



New South Wales

State Environmental Planning Policy (Port Botany) Amendment (Port Kembla) 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 241

State Environmental Planning Policy (Port Botany) Amendment (Port
Clause 1 Kembla) 2013

**State Environmental Planning Policy (Port Botany)
Amendment (Port Kembla) 2013**

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

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

2 Commencement

This Policy commences on 31 May 2013, immediately after the commencement of *State Environmental Planning Policy (Port Botany) 2013*, and is required to be published on the NSW legislation website.

3 Maps

- (1) Each map adopted by *State Environmental Planning Policy (Port Botany) 2013* that is specified in Column 1 of the following table is declared by this Plan to be amended or replaced, as the case requires, by the map specified opposite in Column 2 of the table as approved by the Minister on the making of this Plan:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
State Environmental Planning Policy (Port Botany) 2013 Additional Permitted Uses Map (SEPP_PTB_APU_001_030_20130430)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Additional Permitted Uses Map (SEPP_PBK_APU_001_030_20130524)
State Environmental Planning Policy (Port Botany) 2013 Height of Buildings Map (SEPP_PTB_HOB_001_030_20130218)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Height of Buildings Map (SEPP_PBK_HOB_001_030_20130524)

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
State Environmental Planning Policy (Port Botany) 2013 Land Application Map (SEPP_PTBLAP_001_030_20130124)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Application Map (SEPP_PBK_LAP_001_030_20130524)
State Environmental Planning Policy (Port Botany) 2013 Land Application Map	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Application Map (SEPP_PBK_LAP_002_020_20130524)
State Environmental Planning Policy (Port Botany) 2013 Land Zoning Map (SEPP_PTBLZN_001_030_20130124)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Zoning Map (SEPP_PBK_LZN_001_030_20130524)
State Environmental Planning Policy (Port Botany) 2013 Land Zoning Map	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Zoning Map (SEPP_PBK_LZN_002_020_20130524)
State Environmental Planning Policy (Port Botany) 2013 Lease Area Map (SEPP_PTBLESA_001_030_20130124)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LESA_001_030_20130524)
State Environmental Planning Policy (Port Botany) 2013 Lease Area Map	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LESA_002_020_20130524)
State Environmental Planning Policy (Port Botany) 2013 Lease Area Map	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LESA_002A_006_20130524)

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State Environmental Planning Policy (Port Botany) Amendment (Port
 Clause 4 Kembla) 2013

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
State Environmental Planning Policy (Port Botany) 2013 Referral Area Map (SEPP_PTB_REF_001_030_20130124)	State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Referral Area Map (SEPP_PBK_REF_001_030_20130524)

- (2) Each map adopted by *State Environmental Planning Policy (Major Development) 2005* that is specified in Column 1 of the following table is declared by this Plan to be amended or replaced, as the case requires, by the map specified opposite in Column 2 of the table as approved by the Minister on the making of this Plan:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Port Kembla Site Land Application Map (SEPP_MD_3PT_LAP_003_20090522)	Not replaced
State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Port Kembla Site Land Zoning Map (SEPP_MD_3PT_LZN_003_20090522)	Not replaced

4 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy (Port Botany) 2013

[1] Clauses 1 and 3

Insert “and Port Kembla” after “Port Botany” wherever occurring.

[2] Clause 3 Aims of Policy

Omit “and around” from clause 3 (a).

[3] Clause 3 (c)

Insert “within the Lease Area” after “certain development”.

[4] Clause 3 (e)

Insert “at Port Botany” after “development”.

[5] Clause 3 (g)

Insert after clause 3 (f):

- (g) to ensure that land around the Lease Area is maintained for port-related and industrial uses, including heavy industry on land around Port Kembla.

[6] Clause 4 Definitions

Insert “and Port Kembla” after “Port Botany” wherever occurring in the definitions of *Additional Permitted Uses Map*, *Height of Buildings Map*, *Land Application Map*, *Land Zoning Map*, *Lease Area Map* and *Referral Area Map* in clause 4 (1).

[7] Clause 4 (1)

Insert in alphabetical order:

Channel User Licence Agreement means an agreement between Roads and Maritime Services and the Port Operator under which the Port Operator is authorised to use certain channels and berthing boxes.

[8] Clause 4 (1), definition of “Council”

Insert at the end of paragraph (b):

, or

- (c) in relation to land within the Wollongong City area—Wollongong City Council.

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[9] Clause 4 (1), definition of “freight”

Omit the definition. Insert instead:

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

[10] Clause 4 (1), definition of “Lease Area”

Insert in alphabetical order:

Lease Area means the area shown edged in red and identified as “Port Botany Lease Area” or “Port Kembla Lease Area” on the Lease Area Map.

[11] Clause 4 (1), definition of “maintenance dredging”

Insert “at the depth and width specified for the purpose of maintenance dredging in the Channel User Licence Agreement that authorises the use of that channel” after “channel”.

[12] Clause 4 (1), definition of “Outer Harbour Map”

Insert in alphabetical order:

Outer Harbour Map means the State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Outer Harbour Map.

[13] Clause 4 (1), definitions of “Port Botany Lease Area” and “Port Botany Operator”

Omit the definitions.

[14] Clause 4 (1), definition of “Port Operator”

Insert in alphabetical order:

Port Operator means:

- (a) in relation to Botany Bay—the port operator (within the meaning of the *Ports and Maritime Administration Act 1995*) of the port of Botany Bay, and
- (b) in relation to Port Kembla—the port operator (within the meaning of that Act) of the port of Port Kembla.

[15] Clause 4 (1), definition of “port facilities”

Omit “Port Botany”.

[16] Clause 4 (1), definition of “public authority”

Omit “Botany”.

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- [17] **Clause 6 Relationship with other environmental planning instruments**
Insert “or complying” after “exempt” in clause 6 (3).
- [18] **Clauses 8 (a), 10 (5), 18 (3), 18 (notes), 24 (2), 25 (2), 27 (1) (a) and (3), 28 (1) (a) and (3), 29 (2) and 30 (1) (b) and Schedule 1, clause 14 (2) (c) and Schedule 2, clause 9 (c)**
Omit “Port Botany” wherever occurring.
- [19] **Clause 10 Suspension of covenants, agreements and instruments**
Insert at the end of the clause:
Note. This clause does not apply to unzoned land.
- [20] **Clause 12 Land use zones**
Insert after the matter relating to “IN1 General Industrial”:
IN3 Heavy Industrial
- [21] **Clause 16 Subdivision—consent requirements**
Omit the clause. Insert instead:
16 Subdivision—consent requirements
(1) Any land to which this Policy applies may be subdivided, but only with development consent.
Note. Subdivision within the Lease Area by the Port Operator or a Port Corporation is exempt development.
(2) Development consent must not be granted for the subdivision of land that comprises, or on which there is, 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 that Act.
- [22] **Clause 18 Development by public authorities (including Port Operator)**
Insert “Zone IN3 Heavy Industrial,” after “General Industrial” wherever occurring in clause 18 (1) and (4) and Note 1.
- [23] **Clause 19 Port Operator to be notified of certain development applications at Port Botany**
Omit “Botany” wherever occurring in clause 19 (2) and (4) (a).

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[24] Land Use Table

Insert after the matter relating to Zone IN1 General Industrial:

Zone IN3 Heavy Industrial

1 Objectives of zone

- To provide suitable areas for those industries that need to be separated from other land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of heavy industry on other land uses.
- To provide transport infrastructure and intermodal facilities.
- To allow a diversity of activities that will not significantly detract from the operation of existing or proposed industries.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Depots; Food and drink premises; Freight transport facilities; Heavy industries; Port facilities; Roads; Transport depots; Warehouse or distribution centres; Waste or resource management facilities

4 Prohibited

Any development not specified in item 2 or 3

[25] Land Use Table, Zone SP1 Special Activities

Insert “and Port Kembla” after “Port Botany” in the 6th objective in item 1.

[26] Land Use Table, Zone SP1 Special Activities

Insert “Moorings;” after “Jetties;” in item 2.

[27] Clause 25 Complying development

Omit “deemed-to-satisfy” from clause 25 (3) (b).

[28] Clause 26 (1) and Schedule 1, clause 10 (2) (c)

Omit “Botany” wherever occurring.

[29] Clause 31 Heritage conservation

Insert at the end of the Table to the clause under the headings **Suburb, Item name, Address and Property description**, respectively:

Port Kembla	Mobile Block Setting Steam Crane	Eastern Breakwater Harbour	Lot 4, DP 114693
Port Kembla	Garden around Former House and Adjacent Driveway	2 Electrolytic Street (Gloucester Boulevard)	Lot 51, DP 1002696
Port Kembla	Hill 60, Illowra Battery (State Heritage Register listing 01492)	Gloucester Boulevard	Lot 3, DP 1146913 and Lot 1, DP 825951
Port Kembla	Brick Chimney, Port Kembla Copper	Military Road	Lot 21, DP 546139
Port Kembla	Office and House, Port Kembla Copper	Military Road	Lot 21, DP 546139
Port Kembla	Commonwealth Rolling Mill Plant and Gardens	Old Port Road	Lot 1, DP 190251

[30] Schedule 1 Exempt development

Insert “, including landscaping works and landscaping structures used for drainage” after “structures” in clause 13.

[31] Schedule 1, clause 14 (2) (c) and Schedule 2, clause 9 (c)

Insert “if constructed or installed on land at Port Botany—” before “be mounted” wherever occurring.

[32] Schedule 1, clause 15A

Insert after clause 15:

15A Maintenance and repair

- (1) The maintenance, repair or replacement of fittings and fixtures in relation to development for the purpose of port facilities.
- (2) The work may involve excavation works, but only to the extent necessary to carry out the maintenance, repair or replacement.

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Schedule 1 Amendment of State Environmental Planning Policy (Port Botany) 2013

[33] Schedule 1, clause 32 Subdivision by Port Operator or Port Corporation
Omit “Botany”.

[34] Schedule 2 Complying development
Omit “20,000” wherever occurring in clause 5.
Insert instead “30,000”.

[35] Schedule 2, clause 6
Insert “and Port Kembla” after “Port Botany”.

[36] Schedule 2, clause 9A
Insert after clause 9 (before the heading to Division 2):

9A Development on land in Outer Harbour Area

- (1) This clause applies to land identified as “Outer Harbour Area” on the Outer Harbour Map.
- (2) Complying development carried out on land to which this clause applies must be consistent with the terms of a concept plan approved by the Minister for a project on that land.

[37] Schedule 2, clause 10A
Insert after clause 10:

10A Bridges used for purposes other than roads

- (1) The construction or installation of a bridge used for a purpose other than a road.
- (2) The bridge must be certified by a qualified engineer as having a satisfactory design and structural integrity.

[38] Schedule 2, clause 11 (2) (a) (iii)
Insert “if constructed or installed on land at Port Botany—” before “demonstrates”.

[39] Schedule 2, clause 11 (6)
Insert after subclause (5):

- (6) The bulk liquid storage tank must be certified by a qualified engineer as having a satisfactory design and structural integrity.

[40] Schedule 2, clause 12 (2)

Omit the subclause. Insert instead:

- (2) A hazard analysis must be prepared by a qualified person approved by the Director-General for the purposes of this clause that:
 - (a) 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
 - (b) 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
 - (c) if the tank is located on land at Port Botany—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 Planning NSW in 1996, or will not cause societal risk to exceed the ALARP band as shown in Figure 9 of that Report.

[41] Schedule 2, clause 13 (3)

Insert after clause 13 (2):

- (3) The development must comply with any recommendations made by the studies referred to in subclause (2) in relation to the development.

[42] Schedule 2, clause 15A

Insert after clause 15:

15A Dry bulk storage silos

- (1) The construction or installation of a dry bulk storage silo.
- (2) The dry bulk storage silo must be certified by a qualified engineer as having a satisfactory design and structural integrity.

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[43] Schedule 2, clause 17A

Insert after clause 17:

17A Rail discharge terminals

- (1) The erection of a rail discharge terminal.
- (2) The rail discharge terminal must be certified by a qualified engineer as having a satisfactory design and structural integrity.

[44] Schedule 2, clause 18A

Insert after clause 18:

18A Ship loaders, unloaders and associated belt conveyor systems

- (1) The construction or installation of a new ship loader or unloader, or associated belt conveyor system.
- (2) The ship loader, unloader or belt conveyor system must be certified by a qualified engineer as having a satisfactory design and structural integrity.

[45] Schedule 2, clause 19 (1)

Omit “3m”. Insert instead “6m”.

[46] Schedule 2, clause 21 (e) (iv)

Insert “, or appropriately remediated or managed on site” after “*Protection of the Environment Operations Act 1997*”.

[47] Schedule 2, clause 21 (e) (v)

Omit “natural excavated material (VEMN)”.

Insert instead “excavated natural material (VENM)”.

[48] Schedule 2, clause 21 (e) (v)

Insert “, or fill covered by a valid exemption under clause 51 of the *Protection of the Environment Operations (Waste) Regulation 2005* that permits the reuse of such fill” after “*Contaminated Land Management Act 1997*”.

[49] Schedule 2, clause 23

Omit the clause. Insert instead:

23 Additional conditions—bridges, cranes, ship loaders, unloaders and associated belt conveyer systems, dry bulk storage silos and rail discharge terminals

- (1) This clause applies to development that consists of the construction or installation of any of the following items:
 - (a) a bridge used for a purpose other than a road,
 - (b) a rail-mounted crane or crane rails,
 - (c) a ship loader, unloader, or associated belt conveyer system,
 - (d) a dry bulk storage silo,
 - (e) a rail discharge terminal.
- (2) The development is subject to the following conditions:
 - (a) a certificate by a qualified engineer must be provided to the principal certifying authority certifying that:
 - (i) the item has been installed in accordance with the specifications for the design certified by a qualified engineer, and
 - (ii) the item is structurally adequate,
 - (b) on completion of the building work, the principal certifying authority must be satisfied that the item is structurally adequate for its intended purpose.

[50] Schedule 2, clause 27 (3)

Insert after clause 27 (2):

- (3) The development is also subject to the following conditions:
 - (a) a certificate by a qualified engineer must be provided to the principal certifying authority certifying that:
 - (i) the tank has been installed in accordance with the specifications for the design certified by a qualified engineer, and
 - (ii) the tank is structurally adequate,
 - (b) on completion of the building work, the principal certifying authority must be satisfied that the tank is structurally adequate for its intended purpose.

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[51] Schedule 2, clauses 28–30

Insert after clause 27:

28 Additional condition—bulk liquid storage tanks (change of stored liquid)

Development that consists of a change in the kind of liquid stored in a bulk liquid storage tank is subject to the condition that, if any building work has been carried out, the principal certifying authority must be satisfied that the tank is structurally adequate for the liquid that is intended to be stored in the tank on completion of the building work.

29 Additional conditions—bulk liquid storage tanks (modifications to pipelines and flow rates)

Development that consists of modifications referred to in clause 13 (1) (a) or (b), or the installation of a new pipeline referred to in clause 13 (1) (c), is subject to the following conditions:

- (a) a certificate by a qualified engineer must be provided to the principal certifying authority certifying that:
 - (i) the item has been modified or installed in accordance with the specifications for the design certified by a qualified engineer, and
 - (ii) the item is structurally adequate,
- (b) the commissioning and operation of the tank, as modified or after the installation of the new pipeline or after the modification of an existing pipeline, must comply with the applicable recommendations of the studies referred to in clause 13 (2),
- (c) on completion of the building work, the principal certifying authority must be satisfied that the item is structurally adequate for its intended purpose.

30 Additional condition—port facilities (change of use—change of building classification or increased fire hazard level)

Development that involves a change of use referred to in clause 18 is subject to the condition that, if the new use involves a structure that is not within a classification of building under the *Building Code of Australia*, the principal certifying authority must be satisfied that fire safety measures appropriate to the level of fire hazard have been provided on completion of any building work.

Schedule 2 Amendment of other instruments

2.1 State Environmental Planning Policy (Major Development) 2005

[1] **Schedule 3 State significant sites**

Omit the heading to Part 20. Insert instead “**Port of Newcastle**”.

[2] **Schedule 3, Part 20, clause 1**

Omit “*Three Ports Site*”. Insert instead “*Newcastle Port Site*”.

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

Omit the definition. Insert instead:

Land Application Map means the State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Newcastle Port Site Land Application Map.

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

Omit the definition. Insert instead:

Land Zoning Map means the State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Newcastle Port Site Land Zoning Map.

[5] **Schedule 3, Part 20, clauses 4, 5, Division 2 (heading), 6 (1), 7, 14, 15 (1), 16 (1), 17 (1), 19 (1) and Schedule 7, clause 2 (1)**

Omit “Three Ports Site” wherever occurring.

Insert instead “Newcastle Port Site”.

[6] **Schedule 3, Part 20, clauses 7 (b) and (d), 10 and 12**

Omit the provisions.

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

Omit the matter relating to Wollongong LGA from the Table to the clause.

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

Omit “**Three Ports Site**” from the heading to clause 2.

Insert instead “**Newcastle Port Site**”.

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Schedule 2 Amendment of other instruments

[9] Schedule 7, clause 2 (2), definition of “Newcastle Port Site”

Insert in alphabetical order:

Newcastle Port Site means the land identified in Schedule 3 on the State Environmental Planning Policy (Major Projects) Amendment (Three Ports) 2009 Newcastle Port Site Land Application Map.

[10] Schedule 7, clause 2 (2), definition of “Three Ports Site”

Omit the definition.

2.2 State Environmental Planning Policy (Infrastructure) 2007

Clause 67A Application of Division

Insert “*and Port Kembla*” after “*Port Botany*”.