

# Planning circular

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## PLANNING SYSTEM

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Infrastructure; Port development

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

This circular is to provide an overview of the key provisions of the *State Environmental Planning Policy (Three Ports) 2013* which applies to Port Botany, Port Kembla and Port of Newcastle.

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### **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. The Three Ports SEPP sets the land use planning and assessment framework for appropriate development at the three ports.

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 is 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* (EP&A Act) and determined by the Minister as the consent authority.

The Three Ports SEPP commenced on 31 May 2013 for Port Botany and Port Kembla, and on 31 May 2014 for Port of Newcastle.

### **Background**

Port Botany, Port Kembla and the Port of Newcastle are the three largest ports in New South Wales. These ports are recognised as state significant precincts due to their importance to the NSW and Australian economies.

The Three Ports SEPP is the principal environmental planning instrument that sets the land use planning and assessment framework for appropriate

development at the three ports. The Three Ports SEPP provides regulatory certainty and efficiency for the 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.

### **Key objectives**

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 around the lease areas is maintained for port-related and industrial uses.

### **Application and key provisions**

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 EP&A Act);

- sets a capital investment value threshold of \$100 million (except in respect of major hazard facilities) for port facility development on land within lease areas to be declared as SSI or SSD;
- sets 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 are specified as exempt development, whilst other port infrastructure such as dry bulk storage silos, cranes and conveyor systems are specified as complying development;
- ensures that capital dredging (except minor capital dredging up to a maximum excavated volume of 100,000 cubic metres) and reclamation works are dealt with as SSI (under clause 28), and major hazard facilities as SSD (under *State Environmental Planning Policy (State and Regional Development) 2011*).

The Minister for Planning and Public Spaces 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).

### Complying development for structures without a BCA classification

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 registered certifiers in respect of these categories of complying development, Schedule 1 of the *Building and Development Certifiers Regulation 2020* (BDC Regulation 2020) includes 'Classes of registration' which outlines what level of registration is required for CDC works to be determined. Under Schedule 1, registered certifiers who hold a 'building surveyor – unrestricted' class are able to certify developments pertaining to the Three Ports SEPP. In relation to demolition works under the Three Ports SEPP, the certifier can only undertake certification work if their certificate of registration specifically authorises them to carry out that type of certification work.

Registered certifiers who hold a 'building surveyor – unrestricted' class must also obtain specific authorisation to carry out certification work for building work covered by cl 162AB of the *Environmental Planning and Assessment Regulation 2000* (EP&A

Regulation). The EP&A Regulation applies to building work that does not have a classification under the BCA on land covered by the Three Ports SEPP. The provision requires the principal certifier to carry out critical stage inspections during the construction phase of these unclassified structures at the three ports.

Clause 61(c) of the BDC Regulation 2020 permits councils to undertake certification work under the EP&A Act for structures without a BCA classification, subject to certain provisions.

### Regulations under the EP&A Act

The regulations made under the EP&A Act, including the EP&A Regulation and the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* ('Savings Regulation'), include several clauses essential for the operation of the Three Ports SEPP. The provisions:

- ensure that private port operators can carry out certain limited types of activities through a self-assessment process under Part 5 of the EP&A Act;
- enable the private port operators to issue subdivision certificates with regards to land within the lease areas (See clause 18B of the Savings Regulation);
- clarify that an occupation certificate is not required for port-related structures that do not have a classification under the BCA; and
- 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 Three Ports 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, Industry and Environment.

## Further information

<http://www.legislation.nsw.gov.au>

For further information please contact Service NSW on 13 77 88.

Department of Planning, Industry and Environment circulars are available at:

[planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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