

# Modification of Development Consent

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*

The Independent Planning Commission, as delegate of the Minister for Planning and Public Spaces under the delegation executed on 14 September 2011, approves the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Mr Chris Wilson (Chair)  
**Member of the Commission**

Sydney

8 February 2024

## SCHEDULE 1

|                             |  |
|-----------------------------|--|
| <b>Development consent:</b> | DA 8137  |
| <b>For the following:</b>   | Use the existing hardstand area as port facilities for the storage of freight, including the loading and unloading of freight on the site. |
| <b>Applicant:</b>           | Port of Newcastle Operations Pty Limited   |
| <b>Consent Authority:</b>   | Minister for Planning and Public Spaces  |
| <b>The Land:</b>            | Part Lot 42 DP 1191982, Part Lot 51 DP 1229869 and Part Lot 54 DP 1229869  |
| <b>Modification:</b>        | Modify Conditions B9 and B10 to permit operations to occur on the remediated portions of the site.   |

## SCHEDULE 2

The above consent is modified as follows:

### In Schedule 1:

1. Delete the following definitions from the Definitions Table:

- Department
- Development
- Modification Assessments
- RMS
- RTS
- SEE.

2. Insert the following definitions in the Definitions Table:

| Term                | Definition   |
|---------------------|--|
| Certifier           | Has the same meaning as in Part 6 of the EP&A Act  |
| Department          | Department of Planning and Environment   |
| Development         | The development as described in Schedule 1 and the documents listed in Condition A2, involving the use of the existing hardstand area as port facilities for the storage of freight, including the loading and unloading of freight on the site  |
| Excluded Area       | The Excluded Area means the uncapped area shown in red hatching in Figure 2 of Appendix B (Plan Ref: Map Description: DA 8137 (MOD 2) Date: 02/11/23)  |
| Incident            | An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance<br><br><b>Note:</b> "material harm" is defined in this consent   |
| Material harm       | Harm that:<br>(a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or<br>(b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment) |
| Principal Certifier | Means the principal certifier and has the same meaning as in Part 6 of the EP&A Act  |
| TfNSW               | Transport for NSW  |

## In Schedule 2: Part A – Administrative Conditions

3. Delete Condition A2 and replace as follows:

A2 The development must be carried out in accordance with:

- a) Development Application 8137, including the Statement of Environmental Effects titled, *Cargo Storage Facility, Mayfield*, prepared by AECOM, and dated 25 November 2016 and Response to Submissions email from PoN dated 5 May 2017, and all attached documents including the letter report titled, *Road Safety Review – Selwyn Street, Mayfield, NSW*, prepared by SECA Solution, dated 28 April 2017, and supplementary information provided by email from PoN, dated 8 May 2017;
- b) DA 8137 MOD 1, accompanied by *Statement of Environmental Effects Development Consent Modification – Mayfield Cargo Storage Facility*, dated 11 October 2019, prepared by Aurecon Australasia Pty Ltd, and *Response to Submissions* dated 13 May 2020, prepared by Aurecon Australasia Pty Ltd; and
- c) DA 8137 MOD 2, accompanied by *Modification to expand wharf area (DA8137) Statement of Environmental Effects*, dated 27 April 2023, prepared by GHD, PoN letter titled *DA8137 Mayfield Cargo Storage Facility* dated 17 November 2023, and additional information provided by email from PoN, dated 6 November 2023.

4. In Condition A7, delete the words “SEE, RTS and the Modification Assessments” and replace with “documents listed in Condition A2”.

## In Schedule 2: Part B – Operational Environmental Performance and Management

5. Delete Condition B5 and replace with the following:

B5 Prior to the commencement of operation of the development, as modified by MOD 2, the *Noise and Vibration Impact Assessment* included in the documents listed in Condition A2(a), including all modelling data, is to be provided to the PoN for the purposes of updating the Site Noise Model.

6. Delete Conditions B7A and B8 and replace with the following:

B7A The Applicant must update the OEMP required under Condition B7 to the satisfaction of the Secretary prior to the occupation and operation of the additional 6.6 hectares of loading / unloading area approved under DA 8137 MOD 1. The updated OEMP must include a:

- a) restriction that no more than 104 movements of cargo under its own power are permitted from the site during the course of a calendar year and are to occur outside of the AM and PM peak; and
- b) record of all cargo movements made under its own power is to be kept by the Applicant and incorporated into the traffic monitoring program required under Condition B7.

**Note:** *The purpose of condition B7A is to minimise traffic impacts of cargo that is transported from the site under its own power (for example, motor vehicles) and not to restrict cargo movements generally.*

B8 The Applicant and any other person carrying out any part of the development from time to time must operate the development in accordance with the OEMP (as revised from time to time), unless otherwise agreed by the Secretary. A copy of the approved OEMP must be made publicly available on the Applicant's website.

7. Delete Conditions B9 and B10 and replace as follows:

B9 Prior to the occupation and operation of the additional 6.6 hectares of loading / unloading area approved under DA 8137 MOD 1:

- a) the area marked as the Uncapped Area (Excluded Area), shown in Figure 2 of Appendix B (Plan Ref: Map Description: DA 8137 (MOD 2) Date: 02/11/23) must be isolated by the installation and maintenance of a security fence;
- b) prominent signs 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 Excluded Area is restricted to Port of Newcastle staff or those approved by the Port of Newcastle to enter the Uncapped Area; and
- c) submission to the Secretary for information the Site Audit Report and Section A Site Audit Statement, prepared in accordance with the NSW Contaminated Land Management – Guidelines for NSW Site Auditor Scheme 2018, which demonstrates that the land is suitable for its intended use.

B10 Prior to the use of the Uncapped Area shown in Figure 2 of Appendix B:

- a) the land must be remediated in accordance with the Contaminated Site Management Plan - Port Lands Former BHP Steelworks Mayfield Newcastle – Hunter Development Corporation December 2016 and any relevant requirements of the Environment Protection Authority; and
- b) submission to the Secretary for information the Site Audit Report and Section A 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.

8. Insert after Condition B10 the following new conditions:

#### **Construction of Security Fence**

B11. All new structures and any alterations or additions to existing structures, that are part of the development, must be constructed in accordance with the relevant requirements of the Building Code of Australia (BCA).

Notes:

- Under Part 6 of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the proposed building works.
- Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.

B12 Prior to the commencement of construction of the security fence (shown in Figure 2 of Appendix B (Plan Ref: Map Description: DA 8137 (MOD 2)) Date: 02/11/23), a **Contaminated Land Management Plan** must be submitted to the Secretary for approval. The Plan must be prepared by a suitable qualified and experienced person and be consistent with the *Contaminated Site Management Plan - Port Lands Former BHP Steelworks Mayfield Newcastle - Hunter Development Corporation, December 2016* (Mayfield CSMP). The Plan must:

- a) Describe the proposed construction works;
- b) Set standards and performance measures for the construction work;
- c) Describe actions and measures that will be implemented to mitigate potential impacts;
- d) Explain how the environmental performance of the construction works will be monitored and what actions will be taken if any non-compliance is detected; and measures to reinstate the capping layer if disturbed.

The approved Plan must be implemented.

- B13. Work must not commence until a Construction Certificate in respect of the work has been issued.
- B14. All relevant conditions under this section must be met prior to the issue of any relevant Construction Certificate.
- B15. Prior to the issue of any relevant Construction Certificate, the Applicant must:
- a) Appoint a Principal Certifier in accordance with the relevant provisions of the EP&A Act and EP&A Regulation; and
  - b) The Principal Certifier must submit to the Planning Secretary and Council an "Appointment of Principal Certifier".
- B16. Prior to the issue of any relevant Construction Certificate, the Applicant must provide evidence to the Certifier that any long service levy payable under Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- B17. The proposed works must comply with the applicable Performance Requirements of the relevant sections of the BCA to achieve and maintain acceptable standards of structural sufficiency, safety, health and amenity for the ongoing benefit of the community. Compliance with the Performance Requirements can only be achieved by:
- a) Compliance with relevant Deemed to Satisfy Provisions of the BCA; or
  - b) Performance Solution which demonstrates:
    - a. compliance with all relevant Performance Requirements of the BCA; or
    - b. the solution is at least equivalent to the Deemed to Satisfy Provisions; or
  - c) a combination of B17 (a) and (b) above.
- Prior to the issue of the first Construction Certificate, a report detailing compliance with any relevant provisions of the BCA is to be submitted to the satisfaction of the Certifier.
- B18. Reinstatement of the engineered pavement cap area and areas of former clay capping must be carried out in accordance with the Contaminated Land Management Plan required under Condition B12.
- B19. Prior to the issue of any Occupation Certificate, evidence must be provided to the satisfaction of the Certifier that the proposed works have been completed in accordance with the BCA.

## **PART C - REPORTING AND AUDITING**

### **Incident Notification, Reporting and Response**

- C1. The Secretary must be notified in writing via the Major Projects website immediately after the Applicant becomes aware of an incident that causes, or is likely to cause, material harm to the environment. The notification must identify the development (including the development application number and the name of the development if it has one) and set out the location and nature of the incident. Subsequent notification requirements must be given, and reports submitted in accordance with the requirements set out in Appendix C.

### **Non-Compliance Notification**

- C2. The Secretary must be notified in writing via the Major Projects website within seven days after the Applicant becomes aware of any non-compliance with this consent.
- C3. A non-compliance notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which

it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

- C4. A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

### **Independent Audit**

- C5. Within one year of the approval of DA 8137 MOD 2, and every three years after, unless the Secretary directs otherwise, the Applicant must commission and pay the full cost of an Independent Environmental Audit (Audit) of the development. Audits must:

- (a) be prepared in accordance with the Independent Audit Post Approval Requirements (Department 2020);
- (b) be led and conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary; and
- (c) be submitted to the satisfaction of the Secretary within three months of commissioning the Audit (or within another timeframe agreed by the Secretary).

- C6. In accordance with the specific requirements in the Independent Audit Post Approval Requirements (Department 2020, or its latest version), the Applicant must:

- (a) review and respond to each Independent Audit Report prepared under Condition C5 of this consent;
- (b) submit the response to the Secretary and any other NSW agency that requests it, together with a timetable for the implementation of the recommendations; and
- (c) implement the recommendations to the satisfaction of the Secretary.

### **Monitoring and Environmental Audits**

- C7. Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance reporting and independent auditing.

*Note: For the purposes of this condition, as set out in the EP&A Act “monitoring” is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development. An “environmental audit” is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.*

### **Access to Information**

- C8. At least 48 hours prior to the occupation and operation of the additional 6.6 hectares of loading / unloading area approved under DA 8137 MOD 1 and for the life of the development (or such other time as agreed by the Secretary), the Applicant must:

- (a) make the following information and documents (as they are obtained or approved) publicly available on its website:
  - (i) the documents referred to in condition A2 of this consent;
  - (ii) all current statutory approvals for the development;
  - (iii) all approved strategies, plans and programs required under the conditions of this consent;
  - (iv) contact details to enquire about the development or to make a complaint;
  - (v) a complaints register, updated monthly;

- (vi) audit reports prepared as part of any Independent Audit of the development and the Applicant's response to the recommendations in any audit report; and
  - (vii) any other matter required by the Secretary.
- (b) keep such information up to date, to the satisfaction of the Secretary

9 Insert after **APPENDIX A** the following:

## APPENDIX B

### MAP SHOWING THE EXCLUDED AREA (UNCAPPED AREA)



Figure 1 | Plan of the development site and locality (Source: PON)





Figure 2 | Plan of the Excluded Area (uncapped area) and surrounds (Source: PON)

| Proposed Fence Post Coordinates |            |             | Proposed Fence Post Coordinates |            |             |
|---------------------------------|------------|-------------|---------------------------------|------------|-------------|
| PointID                         | Easting    | Northing    | PointID                         | Easting    | Northing    |
| 1                               | 384373.359 | 6360106.422 | A                               | 384382.618 | 6360102.210 |
| 2                               | 384361.374 | 6360089.762 | B                               | 384374.929 | 6360091.498 |
| 3                               | 384392.654 | 6360064.264 | C                               | 384381.438 | 6360086.088 |
| 4                               | 384381.881 | 6360054.891 | D                               | 384384.568 | 6360086.088 |
| 5                               | 384428.514 | 6360000.005 | E                               | 384415.202 | 6360057.185 |
| 6                               | 384495.077 | 6359947.712 | F                               | 384406.232 | 6360049.500 |
|                                 |            |             | G                               | 384417.467 | 6360038.005 |
|                                 |            |             | H                               | 384420.996 | 6360037.872 |
|                                 |            |             | I                               | 384443.639 | 6360020.157 |
|                                 |            |             | J                               | 384437.001 | 6360005.294 |
|                                 |            |             | K                               | 384474.540 | 6359977.070 |
|                                 |            |             | L                               | 384471.991 | 6359974.043 |
|                                 |            |             | M                               | 384494.985 | 6359949.499 |
|                                 |            |             | N                               | 384504.841 | 6359957.024 |
|                                 |            |             | O                               | 384490.485 | 6359971.406 |
|                                 |            |             | P                               | 384483.131 | 6359980.000 |
|                                 |            |             | Q                               | 384487.726 | 6359986.193 |
|                                 |            |             | R                               | 384484.796 | 6359988.191 |
|                                 |            |             | S                               | 384478.081 | 6359979.707 |
|                                 |            |             | T                               | 384445.192 | 6360002.988 |
|                                 |            |             | U                               | 384458.290 | 6360025.951 |
|                                 |            |             | V                               | 384450.432 | 6360033.743 |
|                                 |            |             | W                               | 384430.653 | 6360048.328 |
|                                 |            |             | X                               | 384399.527 | 6360091.153 |

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Figure 3 | Proposed fence post coordinates (Source: PON)



**APPENDIX C**  
**WRITTEN INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS**

1. Written notification of an incident in accordance with condition C1 must:
  - (a) identify the development and application number;
  - (b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
  - (c) identify how the incident was detected;
  - (d) identify when the Applicant became aware of the incident;
  - (e) identify any actual or potential non-compliance with terms of the approval;
  - (f) describe what immediate steps were taken in relation to the incident;
  - (g) identify further action that will be taken in relation to the incident; and
  - (h) identify a project contact for further communication regarding the incident.
2. The Incident Report must include:
  - (a) a summary of the incident;
  - (b) outcomes of an incident investigation, including identification of the cause of the incident;
  - (c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
  - (d) details of any communication with other stakeholders regarding the incident.

**End of modification**  
**(DA8137-MOD-2)**