

7 April 2017

Felicity Greenway
Director Industry and Infrastructure Policy
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Ms Greenway,

State Environmental Planning Policy (Infrastructure) (Review) 2016

The Port Authority of New South Wales (Port Authority) has reviewed the State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 (ISEPP Amendment). The Port Authority refers to previous consultation with the Department of Planning & Environment (DPE), particularly in regards to Division 13 of the ISEPP and acknowledges and supports the amendments that have been proposed in the ISEPP Amendment.

In its review and referring back to previous comments provided to DPE, the Port Authority requests some additional minor modifications to the ISEPP. These have been outlined in the table attached to this letter.

Please don't hesitate to contact me with any questions or concerns regarding the proposed additional modifications.

Yours sincerely,



Ryan Bennett
Senior Planning & Sustainability Manager

SYDNEY

ABN: 50 825 884 846

YAMBA

PO Box 143
Yamba NSW 2464
T: 61 2 6646 2002

NEWCASTLE

PO Box 663
Newcastle NSW 2300
T: 61 2 4985 8222

SYDNEY

PO Box 25
Millers Point NSW 2000
T: 61 2 9296 4999

PORT KEMBLA

PO Box 89
Port Kembla NSW 2505
T: 61 2 4275 0100

EDEN

PO Box 137
Eden NSW 2551
T: 61 2 66461596

www.portauthoritynsw.com.au

State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 – Port Authority additional amendments / comments

ISEPP Clause	Requested amendment /comments by Port Authority of NSW
Clause Reference	Details of Requested Change
<p>Clause 67 Definitions</p> <p>port facilities has the same meaning as in the Standard Instrument.</p>	<p>After considering the wording for the definition of port facilities in the ISEPP Amendment, which reflects what is in the Standard Instrument, the Port Authority would like to request the following definition to be included in place of “port facilities has the same meaning as in the Standard Instrument.” The following text is from the Standard Instrument (red text) with minor wording adjustments (in green):</p> <p>port facilities means any of the following facilities at or in the vicinity of a designated port within the meaning of section 47 of the <u>Ports and Maritime Administration Act 1995</u>:</p> <ul style="list-style-type: none"> (a) facilities for the embarkation or disembarkation of passengers onto or from any vessels, including public ferry wharves, (b) facilities for the loading or unloading of freight onto or from vessels and freight receival, processing, land transport and storage facilities, (c) wharves for commercial fishing operations, (d) refuelling, launching, berthing, mooring, storage or maintenance facilities for any vessel, (e) sea walls or training walls, (f) administration and port operations buildings, (g) communication, security, safety and power supply facilities, road and rail infrastructure, pipelines, fencing, lighting or car parks <p>The above minor changes to the definition of port facilities from the Standard Instrument has incorporated some additional elements that are currently in the definition of port facilities in the State Environmental Planning Policy (Three Ports) 2013 (Three Ports SEPP). These additional elements are important and are reflective of the types of facilities found at ports and would make the definition largely consistent between the private ports under the Three Ports SEPP and the rest of the ports in NSW that are not under this SEPP.</p>
<p>Clause 67A Application of Division</p> <p>The ISEPP Amendment does not propose to amend Clause 67A, despite the Port Authority’s request for this clause to be amended and previous written feedback from DPE that they would proceed with an amendment.</p>	<p>The existing clause reads:</p> <p>67A Application of Division This Division does not apply to development on land to which <i>State Environmental Planning Policy (Three Ports) 2013</i> applies, other than land that is within the City of Newcastle but not within the Port of Newcastle Lease Area under that Policy.</p> <p>There are some state government assets within the Three Ports SEPP defined area, and it is important that the ISEPP is still applicable on non-lease land to which the Three Ports SEPP applies in order to allow Newcastle Port Corporation (Port Authority of NSW), as the public authority responsible for these assets, to be able to apply the development without consent provisions of Division 13 within the non-lease areas of the Three Ports SEPP. This situation is not isolated to land within the City of Newcastle but not within the Port of Newcastle Lease Area, as clause 67A currently limits.</p> <p>The Port Authority therefore requests that clause 67A is amended so as to not preclude the application of Division 13 within the non-lease areas of the Three Ports SEPP without development consent.</p> <p>It is noted that DPE previously responded to the Port Authority’s request in relation to Clause 67A favorably (as follows):</p> <p><i>“Proceed with a provision which allows the Port Authority of NSW to be able to apply this division within the non-lease area without development consent.”</i></p>

State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 – Port Authority additional amendments / comments

<p>Clause 70(c)(ii)</p> <p>Building alterations, including:</p>	<p>Port Authority proposes that the wording is changed to allow for interior alterations to buildings as long as it does not result in the load bearing capacity of any component of the building being <u>exceeded</u>.</p> <p>Therefore, the following amendments to clause 70(c)(ii) are proposed (in green):</p> <p><i>(ii) interior alterations to buildings that do not result in effect the load bearing capacity of any load bearing component of a building being exceeded, and</i></p> <p>The current wording of clause 70(c)(ii) is problematic as any alteration with potential structural impacts, no matter how minor, fall out of exempt development. It is considered that minor structural or load bearing capacity issues (i.e. those that may <u>affect</u> the load bearing capacity but <u>not exceed</u> the load bearing capacity) are better dealt with via the existing requirements for works to be in accordance with the BCA (clause 20) rather than having to be assessed under Part 5 as development without consent.</p> <p>This proposed wording is also consistent with that in Schedule 1 of the Three Ports SEPP 2013.</p>
<p>Clause 70(h)</p> <p>The ISEPP Amendment currently proposes the following wording:</p> <p><i>(h) paving, or an at-grade car park (including access to or from the car park), that:</i></p> <p><i>(i) is ancillary or incidental to a lawful use of the land, and</i></p> <p><i>(ii) is designed so that any surface water run-off is directed to a stormwater management system or landscaped area,</i></p>	<p>The Port Authority requests the following minor amendment (in green) to the currently proposed wording in the ISEPP Amendment (in red):</p> <p><i>(h) paving (including the replacement and maintenance or repair of paving), or an at-grade car park (including access to or from the car park), that:</i></p> <p><i>(i) is ancillary or incidental to a lawful use of the land, and</i></p> <p><i>(ii) is designed so that any surface water run-off is directed to a stormwater management system or landscaped area,</i></p> <p>This minor amendment clarifies that routine replacement, maintenance and repair activities for paving are also exempt. Note, that this minor proposed amendment may not be necessary if a new subclause is included in Clause 70 for ‘Maintenance and Repair’ (see below).</p>
<p>Clause 70(k) and (k1)</p> <p>The ISEPP amendment proposes the following wording:</p> <p><i>(k) pedestrian ramps, pathways and stairways (other than mechanical stairways),</i></p> <p><i>(k1) mechanical stairways, but only if the stairways are designed to ensure that any noise emitted by them does not exceed 5dB(A) above ambient background noise level (as measured at any adjoining property boundary).</i></p>	<p>The Port Authority requests the following minor amendment (in green) to the currently proposed wording in the ISEPP Amendment (in red):</p> <p><i>(k) pedestrian ramps, pathways and stairways (other than mechanical stairways or ramps),</i></p> <p><i>(k1) mechanical stairways or ramps, but only if the stairways or ramps are designed to ensure that any noise emitted by them does not exceed 5dB(A) above ambient background noise level (as measured at any adjoining property boundary).</i></p> <p>The minor amendment clarifies that this exempt provision is inclusive of ‘travelators’ and not just ‘escalators’.</p>
<p>Clause 70(s)(v)</p> <p>business identification signs that:</p>	<p>Port Authority proposes that “externally” is inserted before “illuminated” in clause 70(s)(v).</p> <p><i>(v) are not externally illuminated, and</i></p> <p>This would allow for business identification signs that are backlit or internally lit to be exempt but not those that are lit by external lights, such as flood lighting. Reference could be made to AS 4282-1997 (Control of the obtrusive effects of outdoor lighting) if deemed necessary.</p>
<p>Clause 70(z)</p> <p>The ISEPP amendment proposes the following wording:</p> <p><i>(z) a port facility, in the circumstances specified in clause 21 of Schedule 1 to State Environmental Planning Policy (Three Ports) 2013 (relating to the change of use of port facilities) if the facility is not and, before the change of use, was not a petroleum terminal,</i></p>	<p>Consider if it would be more appropriate to put the wording directly in clause 70(z) rather than referring to a Schedule of another SEPP that generally doesn’t apply to the Port Authority of NSW?</p>

State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 – Port Authority additional amendments / comments

<p>Clause 70 – new subclause request</p> <p>Fuel Storage Tanks</p>	<p>The Port Authority previously raised a request to include a provision for fuel storage tanks to be included as exempt development, similar to the exempt provision that exists at clause 11 of Schedule 1 of the Three Ports SEPP, and in accordance with the requirements stipulated in 11(2).</p> <p>It is considered that, for the purposes of the Port Authority, that the size of fuel storage tanks included as exempt development could be limited to 5000L, which is 1/10 the allowance under the Three Ports SEPP. The risk would be very low with only 5000L tanks that are also in compliance with Australian Dangerous Goods Code and AS1940-2004.</p> <p>Therefore a request is made to include an exempt provision along the lines of:</p> <p>Fuel storage tanks</p> <p>Fuel storage tanks and dispensing facilities, if the development will not result in the total capacity of fuel storage tanks for a facility exceeding 5000 litres of fuel. The tanks must comply with the Australian Dangerous Goods Code, and comply with AS 1940—2004, <i>The storage and handling of flammable and combustible liquids</i>.</p>
<p>Clause 70 – new subclause request</p> <p>Maintenance and Repair</p>	<p>The Port Authority previously raised a request to include a provision for ‘Maintenance and Repair’ to be included as exempt development, similar to the exempt provision that exists at clause 15A of Schedule 1 of the Three Ports SEPP.</p> <p>It is noted that DPE previously responded to the Port Authority’s request in relation to this matter favorably (as follows):</p> <p>“Division 13 does not currently include maintenance and repair as exempt development. Ok to progress.”</p> <p>Therefore a request is made to include an exempt provision along the lines of:</p> <p>Maintenance and Repair</p> <p>The maintenance, repair or replacement of fittings, fixtures and infrastructure in relation to the development for the purpose of port facilities. The work may involve excavation works, but only to the extent necessary to carry out the maintenance, repair or replacement.</p> <p>Maintenance and repair activities are already listed as exempt in several Divisions of the ISEPP.</p>
<p>Clause 70 – new subclause request</p> <p>Temporary uses of land</p>	<p>The Port Authority previously raised a request to include a provision for ‘Temporary uses of land’ to be included as exempt development, similar to the exempt provision that exists at clause 35 of Schedule 1 of the Three Ports SEPP.</p> <p>It is considered that this provision would allow for temporary uses of port lands on an as-required basis without the need to seek consent or development without consent. It is considered that the controls in (2), (3) and (4) (below) sufficiently restrict temporary uses so as to not impact on adjoining land or the amenity of the neighbourhood. An example is for periodic requests to the Port Authority to set up temporary storage areas for equipment on port lands well away from any sensitive receivers.</p> <p>Therefore a request is made to include an exempt provision along the lines of:</p> <p>Temporary uses of land</p> <p>(1) The temporary use of land for a maximum period of 182 days (whether or not consecutive days) in any period of 12 months.</p> <p>(2) The use must not prejudice the subsequent carrying out of development on the land in accordance with this Policy.</p> <p>(3) The use must not adversely impact on any adjoining land or the amenity of the neighbourhood.</p> <p>(4) The use must not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land.</p>

State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 – Port Authority additional amendments / comments

<p><i>Clause 70 – new subclause request</i></p> <p>Truck weighbridges</p>	<p>The Port Authority previously raised a request to include a provision for ‘Truck weighbridges’ to be included as exempt development, similar to the exempt provision that exists at clause 37 of Schedule 1 of the Three Ports SEPP.</p> <p>Although largely the responsibility of individual port tenants, it is entirely possible that the Port Authority may need to or choose to install truck weighbridges in relation to bulk product trucks and other port related trucks. The Port Authority therefore requests the inclusion of the provision in relation to <u>truck weighbridges</u> in line with the provision that exists under the Three Ports SEPP.</p> <p>Tuck weighbridges</p> <p>The construction and installation of a truck weighbridge.</p>
<p><i>Clause 70 – new subclause request</i></p> <p>Emergency works</p>	<p>The Port Authority proposes a provision be included for emergency works as exempt development. It is considered that the provisions in clause 8 of Schedule 1 of the Three Ports SEPP should be replicated in the ISEPP to allow these same activities for port facilities and navigation and emergency response facilities in ports outside of the Three Ports SEPP area. It is also noted that emergency works as exempt development are provided in several divisions of the ISEPP for other types of critical infrastructure, including Division 5 (Electricity transmission or distribution networks), Division 9, Division 15, Division 17, Division 18, Division 20 and Division 24.</p> <p>Emergency works for the purpose of maintaining or restoring port facilities or navigation and emergency response facilities.</p>