



Amendments to State Environmental Planning Policy (SEPP) Three Ports 2013

*Explanation of Intended
Effect September 2018*

September 2018

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Introduction

Purpose of amendments to the Three Ports SEPP

This Explanation of Intended Effect (EIE) outlines the proposed changes to *State Environmental Planning Policy (SEPP) Three Ports 2013* (the Three Ports SEPP).

State Environmental Planning Policies (SEPPs) deal with matters of State or regional environmental planning significance. They apply planning controls to certain land and types of development and provide for the development assessment pathway and environmental assessment that is required.

The Government's decisions to lease Port Botany and Port Kembla to a private port operator (NSW Ports) in April 2013 and subsequently the Port of Newcastle to a different private port operator (Port of Newcastle Investments) in April 2014 resulted in the need for new planning assessment pathways and controls to be developed.

The Three Ports SEPP is the environmental planning instrument that sets the land use planning and assessment framework for appropriate development at Port Kembla, Port Botany and the Port of Newcastle.

The changes proposed to the Three Ports SEPP will enable additional, essential, day-to-day development on land at the three ports through a streamlined assessment pathway, thereby promoting the efficient operation of the ports. The changes also aim to protect land at the three ports for port-related purposes, and clarify and simplify existing provisions in the Three Ports SEPP.

The proposed amendments to the Three Ports SEPP:

- identify additional categories of exempt and complying development that can occur at the three ports
- rezone certain land near Hale Street and Wentworth Avenue, Botany
- make other housekeeping changes and operational improvements.

The EIE also discusses options to protect land around Port Botany for port-related uses, such as container storage. The Department is seeking feedback on options to assist in decision making around this issue.

Under Clause 26(1) of the Three Ports SEPP, the port operators may propose to the Minister that additional categories of development be specified as exempt or complying development. Many of the proposed amendments respond to requests made by the port operators.

This EIE is to be read in conjunction with the existing Three Ports SEPP. Draft maps have been prepared which will accompany the amendment to the Three Ports SEPP. These maps can be accessed on the Department's website.

Background to the Three Ports SEPP

Port Botany, Port Kembla and the Port of Newcastle are the three largest ports in NSW. These ports are recognised as State significant precincts due to their importance to the NSW and Australian economies.

Prior to the application of the Three Ports SEPP, several environmental planning instruments applied to development at the ports. The Three Ports SEPP rationalised the planning controls under those environmental planning instruments¹ to ensure that all three ports operate under the same efficient planning regime.

The Three Ports SEPP applies to land at the three ports covering both the lease areas (the land leased to a private port operator under the *Ports Assets (Authorised Transactions) Act 2012* and outlined in red on the Lease Area Map) as well as surrounding lands maintained for port-related and industrial uses, which is predominantly zoned for industrial purposes under the Land Application Map. Local Environmental Plans do not apply to the land covered by the Three Ports SEPP.

The Three Ports SEPP aims to protect the ports from incompatible land uses and stipulates zones for the surrounding land to accommodate port activities. It provides that certain development within the lease area of the ports is exempt or complying development (i.e. a development application is not required), subject to specified criteria and conditions.

The Minister for Planning is the consent authority for all development that requires consent on land within the lease areas of all three ports and unzoned land (i.e. the shipping channels). The council is the consent authority for all development on mapped land outside the lease areas (other than unzoned land).

Strategic justification for the proposed amendments

Port Botany, Port Kembla and the Port of Newcastle are critical to the future economic growth and development of NSW.

Port Botany and Port Kembla are NSW's key import and export gateways, collectively contributing around \$4 billion per year to the NSW economy and supporting over 26,000 jobs². Ensuring these ports operate efficiently will be integral to protecting and strengthening the State's economic future.

Port Botany is NSW's largest container port and largest bulk liquid and gas port - most of Port Botany's trade caters for Sydney's consumers and businesses, with 80 per cent of import containers delivered within a 40km radius of Port Botany³.

Port Kembla is NSW's largest motor vehicle import hub, largest grain export terminal and second largest coal export port. Port Kembla is a key economic driver in the Illawarra region and services an extensive area of NSW, connected to trade locations by both road and rail⁴.

The Port of Newcastle is the world's largest coal export port and the largest bulk port on the east coast of Australia. It is a vital part of the Newcastle and Hunter regional economy⁵. The port is a major strategic asset for the NSW economy, and an important trading gateway handling over \$15 billion in trade annually⁶.

Together with a network of metropolitan intermodal terminals, the ports service the growing freight transport needs of Sydney and NSW as the population and economy continues to grow.

The amendments proposed to the Three Ports SEPP aim to promote the efficient development and operation of the ports, further supporting the ports' contribution to the State's economic activity.

¹ Those instruments being *State Environmental Planning Policy (Major Development) 2005*, *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (State and Regional Development) 2011*

² NSW Ports' 30 year Master Plan, October 2015

³ NSW Ports' 30 year Master Plan, October 2015

⁴ NSW Ports' 30 year Master Plan, October 2015

⁵ Plan Port of Newcastle (2015), Port Development Plan 2015 - 2020

⁶ Plan Port of Newcastle (2015), Port Development Plan 2015 - 2020

Part 1 – Proposed amendments to the Three Ports SEPP

Expansion of exempt and complying categories

The existing exempt and complying development provisions for the three ports are found in Schedules 1 and 2 of the Three Ports SEPP. The exempt and complying categories within the Three Ports SEPP are proposed to be expanded, as detailed in Tables 1 and 2.

Exempt development is very low impact development that does not need planning approval.

Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast track assessment by a council or private accredited certifier if specified development standards can be satisfied.

The complying development provisions within the Three Ports SEPP have been specifically developed for the three ports and are unique to these ports. They allow uses such as the modification to pipelines and flow rates to bulk liquid storage tanks; and the development of bulk liquid storage tanks and changes of stored liquid within such tanks (both currently only accessible to Port Botany) as complying development, subject to the appropriate hazard studies being prepared. Risks and hazards are a consideration for certain complying development under the provisions of the Three Ports SEPP.

The Department has a list of authorised hazard and risk specialists who can prepare hazard and fire safety studies for development related to bulk liquid storage tanks under the complying development provisions of the Three Ports SEPP. This list is available on the Department's website.

Under the Three Ports SEPP, exempt and complying development can only occur within the mapped lease areas. The lease area is the land leased to a private port operator under the *Ports Assets (Authorised Transactions) Act 2012* and outlined red on the Lease Area Maps within the SEPP.

The amendments proposed to the exempt and complying regime aim to support the efficient operation of the ports, and to clarify existing provisions. The amendments give the port operators and their tenants the ability to undertake additional, essential, day-to-day development on land within the lease areas more efficiently by allowing them to access a fast track complying development approval if they can comply with the specified standards.

All proposed amendments have been reviewed by the Department's hazard and risk specialist. None of the proposed amendments would increase the risk profile of the ports beyond tolerable limits. The changes proposed below have been identified as either exempt or complying development based on the following principles:

- If, following compliance with the prescribed standards, there is no additional (or negligible risk) from the development, the development has been proposed as exempt development.
- If, following compliance with the prescribed requirements, the risk from the development would be minimal, the development has been proposed as complying development. In this instance,

requirements have been put in place to manage and mitigate risk. A complying development certificate must also be issued for the activity by an accredited certifier or council.

The proposed amendments in Table 1, 2 and 3 are provisional and subject to legal review and the outcome of consultation. They are to be read in conjunction with the existing Three Ports SEPP. A copy of the Three Ports SEPP is available on the NSW legislation webpage.

Table 1 – Draft exempt development amendments

Development/Clause	Proposed change
Bulk liquid storage tanks ⁷ —change of stored liquid	<p>It is proposed to allow a change of product from one combustible liquid to another combustible liquid as exempt development. This activity is currently permitted as complying development (see clause 2 of Schedule 2).</p> <p>To enable this, it is proposed to amend clauses 2 and 3 of Schedule 1 to remove the words ‘combustible’ from the meaning of ‘excluded liquid’. In removing combustible liquids from the definition, excluded liquids would be defined as a liquid that is: dangerous goods of class 1, 2, 3, 5, 6, 7, 8 or 9 under Part 2 of the Australian Dangerous Goods Code; liquefied petroleum gas; or liquefied natural gas.</p> <p>Given the levels of protection that are already in place for the development of tanks containing combustible liquids, the change in product from one combustible liquid to another combustible liquid has negligible, if any, impact on the risk to people and the environment. As such, it is considered acceptable to be undertaken as exempt development when applied to existing tanks in all three port areas.</p> <p>The words ‘Class 4’ in clause 3(2) are also proposed to be removed as all goods under this class are flammable solids, not liquids. This amendment corrects an error.</p> <p>Excluded liquids are defined within several clauses under the Three Ports SEPP, rather than in the general definitions under clause 4.</p>

⁷ Bulk liquid storage tanks are above ground tanks generally containing between 10,000-50,000 cubic metres of both hazardous and non-hazardous liquids such as flammable liquids, combustible liquids, corrosive liquids and fats and oils. Flammable liquids have a lower flashpoint (i.e. the minimum temperature at which they can ignite) than combustible liquids

Development/Clause	Proposed change
Bulk liquid storage and handling facilities—fittings, fixtures and pipelines—maintenance and repair	<p>Currently, the maintenance and repair of all pipelines relating to bulk liquid storage is exempt development. The maintenance and repair of bulk liquid tanks and handling facilities forms part of routine activities for such facilities.</p> <p>This is currently recognised in clause 4 of Schedule 1 the Three Ports SEPP for fittings, fixtures and pipelines. However, repairs of inert gas plants and pumps have been unintentionally omitted.</p> <p>It is proposed to correct this error by amending clause 4 to include ‘plant and equipment.’ This will provide clarity that the clause is intended to allow for the maintenance, repair and replacement of fittings, fixtures, pipelines, plant and equipment as exempt development.</p> <p>This will also ensure the maintenance of pumps is included as exempt development as pumps are typically installed on all pipelines.</p> <hr/> <p>Currently, modifications to pipelines to enlarge or increase the flow rate or install a new pipeline containing an excluded liquid is complying development.</p> <p>It is proposed to permit modifications to pipelines to enlarge or increase the flow rate or install a new pipeline containing an excluded liquid as exempt development. This amendment will not extend to those pipelines used for the loading and unloading of excluded liquids. It is intended this change will allow the port operators to make changes to small, lower risk pipelines more efficiently.</p> <hr/> <p>A dispensing facility is a fuel transfer facility for the dispensing of liquids from a storage tank to the fuel tank of a vehicle or vessel.</p> <p>It is proposed to allow the installation, maintenance and repair of a dispensing facility to be undertaken as exempt development. The installation and the operation of a dispensing facility is a low risk activity if the storage tank is not part of the dispensing facility.</p> <hr/> <p>It is proposed to remove the words ‘Class 4’ in clause 4(3). This amendment corrects an error because all goods under Class 4 are flammable solids, not liquids.</p> <hr/>
Demolition Clause 6	<p>It is proposed to permit the demolition of bulk liquid storage tanks and pipelines that have been used for combustible liquids as exempt development, subject to compliance with Australian Standard 2601 -2001 <i>The Demolition of Structures</i>.</p>

Development/Clause	Proposed change
<p>Pollution control facilities, work health and safety measures and environmental protection works</p> <p>Clause 20</p>	<p>Clause 20 is proposed to be broadened to allow the construction and installation of mitigation measures relating to pollution control, work health and safety and environmental protection (e.g. oil booms and skimmer systems used to contain fuel spills in water) within all port facilities as exempt development.</p> <p>While the clause currently allows for such works to be undertaken within a port “including” storage tanks or fuel storage tanks, the clause could be interpreted as meaning that these works may not be able to be carried out on all chemical and bulk liquid facility sites.</p> <p>This was not the intent of the clause, which should apply to all port facilities to ensure they have appropriate pollution control and safety measures in place to prevent or mitigate a negative incident.</p>
<p>Truck marshalling areas</p> <p>Clause 36</p>	<p>Clause 36 currently allows the construction or installation of a truck marshalling area as exempt development. The current provisions of the Three Ports SEPP do not allow the parking of any trucks in car parks.</p> <p>It is proposed to amend clause 36 to permit the parking of any truck not carrying dangerous goods as exempt development.</p> <p>Trucks that are not carrying dangerous goods do not increase the level of risk on these sites.</p> <p>It is also proposed to introduce minimum standards for these areas by adding that truck marshalling areas must be constructed in accordance with <i>Australian Standard 2890.2 2002 Parking Facilities Part 2: Off-street Commercial Vehicle Facilities</i>. This Australian Standard applies to commercial vehicles including articulated trucks up to 19m long.</p> <p>The proposed amendments will not provide approval for trucks to park on public streets or in public car parks.</p>

Development/Clause	Proposed change
<p>Bulk liquid storage tanks for the storage of combustible liquids</p> <p>New clause</p>	<p>The storage of combustible liquid is currently permitted as complying development (refer to clauses 11 to 12 in Schedule 2 of the Three Ports SEPP). Clauses 11 and 12 are currently only applicable to Port Botany.</p> <p>It has been determined that if the development is for bulk liquid storage tanks solely for the storage of combustible liquids, and the tank is not sharing a bund (i.e. a physical barrier used to retain liquid in the event of a spill) with a bulk liquid storage tank containing an excluded liquid, the development will pose minimal risk and can be carried out as exempt development.</p> <p>For these reasons, it is proposed to allow the storage of combustible liquids in bulk liquid storage tanks as exempt development, subject to several requirements, including:</p> <ul style="list-style-type: none"> • the tank is only for the storage of combustible liquids, such as diesel • the combustible liquid is not stored at a high temperature • the development complies with <i>Australian Standard 1940 – 2004 The storage and handling of flammable and combustible liquids</i> • the development is not sharing a bund with a bulk liquid storage tank containing excluded liquids. <p>This amendment is likely to require consequential changes to other clauses in the Three Ports SEPP where combustible liquid is referenced. If the proposed development does not comply with the prescribed standards outlined above, then the development will continue to be complying development with the same standards as outlined in clause 11.</p>
<p>Tanks for the storage of liquefied or refrigerated gases</p> <p>New clause</p>	<p>It is proposed to allow tanks for the storage of liquefied or refrigerated gases (specifically Class 2.2 non-flammable, non-toxic gases under the Australian Dangerous Goods Code) to be exempt development, where they:</p> <ul style="list-style-type: none"> • are no more than 3 tonnes • are not assigned a subsidiary risk under the Dangerous Goods Code • are stored in compliance with the <i>Australian Standards 1894 The storage and handling of non-flammable cryogenic and refrigerated liquids</i>. <p>This amendment does not introduce additional risk to surrounding land uses, if the material does not have a subsidiary risk. A subsidiary risk is a secondary hazard of a substance or article as assigned by the Australian Dangerous Goods Code. Dangerous goods are given a class based on their primary hazard.</p>

Development/Clause	Proposed change
Change in product - tanks new clause	<p>It is proposed to allow a tank that has contained dangerous goods Class 3 liquids to be used for combustible liquids (but not vice versa). The risk from a combustible liquid is lower than the risk from a dangerous goods Class 3 liquid. It is therefore considered acceptable to be undertaken as exempt development.</p> <p>This new clause would be applicable to existing tanks in all three port areas.</p>
Storage of gas-free LPG tanks new clause	<p>It is proposed to allow the storage of gas free liquefied petroleum gas (LPG) tanks and cylinders as exempt development.</p> <p>When tanks are gas free, they do not create any additional risk.</p>
Use of hard stand as open air storage new clause	<p>It is proposed to allow operators to use hard stand areas for open air storage facilities as exempt development, subject to the following requirements:</p> <ul style="list-style-type: none"> • the area is not more than 5000m² • the stored products cannot be a dangerous good • there is compliance with any requirement for a contamination statement • the land on which the product is stored must be suitable for the use • the new use should not block accessibility around the port, or emergency and evacuation access • the storage of loose bulk cargo is to be appropriately contained on site to ensure there is no loss of material by way of dust, erosion, or tracking by vehicles • the storage of products must not adversely impact on the locality by way of dust, noise, light spill • the area must withstand the loads for which it is to be used • surface water run-off must not be affected.

Development/Clause	Proposed change
Pruning, topping, or delimbing of any tree in the lease areas new clause	<p>It is proposed to permit the pruning, topping or delimbing of any tree in the lease areas as exempt development if it involves:</p> <ul style="list-style-type: none"> • a priority weed within the meaning of clause 32 of Schedule 7 to the <i>Biosecurity Act 2015</i> • a tree that is dying or dead and is not required as the habitat of native animals • a tree that poses a risk to human life or property • is not a heritage item • a tree that is not, or does not comprise part of, a threatened species, population or ecological community within the meaning of the <i>Biodiversity Conservation Act 2016</i>, or the <i>Fisheries Management Act 1994</i>. <p>The development must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.</p>

Table 2– Draft complying development amendments

Development/Clause	Proposed change
Awnings or canopies Clause 10	It is proposed to reduce restrictions on the height and location where awnings and canopies can be developed as complying development, and instead require awnings and canopies to comply with the Building Code of Australia and relevant Australian Standards. This will allow the development of awnings over footpaths to provide weather protection.
Development for bulk liquid storage as complying development Clauses 11 and 12 Clause 25(7)	<p>Under the Three Ports SEPP certain development of bulk liquid storage tanks and changes to stored liquid within such tanks can be undertaken as complying development. However, access to these complying development provisions (clauses 11 and 12 in Schedule 2 of the Three Ports SEPP) requires a Land Use Safety Study (LUSS) to be in place.</p> <p>A LUSS in the context of the Three Ports SEPP is a study which estimates the cumulative risks from all potentially hazardous activities at the port on the surrounding land uses. The LUSS focuses on the hazards that affect people, property and the environment.</p>

Development/Clause	Proposed change
	<p>Currently, the only Port which has access to provisions allowing the development of bulk liquid storage tanks and changes to stored liquid within such tanks to be undertaken as complying development within its lease area is Port Botany.</p> <p>The Port of Newcastle recently submitted an LUSS to the Department. The LUSS estimates cumulative risks from current port activities and future project expansions within multiple precincts, including the Mayfield Precinct. The Department found that at this time, there is sufficient information to turn on the provisions for the Mayfield precinct.</p> <p>The LUSS found that the cumulative individual fatality risks associated with future project expansions for the storage of bulk liquids at the Mayfield Precinct were below the risk criteria for land use safety planning published in <i>Hazardous Industry Planning Advisory Paper No 10</i>. This means that the cumulative individual risks to the surrounding land uses are below most risks being experienced by the community.</p> <p>Due to the location of the high-risk activities, the cumulative societal risk for future project expansions within the Mayfield Precinct were also estimated and are considered tolerable as the risks are as low as reasonably practicable. The Department's hazard and risk specialist has reviewed the Port of Newcastle's LUSS, and found that the LUSS adequately assesses the risks from the existing potentially hazardous facilities and assumed future development within the Mayfield Precinct. The LUSS was also peer reviewed by an independent hazard and risk specialist.</p> <p>It is proposed to turn on the complying development provisions for the development of bulk liquid storage tanks and changes to stored liquids within such tanks for the Mayfield Precinct, for Dangerous Goods Class 3 (flammable liquids) and combustible liquids (diesel), and for the quantities of materials assessed under the LUSS.</p> <p>It is proposed to extend the application of Clause 11(2)(a)(iii) and Clause 12(2)(c), which trigger the requirement for bulk liquid storage tanks located, constructed or installed within the specified port to not exceed specified risk levels identified in an LUSS to the Mayfield Precinct in the Port of Newcastle. These clauses currently refer to Port Botany only.</p> <p>Under the current provisions of the Three Ports SEPP, loading/unloading bays for excluded liquids (i.e. dangerous goods) cannot be built as complying development. It is proposed to retain this policy position across the three ports (Botany,</p>

Development/Clause	Proposed change
	<p>Newcastle and Kembla) to ensure transport risks are fully assessed through a development application process.</p> <p>Port Kembla does not currently have an LUSS in place and therefore does not have access to these provisions.</p> <p>Clause 25(7) limits the application of clauses 11 and 12. It is proposed to fix an anomaly by updating clause 25(7) to include Port Kembla. Reference to the Port of Newcastle within Clause 25(7) is proposed to be updated to respond to the above proposal.</p>
<p>Bulk liquid storage tanks—modifications to pipelines and flow rates</p> <p>Clause 13</p>	<p>Clause 13 currently allows certain modifications to pipelines and flow rates for bulk liquid storage tanks. The Clause is required to be clarified to ensure the following changes to pipelines and flow rates are permitted as complying development:</p> <ul style="list-style-type: none"> the installation of new pipelines for the loading/unloading of bulk liquid storage tanks modifications to enlarge an existing pipeline to any size for the loading/unloading of bulk liquid storage tanks modifications to flow rates for existing pipelines used for the loading and unloading of bulk liquid storage tanks. <p>Clause 13(2)(a)(iii) which relates to modification to pipelines and flow rates to bulk liquid storage tanks is proposed to be updated to reference the Mayfield Precinct Future Case Map within the Port of Newcastle’s LUSS. The Clause currently only refers to the Port Botany LUSS.</p> <p>Note: The installation and modification of certain small diameter pipelines is exempt development.</p>
<p>Road and rail terminal facilities</p> <p>Clause 17A</p>	<p>Road and rail terminal facilities for loading and unloading freight (except all classes of dangerous goods under Part 2 of the Australian Dangerous Goods Code, liquefied petroleum gas or liquefied natural gas) are permitted as complying development subject to certain requirements, such as certification from a qualified engineer as having satisfactory design and structural integrity.</p> <p>For this clause, the amended excluded liquids exclude class 4 dangerous goods, which could permit development beyond the intent of the proposed amendment. Class 4 dangerous goods are flammable solids, not liquids. It is proposed to replace the reference to excluded liquid with reference to dangerous goods, liquefied petroleum gas or liquefied natural gas. This amendment corrects an error.</p>

Development/Clause	Proposed change
Additional condition— development on land containing contaminated soil	Clause 31 is intended to relate to land containing a ‘containment cell’. A containment cell is a component of a remediation project that involves and engineered on-site cell structure designed to contain contaminated material(s).
Clause 31	<p>The heading of this clause contains an error as it reads ‘contaminated soil’.</p> <p>It is proposed to fix this error by amending the title of clause 31 to read: ‘Additional condition – development on land containing a containment cell’.</p>
The filling and storage of liquefied petroleum gas (LPG) cylinders	LPG cylinders can vary in size from 4.5kg to 210kg (the typical sizes are: 4.5kg and 9kg for BBQs, 18kg, 45kg, 90kg, 190kg and 210kg). The last two sizes are for industrial use. It is proposed to permit the filling and storage of such LPG cylinders subject to:
New clause	<ul style="list-style-type: none"> the risks from the development are below the risk criteria published in Hazardous Industry Planning Advisory Paper No 4 – Risk Criteria for Land Use Safety Planning the aggregate storage quantity of LPG in all cylinders is not more than 20 tonnes per site the development complies with Australian Standards/NZS 1596:2008, The storage and handling of LP Gas and Australian Standards 4332 The storage and handling of gases in cylinders the development is not retail (i.e. no swap-and-go facility for the public) the development is ‘ancillary’ to the facility a hazard analysis, fire safety study and hazard and operability study have been prepared by a qualified person approved by the Secretary and prepared in accordance with applicable Hazardous Industry Planning Advisory Papers the development is constructed or installed at Port Botany, the proposed development will be required to demonstrate there is no increase to the individual risk levels shown in the Port Botany Land Use Safety Study Overview Report, or cause significant increase of the societal risk. <p>This activity is not currently covered by the Three Ports SEPP.</p> <p>This clause will only apply to Port Botany.</p>
The storage of “liquid empty” liquefied petroleum gas storage tanks, road tankers,	<p>It is proposed to allow the storage of “liquid empty” liquefied petroleum gas storage tanks, road tankers, storage vessels and cylinders.</p> <p>The development will be subject to the following requirements:</p>

Development/Clause	Proposed change
storage vessels and cylinders.	<ul style="list-style-type: none"> the risks from the development are below the risk criteria published in Hazardous Industry Planning Advisory Paper No 4 – Risk Criteria for Land Use Safety Planning
New clause	<ul style="list-style-type: none"> the storage vessels are to be on a dedicated area, paved with concrete or bitumen the aggregate quantity of liquefied petroleum gas in all vessels is no more than 20 tonnes per site the development complies with Australian Standards/NZS 1596:2008, The storage and handling of LP Gas the development is “ancillary” to the facility a hazard analysis and fire safety study have been prepared by a qualified person approved by the Secretary and prepared in accordance with applicable Hazardous Industry Planning Advisory Papers if constructed or installed at Port Botany, the proposed development will not increase the individual risk levels shown in the Port Botany Land Use Safety Study Overview Report, or cause significant increase of the societal risk. <p>This clause will only apply to Port Botany.</p>
Temporary parking of certain road tankers in dedicated car parks	<p>It is proposed to allow certain types of bulk road tankers to park temporarily for up to 24 hours if they are loaded with LPG, Class 3 or Class 8 materials. No other dangerous goods would be permitted. It is intended that this new provision will ensure port land is used more efficiently and will contribute to reducing congestion on local roads.</p> <p>The current provisions of the Three Ports SEPP do not allow the parking of any trucks in car parks. However, trucks carrying non-dangerous goods do not increase or impact the overall risk profile of a site.</p> <p>Further, the potential impacts from tankers with a dangerous goods load mainly depend on the dangerous good classification of the cargo and the quantity of the cargo. Therefore, the provision will ensure that only one class of dangerous goods will be permitted to be parked in the area at any one time, subject to certain requirements.</p> <p>The temporary parking of trucks and tankers will be subject to the following requirements:</p>
New clause	

Development/Clause	Proposed change
	<ul style="list-style-type: none"> the risks from the development are below the risk criteria published in <i>Hazardous Industry Planning Advisory Paper No 4 – Risk Criteria for Land Use Safety Planning</i> must be on a dedicated hardstand area, paved with concrete or bitumen the development is “ancillary” to the existing facility handling these materials if constructed or installed at Port Botany, the proposed development will comply with, and not increase, the individual risk levels shown in the Port Botany Land Use Safety Study Overview Report, or cause societal risk to exceed the as low as reasonably practicable band the development complies with ADG Code and <i>Australian Standard 3846 – 2005 The Handling and Transport of Dangerous Cargoes in Port Areas</i>. <p>For any LPG bulk road tankers parking area, the additional requirements include:</p> <ul style="list-style-type: none"> the aggregate quantity of LPG at the parking area at any time is not more than 120 tonnes the development complies with Australian Standards/NZS 1596:2008, The storage and handling of LP Gas a hazard analysis and fire safety study have been prepared by a qualified person approved by the Secretary of the Department and prepared in accordance with applicable Hazardous Industry Planning Advisory Papers. <p>For any Class 3 Flammable Liquids parking area, the additional requirements include:</p> <ul style="list-style-type: none"> the aggregate quantity of Class 3 at the parking area at any time is not more than 200 tonnes the development complies with <i>Australian Standards /NZS:1940 The storage and handling of flammable and combustible liquids</i> a hazard analysis and fire safety study have been prepared by a qualified person approved by the Secretary of the Department and prepared in accordance with applicable Hazardous Industry Planning Advisory Papers. <p>For any Class 8 Corrosives parking area, the additional requirements include:</p> <ul style="list-style-type: none"> the aggregate quantity of Class 8 at the parking area at any time is not more than 200 tonnes

Development/Clause	Proposed change
	<ul style="list-style-type: none"> a hazard analysis has been prepared by a qualified person approved by the Secretary of the Department and prepared in accordance with applicable Hazardous Industry Planning Advisory Papers. <p>This clause will only apply to Port Botany (all proposed amendments) and the Port of Newcastle (proposed amendment for Class 3 tanker parking only).</p>

Table 3– proposed housekeeping changes and operational improvements

Development/Clause	Proposed change
Definitions	It is proposed to update the definition of ‘Channel User Licence Agreement’ to also reference a ‘Deed’ because a Channel User Licence Deed (not agreement) is in place for Port of Newcastle. Both the deed and agreement refer to a permit allowing a ship to use a navigational channel (an access channel, swing basin, berthing box or other navigable area).
Port operator to be notified of certain development applications	It is proposed to require consent authorities to notify the port operators (NSW Ports and Port of Newcastle) when certain development applications are lodged on land within the boundaries of the Three Ports SEPP. In addition, it is also proposed to require consent authorities to notify port operators about development applications on land adjacent to the mapped boundaries of the Three Ports SEPP.
Clause 19	<p>These proposed amendments will assist the consent authority to identify potential land use conflict early and allow the port operators to comment on certain development that may impact on their operations, including: subdivision of land; State Significant Development and State Significant Infrastructure development applications and modifications which impact on port infrastructure or operation; designated development; and development to which <i>State Environmental Planning Policy (SEPP) 33—Hazardous and Offensive Development</i> applies.</p>

Development/Clause	Proposed change
Land Use Table	The Land Use Tables in the Three Ports SEPP specify for each zone: the objectives for development; development that may be carried out without development consent; development that may be carried out only with development consent; and development that is prohibited.
Zone SP1 Special Activities	<p>Zone SP1 Special Activities allows a broad range of development as permissible with consent. This broad approach allows any use not specified as being prohibited in the zone. Consequently, certain uses which may be inappropriate such as agriculture and recreational facilities (major) are permitted on land zoned SP1.</p> <p>It is proposed to amend the land use table to identify the full list of uses which are prohibited in the SP1 zone, to ensure that inappropriate uses are not inadvertently permitted.</p> <p>It is proposed to prohibit the following land uses in the SP1 zone:</p> <p><i>artisan food and drink industry; rural industry, agriculture, air transport facility, airstrip, amusement centre, animal boarding or training establishment, home occupation (sex services), sex services premises, camping ground, canal estate development, commercial premises, charter and tourism boating facility, correctional centre, electricity generating works, emergency services facility, exhibition home, exhibition village, extractive industry, farm building, forestry, health services facility, home-based child care, home business, home occupation, industrial retail outlet, industrial training facility, information and education facility, mine, mortuary, moveable dwelling, open cut mining, recreation area, recreation facility (major), recreation facility (outdoor), waste or resource management facility, restriction facilities, sewerage system, underground mining, veterinary hospital, waste or resource management facility, water supply system, and wholesale supplies.</i></p> <p>It is proposed to permit take away food and drink premises, as these are considered ancillary uses that provide services for the workforce using the area.</p> <p>Note: any use that is lawfully commenced but subsequently becomes a prohibited use through zoning changes would not be affected as ‘existing use rights’ would apply.</p>

Development/Clause	Proposed change
Earthworks Clause 22	<p>Clause 22 applies to earthworks for which development consent is required, and ensures such earthworks will not have a detrimental impact on the environment, surrounding areas and heritage. There is ambiguity in how clause 22 is interpreted regarding undertaking earthworks as complying development.</p> <p>Clause 22(2) specifies that development consent is required for earthworks unless the earthworks are exempt development, or the earthworks are ancillary to development that is permitted without consent or to development for which development consent has already been given.</p> <p>Clause 22(3) specifies several considerations that need to be considered by the consent authority before granting consent for earthworks.</p> <p>To clarify the intent of the clause, it is proposed to redraft subclause 22(2) to make it clear that the consent authority does not need to consider matters under clause 22(3) when earthworks are being undertaken as complying development under the Three Ports SEPP.</p> <p>The Three Ports SEPP includes general conditions for earthworks for complying development in clause 21 of Schedule 2.</p>
Heritage conservation Clause 31	<p>It is proposed to remove the following heritage items from the Three Ports SEPP because the buildings were lawfully demolished in 2015:</p> <ul style="list-style-type: none"> • Master Mechanics Office at 99 Selwyn Street, Mayfield North • Pattern Store at 99 Selwyn Street, Mayfield North.

Development/Clause	Proposed change
Port Kembla and Port of Newcastle Lease Area Map updates	<p>The exempt and complying provisions within Schedules 1 and 2 of the Three Ports SEPP apply to land identified in the Lease Area Maps. It is proposed to update the Port Kembla Lease Area Map to include seven additional parcels of land and update the Port of Newcastle Lease Area Map to include one additional parcel of land, so these areas can take advantage of the Three Ports SEPP provisions.</p> <p>The seven small additions to the Port Kembla Lease Area Map (which have been placed on public exhibition with the EIE) include:</p> <ol style="list-style-type: none"> 1. Spring Hill Road Overhead Rail Bridge and North Fork/South Fork rail assets 2. Old Port Road level crossing 3. Lot 2 DP538742 4. Lot 1 DP 203788 5. Old Port Road Overhead Rail Bridge 6. Pipeline Corridor 7. Lot 8 DP215948 <p>Three of the above parcels of land (Lot 2 DP 538742; Lot 1 DP 203788 and Lot 8 DP 215948) are managed by NSW Ports under the lease from the lessor. These lands were not included in the Lease Area Map and this amendment seeks to correct this omission.</p> <p>The remaining four parcels of land (Old Port Road level crossing, Old Port Road overhead rail bridge, pipeline corridor, and Spring Hill Road overhead rail bridge including North Fork and South Fork Rail Assets) are also managed by NSW Ports but are not included in the lease agreement. These lands include rail and road infrastructure.</p> <p>RMS has requested to be notified where works are being undertaken on State roads or road reserves. Therefore, the proposed amendment will include a requirement to notify RMS in these instances.</p> <p>It is proposed Lot 8 DP215948, Spring Hill Road overhead rail bridge and the North Fork/South Fork rail assets would be zoned SP1 Special Activities under the Three Ports SEPP (consistent with current zoning and uses as road and railway assets).</p> <p>The remaining sites are proposed to be zoned IN3 Heavy Industrial.</p> <p>The additional parcel of land in the Port of Newcastle (Lot 27 DP 842685) is managed by the Port of Newcastle under the lease agreement. This land was inadvertently not included in the Lease Area Map and this amendment seeks to correct this omission. The Lot is currently zoned SP1 Special Activities under the Three Ports SEPP.</p>

Proposal to rezone land near Hale Street, Botany

It is proposed to rezone two areas of land identified in Figure 1, near Hale Street, Botany.

The subject land at 1 Bay Street and 2-10 McFall Street, Botany is currently zoned IN1 General Industrial under Botany Bay Local Environmental Plan (LEP) 2013. This area is shaded red on Figure 1 below.

The subject land bound by Erith, Byrnes and Hale Streets, Botany is currently zoned IN1 General Industrial under the Three Ports SEPP. This area is shaded green on Figure 1 below.

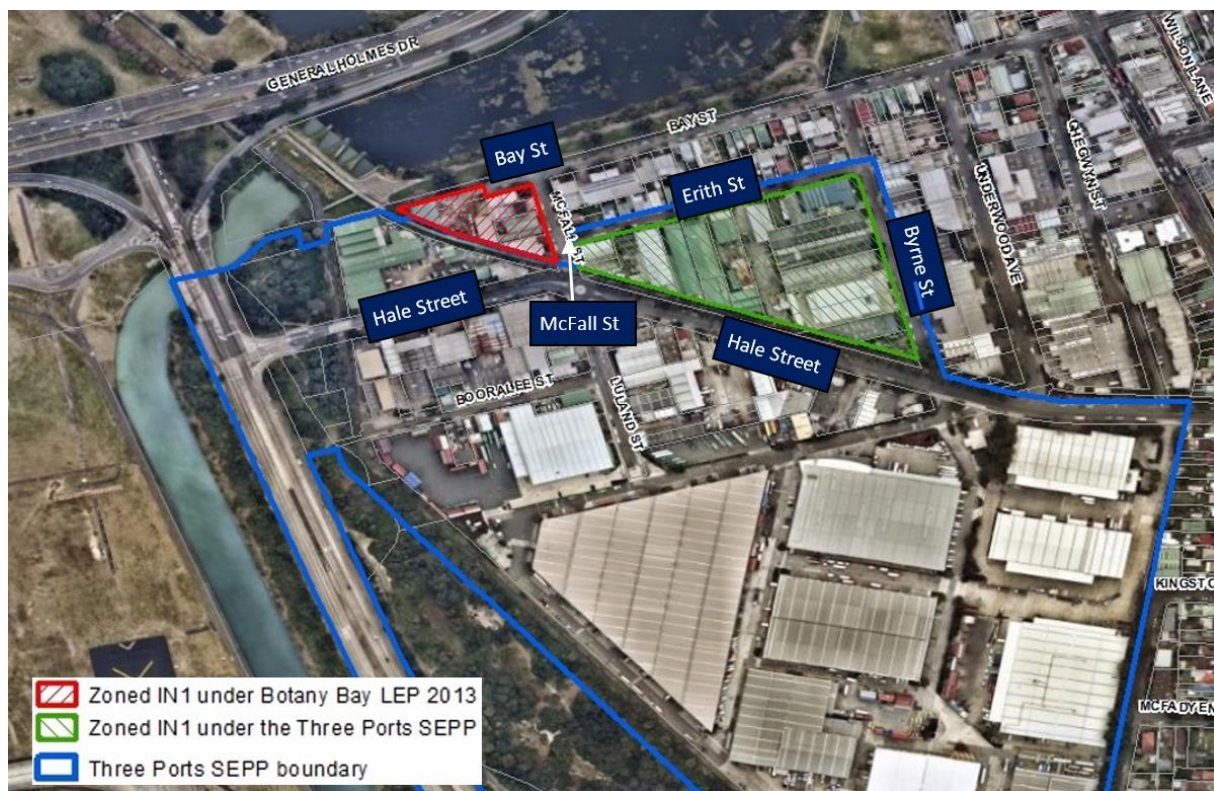


Figure 1: subject sites (cross hatched)

The land in both areas is near Port Botany and Sydney Airport, and is used for a range of activities such as vehicle repairs, warehousing, freight transport, landscape supplies, light and general industrial and waste management. The adjoining sites along Erith, Bay Street and Byrnes Streets mainly consist of low density residential, warehouse and distribution centres and industrial uses. There is a nearby school at Bay Street.

The areas have road safety issues relating to freight-related articulated trucks. Due to the narrowness of the roads, heavy vehicles associated with port-related industries have difficulty manoeuvring within the area. A traffic report prepared on behalf of Bayside Council concluded that the use of heavy vehicles within these areas is resulting in trucks turning into oncoming traffic (due to inadequate turning paths), damage to kerbs and potential damage to parked cars.

There is an opportunity for the land use planning system to better manage these land use conflicts over time by promoting the right type of future development in these areas.

It is proposed to rezone both parcels of land under the Three Ports SEPP as IN2 Light Industrial. The IN2 zone would prohibit container depots, freight transport facilities and warehouse or distribution centres as well as sensitive uses such as child care centres and residential uses. A range of businesses, light industrial uses and

other port-related uses such as boat building and repair facilities would be permitted. A complete list of permitted and prohibited land uses proposed in the IN2 zone are included below in Table 4.

Table 4– proposed land use table for Zone IN2

Permitted without consent	Proposed land uses to be permitted with development consent (A development application is required to be submitted to the consent authority)	Proposed land uses to be prohibited development
Environmental protection works	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 (other than artisan food and drink industry); Neighbourhood shops; Places of public worship; Roads; Signage; Vehicle body repair workshops; Vehicle repair stations.	Child care centres; Educational establishments; Depots; Freight transport facilities; Office premises; Residential accommodation; Retail premises; Warehouse or distribution centres; Waste or resource management facilities; Any other development not specified as being permitted with or permitted without consent

The proposed objectives of the new IN2 zone would include to:

- provide a range of business and light industrial uses
- encourage employment opportunities
- minimise any adverse effect of industry on other land uses
- support and protect industrial land for industrial uses
- 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 uses and land uses within adjoining zones.

Existing use rights provide for the continuation of current operations. Where there is an existing lawful use on land (which would otherwise be prohibited within the new IN2 zone), existing use rights apply. An existing use (defined in Section 4.65 of the *Environmental Planning and Assessment Act 1979*) (EP&A Act) is a use that is lawfully commenced but subsequently becomes a prohibited use under an LEP, SEPP or other environmental planning instrument. The EP&A Act and the EP&A Regulation 2000 makes provisions for the continuance of existing uses.

Zoning provides a clear and transparent framework for the way land can be used. Zoning this area appropriately would:

- simplify the controls applying to the land by making it clear what is permitted and what is prohibited on the land
- reduce land use conflict

- maintain consistency throughout the subject lands
- minimise fragmentation of land uses
- provide more compatible uses between surrounding residential, industrial and port-related land, and the airport.

The existing Port Botany Land Zoning Map would be amended to include the subject land, in its entirety, into the Three Ports SEPP and zone the land IN2 Light Industrial. Consequently, land at 1 Bay Street and 2-10 McFall Street, Botany would be removed from Council's LEP and included in the Three Ports SEPP.

The Land Application Map which identified the land to which the Three Ports SEPP applies will also be amended to include land at 1 Bay Street and 2-10 McFall Street, Botany, which is currently zoned under Botany Bay LEP 2013.

Proposal to include land near Wentworth Avenue, Botany in the Three Ports SEPP

It is proposed to rezone an area of land identified in Figure 2, near Wentworth Avenue, Botany.

The subject land bounded by Wentworth Avenue, Baker Street, Moore Street and Wight Street is currently zoned IN2 Light Industrial under Botany Bay Local Environmental Plan (LEP) 2013. It is proposed to include this land in the Three Ports SEPP as IN1 General Industrial.



Figure 2: subject site (cross hatched)

An aim of the Three Ports SEPP is to ensure land around the port is maintained for port-related and industrial uses. Including this land under the Three Ports SEPP will ensure greater certainty about the future industrial use of this land and protect it from fragmentation and alternative development pressure.

The combined area of the subject lots is approximately 10.5ha, and it is currently used for light and general industrial purposes including warehouse and distribution industries, a metal fabrication business, showrooms and manufacturing (Orora paper and recycling and juice production). These existing uses are compatible with the permitted uses in the IN1 zone of the Three Ports SEPP. Regardless, where there is an existing lawful use on land (which would otherwise be prohibited if the land was zoned under the Three Ports SEPP), existing use rights will apply.

Nearby industrial land along Baker and Moore Streets consists of warehouse and distribution centres and industrial uses. On the corner of Baker Street and Wentworth Avenue there are several low density residential properties. There is a sport oval zoned RE1 adjacent to the site on Corish Circle. The area is also near Port Botany and Sydney Airport.

As with the Hale Street area rezoning proposal, the existing Port Botany Land Zoning Maps would be amended to include the subject land, in its entirety, into the Three Ports SEPP and zone the land IN1 General Industrial. Consequently, this land would be removed from Council's LEP and included in the Three Ports SEPP.

Part 2 – Other regulatory changes being considered

Port Botany is recognised as being tightly constrained and with limited room to expand. The Department is seeking feedback on options to protect land around Port Botany for port-related uses, particularly container storage and large-scale warehousing.

Protecting land at Port Botany for freight and container uses

Any potential loss of port-related uses and lands from areas around the Port may have implications for the efficient and sustainable movement of freight in the Sydney region. It is therefore important to protect lands at Port Botany and the Port's function as an international gateway for freight, and support port-related land uses and infrastructure in the area around the port.

NSW Port's 30 Year Master Plan predicts that over the next 30 years, the volume of containers having a destination within 10km of the Port is forecast to triple. Ensuring land around the Port remains an adequate size for port-related uses, including container storage, will be important in protecting the Port. These areas are strategically located within proximity to the Port, particularly supporting freight and port-related uses.

It is important there is sufficient land available to support uses that promote the economic viability and efficiency of the Port.

The options below explore ways to protect Port Botany's function as an international gateway for freight and support port-related land uses and infrastructure in the area around the Port.

Option 1 – Heads of consideration provisions

Clause 16(1) of the Three Ports SEPP currently permits with consent, the subdivision of land within the Three Ports SEPP. Subdivision within the lease area by the Port Operator or a Port Corporation is exempt development.

A provision may be included in the Three Ports SEPP which identifies additional considerations to be considered by the consent authority when assessing development applications for any proposed subdivision of land zoned IN1 General Industrial under the Three Ports SEPP, around Port Botany. This would not include land within the lease area (i.e. the provision would apply to any land zoned IN1 on the Port Botany Land Zoning Map, and would not apply to any land outlined in red on the Port Botany Lease Area Map).

The consent authority could be required to consider the following matters when assessing an application for the subdivision of land:

- the impact of the subdivision on the Port or the suitability of the subdivision
- location/access to the port
- potential land use conflicts
- the natural and physical constraints and future opportunities of the land.

Inclusion of these additional heads of consideration will ensure that the consent authority and proponents of the development specifically consider the impacts of the proposed subdivision and the resulting possible land uses

of that land upon the port operations and potential for future expansion of the Port. This option would not introduce any additional development standards or change the zoning of land around the Port.

Option 2 – introduce a 2ha minimum lot size for certain land zoned IN1 General Industrial

A lot size map could be included in the Three Ports SEPP which introduces a minimum lot size of 2ha for lots which are currently greater than 2ha and which are zoned IN1 General Industrial under the Three Ports SEPP, at Port Botany.

The subdivision of large lots zoned IN1 would still be allowed, provided each proposed parcel created by the subdivision has a minimum lot size of 2ha. The subdivision of existing lots that are already smaller than 2ha would still be permitted.

Port-related uses, such as container storage, require larger parcels of land. One way of preserving areas around the Port for these uses is to ensure suitably sized land is available. If land around the Port is subdivided into smaller industrial units it will sterilise the ability of this land to be used for port-related uses, particularly if the industrial units are strata subdivided and sold off to individual owners. It is considered that for land to support freight and container-related uses it should be greater than 2ha in size.

This option would allow the land to be maintained in a suitable size to accommodate future port-related uses when that need arises, while still permitting some flexibility in current land uses and property ownership. This option would however introduce an additional development standard for land zoned IN1 under the Three Ports SEPP, which was not previously in place.

The Three Ports SEPP does not currently include lot size provisions.

Option 3 – restricting uses in zone IN1 General Industrial

An amendment could be made to the land use table of the Three Ports SEPP to restrict the land uses in the IN1 General Industrial zone to be limited to container storage and port-related uses, and other ancillary uses that would not affect the operation of the Port such as roads and signage.

Currently, the IN1 zone permits:

- environmental protection works
- boat building and repair facilities
- business premises
- depots
- food and drink premises
- freight transport facilities
- general industries
- jetties
- light industries
- neighbourhood shops
- office premises
- roads
- signage
- truck depots
- vehicle body repair workshops
- vehicle repair stations
- warehouse or distribution centres
- waste or resource management facilities.

If an existing lawful use on land within the IN1 zone becomes prohibited via the updated land use table, existing use rights apply. Existing use rights provide for the continuation of previous rights to operate the same use on the parcel of land.

This approach would mean that existing uses can continue unaffected with minor expansions/alterations permissible, but any changes to the land use would not be permissible unless it was for a port-related use. This

approach is highly limiting, could impact on the current demand for industrial land and would introduce a reliance on existing use rights. However, it would ensure that land around the Port would be used to support the operation of the Port.

Option 4 – do nothing

This option would retain provisions around subdivision as they are currently. This approach would rely upon the consent authority to consider the impacts of subdivision as part of the requirements under Section 4.15 of the EP&A Act.