

Development Consent

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

As delegate for the Minister for Planning under delegation dated 16 February 2015, I hereby grant consent to the Development Application referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

Chris Ritchie
Director
Industry Assessments

Sydney, 30 June 2017

The Department has prepared a consolidated version of the consent which is intended to include all modifications to the original determination instrument.

The consolidated version of the consent has been prepared by the Department with all due care. This consolidated version is intended to aid the consent holder by combining all consents relating to the original determination instrument but it does not relieve a consent holder of its obligation to be aware of and fully comply with all consent obligations as they are set out in the legal instruments, including the original determination instrument and all subsequent modification instruments.

SCHEDULE 1

Application No.:	DA 8137
Applicant:	Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust
Consent Authority:	Minister for Planning
Land:	Part Lot 42 DP 1191982, Part Lot 51 DP 1229869 and Part Lot 54 DP 1229869
Development:	Use the existing hardstand area as port facilities for the storage of freight, including the loading and unloading of freight on the site

SUMMARY OF MODIFICATIONS

Application Number	Determination Date	Decider	Modification Description
DA 8137 MOD 1	23 June 2020	Director Industry Assessments	Expand the loading and unloading area of the Mayfield Cargo Storage Facility from 12 hectares to 18.6 hectares, and to include roll-on / roll-off cargo as a permitted cargo type.
DA 8137 MOD 2	8 February 2024	Independent Planning Commission	Modify Conditions B9 and B10 to permit operations to occur on the remediated portions of the site.

DEFINITIONS

Applicant	Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust
Certifier	Has the same meaning as in Part 6 of the EP&A Act
Construction	The demolition of buildings or works, the carrying out of works, including bulk earthworks, and erection of buildings and other infrastructure covered by this consent
Council	City of Newcastle
Day time	The period from 7am to 6pm on Monday to Saturday, and 8am to 6pm on Sundays and Public Holidays
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
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation 2000	<i>Environmental Planning and Assessment Regulation 2000</i>
EPA	Environment Protection Authority
Evening	The period from 6pm to 10pm
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. Note: "material harm" is defined in this consent
Material harm	Harm that: <ul style="list-style-type: none"> (a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or (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)
MCP	Mayfield Concept Plan (09_0096), approved by the Minister on 16 July 2012 and as modified
Minister	Minister for Planning and Public Spaces
NCC	National Construction Code
Night time	The period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays
Operation	Use of the existing hardstand area as port facilities for the storage of freight, including the loading and unloading of freight on the site
PCA	Principal Certifying Authority
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
PoN	Port of Newcastle
Principal Certifier	Means the principal certifier and has the same meaning as in Part 6 of the EP&A Act
Reasonable	Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Secretary	Secretary of the Department, or nominee
Site	Land referred to in Schedule 1
Site Noise Model	A model developed by PoN for the assessment and management of cumulative noise from the MCP area
TfNSW	Transport for NSW

SCHEDULE 2

PART A – ADMINISTRATIVE CONDITIONS

Obligation to Minimise Harm to the Environment

- A1. In addition to meeting the specific performance criteria established under this consent, the Applicant must implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the Development.

Terms of Consent

- 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.
- A3. If there is any inconsistency between the above documents, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.
- A4. Notwithstanding condition A3, the Applicant must carry out the development in accordance with the requirements of the Mayfield Concept Plan Approval (09_0096), as modified (MCP). If there is an inconsistency between this consent and the MCP, the concept plan approval shall prevail to the extent of the inconsistency.
- A5. The Applicant must comply with any written requirement(s) of the Secretary arising from the Department's assessment of:
- a) any reports, plans, strategies, programs, studies or correspondence that are submitted in accordance with this consent; and
 - b) the implementation of any actions or measures contained in these reports, plans, strategies, programs, studies or correspondence.

Limits of Consent

- A6. This consent lapses five years after the date from which it operates, unless the use has physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under section 4.53 of the EP&A Act.
- A7. This consent is limited to the use of the site as Port Facilities as described in the [documents listed in Condition A2](#).

Statutory Requirements

- A8. The Applicant must ensure that all necessary licences, permits and approvals are obtained and kept up to date as required throughout the life of the development. No condition of this consent removes the obligation of the Applicant to obtain, renew or comply with such licences, permits or approvals.

Compliance

- A9. The Applicant must ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.

PART B – OPERATIONAL ENVIRONMENTAL PERFORMANCE AND MANAGEMENT

Hours of Operation

B1. The Development is permitted to operate the development 24 hours-a-day, seven days-a-week.

Operational Noise Limits

B2. The Applicant must ensure that noise generated by the development does not exceed the noise limits in Table 1.

Table 1: Noise Limits (dB(A))

No.	MCP Receiver	Location	Day	Evening	Night	Night	Night
			Leq(15min)	Leq(15min)	Leq(15min)	Leq(9hr)	L ₁ (1min)
R1	A	1 Arthur Street, Mayfield	35	35	35	35	46
R2	B	2 Crebert Street, Mayfield	39	39	39	35	51
R3	-	24 Crebert Street, Mayfield	40	39	39	35	52
R4	C	32 Elizabeth Street, Carrington	35	35	35	35	41
R5	D	186 Fullerton Road, Stockton	35	35	35	35	40

Note:

- To identify a noise receiver location, refer to the figure in **Appendix A**.
- Noise generated by the development is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the EPA's NSW Industrial Noise Policy.

Mayfield Concept Plan Noise Quota

B3. The Applicant must:

- ensure noise from the site does not exceed the noise quotas provided by the PoN in accordance with the Site Noise Model; and
- comply with the directions of the PoN in relation to the management of noise from the Site.

Operating Conditions

B4. The Applicant must:

- implement all reasonable and feasible noise management and mitigation measures to prevent and minimise noise from the site;
- implement, where possible, a safe system of work so that tonal movement alarms, such as reversing beepers, are not needed on the site;
- maintain the effectiveness of any noise suppression equipment or plant at all times and ensure defective plant that may generate offensive noise is not used operationally until fully repaired; and
- regularly assess noise monitoring data and relocate, modify and/or stop operations to ensure compliance with the relevant conditions of this consent.

Mayfield Concept Plan Site Noise Model

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.](#)

Selwyn Street Improvements

B6. Within six months of the commencement of operation, the Applicant must undertake the following roadworks at its own expense:

- provide a white centre line for the length of Selwyn Street between the site access and the level crossing;

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- b) provide a white line along each edge of Selwyn Street between the site access and the level crossing to highlight the edge of the road. The vegetation on both sides of the road must be regularly maintained to ensure this line remains visible; and
 - c) provide a chevron marker board on Selwyn Street opposite the side road to reinforce the presence of the intersection for drivers exiting the site.

Operational Environmental Management Plan

B7. The Applicant must prepare an Operational Environmental Management Plan (OEMP) for the development. The Plan must:

- a) be prepared by a suitably qualified and experienced expert;
- b) provide the strategic framework for environmental management of the development;
- c) identify the statutory approvals that apply to the development;
- d) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
- e) describe the procedures that would be implemented to:
 - i) keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - ii) receive, handle, respond to, and record complaints;
 - iii) respond to any non-compliance with the conditions of consent, such as noise mitigation measures;
 - iv) respond to emergencies;
- f) detail measures to manage noise generated by the development;
- g) detail measures to manage traffic generated by the development, in accordance with the MCP's *Traffic Management Plan*;
- h) include details of a monitoring program that is to be undertaken in accordance with the *NSW Industrial Noise Policy* and the *Noise Verification Monitoring Plan, October 2015*, or its latest version;
- i) include details of a reporting program to be provided annually to the Secretary and PoN that:
 - i) demonstrates compliance with the noise limits in this consent and the noise quotas determined in accordance with the MCP; and
 - ii) is prepared in accordance with the MCP's *Traffic Monitoring and Review Plan*. The traffic monitoring program shall include details of traffic movements to and from the site (during peak periods and daily volumes), including along Selwyn Street.

Note: The monitoring requirements could be satisfied by the monitoring network required for the Mayfield Concept Plan

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.

Contamination

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.

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 suitably 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.

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- 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 Building Code of Australia 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.

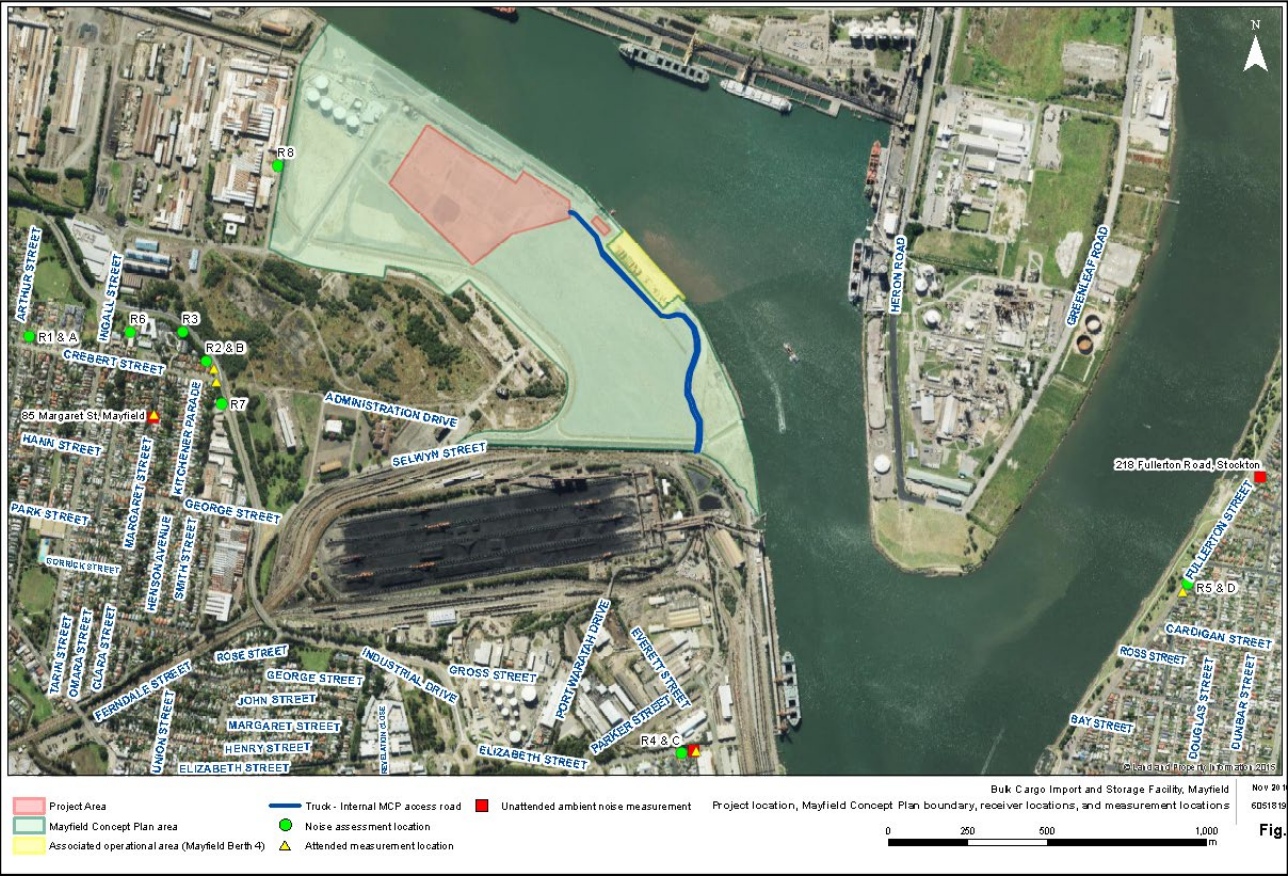
Note: For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development 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:

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- (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
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APPENDIX A **MAP SHOWING THE LOCATION OF NOISE SENSITIVE RESIDENTIAL RECEIVERS**



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 immediate surrounds (Source: PON)

Proposed Fence Post Coordinates			Proposed Fence Post Coordinates		
PointID	Eastings	Northings	PointID	Eastings	Northings
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 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.