

Circular	PS 14-002
Issued	10 October 2014
Related	

State Environmental Planning Policy (Three Ports) 2013 – New planning provisions for Port Botany, Port Kembla and Port of Newcastle

The purpose of this circular is to inform councils, accredited certifiers and the public of the commencement and content of *State Environmental Planning Policy (Three Ports) 2013*.

Introduction

The *State Environmental Planning Policy (Three Ports) 2013* ('Three Ports SEPP') applies to the three privatised ports in New South Wales – Port Botany, Port Kembla and Port of Newcastle. It commenced on 31 May 2013 for Port Botany and Port Kembla, and on 31 May 2014 for Port of Newcastle. The primary purpose of this policy is to enable essential, day-to-day development on land within the lease areas of the relevant ports to be undertaken by the port operator and port tenants as exempt or complying development (subject to specified criteria and conditions), thereby promoting the efficient operation of the ports.

Development of greater significance at the ports has been expressly declared as either State Significant Development ('SSD') or State Significant Infrastructure ('SSI') under the Three Ports SEPP, or will be otherwise subject to the development assessment process under Part 4 of the *Environmental Planning and Assessment Act 1979* and determined by the Minister as the consent authority.

Reasons for the Three Ports SEPP

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, streamlined and more efficient planning controls for development at the ports.

The new planning regime provides regulatory certainty and efficiency for the new port operators and port

tenants through a consistent planning regime for the delivery of infrastructure and development on land in and around the three ports.

Prior to the application of the Three Ports SEPP, a number of environmental planning instruments applied to development at the ports. The Three Ports SEPP rationalises the planning controls under those environmental planning instruments (i.e. *State Environmental Planning Policy (Major Development) 2005*, the *State Environmental Planning Policy (Infrastructure) 2007* and the *State Environmental Planning Policy (State and Regional Development) 2011*) to ensure that all three ports operate under the same planning regime, under one SEPP.

Much of the day-to-day development undertaken on land within the lease area of the three ports can now be carried out as exempt or complying development under the Three Ports SEPP, as long as the relevant development standards can be met or complied with. The Three Ports SEPP contains many new categories of exempt and complying development that have specifically been included for the three ports, and are therefore unique to the three ports. At this stage, there are 44 categories of exempt development and 19 categories of complying development, although there may be more added in the future.

Key objectives of the Three Ports SEPP

The key objectives of the Three Ports SEPP are to:

- provide a consistent planning regime for the development and delivery of infrastructure on land

in Port Botany, Port Kembla and the Port of Newcastle;

- allow for the efficient development, redevelopment, and protection of land at the ports (i.e. the lease areas) for port purposes;
- identify the environmental assessment category into which different types of development and infrastructure fall (including exempt and complying development);
- identify certain development as SSD or SSI; and
- ensure land outside of the lease areas is maintained for port-related and industrial uses.

Application of the Three Ports SEPP

The Three Ports SEPP applies to land at the three ports covering both the lease areas (i.e. land leased to a private port operator under the *Ports Assets (Authorised Transactions) Act 2012*) as well as surrounding land that needs to be maintained for port-related and industrial uses.

In terms of port-related development, the Three Ports SEPP:

- permits public authorities at the ports, including the private port operators, to carry out maintenance dredging and navigation and emergency response facilities without consent (through a self-assessment process under Part 5 of the *Environmental Planning and Assessment Act 1979*);
- increases the capital investment value threshold for port facility development on land within lease areas to be declared as SSI or SSD from \$30 million under previous environmental planning instruments to \$100 million (except in respect of major hazard facilities);
- increases the categories of development that may be undertaken as exempt and complying development on land within the lease areas, subject to specific requirements, development standards and also conditions (in the case of complying development) – for example, common port infrastructure such as truck weighbridges and railway tracks would be exempt development, whilst other port infrastructure such as dry bulk silos, cranes and conveyor belts are specified as complying development;
- ensures that all capital dredging (except minor capital dredging up to a maximum excavated volume of 100,000 cubic metres) and reclamation works will be dealt with as State Significant Infrastructure, and major hazard facilities as State Significant Development at all three ports.

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 relevant local councils will continue to be the consent authority for all development on land outside the lease areas (other than unzoned land).

Category A5 Accreditation under the Building Professionals legislation

The complying development categories in the Three Ports SEPP include several types of port-related structures that do not have a classification under the *Building Code of Australia* (BCA). These categories of complying development are unique to the three ports. In order for complying development certificates (CDCs) to be issued by accredited certifiers in respect of these categories of complying development, Schedule 1 of the *Building Professionals Regulation 2007* has been amended to introduce a new category of accreditation *Category A5 - Accredited certifiers - Port Botany, Port Kembla and Port of Newcastle* (Category A5).

The Building Professionals Board is responsible for administering accreditation under the various categories listed in Schedule 1 of the *Building Professionals Regulation 2007*. Persons issued with a Category A5 certificate of accreditation by the Building Professionals Board (Category A5 accredited certifiers) will be able to determine applications for these categories of complying development. They will be able to issue CDCs for rail mounted cranes, dry bulk silos, ship loaders/unloaders, conveyor systems, and wharves and berthing infrastructure. Amendments have also been made to the *Environmental Planning and Assessment Regulation 2000* to allow a Category A5 accredited certifier to be appointed as a principal certifying authority for building work involved with these categories of complying development. This means that Category A5 accredited certifiers will be responsible for conducting all critical stage inspections during the construction phase of all these unclassified structures at the three ports.

It is noted that Councils are able to issue CDCs for port-related structures under the *Environmental Planning and Assessment Act 1979* without a Category A5 certificate of accreditation.

Amendments to the *Environmental Planning and Assessment Regulation 2000*

Several amendments essential for the operation of the Three Ports SEPP have been made to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

These amendments:

- ensure that private port operators can carry out certain limited types of activities through a self-assessment process under Part 5 of the *Environmental Planning and Assessment Act 1979*;
- enable the private port operators to issue subdivision certificates with regards to land within the lease areas;
- clarify that an occupation certificate is not required for port-related structures that do not have a classification under the BCA, such as rail mounted

cranes, dry bulk silos, ship loaders/unloaders, conveyor systems, and wharves and berthing infrastructure;

- specify the functions that must be carried out by a principal certifying authority appointed for building work being undertaken in connection with a port-related structure that do not have a classification under the BCA.

Management of contamination

The Three Ports SEPP contains a number of provisions to manage contamination.

Neither exempt nor complying development can be carried out on land that is significantly contaminated land, within the meaning of the *Contaminated Land Management Act 1997*.

Certain categories of exempt and complying development on land within the lease areas will require a contamination statement to be issued by a qualified person (as defined in the SEPP) before the development can be undertaken. The contamination statement must certify that the land is suitable for the intended purpose of the development, having regard to the contamination status of the land.

In the case of development on land containing a containment cell, development cannot be undertaken as exempt development if it is likely to cause the cell to be breached or otherwise damaged or to reduce the effectiveness of the cell. Complying development on such land must comply with a standard condition requiring oversight by a site auditor.

Hazard studies

The Three Ports SEPP allows the construction or installation of certain bulk liquid storage tanks, changes of stored liquid within such tanks, and modifications to pipelines and flow rates associated with such tanks, on land within a lease area to be undertaken as complying development. In order for a CDC to be issued for these categories of development, the proponent may be required to obtain a hazard analysis, fire safety study and a hazard and operability study from a qualified person approved by the Secretary of the Department of Planning and Environment.

In late 2013, the Department of Planning and Environment conducted an open Expression of Interest process to invite all suitably qualified persons to express their interest in being approved by the Secretary for the purposes of these provisions for Port Botany and Port Kembla. Currently there are a total of 17 persons approved by the Secretary to undertake hazard analysis. This process will also be undertaken for Newcastle Port.

Further Information

A copy of this circular is available at:
<http://www.planning.nsw.gov.au>

A copy of the *State Environmental Planning Policy (Three Ports) 2014* is available at:
<http://www.legislation.nsw.gov.au>

A copy of the *Building Professionals Regulation 2007* is available at <http://www.legislation.nsw.gov.au>

For further information please contact Planning and Environment's information centre on 1300 305 695.

Department of Planning & Environment circulars are available from:

<http://www.planning.nsw.gov.au/circulars>

Authorised by:

Carolyn McNally
Secretary

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