



New South Wales

# **State Environmental Planning Policy (Transport and Infrastructure) Amendment (Three Ports) 2022**

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*.

ANTHONY ROBERTS, MP  
Minister for Planning

## **State Environmental Planning Policy (Transport and Infrastructure) Amendment (Three Ports) 2022**

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Transport and Infrastructure) Amendment (Three Ports) 2022*.

### **2 Commencement**

This Policy commences on the day on which it is published on the NSW legislation website.

### **3 Maps**

The maps adopted by the following instruments are amended or replaced, as the case requires, by the maps approved by the Minister on the making of this Policy—

- (a) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 5,
- (b) *Bayside Local Environmental Plan 2021*,
- (c) *Wollongong Local Environmental Plan 2009*.

### **4 Repeal of Policy**

This Policy is repealed at the beginning of the day following the day on which this Policy commences.

## Schedule 1 Amendment of State Environmental Planning Policy (Transport and Infrastructure) 2021

[1] Chapter 5, heading

Omit “Newcastle”. Insert instead “Port of Newcastle”.

[2] Section 5.2 Definitions

Omit the 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* from section 5.2(1).

[3] Section 5.2(1)

Insert in alphabetical order—

*Additional Permitted Uses Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Additional Permitted Uses Map.

*Height of Buildings Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Height of Buildings Map.

*Heritage Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Heritage Map.

*Land Application Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Land Application Map.

*Land Zoning Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Land Zoning Map.

*Lease Area Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Lease Area Map.

*major hazard facility* has the same meaning as in the *Work Health and Safety Regulation 2017*.

*Mayfield Bulk Liquid Storage Tanks Area* means the area shown edged heavy black on the Mayfield Bulk Liquid Storage Tanks Map.

*Mayfield Bulk Liquid Storage Tanks Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Mayfield Bulk Liquid Storage Tanks Map.

*Newcastle LUSS* means the *Port of Newcastle Land Use Safety Study Final Report*, dated 10 October 2017.

*Outer Harbour Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Outer Harbour Map.

*Port Botany LUSS* means the *Port Botany Land Use Safety Study Overview Report*, published by Planning NSW in 1996.

*Referral Area Map* means the State Environmental Planning Policy (Transport and Infrastructure) 2021 Three Ports Referral Area Map.

*virgin excavated natural material* has the same meaning as in the *Protection of the Environment Operations Act 1997*, Schedule 1, clause 50(1).

[4] Section 5.2(1), definition of “combustible liquid” and Schedule 11, sections 15(2), note and 24

Omit “*Work Health and Safety Regulation 2011*” wherever occurring.

Insert instead “*Work Health and Safety Regulation 2017*”.

[5] **Section 5.3**

Omit the section. Insert instead—

**5.3 Land to which Chapter applies**

- (1) This Chapter applies to the land identified on the Land Application Map.
- (2) This Chapter, other than sections 5.6 and 5.9(3), does not apply to land identified as “Deferred matter” on the Land Application Map.

[6] **Sections 5.5(2) and (3), 5.26(2), 5.29(2) and 5.30(1)(a)**

Omit “Director-General” wherever occurring. Insert instead “Planning Secretary”.

[7] **Section 5.6**

Omit the section. Insert instead—

**5.6 Consent authority**

The consent authority is—

- (a) for development on the following land—the Minister—
  - (i) land within the Lease Area,
  - (ii) land that is unzoned,
  - (iii) land identified as “Deferred matter” on the Land Application Map, and
- (b) otherwise—the Council.

[8] **Section 5.10 Land use zones**

Insert after “IN1 General Industrial” under the heading “**Industrial Zones**”—  
IN2 Light Industrial

[9] **Section 5.14 Subdivision—consent requirements**

Insert after section 5.14(2)—

- (3) Before granting development consent for the subdivision of relevant land, the consent authority must consider the following—
  - (a) whether the subdivision is likely to have an adverse impact on the operations of the port concerned,
  - (b) whether the subdivision will create or increase land use conflict in the area,
  - (c) whether the subdivision is appropriate considering—
    - (i) the natural and physical constraints affecting the land, and
    - (ii) the existing uses and approved uses on land adjacent to the subdivision,
  - (d) whether the subdivision is likely to have a significant adverse impact on facilitating land uses the consent authority considers are suitable and appropriate for the land,
  - (e) the impact of the subdivision on land used for industrial purposes,
  - (f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the subdivision.
- (4) In this section—  
**relevant land** means the following land that is not within a Lease Area—

- (a) land at Port Botany in Zone IN1 General Industrial,
- (b) land at Port Kembla in Zone IN3 Heavy Industrial or Zone SP1 Special Activities,
- (c) land at the Port of Newcastle in Zone SP1 Special Activities.

**[10] Section 5.17**

Omit section 5.17. Insert instead—

**5.17 Port Operator to be notified of certain development applications**

- (1) This section applies to development on land identified on the Referral Area Map.
- (2) Before determining a development application for development to which this section applies, the consent authority must give written notice of the development to the Port Operator.
- (3) Notice must be given no later than 7 days after the development application is made.
- (4) In determining a development application for the development, the consent authority must consider the following—
  - (a) submissions made to the consent authority by the Port Operator within 21 days after notice is given,
  - (b) the effect of the development on—
    - (i) the practicability, cost, structural integrity and safety of future port expansion or dredging works within navigation channels, and
    - (ii) ship movements to, from or within the port to which the development relates.

**[11] Sections 5.19A and 5.19B**

Insert after section 5.19—

**5.19A Office premises in Zone IN2**

Development consent must not be granted for development for the purposes of office premises on land within Zone IN2 Light Industrial unless the consent authority is satisfied the development is associated with, and ancillary to, port facilities or industrial uses of land.

**5.19B Food and drink premises in Zone SP1**

Development consent must not be granted for development for the purposes of food and drink premises on land in Zone SP1 Special Activities if the gross floor area of the food and drink premises is more than 300m<sup>2</sup>.

**[12] Section 5.20 Earthworks**

Omit “development consent for” from section 5.20(3).

Insert instead “consent to a development application for development for the purposes of”.

**[13] Section 5.20(3)(c)**

Omit the paragraph. Insert instead—

- (c) the classification of the soil to be excavated,

**[14] Section 5.20(3)(e)**

Omit “the source of any fill material and”.

**[15] Section 5.20(3)(j) and (k)**

Insert after paragraph (i)—

- (j) whether the development is likely to result in water pollution or land pollution,
- (k) whether the development can be carried out in a way that will minimise wind-blown or traffic-generated dust emissions.

**[16] Section 5.20(4) and (5)**

Insert after section 5.20(3)—

- (4) The consent authority must not grant consent to a development application under this section unless the consent authority is satisfied that fill brought to the site—
  - (a) contains only virgin excavated natural material, or
  - (b) is the subject of an excavated natural material exemption in force under the *Protection of the Environment Operations (Waste) Regulation 2014*, Part 9.
- (5) In this section—  
*land pollution* and *water pollution* have the same meaning as in the *Protection of the Environment Operations Act 1997*.

**[17] Land Use Table**

Insert in appropriate order—

**Zone IN2 Light Industrial**

**1 Objectives of zone**

- To provide a range of business and light industrial land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial land uses.
- To enable development for the purposes of office premises associated with, and ancillary to, port facilities or industries.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of workers in the area.
- To minimise conflict between port-related land uses and land uses within adjoining zones.

**2 Permitted without consent**

Environmental protection works

**3 Permitted with consent**

Boat building and repair facilities; Business premises; Food and drink premises; Garden centres; General industries; Hardware and building supplies; Industrial training facilities; Landscaping material supplies; Light industries; Neighbourhood shops; Office premises; Places of

public worship; Roads; Signage; Vehicle body repair workshops;  
Vehicle repair stations

**4 Prohibited**

Artisan food and drink industries; Any other development not specified  
in item 2 or 3

**[18] Land Use Table, Zone SP1 Special Activities**

Insert “Food and drink premises;” in alphabetical order in item 3.

**[19] Land Use Table, Zone SP1 Special Activities**

Insert in alphabetical order in item 4—

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal  
boarding or training establishments; Camping grounds; Commercial premises;  
Community facilities; Correctional centres; Early education and care  
facilities; Eco-tourist facilities; Exhibition homes; Exhibition villages;  
Extractive industries; Farm buildings; Forestry; Health services facilities;  
Highway service centres; Home businesses; Home occupations; Home  
occupations (sex services); Industrial retail outlets; Mortuaries; Open cut  
mining; Recreation facilities (major); Recreation facilities (outdoor); Rural  
industries; Sex services premises; Veterinary hospitals; Wholesale supplies

**[20] Land Use Table, Zone SP1 Special Activities**

Omit from item 4—

Business premises; Funeral homes; Garden centres; Hardware and building  
supplies; Medical centres; Office premises; Shops; Specialised retail  
premises; Vehicle sales or hire premises

**[21] Section 5.24 Exempt development**

Omit the note. Insert instead—

**Note—** Under the Act, section 1.6, the carrying out of exempt development does not  
require—

- (a) development consent under the Act, Part 4, or
- (b) an environmental impact assessment under the Act, Division 5.1, or
- (c) State significant infrastructure approval under the Act, Division 5.2, or
- (d) a certificate under the Act, Part 6.

Exempt development is development declared to be exempt development by an  
environmental planning instrument because of its minor impact.

**[22] Section 5.24(1)**

Omit “identify development of minimal environmental impact”.

Insert instead “declare development of minor impact”.

**[23] Sections 5.24(3)(e) and 5.25(3)(e)**

Omit “(within the meaning of the *State Environmental Planning Policy No 33—Hazardous  
and Offensive Development*)”.

Insert instead “within the meaning of *State Environmental Planning Policy (Resilience and  
Hazards) 2021*, Chapter 3”.

**[24] Section 5.24(3)(g)**

Insert at the end of the paragraph—

, and

- (h) must not be carried out on land in an area of outstanding biodiversity value within the meaning of the *Biodiversity Conservation Act 2016*.

**[25] Section 5.25 Complying development**

Insert after section 5.25(3)—

- (3A) In Schedule 11, a reference to prepare is taken to include update in relation to a requirement to prepare the following—
  - (a) an emergency plan,
  - (b) a fire safety study,
  - (c) a hazard and operability study,
  - (d) a hazard analysis,
  - (e) a safety management system.

**[26] Section 5.25(4)**

Omit “sections 11–13 of Schedule 11”. Insert instead “Schedule 11, sections 11–13AC”.

**[27] Section 5.25(7)**

Omit the subclause.

**[28] Section 5.29 Preservation of trees or vegetation**

Omit “ringbark, cut down, top, lop” from section 5.29(3). Insert instead “cut down, top”.

**[29] Section 5.29(3)(b) and (4)**

Insert “or an approval” after “a permit”, wherever occurring.

**[30] Section 5.29(4)**

Insert “or approval” after “the permit”.

**[31] Section 5.29(7)**

Omit “A permit under this section cannot allow any ringbarking,”.

Insert instead “A permit or approval must not allow”.

**[32] Sections 5.29(7) and 5.30(2)**

Omit “lopping” wherever occurring. Insert instead “pruning”.

**[33] Section 5.29(8)(e)**

Insert at the end of the paragraph—

, or

- (f) plants declared to be marine vegetation under the *Fisheries Management Act 1994*.

**[34] Section 5.30 Other trees or vegetation**

Omit “ringbarking,” from section 5.30(2).

**[35] Section 5.31 Heritage conservation**

Omit the definition of *Heritage Map* from section 5.31(9).



**[36] Section 5.31, Table**

Omit the following—

Mayfield North	Master Mechanics Office	99 Selwyn Street	Lot 4, DP 1177466
Mayfield North	Pattern Store	99 Selwyn Street	Lot 4, DP 1177466

**[37] Schedule 10 Exempt development—Chapter 5**

Insert after section 2(2)—

- (2A) In addition, if the liquid is a combustible liquid—
- (a) the bulk liquid storage tank must only be used for the storage of combustible liquids, and
  - (b) the total quantity of combustible liquid stored in a tank must be less than 2,000 tonnes, and
  - (c) the combustible liquid must have a flash point above 60°C, and
  - (d) the combustible liquid must not be stored at a temperature above its flash point, and
  - (e) the development must comply with AS 1940:2017, *The storage and handling of flammable and combustible liquids*, and
  - (f) the development must not share a bund with a bulk liquid storage tank containing an excluded liquid.

**[38] Schedule 10, section 2A**

Insert after section 2—

**2A Storage of certain “gas-free” liquefied petroleum gas storage tanks and cylinders**

Storage of “gas-free” liquefied petroleum gas storage tanks and cylinders free from dangerous goods.

**[39] Schedule 10, section 3A**

Insert after section 3—

**3A Bulk liquid storage tanks—change of stored liquid from Class 3 to combustible**

Change in kind of liquid stored in a bulk liquid storage tank from a liquid that is dangerous goods of class 3 under the *Australian Dangerous Goods Code*, Part 2, to a combustible liquid, or from a combustible liquid to another combustible liquid.

**[40] Schedule 10, section 4**

Omit the section. Insert instead—

**4 Bulk liquid storage and handling facilities—fittings, fixtures, pipelines and other fixed plant, equipment and dispensing facilities—maintenance, repair and replacement**

- (1) The following associated with bulk liquid storage and handling facilities—
  - (a) the maintenance, repair and replacement of fittings, fixtures, pipelines and other fixed plant and equipment,
  - (b) the maintenance and repair of dispensing facilities.

- (2) A replacement of fittings, fixtures, pipelines and other fixed plant and equipment involving an excluded liquid must be like-for-like.
- (3) This section does not apply to the following—
  - (a) modification to enlarge an existing pipeline for loading or unloading a bulk liquid storage tank containing an excluded liquid,
  - (b) modification to increase the flow rate of a pipeline for loading or unloading a bulk liquid storage tank containing an excluded liquid,
  - (c) installation of a new pipeline for loading or unloading a bulk liquid storage tank containing an excluded liquid,
  - (d) installation of a new dispensing facility to a bulk liquid storage tank containing an excluded liquid.
- (4) In this section—

*excluded liquid* means the following—

  - (a) a combustible liquid,
  - (b) a liquid that is dangerous goods of class 1, 2, 3, 4, 5, 6, 7, 8 or 9 under the *Australian Dangerous Goods Code*, Part 2,
  - (c) liquefied petroleum gas,
  - (d) liquefied natural gas.

**[41] Schedule 10, section 4A**

Insert after section 4—

**4A Storage of non-flammable non-toxic gases**

- (1) Gas storage tanks used to store gases of Division 2.2 under the *Australian Dangerous Goods Code*, Part 2, including the storage of the gases.
- (2) A gas storage tank must not have a capacity to store more than 3 tonnes of gas.
- (3) The gas—
  - (a) must not be a gas of subsidiary hazard under the Australian Dangerous Goods Code, and
  - (b) must be stored in compliance with AS 1894—1997, *The storage and handling of non-flammable cryogenic and refrigerated liquids*.

**[42] Schedule 10, section 6(a) and (b)**

Omit “or combustible liquids” wherever occurring.

**[43] Schedule 10, sections 11(2)(b) and 15(2)(b)**

Omit “AS 1940—2004” wherever occurring. Insert instead “AS 1940:2017”.

**[44] Schedule 10, section 12B**

Insert after section 12A—

**12B Hardstand area for open-air storage facilities**

- (1) The construction, installation and use of a hardstand area for the purpose of open-air storage facilities.
- (2) The hardstand area must—
  - (a) have a gross floor area of no more than 5,000m<sup>2</sup>, and

- (b) only be used to store products that are bulk solids, and
  - (c) entirely contain the products during their storage, and
  - (d) be designed and constructed to withstand the loads for which it will be used, and
  - (e) be paved with concrete or bituminous surfaces.
- (3) The hardstand area must not—
- (a) be used to store dangerous goods, or
  - (b) adversely impact on adjoining land or the amenity of the neighbourhood, including as a result of dust, odour or noise created by the development, or
  - (c) be located in, or in a way that impedes access to, parking or loading bays or spaces, vehicle turnaround areas or docks, or
  - (d) redirect the flow of surface water, or cause sediment to be transported, onto an adjoining property or into a waterway, or
  - (e) adversely affect access into, across or out of the Lease Area for the purpose of an evacuation or attendance by emergency services.
- (4) The development must not be inconsistent with, or contravene, a provision or condition of a development consent applying to the land.
- (5) The land on which the development is carried out must be suitable for the use of the hardstand area for the purpose of open-air storage facilities.

**[45] Schedule 10, sections 14(2)(a) and 30(2) and Schedule 11, section 9(a)**

Omit “AS 4282—1997” wherever occurring. Insert instead “AS/NZS 4282:2019”.

**[46] Schedule 10, section 15(2)(c)**

Omit “2008”. Insert instead “2014”.

**[47] Schedule 10, section 18A(2)(d)(i)**

Omit “(VENM) within the meaning of Schedule 1 to the *Protection of the Environment Operations Act 1997*”.

**[48] Schedule 10, section 20(1)**

Omit the subsection. Insert instead—

- (1) The construction and installation of facilities and works for the purposes of environmental protection works and the implementation of mitigation measures for pollution control and work, health and safety measures.

**[49] Schedule 10, section 21(5) and Schedule 11, sections 1(6) and 18(5), definitions of “contamination statement” and “qualified person”**

Omit the definitions, wherever occurring. Insert instead—

***certified contaminated land consultant*** means a person who holds either or both of the following certifications—

- (a) a Certified Professional Soil Scientist Contaminated Site Assessment and Management certification from Soil Science Australia,
- (b) a Certified Environmental Practitioner—Site Contamination certification from the Environment Institute of Australia and New Zealand.

***contamination statement*** means a statement—

- (a) prepared or endorsed by a certified contaminated land consultant, after considering applicable guidelines made under the *Contaminated Land Management Act 1997*, section 105, and
- (b) stating the land is suitable for the intended purpose of the development.

**[50] Schedule 10, section 35(5)**

Insert after section 35(4)—

- (5) This section does not apply to the use of land for the purposes of—
  - (a) bulk liquid storage, or
  - (b) the storage of dangerous goods.

**[51] Schedule 10, section 36(2) and (3)**

Omit section 36(2). Insert instead—

- (2) The area must—
  - (a) be paved with concrete or bituminous surfaces, and
  - (b) be designed and constructed to contain and collect leaks and spillages to ensure leaks and spillages do not contaminate the land or enter the stormwater system, and
  - (c) comply with AS 2890.2:2018, *Parking facilities, Part 2: Off-street commercial vehicle facilities*.
- (3) The development must not cause the contravention of a condition of a development consent applying to the land, which relates to car parking, loading, vehicular movement, waste management or landscaping.

**[52] Schedule 11 Complying development—Chapter 5**

Omit section 10(3)(a).

**[53] Schedule 11, section 11**

Omit the section. Insert instead—

**11 Bulk liquid storage tanks**

- (1) The construction and installation of bulk liquid storage tanks, including bunding, pipes and other associated infrastructure, on land in Port Botany and the Mayfield Bulk Liquid Storage Tanks Area.
- (2) The development must—
  - (a) not be, and not result in, a workplace that constitutes a major hazard facility, and
  - (b) have a capital investment value of \$30 million or less, and
  - (c) comply with—
    - (i) AS 1940:2017, *The storage and handling of flammable and combustible liquids*, and
    - (ii) AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, and
  - (d) for development on land in Port Botany—comply with—
    - (i) AS/NZS 1596:2014, *The storage and handling of LP Gas*, and
    - (ii) AS 3961:2017, *The storage and handling of liquefied natural gas*.

- (3) The tanks must be used to store—
  - (a) for development on land in Port Botany—
    - (i) combustible liquids, or
    - (ii) dangerous goods classified as class 3, 8 or 9 under the *Australian Dangerous Goods Code*, Part 2, or
    - (iii) liquefied petroleum gas, or
    - (iv) liquefied natural gas, or
  - (b) for development on land in the Mayfield Bulk Liquid Storage Tanks Area—diesel fuel or dangerous goods classified as class 3 under the *Australian Dangerous Goods Code*, Part 2 in a way and volume assessed for the substance under the Newcastle LUSS.
- (4) The height of the tanks must not exceed 32.5m above ground level (existing).
- (5) The tanks must be certified by a qualified engineer as having a satisfactory design and structural integrity.
- (6) A hazard analysis, prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary for the most hazardous substance proposed to be stored in the tanks, must demonstrate that—
  - (a) the 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 on the Department's website, and
  - (b) if constructed or installed on land at Port Botany—the development will not cause—
    - (i) an increase in the individual risk levels shown in the Port Botany LUSS, Figure 2, or
    - (ii) societal risk to exceed the ALARP band shown in the Port Botany LUSS, Figure 9, and
  - (c) if constructed or installed on land in the Mayfield Bulk Liquid Storage Tanks Area—the development will not cause—
    - (i) an increase in the individual risk levels shown in the Newcastle LUSS, Figure 3, or
    - (ii) societal risk to exceed the ALARP band shown in the Newcastle LUSS, Appendix C, page 25, Figure 4-25.
- (7) A fire safety study must be prepared, in accordance with the *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
- (8) A hazard and operability study must be prepared, in accordance with the *Hazardous Industry Planning Advisory Paper No 8: HAZOP Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
- (9) The development must comply with the recommendations, if any, made by the studies prepared under this section 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.

**[54] Schedule 11, sections 12, 12A and 13**

Omit sections 12 and 13. Insert instead—

**12 Bulk liquid storage tanks—change of stored liquid at Port Botany**

- (1) Change in kind of liquid stored in a bulk liquid storage tank on land in Port Botany if the previous liquid stored or the new liquid consist of—
  - (a) a combustible liquid, or
  - (b) dangerous goods of class 3, 8 or 9 under the *Australian Dangerous Goods Code*, Part 2.
- (2) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department’s website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department’s website, and
  - (b) the development will not cause—
    - (i) an increase in the individual risk levels shown in the Port Botany LUSS, Figure 2, or
    - (ii) societal risk to exceed the ALARP band shown in the Port Botany LUSS, Figure 9.
- (3) A hazard analysis is not required to be prepared under subsection (2) if—
  - (a) a hazard analysis that complies with subsection (2) has been prepared for the storage of a liquid that has the same or a higher level of hazard than the liquid proposed to be stored in the tank, and
  - (b) the change is not to or from a liquid consisting of dangerous goods of class 8 or 9 under the *Australian Dangerous Goods Code*, Part 2.
- (4) A hazard and operability study must be prepared, in accordance with the *Hazardous Industry Planning Advisory Paper No 8: HAZOP Guidelines*, dated January 2011 and published on the Department’s website, by a person approved by the Planning Secretary.
- (5) The development must comply with—
  - (a) AS 1940:2017, *The storage and handling of flammable and combustible liquids*, and
  - (b) AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, and
  - (c) the recommendations, if any, made by the studies prepared under this section in relation to the development.

**12A Bulk liquid storage tanks—change of stored liquid in Mayfield Bulk Liquid Storage Tanks Area**

- (1) Change in kind of liquid stored in a bulk liquid storage tank on land in the Mayfield Bulk Liquid Storage Tanks Area if the previous liquid stored or the new liquid consist of—
  - (a) diesel fuel, or
  - (b) dangerous goods of class 3 under the *Australian Dangerous Goods Code*, Part 2.

- (2) The new liquid must be stored in a way and volume assessed for the substance under the Newcastle LUSS.
- (3) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department's website, and
  - (b) the development will not cause—
    - (i) an increase in the individual risk levels shown in the Newcastle LUSS, Figure 3, or
    - (ii) societal risk to exceed the ALARP band shown in the Newcastle LUSS, Appendix C, page 25, Figure 4-25.
- (4) A hazard analysis is not required to be prepared under subsection (3) if a hazard analysis that complies with subsection (3) has been prepared for the storage of a liquid that has the same or a higher level of hazard than the liquid proposed to be stored in the tank.
- (5) A hazard and operability study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 8: HAZOP Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
- (6) The development must comply with—
  - (a) AS 1940:2017, *The storage and handling of flammable and combustible liquids*, and
  - (b) AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, and
  - (c) the recommendations, if any, made by the studies prepared under this section in relation to the development.

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

- (1) For a bulk liquid storage tank used to store dangerous goods of class 2, including liquefied petroleum gas or liquefied natural gas, 3, 5, 6, 8 or 9 under the *Australian Dangerous Goods Code*, Part 2—
  - (a) modifications to enlarge an existing pipeline for loading or unloading to the bulk liquid storage tank, or
  - (b) modifications to increase the flow rate of a pipeline for loading or unloading to or from the bulk liquid storage tank, or
  - (c) installation of a new pipeline or dispensing facilities for loading or unloading to the bulk liquid storage tank.
- (2) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department's website, and

- (b) for development on land in the Mayfield Bulk Liquid Storage Tanks Area—the development will not cause—
  - (i) an increase in the individual risk levels shown in the Newcastle LUSS, Figure 3, or
  - (ii) societal risk to exceed the ALARP band shown in the Newcastle LUSS, Appendix C, page 25, Figure 4-25, and
- (c) for development on land at Port Botany—the development will not cause—
  - (i) an increase in the individual risk levels shown in the Port Botany LUSS, Figure 2, or
  - (ii) societal risk to exceed the ALARP band shown in the Port Botany LUSS, Figure 9.
- (3) A hazard analysis is not required to be prepared under subsection (2) if a hazard analysis that complies with subsection (2) has been prepared for the storage of a liquid that has the same or a higher level of hazard than the liquid proposed to be stored in the tank.
- (4) A fire safety study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines*, dated January 2011 and published on the Department’s website, by a person approved by the Planning Secretary if the tank is used to store the following liquids—
  - (a) liquids of dangerous goods class 2, including liquefied petroleum gas or liquefied natural gas, 3 or 5 under the *Australian Dangerous Goods Code*, Part 2,
  - (b) high temperature liquids of dangerous goods class 9 under the *Australian Dangerous Goods Code*, Part 2.
- (5) A hazard and operability study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 8: HAZOP Guidelines*, dated January 2011 and published on the Department’s website, by a person approved by the Planning Secretary.
- (6) The development must comply with the recommendations, if any, made by the studies in relation to the development.

**[55] Schedule 11, sections 13AA–13AC**

Insert before section 13A—

**13AA Storage of “liquid empty” LPG storage tanks, road tankers, storage vessels and cylinders at Port Botany**

- (1) The storage at Port Botany of “liquid empty” storage tanks, road tankers and gas cylinders and other storage vessels used for storing or transporting liquefied petroleum gas (the *relevant items*).
- (2) The relevant items must be stored on a dedicated area paved with concrete or bituminous surfaces.
- (3) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department’s website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department's website, and
- (b) the development will not cause—
    - (i) an increase in the individual risk levels shown in the Port Botany LUSS, Figure 2, or
    - (ii) societal risk to exceed the ALARP band shown in the Port Botany LUSS, Figure 9.
  - (4) The hazard analysis must be prepared in relation to the most hazardous substance proposed to be stored in the tanks.
  - (5) A fire safety study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
  - (6) The storage of the relevant items must—
    - (a) be ancillary to an existing facility for the bulk storage of liquefied petroleum gas at Port Botany, and
    - (b) not adversely affect access into, across or out of the Lease Area for the purpose of an evacuation or attendance by emergency services, and
    - (c) comply with—
      - (i) AS/NZS 1596:2014, *The storage and handling of LP Gas*, and
      - (ii) the recommendations, if any, set out in the studies.
  - (7) The development—
    - (a) must be carried out on the site of a bulk liquid storage facility, and
    - (b) must not have previously been carried out on the site, whether or not as complying development.

**13AB Filling and storage of LPG cylinders at Port Botany**

- (1) The filling of gas cylinders with liquefied petroleum gas and the storage of the filled gas cylinders at Port Botany.
- (2) The cylinders must be filled and stored on a dedicated area paved with concrete or bituminous surfaces.
- (3) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department's website, and
  - (b) the development will not cause—
    - (i) an increase in the individual risk levels shown in the Port Botany LUSS, Figure 2, or
    - (ii) societal risk to exceed the ALARP band shown in the Port Botany LUSS, Figure 9.
- (4) The hazard analysis must be prepared in relation to the most hazardous substance proposed to be stored in the tanks.

- (5) A fire safety study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
- (6) A hazard and operability study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 8: HAZOP Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.
- (7) The development must—
  - (a) be ancillary to an existing facility for bulk storage of liquefied petroleum gas at Port Botany, and
  - (b) not operate as a gas bottle exchange for the public, and
  - (c) comply with—
    - (i) AS/NZS 1596:2014, *The storage and handling of LP Gas*, and
    - (ii) AS 4332—2004, *The storage and handling of gases in cylinders*, and
    - (iii) the recommendations, if any, made by the studies in relation to the development, and
  - (d) be carried out on the site of a bulk liquid storage facility, and
  - (e) not have previously been carried out on the site, whether or not as complying development.

**13AC Temporary parking of road tankers in dedicated parking areas in Mayfield Bulk Liquid Storage Tanks Area**

- (1) The construction, installation and use of a parking area for the purposes of providing temporary parking for road tankers (the **temporary parking**) on land within the Mayfield Bulk Liquid Storage Tanks Area.
- (2) The tankers must, while parked in the parking area, only store dangerous goods of class 3 under the *Australian Dangerous Goods Code*, Part 2.
- (3) A hazard analysis prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 6: Hazard Analysis*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary must demonstrate that—
  - (a) the 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 on the Department's website, and
  - (b) the development will not cause—
    - (i) an increase in the individual risk levels shown in the Newcastle LUSS, Figure 3, or
    - (ii) societal risk to exceed the ALARP band shown in the Newcastle LUSS, Appendix C, page 25, Figure 4-25.
- (4) The hazard analysis must be prepared in relation to the most hazardous substance proposed to be stored in the tanks.
- (5) A fire safety study must be prepared in accordance with the *Hazardous Industry Planning Advisory Paper No 2: Fire Safety Study Guidelines*, dated January 2011 and published on the Department's website, by a person approved by the Planning Secretary.

- (6) The temporary parking must—
- (a) not be located—
    - (i) on a road or road related area within the meaning of the *Road Transport Act 2013*, or
    - (ii) in, or in a way that impedes access to, other parking or loading bays or spaces, vehicle turnaround areas, or docks, or
    - (iii) on the site of a petrol station, and
  - (b) be located on a dedicated area paved with concrete or bituminous surfaces, and
  - (c) be ancillary to an existing facility used for handling the material stored in the tanker, and
  - (e) be designed and constructed to contain and collect leaks and spillages to ensure they do not contaminate the land or enter the stormwater system, and
  - (f) not adversely affect access into, across or out of the Lease Area for the purpose of an evacuation or attendance by emergency services, and
  - (g) not adversely impact on adjoining land or the amenity of the neighbourhood, including as a result of dust, odour or noise created by the temporary parking, and
  - (h) comply with—
    - (i) AS 1940:2017, *The storage and handling of flammable and combustible liquids*, and
    - (ii) AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, and
    - (iii) the *Australian Dangerous Goods Code*, and
    - (iv) the recommendations, if any, made by the studies in relation to the development.
- (7) The development—
- (a) must be carried out on the site of a bulk liquid storage facility, and
  - (b) must not have previously been carried out on the site, whether or not as complying development.

**[56] Schedule 11, section 17A(1)**

Omit “(other than an excluded liquid)”.

Insert instead “, other than dangerous goods,”.

**[57] Schedule 11, section 17A(3)**

Omit the subsection.

**[58] Schedule 11, section 18C**

Insert after section 18B—

**18C Hardstand area for open-air storage facilities**

- (1) The construction, installation and use of a hardstand area for the purpose of open-air storage facilities.
- (2) The hardstand area must—
  - (a) only be used to store products that are bulk solids, and

- (b) entirely contain the products during their storage, and
  - (c) be designed and constructed to withstand the loads for which it will be used, and
  - (d) be paved with concrete or bituminous surfaces.
- (3) The hardstand area must not—
- (a) be used to store dangerous goods, or
  - (b) adversely impact on adjoining land or the amenity of the neighbourhood, including as a result of dust, odour or noise created by the development, or
  - (c) be located in, or in a way that impedes access to, parking or loading bays or spaces, vehicle turnaround areas or docks, or
  - (d) redirect the flow of surface water, or cause sediment to be transported, onto an adjoining property or into a waterway, or
  - (e) adversely affect access into, across or out of the Lease Area for the purpose of an evacuation or attendance by emergency services.
- (4) The development must not be inconsistent with, or contravene, a provision or condition of a development consent applying to the land.
- (5) The land on which the development is carried out must be suitable for the use of the hardstand area for the purpose of open-air storage facilities.

**[59] Schedule 11, section 21(1)(c)(ia)**

Insert after section 21(1)(c)(ii)—

- (ia) any excavated material must be classified in accordance with the *Waste Classification Guidelines, Part 1: Classifying waste*, published by the NSW Environment Protection Authority in November 2014,

**Note—** The *Waste Classification Guidelines* are available on the Environment Protection Authority's website.

**[60] Schedule 11, section 21(1)(c)(iv)**

Omit the subparagraph. Insert instead—

- (iv) for fill brought to the site—must use fill containing only virgin excavated natural material or fill re-used in accordance with an excavated natural material exemption under the *Protection of the Environment Operations (Waste) Regulation 2014*, Part 9.

**[61] Schedule 11, section 27(1) and (2)**

Omit “Department of Planning and Infrastructure”, wherever occurring.

Insert instead “Department”.

**[62] Schedule 11, section 27(1)(c)–(f)**

Omit section 27(1)(c) and (d). Insert instead—

- (c) the commissioning and operation of the tanks must comply with the relevant recommendations of the studies prepared under section 11,
- (d) a certificate issued by a person approved by the Planning Secretary must be provided to the principal certifying authority stating that the commissioning of the tanks complies with the studies,

- (e) a hazard audit of the development must be carried out by a person approved by the Planning Secretary—
  - (i) 1 year after the commencement of the use of the tanks, and
  - (ii) otherwise—at least once every 3 years,
- (f) the operation of the tanks must comply with the relevant recommendations of a hazard audit.

**[63] Schedule 11, sections 29A–29C**

Insert after section 29—

**29A Additional condition—storage of “liquid empty” LPG storage tanks, road tankers, storage vessels and cylinders at Port Botany**

- (1) Development specified in this Schedule, section 13AA is subject to the following conditions—
  - (a) the total quantity of liquefied petroleum gas contained in all “liquid empty” storage tanks, road tankers, storage vessels and cylinders stored at the storage site at the same time must not exceed 20 tonnes,
  - (b) a safety management system developed in accordance with the *Hazardous Industry Planning Advisory Paper No 9: Safety Management*, dated January 2011 and published on the Department’s website, must be prepared and implemented in relation to the development,
  - (c) an emergency plan developed in accordance with the *Hazardous Industry Planning Advisory Paper No 1: Emergency Planning*, dated January 2011 and published on the Department’s website, must be prepared and implemented in relation to the development,
  - (d) a hazard audit of the development must be carried out by a person approved by the Planning Secretary—
    - (i) 1 year after the commencement of the development, and
    - (ii) otherwise—at least once every 3 years.
- (2) The hazard audit must—
  - (a) comply with the *Hazardous Industry Planning Advisory Paper No 5: Hazard Audit Guidelines*, dated January 2011 and published on the Department’s website, and
  - (b) include an implementation schedule for recommendations made by the audit.

**29B Additional condition—filling and storage of LPG cylinders at Port Botany**

- (1) Development specified in this Schedule, section 13AB is subject to the following conditions—
  - (a) the total quantity of liquefied petroleum gas contained in all gas cylinders stored at the storage site at the same time must not exceed 20 tonnes,
  - (b) a safety management system developed in accordance with the *Hazardous Industry Planning Advisory Paper No 9: Safety Management*, dated January 2011 and published on the Department’s website, must be prepared and implemented in relation to the development,
  - (c) an emergency plan developed in accordance with the *Hazardous Industry Planning Advisory Paper No 1: Emergency Planning*, dated

January 2011 and published on the Department's website, must be prepared and implemented in relation to the development,

- (d) a hazard audit of the development must be carried out by a person approved by the Planning Secretary—
  - (i) 1 year after the commencement of the development, and
  - (ii) otherwise—at least once every 3 years.
- (2) The hazard audit must—
  - (a) comply with the *Hazardous Industry Planning Advisory Paper No 5: Hazard Audit Guidelines*, dated January 2011 and published on the Department's website, and
  - (b) include an implementation schedule for recommendations made by the audit.

**29C Additional condition—temporary parking of road tankers in dedicated parking areas in Mayfield Bulk Liquid Storage Tanks Area**

- (1) Development specified in this Schedule, section 13AC is subject to the following conditions—
  - (a) a road tanker must not be continuously parked in the parking area for more than 24 hours in a 48-hour period,
  - (b) the total quantity of dangerous goods of class 3 under the *Australian Dangerous Goods Code*, Part 2 stored in all road tankers parked in the parking area at the same time must not exceed 200 tonnes,
  - (c) an emergency plan developed in accordance with the *Hazardous Industry Planning Advisory Paper No 1: Emergency Planning*, dated January 2011 and published on the Department's website, must be prepared and implemented in relation to the development,
  - (d) a safety management system developed in accordance with the *Hazardous Industry Planning Advisory Paper No 9: Safety Management*, dated January 2011 and published on the Department's website, must be prepared and implemented in relation to the development,
  - (e) a hazard audit of the development must be carried out by a person approved by the Planning Secretary—
    - (i) 1 year after the commencement of the use of the temporary parking, and
    - (ii) otherwise—at least once every 3 years.
- (2) The hazard audit must—
  - (a) comply with the *Hazardous Industry Planning Advisory Paper No 5: Hazard Audit Guidelines*, dated January 2011 and published on the Department's website, and
  - (b) include an implementation schedule for recommendations made by the audit.

**[64] Schedule 11, section 31, heading**

Omit “contaminated soil”. Insert instead “containment cell”.

**[65] Schedule 11, section 33(2A)**

Insert after section 33(2)—

- (2A) The development must comply with AS 2419.1:2021, *Fire hydrant installations, Part 1: System design, installation and commissioning*.

**[66] Schedule 11, section 33**

Renumber as section 19AA and move to after Schedule 11, section 19.

**[67] Schedule 12 Savings and transitional provisions—Chapter 5**

Insert after Schedule 11—

## **Schedule 12 Savings and transitional provisions— Chapter 5**

### **1 State Environmental Planning Policy (Transport and Infrastructure) Amendment (Three Ports) 2022**

- (1) An amendment to Chapter 5 made by the amending Policy does not apply to a relevant application.
- (2) Chapter 5, as in force immediately before the commencement of the amending Policy, continues to apply to a relevant application.
- (3) In this section—  
*amending Policy* means *State Environmental Planning Policy (Transport and Infrastructure) Amendment (Three Ports) 2022*.  
*relevant application* means the following applications made, but not finally determined, before the commencement of the amending Policy—
  - (a) a development application,
  - (b) an application for a complying development certificate,
  - (c) an application made by a proponent to a determining authority for approval of an activity under the Act, Part 5.