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DA 09/X007  
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3 March 2011



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Dear Ms Newman

**PART 3A MAJOR PROJECT EXHIBITION (MP09\_0096)  
MAYFIELD SITE PORT RELATED ACTIVITIES CONCEPT PLAN**

I refer to your letter dated 10 February 2011 inviting Council to comment on the Submissions Report (AECOM 20/12/10) developed on behalf of Newcastle Port Corporation (NPC) for proposed port related facilities and activities on a portion of the former BHP Steelworks site at Mayfield North.

Council officers have reviewed the documentation provided and the following comments are made in regards to the proponent's responses to the matters discussed in Council's letter dated 10 September 2010. For your convenience, similar subject headings and numbering has been used.

**1. Traffic & Transport**

**1.1 Traffic Impact**

It is considered that the revised Transport Assessment (TA) report (AECOM dated 20/12/10) does not satisfactorily address the Director General's Requirements with regard to assessing and mitigating the impact of traffic and transport nor does it satisfactorily address all of the matter raised in Council's original submission.

It is noted that the revised TA includes amended assumptions for traffic modelling associated with the NPC Concept Plan and also provides assumed traffic generation rates for the neighbouring Intertrade Industrial Park (IIP).

The revised TA finds that, as a direct result of the combined traffic volumes from the NPC and IIP developments, the adjoining section of Industrial Drive will fail by 2024 (initial NPC operations) having regard to both mid block and intersection capacity. The revised TA, at Section 6.3, suggests substantial mitigation measures that are required in order to mitigate this failure.

Consideration of the likely impacts of the NPC proposal on the broader road network was not satisfactorily addressed in the revised TA. Now, with this evidence that the combined effect of the NPC and IIP proposals will cause significant failures of the arterial road network immediately adjacent the site, it must be assumed that this additional traffic will also have significant impact and potentially cause failure of other roads and intersections not immediately adjacent to the site.

Section 4.3.2 of NPC's Final Statement of Commitments states that '*Heavy vehicle movements generated by the Concept Plan will be required to use a designated truck haulage route using the arterial road network...*', yet nowhere within the Submissions Report, revised Transport Assessment or Statement of Commitments is this haulage route identified other than to specify that the origin and destination for the majority of cargo will be Sydney. It is assumed the route will be via either the Pacific Highway/New England Highway to Beresfield (a trip of approximately 29km) or Sandgate Road / SH23 / Newcastle Road / Link Road to West Wallsend (a trip of approximately 11km).

If NPC have identified this designated haulage route, then it is considered reasonable, appropriate and necessary that this route is studied, in detail, to ensure it will be able to adequately cater for the identified traffic increase.

As the Department may be aware, the RTA is currently exhibiting a suite of six proposed key intersection upgrades along MR82 between the F3 freeway and Newcastle considered necessary to cater for a significant increase in traffic numbers expected to occur along this road following the opening of the Hunter Expressway in 2013.

Therefore, it is considered imperative that, before a determination is made in regards the Concept Plan, NPC be required to nominate the proposed haulage route and prepare, in consultation with the RTA, a Paramics model of the proposed haulage route between the subject site and the F3 Freeway. This modelling can then be utilised to determine adequacy and capacity of the existing roads and assist in identifying what other road upgrades may be required in order to satisfactorily accommodate the additional traffic anticipated from the NPC, IIP and other port related lands.

The NSW State Government may then, through its road agency, the RTA, undertake the necessary planning for the route upgrades so that appropriate State Infrastructure Levies can be imposed on the various developments to ensure a fair and equitable cost sharing strategy.

## **1.2 Future Transport Infrastructure**

In the original Environmental Assessment, numerous references were made to a need to construct an internal link road to provide a better, more controlled, spread of heavy vehicle movements between the two intended access points on Industrial Drive. It is noted that in the Submissions Report it is now proposed to provide this Link Road '*within or external to the site*'. The Submissions Report does not give any indication as to agreement being reached with any party 'external' to the subject site with regard this road. Also, the Submissions Report does not adequately address the previous request for details on the timeframe for delivery of this road, a commitment to the roads construction nor does it assign responsibility for the construction or identify the future owner(s) of this road and how individual site security will be managed for each precinct.

Further, it remains unclear how NPC propose to determine who will be responsible for the construction of any necessary upgrades to existing intersections or roads, the recommended rail upgrades or grade separation of rail and road transport, or how cost sharing for all these works is to be proportioned to the future individual Projects.



As mentioned above in Section 1.1, it is a matter of great concern that the combined NPC and IIP proposals cannot co-exist and will cause Industrial Drive to fail by the year 2024, NPC's identified period for '*initial operations*' only. The revised TA report suggests that major works such as construction of additional lanes on Industrial Drive (requiring significant property acquisitions), further intersection construction and intersection upgrade works including possible grade separation of one or both of the key intersections. Based on a presumption that the proponent of the IIP will also make application for consent under Part 3A of the Environmental Planning & Assessment Act, 1979 (EP&A Act), how does the Department perceive that these mitigation measures are to be achieved?

Notwithstanding, it is considered reasonable and appropriate that NPC are required, by way of conditions included in any approval granted by the Minister, to undertake the following works prior to any of the five proposed precincts becoming operational:

- i) Construction of the Link Road
- ii) Upgrade works to the Industrial Drive / Ingall Street intersection.
- iii) Upgrade works to the Industrial Drive / George Street intersection.
- iv) Upgrade George Street, Selwyn Street and Ingall Street to meet the minimum requirements of Newcastle Development Control Plan 2005 – Element 4.11 (Subdivision), or as otherwise agreed by Council.
- v) Upgrade rail level crossings to Selwyn Street.
- vi) Installation of recommended acoustic mitigation measures to all identified affected residences.

### **1.3 Local Area Traffic Management (LATM)**

In Section 5.4.3 of the revised TA report it is stated that '*A detailed assessment of the impact of the Concept Plan on the condition and geometry of the local road network has not been undertaken...*'. It is also suggested in the revised TA report that the total predicted volume of traffic generated by the proposed concept in 2034, combined with the assumed traffic generation from development of the IIP site, is within the midblock capacity of the existing local road network. Notwithstanding, satisfying mid-block capacity guidelines does not guarantee that management of the additional traffic volume and any resulting driver behavioural changes will not be required by the introduction of additional LATM controls.

An assurance is again sought that NPC commit to providing future LATM controls or that funding will be provided to Council by NPC to implement works as required.

### **1.4 Upgrading Freight Rail Network and Level Crossings**

It is understood that planning and delivery of the Northern Sydney Freight Corridor (NSFC) project has been delayed as a result of the recovery efforts associated with disaster relief in Queensland.

It is also understood that the proposed freight bypass of Newcastle was not part of the scope of the NSFC project but that it was to be considered in 2010 as part of the NSW Freight Strategy by NSW Transport in conjunction with the NSW Freight Advisory Council. However, the findings of this Strategy have not yet been publicly disclosed.

The revised TA report acknowledges that increased reliance (up to 100%) on container movement by road would be necessary during initial operations of the proposed container terminal. Given that these critical rail infrastructure upgrades may now be further delayed, it is important that the Department is satisfied that the additional impacts on the road network, in this interim period, can be adequately mitigated.

Alternatively, the Minister may wish to impose limitations, by way of appropriate conditions, on operations within the proposed precincts pending delivery of the required rail infrastructure upgrades.

Section 3.4.6 of the Submission Report identifies a range of upgrades required to be carried out on site with regard to rail infrastructure. This section also identifies that over the longer term of the Concept Plan the at grade crossings of the rail lines '*...may constrain truck movements and the efficiency of port operations*' and '*...as a result it may be necessary to carry out works to grade separate road and rail movements at one or more crossing locations*'. It is again requested that NPC provide a firm commitment to funding and undertaking these works should this scenario eventuate.

## **2. Flooding, Stormwater and Water Quality Management**

It is acknowledged that NPC propose that the site-wide Stormwater Management System (SMS) will be developed having regard to the requirements of the Newcastle Development Control Plan 2005 (as amended).

However, it remains a concern that NPC propose to include in the SMS stormwater management techniques such as vegetated swales and stormwater harvesting for irrigation purposes as these techniques are likely to result in recontamination by ground contaminants found on site.

As mentioned below in Section 3.1, it is acknowledged on-site stormwater management infrastructure will not be transferred to Council's ownership.

## **3. Contaminated Land**

The amending and additional information relating to site contamination is considered to be generally acceptable. However, copies of the following documents referenced in the Environmental Assessment have not yet been provided for review:

- Detailed contamination investigation reports
- The Remediation Action Plan (completed in 2004)
- Any site audit statements/reports which may have been completed to date.

It is again requested that electronic copies of the above referenced contamination reports be provided to Council for inclusion on the property's Planning Controls. This will allow Council to meet its statutory obligations, maintain a complete record of contamination information relating to the property and assist in the assessment of future project applications or development applications for the site.



### **3.1 Potential dedication of contaminated assets to Council**

The statement made in the Submissions Report at Section 3.11.1(c) that *'It is not NPC's intention to dedicate to Council any future roads, stormwater infrastructure, foot paths or other assets located at the site'* is acknowledged and endorsed.

It is requested that the Minister include, in any Concept Plan approval or subsequent Project Approval given, a condition that reinforces this statement.

### **3.2 Environmental Commitments and Performance**

The proponent's modelling of traffic related acoustic impacts confirms that there will be adverse impacts on residences fronting Industrial Drive as a direct result of increased traffic movements, particularly heavy vehicles, resulting from the proposed development. However, the impact modelling is restricted to only those receivers in close proximity to the subject site. Clearly, the increased traffic noise resulting from the proposed increased traffic will not cease to exist once the vehicles have left the immediate proximity of the subject site.

As mentioned above in Section 1, the proponent has not yet provided any details regarding the proposed or likely haulage routes to/from this site to Sydney as the nominated predominate destination. Without such information being fully disclosed and studied, it is unclear how the Department can properly determine the true and full extent of properties affected by this increased traffic noise. For example, if it is determined that heavy vehicles will traverse through the predominately residential suburbs of Jesmond and Wallsend to access the F3 Freeway versus access to the F3 Freeway via the Pacific and New England Highways, then what additional residences are likely to be impacted by the significant increase in traffic numbers proposed?

Also, as mentioned above, it is considered that the proponent has not yet adequately demonstrated who will be made responsible for the planning, cost sharing, delivery, monitoring and reporting of all of the recommended mitigations measures. For other developments, such as residential or industrial subdivisions, the responsibility for delivery of new works and services, infrastructure upgrades or environmental mitigation measures resulting from the likely future use of the lots created typically rests with the subdivider and not the future purchaser and developer of the individual allotments. Hence, it seems appropriate that the proponent of a Concept Plan to significantly increase use of a parcel of land should be made responsible for ensuring any and all mitigation measures or upgrades are provided to offset the anticipated impacts.

Therefore, it is strongly recommended that the NPC be made responsible for delivery and ongoing monitoring of all proposed mitigation measures via appropriate conditions imposed under any approval granted by the Minister in respect of the current Concept Plan.

Any other environmental impacts resulting from future Project applications, over and above those considered under the Concept Plan, could then be clearly attributed to, and be the sole responsibility of, the proponent of the individual Projects.

#### **4. Provision of Services**

As previously mentioned, it is considered appropriate for NPC to commit to delivering the works, services, upgrades, mitigation measures and land acquisitions identified as necessary to adequately support their proposal.

It is noted that NPC have identified some key infrastructure constructions and upgrade works and the anticipated timing for these works, but have not given a firm commitment to actually delivering such works. It would seem that NPC are seeking to deflect the responsibility for delivering these facilities onto the developers of the individual precincts within the Concept Plan.

Also as mentioned above, it is considered appropriate that key infrastructure components such as the internal link road, adjustments to rail crossings, road upgrades for Selwyn Street and Ingall Street and the intersection upgrades are provided by NPC prior to operations commencing on the site.

Accordingly, it is requested that a condition be imposed in any approval issued by the Minister in regards the subject NPC Concept Plan requiring the delivery of those integral components prior to operations commencing on any of the proposed precincts.

#### **5. Section 94A**

The statement made by the proponent at Section 3.2.1 that *'It is important that the Concept Plan establishes a mechanism to identify the key infrastructure upgrades required to support the development over the extended timeframe of the project and to ensure that the infrastructure upgrades are appropriately funded and provided in a timely and equitable manner.'* is strongly supported.

The proponent also correctly asserts that *'...the use of Section 94 development contributions is not considered to be the most appropriate mechanism...'* for funding and delivery of these upgrades. However, the mechanism suggested by the proponent is for establishment of a Strategic Infrastructure Plan (SIP) requires clarification as there appears to be no current legislative framework to establish, operate or administer an SIP.

It is considered that funding and delivery of the *'key infrastructure upgrades required'* to support the class of development proposed under the Concept Plan is the responsibility of the proponent of the activity that directly necessitates such upgrades. The proponent is, therefore, again requested to commit to funding and delivery of all new infrastructure, required upgrades to existing infrastructure and delivery of all identified mitigation measures in association with their proposed Concept Plan.

Section 94A(4) of the EP&A Act states:

- (4) *A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.*



The NPC Concept Plan is not exempt from payment of s94A contributions. Further, the Minister has deemed it appropriate to levy s94A contributions on other Major Projects such as Orica (MP08/0129) and Knauff (MP09\_0101) and Council has imposed s94A contributions on other developments such as Steel River Eco-Industrial Park and the Freeway South Business Park at Beresfield.

Accordingly, it is again requested that a condition be imposed in any approval issued by the Minister in regards the subject NPC Concept Plan requiring the current proponent or proponents of individual developments within the Concept Plan to make full payment of their respective contributions in accordance with Council's adopted Section 94A Development Contributions Plan 2006.

Should you require further clarification of any of the matters raised in this letter please contact myself on 49742767 or Senior Development Officer Brian Cameron, on 4974 2637, respectively.

Yours faithfully



**Geof Mansfield**  
**DEVELOPMENT ASSESSMENT TEAM COORDINATOR**