

**DEVELOPMENT APPLICATION
ASSESSMENT REPORT**

**USE OF DYKE POINT SHED FOR FREIGHT
STORAGE**

Dyke Road, Carrington

DA 8062



Assessment under Part 4 of the *Environmental Planning
and Assessment Act 1979*

March 2017

ABBREVIATIONS

Applicant	Port of Newcastle Operations Pty Limited Pty as trustee for the Port of Newcastle Trust
Consent	The development consent (see Appendix A) for the use of Dyke Point shed for the storage of freight
Council	City of Newcastle
Department	Department of Planning and Environment
Development	The development as described in the SEE and RTS being for the use of Dyke Point shed for the storage of freight
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental planning instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
PoN	Port of Newcastle
RMS	Roads and Maritime Services
Secretary	Secretary, or nominee
SEE	Statement of Environmental Effects titled ' <i>Proposed Storage Facility Dyke Point Shed</i> ', prepared by Barr Property and Planning and dated 21 October 2016
SEPP	State Environmental Planning Policy
Three Ports SEPP	<i>State Environmental Planning Policy (Three Ports) 2013</i>

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1. INTRODUCTION

Port of Newcastle Operations Pty Limited as Trustee for the Port of Newcastle Trust (the Applicant) is seeking development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to use the existing industrial shed at Dyke Point, Carrington for the storage of freight¹.

1.1. Site Context and Location

The site is located at Dyke Point, Carrington (Part Lot 93 DP 1193181) within the Port of Newcastle Lease Area (PoNLA).

The Port of Newcastle (PoN) is one of the largest industrial ports in Australia and is the economic and trading gateway for the Hunter Valley and northern NSW. The site of the shed is located within the PoN's Carrington precinct, one of several precincts within the PoN (see the Statement of Environmental Effects (SEE) prepared in support of the development application at **Appendix D** for further information on the precincts). The site contains a 5,656 square metre (m²) industrial shed known as the Dyke Point Shed (the shed), constructed in 1943. Dyke Point forms the tip of a narrow peninsula in the centre of Newcastle Harbour, accessed via the PoN's Carrington precinct. The location of the site is shown in **Figure 1**.



Figure 1: Site location and context

The closest residential receivers are located approximately 200 metres (m) south of the site, on the opposite bank of the Hunter River, in the Honeysuckle precinct. The Crown Plaza Hotel and two residential buildings, front the harbour foreshore in this location. The residential suburb of Stockton is located approximately 400 m to the north-east of the site, on the northern bank of the Hunter River.

To the north and west of the site lies the remainder of the PoN Carrington precinct. The Hunter River both north and south of the site is a heavily trafficked industrial shipping route for cargo ships entering and exiting Newcastle Harbour and is regularly traversed by ships and tugboats.

Hardstand areas around the shed are utilised by PoN for the short-term storage and lay down of freight. The immediate foreshore of the site is landscaped with grassed areas and palm trees (see Report front cover and **Figure 2**).

¹ Under *State Environmental Planning Policy (Three Ports) 2013* **freight** means any item, goods or produce being transported and includes containers (whether empty or otherwise), gases, livestock, liquids, minerals, plant and equipment, raw materials, vehicles and vessels.



Figure 2: Dyke Point Shed as seen from Honeysuckle

1.2. Previous Use and Approved Developments on the Site

The shed was built in association with the expansion of the NSW State Dockyard and Engineering Works to encompass engineering and shipyard workshops in 1943. The site operated in conjunction with the State Dockyard until 1987, when the dockyard was closed. In 1990, ownership of the site was transferred to the Maritime Services Board (MSB). The MSB, succeeded by the Newcastle Port Corporation (NPC), used the site for a range of operational uses, including:

- navigation aids;
- storage of plant and equipment;
- records storage;
- staff accommodation;
- repairs and maintenance; and
- support for floating plant including the dredge for the river.

In 2007, Council granted development consent for development and use of the site as a super yacht commercial building and refit facility (Azzura Marine, Consent No. 06/2166). The consent provided for alterations and additions to the shed (including partial demolition), and construction of a wharf and launching pier.

At the early closure of the yacht company, many of the works covered by Consent No. C6/2166 including the wharf and launching pier had not been completed. Some were undertaken by the NPC in 2008 including partial demolition of the shed and its reroofing and recladding. While substantial commencement of the consent was evidenced by the works, the shed was not occupied or used in accordance with the consent.

On 30 May 2014, PoN commenced a 98 year lease of the site and surrounding lands.

1.3. Applicant's Justification and the Need for the Development

The SEE indicates the proposal is consistent with the *Hunter Regional Plan 2036* as the proposal will:

- reinforce the use of existing freight networks and multimodal facilities, providing an additional facility within the PoN; and
- enable the use and occupation of an underutilised facility and contribute to the economic use and development of the site, whilst having minimal environmental impact on the PoN or its surroundings.

The SEE states the proposal will have an overall positive social and economic impact in allowing the efficient use of an existing facility within the PoN.

2. PROPOSED DEVELOPMENT

The Applicant proposes to use the shed as a 'port facility' for the storage of a variety of freight. No demolition or other works are proposed to be undertaken to the shed or surrounding areas. The proposed use includes the loading and unloading of freight, to and from the shed. The definition and permissibility of this use is discussed in **Section 3.5**. Freight proposed to be stored in the facility will include, but not be limited to:

- project cargo: wind turbine components, tunnel boring machine components, large industrial components, luxury boats, electrical transformers and machinery, together with project associated cargo within containers;
- general cargo: farm machinery, excavators, construction machinery; and
- bulk steel and timber.

Freight destined for storage in the shed would be accommodated as per the arrangements for existing cargo destined for other storage areas in the Carrington precinct, including the existing hardstand areas surrounding the shed. Freight would be unloaded from cargo ships at berths within the Carrington precinct such as East Basin 1 (EB1 Berth, refer to **Figure 1**) and West Basin 4 (WB4 Berth, refer to **Figure 1**) and driven to the shed where it would be unloaded and stored (this route is indicated by the dotted blue line in **Figure 1**) until it is required to be transported to its final destination by truck, utilising the existing approved heavy vehicle access route to the Pacific Motorway (M1) via Industrial Drive. The reverse would occur for cargo moved from the shed by water based transport, being loaded onto trucks at the shed by forklift/ crane and driven to the designated berth for export.

The shed would not be used for the storage of freight or cargo that is hazardous, or a waste product. It is not proposed to undertake manufacturing, processing, refuelling, machine maintenance or industrial activity within the shed.

All or part of the shed would be leased to various tenants for various lengths of time.

It is proposed to use the shed 24 hours-a-day, seven days-a-week.

3. STATUTORY CONTEXT AND STRATEGIC CONTEXT

3.1 Part 4 Development

The site is located in the PoNLA as defined in *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP).

The Three Ports SEPP was created following the NSW Government's decision to lease the three main ports in NSW to private operators. The Three Ports SEPP provides a streamlined planning and assessment framework for state significant port infrastructure facilities in Port Botany, Port Kembla and Port of Newcastle.

The proposal is classified as a Part 4 development under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is permissible with development consent.

3.2 Consent Authority

Under clause 8 of the Three Ports SEPP, the Minister for Planning is the consent authority for development on land within the PoNLA or land that is unzoned under the Three Ports SEPP. As the site is located in the PoNLA, the Minister for Planning is the consent authority for the proposed development.

3.3 Delegated Authority

On 16 February 2015, the Minister for Planning delegated responsibility for determination of applications under section 80 of the EP&A Act to Directors who report to Executive Directors in Planning Services where:

- the relevant local council has not made an objection;
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objection.

The City of Newcastle Council (Council) did not object to the proposal, no reportable political donation disclosures were made, and there are no public submissions in the nature of objection. Accordingly, the application can be determined by the Director, Industry Assessments, under delegation.

3.4 Permissibility

The site is zoned SP1 (Special Activities) under the Three Ports SEPP. The proposed development involves the use of the existing shed for the storage of freight. The proposed use is best characterised as 'port facility'.

Under the Three Ports SEPP, **port facilities** means *facilities on land in the Lease Area used in connection with the carrying of freight and persons by water from one port to another for business or commercial purposes, and includes... facilities for the loading or unloading of freight onto or from vessels and freight receival, processing, land transport and storage facilities.*

Accordingly, the proposal is permissible with consent in the SP1 zone.

3.5 Exhibition and Notification

There is no legislative requirement to formally notify or exhibit the proposal. However, after accepting the development application (DA) and SEE for the proposal, the Department made it publicly available from 24 November 2016 until 8 December 2016. The Council was also notified and invited to provide comment on the proposal.

3.6 Consideration under section 79C of the EP&A Act

Under section 79C of the EP&A Act, in determining a DA, a consent authority is required to take a number of matters into consideration in relation to the proposed development. The Department has given due consideration to the matters prescribed by section 79C.

The Department's detailed consideration of the proposed development against the provisions of section 79C of the EP&A Act is contained in **Section 5** and within **Appendix B** of this report.

3.7 Environmental Planning Instruments

Under section 79C of the EP&A Act, the consent authority, when determining a DA, must take into consideration the provisions of any environmental planning instrument (EPI), draft EPI (that has been subject to public consultation and notified under the EP&A Act) and development control plan/s (DCP) that apply to the proposal.

The Department has also assessed the proposal against the relevant provisions of the EPIs that apply to the site, and is satisfied that, subject to the implementation of the recommended conditions of consent, the proposal is generally consistent with the aims, objectives and provisions of these instruments (see **Appendix C**).

3.8 Objects of the EP&A Act

In determining the application, the consent authority should consider whether the proposal is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 5 of the EP&A Act, and include:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land, provision and co-ordination of community services and facilities, and
 - (vii) ecologically sustainable development, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State.

The Department has fully considered the objects of the EP&A Act, including the encouragement of Ecologically Sustainable Development (ESD), in its assessment of the application.

The Department considers that the proposal is generally consistent with the objects of the EP&A Act, and particularly objects (a) (i), (ii) and (vii) as the proposal will enable the proper management and the orderly and economic use of existing underutilised land and existing port infrastructure to support the surrounding industrial and port related uses. The Department's assessment in **Section 5** demonstrates that with the implementation of recommended conditions of consent, the impacts of the proposal can be mitigated and/or managed to ensure the environment is protected.

3.9 Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle;
- (b) inter-generational equity;
- (c) conservation of biological diversity and ecological integrity; and
- (d) improved valuation, pricing and incentive mechanisms.

The potential environmental impacts of the proposal have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended.

Given that the DA is confined to the use of the existing shed and no construction works are proposed, the proposal is not anticipated to have any adverse impacts on native flora or fauna, including threatened species, populations and ecological communities, and their habitats. As such, the Department considers that the proposed development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

3.10 Strategic Context

Hunter Regional Strategy 2036

The Department released *Hunter Regional Strategy 2036* (HRS) in October 2016. Goal 1 of the Regional Plan relates to the Hunter as the "leading regional economy in Australia". The proposal is considered to be consistent with the relevant Directions and Actions of the HRS under Goal 1 including, *Direction 2: Enhance connections to the Asia-Pacific through global gateways*, and *Direction 4: Enhance inter-regional linkages to support economic growth*.

The HRS recognises the PoN as a nationally significant gateway, with connectivity to the Asia-Pacific region, significant international exports and the capacity to generate associated industry, regional and local employment. The proposal is consistent with the identified need to grow and diversify the PoN's operations as it will permit the use of an existing underutilised shed for the undercover storage of cargo.

4. CONSULTATION AND SUBMISSIONS

4.1 Submissions

Council did not object to the proposed development and provided the following comment:

- questioned whether the storage of cargo for up to 2 years as proposed, is contrary to the concept of short-term storage;
- recommended that a condition be imposed to ensure the shed is only used for storage purposes associated with a 'port facility' as defined by the Three Ports SEPP;
- noted noise impacts to nearby residential and hotel developments as being of concern for other proposed development at the site and requested the noise impact assessment be reviewed by an appropriately qualified acoustic engineer;
- requested compliance with conditions 3.4 and 3.5 of Azzuara Marine development consent DA 2006/2166 in relation to flood protection and stormwater drainage;
- requested the Applicant be required to provide a fire safety certificate prior to determination;
- requested a traffic management plan be provided prior to determination;
- sought clarification on the number and location of on-site parking for staff and visitors; and
- acknowledged the proposal is exempt from the requirements of Council's section 94A Development Control Plan, 2009.

A full copy of Council's submission can be found at **Appendix E**.

4.2 Response to Submissions

The Applicant's Response to Submissions (RTS), dated 20 December 2016, sought to address Council's comments (see **Appendix D**). In relation to fire safety and the request for a Fire Safety Certificate (FSC), the RTS reiterated that a FSC issued by Wormald and dated 26 September 2016 is provided at Appendix D of the SEE. Similarly, the traffic management plan was provided with the SEE.

Other issues raised by Council and the Applicant's responses are discussed in detail in **Section 5**.

5. ASSESSMENT

The Department has considered the relevant matters for consideration under section 79C of the EP&A Act, the Applicant's SEE, the issues raised in Council's submission, and the Applicant's RTS in its assessment of the development. The Department considers the key assessment issues are:

- noise;
- operating hours;
- traffic generation;
- period of freight storage;
- proposed use; and
- fire safety.

The Department's assessment of these issues is provided in **Table 1** below.

Table 1: Assessment of key issues

Table 1: Assessment of Key Issues

Assessment

Recommendation

Noise

- The proposal has the potential to generate noise impacts at the nearest sensitive receivers located across the river at Stockton and Honeysuckle (see **Figure 1**).
- The SEE identifies that the proposal may increase noise within the shed and its immediate vicinity from the use of cranes and forklifts, vehicle operation, and the unloading, set down, stacking or loading of cargo. Vehicle movements to reverse into the shed are also a potential source of noise. The SEE notes that such sources of noise are identical to those already generated by existing port facility activities undertaken on hard stand freight set down areas in the immediate vicinity of the shed.
- Previous uses of the shed have included noise generating manufacturing and industrial processes. The proposed use is for the static storage of freight and noise would only be generated during the set down and storage of freight in the shed and the loading of freight from the shed, which will occur infrequently.
- The Council has highlighted noise as an issue with previous applications at the site and has requested the Applicant's noise impact assessment (NIA) be reviewed by an appropriately qualified acoustic engineer.
- Existing and likely future noise generation has been considered in detail in the Applicant's NIA which was prepared in accordance with the NSW Environment Protection Authority's Industrial Noise Policy (INP). The NIA concludes that:
 - the predicted noise impact to nearby sensitive receivers from the proposed use of the shed ranges up to 44dB(A) L_{eq} under a worst-case scenario, which is below the applicable project specific noise levels (PSNL) during all periods (see **Table 2**), at all nearest noise sensitive receivers;
 - the predicted noise impact during the night-time period from the proposed use of the shed on nearby noise sensitive receivers ranges up to 58 dB(A) L_1 at locations R1 to R3 and 50 dB(a) L_1 at locations R4 to R6 under a worst-case scenario, which is below the sleep disturbance noise criteria at all nearest noise sensitive receivers;
 - truck movements were modelled and shown to comply within the limits, however it is noted that truck movements are expected to be largely the same as what currently occurs in and around the site and the Applicant considers they will not add to the noise generated by the use of the shed; and
 - there will be no significant noise impacts from the proposed use and the proposal is acceptable from an acoustic point of view.

Condition requiring the proposed use of the shed to comply at all times with the PSNL determined by the NIA.

Table 2 Noise Limits - PSNL dB(A)

Location	Day $L_{Aeq}(15 \text{ minute})$	Evening $L_{Aeq}(15 \text{ minute})$	Night $L_{Aeq}(15 \text{ minute})$	Night $L_{A1}(1 \text{ minute})$
R1 to R3 (N1)	51	51	48	58
R4 to R6 (N2)	47	44	44	54

- The Applicant's NIA has been reviewed by the Department's acoustic engineer.
- The Department is satisfied the additional noise generated as a result of the proposed use of the shed:
 - will be below the PSNL;

Assessment	Recommendation
○ is reasonable having regard to the context of a busy industrial working harbour and an industrial/residential interface; ○ is reasonable having regard to the zoning of the site and the range of permissible industrial uses; and ○ will not detract unreasonably from the amenity of sensitive receivers. • The Department's assessment concludes that any additional noise generated by the proposed use of the shed would be reasonable and acceptable.	
Operating hours • It is proposed to use the shed 24 hours-a-day, seven days-a-week. • This has the potential to impact on the acoustic amenity of sensitive receivers. • The SEE notes that some freight is required to be moved on the road network at night or outside peak times and that the existing port facilities and berths operate 24 hours-a-day, seven days-a-week. • The SEE states that 24-hour operation is required to facilitate existing land and water based transport movements. • Should the operation of the site be restricted, freight would need to be placed in holding areas in other parts of the Carrington precinct until the shed could be accessed. This would create inefficiencies in the movement and storage of freight through berths and within the internal PoN road network and consequent loading and transport delays. • Restricted operations would create a need for trucks to wait between loading at a berth and unloading at the shed, or loading at the shed and undertaking restricted night journeys on the road network. Waiting and queuing trucks would create additional noise, and inefficiencies in both the transport of freight and the operation of the shed. • On the basis of the information presented in the SEE, the Department is satisfied that approval of a 24 hour operation is necessary to avoid unnecessary queuing and the consequent generation of additional noise and traffic, and overall operational inefficiencies. • The Department's assessment concludes that the proposed operating hours are reasonable and necessary to ensure the efficient operations of the PoN.	A condition has been included that permits the operation of the shed 24 hours-a-day, 7 days-a-week.
Period of Freight Storage • In its submission, Council raise concern that the proposed storage of cargo for up to two years is contrary to the concept of short-term storage. • The RTS indicated that PoN provides short-term storage of freight for a period of up to two years, as part of standard commercial arrangements. • Further, the definition of a "port facilities", as defined in the Three Ports SEPP does not specify any limits on the length of time freight may be stored. • The storage of freight within the shed beyond a two year period would not in itself generate an environmental impact as the storage of freight per se would not result any noise or vehicular movements. • The Department does not consider it necessary to impose a condition restricting the time period in which freight may be stored within the shed as this could impede the operations of the port. • The Department's assessment concludes that freight may be stored at the shed as described in the SEE.	No conditions are required.
Traffic Generation and Parking <i>Traffic Generation</i> • The proposal will extend the same freight storage use currently undertaken on the exterior concrete hard stands surrounding the shed to the interior of the shed. As such, there will be no additional traffic generated by the proposed use. • Traffic within the PoN Carrington precinct will remain the same as existing with only slight changes occurring to the movements of trucks within Carrington precinct. • Cargo will be transported to and from the site on trucks using the existing internal PoN road network, destined for berths within the PoN or for sites via the road network described in the SEE. This replicates the existing access arrangements for cargo placed in the external areas of the site around the shed. • The SEE demonstrates the efficient movement of 19 m semi-trailers, service vehicles and trucks within the shed, its immediate vicinity, and access roads. • As noted in the SEE, there is a separate assessment process for the movement of heavy, high or wide loads which is approved and managed by the Roads and	No conditions are required.

Assessment	Recommendation
Maritime Service. Any such loads moving through the facility would come under this existing assessment and permit process. - Accordingly, the Department's assessment concludes that traffic generation from the use of the shed is likely to be negligible and barely perceivable in the context of the existing operation of the Carrington precinct. Parking - The Council sought clarification in relation to the number of on-site car parking spaces. The traffic management plan (TMP) indicates four parking spaces will be provided for staff and visitors. Given that a limited number of staff (three people) would be required to attend the shed during set down and unloading operations, the number of car parking spaces is considered to be adequate. - The Department is satisfied that the provision of on-site parking is adequate to service the proposed use.	
Proposed Use	
- It is proposed to use the shed as a "port facility" for the storage of "freight". - Council is concerned that the shed could be used to store goods or items other than freight, and that these items could be transported by truck to and from the shed, with no requirement to be shipped to or from the shed. - The PoN is seeking consent to use the shed for the purposes of a port facility for the short-term storage of freight. The relevant aspect of the definition of port facilities is, "<i>facilities for the loading or unloading of freight onto or from vessels and freight receipt, processing, land transport and storage facilities.</i>" The requirement for freight to be unloaded and loaded onto or from vessels in the definition precludes the type of transport and storage activities identified by the Council. - Accordingly, Council's concern will be addressed by the operation of the proposed use in accordance with the definition of port facilities. - The Department's assessment concludes the proposed development will be used for the purposes of a port facility.	The recommended consent permits the use of the shed as a port facility (as defined in the Three Ports SEPP); and includes a condition that requires the development to be carried out in accordance with the DA and SEE.
Fire Safety	
- A FSC issued by Wormald, dated 26 September 2016 is provided with the SEE stating that the building complies with the fire safety measures required for a Building Code of Australia, Class 10A building. - The EP&A Regulation sets out the requirements for displaying the FSC at the site and providing a copy to the Commissioner of FRNSW. It is recommended these requirements be included in the recommended conditions of consent. - The Department's assessment concludes that fire safety has and will be appropriately managed at the site, subject to the implementation of the recommended conditions.	Conditions requiring: - the FSC to be provided to the Commissioner of FRNSW and to be prominently displayed at the site; and - the annual Fire Safety Statement, in the form described in clause 175 of the EP&A Regulation, to be submitted to the Secretary, and copies given to the Commissioner FRNSW and prominently displayed at the site.

6. CONCLUSION

The DA has been assessed in accordance with the matters for consideration under Part 4 and section 79C of the EP&A Act, and all relevant environmental planning instruments, and is considered to comply with all relevant items.

The proposal will result in the provision of increased undercover storage for freight in the PoN. The proposal provides for the efficient use of an existing facility with negligible environmental impact.

The Department is satisfied that any increase in noise associated with the proposed use would be negligible and within the project specific noise levels determined in accordance with the Industrial Noise Policy.

It is recommended that the DA be approved on the basis of its planning merit, subject to conditions, as recommended by the Department.

7. RECOMMENDATION

It is recommended that the Director, Industry Assessments:

- a) **consider** all relevant matters prescribed under section 79C of the EP&A Act, including the findings and recommendations of this report; and
- b) **approve** the development application, subject to conditions, under section 80(1)(a) of the EP&A Act by signing the instrument of consent at **Appendix A**.

Prepared by: Robert Byrne
Senior Planning Officer

Endorsed:


Joanna Bakopanos
Team Leader
Industry Assessments

 9/3/17.
Chris Ritchie
Director
Industry Assessments

**APPENDIX A
INSTRUMENT OF CONSENT**

Development Consent

Section 80 (1)(a) 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; and
- provide for the ongoing environmental management of the development.



Chris Ritchie
Director
Industry Assessments

Sydney 9 MARCH

2017

SCHEDULE 1

Application No.:	DA 8062
Applicant:	Port of Newcastle Operations Pty Limited Pty as trustee for the Port of Newcastle Trust
Consent Authority:	Minister for Planning
Land:	Lot 93 DP 1193181, Dyke Point, Carrington Precinct, Port of Newcastle
Development:	Use the existing Dyke Point Shed as port facilities for the storage of freight, including the loading and unloading of freight to and from the Dyke Point Shed

DEFINITIONS

Construction	The demolition of buildings or works, the carrying out of works, including bulk earthworks, and erection of buildings and other infrastructure
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 the SEE and RTS
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation 2000	<i>Environmental Planning and Assessment Regulation 2000</i>
Evening	The period from 6pm to 10pm
Feasible	Feasible relates to engineering considerations and what is practical to build
Freight	Has the same meaning as the defined term in <i>State Environmental Planning Policy (Three Ports) 2013</i>
FRNSW	Fire and Rescue NSW
Minister	Minister for Planning
Night time	The period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays
Operation	The use of the Dyke Point shed as port facilities for the storage of freight, including the loading and unloading of freight to and from the Dyke Point Shed
Port Facilities	Has the same meaning as the defined term in <i>State Environmental Planning Policy (Three Ports) 2013</i>
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.
RTS	Response to Submissions letter, prepared by Port of Newcastle, dated 20 December 2016
Secretary	Secretary of the Department, or nominee
SEE	Statement of Environmental Effects titled <i>Proposed Storage Facility Dyke Point Shed</i> and prepared by Barr Property and Planning, dated 21 October 2016
Site	Land referred to in Schedule 1

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 shall 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 Applicant shall carry out the development in accordance with:
- a) Development Application DA 8062;
 - b) the SEE; and
 - c) the RTS.
- A3. If there is any inconsistency between the documents listed in Condition A2, 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. The Applicant shall comply with any reasonable 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;
 - b) the implementation of any actions or measures contained in these reports, plans, strategies, programs, studies or correspondence submitted by the Applicant; and
 - c) any complaints submitted by the public in regard to noise, emission or impacts associated with the Development.

Limits on Consent

- A5. This consent lapses five years after the date from which it operates, unless the use of any land, building or work the subject of this consent is actually commenced before the date on which the consent would otherwise lapse under section 95 of the EP&A Act.
- A6. This consent is limited to the use of the existing Dyke Point Shed as Port Facilities as described in the SEE.

Note: *No construction works are permitted under this consent.*

Compliance

- A7. The Applicant shall ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.
- A8. The Applicant shall be responsible for any environmental impacts resulting from the actions of all persons that it invites onto the site, including contractors, sub-contractors and visitors.

PART B – OPERATIONAL ENVIRONMENTAL PERFORMANCE AND MANAGEMENT

Hours of Operation

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

Operational Noise Limits

- B2. The Applicant shall ensure that noise generated by operation of the Development does not exceed the noise limits in Table 1.

Table 1: Noise Limits dB(A)

Location	Day LAeq(15 minute)	Evening LAeq(15 minute)	Night LAeq(15 minute)	Night LA1(1 minute)
R1 to R3 (N1)	51	51	48	58
R4 to R6 (N2)	47	44	44	54

Note: Noise generated by the Development is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy. Refer to the plan in **Appendix A** for the location of residential sensitive receivers.

Fire Safety

- B3. A copy of the final Fire Safety Certificate issued by Wormald and dated 26 September 2016 (together with a copy of the current fire safety schedule) shall be submitted to the Commissioner of Fire and Rescue NSW (FRNSW) and a further copy of the Certificate (together with a copy of the current fire safety schedule) should be prominently displayed at the site.
- B4. An annual Fire Safety Statement in the form described in Clause 175 of the EP&A Regulation shall be submitted to the Secretary, and a copy (together with a copy of the current fire safety schedule) must be given to the Commissioner of FRNSW. A further copy of the Statement (together with a copy of the current fire safety schedule) should be prominently displayed at the site.
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APPENDIX A
MAP SHOWING THE LOCATION OF NOISE SENSITIVE RESIDENTIAL RECEIVERS

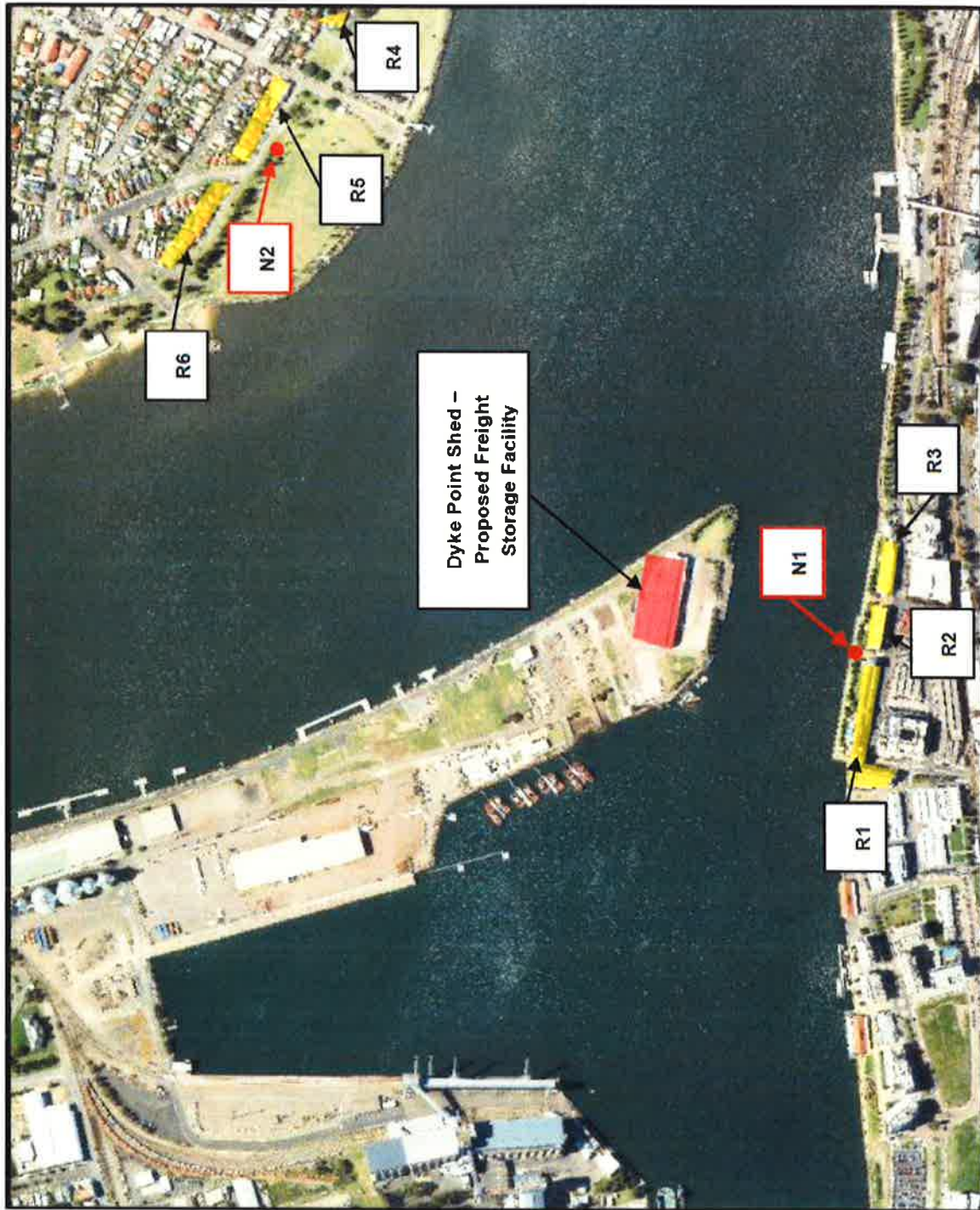


Figure 1: Site Plan

APPENDIX B CONSIDERATIONS UNDER SECTION 79C

Section 79C of the EP&A Act requires that the consent authority, when determining a development application, must take into consideration the following matters:

(a) the provisions of: (i) any environmental planning instrument, and (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and (iii) any development control plan, and (iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and (v) any coastal zone management plan (within the meaning of the <i>Coastal Protection Act 1979</i>) that apply to the land to which the development application relates,	Consideration of the provisions of all environmental planning instruments (including draft instruments subject of public consultation under this Act) that apply to the proposed development is provided in Appendix C of this report. The Applicant has not entered into any planning agreement under section 93F. The Department has undertaken its assessment of the proposed development in accordance with all relevant matters as prescribed by the regulations, the findings of which are contained within this report. The Department is not aware of any coastal zone management plan that applies to the proposed development and in any case, is satisfied that the proposal would have a negligible impact on the coastal zone.
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered the likely impacts of the development in detail in Section 5 of this report. The Department is satisfied that all environmental impacts can be appropriately managed and mitigated through recommended conditions of consent.
(c) the suitability of the site for the development,	Sections 1 to 3.10 and Appendix C of the Department's Assessment Report provide details on the suitability of the site for the proposed development. The site is located within the lease area of the PoN, is zoned for special activities and is permissible with development consent.
(d) any submissions made in accordance with this Act or the regulations,	The issues raised in the submission from Council are considered in Section 5 of the Assessment Report.
(e) the public interest.	The PoN is considered to be a significant resource that provides substantial direct and indirect economic benefits to the State of NSW and the national economy. The proposed development will make a positive economic contribution by allowing the greater utilisation, orderly and economic use of land in the PoN. As such the proposal is considered to be in the public interest.

APPENDIX C CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Three Ports) 2013

The shed is located in the PoN Lease Area and the Three Ports SEPP applies to the proposed development.

The proposal is consistent with key aims of the Three Ports SEPP which are to allow the efficient development, re-development and protection of land for port purposes and to ensure that land around the Lease Area is maintained for port-related and industrial uses.

The site is zoned SP1 (special activities) under the Three Ports SEPP and the proposed development is permissible with consent. The proposed development would be consistent with relevant aims of this zone including:

- *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.*
- *To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities.*
- *To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle.*

The proposal would facilitate the ongoing efficient movement of freight to and from the PoN through the use of an underutilised industrial shed, with negligible additional environmental impact. The PoN provides substantial direct and indirect economic benefits to the State of New South Wales (NSW). The proposed development would therefore make a positive contribution to the NSW economy by supporting the existing port related activities in the area.

The Department is satisfied that the proposed development is consistent with relevant provisions of the Three Ports SEPP.

**APPENDIX D
DEVELOPMENT APPLICATION AND ACCOMPANYING DOCUMENTS (INCLUDING
STATEMENT OF ENVIRONMENTAL EFFECTS AND RESPONSE TO SUBMISSIONS)**

APPENDIX E SUBMISSIONS