. The maps adopted by this Policy are to be made available on the official NSW legislation website in connection with this Policy.

10 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Policy or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not apply:
 - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
 - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
 - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
 - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
 - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or
 - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act.

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Clause 11 State Environmental Planning Policy (Port Botany) 2013

Part 1 Preliminary

- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).
- (5) This clause does not apply to land within the Port Botany Lease Area.

11 Savings provision relating to development applications and Part 5 activities

- (1) If a development application has been made before the commencement of this Policy in relation to land to which this Policy applies and the application has not been finally determined before that commencement, the application must be determined as if this Policy had not commenced.
- (2) This Policy does not apply to development that, immediately before the commencement of this Policy, was an activity to which Part 5 of the Act applied if:
 - (a) before the commencement of this Policy, the activity had been considered under Part 5 of the Act and any approvals or requirements that were required under that Part before the activity could be carried out had been obtained or complied with, and
 - (b) the development is substantially commenced not later than 2 years after the commencement of this Policy.
- (3) Part 20 of Schedule 3 to *State Environmental Planning Policy (Major Development) 2005*, as in force immediately before the commencement of this Policy, continues to apply to development specified in subclause (2).

Part 2 Permitted or prohibited development

12 Land use zones

The land use zones under this Policy are as follows:

Industrial Zones

IN1 General Industrial

Special Purpose Zones

SP1 Special Activities

Recreation Zones

RE1 Public Recreation

13 Zoning of land to which Policy applies

For the purposes of this Policy, land is within the zones shown on the Land Zoning Map.

14 Zone objectives and Land Use Table

- (1) The Land Use Table at the end of this Part specifies for each zone:
 - (a) the objectives for development, and
 - (b) development that may be carried out without development consent, and
 - (c) development that may be carried out only with development consent, and
 - (d) development that is prohibited.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.
- (3) In the Land Use Table at the end of this Part:
 - (a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and
 - (b) a reference to a type of building or other thing does not include (despite any definition in this Policy) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.
- (4) This clause is subject to the other provisions of this Policy.

Notes.

- 1 Schedule 1 sets out exempt development (which is generally exempt from both Parts 4 and 5 of the Act). Development in the land use table that may be carried out without consent is nevertheless subject to the

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Clause 15 State Environmental Planning Policy (Port Botany) 2013

Part 2 Permitted or prohibited development

environmental assessment and approval requirements of Part 5 of the Act.

- 2 Schedule 2 sets out complying development (for which a complying development certificate may be issued as an alternative to obtaining development consent).

15 Unzoned land

- (1) Development may be carried out on unzoned land only with development consent.
- (2) Before granting development consent, the consent authority:
 - (a) must consider whether the development will impact on adjoining zoned land and, if so, consider the objectives for development in the zones of the adjoining land, and
 - (b) must be satisfied that the development is appropriate and is compatible with permissible land uses in any such adjoining land.
- (3) Despite subclause (1), development for the following purposes may be carried out by or on behalf of a public authority on unzoned land without development consent:
 - (a) maintenance dredging,
 - (b) capital dredging,
 - (c) environmental management works associated with port facilities or wharf and boating facilities,
 - (d) navigation and emergency response facilities,
 - (e) port facilities, if the development is directly related to an existing port facility.

16 Subdivision—consent requirements

Any land to which this Policy applies may be subdivided, but only with development consent.

Note. Subdivision within the Port Botany Lease Area by the Port Botany Operator or a Port Corporation is exempt development.

17 Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note. If this Policy identifies the demolition of a building or work as exempt development, the demolition may be carried out without development consent.

18 Development by public authorities (including Port Botany Operator)

- (1) Development may be carried out for the following purposes without development consent on land within Zone IN1 General Industrial,

Zone SP1 Special Activities or Zone RE1 Public Recreation, but only if it is development carried out by or on behalf of a public authority:

- (a) navigation and emergency response facilities,
 - (b) wharf or boating facilities, if the development has a capital investment value of more than \$100 million,
 - (c) capital dredging,
 - (d) maintenance dredging,
 - (e) port facilities, if the development has a capital investment value of more than \$100 million.
- (2) Despite any other provision of this Policy, development for the purposes of wharf or boating facilities may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if the development is authorised by or under that Act.
- (3) Development may be carried out for the following purposes without development consent on land within the Port Botany Lease Area, but only if it is development carried out by or on behalf of a public authority:
- (a) environmental facilities,
 - (b) environmental protection works,
 - (c) community facilities.
- (4) Development may be carried out with development consent on land within Zone IN1 General Industrial, Zone SP1 Special Activities or Zone RE1 Public Recreation for the purposes of port facilities, or wharf or boating facilities, having a capital investment value of \$100 million or less, but only if it is development carried out by or on behalf of a public authority.

Notes.

- 1 Development that is permitted to be carried out with or without consent in land within Zone IN1 General Industrial, Zone SP1 Special Activities or Zone RE1 Public Recreation is also specified in the Land Use Table set out in this Policy.
- 2 Development by a public authority on land within the Port Botany Lease Area for the purposes of port facilities or wharf or boating facilities, having a capital investment value of more than \$100 million, and development for the purposes of capital dredging or that involves reclamation work is declared to be State significant infrastructure under clause 28 of this Policy.
- 3 Other permits or licences may be required under other Acts for development in the Port Botany Lease Area.

19 Port Botany Operator to be notified of certain development applications

- (1) This clause applies to land identified on the Referral Area Map.

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Clause 20 State Environmental Planning Policy (Port Botany) 2013

Part 2 Permitted or prohibited development

- (2) Before determining a development application for development on land to which this clause applies, the consent authority must notify the chief executive of the Port Botany Operator in writing of the proposed development.
- (3) Notice must be given not later than 7 days after the development application is made.
- (4) In determining a development application to which this clause applies, the consent authority must consider the following matters:
 - (a) any submissions made to the consent authority by the chief executive of the Port Botany Operator within 21 days of notification of the development application under this clause,
 - (b) the effect of the development on the practicability, cost, structural integrity and safety of future port expansion or dredging works within navigation channels,
 - (c) the effect of the development on ship movements to, from or within Port Botany.

20 Prohibition on development for the purpose of container depots on certain land in Zone IN1

- (1) Despite any other provision of this Policy, development consent must not be granted for development for the purpose of a container depot on land within Zone IN1 General Industrial that is shown as a Container Depots Prohibition Area on the Land Zoning Map.
- (2) In this clause, a *container depot* means a building or place that is used for:
 - (a) the unloading or unpacking (or both) of shipping containers for delivery to individual consignees, or
 - (b) the consolidation of goods from different consignors into full shipping container loads for despatch, or
 - (c) the repair, refitting or storage of shipping containers.

21 Business premises and office premises in Zone IN1

Development consent must not be granted for development for the purposes of business premises or office premises on land within Zone IN1 General Industrial unless the consent authority is satisfied that the development is associated with, and ancillary to, port facilities or industrial uses of land.

22 Earthworks

- (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on

environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

- (2) Development consent is required for earthworks unless:
- (a) the earthworks are exempt development under this Policy or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Policy or to development for which development consent has been given.
- (3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:
- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,
 - (i) the potential impact on groundwater and groundwater dependent ecosystems.

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

23 Additional permitted uses

Despite any other provision of this Policy, development for the purposes of business premises or office premises may be carried out with development consent on land shown hatched on the Additional Permitted Uses Map.

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Clause 23 State Environmental Planning Policy (Port Botany) 2013

Part 2 Land Use Table

Land Use Table

Zone IN1 General Industrial

1 Objectives of zone

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To facilitate and encourage port related industries that will contribute to the growth and diversification of trade through the port.
- To enable development for the purposes of business premises or office premises associated with, and ancillary to, port facilities or industries.
- To encourage ecologically sustainable development.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boat building and repair facilities; Business premises; Depots; Food and drink premises; Freight transport facilities; General industries; Jetties; Light industries; Neighbourhood shops; Office premises; Roads; Signage; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities

4 Prohibited

Any development not specified in item 2 or 3

Zone SP1 Special Activities

1 Objectives of zone

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

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- 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.
 - 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.
 - To provide for port related facilities and development that support the operations of Port Botany.
 - To facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses.
 - To encourage employment opportunities.

2 Permitted without consent

Jetties; Roads

3 Permitted with consent

Capital dredging; Environmental facilities; Environmental protection works; Maintenance dredging; Navigation and emergency response facilities; Port facilities; Wharf or boating facilities; Any other development not specified in item 2 or 4

4 Prohibited

Cemeteries; Child care centres; Crematoria; Educational establishments; Entertainment facilities; Function centres; Funeral homes; Garden centres; Hardware and building supplies; Medical centres; Neighbourhood shops; Places of public worship; Recreation facilities (indoor); Registered clubs; Residential accommodation; Respite day care centres; Restricted premises; Tourist and visitor accommodation

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

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Clause 23 State Environmental Planning Policy (Port Botany) 2013

Part 2 Land Use Table

- To protect, manage and restore the Botany Bay shoreline for ecological purposes.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boat launching ramps; Car parks; Community facilities; Environmental facilities; Kiosks; Recreation areas; Roads

4 Prohibited

Any development not specified in item 2 or 3

Part 3 Exempt and complying development

24 Exempt development

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
 - (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
 - (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).
- (1) The objective of this clause is to identify development of minimal environmental impact as exempt development.
 - (2) Development specified in Schedule 1 on land within the Port Botany Lease Area that meets the standards for the development contained in that Schedule and that complies with the requirements of this Part is exempt development.
 - (3) To be exempt development, the development:
 - (a) must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia* or, if there are no such relevant provisions, must be structurally adequate, and
 - (b) must not, if it relates to an existing building, cause the building to contravene the *Building Code of Australia* or compromise the fire safety of the building or affect access to any fire exit, and
 - (c) must not be development of a kind specified as designated development (other than development specified in clause 28 or 30 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*), and
 - (d) if it is likely to affect an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under the *Heritage Act 1977* or a heritage item or heritage conservation area specified in an environmental planning instrument, must involve no more than minimal impact on the heritage significance of the item or area, and
 - (e) must not be a potentially hazardous industry or a potentially offensive industry (within the meaning of the *State Environmental Planning Policy No 33—Hazardous and Offensive Development*).

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Clause 25 State Environmental Planning Policy (Port Botany) 2013

Part 3 Exempt and complying development

- (4) Development that relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2–9 is exempt development only if:
 - (a) the building has a current fire safety certificate or fire safety statement, or
 - (b) no fire safety measures are currently implemented, required or proposed for the building.
- (5) To be exempt development, the development must be installed in accordance with the manufacturer's specifications, if applicable.
- (6) A heading to an item in Schedule 1 is part of that Schedule.

25 Complying development

- (1) The objective of this clause is to identify development as complying development.
- (2) Development specified in Part 1 of Schedule 2 on land within the Port Botany Lease Area that is carried out in compliance with:
 - (a) the development standards specified in relation to that development, and
 - (b) the requirements of this Part,is complying development.
- (3) To be complying development, the development must:
 - (a) be permissible, with development consent, in the zone in which it is carried out, and
 - (b) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (c) before the complying development certificate is issued, have written consent from the relevant roads authority, if required by the *Roads Act 1993*:
 - (i) for each opening of a public road required by the development, and
 - (ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve, and
 - (d) have an approval, if required by the *Local Government Act 1993*, from the Council for an on-site effluent disposal system if the development is undertaken on unsewered land, and
 - (e) not be a potentially hazardous industry or a potentially offensive industry (within the meaning of the *State Environmental Planning Policy No 33—Hazardous and Offensive Development*).

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- (4) Subclause (3) (e) does not apply to development specified in clauses 11–13 of Schedule 2.
 - (5) A complying development certificate for development specified in Part 1 of Schedule 2 is subject to the conditions (if any) set out or referred to in Part 2 of that Schedule.
 - (6) A heading to an item in Schedule 2 is part of that Schedule.

26 Additional exempt and complying development

- (1) The Port Botany Operator may propose to the Minister that additional categories of development be specified as exempt development or complying development under this Policy.
- (2) For the purpose of considering any such amendment, the Minister may require the Director-General to consider, and to report to the Minister on, any such proposal.

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Clause 27 State Environmental Planning Policy (Port Botany) 2013

Part 4 State significant development and State significant infrastructure

Part 4 State significant development and State significant infrastructure

27 State significant development

- (1) Development is declared to be State significant development for the purposes of the Act if:
 - (a) it is carried out on land within the Port Botany Lease Area or on unzoned land under this Policy, and
 - (b) it is, by operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and
 - (c) it has a capital investment value of more than \$100 million or it is designated development (other than development specified in clause 28 (c) or 30 (shipping facilities) of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*).
- (2) *State Environmental Planning Policy (State and Regional Development) 2011* applies to development declared by this Policy to be State significant development as if the declaration was made under *State Environmental Planning Policy (State and Regional Development) 2011*.
- (3) Despite subclause (2), clause 8 (1) of *State Environmental Planning Policy (State and Regional Development) 2011* does not apply to development carried out on land within the Port Botany Lease Area or on land that is unzoned land under this Policy.
- (4) Clause 12 of *State Environmental Planning Policy (State and Regional Development) 2011* applies to development declared by this clause to be State significant development in the same way it applies to development specified in Schedule 1 or 2 to *State Environmental Planning Policy (State and Regional Development) 2011*.

28 State significant infrastructure

- (1) Development is declared, pursuant to section 115U (2) of the Act, to be State significant infrastructure for the purposes of the Act if:
 - (a) it is carried out on land within the Port Botany Lease Area or on unzoned land under this Policy, and
 - (b) the development on that land is, by the operation of a State environmental planning policy, permissible without development consent under Part 4 of the Act, and
 - (c) the development is for the purposes of port facilities or wharf or boating facilities carried out by or on behalf of a public authority, being development having a capital investment value of more

than \$100 million, or for the purposes of capital dredging or development that involves reclamation work.

- (2) *State Environmental Planning Policy (State and Regional Development) 2011* applies to development declared by this Policy to be State significant infrastructure as if the declaration was made under *State Environmental Planning Policy (State and Regional Development) 2011*.
- (3) Despite subclause (2), clause 14 (1) of *State Environmental Planning Policy (State and Regional Development) 2011* does not apply to development specified in clause 2 of Schedule 3 to that Policy if the development is carried out on land within the Port Botany Lease Area or on land that is unzoned land under this Policy.
- (4) Clause 19 of *State Environmental Planning Policy (State and Regional Development) 2011* applies to development declared by this clause to be State significant infrastructure in the same way it applies to development specified in Schedule 3, 4 or 5 to *State Environmental Planning Policy (State and Regional Development) 2011*.

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Clause 29 State Environmental Planning Policy (Port Botany) 2013

Part 5 Miscellaneous

Part 5 Miscellaneous

29 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation on land to which this Policy applies (other than the Port Botany Lease Area) that are prescribed for the purposes of this clause by a development control plan made by the Council of the area in which they are situated.
Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
 - (a) development consent, or
 - (b) a permit granted by the Council of the area in which the tree or vegetation is situated.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree or other vegetation that the Council of the area in which the tree or vegetation is situated is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council of the area in which the tree or vegetation is situated is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - (a) that is or forms part of a heritage item, or
 - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,unless the Council is satisfied that the proposed activity:
 - (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object or Aboriginal place of heritage significance, and

- (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object or Aboriginal place of heritage significance.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 31 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
- (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
 - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Note. Permissibility may be a matter that is determined by or under any of these Acts.

30 Other trees or vegetation

- (1) This clause applies to any tree or other vegetation on land to which this Policy applies that:
- (a) is not of a species or kind prescribed for the purposes of clause 29 by a development control plan made by the Council of the area in which the tree or vegetation is situated, or
 - (b) is situated within the Port Botany Lease Area.
- (2) The ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree or other vegetation to which this clause applies is permitted without development consent.

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Clause 31 State Environmental Planning Policy (Port Botany) 2013

Part 5 Miscellaneous

31 Heritage conservation

(1) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving a heritage item,
- (b) altering a heritage item that is a building by making structural changes to its interior,
- (c) erecting a building on land on which a heritage item is located.

(2) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, and
 - (ii) would not adversely affect the heritage significance of the heritage item, or
- (b) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (c) the development is exempt development.

(3) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item, consider the effect of the proposed development on the heritage significance of the item concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (4) or a heritage conservation management plan is submitted under subclause (5).

(4) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within the vicinity of land referred to in paragraph (a),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item.

(5) **Heritage conservation management plans**

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(6) **Demolition of nominated State heritage items**

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(7) **Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Policy, if the consent authority is satisfied that:

- (a) the conservation of the heritage item is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

(8) In this clause, *heritage item* means a building, work, tree or place listed in the Table to this clause.

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Clause 32 State Environmental Planning Policy (Port Botany) 2013

Part 5 Miscellaneous

Heritage items

Suburb	Item name	Address	Property description
Banksmeadow	Main Administration Building—“Orica” and Mature Ficus	Corner of Denison and Beauchamp Streets	Lot 11, DP 1039919
Banksmeadow	Pier Hotel	1751 Botany Road	Lot 1, DP 1031248
Banksmeadow	Botany Bay Hotel	1807 Botany Road	Lot A, DP 333268
Botany	Canary Island Date Palms (<i>Phoenix canariensis</i>)	23 Byrnes Street	Lot 1, DP 169307

32 Application of consultation requirements

- (1) Division 1 of Part 2 of *State Environmental Planning Policy (Infrastructure) 2007* applies to development referred to in this Policy carried out by or on behalf of a public authority within the meaning of this Policy in the same way that it applies to development referred to in that Policy carried out by or on behalf of a public authority within the meaning of that Policy.
- (2) For the purposes of this clause, a reference in that Division to a local heritage item is a reference to a local heritage item within the meaning of this Policy.

Schedule 1 Exempt development

(Clause 24)

Note. Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply.

1 Building alterations

- (1) Building alterations consisting of any of the following:
 - (a) non-structural alterations to the exteriors of buildings (such as painting, plastering, cement rendering, cladding, attaching fittings and decorative work),
 - (b) any work involving the removal of lead, or the removal of asbestos or asbestos cement if the removal complies with the WorkCover Authority's *Working with Asbestos Guide 2008* (ISBN 0 7310 5159 9),
 - (c) construction or installation of mechanical plant or an air conditioning unit.
- (2) Interior alterations to a building that do not:
 - (a) result in the load bearing capacity of any component of the building being exceeded, or
 - (b) result in a change to the configuration of a room in a building that interferes with the operational effectiveness of any fire safety measures for the building, or
 - (c) result in a change that detrimentally affects the operational effectiveness of the fire safety measures for the building.

2 Bulk liquid storage tanks

- (1) Bulk liquid storage tanks used to store dangerous goods, and the storage of such liquids in the tanks, other than an excluded liquid.
- (2) The height of the bulk liquid storage tank must not exceed 32.5m above ground level (existing).
- (3) For the purposes of this clause, *excluded liquid* means a combustible liquid, a liquid that is dangerous goods of class 1, 2, 3, 4, 5 or 6 under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas.

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State Environmental Planning Policy (Port Botany) 2013

Schedule 1 Exempt development

3 Bulk liquid storage tanks—change of stored liquid

- (1) Change in kind of liquid stored in a bulk liquid storage tank, other than a change where the previous liquid stored or the new liquid consists of an excluded liquid.
- (2) For the purposes of this clause, *excluded liquid* means a combustible liquid, a liquid that is dangerous goods of class 1, 2, 3, 4, 5 or 6 under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas.

4 Bulk liquid storage and handling facilities—fittings, fixtures and pipelines—maintenance and repair

- (1) The maintenance, repair and replacement of fittings, fixtures and pipelines related to bulk liquid storage and handling facilities.
- (2) This clause does not apply to the following:
 - (a) modifications to enlarge an existing pipeline to a bulk liquid storage tank containing an excluded liquid,
 - (b) modifications to increase the flow rate to or from a bulk liquid storage tank containing an excluded liquid,
 - (c) installation of a new pipeline to increase the flow rate to or from a bulk liquid storage tank containing an excluded liquid.
- (3) For the purposes of this clause, *excluded liquid* means a combustible liquid, a liquid that is dangerous goods of class 1, 2, 3, 4, 5 or 6 under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas.

5 Car parks (at-grade)

- (1) The construction or installation of an at-grade car park.
- (2) The car park must:
 - (a) be designed in accordance with AS 1428.1—2009, *Design for access and mobility Part 1: General requirements for access—New building work*, AS 1428.2—1992, *Design for access and mobility Part 2: Enhanced and additional requirements—Buildings and facilities*, AS 1428.3—1992, *Design for access and mobility Part 3: Requirements for children and adolescents with physical disabilities*, AS/NZS 1428.4.1:2009, *Design for access and mobility Part 4.1: Means to assist the orientation of people with vision impairment—Tactile ground surface indicators*, AS/NZS 2890.1:2004, *Parking facilities—Part 1: Off-street car parking* or AS 2890.2 2002, *Parking facilities Part 2: Off-street commercial vehicle facilities*, and
 - (b) be paved with concrete or bituminous surfaces, and

- (c) be designed and constructed so that any surface water run-off drains to an existing stormwater drainage system or to a landscaped area.

6 Demolition

Demolition of a building or work in accordance with AS 2601—2001, *The demolition of structures*, other than:

- (a) demolition of bulk liquid storage tanks that have been used to store dangerous goods or combustible liquids, or
- (b) demolition of pipelines that have been used to carry dangerous goods or combustible liquids, or
- (c) demolition of liquefied petroleum gas storage tanks that together have a capacity to store, at any one time, a total of more than 3 tonnes of gas.

7 Driveways

- (1) The construction or installation of a driveway that is ancillary or incidental to a lawful use on the land on which the development is carried out.
- (2) The driveway must be designed in accordance with AS 2890.2—2002, *Parking facilities Part 2: Off-street commercial vehicle activities*.

8 Emergency works

- (1) Works for the purpose of maintaining or restoring port facilities or emergency services equipment in order to ensure public safety or to protect buildings or the environment as a result of:
 - (a) a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or
 - (b) an accident, equipment failure or structural collapse, or
 - (c) damage caused by vandalism or arson.
- (2) The works must not disturb soil or vegetation any more than is necessary to carry out the works.

9 Fences or gates (including security boom gates)

- (1) The construction or installation of a fence or gate (including a security boom gate).
- (2) Any security fence must not exceed 5m in height.

10 Flagpoles

- (1) The construction or installation of a flagpole.

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Schedule 1 Exempt development

- (2) The flagpole must:
- (a) have a height above ground level (existing) of not more than 30m or, if erected on or attached to a building, extend not more than 10m above the highest point of the building, and
 - (b) not be located within 20m of any boundary of a property that is used for residential purposes, and
 - (c) not display any commercial advertisements for or about anything other than the Port Botany Operator or a business located on the site.

11 Fuel storage tanks

- (1) Fuel storage tanks, if the development will not result in the total capacity of fuel storage tanks for a business exceeding 50,000 litres of fuel.
- (2) The tanks must:
- (a) comply with the Australian Dangerous Goods Code, and
 - (b) comply with AS 1940—2004, *The storage and handling of flammable and combustible liquids*.

12 Hail netting

- (1) The construction or installation of hail netting.
- (2) The netting must:
- (a) have a height above ground level (existing) of not more than 12m, and
 - (b) be dark in colour.

13 Landscaping

The construction or installation of landscaping works and landscaping structures.

14 Lighting

- (1) The construction or installation of lighting, including structures for external lighting.
- (2) All new external lighting must:
- (a) comply with AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*, and
 - (b) comply with sections 9.1.3 (Lighting in the Vicinity of an Aerodrome) and 9.21 (Lighting in the Vicinity of Aerodromes) of the *Manual of Standards Part 139—Aerodromes* made under the

Civil Aviation Safety Regulations 1998 of the Commonwealth, and

- (c) be mounted, screened and directed in such manner that it does not create a nuisance or light spill onto land outside the Port Botany Lease Area or into Penrhyn Estuary or its flushing channel, or shine into the Estuary.
- (3) The lighting or structures must not exceed a height of 35m above ground level (existing) or, if erected on or attached to a building, must not extend more than 10m above the highest point of the building.

15 Liquefied petroleum gas storage tanks

- (1) Liquefied petroleum gas storage tanks, if the development will not result in the total capacity of liquefied petroleum gas storage tanks for a business exceeding 3 tonnes of gas.
- (2) The containers must comply with the following:
 - (a) the Australian Dangerous Goods Code,
 - (b) AS 1940—2004, *The storage and handling of flammable and combustible liquids*,
 - (c) AS/NZS 1596:2008, *The storage and handling of LP Gas*.

16 Minor works for securing, accessing or protecting wharves or vessels

The construction or installation, and the removal, of minor works for securing, accessing or protecting wharves or vessels, including ladders, ramps, fenders and mooring points.

17 Paving

- (1) The construction or installation of paving, including the replacement and maintenance or repair of paving.
- (2) The paving must be designed and constructed:
 - (a) so as to withstand the loads for which it is to be used, and
 - (b) so that any surface water run-off drains to an existing stormwater drainage system or to a landscaped area.

18 Pedestrian ramps, paths and mechanical and non-mechanical stairways

The construction or installation of pedestrian ramps, paths and mechanical and non-mechanical stairways.

19 Movable plant and equipment

The installation and maintenance of movable plant and equipment.

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Schedule 1 Exempt development

20 Pollution control facilities, work health and safety measures and environmental protection works

- (1) The construction or installation of facilities and works for the purposes of pollution control, work health and safety measures and environmental protection works, including any such facilities and works associated with liquefied petroleum gas storage tanks or fuel storage tanks, noise walls and stormwater treatment devices.
- (2) The development must:
 - (a) satisfy any applicable pollution control provisions and guidelines, and
 - (b) not be inconsistent with, or contravene, an existing development consent applicable to the land or be undertaken for the purpose of remediating contaminated land.
- (3) Subclause (2) (b) does not apply to any provision or condition of an existing development consent that limits development on the land to the use permitted by that consent.

21 Port facilities—change of use

- (1) Port facilities, if the development involves a change of use from a lawful use for the purposes of port facilities to another kind of use for the purposes of port facilities and the land on which the development is carried out is the subject of a contamination certificate.
- (2) The new use must not be inconsistent with, or contravene, an existing development consent applicable to the land. This subclause does not apply to any provision or condition of an existing development consent that limits development on the land to the use permitted by that consent.
- (3) The land on which the development is carried out must be suitable for the new use.
- (4) The new use:
 - (a) must not result in a change of classification of a building under the *Building Code of Australia*, and
 - (b) must not increase the level of fire hazard arising from the use of a building, and
 - (c) must not involve alterations to a building classified under the *Building Code of Australia*, other than alterations that are exempt development under this Policy.
- (5) In this clause, a **contamination certificate** is a certificate by a qualified person approved by the Director-General for the purposes of this clause certifying that, having regard to the contamination status of the land, the land is suitable for its proposed use.

22 Railway tracks

Railway tracks, including signals and sidings, and maintenance and replacement works.

23 Retaining walls (not including sea walls)

- (1) The construction or installation of a retaining wall (not including a sea wall).
- (2) The wall must:
 - (a) provide for the retaining of fill to a height above ground level (existing) of not more than 2m and excavation to a depth below ground level (existing) of not more than 1m, and
 - (b) comply with:
 - (i) AS 3700—2011, *Masonry structures* and AS 3700 Supp 1—2012, *Masonry structures—Commentary (Supplement 1 to AS 3700—2011)*, and
 - (ii) AS/NZS 1170.1:2002, *Structural design actions Part 1: Permanent, imposed and other actions* and AS/NZS 1170.1 Supp 1:2002, *Structural design actions—Permanent, imposed and other actions—Commentary (Supplement to AS/NZS 1170.1:2002)*, and
 - (iii) if the structure is made of timber, AS 1720:1—2010, *Timber structures Part 1: Design methods*, and
 - (c) be designed so as to manage the natural flow of stormwater or surface water run-off.

24 Road and rail infrastructure—minor maintenance, repairs and works

The carrying out of minor maintenance, minor repairs and other minor works to roads and rail infrastructure.

25 Roads—marking out

The marking out of roads, including the marking out of parking areas, queuing areas and pedestrian crossings.

Note. Approval is required under the *Roads Act 1993* for work done on public roads and under the *Road Transport (Safety and Traffic Management) Act 1999*.

26 Safety or security barriers

The construction or installation, and removal, of safety or security barriers, including jersey barriers and bollards.

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Schedule 1 Exempt development

27 Satellite dishes

The erection or installation of radio or satellite communication dishes for the purpose of receiving television or radio signals or for use in connection with community band or two-way radio.

28 Scaffolding

- (1) The construction, installation and removal of a scaffold or hoarding.
- (2) The development must:
 - (a) comply with AS/NZS 1576.1:2010, *Scaffolding—General requirements*, and
 - (b) be removed as soon as is practicable without compromising public health or safety.

29 Security and monitoring cameras and other devices

- (1) The construction or installation of security cameras and other devices, including radar, communication devices and microwave receivers for the purposes of monitoring traffic, port navigation, tracking vessels or tracking trucks or for security purposes.
- (2) The development must not involve the erection of a new structure having a height exceeding 35m above ground level (existing).

30 Signage

- (1) Signage (other than advertising structures).
- (2) A sign must comply with AS 1319—1994, *Safety signs for the occupational environment* and AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*.

31 Signage—changes and maintenance and repair

A change to the display on an existing sign, or the maintenance or repair of an existing sign.

32 Subdivision by Port Botany Operator or Port Corporation

The subdivision of land by the Port Botany Operator or a Port Corporation.

33 Switch rooms and security booths

- (1) The erection of a switch room or security booth.
- (2) The building must not have a gross floor area of more than 500m².

34 Temporary structures

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

35 Temporary uses of land

- (1) The temporary use of land for a maximum period of 182 days (whether or not consecutive days) in any period of 12 months.
- (2) The use must not prejudice the subsequent carrying out of development on the land in accordance with this Policy.
- (3) The use must not adversely impact on any adjoining land or the amenity of the neighbourhood.
- (4) The use must not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land.

36 Truck marshalling area

- (1) The construction or installation of a truck marshalling area.
- (2) The area must be:
 - (a) paved with concrete or bituminous surfaces, and
 - (b) designed and constructed so that it drains to an existing stormwater drainage system or to a landscaped area.

37 Truck weighbridges

The construction and installation of a truck weighbridge.

38 Utilities and service facilities

The construction or installation of a utility or service facility, including pipelines (other than pipelines used to carry dangerous goods or pipelines that are the subject of a licence under the *Pipelines Act 1967* or above ground or overhead power facilities).

39 Washbays

The construction and installation of washbays.

40 Water tanks

The erection of one or more rainwater, grey water or bilge water tanks, having a capacity to store not more than 20,000 tonnes of water per tank, and the removal of such tanks.

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State Environmental Planning Policy (Port Botany) 2013

Schedule 2 Complying development

Schedule 2 Complying development

(Clause 25)

Part 1 Complying Development

Division 1 New port facility or wharf or boating facility buildings or alterations or additions to such buildings

Subdivision 1 Development specified

- 1 **New port facility or wharf or boating facility buildings or alterations or additions to such buildings**
 - (1) Erection and use of a new building for the purposes of port facilities or wharf or boating facilities, if the land on which the development is carried out is subject to a contamination certificate.
 - (2) An external or internal alteration of, or addition to, an existing building that is used for the purposes of port facilities or wharf or boating facilities.

Note. Some buildings or structures for the purposes of port facilities are exempt development specified in Schedule 1.
 - (3) This clause does not apply to a new building erected or used for the purposes of development of a kind specified as designated development, other than development specified in clause 28 or 30 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*.
 - (4) Despite subclause (3), this clause applies to development for the purposes of buildings that are ancillary to bulk liquid storage tanks.
 - (5) In this clause, a **contamination certificate** is a certificate by a qualified person approved by the Director-General for the purposes of this clause certifying that, having regard to the contamination status of the land, the land is suitable for its proposed use.

Subdivision 2 Development standards

2 Application of development standards

This Subdivision sets out the development standards that apply to development specified in Subdivision 1.

3 General standards

The development must not be inconsistent with, or contravene, any condition of an existing development consent that applies to the land on which the development is to be carried out. This clause does not apply to any provision or condition of an existing development consent that limits development on the land to the use permitted by that consent.

4 Building heights

The height of a new building, or building as altered or added to, must not exceed the maximum height specified on the Height of Buildings Map.

5 Gross floor area

- (1) The gross floor area of a new building must not exceed 20,000m².
- (2) The gross floor area of any building, including any addition to the existing building, must not exceed 20,000m².

6 Visual amenity

Air conditioning units and mechanical plant must be screened or positioned so as to minimise visibility from frontages to main roads within Port Botany (other than private roads).

7 Materials, finishes and colour

Glazing must have a reflectivity coefficient of less than 20%.

8 Earthworks

- (1) Excavation works (other than excavation associated with piling) for the purposes of the development must not be more than 5m below ground level (existing) and the excavation must be structurally supported in accordance with subclause (2).
- (2) The structural support must take the form of a structural retaining system that:
 - (a) has been designed by a qualified engineer, and
 - (b) has a drainage system, and
 - (c) does not redirect the flow of surface water onto adjoining property, and
 - (d) is not higher than 5m, and
 - (e) in the case of works other than works required for an extension to an existing building, is separated from any other structural retaining system on the site by at least 2m measured horizontally.

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State Environmental Planning Policy (Port Botany) 2013

Schedule 2 Complying development

9 Lighting

All new external lighting must:

- (a) comply with AS 4282–1997, *Control of the obtrusive effects of outdoor lighting*, and
- (b) comply with sections 9.1.3 (Lighting in the Vicinity of an Aerodrome) and 9.21 (Lighting in the Vicinity of Aerodromes) of the *Manual of Standards Part 139—Aerodromes* made under the *Civil Aviation Safety Regulations 1998* of the Commonwealth, and
- (c) be mounted, screened and directed in such manner that it does not create a nuisance or light spill onto land outside the Port Botany Lease Area or into Penrhyn Estuary or its flushing channel, or shine into the Estuary.

Division 2 Other development

10 Awnings or canopies

- (1) The construction or installation of an awning or canopy.
- (2) The development must not:
 - (a) result in an increase to the gross floor area of the building, or
 - (b) reduce the existing level of access to the building by people with a disability.
- (3) The development must be:
 - (a) not less than 2.7m above ground level (existing) at any point, and
 - (b) not more than 3m in depth measured horizontally from the facade of the building, and
 - (c) no closer than 450mm to the edge of any kerb or alignment of a path or road on which vehicles travel.
- (4) The awning or canopy must be certified by a qualified engineer as having a satisfactory design.

11 Bulk liquid storage tanks

- (1) Bulk liquid storage tanks used to store dangerous goods and storage of dangerous goods in those tanks, if:
 - (a) the development has a capital investment value of \$30 million or less, and
 - (b) the tanks are used to store combustible liquids, dangerous goods classified as class 3 under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas, and

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- (c) the development is not, or does not result in, a workplace that constitutes a major hazard facility within the meaning of the *Work Health and Safety Regulation 2011*, and
 - (d) the development complies with AS 1940—2004, *The storage and handling of flammable and combustible liquids* and AS/NZS 1596:2008, *The storage and handling of LP Gas* and AS 3961—2005, *The storage and handling of liquefied natural gas*, and
 - (e) the studies specified in subclause (2) relating to the development have been prepared by a qualified person approved by the Director-General for the purposes of this clause.
- (2) The specified studies are as follows:
- (a) a hazard analysis that:
 - (i) is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6, Hazard Analysis*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, and
 - (ii) demonstrates that the proposed development meets the applicable risk criteria set out in the *Hazardous Industry Planning Advisory Paper No 4, Risk Criteria for Land Use Safety Planning*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, and
 - (iii) demonstrates that the proposed development will not cause any increase in the individual risk levels shown on Figure 2 of the *Port Botany Land Use Safety Study Overview Report*, published by PlanningNSW in 1996, or will not cause societal risk to exceed the ALARP band as shown in Figure 9 of that Report, and
 - (iv) is prepared having regard to the most hazardous substance proposed to be stored in the tanks,
 - (b) a fire safety study that is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2, Fire Safety Study Guidelines*, dated January 2011 and published by the Department of Planning and Infrastructure on its website,
 - (c) a hazard and operability study that is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 8, HAZOP Guidelines*, dated January 2011 and published by the Department of Planning and Infrastructure on its website.
- (3) Bunding and pipes and other infrastructure associated with development for bulk liquid storage tanks of a kind permitted by subclause (1).
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- (4) The development must comply with any recommendations made by the studies referred to in subclause (2) in relation to the development.

Note. Approvals for cranes and other structures may need to be obtained under the *Airports Act 1996* of the Commonwealth.

- (5) The height of the bulk liquid storage tank must not exceed 32.5m above ground level (existing).

12 Bulk liquid storage tanks—change of stored liquid

- (1) Change in kind of liquid stored in a bulk liquid storage tank, if the previous liquid stored or the new liquid consist of any of the following:
- (a) a combustible liquid,
 - (b) dangerous goods of class 3 under Part 2 of the Australian Dangerous Goods Code.
- (2) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6, Hazard Analysis*, dated January 2011 and published by the Department of Planning and Infrastructure on its website must be prepared by a qualified person approved by the Director-General for the purposes of this clause.
- (3) A hazard analysis is not required to be prepared under this clause if a hazard analysis of that kind has been previously prepared for the storage of a liquid in the tank being a liquid that is of the same or a higher level of hazard than the liquid proposed to be stored in the tank.
- (4) The development must comply with AS 1940—2004, *The storage and handling of flammable and combustible liquids*.

13 Bulk liquid storage tanks—modifications to pipelines and flow rates

- (1) In relation to a bulk liquid storage tank used to store combustible liquids, dangerous goods of class 3 under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas:
- (a) modifications to enlarge an existing pipeline to the bulk liquid storage tank, or
 - (b) modifications to increase the flow rate to or from the bulk liquid storage tank, or
 - (c) installation of a new pipeline to increase the flow rate to or from the bulk liquid storage tank,

if the studies specified in subclause (2) relating to the development have been prepared by a qualified person approved by the Director-General for the purposes of this clause.

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- (2) The specified studies are as follows:
- (a) a hazard analysis that:
 - (i) is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6, Hazard Analysis*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, and
 - (ii) demonstrates that the proposed development meets the applicable risk criteria set out in the *Hazardous Industry Planning Advisory Paper No 4, Risk Criteria for Land Use Safety Planning*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, and
 - (iii) demonstrates that the proposed development will not cause any increase in the individual risk levels shown on Figure 2 of the *Port Botany Land Use Safety Study Overview Report*, published by PlanningNSW in 1996, or will not cause societal risk to exceed the ALARP band as shown in Figure 9 of that Report,
 - (b) a fire safety study that is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2, Fire Safety Study Guidelines*, dated January 2011 and published by the Department of Planning and Infrastructure on its website,
 - (c) a hazard and operability study that is prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 8, HAZOP Guidelines*, dated January 2011 and published by the Department of Planning and Infrastructure on its website.

14 Cranes

- (1) The installation of a new rail mounted crane or crane rails or the replacement of an existing rail mounted crane or crane rails.
- (2) The crane or crane rails must be certified by a qualified engineer as having a satisfactory design.

Note. Approvals for cranes and other structures may need to be obtained under the *Airports Act 1996* of the Commonwealth.

15 Demolition of certain structures

- (1) The demolition of any of the following:
 - (a) one or more liquefied petroleum gas storage tanks having a total capacity of more than 3 tonnes of gas,
 - (b) bulk liquid storage tanks that have been used to store dangerous goods,
 - (c) pipelines that have been used to carry dangerous goods.

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- (2) The demolition must comply with AS 2601—2001, *The demolition of structures*.

Note. Demolition work must also be carried out in accordance with the *Work Health and Safety Regulation 2011*.

16 Emergency services equipment

- (1) The construction or installation, including upgrading and replacing, of emergency services equipment (including fire systems, pumphouses, fire water tanks and other essential fire safety facilities).
- (2) The development must not:
- (a) reduce the level of fire safety of a building, or
 - (b) detrimentally affect the structural integrity of a building, or
 - (c) alter or extend an existing fire sprinkler system of a building that is unsuitable for the level of fire hazard arising from the use of the building unless the alteration or extension is for the purpose of or includes upgrading the fire sprinkler system so that it is suitable for that level of fire hazard.

17 Food and drink premises

- (1) Food and drink premises.
- (2) The food and drink premises must:
- (a) not have a gross floor area of more than 1,250m², and
 - (b) have food preparation areas that comply with AS 4674—2004, *Design, construction and fit-out of food premises*.

18 Port facilities—change of use (change of building classification or increased fire hazard level)

- (1) Port facilities, if the development involves a change of use from a lawful use for the purposes of port facilities to another kind of use for the purposes of port facilities and the land on which the development is carried out is the subject of a contamination certificate.
- (2) The new use must not be inconsistent with, or contravene, an existing development consent applicable to the land. This subclause does not apply to any provision or condition of an existing development consent that limits development on the land to the use permitted by that consent.
- (3) The land on which the development is carried out must be suitable for the new use.
- (4) If the new use results in an increase in the level of fire hazard arising from the use of a building, appropriate fire safety measures for that increased level of fire hazard must be provided.

- (5) In this clause, a **contamination certificate** is a certificate by a qualified person approved by the Director-General for the purposes of this clause certifying that, having regard to the contamination status of the land, the land is suitable for its proposed use.

Note. A change of use that does not result in a change of building classification or an increase in the fire hazard level of the building is exempt development under this Policy.

19 Retaining walls

- (1) The construction of a retaining wall having a height of not more than 3m above ground level (existing).
- (2) The design of the wall must:
- (a) if it has a height of more than 1m, be certified by a structural engineer as having a satisfactory design and structure, and
 - (b) comply with:
 - (i) AS 3700—2011, *Masonry structures* and AS 3700 Supp 1—2012, *Masonry structures—Commentary (Supplement to AS 3700—2011)*, and
 - (ii) AS/NZS 1170.1:2002, *Structural design actions Part 1: Permanent, imposed and other actions* and AS/NZS 1170.1 Supp 1:2002, *Structural design actions—Permanent, imposed and other actions—Commentary (Supplement to AS/NZS 1170.1:2002)*, and
 - (iii) if the structure is made of timber, AS 1720.1—2010, *Timber structures Part 1: Design methods*.

Part 2 Complying development certificate conditions

Note. Complying development must comply with the requirements of the Act, the regulations under the Act and this Policy.

20 General conditions

Any development specified in Part 1 is subject to the same conditions set out in Division 3 of Part 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (other than clause 3.40).

21 Complying development certificate conditions—additional conditions

Any development specified in Part 1 is subject to the following conditions:

- (a) construction may be carried out only between 7.00am and 5.00pm Monday to Saturday, unless construction cannot be heard at the nearest residence,

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- (b) run-off and erosion controls must be implemented during construction to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:
 - (i) diverting uncontaminated run-off around cleared or disturbed areas, and
 - (ii) erecting a silt fence to prevent debris escaping into drainage systems and waterways, and
 - (iii) preventing tracking of sediment by vehicles onto roads, and
 - (iv) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot,
- (c) at the following stages, the principal certifying authority must be given the following survey certificates prepared by a registered land surveyor:
 - (i) before any form work below the ground floor slab is completed or (if there is no such form work) before the concrete is poured for the ground floor slab—a survey certificate showing the location of the structure relative to the boundaries,
 - (ii) at the completion of the lowest floor—a survey certificate confirming that levels are in accordance with the complying development certificate (with the levels relating to data on the certificate),
- (d) to control dust emissions from the site, suitable screens or barricades must be erected prior to any demolition, excavation or building work,
- (e) any earthworks, including any structural retaining system or other related structure for the purposes of the development must comply with the following:
 - (i) must not cause damage to any adjoining buildings or structures on the land comprising the lot on which the earthworks are carried out or to any building or structure on land comprising an adjoining lot,
 - (ii) must not redirect the flow of surface water onto adjoining property,
 - (iii) must not exceed 3m above ground level (existing),
 - (iv) any excavated soil found to be contaminated as classified under guidelines made under the *Contaminated Land Management Act 1997* must be removed from the site in accordance with any requirements of the *Protection of the Environment Operations Act 1997*,

- (v) in the case of fill brought to the site, must use fill that contains only virgin natural excavated material (VEMN) as defined by guidelines made under the *Contaminated Land Management Act 1997*.

22 Additional condition—awnings and canopies

Development that consists of the construction or installation of an awning or canopy is subject to the condition that a certificate by a qualified engineer certifying that the awning or canopy has been constructed or installed in accordance with the specifications for the design certified by a qualified engineer must be provided to the principal certifying authority.

23 Additional condition—cranes

- (1) This clause applies to development that consists of a new rail mounted crane, new crane rails, the replacement of an existing rail mounted crane or the replacement of existing crane rails.
- (2) The development is subject to the condition that a certificate by a qualified engineer certifying that the new or replacement crane or crane rails have been installed in accordance with the specifications for the design certified by a qualified engineer must be provided to the principal certifying authority.

24 Additional condition—demolition of certain tanks and pipelines

Development that consists of the demolition of structures referred to in clause 15 is subject to the condition that the demolition is carried out in accordance with a demolition plan prepared by a person authorised to carry out such demolitions under the *Work Health and Safety Regulation 2011*.

25 Additional condition—emergency facilities

Fire watch measures must be implemented during any period when development that consists of work on existing alarm signalling equipment results in a loss of a monitoring service.

26 Additional condition—retaining walls over 1m

Development that consists of a retaining wall having a height of more than 1m is subject to the condition that a certificate by a structural engineer certifying that the wall has been constructed in accordance with the specifications for the design certified by a structural engineer must be provided to the principal certifying authority.

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27 Additional conditions—bulk liquid storage tanks

- (1) Development that consists of bulk liquid storage tanks referred to in clause 11 is subject to the following conditions:
 - (a) an emergency plan that is developed in accordance with the *Hazardous Industry Planning Advisory Paper No 1, Emergency Planning*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, must be prepared and implemented in relation to the development,
 - (b) a safety management system that is developed in accordance with the *Hazardous Industry Planning Advisory Paper No 9, Safety Management*, dated January 2011 and published by the Department of Planning and Infrastructure on its website, must be prepared and implemented in relation to the development,
 - (c) the commissioning and operation of the tanks must comply with the applicable recommendations of the studies referred to in clause 11 (2),
 - (d) a hazard audit of the development that complies with subclause (2) must be carried out 12 months after the commencement of the use of the tanks and every 3 years thereafter.
- (2) The hazard audit must comply with the *Hazardous Industry Planning Advisory Paper No 5, Hazard Audit Guidelines*, dated January 2011 and published by the Department of Planning and Infrastructure on its website and include an implementation schedule for recommendations.

**Schedule 3 Amendment of State Environmental
Planning Policy (Major Development)
2005**

[1] Schedule 3 State significant sites

Omit the definition of *Additional Permitted Uses Map* from clause 2 (1) of Part 20. Insert instead:

Additional Permitted Uses Map means the State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Newcastle Port Site Additional Permitted Uses Map.

[2] Schedule 3, Part 20, clause 2 (1), definition of “Land Application Map”

Omit paragraph (b).

[3] Schedule 3, Part 20, clause 2 (1), definition of “Land Zoning Map”

Omit paragraph (b).

[4] Schedule 3, Part 20, clause 7

Omit clause 7 (d).

[5] Schedule 3, Part 20, clauses 12 and 13A

Omit the clauses.

[6] Schedule 3, Part 20, clause 20 (2)

Omit the subclause.

[7] Schedule 3, Part 20, clause 21, Table

Omit all items under the heading “Botany Bay LGA”.

[8] Schedule 7 Development that does not require consent under Part 4

Omit paragraph (b) of the definition of *Three Ports Site* in clause 2 (2).

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Schedule 4 Amendment of State Environmental Planning Policy (Infrastructure) 2007

Schedule 4 Amendment of State Environmental Planning Policy (Infrastructure) 2007

[1] Clause 67 Definitions

Omit the definition of *navigation and emergency response facilities*. Insert instead:

navigation and emergency response facilities means facilities for:

- (a) water traffic control, safe navigation and other safety purposes (such as beacons, navigation towers, radar towers, communication facilities, vessel monitoring facilities, lighthouses, buoys, marine markers, pilot stations, jetties, breakwaters or training walls), and
- (b) emergency response, including rescue stations and emergency communication facilities and jetties.

[2] Clause 67A

Insert after clause 67:

67A Application of Division

This Division does not apply to development on land to which *State Environmental Planning Policy (Port Botany) 2013* applies.

[3] Clause 71 Complying development

Insert “AS 3700—2011, *Masonry structures* and” before “AS 3700” in clause 71 (1) (f) (iii) (A).

[4] Clause 71 (1) (f) (iii) (B)

Insert “AS/NZS 1170.1:2002, *Structural design actions Part 1: Permanent, imposed and other actions* and” before “AS/NZS: 1170.1:2002”.

[5] Clause 72 Complying development conditions—additional conditions

Insert “complying development” before “certificate” where secondly occurring in clause 72 (c) (ii).