



# Expansion of Port of Newcastle Mayfield Cargo Storage Facility

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Part 4 Modification Application (DA 8137 MOD 2)

December 2023



Published by the NSW Department of Planning and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Expansion of Port of Newcastle Mayfield Cargo Storage Facility

Subtitle: Part 4 Modification Application (DA 8137 MOD 2)

Cover image: Mayfield Cargo Storage Facility (Source: Port of Newcastle)

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# Glossary

Abbreviation	Definition
<b>BCA</b>	Building Code of Australia
<b>CLMP</b>	Contaminated Land Management Plan
<b>Commission</b>	Independent Planning Commission
<b>Council</b>	Newcastle City Council
<b>CSMP</b>	Contaminated Site Management Plan
<b>Department</b>	Department of Planning and Environment
<b>DA</b>	Development Application
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>EPI</b>	Environmental Planning Instrument
<b>EPL</b>	Environment Protection Licence
<b>ESD</b>	Ecologically Sustainable Development
<b>FPP</b>	NSW Freight and Ports Plan 2018-2023
<b>GNMP</b>	Greater Newcastle Metropolitan Plan 2036
<b>HRP</b>	Hunter Regional Plan 2041
<b>MCSF</b>	Mayfield Cargo Storage Facility
<b>MCP</b>	Mayfield Concept Plan
<b>M4</b>	Mayfield Berth No 4
<b>Minister</b>	Minister for Planning and Public Spaces
<b>NDCP</b>	Newcastle Development Control Plan 2012
<b>NZP</b>	Net Zero Plan Stage 1: 2020-2030
<b>OEMP</b>	Operational Environment Management Plan

<b>Planning Secretary</b>	Secretary of the Department of Planning and Environment
<b>PMP</b>	Port Master Plan 2040
<b>PON</b>	Port of Newcastle
<b>SEE</b>	Statement of Environmental Effects
<b>SEPP</b>	State Environmental Planning Policy
<b>SMT</b>	Stolthaven Mayfield Terminal
<b>TfNSW</b>	Transport for NSW
<b>VRA</b>	Voluntary Remediation Agreement 26025

# Executive Summary

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the development consent for the open-air cargo storage facility on part of the former BHP steelworks site at Mayfield North, known as the Mayfield Cargo Storage Facility (MCSF). The Applicant is seeking to modify the development consent to permit the use of the expanded cargo storage facility and defer the remediation of the uncapped land.

The Applicant is Port of Newcastle Operations Pty Limited and the land which is the subject of the modification application is located within the Port of Newcastle's (PON) Mayfield Precinct, within the City of Newcastle local government area. The land has been leased to the Applicant from its owner the Port of Newcastle Lessor Ministerial Holding Corporation.

## Consent Authority

On 30 June 2017, the then Minister for Planning granted consent to development application (DA) DA 8137 under clause 8(a) of the former *State Environmental Planning Policy (Three Ports) 2013*, now clause 5.6(a)(i) of *State Environmental Planning Policy (Transport and Infrastructure) 2021*. Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that an application to modify a development consent must be made to the consent authority that granted that consent. As such, the Minister for Planning and Public Spaces is the consent authority for the modification application.

On 14 September 2011, the then Minister for Planning and Infrastructure delegated his functions under Section 96 (now Section 4.55) of the EP&A Act to the Planning Assessment Commission (now the Independent Planning Commission (the Commission)), in relation to reportable political donation applications.

As the Applicant disclosed a reportable political donation under Section 10.4 of the EP&A Act, the application will be determined by the Commission as the Minister's delegate.

## Engagement

In accordance with Section 4.55(1A) of the EP&A Act, the Applicant considered the proposed modification to be of minimal environmental impact. The Department agreed, and as there is no requirement under the EP&A Act, the Environmental Planning and Assessment Regulation 2021, and the Department's Community Participation Plan to notify the proposed modification, the application was not notified or advertised.

However, the Department notified the Environment Protection Authority, Transport for NSW, and the City of Newcastle about the proposal. Neither agency nor council raised concerns or made an objection.

## Assessment

The Department has considered the relevant matters for consideration under section 4.15(1) of the EP&A Act, the Statement of Environmental Effects, and agency advice, in its assessment of the proposal.

The Department considers the key assessment issues to be:

- noise;
- heavy vehicle traffic; and
- contamination.

These issues have been assessed, and the Department considers that operational noise and traffic movements are within the approved limits specified in the Mayfield Concept Plan approval and the development consent for the MCSF. The Applicant has committed to establish a buffer to the uncapped land where storage of cargo would not be carried out. In addition, a fence will be installed to restrict access to the uncapped land.

The Department is satisfied the proposal is acceptable, as the:

- modification proposal is consistent with relevant strategic planning policies and plans;
- development to which the modification relates remains substantially the same; and
- modification of the consent would not result in adverse impacts on the environment beyond those assessed in the original development application.

## **Conclusion**

The Department concludes the proposed modification is appropriate, as it would not result in unacceptable environmental, amenity, and visual impacts, and provides additional temporary storage for large cargo (such as wind turbines and other project cargo) near the Port of Newcastle. Consequently, it is recommended that the modification is in the public interest and should be approved, subject to conditions.

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# 1 Introduction

## 1.1 The proposal

- 1.1.1 This report provides the NSW Department of Planning and Environment's (the Department's) assessment of an application to modify the development consent for the open-air cargo storage facility on part of the former BHP steelworks site at Mayfield North NSW, known as the Mayfield Cargo Storage Facility (MCSF) (the proposal).
- 1.1.2 The Port of Newcastle Operations Pty Limited (the Applicant) states there is increased demand at the facility for large cargo, such as wind turbines and other project cargo, for temporary storage that is easily accessible, close to major transport routes and near the port. The proposal would increase the temporary storage, handling and onward transport by road, of cargo at Mayfield North.

## 1.2 Project background and location

- 1.2.1 On 30 June 2017, the then Minister for Planning approved Development Application DA 8137 (the Development) for the operation of a port facility for the storage of freight, including the loading, unloading, moving, and stacking of freight, at the MCSF.
- 1.2.2 The Development formalised the Applicant's ability to use the Site for permanent storage of shipborne freight as the exempt development provisions of the former *State Environmental Planning Policy (Three Ports) 2013* (the Three Ports SEPP) only allowed the use of the Site as a port facility for 182 days per year without development consent. The Development did not require any demolition or building construction works to occur.
- 1.2.3 The land subject to the development consent (the Site) is located in the Port of Newcastle's (PON) Mayfield Precinct, within the Newcastle Local Government Area. The Site is located on land legally known as Part Lots 51 and 54 DP 1229869 and Part Lot 42 DP 1191982, also known as 189 Selwyn Street, Mayfield North. These lots have been leased to the Applicant from its owner the Port of Newcastle Lessor Ministerial Holding Corporation. The Department notes that, subsequent to the approval of the MCSF, Lots 51 and 54 DP 1229869 were created from the subdivision of Lot 45 DP 1191982.
- 1.2.4 The MCSF is maintained as an existing hardstand area, installed following the completion of remediation works at the former BHP steelworks site. The Site is zoned SP1 – Special Activities under *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP) and is currently used as a shipborne freight storage facility. The Site is devoid of vegetation, with the exception of a fenced non-remediated area beside the Hunter River, which contains shrubby weeds.
- 1.2.5 The Site is located on the south-western foreshore of the southern arm of the Hunter River. Surrounding development consists of industrial, rail and port related activities. The nearest residential receivers are located approximately 800 metres to the south-west of the Site, in Mayfield East. The regional and local context of the Port of Newcastle is shown in **Figure 1** and **Figure 2**. The location of the MCSF is shown in **Figure 3**.



Figure 1 | Regional Context Map (Source: GHD)



Figure 2 | Local Context Map (Source: Google Maps)



Figure 3 | Mayfield Cargo Storage Area DA 8137 (Source: GHD)



### 1.3 Modification background

1.3.1 On 23 June 2020 the Development was modified to expand the cargo storage area of the MCSF from 12 hectares to 18.6 hectares, and permit an additional cargo type, being roll-on and roll-off cargo such as motor vehicles (MOD 1). The increased cargo storage area is shown in green in **Figure 4**, and its operation is subject to two conditions:

- Condition B9: Prior to the occupation and operation of the additional 6.6 hectares of loading/unloading area approved under DA 8137 MOD 1, the land is to be remediated in accordance with the requirements of Development Application 293-08-00 and Voluntary Remediation Agreement 26025.
- Condition B10: Upon completion of the remediation works required under condition B9 and prior to the use of that land, the Applicant must submit to the Planning Secretary, a Site Audit Report and a Section B Site Audit Statement, prepared in accordance with the NSW Contaminated Land Management – Guidelines for the NSW Site Auditor Scheme 2017, which demonstrates the site is suitable for its intended industrial use.

1.3.2 The purpose of Conditions B9 and B10 is to ensure that land is remediated prior to its use and operation as an open-air cargo storage area.

1.3.3 The Applicant has not yet satisfied Conditions B9 and B10 and commenced operations in the expanded storage area.



**Figure 4 | Mayfield Cargo Storage Area – Expansion Area MOD 1 (Source: GHD)**

## 1.4 Related projects and works

- 1.4.1 The Site forms part of the former BHP steelworks site which was in operation from 1915 to 1999. Post closure in April 2001, the then Minister for Urban Affairs and Planning approved development application DA 293-08-00 for the remediation of the BHP site and development of a multi-use terminal, comprising a container terminal and a general cargo handling facility on the remediated land. The Mayfield Berth No.4 (M4) and general cargo handling facility is the only part of the approved development to be constructed. DA 293-08-00 regulates the operation of the general cargo handling facility, which is located immediately to the south of the Site and is the primary berth which services the MCSF.
- 1.4.2 On 14 June 2001, the Environment Protection Authority (EPA) declared the BHP site to be a remediation site and a remedial action plan was prepared in 2004 to address legacy soil and groundwater contamination associated with the former steelworks. In 2018, remediation works were completed, with the exception of a small area of land in the north-east corner of the Site.
- 1.4.3 On 16 July 2012, the then Minister for Planning and Infrastructure approved the Mayfield Concept Plan (MCP) (MP09\_0096) which the Site is located fully within. The MCP approved a conceptual layout of port related land uses which included five indicative precincts. The Site is located within the Bulk Liquids and Container Terminal precinct of the MCP.

## 2 Proposed Modification

### 2.1 Description of the proposal

- 2.1.1 The Applicant is seeking to modify DA 8137 to permit the use of the remediated and capped portions of the expanded cargo storage area approved under MOD 1. This will require modification to conditions B9 and B10, as the additional 6.6 hectares of land is only permitted to be occupied and used following the remediation of the uncapped land and demonstration to the Planning Secretary the site is suitable for its intended industrial use. **Figure 4** shows the expanded storage areas to be used (in green) and the remaining uncapped area (in red).
- 2.1.2 The Applicant proposes the following modifications to Conditions B9 and B10<sup>1</sup>:
1. ~~Condition B9 - Prior to the occupation and operation of the additional 6.6 hectares of loading/unloading area approved under DA 8137 MOD 1 the land is to be remediated in accordance with the requirements of Development Application 293-08-00 and Voluntary Remediation Agreement 26025.~~ **Prior to the occupation and operation of the additional 6.6 hectares of loading / unloading area approved under DA 8137 MOD 1, the area marked as the Uncapped Area (Excluded Area) must be isolated by the installation of a security fence as shown in Plan Ref: (Map Description: DA 8137 (MOD 2) Date: 02/11/23). A prominent sign must be placed and maintained on the security fence stating that the Excluded Area is not approved for the storage of cargo and that access to the area is restricted to PON staff or those approved by PON to enter the area.**
  2. ~~Condition B10 - Upon completion of the remediation works required under condition B9 and prior to the use of that land, the Applicant must submit to the Planning Secretary, a Site Audit Report and a Section B Site Audit Statement, prepared in accordance with the NSW Contaminated Land Management – Guidelines for the NSW Site Auditor Scheme 2017, which demonstrates the site is suitable for its intended industrial use.~~ **Prior to the use of the Excluded Area, the land must be remediated in accordance with any relevant requirements of the Environmental Protection Authority and the Applicant must submit to the Planning Secretary a Site Audit Report and a Section B Site Audit Statement, prepared in accordance with the NSW Contaminated Land Management – Guidelines for NSW Site Auditor Scheme 2018, which demonstrates that the Excluded Area is suitable for its intended use.**
- 2.1.3 The Department agrees to the purpose of the modified Conditions B9 and B10 and has made minor amendments to the Applicant's proposed modified conditions:
- Condition B9, to clarify the intent and timing of the security fence
  - Condition B10, to require the uncapped land be remediated in accordance with the Contaminated Site Management Plan – Port Lands Former BHP Steelworks Mayfield, Newcastle – Hunter Development Corporation December 2016, as well as the

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<sup>1</sup> Deleted text strikethrough and new text in bold.

requirements of the Environment Protection Authority in relation to the remediation of contaminated land.

- 2.1.4 In addition, the Department has recommended modification of Condition B7A to require the Operational Environment Management Plan (OEMP) to be updated and submitted to the Planning Secretary for approval, prior to the commencement of operation in the expanded cargo storage area.
- 2.1.5 New conditions are recommended in relation to the construction and certification of the security fence around the uncapped area and reporting and auditing requirements. The inclusion of reporting and auditing requirements would bring the consent’s compliance requirements in line with current Department practice.
- 2.1.6 The Department has also recommended minor administrative changes to a number of definitions to reflect current agency names, and adding the Modification documents to condition A2 to ensure the modified development is carried out in accordance with these documents.

The recommended changes to the development consent are summarised in Table 1.

Table 1 | Modifications to the Development Consent

Condition	Approved Condition Intent	Proposed Change	Justification
A2	Condition A2 lists the documents that the development must be carried out in accordance with	Modify the condition to include the Modification 2 Report	The development must be carried out in accordance with these documents.
A7	Use of the site limited to Port Facilities as described in Condition A2 documents	Modify the condition to reflect the Modification 2 Report	The development must be carried out in accordance with these documents.
B5	Noise and vibration assessment for Site Noise Model	Modify the condition to reflect Condition A2 documents	Require Site Noise Model to be updated
B7A	Require the OEMP to be updated prior to the commencement of operation under Mod 2	Modify the condition to reflect the Modification 2 Report	Require the OEMP to be approved prior to operation under MOD 2 commencing
B8	Development must be operated in accordance with the OEMP	OEMP to be made publicly available	The updated OEMP to be made publicly available

<b>Condition</b>	<b>Approved Condition Intent</b>	<b>Proposed Change</b>	<b>Justification</b>
B9	Land to be remediated prior to occupation and operation	Modified to require uncapped land (Excluded Area) to be fenced to restrict access and prevent the storage of cargo within 10 metres of the uncapped land	To require fencing of the Excluded Area to be installed before operations commence
B10	Require a Site Audit Report and Site Audit Statement to be submitted to the Secretary	Modified to require the uncapped land to be remediated prior to use and demonstrate the land is suitable for its intended use	To require the uncapped land to be remediated prior to its use
B11	New structures to comply with the Building Code of Australia (BCA)	New condition	Ensure structural integrity of new structures
B12	Requires a Contaminated Land Management Plan for the construction of the security fence	New condition	Measures to manage and mitigate construction of the security fence
B13 to B16	Requirements for construction certificate	New conditions	Ensure construction certification is obtained prior to construction commencing
B17	Compliance with the BCA	New condition	Ensure structural integrity of new structures
B18	Require the capping layer to be reinstated following construction	New condition	Ensure the structural integrity of the capping layer
B19	Requirement for an Occupation Certificate	New condition	Ensure works are completed in accordance with the BCA
C1	Incidents to be notified	New condition	Update consent to current compliance requirements
C2 to C4	Non-compliance notification	New conditions	Update consent to current compliance requirements
C5 – C6	Require independent audits to be carried out regularly	New conditions	Update consent to current compliance requirements
C7	Carry out environmental monitoring	New condition	Update consent to current compliance requirements
C8	Provide public access to consent documents	New condition	Update consent to current compliance requirements



Condition	Approved Condition Intent	Proposed Change	Justification
General Housekeeping		The Department has recommended a number of minor changes be made to reflect new agency and Department names	
	Appendices	Insert an Appendix B showing the Map of the Excluded Area Insert an Appendix C which contains the written notification and incident reporting requirements	

## 3 Strategic Context

### 3.1 Port Master Plan 2040

- 3.1.1 The *Port Master Plan 2040* (PMP) outlines the key strategic development and trade opportunities for the Port of Newcastle (PON) and the broader region to 2040.
- 3.1.2 Goal 1 of the PMP seeks to promote the capacity of the PON and the supply chain to support the economy. The proposal will facilitate growth in capacity requirements for the PON's freight storage needs.
- 3.1.3 The Department has considered the strategic context of the proposal against the objectives of the PMP, and is satisfied that it is consistent with these objectives.

### 3.2 NSW Freight and Ports Plan 2018-2023

- 3.2.1 The *NSW Freight and Ports Plan 2018-2023* (FPP) is a call to action for government and industry to collaborate on clear initiatives and targets to make the NSW freight task more efficient and safer.
- 3.2.2 Goal 1.1 of the FPP is to encourage investment by providing greater certainty regarding government priorities and funding. A NSW Government action in this goal is to support PON to explore trade opportunities in new markets. The proposal will enable PON to meet future demand for imports from growing sectors, such as windfarms.
- 3.2.3 The Department has considered the strategic context of the proposal against the objectives of the FPP, and is satisfied that it is consistent with these objectives.

### 3.3 Net Zero Plan Stage 1: 2020-2030

- 3.3.1 The *Net Zero Plan Stage 1: 2020–2030* (NZP) sets out how the NSW Government will deliver on its objective to achieve net zero emissions by 2050 by creating new jobs, cutting household costs, and attracting investment. The NZP sets out how the NSW Government will support this objective to 2030.
- 3.3.2 Priority 1 of the NZP is to drive uptake of proven emissions reduction technologies that grow the economy, create new jobs, or reduce the cost of living. The proposal will facilitate the importation of large cargo, such as windfarm components.
- 3.3.3 The Department has considered the strategic context of the proposal against the objectives of the NZP, and is satisfied the proposal is consistent with these objectives.

### 3.4 Hunter Regional Plan 2041

- 3.4.1 The *Hunter Regional Plan 2041* (HRP) was released by the Department to provide a vision to support the development of the Hunter as a leading regional economy with opportunities for sustainable growth.

- 3.4.2 The HRP recognises the PON as an important component of the Hunter’s freight network which enhances the Hunter’s global reach, particularly through new jobs and associated growth areas from the expansion and diversification of operations. The HRP considers that efficient access for products through connections to major transport networks is essential. In this regard, the PON provides national and international access for the Hunter and wider region. The proposal is consistent with the HRP as it would increase the capacity for the storage of imported project cargo, an important objective of the Plan.
- 3.4.3 The Department has considered the strategic context of the proposal against the objectives of the HRP, and is satisfied that the proposal will support the expansion and diversification of the PON’s operations.

### **3.5 Greater Newcastle Metropolitan Plan 2036**

- 3.5.1 The *Greater Newcastle Metropolitan Plan 2036* (GNMP) sets out strategies and actions that will drive sustainable growth across Greater Newcastle.
- 3.5.2 Strategy 3 seeks to increase domestic and global trade capabilities at the PON, including the Department working with PON to facilitate the diversification of activities to adapt to changing demand.
- 3.5.3 The Department has considered the strategic context of the proposal against the objectives of the GNMP, and is satisfied that it will diversify the use of PON land. The Department considers the proposal is consistent with the GNMP.

## 4 Statutory context

### 4.1 Scope of modifications

- 4.1.1 The Department has reviewed the scope of the modification application, and considers that the application can be characterised as a modification involving minimal environmental impacts, as the proposal:
- would not significantly increase the environmental impacts of the development as approved,
  - is substantially the same development as originally approved, and
  - would not involve any further disturbance outside the already approved disturbance areas for the development.
- 4.1.2 Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act, rather than requiring a new development application to be lodged.

### 4.2 Consent authority

- 4.2.1 On 30 June 2017, a delegate of the then Minister for Planning granted development consent to development application DA 8137 under clause 8(a) of the *State Environmental Planning Policy (Three Ports) 2013*, now clause 5.6 (a)(i) of the Transport and Infrastructure SEPP.
- 4.2.2 Section 4.55(1A) of the EP&A Act provides that an application to modify a development consent must be made to the consent authority that granted that consent. As such, the Minister for Planning and Public Spaces is the consent authority for the modification application.
- 4.2.3 On 14 September 2011, the then Minister for Planning and Infrastructure delegated his functions under Section 96 (now Section 4.55) of the EP&A Act to the Planning Assessment Commission (now the Independent Planning Commission (the Commission)), in relation to reportable political donation applications. The Minister's delegation took effect on 1 October 2011.
- 4.2.4 As the Applicant has made a reportable political donation, the Commission, as the Minister's Delegate, will determine the modification application.

### 4.3 Permissibility

- 4.3.1 The Site is zoned SP1 Special Activities under the Transport and Infrastructure SEPP. Port facilities are a permissible use in this zone.
- 4.3.2 The proposal meets the relevant objectives of the SP1 zone as discussed further in **Appendix B**.

## 4.4 Mandatory Matters for Consideration

4.4.1 The following are the relevant mandatory matters for consideration:

- the matters in section 4.15(1) of the EP&A Act
- relevant environmental planning instruments (EPIs)
- objects of the EP&A Act
- ecologically sustainable development.

The Department's consideration of these matters is set out below, in **Section 6** and **Appendix B**.

### Environmental Planning Instruments

4.4.2 Under section 4.15 (1)(a)(i) of the EP&A Act, the consent authority, when determining a modification application, must take into consideration the provisions of any environmental planning instrument (EPI) and draft EPI (that has been subject to public consultation and notification under the EP&A Act) that apply to the proposal.

4.4.3 The Department has considered the proposal against the relevant provisions of applicable EPIs, including:

- *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP)
- *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP)

4.4.4 Detailed consideration of the provisions of EPIs that apply to the proposal is provided in **Appendix B**. The Department is satisfied the proposal generally complies with the relevant provisions of these EPIs.

### Objects of the EP&A Act

4.4.5 In determining the application, the consent authority should consider whether the proposal is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 1.3 of the EP&A Act.

4.4.6 The Department has considered the objects of the EP&A Act in its assessment of the application (see **Appendix B**) and is satisfied that the proposal meets the objects of the EP&A Act.

### Ecologically sustainable development

4.4.7 The EP&A Act adopts the definition of ecologically sustainable development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity

- improved valuation, pricing and incentive mechanisms.

4.4.8 The potential environmental impacts of the proposal have been assessed and where potential impacts have been identified, mitigation measures are recommended. As demonstrated in **Section 6** of this report, the proposal is not expected to have adverse impacts on sensitive receivers. As such, the Department considers that the proposal would not adversely impact the environment, the amenity of nearby sensitive receivers, and is consistent with the objects of the EP&A Act and principles of ESD.

#### **4.5 Other Approvals**

4.5.1 The Applicant has not indicated the proposal is integrated development under section 4.46 of the EP&A Act.

#### **4.6 Compliance with DA 8137**

4.6.1 The Department's Compliance branch is currently investigating an alleged breach of development consent DA 8137. Specifically, the use of the additional 6.6 hectares of the site for the storage of cargo, prior to undertaking remediation of the uncapped area described in MOD 1, as required by Condition B9 of the consent. The Compliance branch is also undertaking additional investigations of alleged breaches of DA 8137. These investigations are ongoing.

4.6.2 The Department considers that approval of MOD 2 will not impede the completion of the compliance investigations.

## 5 Engagement

### 5.1 Department's engagement

5.1.1 There is no requirement in the EP&A Act, the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) or the Department's Community Participation Plan (November 2019) for the modification application to be notified, advertised or made publicly available on the Department's website. However, the Department made the modification application and accompanying documents publicly available on its website and notified Transport for NSW (TfNSW), Environment Protection Authority (EPA) and City of Newcastle (Council) about the proposal on 26 May 2023.

### 5.2 Agency advice

5.2.1 The Department received advice from the EPA, TfNSW and Council.

5.2.2 A summary of the advice is provided in **Table 2** and a link to the full advice is in **Appendix A**.

Table 2 | Summary of agency and Council advice

Environment Protection Authority
<p>The EPA recommended that all practical measures be taken to prevent, control, abate or mitigate water pollution, and ensure measures to protect human health and the environment from harm are considered and implemented where appropriate.</p> <p>The EPA advised the Port of Newcastle currently operates Mayfield Berth No 4 (M4) in accordance with Environment Protection Licence (EPL) 13181 for the scheduled activity shipping in bulk. If shipping in bulk activities are to occur on the expanded area, the licensee will need to seek a variation to the EPL 13181 prior to these activities occurring.</p>
Transport for NSW
<p>TfNSW reviewed the proposal and raised no requirements or objections. TfNSW considered the proposal will have no significant impact to the nearby classified (State) road network.</p>
City of Newcastle
<p>The Council reviewed the proposal and raised no requirements or objections. The Council considered there will be no significant impact to the City of Newcastle.</p>

5.2.3 The Applicant has reviewed the agency and Council advice and considers that a response is not required. The Department agrees that a response to advice received on the proposal is not required.

### **5.3 Site Inspection**

- 5.3.1 On 5 June 2023, Department officers inspected the MCSF to better understand the current use and context of the site, remediation and development undertaken to date, and the proximity of uncapped areas to cargo storage. The distance to the residential area of Mayfield East was noted.
- 5.3.2 The Department officers observed the Mayfield Berth No. 4, the Mayfield Cargo storage area and the uncapped area and recent works at the Mayfield Berth general cargo handling area.
- 5.3.3 Photos taken by Department officers during the site inspection are included in Appendix C.



## 6 Assessment

### 6.1 Key assessment issues

6.1.1 The Department has considered the relevant matters for consideration under section 4.15 of the EP&A Act, the SEE and agency advice in its assessment of the proposal. The Department considers the key assessment issues to be:

- noise
- heavy vehicle traffic
- contamination.

### 6.2 Noise

6.2.1 The proposal has the potential to increase operational noise impacts due to an increase in heavy vehicle movements and the operation of port equipment used for loading and unloading cargo to and from the expanded cargo storage area.

6.2.2 MCP Condition 2.17 specifies approval noise limits for the cumulative MCP area and all developments contained within its boundary. The Development provides specific operational noise limits (Condition B3) for the operation of the MCSF.

6.2.3 The Applicant submitted an acoustic review (SEE, Appendix B) which assessed the noise impacts of the proposal, and determined compliance of the existing operations with the operational noise limits of the MCP and the MCSF development consents. The review noted that the proposal will expand the cargo storage area, rather than change the type of activities undertaken on the site. The type of cargo proposed to be stored in the expanded area would be the same as the existing storage operation – project cargo, break bulk, general freight in containers, and bulk cargo. The review concluded the proposal is unlikely to have adverse impacts on existing noise sensitive receivers located to the west in Mayfield East. In addition, the Facility's operational noise emissions have complied with the applicable noise limits as documented in five previous annual (2017 to 2021) operational noise compliance reports.

6.2.4 The Department notes that the operation of the expanded cargo storage area (yet to commence) is unchanged from that approved under MOD 1, that the predicted noise contribution from the expanded operation will be negligible, and the noise review demonstrates that the operation of the expanded area will comply with the noise limits under the MCP and the Development. The Development as modified under MOD 1 requires the OEMP to be updated before operations in the expanded cargo storage area commence. The Department has recommended an amendment to Condition B7A to reflect the proposal.

6.2.5 The Department considers that the proposal is unlikely to generate significant noise impacts and that existing noise conditions remain relevant to the operation of the proposal.

### 6.3 Heavy vehicle traffic

- 6.3.1 The proposed increase in the cargo storage area will increase heavy vehicle movements along Selwyn/George Streets and the intersection of George Street and Industrial Drive.
- 6.3.2 Traffic movements generated by the proposal fall within the total traffic movements of developments associated with the MCP. Condition 2.3 of the MCP sets the total truck movements from developments within the MCP boundary (**Table 3**).

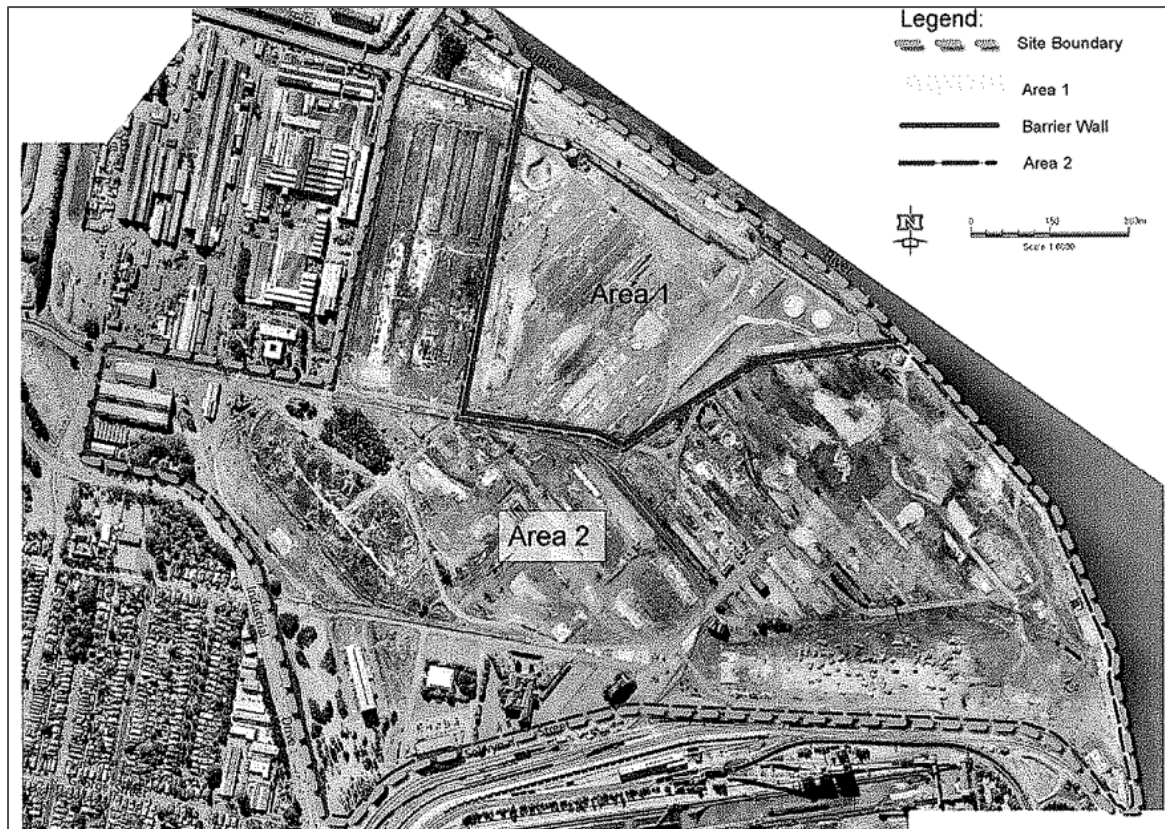
Table 3 | MCP Truck Movement Limits (Source: SEE, Appendix A)

Total Truck Movements per annum	Total Truck Movements per day	Total Truck Movements in peak periods
462,104	1,268	95

- 6.3.3 Currently two developments are operational within the MCP: the Mayfield Cargo Storage Facility (MCSF) and the Stolthaven Mayfield Terminal (SMT). The combined truck movements from these developments are well within the total number of truck movements approved under the MCP. The Applicant has provided information about truck movements generated by the MCSF and SMT, being 33,000 movements per annum, 91 truck movements per day and 4 truck movements in peak periods (for each of the two developments).
- 6.3.4 The MOD 1 assessment of the expanded cargo storage facility considered the additional truck movements (18,000 per year, 50 per day and 2 during peak periods) generated will have an inconsequential impact on the local road network.
- 6.3.5 The Department notes that the operation of the expanded cargo storage area is unchanged from that approved under MOD 1. The Department considers that the traffic impacts of the proposal are within the truck movement limits established under the MCP, and potential traffic impacts on the locality are acceptable. The existing Development requires the OEMP to be updated prior to operation of the expanded cargo storage area commencing. Condition B7A will be updated to reflect the Modification application.

### 6.4 Contamination

- 6.4.1 Remediation of the site is required under DA 293-08-00 and Voluntary Remediation Agreement 26025 (VRA). The remediation of the Site has largely been undertaken, except for a small portion of land to the north-east, the Koppers Operational Area (shown in red in **Figure 4**).
- 6.4.2 The VRA divides the site into two areas according to the level of contamination and associated environmental hazard (see **Figure 5**). Area 1 was previously occupied by coke ovens, gas holders and other processes associated with steelmaking. Area 2 is the rest of the site, which is less heavily contaminated. The VRA set out the program for remediation to be implemented in two stages.



**Figure 5 | Map of Area 1, Area 2 and the location of the barrier wall (Source: VRA 26025)**

- 6.4.3 Stage 1 remediation works were commenced in 2006 and include the construction of a subterranean barrier wall on three sides of Area 1, recontouring and capping of Area 1, the construction of the Eastern Drain and Western Drain, and interim groundwater and sediment control works on Area 2. The barrier wall was constructed with a mix of soil and bentonite which extends to the bottom of the natural sand and alluvial deposits, between 30 and 49 metres deep. These works re-direct water away from the most contaminated area of the site. The MCSF is located wholly in Area 1.
- 6.4.4 Stage 2 remediation works involved the contouring and low permeability capping of Area 2 and was completed in 2018.
- 6.4.5 The Koppers Operational Area was not able to be remediated during previous capping works in Area 1, due to ongoing operations at the Koppers berth at the time. These operations have now ceased, and the Koppers Gantry and Pipework leading to the berth have been removed and the cap reinstated. However, these works were not extended to decommissioning of the Koppers Operational Area and Berth 6 deck due to seawall instability.
- 6.4.6 The Applicant's Contaminated Sites Auditor considered the impacts of the Koppers Operational Area remaining unremediated is minor, in relation to the overall effectiveness of the remediation strategy for the former BHP Steelworks site, due to the exchange with seawater at this interface, meaning that contamination had already likely been flushed to the Hunter River. The risk to receptors of leaving the area unremediated are as follows:
1. the infiltration of groundwater causing migration of contaminants to the Hunter River - considered to be minor in view of the small area of unremediated land, relative to the

larger site area and capping works previously undertaken. The interface with the river will likely mean that contaminants have largely been flushed from the site; and

2. direct contact with soils and inhalation of potential vapours by site users - in this regard, the Applicant proposes to isolate the unremediated land by installing fencing to restrict access by site users. This measure is considered appropriate to manage these risks. Management of the unremediated area is detailed in the Contaminated Site Management Plan (CSMP) which was developed under Condition 4.1 of DA 293-08-00. The Applicant's contaminated Sites Auditor considered that no specific contaminated lands management measures are required for the operation of the proposal.

6.4.7 Requirement 15.10.1 of the CSMP requires that *"any change of land use or redevelopment [of the Koppers Operational Area] that will involve human occupation will require appropriate remediation measures that meet the VRA, to the satisfaction of the Site Auditor"*. The VRA that was implemented for the remediation of Area 1 and Area 2 was subsequently repealed by the EPA in 2018. The capping layer in Area 1 has since been managed under the EPA's Ongoing Maintenance Order No. 20142802. The future remediation of the uncapped land will be required to be carried out in accordance with the CSMP and EPA requirements for the management of contaminated land.

6.4.8 The Applicant has committed to create an exclusion zone adjacent to the uncapped zone and Koppers Operational Area (the Excluded Area shown in **Figure 6** and **Figure 7**). The Excluded Area will be fenced with prominent signage stating that the Excluded Area is not approved for the storage of cargo. The proposed exclusion fence will be located at a distance of 10 metres from the uncapped land and will restrict access and prevent cargo from being stored in this area.

6.4.9 The Department considers that the creation of an Excluded Area, and the installation of fencing along its boundary, is an appropriate measure to restrict access and minimise the likelihood of impact to site users. Existing management measures are appropriate to manage the unremediated area and no additional measures are required. The Department has recommended modification of Condition B9 to require the establishment of an Excluded Area and fencing along its boundary in line with the Applicant's commitments. The development consent would be updated to require the preparation of a Contaminated Land Management Plan (CLMP) to manage the contamination risk of excavating contaminated material during construction of the security fence. In addition, the Applicant will be required to reinstate any capping layer that has been disturbed by the fence construction in accordance with the CLMP.

6.4.10 The Applicant has advised that with the repeal of the VRA the future remediation of the uncapped land will be undertaken in accordance with the requirements of the EPA. The Department notes that remediation of the site was subject to the CSMP required by Condition 4.1 of DA 293-08-00. Consequently, the Department has modified Condition B10 to require that, prior to the use of the uncapped land, it be remediated in accordance with the CSMP and requirements of the EPA, and a Site Audit Report and a Site Audit Statement be submitted to the Planning Secretary, to demonstrate the remediated land is suitable for (and prior) to its intended use.





Figure 6 | Plan of the development site and locality (Source: Port of Newcastle 02/11/23)



Figure 7 | Plan of the excluded area (uncapped area) and immediate surrounds (Source: Port of Newcastle 02/11/23)

## 6.5 Other assessment issues

6.5.1 The Department's assessment of other issues is provided in **Table 4**.

Table 4 | Other assessment issues

Environmental issue	Assessment
Air quality	The proposal will not change the type of activities being undertaken at the site. The Department considers there will be negligible air quality impacts, as operation will be limited to capped hardstand areas and the internal access road is sealed.
Visual and lighting	Lighting will be needed during operation which can occur at all times. However, residential receivers are located at least 800 metres away and are visually screened from the site. The Department considers there will be negligible visual and lighting impacts.
Waste	The Department notes that PON's tenants will be responsible for the removal of dunnage (shipping packaging, containers etc.). All other waste is to be collected by a licenced waste contractor and disposed of at a licensed waste disposal facility, in accordance with current practice.
Soil	Remediation of the site to be used was finalised in 2018 in accordance with the then VRA held with the EPA, including capping the site. As the site is currently a fully sealed hardstand area, minimal dust generation is expected to occur. The Department considers the proposal to have negligible impacts on soil.
Water	As part of the remediation works, the site was capped with hardstand of very low permeability. Overland flow is directed to a series of trunk drains, which discharge water directly into the Hunter River. The Applicant does not propose to use the site for the storage of bulk liquids, which could cause large spills. The Applicant will require tenants to provide a spill kit suitable for their operations. On-site refuelling will be undertaken in a dedicated refuelling bunded area. The Department considers the impact on water to be relatively minor, as no disturbance of soils due to construction or operation is expected. The requirements for ongoing monitoring of groundwater in Area 1 and 2 in the repealed VRA are retained in the Ongoing Maintenance Order. The

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Applicant is required to undertake groundwater monitoring and report the results to the EPA on an annual basis.

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Social and economic

The proposal will enable previously unused employment lands to support port-related activities. The Department considers this proposal to have negligible social impacts due to negligible amenity impacts and the ongoing use of the site for port activities.

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## 6.6 Conclusion

6.6.1 The Department has assessed the proposal against the matters for consideration relevant to the Modification application:


- Noise emitted by the proposal is predicted to be within existing limits, and is not considered to be a significant issue.
- Traffic movements generated by the expanded storage area are within the maximum traffic movements specified in the MCP approval, and heavy vehicle movements are not considered to be a significant issue.
- Contamination from the unremediated Koppers Operational Area is a potential risk to site users. However, the Applicant proposes to establish an exclusion area adjacent to the unremediated land to restrict access for site users. The Department considers this to be an appropriate management measure. In addition, prior to the use of the uncapped land it be remediated and demonstrated that the land is suitable for its intended use.

6.6.2 The Department has concluded that the proposal does not result in significant changes that would alter the matters for consideration under section 4.55 (1A) of the EP&A Act, the objects of the EP&A Act under section 1.3, including the principles of ecologically sustainable development, and the conclusions made as part of the original assessment.

## 7 Evaluation

- 7.1.1 The Department has assessed the Modification, SEE and advice provided by the EPA, TfNSW and Council. The Department has also considered the objectives and relevant considerations under section 4.55(1A) of the EP&A Act.
- 7.1.2 The key issues relate to noise, traffic and contamination. The Department's assessment concluded that noise impacts and traffic movements from the expanded cargo storage facility are negligible in the context of the overall limits specified in the MCP noise and traffic movement conditions and noise limits in DA 8137.
- 7.1.3 The expanded cargo handling facility was approved under MOD 1 with requirements that operations in the expanded storage area could not commence until the uncapped areas had been remediated. The Department is satisfied that deferring remediation of the Koppers Operational Area to a future date will not result in significant impacts to the existing port activities on the remediated land.
- 7.1.4 The Applicant has committed to establish a buffer area where cargo will not be stored to ensure that the unremediated land is fenced to prevent public access and remains undisturbed by port activities.
- 7.1.5 The Department concludes the proposal can be supported, as the:
1. modification request complies with relevant statutory provisions and remains consistent with the EP&A Act (refer to **Section 3**);
  2. development to which the modification relates remains substantially the same; and
  3. modification would not result in adverse impacts on the environment beyond those assessed in the development consent.
- 7.1.6 Following on from its assessment of the proposal, the Department considers the proposal is approvable, subject to conditions. This assessment is hereby presented to the Commission for determination.

**Endorsed by:**



**Erica van den Honert**  
Executive Director  
Infrastructure Assessments

**Endorsed by:**



**David Gainsford**  
Deputy Secretary  
Development Assessment and Systems



# Appendices

## Appendix A – List of Documents

The following supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal as follows:

### Application

<https://www.planningportal.nsw.gov.au/daex/under-consideration/expansion-mayfield-cargo-storage-facility-modification-2-da-8137-mod2>

### Submissions

<https://www.planningportal.nsw.gov.au/daex/under-consideration/expansion-mayfield-cargo-storage-facility-modification-2-da-8137-mod2>

## Appendix B – Statutory Considerations

Pursuant to the requirements of section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the Department’s assessment of the proposal included detailed consideration of the:

- objects found in section 1.3 of the EP&A Act; and
- matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered these matters in its assessment and provided a summary in **Table 5**.

Table 5 | Considerations against the objects of the EP&A Act

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,	The proposal seeks to maximise the use of the site. The proposal would not adversely impact on the State’s natural or other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Department has considered ecologically sustainable development (ESD) in its assessment of the development (see <b>Section 4.4</b> ). The Department is satisfied the development can be carried out in a manner that is consistent with the principles of ESD.
(c) to promote the orderly and economic use and development of land,	The proposal involves the orderly and economic use of land through the utilisation of land adjacent to the M4 berth on the southern arm of the Hunter River.
(d) to promote the delivery and maintenance of affordable housing,	Not applicable.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The Department considers the proposal would not result in unacceptable environmental impacts.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	No impacts to built and cultural heritage have been identified, due to the historical disturbance of the site and locality.

(g) to promote good design and amenity of the built environment,	The Department considers the proposal would not result in unacceptable built form impacts.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	Not applicable.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department referred the development to relevant government agencies and Council and invited them to comment. The Department has given due consideration to their advice.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	<p>There is no requirement in the EP&amp;A Act, Environmental Planning and Assessment Regulation 2021, (EP&amp;A Regulation) or the Department's Community Participation Plan (November 2019) for the modification application to be notified, advertised or made publicly available on the Department's website.</p> <p>However, the Department made the modification application and accompanying documents publicly available on its website and notified Transport for NSW (TfNSW), Environment Protection Authority (EPA) and City of Newcastle (Council) on 26 May 2023. No concerns were raised in agency and Council advice received on the proposal.</p>

Table 6 | Matters for consideration under Section 4.15 of the EP&A Act

Matter	Consideration
a) The provisions of:	The Department considered the relevant environmental planning instruments in its assessment of the development. Details of the assessment are provided in <b>Appendix B</b> .
i) Any environmental planning instrument, and	
ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making	The Department considered the relevant draft environmental planning instruments in its assessment of the development. Details of the assessment are provided in <b>Appendix B</b> .

of the proposed instrument has been deferred indefinitely or has not been approved), and	
iii) any development control plan, and	The Newcastle Development Control Plan 2012 (NDCP) does not apply to the site in accordance with Section 1.00 of the NDCP, as the site is located within the PON lease area.
iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	Not applicable.
iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	The Department has assessed the development in accordance with relevant matters prescribed by the EP&A Regulation the findings of which are contained in this report.
b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department considered the likely impacts of the development in detail, in <b>Section 6</b> of this report. The Department concludes that environmental impacts can be appropriately managed and mitigated through existing and recommended conditions of consent.
c) the suitability of the site for the development,	The development is permissible with consent, and the site is suitable for the proposal, as it is located on land zoned SP1 Special Activities, and does not adversely impact on surrounding uses.
d) any submissions made in accordance with this Act or the regulations,	Matters raised in advice received from agencies and Council have been summarised in <b>Section 5</b> and considered as part of the assessment of the proposal in <b>Section 6</b> of this report.
e) the public interest.	The Department considers the proposal to be in the public interest as it enables the use of additional land for port facilities.

## Environmental Planning Instruments

To satisfy the requirements of Section 4.15(1) of the EP&A Act, the following EPIs were considered as part of the Department's assessment:

- *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP)
- *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP)
- Draft *State Environmental Planning Policy (Remediation of Land)*.

### State Environmental Planning Policy (Transport and Infrastructure) 2021

The Transport and Infrastructure SEPP repealed the State Environmental Planning Policy (Three Ports) 2013 under which DA 8137 was approved. This Modification proposal is characterised as port facilities, being "*facilities on land in the Lease Area used in connection with the carrying of freight and persons by water from one port to another for business or commercial purposes, and includes ... facilities for the loading or unloading of freight onto or from vessels and freight receipt, processing, land transport and storage facilities*". The land use is permissible with consent in the SP1 zone.

Table 7 | Consideration of SP1 Zone Objectives under the Transport and Infrastructure SEPP

Objective	Department's Consideration
To provide for special land uses that are not provided for in other zones	The proposal will continue freight handling within the Lease Area.
To provide for sites with special natural characteristics that are not provided for in other zones	The proposal will see greater use of waterfront areas within the Lease Area for freight storage and port facilities.
To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.	The proposal facilitates development in keeping with the special characteristics of the site, and its existing special use, and has negligible adverse impacts on surrounding land.
To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities.	The proposal expands the capacity of the site for freight handling at the port.
To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and	The proposal enables efficient handling and distribution of freight from port areas, by increasing freight storage capacity near existing transport infrastructure.

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distribution of freight from port areas through the provision of transport infrastructure

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To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle.

The proposal expands port facilities within the Port of Newcastle Lease Area.

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To facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses.

The site is suitably separated from surrounding residential areas.

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### State Environmental Planning Policy (Resilience and Hazards) 2021

The site is mapped as a coastal environment area and as a coastal use area under the Resilience and Hazards SEPP. However, clause 2.5(2) of the SEPP outlines that Chapter 2 of the SEPP does not apply to Lease Areas identified in State Environmental Planning Policy (Three Ports) 2013 (now the Transport and Infrastructure SEPP). The site is identified as being in the PON Lease Area in the Transport and Infrastructure SEPP. Therefore, Chapter 2 of the Resilience and Hazards SEPP does not apply to the site.

Chapter 4 of the Resilience and Hazards SEPP contains the provisions of the former SEPP 55. The chapter aims to provide a State-wide approach to the remediation of contaminated land. Chapter 4 requires a consent authority to not grant consent to development unless:

- it has considered whether the land is contaminated, and
- if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The Department has considered contamination in its assessment of the proposal (see **Section 6.4**). The Department considers that the creation of an Excluded Area, and the installation of fencing along its boundary, is an appropriate measure to restrict access and minimise the likelihood of impact to site users. Existing management measures are appropriate to manage the unremediated area and no additional measures are required. The site is subject to the requirement for remediation works outlined within the VRA, including capping of the area prior to use as a cargo storage area. The construction of the security fence adjacent to the uncapped land will be undertaken in accordance with a Contaminated Land Management Plan, and the capping layer must be reinstated should it be impacted by the fence construction.

### **Draft State Environmental Planning Policy (Remediation of Land)**

The draft Remediation SEPP seeks to retain the key operational framework of the current SEPP 55, while also adding new provisions relating to changes in categorisation and introducing modern approaches to the management of contaminated land. The proposal has been assessed against SEPP 55 and the Department is satisfied the Modification would be consistent with the draft Remediation SEPP.



**Appendix C – 05 June 2023 Site inspection photos**



Figure 8 | Cargo adjacent to unremediated land





Figure 9 | Koppers Operational Area



Figure 10 | MCSF cargo storage area