

Modification of Development Consent

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*

The Independent Planning Commission, as delegate of the Minister for Planning and Public Spaces under the delegation executed on 14 September 2011, approves the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.

(Name of Commissioner)
Member of the Commission

(Name of Commissioner)
Member of the Commission

Sydney

SCHEDULE 1

Development consent:	DA 8137
For the following:	Use the existing hardstand area as port facilities for the storage of freight, including the loading and unloading of freight on the site
Applicant:	Port of Newcastle Operations Pty Limited
Consent Authority:	Minister for Planning and Public Spaces
The Land:	Part Lot 42 DP 1191982, Part Lot 51 DP 1229869 and Part Lot 54 DP 1229869
Modification:	Storage of lithium-ion batteries within the Mayfield Cargo Storage Facility.

SCHEDULE 2

The above consent is modified as follows:

In Schedule 1: Definitions Table

1. Amend by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck out~~ words as follows:

Term	Definition
Department	Department of Planning and Environment, <u>Housing and Infrastructure</u>
Incident	<p>An occurrence or set of circumstances that causes or threatens to cause material harm <u>to the environment, and as a consequence of that environmental harm, may cause harm to the health and safety of human beings,</u> and which may or may not be or cause a non-compliance.</p> <p>Note: "material harm" is defined in this consent</p>
Material Harm	<p><u>Is</u> harm that:</p> <p>(a) involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial <u>environment that may include (but not be limited to) a leak, spill, emission other escape or deposit of a substance, and as a consequence of that environmental harm (pollution), may cause harm to the health or safety of people,</u> or</p> <p>(b) results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)</p> <p><u>Note: This definition excludes "harm" that is either authorised under this consent or any other statutory approval.</u></p> <p><u>Note: For the purposes of this definition, material harm excludes incidents captured by Work Health and Safety reporting requirements.</u></p>

In Schedule 2: Part A – Administrative Conditions

2. Condition A2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck out~~ words / numbers as follows:

- A2 The development must be carried out in accordance with:
- a) Development Application 8137, including the Statement of Environmental Effects titled, *Cargo Storage Facility, Mayfield*, prepared by AECOM, and dated 25 November 2016 and Response to Submissions email from PoN dated 5 May 2017, and all attached documents including the letter report titled, *Road Safety Review – Selwyn Street*,

Mayfield, NSW, prepared by SECA Solution, dated 28 April 2017, and supplementary information provided by email from PoN, dated 8 May 2017;

- b) DA 8137 MOD 1, accompanied by *Statement of Environmental Effects Development Consent Modification – Mayfield Cargo Storage Facility*, dated 11 October 2019, prepared by Aurecon Australasia Pty Ltd, and *Response to Submissions* dated 13 May 2020, prepared by Aurecon Australasia Pty Ltd; ~~and~~
- c) DA 8137 MOD 2, accompanied by *Modification to expand wharf area (DA8137) Statement of Environmental Effects*, dated 27 April 2023, prepared by GHD, PoN letter titled *DA8137 Mayfield Cargo Storage Facility* dated 17 November 2023, and additional information provided by email from PoN, dated 6 November 2023; and
- d) **DA 8137 MOD 3, accompanied by:**
 - i. **DA 8137 (MOD 3) – Storage of Lithium Ion Batteries (Class 9 DG) At Mayfield Modification Report dated 16 July 2024 prepared by GHD Pty Ltd**
 - ii. **Response to Request for Response to Submissions and further information prepared by Port of Newcastle, dated 16 September 2024**
 - iii. **DA 8137 (Mod 3) – Storage of Lithium Ion Batteries (Class 9 DG) At Mayfield Modification Report dated 2 May 2025, and Preliminary Hazard Analysis dated 02 May 2025 prepared by GHD Pty Ltd, and Preliminary Hazard Analysis Addendum, dated 09 July 2025 prepared by GHD Pty Ltd.**

In Schedule 2: Part B – Operational Environmental Performance and Management

3. Condition B7 is amended by the **bold and underlined** words / numbers as follows:

Operational Environmental Management Plan

- B7. The Applicant must prepare an Operational Environmental Management Plan (OEMP) as revised from time to time, for the development. The Plan must:
- a) be prepared by a suitably qualified and experienced expert;
 - b) provide the strategic framework for environmental management of the development;
 - c) identify the statutory approvals that apply to the development;
 - d) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
 - e) describe the procedures that would be implemented to:
 - i) keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - ii) receive, handle, respond to, and record complaints;
 - iii) respond to any non-compliance with the conditions of consent, such as noise mitigation measures;
 - iv) respond to emergencies;
 - f) detail measures to manage noise generated by the development;
 - g) detail measures to manage traffic generated by the development, in accordance with the MCP's *Traffic Management Plan*;
 - h) include details of a monitoring program that is to be undertaken in accordance with the *NSW Industrial Noise Policy* and the *Noise Verification Monitoring Plan, October 2015*, or its latest version;
 - i) include details of a reporting program to be provided annually to the Secretary and PoN that:
 - i) demonstrates compliance with the noise limits in this consent and the noise quotas determined in accordance with the MCP; and
 - ii) is prepared in accordance with the MCP's *Traffic Monitoring and Review Plan*. The traffic monitoring program shall include details of traffic movements to and from the site (during peak periods and daily volumes), including along Selwyn Street;
 - j) **and include the Battery Storage Management Plan required by condition B21.**

4. Conditions B20, B21 and B22 are inserted by the **bold and underlined** words / numbers as follows:

Hazards Management

B20. The storage and handling of containerised lithium-ion battery units must be undertaken in accordance with:

- (a) **Fire and Rescue NSW position statements:**
 - i. **Open Yard Storage of Battery Energy Storage Systems (BESS), dated 5 December 2024, and**
 - ii. **Emergency Plan Requirements at Sites Having Lithium Batteries, dated 5 December 2024.**
- (b) **Preliminary Hazard Analysis dated 02 May 2025 prepared by GHD Pty Ltd and the Preliminary Hazard Analysis Addendum, dated 09 July 2025 prepared by GHD Pty Ltd.**

B21. A Battery Storage Management Plan must be prepared and submitted to the Secretary for approval prior to the commencement of the storage of lithium-ion battery units. The Battery Storage Management Plan must include the following safety requirements:

- (a) **Lithium-ion batteries stored as per manufacturer's specifications**
- (b) **Bollards/protective barriers to be installed around vehicle movement routes**
- (c) **Lithium-ion batteries must be stored at least 6 m from fire source features (any building, structure or site boundary) and other general cargo and dangerous good transportation routes**
- (d) **Lithium-ion battery units must be stored in clusters not exceeding 50 metres in length on any one side, at least 1 m from each battery unit (with an access panel, door or deflagration vent/s), based on preliminary radiant heat contours for property damage**
- (e) **Lithium-ion battery units must not be stacked vertically, with only one level of storage permitted**
- (f) **Inspection of Lithium-ion battery units must be carried out for signs of damage, such as visible impacts, hissing, leaking and smoking, on arrival at the Site, and monthly thereafter for the duration of storage**
- (g) **A Protocol for managing damaged Lithium-ion batteries, detailing actions around relocation (if safe to do so) and monitoring damaged batteries**
- (h) **The Battery Fire Emergency Plan required by Condition B22.**

The OEMP required under Condition B7 must be updated to include the Battery Storage Management Plan.

B22 Develop a Battery Fire Emergency Plan, in consultation with Fire and Rescue NSW. The Plan must include the following:

- (a) **details of manufacturer guidance for extinguishing fires**
- (b) **actions when burning batteries cannot be extinguished**
- (c) **exclusion of potential ignition sources**
- (d) **an Emergency Services Information Package to assist emergency services in responding to fires**
- (e) **regular review and testing of the Battery Fire Emergency Plan.**

In Schedule 2: Part C – Reporting and Auditing

5. Condition C1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck out~~ words / numbers as follows:

Incident Notification, Reporting and response

- C1. ~~The Secretary must be notified in writing via the Major Projects website immediately after the Applicant becomes aware of an incident that causes or is likely to cause material harm to the environment. The notification must identify the development (including the development application number and the name of the development if it has one) and set out the location and nature of the incident. Subsequent notification requirements must be given, and reports submitted in accordance with the requirements set out in Appendix C.~~

The Applicant must notify the Department within 24 hours of becoming aware of an Incident. The notification must be made via the NSW planning portal (Major Projects) and address details of the Incident including:

- (a) **date, time and location;**
- (b) **a brief description of what occurred and why it has been classified as an Incident;**
- (c) **a description of what immediate steps were taken in relation to the Incident; and**
- (d) **identifying a contact person for further communication regarding the Incident.**

C1A. The Applicant must provide the Department with a subsequent Incident report in accordance with Appendix C (Incident Notification and Reporting Requirements).

6. Condition C2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words / numbers as follows:

Non-Compliance Notification

- C2 **Within seven days of becoming aware of a non-compliance, the Applicant must notify the Department of the non-compliance. The notification must be in writing and must be submitted via the NSW planning portal (Major Projects). The notification must identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply, the reasons for the non-compliance (if known), and what actions have been undertaken, or will be undertaken, and when, to address the non-compliance.**

Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

~~The Secretary must be notified in writing via the Major Projects website within seven days after the Applicant becomes aware of any non-compliance with this consent.~~

7. Delete Conditions C3 and C4:

~~C3 A non-compliance notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.~~

~~C4 A non-compliance which has been notified as an incident does not need to also be notified as a noncompliance.~~

8. Conditions C5, C6, C7 and C8 are amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words / numbers as follows:

Independent Audit

~~C3~~**C5** Within one year of the approval of DA 8137 MOD 2, and every three years after, unless the Secretary directs otherwise, the Applicant must commission and pay the full cost of an Independent Environmental Audit (Audit) of the development. Audits must:

- (a) be prepared in accordance with the Independent Audit Post Approval Requirements (Department 2020) **or as updated from time to time and published on the Department's website; and**
- (b) be led and conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary; and
- (c) be submitted to the satisfaction of the Secretary within three months of commissioning the Audit (or within another timeframe agreed by the Secretary).

C64 In accordance with the specific requirements in the Independent Audit Post Approval Requirements (Department 2020, or its latest version), the Applicant must:

- (a) review and respond to each Independent **Environmental** Audit Report prepared under condition **C53** of this consent;
- (b) submit the response to the Secretary and any other NSW agency that requests it, together with a timetable for the implementation of the recommendations; and
- (c) implement the recommendations to the satisfaction of the Secretary.

Monitoring and Environmental Audits

C75 Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance reporting and independent auditing.

Note: For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.

Access To Information

C86 At least 48 hours prior to the occupation and operation of the additional 6.6 hectares of loading / unloading area approved under DA 8137 MOD 1 and for the life of the development (or such other time as agreed by the Secretary), the Applicant must:

- (a) make the following information and documents (as they are obtained or approved) publicly available on its website:
 - (i) the documents referred to in condition A2 of this consent;
 - (ii) all current statutory approvals for the development;
 - (iii) all approved strategies, plans and programs required under the conditions of this consent;
 - (iv) contact details to enquire about the development or to make a complaint;
 - (v) a complaints register, updated monthly;
 - (vi) audit reports prepared as part of any Independent **Environmental** Audit of the development and the Applicant's response to the recommendations in any audit report; and
 - (vii) any other matter required by the Secretary.
- (b) keep such information up to date, to the satisfaction of the Secretary

Appendix

9. Appendix C – Incident Notification and Reporting Requirements is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words / numbers as follows:

APPENDIX C

INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

INCIDENT NOTIFICATION REQUIREMENTS

- ~~1. Written notification of an incident in accordance with C1 must:~~
 - ~~(a) identify the development and application number;~~
 - ~~(b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);~~
 - ~~(c) identify how the incident was detected;~~
 - ~~(d) identify when the Applicant became aware of the incident;~~
 - ~~(e) identify any actual or potential non-compliance with terms of the approval;~~
 - ~~(f) describe what immediate steps were taken in relation to the incident;~~
 - ~~(g) identify further action that will be taken in relation to the incident; and~~
 - ~~(h) identify a project contact for further communication regarding the incident.~~
- ~~2. The Incident Report must include:~~
 - ~~(a) a summary of the incident;~~
 - ~~(b) outcomes of an incident investigation, including identification of the cause of the incident;~~
 - ~~(c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and~~
 - ~~(d) details of any communication with other stakeholders regarding the incident.~~
- 1. All Incident notifications and reports must be submitted via the NSW planning portal (Major Projects).**
- 2. The Applicant must provide notification as required under these requirements, even if the Applicant fails to give the notification required under condition C1 or, having given such notification, subsequently forms the view that an incident has not occurred.**
- 3. Within 7 days (or as otherwise agreed by the Secretary) of the Applicant making the immediate Incident notification (in accordance with condition C1), the Applicant is required to submit a subsequent Incident report that:**
 - (a) identifies how the Incident was detected;**
 - (b) identifies when the Applicant became aware of the Incident;**
 - (c) identifies any actual or potential non-compliance with conditions of consent;**
 - (d) identifies further action(s) that will be taken in relation to the Incident;**
 - (e) a summary of the Incident;**
 - (f) outcomes of an Incident investigation, including identification of the cause of the Incident;**
 - (g) details of the corrective and preventative actions that have been, or will be, implemented to address the Incident and prevent recurrence, including the period for implementing any corrective and/or preventative actions; and**
 - (h) details of any communication with other stakeholders regarding the Incident.**
- 4. The Applicant must submit any further reports as directed by the Secretary.**

End of modification
(DA8137-MOD-3)