



New South Wales

State Environmental Planning Policy (Port Botany and Port Kembla) Amendment (Port of Newcastle) 2014

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

State Environmental Planning Policy (Port Botany and Port Kembla) Amendment (Port of Newcastle) 2014

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Port Botany and Port Kembla) Amendment (Port of Newcastle) 2014*.

2 Commencement

- (1) Except as provided by subclause (2), this Policy commences on 31 May 2014 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [56], [57], [66], [67], [69], [87] and [88] commence on the day on which this Policy is published on the NSW legislation website.

3 Maps

Each map adopted by *State Environmental Planning Policy (Port Botany and Port Kembla) 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 and Port Kembla) 2013 Land Application Map (SEPP_PBK_LAP_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Land Application Map (SEPP_TPT_LAP_001_030_20140219)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Application Map (SEPP_PBK_LAP_002_020_20130524)	State Environmental Planning Policy (Three Ports) 2013 Land Application Map (SEPP_TPT_LAP_002_020_20140219)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Application Map	State Environmental Planning Policy (Three Ports) 2013 Land Application Map (SEPP_TPT_LAP_003_040_20140224)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Zoning Map (SEPP_PBK_LZN_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Land Zoning Map (SEPP_TPT_LZN_001_030_20140218)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Zoning Map (SEPP_PBK_LZN_002_020_20130524)	State Environmental Planning Policy (Three Ports) 2013 Land Zoning Map (SEPP_TPT_LZN_002_020_20140219)

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Land Zoning Map	State Environmental Planning Policy (Three Ports) 2013 Land Zoning Map (SEPP_TPT_LZN_003_040_20140224)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Height of Buildings Map (SEPP_PBK_HOB_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Height of Buildings Map (SEPP_TPT_HOB_001_030_20140213)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LES_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Lease Area Map (SEPP_TPT_LES_001_030_20140213)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LES_002_020_20130524)	State Environmental Planning Policy (Three Ports) 2013 Lease Area Map (SEPP_TPT_LES_002_020_20140218)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map (SEPP_PBK_LES_002A_006_20130524)	State Environmental Planning Policy (Three Ports) 2013 Lease Area Map (SEPP_TPT_LES_002A_006_20140213)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Lease Area Map	State Environmental Planning Policy (Three Ports) 2013 Lease Area Map (SEPP_TPT_LES_003_040_20140224)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Referral Area Map (SEPP_PBK_REF_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Referral Area Map (SEPP_TPT_REF_001_030_20140213)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Additional Permitted Uses Map (SEPP_PBK_APU_001_030_20130524)	State Environmental Planning Policy (Three Ports) 2013 Additional Permitted Uses Map (SEPP_TPT_APU_001_030_20140213)
State Environmental Planning Policy (Port Botany and Port Kembla) 2013 Outer Harbour Map (SEPP_PBK_OTH_002_020_20130524)	State Environmental Planning Policy (Three Ports) 2013 Outer Harbour Map (SEPP_TPT_OTH_002_020_20140213)

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 and Port Kembla) 2013

[1] Clause 1 Name of Policy

Omit “*State Environmental Planning Policy (Port Botany and Port Kembla) 2013*”.

Insert instead “*State Environmental Planning Policy (Three Ports) 2013*”.

[2] Clause 3 Aims of Policy

Omit “and Port Kembla” wherever occurring.

Insert instead “, Port Kembla and the Port of Newcastle”.

[3] Clause 4 (1) Definitions

Insert in alphabetical order:

approved project means a transitional Part 3A project within the meaning of Schedule 6A to the Act that is an approved project.

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

Omit “or widening” from paragraph (c). Insert instead “, widening or extending”.

[5] Clause 4 (1), definition of “capital investment value”

Omit “(within the meaning of Schedule 6A to the Act)” from paragraph (b).

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

Insert at the end of paragraph (c):

, or

(d) in relation to land within the Newcastle City area—Newcastle City Council.

[7] Clause 4 (1), definition of “demolition”

Insert in alphabetical order:

demolition includes the dismantling or removal of a building.

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

Insert in alphabetical order:

dispensing facility means a fuel transfer facility that is intended for the dispensing of liquids from a storage tank to the fuel tank of a vehicle or vessel.

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

Insert in alphabetical order:

heritage item—see clause 31 (8).

[10] Clause 4 (1), definitions of “Additional Permitted Uses Map”, “Height of Buildings Map”, “Land Application Map”, “Land Zoning Map”, “Lease Area Map”, “Outer Harbour Map” and “Referral Area Map”

Omit “Port Botany and Port Kembla” wherever occurring. Insert instead “Three Ports”.

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

Insert “or Port of Newcastle Lease Area” after “Port Kembla Lease Area”.

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

Omit “the Channel User Licence Agreement”.

Insert instead “the Channel User Licence Agreement or any Crown lease”.

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

Insert at the end of paragraph (b):

, and

- (c) in relation to the Port of Newcastle—the port operator (within the meaning of that Act) of the Port of Newcastle.

[14] Clause 5 Land to which Policy applies

Insert at the end of the clause:

- (2) This Policy (other than clause 11 (4)) does not apply to land identified as “Deferred matter” on the Land Application Map.

[15] Clause 6 Relationship with other environmental planning instruments

Omit clause 6 (3). Insert instead:

- (3) Except as provided by subclause (2), this Policy does not restrict or prohibit the carrying out of any development:
- (a) on any land to which this Policy applies, that is permitted to be carried out with or without development consent, or that is exempt or complying development, under *State Environmental Planning Policy (Infrastructure) 2007*, or
- (b) on any land to which this Policy applies that is not within a Lease Area, that is exempt or complying development under any other environmental planning instrument.

[16] Clause 11 Savings provision relating to development applications and Part 5 activities

Insert “the application of” before “this Policy” where firstly occurring in clause 11 (1).

[17] Clause 11 (2)

Omit “this Policy” where firstly occurring.

Insert instead “the application of this Policy in relation to land to which this Policy applies”.

[18] Clause 11 (2) (a) and (b) and (3)

Omit “commencement of this Policy” wherever occurring.

Insert insert instead “that commencement”.

[19] Clause 11 (3)

Insert “and Schedule 7” after “Schedule 3”.

[20] Clause 11 (3)

Omit “continues”. Insert instead “continue”.

[21] Clause 11 (4)

Insert after clause 11 (3):

- (4) Part 20 of Schedule 3 to *State Environmental Planning Policy (Major Development) 2005*, as in force immediately before the commencement of *State Environmental Planning Policy (Port Botany and Port Kembla) Amendment (Port of Newcastle) 2014*, continues to apply to land identified as “Deferred matter” on the Land Application Map.

[22] Clause 16 Subdivision—consent requirements

Omit clause 16 (2). Insert instead:

- (2) Development consent must not be granted for the subdivision of land that comprises, or on which there is, a State heritage item.

[23] Clause 18, note 2

Insert “(other than capital dredging where the volume of material excavated does not exceed 100,000 cubic metres)” after “capital dredging”.

[24] Clause 20 Prohibition on development for the purposes of container depots on certain land in Zone IN1

Insert at the end of the clause:

Note. This clause does not prevent the granting of consent to development that is permitted with consent where the use of shipping containers is ancillary to the purposes for which the consent was granted.

[25] Clause 23 Additional permitted uses

Insert “or on land within a Lease Area” after “Additional Permitted Uses Map”.

[26] Clause 23 (2)

Insert at the end of clause 23:

- (2) Despite any other provision of this Policy, development for the purposes of vehicle sales or hire premises may be carried out with development consent on land within a Lease Area”.

[27] Land Use Table, Zone SP1 Special Activities

Omit “and Port Kembla” from item 1.

Insert instead “, Port Kembla and the Port of Newcastle”.

[28] Land Use Table, Zone SP1 Special Activities

Insert “Neighbourhood shops;” in alphabetical order in item 3.

[29] Land Use Table, Zone SP1 Special Activities

Omit “Neighbourhood shops;” from item 4. Insert instead in alphabetical order:

Bulky goods premises;
Business premises;
Caravan parks;
Office premises;
Shops;
Vehicle sales or hire premises;

[30] Clause 24 Exempt development

Omit clause 24 (3) (d). Insert instead:

- (d) if it is likely to affect a State heritage item 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

[31] Clause 24 (3) (f) and (g)

Insert after clause 24 (3) (e):

- , and
- (f) if it is development on land containing a containment cell, must not be development that is likely to cause the cell to be breached or otherwise damaged or to reduce the effectiveness of the cell, and
- (g) must not be carried out on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*.

[32] Clause 25 Complying development

Insert after clause 25 (3) (e):

- , and
- (f) if it is likely to affect a State heritage item or a heritage item or heritage conservation area specified in an environmental planning instrument, involve no more than minimal impact on the heritage significance of the item or area, and
- (g) not be carried out on land that is significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*.

[33] Clause 25 (7)

Insert after clause 25 (6):

- (7) Clauses 11 and 12 of Schedule 2 do not apply to development carried out on land within the Port of Newcastle.

[34] Clause 28 State significant infrastructure

Insert “(other than capital dredging where the volume of material excavated does not exceed 100,000 cubic metres)” after “capital dredging” in clause 28 (1) (c).

[35] Clause 28 (5)

Insert after clause 28 (4):

- (5) This clause does not apply to development specified in clause 3 of Schedule 3 to *State Environmental Planning Policy (State and Regional Development) 2011*.

[36] Clause 29 Preservation of trees or vegetation

Insert “or by the Director-General” after “situated” in clause 29 (2).

[37] Clause 30 Other trees or vegetation

Insert “or by the Director-General” after “situated” in clause 30 (1) (a).

[38] Clause 31 Heritage conservation

Insert before clause 31 (1):

(1A) **Objectives**

The objectives of this clause are as follows:

- (a) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (b) to conserve archaeological sites,
- (c) to conserve Aboriginal objects and Aboriginal places of heritage significance.

[39] Clause 31 (2) (b1)

Insert after clause 31 (2) (b):

- (b1) the development is making changes to the exterior of a heritage item, including in the case of a building making structural changes to the detail, fabric, finish or appearance of the building, or

[40] Clause 31 Heritage conservation

Insert in appropriate order in the Table to the clause:

Carrington	Hydraulic Power Station	106 Bourke Street	Lot 30, DP 1190075
Carrington	Bullock Island Crane Bases	140 Bourke Street	Lot 5, DP 1104199
Carrington	Former McMyler Hoist	140 Bourke Street	Lot 6, DP 1187086
Carrington	Armstrong & Royce Timber Mill	8 Cowper Street South	Part Lot 100, DP 1014244
Carrington	Earp Woodcock Beveridge & Co (Industrial Site)	8 Cowper Street South	Part Lot 100, DP 1014244
Carrington	Former Morrison Bearby Warehouse (facade only)	92 Hill Street	Lot 11, DP 1023961
Kooragang	Palm	2A Heron Road	Lot 1, DP 575674
Mayfield North	Administration Buildings Nos 2, 3 and 4	51 Industrial Drive	Lot 225, DP 1013964
Mayfield North	No 1 Change House	51 Industrial Drive	Lot 225, DP 1013964
Mayfield North	1st Mill Building	51 Industrial Drive	Lot 225, DP 1013964
Mayfield North	Tool Room	133 Ingall Street	Lot 31, DP 1116571
Mayfield North	Delprat's Quarters	133A Ingall Street	Lot 32, DP 1116571
Mayfield North	Cycle Sheds for No 2 Rod Mill	135 Ingall Street	Lot 2, DP 1032755
Mayfield North	Apprentice Training Centre	135 Ingall Street	Lot 2, DP 1032755
Mayfield North	Administration Building, 1933	141 Ingall Street	Lot 1, DP 1116571

Mayfield North	Master Mechanics Office	99 Selwyn Street	Lot 4, DP 1177466
Mayfield North	Pattern Store	99 Selwyn Street	Lot 4, DP 1177466
Newcastle East (Coal River Precinct)	Nobbys Lighthouse, Headland and Breakwater	Nobbys Road	Lots 1052, 1053 and 1055, DP 1189091; R88721
Newcastle East (Coal River Precinct)	Stone Boat Harbour (Relic)	Wharf Road	Lot 100, DP 1190502

[41] Schedule 1 Exempt development

Omit “dangerous goods” from clause 2 (1). Insert instead “liquids”.

[42] Schedule 1, clauses 2 (3), 3 (2) and 4 (3)

Omit “or 6” wherever occurring. Insert instead “, 6, 7, 8 or 9”.

[43] Schedule 1, clause 4 (2) (c)

Omit “to increase the flow rate to or from”. Insert instead “or dispensing facility to”.

[44] Schedule 1, clause 5 (2) (c)

Omit “an existing stormwater”. Insert instead “a stormwater”.

[45] Schedule 1, clause 6 (d)

Insert at the end of paragraph (c):

, or

(d) demolition of a heritage item.

[46] Schedule 1, clause 7, note

Insert at the end of the clause:

Note. Approval is required under the *Roads Act 1993* for work done on public roads and under the *Road Transport Act 2013*.

[47] Schedule 1, clause 8

Insert after clause 8 (2):

(3) The works must not affect the heritage value of any heritage item any more than is necessary to carry out the works.

[48] Schedule 1, clause 11 (1)

Insert “and dispensing facilities” after “Fuel storage tanks”.

[49] Schedule 1, clause 12A

Insert after clause 12:

12A Investigations

- (1) Surveying works and works for the purpose of investigating the physical properties of soil, rock or seabed, including geotechnical investigation, and sediment sampling.
- (2) The development must disturb soil or vegetation only to the extent necessary to carry out the development.

[50] Schedule 1, clause 15A (1)

Omit “and fixtures”. Insert instead “, fixtures and infrastructure”.

[51] Schedule 1, clause 16

Omit “ladders, ramps, fenders and mooring points”.

Insert instead “ladders, railings, catwalks, ramps, fenders, mooring infrastructure and cathodic protection systems”.

[52] Schedule 1, clause 17 (2) (b)

Omit “an existing stormwater”. Insert instead “a stormwater”.

[53] Schedule 1, clause 18A

Insert after clause 18:

18A Preloading works

- (1) Preloading works for compression of soil before construction.
- (2) The development must:
 - (a) disturb soil or vegetation only to the extent necessary to carry out the development, and
 - (b) not damage any adjoining buildings or structures on the land or an adjoining lot, and
 - (c) not redirect the flow of surface water onto an adjoining lot, and
 - (d) not use fill other than:
 - (i) virgin excavated natural material (VENM) within the meaning of Schedule 1 to the *Protection of the Environment Operations Act 1997*, or
 - (ii) fill that is permitted to be re-used under an exemption in force under the *Protection of the Environment Operations (Waste) Regulation 2005*.

[54] Schedule 1, clause 20 (1)

Insert “, environmental monitoring stations” after “noise walls”.

[55] Schedule 1, clause 20 (2) (b) and (3) and 21 (2) and Schedule 2, clause 3

Insert “or an approval for a transitional Part 3A project that is an approved project” after “existing development consent” wherever occurring.

[56] Schedule 1, clause 21 (1)

Omit “contamination certificate”. Insert instead “contamination statement”.

[57] Schedule 1, clause 21 (5)

Omit the subclause. Insert instead:

- (5) In this clause:

contamination statement means a statement issued by a qualified person, after considering any applicable guidelines made under section 105 of the *Contaminated Land Management Act 1997*, certifying that the land is suitable for the intended purpose of the development having regard to the contamination status of the land.

qualified person means a person who has the competencies that are essential to contaminated site assessment and investigation as set out in the document entitled *Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals* published by the National Environment Protection Council in 2013.

[58] Schedule 1, clause 22

Omit “Railway”. Insert instead “The construction or installation of railway”.

[59] Schedule 1, clause 22A

Insert after clause 22:

22A Reefer points

The construction or installation of facilities for refrigerated containers.

[60] Schedule 1, clause 26

Insert “, earth berms” after “jersey barriers”.

[61] Schedule 1, clause 36 (2) (b)

Omit “an existing stormwater”. Insert instead “a stormwater”.

[62] Schedule 1, clause 37, heading

Insert “**and train weighbridges**” after “**weighbridges**”.

[63] Schedule 1, clause 37

Insert “or a train weighbridge” after “weighbridge”.

[64] Schedule 1, clause 38

Omit “or above ground or overhead power facilities”.

Insert instead “) and stormwater drainage”.

[65] Schedule 1, clause 38

Insert at the end of the clause:

- (2) An overhead structure used to support a pipeline must be at a height that provides adequate clearance for road or rail traffic below the structure.

[66] Schedule 2 Complying development

Omit “contamination certificate” from clause 1 (1).

Insert instead “contamination statement”.

[67] Schedule 2, clause 1 (2)

Insert “, if the land on which the development is carried out is subject to a contamination statement or the development does not involve any disturbance of soil” after “boating facilities”.

[68] Schedule 2, clause 1 (4A)

Insert after clause 1 (4):

- (4A) This clause does not apply to the erection and use of a building of a kind that is not within a classification of building under the *Building Code of Australia*.

[69] Schedule 2, clause 1 (5)

Omit the subclause. Insert instead:

(5) In this clause:

contamination statement means a statement issued by a qualified person, after considering any applicable guidelines made under section 105 of the *Contaminated Land Management Act 1997*, certifying that the land is suitable for the intended purpose of the development having regard to the contamination status of the land.

qualified person means a person who has the competencies that are essential to contaminated site assessment and investigation as set out in the document entitled *Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals* published by the National Environment Protection Council in 2013.

[70] Schedule 2, clause 4

Insert at the end of the clause:

Note. All the land shown on the Height of Buildings Map is at Port Botany.

[71] Schedule 2, clause 6

Omit “and Port Kembla”. Insert instead “, Port Kembla and the Port of Newcastle”.

[72] Schedule 2, clause 9A

Re-number as clause 32 and transfer to the end of Part 2 of the Schedule.

[73] Schedule 2, clause 11 (1)

Omit “used to store dangerous goods and storage of dangerous goods in those tanks”.

[74] Schedule 2, clauses 11 (1) (b) and 12 (1) (b)

Insert “, 8 or 9” after “class 3” wherever occurring.

[75] Schedule 2, clause 11 (1) (d)

Insert “and AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*” after “*The storage and handling of liquefied natural gas*”.

[76] Schedule 2, clause 12 (1)

Insert “, if any applicable hazard analysis or hazard operability study referred to in subclause (2) or (3A) has been prepared” after “the following”.

[77] Schedule 2, clause 12 (3) and (3A)

Omit clause 12 (3). Insert instead:

(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 of a higher level of hazard than the liquid proposed to be stored in the tank, and the change is not to or from a liquid that is dangerous goods of class 8 or 9 under Part 2 of the Australian Dangerous Goods Code.

(3A) A hazard and operability study must be prepared by a qualified person approved by the Director-General for the purposes of this clause 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 for any of the following changes:

- (a) a change from a liquid that is dangerous goods of class 8 or 9 under Part 2 of the *Australian Dangerous Goods Code* to a liquid that is a combustible liquid or dangerous goods of class 3 under Part 2 of that Code, or
- (b) a change from a liquid that is a combustible liquid or dangerous goods of class 3 under Part 2 of that Code to a liquid that is dangerous goods of class 8 or 9 under Part 2 of that Code.

[78] Schedule 2, clause 12 (4)

Insert “and AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*” after “*The storage and handling of flammable and combustible liquids*”.

[79] Schedule 2, clause 13 (1)

Insert “, 5, 6, 8 or 9” after “class 3”.

[80] Schedule 2, clause 13 (1) (c)

Omit “to increase the flow rate to or from”. Insert instead “or dispensing facilities to”.

[81] Schedule 2, clause 13 (1)

Insert “and any update specified in subclause (2A)” after “subclause (2)”.

[82] Schedule 2, clause 13 (2A) and (2B)

Insert after clause 13 (2):

- (2A) If there is an existing fire safety study, it is sufficient for the purposes of subclause (2) (b) if the existing study is updated.
- (2B) The study referred to in subclause (2) (b) and any update under subclause (2A) are only required if the tank is used to store any of the following liquids:
 - (a) combustible liquids,
 - (b) liquids of dangerous goods class 2 (including liquefied petroleum gas or liquefied natural gas), 3 or 5 under Part 2 of the *Australian Dangerous Goods Code*,
 - (c) high temperature liquids of dangerous goods class 9 under Part 2 of the *Australian Dangerous Goods Code*.

[83] Schedule 2, clause 13A

Insert after clause 13:

13A Conveyor systems

- (1) The construction or installation of a conveyor system, including chutes, holding bins, hoppers, sampling stations and transfer buildings.
- (2) The conveyor system must be certified by a qualified engineer as having a satisfactory design and structural integrity.
- (3) An overhead structure that supports a conveyor must be constructed so as to provide adequate clearance for traffic below the structure.

[84] Schedule 2, clause 14

Omit “or crane rails” wherever occurring.

Insert instead “, crane rails for a rail mounted crane or a fixed crane”.

[85] Schedule 2, clause 15A

Insert “that is not to be used for the storage of dangerous goods” after “silo” in clause 15A (1).

[86] Schedule 2, clause 17A

Omit the clause. Insert instead:

17A Road and rail terminal facilities

- (1) The erection of terminal facilities for the unloading, loading or discharge of freight (other than an excluded liquid) carried by road or rail, including a dump station or rail loading gantry crane.
- (2) The facility must be certified by a qualified engineer as having a satisfactory design and structural integrity.
- (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, 6, 7, 8 or 9 under Part 2 of the *Australian Dangerous Goods Code*, liquefied petroleum gas or liquefied natural gas.

[87] Schedule 2, clause 18 (1)

Omit “contamination certificate”. Insert instead “contamination statement”.

[88] Schedule 2, clause 18 (5)

Omit the subclause. Insert instead:

- (5) In this clause:

contamination statement means a statement issued by a qualified person, after considering any applicable guidelines made under section 105 of the *Contaminated Land Management Act 1997*, certifying that the land is suitable for the intended purpose of the development having regard to the contamination status of the land.

qualified person means a person who has the competencies that are essential to contaminated site assessment and investigation as set out in the document entitled *Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals* published by the National Environment Protection Council in 2013.

[89] Schedule 2, clause 18A, heading

Omit “associated belt conveyor systems”. Insert instead “cargo handling facilities”.

[90] Schedule 2, clause 18A (1)

Omit “belt conveyor system”. Insert instead “cargo handling facilities”.

[91] Schedule 2, clause 18A (2)

Omit “belt conveyor system”. Insert instead “cargo handling facility”.

[92] Schedule 2, clause 18B

Insert after clause 18A:

18B Stackers-reclaimers, stackers and reclaimers

- (1) The construction or installation of a stacker-reclaimer, stacker or reclaimer and facilities for their operation.
- (2) The stacker-reclaimer, stacker or reclaimer must be certified by a qualified engineer as having a satisfactory design and structural integrity.

[93] Schedule 2, clause 19A

Insert after clause 19:

19A Wharves and berthing infrastructure

- (1) The erection of, or alterations to, a wharf, working platform or infrastructure, including dolphins, for the purpose of berthing or mooring a vessel.
- (2) The design of the wharf or infrastructure must:
 - (a) be certified by a structural engineer as having a satisfactory design and structure, and
 - (b) comply with the following standards:
 - (i) AS 4997—2005, *Guidelines for the design of maritime structures*,
 - (ii) AS/NZS 1170.1:2002, *Structural design actions, Part 1: Permanent, imposed and other actions*,
 - (iii) AS 3600—2009, *Concrete structures*,
 - (iv) AS 4100—1998, *Steel structures*.

[94] Schedule 2, clause 21 (d)

Omit the paragraph. Insert instead:

- (d) to control dust emissions from the site, suitable measures must be taken to suppress dust or mitigate the effect of dust emissions prior to any demolition, excavation or building work,

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

Omit the subparagraph. Insert instead:

- (v) in the case of fill brought to the site, must use fill that contains only virgin excavated natural material (VENM) within the meaning of Schedule 1 to the *Protection of the Environment Operations Act 1997* or fill that is permitted to be re-used under an exemption in force under the *Protection of the Environment Operations (Waste) Regulation 2005*.

[96] Schedule 2, clause 23, heading

Omit “associated belt conveyor systems, dry bulk storage silos and rail discharge terminals”.

Insert instead “bridges, conveyor systems, cranes, dry bulk storage silos, road and rail terminal facilities, ship loaders and unloaders, stacker-reclaimers, stackers, reclaimers, wharves and berthing infrastructure”.

[97] Schedule 2, clause 23 (1) (b)

Omit “or crane rails”. Insert instead “, crane rails for a rail mounted crane or a fixed crane”.

[98] Schedule 2, clause 23 (1) (c)

Omit “associated belt conveyor systems”. Insert instead “cargo handling facilities”.

[99] Schedule 2, clause 23 (1) (e)–(h)

Omit clause 23 (1) (e). Insert instead:

- (e) road and rail terminal facilities,
- (f) a stacker-reclaimer, stacker or reclaimer,
- (g) wharves and berthing infrastructure,
- (h) a conveyor system.

[100] Schedule 2, clause 23 (2)

Omit the subclause. Insert instead:

- (2) The development is subject to the condition that a certificate by a qualified engineer must be provided to the principal certifying authority, on completion of the development and prior to the first use of the development, certifying that:
 - (a) the item has been installed in accordance with the specifications for the design certified by a qualified engineer, and
 - (b) the item is structurally adequate.

[101] Schedule 2, clause 27 (1) (c)

Omit the paragraph. Insert instead:

- (c) the commissioning and operation of the tanks must comply with the applicable recommendations of the studies referred to in clause 11 (2) and a certificate by a qualified person approved by the Director-General for the purposes of this paragraph must be provided to the principal certifying authority stating that the commissioning and operation of the tanks so complies,

[102] Schedule 2, clause 27 (1) (d)

Insert “, by a qualified person approved by the Director-General for the purposes of this paragraph,” after “carried out”.

[103] Schedule 2, clause 27 (3)

Omit the subclause. Insert instead:

- (3) The development is subject to the condition that a certificate by a qualified engineer must be provided to the principal certifying authority, on completion of the development and prior to the first use of the development, certifying that:
 - (a) the item has been installed in accordance with the specifications for the design certified by a qualified engineer, and
 - (b) the item is structurally adequate.

[104] Schedule 2, clause 29

Insert “or dispensing facility” after “pipeline” wherever occurring.

[105] Schedule 2, clause 29 (a)

Insert “, on completion of the development and prior to the first use of the development,” after “must be provided”.

[106] Schedule 2, clause 29 (c)

Omit the paragraph.

[107] Schedule 2, clause 31

Insert after clause 30:

31 Additional condition—development on land containing contaminated soil

- (1) This clause applies to development on land containing a containment cell if the development is likely to cause the cell to be breached or otherwise damaged or to reduce the effectiveness of the cell.
- (2) The development is subject to the condition that an environmental management plan that provides for the following matters is prepared and approved by a site auditor before the development is commenced:
 - (a) the management of the construction process relating to any breach of or damage to the containment cell, including how exposed contaminated material is to be dealt with,
 - (b) the process for reinstating the cell before completion of the development.
- (3) The development is also subject to the condition that:
 - (a) the environmental management plan (including the reinstatement of the containment cell) is complied with, and
 - (b) the land on which the development is carried out must not be used for the purpose of the development unless a site audit report and statement are obtained from a site auditor on or before the completion of the development indicating that the site is suitable for its intended use.
- (4) In this clause, *site auditor*, *site audit report* and *site audit statement* have the same meanings as they have in the *Contaminated Land Management Act 1997*.

[108] Schedules 3 and 4

Omit the Schedules.

Schedule 2 Amendment of other environmental planning instruments

2.1 Newcastle Local Environmental Plan 2012

[1] Schedule 5 Environmental heritage

Omit the matter relating to the former Morrison Bearby Warehouse (facade only) from Part 1.

[2] Schedule 5, Part 1

Insert in appropriate order:

Mayfield West Remnant Garden 3 Murray Dwyer Lot 51, DP 270249 Local I692
Circuit

2.2 State Environmental Planning Policy (Major Development) 2005

[1] Schedule 3 State significant sites

Omit Part 20.

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

Omit clause 2.

2.3 State Environmental Planning Policy (Infrastructure) 2007

[1] Clause 8 Relationship to other environmental planning instruments

Insert after clause 8 (3):

- (4) For the purposes of the carrying out of development on land within the Port of Newcastle Lease Area within the meaning of the *State Environmental Planning Policy (Three Ports) 2013*, clause 79 of this Policy prevails over the following environmental planning instruments to the extent of any inconsistency:

- (a) *State Environmental Planning Policy No 14—Coastal Wetlands*,
(b) *State Environmental Planning Policy No 26—Littoral Rainforests*.

[2] Clause 67 Definitions

Omit the definitions of *Port Botany area* and *Port Botany guidelines*.

[3] Clause 67A Application of Division

Omit “*State Environmental Planning Policy (Port Botany and Port Kembla) 2013* applies”.

Insert instead “*State Environmental Planning Policy (Three Ports) 2013* applies, other than land that is within the City of Newcastle but not within the Port of Newcastle Lease Area under that Policy”.

[4] Clause 70 Exempt development

Omit “system, and” from clause 70 (h) (ii). Insert instead “system,”.

[5] Clause 70 (h) (iii)

Omit the subparagraph.

[6] Clause 70 (q)

Omit the paragraph. Insert instead:

- (q) directional or safety signs that comply with AS 1319—1994, *Safety signs for the occupational environment* and AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*,

[7] Clause 70 (r) (ii)

Omit “graphic), and”. Insert instead “graphic),”.

[8] Clause 70 (r) (iii)

Omit the subparagraph.

[9] Clause 71 Complying development

Omit clause 71 (1) (d). Insert instead:

- (d) fences or gates (including security boom gates) that have a height (when closed, in the case of boom gates) of not more than 5m above ground level (existing),