



**NEWCASTLE**  
**PORT**  
CORPORATION  
*Delivering Opportunity*

**Invitation to Submit Detailed Proposal**

**Mayfield Site**

## **EXECUTIVE SUMMARY**

This Invitation to Submit Detailed Proposal invites Proponents to submit a proposal that details their commitment to develop, operate and grow Cargo Handling Terminals with container operations at the Mayfield Site in the Port of Newcastle.

Proponents are required to submit a concept master plan that provides an overview of the proposed land use, staging and layout of key infrastructure components associated with the development and operation of Cargo Handling Terminals that shall include a container operation with the capacity to handle in excess of one million TEU per annum.

The Submission must include a development that outlines the facilities that will be required and indicate how the design, construction, commission and operation phases are to be delivered and funded. Proponents must demonstrate their ability to finance the development of the Cargo Handling Terminals and provide a budget detailing the likely capital expenditure, proposed timing and ownership structure in their submission.

Proponents must outline how their Submission will meet Newcastle Port Corporation's objectives for the Site and achieve the proposed delivery milestones to develop and operate the Cargo Handling Terminals.

The proposed business plan must provide an outline of the Proponent's vision, market and competition analysis, future growth and operational expansion strategy and include a marketing plan that clearly demonstrates how this operation can grow domestically and internationally, particularly with containerised cargo.

**CONTENTS**

**1. INTRODUCTION..... 5**

1.1 SITE PLAN ..... 5

1.2 BERTHING PLAN..... 5

1.3 SUBJECT LAND AND ADJACENT PARTIES ..... 5

1.4 OBJECTIVES FOR THE SITE ..... 7

1.5 PROCESS OVERVIEW ..... 7

1.6 LODGMENT INFORMATION..... 8

1.7 ENQUIRIES AND CONTACT ..... 9

**2. MARKET OPPORTUNITIES..... 11**

2.1 MARKET OVERVIEW ..... 11

2.2 NEWCASTLE PORT CORPORATION’S CONTRIBUTION ..... 11

2.3 PLANNED LEASES ..... 11

**3. DEVELOPMENT CONSIDERATIONS ..... 13**

3.1 NEWCASTLE PORT CORPORATION’S DEVELOPMENT AND TENURE PREFERENCES ..... 13

3.2 ENVIRONMENTAL ASSESSMENT (CONCEPT PLANNING) ..... 13

3.3 TENURE ARRANGEMENTS..... 13

3.4 EXISTING USERS AND DEVELOPMENT CONSTRAINTS ..... 14

3.5 STAGING OF SITE HANDOVERS ..... 14

3.6 SITE MAINTENANCE ..... 14

3.7 INFRASTRUCTURE ARRANGEMENTS AND STATE CONTRIBUTIONS ..... 15

**4. PROPOSED COMMERCIAL ARRANGEMENTS ..... 18**

4.1 ELEMENTS OF THE CONTRACTUAL ARRANGEMENTS..... 18

4.1.1 Preamble ..... 18

4.1.2 Lease Term ..... 18

4.1.3 Lease Fees..... 18

4.1.4 Throughput Rent ..... 19

4.1.5 Project Delivery Agreement (PDA)..... 19

4.2 OCCUPATIONAL, HEALTH AND SAFETY (OHS) OBJECTIVES..... 19

4.2.1 Preamble ..... 19

4.2.2 OHS Performance ..... 19

4.2.3 Compliance with Employment/Legal Obligations..... 20

**5. EVALUATION PROCESS ..... 21**

5.1 RETURNABLE SCHEDULES ..... 21

5.2 EVALUATION COMMITTEE ..... 21

5.3 PROBITY ADVISOR ..... 21

5.4 THE EVALUATION CRITERIA ..... 22

5.4.1 Preamble ..... 22

5.4.2 Descriptive..... 22

5.4.3 Technical Criteria ..... 23

5.4.4 Commercial Criteria..... 24

5.5 FINANCIAL ASSESSMENT ..... 25

5.6 FURTHER INFORMATION, CLARIFICATIONS AND DISCUSSIONS..... 25

**6. POST ITSDP SUBMISSION PROCESS ..... 26**

6.1 AFTER SUBMISSION ..... 26

6.2 INTERACTIVE PROCESS ..... 26

6.3 MEETINGS ..... 26

6.3.1 Rights of Newcastle Port Corporation ..... 26

6.3.2 Meetings to Seek Clarification..... 26

6.3.3 Conditions for Holding Meetings ..... 26

6.3.4 Presentations ..... 27

6.4 UNSUCCESSFUL SUBMISSIONS ..... 27

6.4.1 Notification..... 27

6.4.2	No Redress Against Newcastle Port Corporation .....	27
	RETURNABLE SCHEDULE 1 .....	28
	RETURNABLE SCHEDULE 2 .....	29
	RETURNABLE SCHEDULE 3 .....	31
	RETURNABLE SCHEDULE 4 .....	33
	RETURNABLE SCHEDULE 6 .....	39
	RETURNABLE SCHEDULE 7 .....	40
	RETURNABLE SCHEDULE 8 .....	41
A.1	PLANNING INFORMATION .....	44
	A.1.1 Historical Summary .....	44
	A.1.2 Zoning .....	44
	A.1.3 Current Planning Approvals .....	44
	A.1.4 Extension of Shipping Channel .....	45
	A.1.5 Remediation .....	45
A.2	CURRENT ENCUMBERANCES AND TENANCIES .....	46
	A.2.1 Koppers .....	46
	A.2.2 BHP Billiton Sediment Work .....	46
	A.2.3 Hunter Wet Land .....	46
	A.2.4 Bulk Liquids Precinct .....	47
	A.2.5 Newcastle Port Corporation Operations Precinct .....	47
	A.2.6 Intertrade Industrial Park .....	47
	A.2.7 Port Security .....	48
	A.2.8 Australian Quarantine and Inspection Services (AQIS) Mosquito Monitoring Zone 48	
A.3	REMEDIATION .....	49
	A.3.1 Remediation Overview .....	49
	A.3.2 Capping Requirements .....	51
	A.3.3 Conformance with Overall Landform and Surface Drainage Strategy .....	51
	A.3.4 Materials Management Plan .....	52
	A.3.5 Contaminated Site Management Plan .....	52
	A.3.6 Environmental Management Plan .....	54
	A.3.7 Site Auditor .....	54
	A.3.8 Shipping Channel and Contaminated Sediments in South Arm of the Hunter River 54	
A.4	SERVICES AND INFRASTRUCTURE .....	56
	A.4.1 Overview .....	56
	A.4.2 Mayfield Industrial Estate Association (MIEA) .....	56
	A.4.3 MIEA Costs .....	57
	A.4.4 Services and Infrastructure Cost Sharing Mechanisms .....	57
	A.4.5 Road .....	57
	A.4.6 Rail .....	58
	A.4.7 Port / Wharves .....	58
	A.4.8 Drainage .....	59
	A.4.9 Water .....	60
	A.4.10 Sewer .....	60
	A.4.11 Gas .....	61
	A.4.12 Electricity Network & Electrical Energy .....	61
	A.4.13 Telecommunications .....	62
B.1	BASIS ON WHICH SITE INFORMATION IS MADE AVAILABLE – DISCLAIMER ...	63
B.2	CHANGES TO THE ITSDP DOCUMENTS .....	64
	B.2.1 Update Notice .....	64
	B.2.2 Effect of Update Notice .....	65
	B.2.3 Newcastle Port Corporation may extend dates .....	65
B.3	MATTERS CONCERNING PREPARATION OF SUBMISSION .....	65
	B.3.1 Intellectual Property .....	65
	B.3.2 Behaviour and Probity .....	66
	B.3.3 Collusive Tendering .....	67
	B.3.4 Unlawful Inducements .....	67
	B.3.5 NSW Government Policies .....	67
	B.3.6 Misleading Statements and Improper Assistance .....	67

B.3.7 Costs and Expenses ..... 68

B.3.8 Nature of Process..... 68

B.3.9 Discrepancies ..... 68

B.3.10 Probity, Security and Financial Checks..... 69

B.3.11 Change in Material Circumstances ..... 69

B.3.12 Proponent's Acknowledgments ..... 69

B.3.13 Newcastle Port Corporation Rights ..... 69

B.3.14 Amendments and Termination of the Process ..... 70

B.3.15 Notices..... 71

B.3.16 Freedom of Information Act and Governmental Reporting Obligations ..... 71

B.3.17 No Representation ..... 72

B.3.18 Applicable Law ..... 72

B.3.19 Confidentiality ..... 72

B.3.20 Validity Period ..... 72

B.4 DEFINITIONS AND INTERPRETATION..... 73

B.4.1 Definitions..... 73

B.4.2 Rules for interpreting this ITSDP..... 76

B.4.3 Business Days..... 76

B.5 ENDNOTE REFERENCES ..... 77

## 1. INTRODUCTION

*This document includes endnote cross referencing (an example is at the end of the following paragraph) which identifies primary information available in the attached Mayfield Site Primary Data CD. Refer to Section B5 for the table of references included in the CD. Several of these references are duplicated for the reader's clarity but only a single copy will be provided in the CD.*

*Further secondary information will be available for viewing in Newcastle Port Corporation's data room at Cnr Scott & Newcomen St, Newcastle, in hard copy. All available documents are listed in the Mayfield Data Room Document List<sup>1</sup>.*

### 1.1 Site Plan

The Site, located in Mayfield, is seventy one (71) hectares in area, has 1550 metres of direct Hunter River frontage and an average width of 400 metres (note all figures are approximate). The planned OneSteel through rail line will traverse the Site along the Southern and Western perimeters. Refer to Figure 1 schematic. The Site has also been captured in a series of Aerial Photographs<sup>2</sup>.

### 1.2 Berthing Plan

To cater for the berthing of ships, Newcastle Port Corporation has developed a Berth & Channel Plan<sup>3</sup> incorporating five berth locations adjacent to the Site. Dimensions range as follows:

<b>Berth No.</b>	<b>Width</b>	<b>Length</b>	<b>Depth</b>	<b>Status</b>
2	48m	310m	11.6m	Not yet constructed
3	55m	310m	12.8m	Exists in part
4	55m	310m	12.8m	Exists in part
5	55m	310m	16.5m	Not yet constructed
6	55m	310m	16.5m	Not yet constructed

The recently constructed Mayfield No.4 Berth occupies part of Berths 3 and 4 (shown in the table) and is 265 metres long and dredged to 12.8m.

Newcastle Port Corporation advise Proponents that the Berth & Channel Plan is indicative and subject to change.

### 1.3 Subject Land and Adjacent Parties

The subject land for this ITSDP as shown on Figure 1 incorporates Berths 2 to 6. Mayfield No.4 Berth and adjacent hardstand, combined area totalling two hectares, is provided by Newcastle Port Corporation.

The western portion of land designated as the Bulk Liquids Precinct and associated Berth 7 is excluded from this ITSDP. The eastern portion of land designated for Newcastle Port Corporation operations and associated Berth 1 is also excluded from this ITSDP.

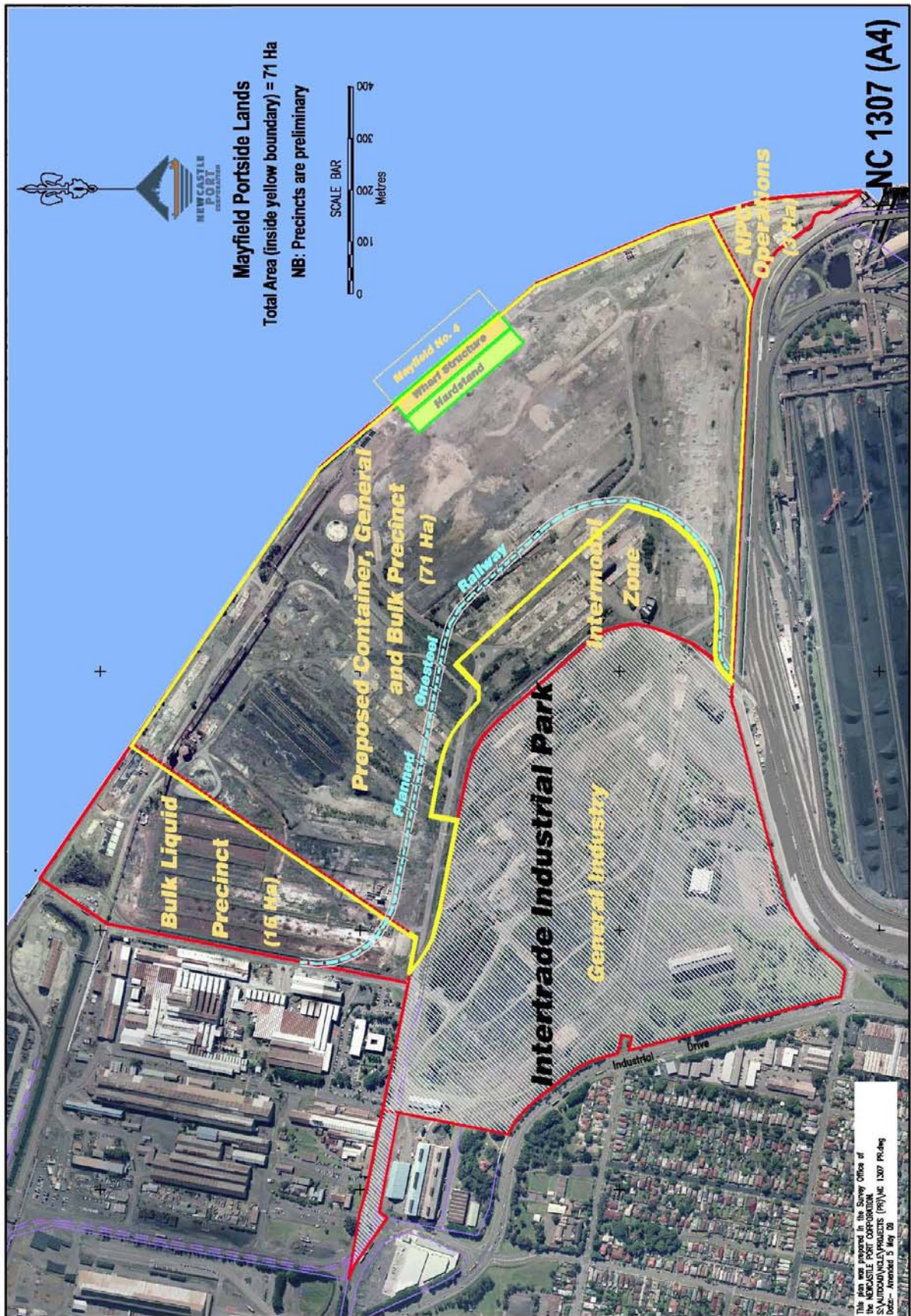


Figure 1 – Site Layout

The Site is currently constrained by 3 activities:

- the pipeline easement for Koppers and cargo activities over Old BHP Berth No.6;
- BHP Billiton river remediation activities occupying in excess of 30 hectares of the Site until 1<sup>st</sup> January 2012, with an option to extend for 7 months;
- Hunter Development Corporation land remediation activities occupying the remainder of the lands until 31<sup>st</sup> December 2012. Hunter Development Corporation are endeavouring to complete work in advance of this date.

Details of these constraints are discussed in Appendix A.

#### **1.4 Objectives for the Site**

Newcastle Port Corporation's objectives for development of the Site are to:

- (a) have cargo handling terminal activity for containers and other cargo which may include bulk, break bulk, roll on roll off, etc., consistent with the characteristics, assets and capabilities of the Site;
- (b) include a best practice container operation capable of handling in excess of 1 million TEU per annum;
- (c) select a Proponent that is committed and has the capacity, resources and expertise to successfully deliver and grow their development proposal;
- (d) increase the proportion of northern NSW trade for NSW ports;
- (e) generate employment opportunities in the Hunter region;
- (f) provide environmental, safety and community amenity benefits through reduced road traffic congestion in Sydney, thereby reducing greenhouse gas, vehicle emissions and noise;
- (g) optimise public value for money by maximising land use intensity and engaging the private sector in the development of the State's port and transport infrastructure for handling container and general cargo trades;
- (h) ensure investment and development is delivered in a timely manner;
- (i) recognise relationships between parties who may use the existing facilities and access points to and from the Site; and
- (j) secure an appropriate commercial return to Newcastle Port Corporation.

Proponents must provide a brief summary that clearly articulates how their Submission satisfies each of these objectives in their Returnable Schedule No.2.

Should Newcastle Port Corporation not secure a developer, Newcastle Port Corporation will preserve the area required for a dedicated container terminal to ensure the objectives of the 2003 NSW Port Growth Plan can be met. It will then expedite development of the rest of the Site focusing on projects, cargoes and services that will ultimately enhance and accelerate the market's acceptance of the opportunity for container trade in Newcastle

#### **1.5 Process Overview**

Proponents are invited to participate in this ITSDP. Proponents have until the Submissions Lodgement Date to provide their Submission. Site visits and meetings may be arranged by Newcastle Port Corporation if requested by Proponents on an individual basis. Information discussed at these site visits which is not commercial in confidence may be distributed to the Proponents. There may not be a group briefing of all invited Proponents.



It should be noted that submissions will be assessed by the Evaluation Committee. Proponents should also note that submissions will be assessed against the Evaluation Criteria set out in Section 5. Proponents should provide sufficient information to enable Newcastle Port Corporation to adequately evaluate their Submission and complete all Returnable Schedules.

Newcastle Port Corporation may commence negotiation with a preferred Proponent(s) to finalise and execute commercial agreement(s) for the Site.

The Evaluation Committee may recommend a preferred Proponent for Ministerial endorsement.

A Developer/Operator may be announced by the Minister in a media release. Proponents who have been unsuccessful will be formally notified by the Newcastle Port Corporation in writing.

The Site may be leased to the Developer/Operator in stages, commencing 2010.

The table below provides indicative milestone dates for the ITSDP process which are subject to change at Newcastle Port Corporation's discretion. Proponents will be notified of any proposed changes. The final timeframes and programmes for the Project will be discussed and agreed with the preferred Proponent and will become binding through the final commercial agreement(s).

<b>Milestones</b>	<b>Dates</b>
ITSDP Documents issued	November 2009
Submissions Lodgement Date	February 2010
Evaluation Report	April 2010
Announce Preferred Proponent	June 2010
Contract commences	July 2010

## **1.6 Lodgment Information**

Proponents must submit a complying Submission under this ITSDP by ensuring that:

- (a) all the Returnable Schedules have been completed;
- (b) supporting documents have been duly executed; and
- (c) the Submission is lodged in Newcastle Port Corporation's Tender Box before the designated Submissions Lodgement Date.

Details of the scope of information to be included in the Submission are provided in the Returnable Schedules.

Subject to any extension or alteration of the Submissions Lodgement Date, the Submissions Lodgement Date is Thursday 16 February 2010 by 3:00pm AEST. A Submission can be lodged on Monday to Friday between 8.30am and 5pm.

The Place of Lodgement is:

**TENDER BOX**

Newcastle Port Corporation  
Ground Floor,  
Corner of Scott and Newcomen Streets  
NEWCASTLE NSW 2300

Any Submission lodged after 3:00pm on the Submissions Lodgement Date is a late Submission. NPC may consider or not consider late tenders at its absolute discretion and any decision to consider a late tender will have regard to NSW Government policy in relation to acceptance of late tenders and the advice of the Probity Advisor.

An original Submission should be lodged together with:

- (a) three (3) "hard" (not electronic) copies; and
- (b) one copy on CD or similar disc.

The original Submission should be clearly marked as the "original". In the event of any discrepancy between the original and any copy, the original takes precedence. All pages are to be numbered consecutively to establish the completeness of the documentation.

Each Submission should be signed by or on behalf of each entity forming part of the consortium or joint venture and evidence should be provided of the authority of the signatories to sign on behalf of their respective entities at Returnable Schedule 7.

Facsimile, email, alternative or non-conforming Submissions will be considered by the Evaluation Committee and the Probity Advisor, and, accepted or rejected in their absolute discretion.

Oral Submissions will not be accepted.

## **1.7 Enquiries and Contact**

Enquiries regarding this ITSDP are to be directed to Mr Simon Bingham, Process Manager for this ITSDP (Contact Officer). Email: [simon.b@newportcorp.com.au](mailto:simon.b@newportcorp.com.au)

The following rules apply:

- (a) Proponents may make written enquiries up to five (5) Business Days before the Submissions Lodgement Date;
- (b) Newcastle Port Corporation reserves the right to provide the details of any enquiries to the other Proponents (not including the identity). However, prior to doing so, the Proponent has the opportunity to retract the enquiry;
- (c) any response to a written question will be provided in writing;
- (d) if Newcastle Port Corporation provides a response to an enquiry via email, Newcastle Port Corporation is not responsible if an intended recipient cannot or does not:
  - i. receive the email sent on behalf of Newcastle Port Corporation; or
  - ii. open or read the email or any attachment to the email;due to any reason, including as a result of or in connection with any computer viruses, computer defects or system failure;
- (e) if requested by Newcastle Port Corporation, the Proponent must acknowledge receipt of any response;

- (f) Proponents are not permitted to direct any enquiries to any other personnel or any State Government agencies or their representatives or personnel, or any party contracted to Newcastle Port Corporation, other than the Probity Advisor, unless the written approval of the Process Manager has been given;
- (g) all interest in and communications regarding the land which is the subject of this ITSDP must be via the ITSDP processes set out in this document;
- (h) for media enquiries, Newcastle Port Corporation is the only agency authorised to make public comment on this ITSDP, including to members of the media. All media enquiries regarding this ITSDP must be directed to the Process Manager;
- (i) Proponents must not communicate or solicit information from Newcastle Port Corporation in relation to this ITSDP except by contacting the Process Manager;
- (j) Proponents who have ongoing contact with Newcastle Port Corporation regarding Port related development and operations are informed that all interest in and communications regarding the Site must be via the ITSDP processes set out in this document; and
- (k) Proponents who approach non-State Government agencies, including ARTC and Newcastle City Council, do so on notice that such non-State Government agencies have no authority to make statements for Newcastle Port Corporation or the State, with respect to this process.

## **2. MARKET OPPORTUNITIES**

### **2.1 Market Overview**

The Site has the capacity to support major Cargo Handling Terminals. This provides a unique opportunity for Proponents to develop and establish Cargo Handling Terminals that includes significant container operations at the Port of Newcastle. This is consistent with the State's 2003 Ports Growth Plan.

Within the proposed Cargo Handling Terminals, the container operations development has the potential to increase to a capacity in excess of 1 million TEU.

The logistics of the operation proposed must be communicated clearly by Proponents in their Submission at Returnable Schedule 3.

### **2.2 Newcastle Port Corporation's Contribution**

Newcastle Port Corporation is constructing 2 hectares of new wharf and adjacent hardstand (known as Mayfield No.4 Berth) as shown in the Figure 1. It is anticipated this should be complete in November 2009 and handle its first cargo in December 2009.

Proponents will be provided with a Site that has been remediated and land formed to allow development. However, the Developer/Operator will be required to maintain the integrity of the remediation works during construction and operation of their proposed development, to comply with NSW Department of Planning Development Consent Conditions<sup>4</sup> and the Contaminated Site Management Plan<sup>5</sup>.

Through a recent marketing campaign, Newcastle Port Corporation has identified several potential Secondary Proponents and will supply contact details upon approval to do so from those Secondary Proponents. In particular, Proponents will be required to consider a Secondary Proponent proposal for an LNG export terminal facility occupying 35 hectares of the Site.

Sub-lessees for general and bulk cargo may have a separate stevedoring operation which proponents must accommodate. The Site has been zoned such that its use as Cargo Handling Terminals is considered a complying development.

### **2.3 Planned Leases**

Newcastle Port Corporation is currently negotiating a long term lease with a bulk material handling operator which requires 1.4ha of land adjacent to Mayfield No.4 Berth. Refer to Figure 2 for details (land is highlighted in the numbered polygon). Newcastle Port Corporation may novate this lease to the preferred Proponent, subject to satisfactory commercial terms being negotiated.

This operation, when not conveying cargo, may permanently occupy 40-50m of the eastern end of the Mayfield No.4 Berth with mobile bulk material ship unloading infrastructure.

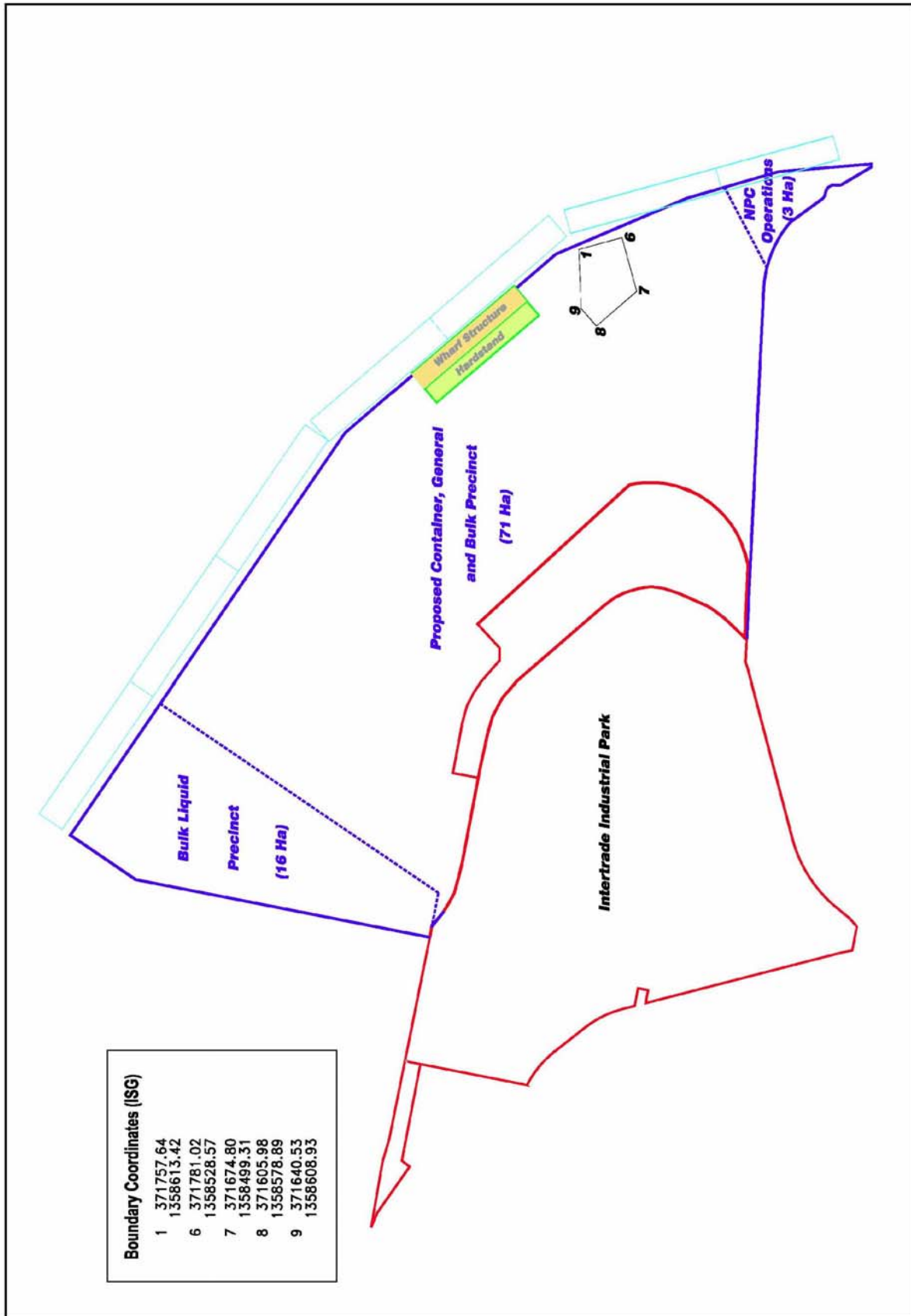


Figure 2 : Bulk material project proponent site

### **3. DEVELOPMENT CONSIDERATIONS**

#### **3.1 Newcastle Port Corporation's Development and Tenure Preferences**

There is no current approved master plan for the Portside Lands, which incorporates the Site. However, Newcastle Port Corporation's objectives are clearly indicated and it is expected that Proponents will prepare a master plan which is consistent with the stated objectives.

In addition/relation to the prime development objective of a container terminal, uses as a core to the development may include:

- (a) Berth Facilities – construction and operation of berth facilities for the purpose of seaborne trade (loading and unloading of cargo at the land/sea interface);
- (b) Cargo Storage and Handling Facilities – warehouse or open storage facilities for cargo/product that is exported or imported directly through the Port of Newcastle and transportation facilities (road, rail, pipeline or conveyor), cargo packing/unpacking services and the like;
- (c) Services to Shipping – including towage, bunkering, providoring, dredging and launch services that require a waterfront location;
- (d) Intermodal Facilities - including road and rail services; or
- (e) Port Related Industry – processing industry that has special materials handling needs (e.g. volumes and/or distance limitations) that warrant its location within close proximity of port facilities.

The proponent will be responsible for ascertaining which approvals would be required for any development proposal and subsequently securing development consent. Newcastle Port Corporation will assist a successful proponent in obtaining development approval.

Tenure will be negotiated to reflect the need for return on developer capital and securing the Corporation's interests.

#### **3.2 Environmental Assessment (Concept Planning)**

In 2009 Newcastle Port Corporation commissioned a new Environmental Assessment<sup>6</sup> for the Portside Lands in the Closure Area for submission to the NSW Department of Planning. This will form a concept plan from which the Developer/Operator may develop a master plan for the Site.

This plan will be submitted for public exhibition in parallel with this process, so the preferred Proponent may have the opportunity to influence the final form of any consent conditions.

#### **3.3 Tenure Arrangements**

The Site and adjacent portside precincts are currently under a contract for sale from the State Property Authority to Newcastle Port Corporation. Under the terms of that contract NPC has authority to act as the owner. Prior to settlement of the sale it is a requirement to effect a single subdivision, of the Site and adjacent portside precincts, away from the remainder of the Closure Area. It is planned that a proposed Subdivision Plan<sup>7</sup> prepared by the Intertrade Industrial Park preferred proponent be adopted.

The Bulk Liquids and the Newcastle Port Corporation Operations precincts are not included in this ITSDP, however the Newcastle Port Corporation Operations area is flexible in terms of its location along the waterfront.

### 3.4 Existing Users and Development Constraints

Three areas of land have constraints on the development of the Site. The Newcastle Port Corporation Mayfield Site Land Use Plan September 2009<sup>8</sup> schematically highlights this use. The areas are:

- (a) the BHP Billiton Sediment Remediation Licence<sup>9</sup> area where BHP Billiton are treating contaminated river sediments. Within the BHP Billiton licensed area the majority of land underneath has been remediated by Hunter Development Corporation in 2008 and any unremediated land will be remediated by BHP Billiton, to the requirements of Hunter Development Corporation, prior to their licence termination. The licence extends to the 1<sup>st</sup> January 2012 with an option to request extension for up to 7 months;
- (b) the remainder of the Site (excluding Mayfield No.4 Berth and hardstand which has already been remediated) will be remediated by the Hunter Development Corporation prior to the end of 2012. The remediation is being delivered under the requirements of the Voluntary Remediation Agreement (VRA)<sup>10</sup>. There may be possibilities to develop the Site synergistically with the Hunter Development Corporation's remediation activities; and
- (c) the Koppers pipeline easement which traverses the Site from the Old BHP No6 Berth into the adjacent OneSteel facility. The Koppers pipeline may be removed with two (2) years notice under existing licence arrangements.

The Mayfield No.4 Berth provided to Proponents by Newcastle Port Corporation has "common user" status. Proponents are to define in their Submission any restrictions or alternatives which might be applicable to its operation.

### 3.5 Staging of Site Handovers

It is anticipated the Site will be handed over by Newcastle Port Corporation in a staged basis. It is planned that progress of the Proponent's work will be measured by Newcastle Port Corporation against milestones which are dictated by handover times.

The contracts that are entered into should be benchmarked against these milestones.

### 3.6 Site Maintenance

The Site was formerly occupied by BHP and operated as a steelworks manufacturing facility from 1860 to 1999 when steelmaking operations ceased. BHP carried out demolition of above ground structures on the Site from closure of the integrated iron and steel making part of the steelworks until mid 2004. At this time an Environmental Deed was entered into between BHP Billiton and the State which imposes certain obligations on the State and future owners and tenants in relation to contamination.

The Site has been declared to be a remediation site under section 21 of the *Contaminated Land Management Act 1997 (NSW)* and is being remediated in accordance with the Voluntary Remediation Agreement (VRA)<sup>11</sup> dated 14 September 2005. There is also a BHP Billiton Environmental Deed<sup>12</sup> which imposes certain obligations on the State and future owners and tenants in relation to contamination.

The remediation of the Site is in progress and primarily involves installing a 500mm impermeable capping layer to separate contaminants and regrading the Site to a designed

surface level for drainage gradient purposes. The Site will be made available to the successful Proponent on the basis that the Site has been remediated sufficient to allow subsequent development. Significant parts of the Site will be left up to 400mm below the remediation design surface level to facilitate terminal development. Some of these areas which have been left low, have only 400mm of capping installed. It is intended that the successful proponent will bring the Site up to design surface levels to fulfil compliance with the VRA. Further details are discussed in Appendix A.3.

For the Site, the State would continue to be liable (subject to certain limitations including an exclusion of liability for consequential losses such as business interruption costs and losses) for:

- (a) the effectiveness of any capping or other works constructed by the State;
- (b) the effectiveness of any cap performance specifications for any capping to be finally designed and constructed by the Proponent (the Proponent remaining responsible for final design and implementation); and
- (c) the management of those parts of the Site that continue to be owned and occupied by the State.

The State would also carry out ongoing required monitoring and necessary management of groundwater in relation to impacts from pre-existing contamination.

The obligations of the Developer/Operator will include:

- (a) carry out and pay for any additional works that are specific to the Proponent's development including obtaining and complying with necessary approvals and certificates (such as Site Audit Statements);
- (b) maintain the integrity of the cap in accordance with a Contaminated Site Management Plan (CSMP)<sup>13</sup>;
- (c) not exacerbate contamination or the risks from it;
- (d) not cause additional contamination;
- (e) only use the Site for purposes that are compatible with the Contaminated Site Management Plan<sup>14</sup> and the conditions of the Site; and
- (f) ensure the health and safety of its workers, invitees and other people and property in accordance with an appropriate site management plan and necessary safety precautions.

### **3.7 Infrastructure Arrangements and State Contributions**

The State has been responsible for the redevelopment of the Site and the remediation, which is in process. The State will manage the requirements of the VRA<sup>15</sup> (notwithstanding the Developer/Operator's obligations as described earlier).

Further information on aspects of site remediation are included in Annexure A of this ITSDP and separate reports pertaining to specific activities are available for inspection and are listed in Annexure B.5.

Newcastle Port Corporation is constructing a refurbished berth (including berth box) and adjacent hardstand of 1 hectare (total 2 hectares) known as Mayfield No.4 Berth. It is detailed in the Mayfield Berth Refurbishment Drawings<sup>16</sup>.

Newcastle Port Corporation has defined the infrastructure available on the Closure Area in Annexure A. Newcastle Port Corporation also defines infrastructure and utilities as on-site or off-site. Off-site infrastructure is under the control of agencies outside Newcastle Port



Corporation's authority and Proponents are to make their own assessment of the off-site issues. On-site infrastructure and utilities are those within the Site and are the Developer/Operator's responsibility.

Mayfield Industrial Estate Association (MIEA) has been established to manage shared facilities and is further defined in Annexure A.

The table below contains information on the proposed supporting infrastructure and the State's position in relation to funding. Unless specifically stated, there is no current commitment to fund other infrastructure.

**Table 1 On-Site Infrastructure Information**

<b>Service</b>	<b>MIEA</b>	<b>User Classification</b>	<b>NPC Funding</b>	<b>Remarks (Annexure A contains further detail)</b>
ROADS - Selwyn/George St - Ingall/Steelworks St - Internal Roads	No Yes No	Shared Shared Developer/ Operator	No No No	Developer/Operator cost
THROUGH RAIL	Yes	Shared	No	Additional works for sidings at Developer/Operator cost. Sidings will not be part of the MIEA.
CAPITAL DREDGING Capital Works for new berths	No	Developer/ Operator	No	Dredging new or expanded berth boxes at Developer/Operator cost.
MAINTENANCE DREDGING	No	Developer/ Operator	Yes	Channel maintenance by Newcastle Port Corporation
NEW WHARVES	No	Developer/ Operator	No	Developer/Operator responsible for cost, design and construction of additional wharfs
DRAINAGE	No	Developer/ Operator	No	Developer/Operator responsible for cost of own land drainage and maintenance
WATER	TBC	Developer/ Operator	No	Capital cost borne by Developer/Operator, running costs borne by Developer/Operator. Proposed services may be provided to Site boundary by Intertrade.
SEWER	TBC	Developer/ Operator	No	Capital cost borne by Developer/Operator, running costs borne by Developer/Operator. Proposed services may be provided to Site boundary by Intertrade.

<b>Service</b>	<b>MIEA</b>	<b>User Classification</b>	<b>NPC Funding</b>	<b>Remarks (Annexure A contains further detail)</b>
ELECTRICAL SUPPLY	Optional	Developer/Operator	No	Capital cost of connection borne by Developer/Operator, running costs borne by Developer/Operator. Substation and easement may be provided by others within Intertrade site.
COMMUNICATIONS	No	Developer/Operator	No	Capital cost of connection borne by Developer/Operator, running costs borne by Developer/Operator.
GAS	Yes	Developer/Operator	No	Capital cost borne by Developer/Operator, running costs borne by Developer/Operator. Service is provided to south western Closure Area boundary.

## **4. PROPOSED COMMERCIAL ARRANGEMENTS**

### **4.1 Elements of the Contractual Arrangements**

#### **4.1.1 Preamble**

The basic arrangement proposed should be a lease arrangement between Newcastle Port Corporation and the Developer/Operator and a separate Project Delivery Agreement (PDA) to administer capital works improvements and expenditure.

#### **4.1.2 Lease Term**

A lease term commensurate with the level of proposed development will be determined. For the purpose of this ITSDP and evaluation, proponents should use a notional 30 year period.

It is intended there will be three phases of development within the lease term;

- the Development Phase: The Project Delivery Agreement is the key driver in this phase where the focus is on the Proponent building the infrastructure and developing the Site as committed. Land leases and throughput rents may be adjusted accordingly during this phase in lieu of capital improvements and Site development;
- the Growth Phase: During this phase land lease rents will be escalated to achieve rates appropriate to the market and recognising the level of capital improvement in the Site by the proponent. Land lease rents will be in place for vacant as well as subscribed lands to provide incentive to maintain development. Throughput rents will be increasing significantly throughout this period such that the final minimum throughputs reflect NPC's expectation of the trade that the Site should be accommodating; and
- the Efficiency Phase: In this final phase the Site has been fully developed from a key infrastructure perspective and be fully or near fully developed in terms of sub lease projects using the common user facilities. Leases and throughput rents will reflect a fully developed Site and trade profile. Additional performance drivers will be included in the leases and throughput rents in this period to drive efficiency, productivity and meet appropriate performance benchmarks.

#### **4.1.3 Lease Fees**

Newcastle Port Corporation has standard leasing agreements for parties who rent land from Newcastle Port Corporation and expects such an agreement to be the foundation to this agreement. Typical lease clauses are available for inspection by Proponents upon request. However, it is anticipated that the final lease document should be specific for this Site and developed during the process.

Maintenance dredging works will be provided by Newcastle Port Corporation within the lease fee. Capital works dredging for new berthing boxes constructed by the Proponent would be executed by the Proponent and approved for construction by Newcastle Port Corporation.

Utility service charges (power, water etc) where applicable that may be rated items billed against the land owner (Newcastle Port Corporation) will be recovered under the usual lease arrangements.

#### **4.1.4 Throughput Rent**

A throughput rent based on the number of TEUs and equivalent Revenue Tonnes of cargo may be charged by Newcastle Port Corporation to the Developer/Operator.

Newcastle Port Corporation is prepared to consider a throughput rent adjustment in the initial phase and may consider suggestions by Proponents as volumes/tonnes increase.

Minimum throughput targets will apply and may be on an escalating basis. Proponents will pay NPC a throughput rent that is based on the greater of actual cargo or minimum throughput targets.

#### **4.1.5 Project Delivery Agreement (PDA)**

This will be an agreement to administer the construction and operation of Site improvements and services to facilitate the operation of the facility. It includes new capital investment committed by the Proponent for wharves, cranes, buildings, hardstand etc, that need to be in place in accordance with negotiated terms.

These capital investments and other capital works should be set up with milestones in the PDA as a fundamental element for contract administration of the PDA and will also be tied to Newcastle Port Corporation's "step-in-rights".

NPC may make land available sequentially to proponents on the basis of successful completion of each stage as committed in the PDA.

NPC will require the PDA to facilitate the development needs and access requirements of quality Secondary Proponents which are identified by NPC and do not contradict any Site objectives and are complimentary to Proponent plans. For a Secondary Proponent to be excluded, where it meets NPC requirements, it is anticipated the preferred Proponent will be required to reasonably demonstrate where the Secondary Proponent will adversely impact the Proponent's Site development plans.

Proponents are to submit an outline "terms sheet" for the basis of developing a PDA. The terms sheet should be included within the Returnable Schedules (Returnable Schedule 3).

## **4.2 Occupational, Health and Safety (OHS) Objectives**

### **4.2.1 Preamble**

A Developer/Operator engaged on any work in connection with this Site, including all the Developer/Operator's employees, subcontractors, and consultants, and all visitors, will abide by Newcastle Port Corporation's general and site specific safety rules.

Proponents attention is drawn to Newcastle Port Corporation's expectation of a high OHS standard. Proponents shall identify in Returnable Schedule 3 how these objectives will be met.

### **4.2.2 OHS Performance**

The Newcastle Port Corporation OHS objective is to ensure that its contracts provide for a safe workplace. Newcastle Port Corporation expects this will be evidenced by:

- (a) diligent management of workplace hazards; and
- (b) minimal safety incidents.

Newcastle Port Corporation wants to encourage achievement of outstanding OHS outcomes and failure to meet agreed milestones in OHS may have an impact on the PDA. The process by which OHS records are kept and monitored is likely to differ between Proponents and the Submission should indicate in the Returnable Schedules the procedures envisaged

#### **4.2.3 Compliance with Employment/Legal Obligations**

The Developer/Operator must conform to all industrial legislation and instruments affecting the employees of the Developer/Operator, at all times during the performance of the Work under the Contract.

The Developer/Operator must ensure that its subcontractors, in the execution of the work under the PDA and the performance of its other obligations under the PDA, comply with the requirements of the NSW Government Apprenticeship Employment Policy (as amended from time to time) in respect of the employment of apprentices.

## **5. EVALUATION PROCESS**

### **5.1 Returnable Schedules**

The Proponent must complete and return all of the Returnable Schedules.

The Returnable Schedules are:

- (a) Concept Master Plan and Staging Plan (Returnable Schedule 1);
- (b) Development Details (Returnable Schedule 2);
- (c) Business Plan (Returnable Schedule 3);
- (d) Investment Details (Returnable Schedule 4);
- (e) Proponent Offer to Newcastle Port Corporation (Returnable Schedule 5);
- (f) Departures (Returnable Schedule 6);
- (g) Statutory Declaration (Returnable Schedule 7); and
- (h) Submission Form (Returnable Schedule 8).

Proponents should include the information requested in the Returnable Schedules, in such detail as they consider will enable an objective assessment to be made in relation to each of the Evaluation Criteria.

### **5.2 Evaluation Committee**

Submissions received will be evaluated against the Evaluation Criteria (at clause 5.4), which reflect Newcastle Port Corporation's objectives for this ITSDP.

The evaluation process will be carried out by an Evaluation Committee which will include representatives of Newcastle Port Corporation and others. The Evaluation Committee may use the services of specialist consultants as required, and will be monitored by an independent Probity Adviser.

A Proponent may be excluded from further evaluation at the absolute discretion of the Evaluation Committee, including, amongst other reasons, where a Submission is not in accordance with this ITSDP or a Submission does not meet Newcastle Port Corporation's Objectives for this ITSDP set out in clause 1.4.

The evaluation of Submissions is confidential and will not be disclosed at any time during or after the evaluation process.

### **5.3 Probity Advisor**

NPC has appointed a Probity Advisor whose details are set out below:

Scott Alden  
Partner, DLA Phillips Fox  
Phone: 02 9286 8128 / 0419 268 121  
Email: scott.alden@dlaphillipsfox.com

The specific tasks to be undertaken by the Probity Advisor will include:

- preparing a Probity Plan for use by NPC management and project personnel;
- providing advice on the Evaluation Criteria;
- attending briefing sessions as required;
- attending the opening and recording of Submissions;
- attending any meetings with the invited entities during the evaluation of Submissions;
- reviewing the evaluation procedures;
- ensuring that an appropriate code of conduct has been signed by all project personnel;
- undertaking conflict of interest checks and maintaining a register of any conflicts;
- reviewing the Evaluation Committee's recommendations on the selection of an entity to undertake the development and, as Probity Advisor, confirm by endorsement that the recommendations made are consistent with the outcome of the assessment process and the application of the assessment criteria;
- preparing a certified report at the completion of the evaluation, providing a record of the process confirming that the probity requirements have been properly observed;
- attend any de-briefing sessions with the unsuccessful entities;
- bringing any issue concerning probity to the attention of NPC management; and
- advising on process and probity issues as requested from time to time by NPC management.

## **5.4 The Evaluation Criteria**

### **5.4.1 Preamble**

The proposals will be examined from a technical and commercial viewpoint to ensure, as far as possible, that the development of these lands provides the best possible outcome for Newcastle Port Corporation and the State having regard to the proposals and NPC's own potential use, and that the community benefit is reflected in the successful proposal.

The key elements of importance in the evaluation are set out in the following sections. Proponents are required to include details of how the Submission addresses these criteria within the Returnable Schedules, even though they may not be specifically identified in the Returnable Schedules. Additionally, Proponents are required to identify the benefits to the State and particularly to the Hunter Region.

### **5.4.2 Descriptive**

Plans and drawings describing the Submission at the critical stages of development illustrating the match between on-site works and the business development plan need to be clear and comprehensive.

**5.4.3 Technical Criteria**

The proposed criteria and the elements incorporated are listed below:

<b>Technical Evaluation Criteria</b>
<p style="text-align: center;"><b>Net Social Benefits</b> (to State and Hunter community)</p> <ul style="list-style-type: none"> <li>➤ Employment potential and recruitment plans</li> <li>➤ Noise and light pollution management plans</li> <li>➤ Management of transport modes</li> <li>➤ Distribution by rail plans</li> <li>➤ Safety record and safety management plans</li> <li>➤ Environmental record and management plans</li> <li>➤ Emergency management plans</li> <li>➤ Training and recruitment plans</li> </ul>
<p style="text-align: center;"><b>Certainty of Delivery</b></p> <ul style="list-style-type: none"> <li>➤ Financial commitment and debt/equity arrangements</li> <li>➤ Stages at which the investment is made</li> <li>➤ Expectations with regard to public investment</li> <li>➤ Proposed management structures</li> <li>➤ Third party involvement and roles</li> <li>➤ Compatibility with adjacent operation</li> </ul>
<p style="text-align: center;"><b>Stevedoring Capability</b></p> <p>Container Terminal/Non Container Operations:</p> <ul style="list-style-type: none"> <li>➤ Container terminal layout which should provide an efficient and competitive terminal operation</li> <li>➤ Layout of non container operations</li> <li>➤ Provides efficient arrangements for rail and road operations.</li> <li>➤ Ensures efficient land use and high sustainability</li> <li>➤ Handling capacities per equipment type</li> <li>➤ Ship to shore crane handling rates (container moves/hr)</li> <li>➤ Truck turn times</li> </ul>



**5.4.4 Commercial Criteria**

The proposed criteria and the elements incorporated are listed below:

<b>Commercial Evaluation Criteria</b>
<b>Projected Capital Delivery</b>
<ul style="list-style-type: none"> <li>➤ Capital expenditure year by year on all procurement for development and operation of the Site, including for major items capital cost at time of order, interim payments and delivery (e.g. container ship to shore cranes)</li> <li>➤ Replacement schedule and capital budget</li> </ul>
<b>Commercial Viability</b>
<ul style="list-style-type: none"> <li>➤ Market knowledge and awareness</li> <li>➤ Strategies to capture imports and exports of all categories with differing origins and destinations.</li> <li>➤ Vessel and trade (container and non-container) throughput</li> <li>➤ Inland distribution strategies and feasibility</li> <li>➤ Operating capacity (TEUS p.a.) year on year and development plans for capacity expansion</li> <li>➤ Proposed business and development strategy</li> <li>➤ Proposed financing and loan arrangements</li> <li>➤ Debt to equity ratio</li> <li>➤ Insurance arrangements</li> <li>➤ Risks to Government</li> </ul>
<b>Newcastle Port Corporation Income/Contributions</b>
<ul style="list-style-type: none"> <li>➤ Proposed lease payments</li> <li>➤ Proposed throughput rent amounts per cargo unit</li> <li>➤ Proposed total wharfage payments to Newcastle Port Corporation per annum from trade forecasts</li> <li>➤ Estimates of all other fees paid to Newcastle Port Corporation per vessel call (navigation etc)</li> <li>➤ Expected financial contributions to proponent delivery</li> </ul>

Proponents are to provide a risk allocation matrix (Returnable Schedule 3) for Newcastle Port Corporation to examine. For all Evaluation Criteria, Newcastle Port Corporation may assess the risk associated with the delivery of the outcomes and commitments described in the Submission and take this risk allocation into consideration when assessing Submissions against the Evaluation Criteria.

## **5.5 Financial Assessment**

Proponents will be further assessed for financial comparison purposes, including NPV calculation and sensitivity analysis, against:

- a) other proponents and an uninformed NPC development option (i.e. prepared prior to receipt of Submissions); and
- b) a Newcastle Port Corporation Site developed option under the same timing and installations/inclusions as proposed by the Proponent for the period of the lease.

Under (a), any Proponent NPV below a “Low NPV” determined in the uninformed NPC development option may result in that Proponent being recommended for elimination from the process.

## **5.6 Further Information, Clarifications and Discussions**

Newcastle Port Corporation reserves the right to seek further information and clarifications from Proponents about their Submission(s) and, specifically, to discuss with Proponents alterations of their preferred tenure arrangements to enable the coordination of the redevelopment of the Site to meet the Newcastle Port Corporation's objectives. In particular, Newcastle Port Corporation may negotiate with a Proponent to modify the preferred master plan and/or preferred tenure arrangements. The Proponent may agree to this, withdraw or amend their Submission to reflect the modification.

All decisions arising out of the Submissions will be at Newcastle Port Corporation's absolute discretion.

## **6. POST ITSDP SUBMISSION PROCESS**

### **6.1 After Submission**

Newcastle Port Corporation will adopt the evaluation and assessment process outlined earlier in the evaluation process.

During the evaluation and assessment process, Newcastle Port Corporation will determine which Submissions, if any, are short-listed and invited to participate further in the ITSDP process (post submission).

Newcastle Port Corporation will notify Proponents of selection to participate further in the ITSDP process (post submission) by giving a notice that it has been so selected.

### **6.2 Interactive Process**

Notwithstanding any of the other requirements of this invitation, Newcastle Port Corporation at its absolute discretion, at any time during the period commencing on the Submission Lodgement Date and ending on the date on which the Short-listed Proponents are announced, may:

- (a) request any Proponent to submit additional information or provide more details and information about:
  - (i) matters relating to the Evaluation Criteria; and
  - (ii) its ability to complete and fulfil obligations under its Submission;
- (b) request any Proponent to make one or more formal presentations for the purpose of explaining details in its Submission and to allow further consideration of its Submission by Newcastle Port Corporation;
- (c) request clarification of any Submission, or request further information from any Proponent;
- (d) request any Proponent to review, improve and/or enhance parts of its Submission; and
- (e) the Proponent must respond promptly in writing to all such requests.

### **6.3 Meetings**

#### **6.3.1 Rights of Newcastle Port Corporation**

Newcastle Port Corporation may convene meetings with all or individual Proponents after the Submissions Lodgement Date.

#### **6.3.2 Meetings to Seek Clarification**

A Proponent may request that Newcastle Port Corporation convene a meeting in order for the Proponent to seek clarification of any aspect of this ITSDP. When making such a request, the Proponent must forward to the Newcastle Port Corporation contact officer in writing those questions or issues requiring clarification. Newcastle Port Corporation may consider any such request and may in its absolute discretion decide whether to convene a meeting.

#### **6.3.3 Conditions for Holding Meetings**

If Newcastle Port Corporation convenes meetings with all or individual Proponents, the following conditions should apply to the meetings:

- (i) the Probity Advisor (or nominee) should attend;
- (ii) the Process Manager is to be given at least five (5) Business Days written notice of the matters which a Proponent wishes to discuss at the meeting;

- (iii) Newcastle Port Corporation is under no obligation to discuss any matter with a Proponent at a meeting;
- (iv) Newcastle Port Corporation may, in its absolute discretion, inform all other Proponents of any matter discussed at any meeting including the substance of that discussion;
- (v) Newcastle Port Corporation will comply with any legal requirements regarding its use of any information which attracts intellectual property rights protected at law (e.g. patents, registered designs or copyright) to the extent it is identified as such by the Proponent in relation to any other matter discussed at any such meeting;
- (vi) Newcastle Port Corporation will take all reasonable steps to ensure that any confidential information in the nature of know how or commercial-in-confidence information which is so identified by any Proponent at any meeting is not used or disclosed by it or any of its officers, employees, agents or consultants except in accordance with the terms of this invitation;
- (vii) nothing that occurs at a meeting may be relied upon by any Proponent unless subsequently confirmed in writing by Newcastle Port Corporation; and
- (viii) a meeting protocol document is required to be signed by attendees in advance of the meeting.

#### **6.3.4 Presentations**

Newcastle Port Corporation may require Proponents (but Proponents have no entitlements to insist upon the right) to make presentations to Newcastle Port Corporation and the Evaluation Committee.

### **6.4 Unsuccessful Submissions**

#### **6.4.1 Notification**

Newcastle Port Corporation may provide feedback to Proponents of the reasons why they were not selected to participate further in the ITSDP Process, upon written request for such feedback.

Newcastle Port Corporation is not obliged to tell an unsuccessful proponent the reasons why it was not selected to participate further in the ITSDP Process.

#### **6.4.2 No Redress Against Newcastle Port Corporation**

An unsuccessful proponent is not entitled to any redress against Newcastle Port Corporation and the Newcastle Port Corporation decision in relation to this ITSDP will be final and (subject to legal rights which cannot be excluded, released or modified) no unsuccessful proponent has any redress or claim against Newcastle Port Corporation as a result of Newcastle Port Corporation exercising any or all of their respective rights or observing any or all of their respective obligations in relation to this ITSDP.

## RETURNABLE SCHEDULE 1

### CONCEPT MASTER PLAN AND STAGING PLAN

The Proponent must submit a concept master plan that provides a layout of the proposed land use for the Site and a staging plan that indicates the anticipated delivery of the proposed development and operation of Cargo Handling Terminals.

The concept master plan must include but is not limited to the following:

- (a) the drawings need to clearly show the proposed layout and total area of land required;
- (b) the drawings should be sufficient in number and annotated to clearly define the scope of the proposed works at each stage of development;
- (c) the stages must show:
  - i. the initial phase;
  - ii. the growth phase; and
  - iii. the efficiency phase;and may show intermediate stages of development. Note that the phase years nominated may be at the Proponent's discretion;
- (d) the drawings are to be to scale and on A3 sized paper and in colour;
- (e) layout of key infrastructure components such as the proposed location of road and rail access to the Site;
- (f) proposed land use showing the proposed location and area of land required for the type of operations envisaged;
- (g) loading and unloading facilities;
- (h) storage facilities and hardstand areas;
- (i) wharfs and berths configuration and staging of wharf development; and
- (j) customs facilities and AQIS if required.

The Staging Plan must include but is not limited to the following:

- (a) staging of wharf work and relationship to trade;
- (b) implementation timetable for the proposed Cargo Handling Terminals;
- (c) Gantt chart containing relevant key dates and milestones;
- (d) details of commencement and completion dates for each stage proposed;
- (e) must include the Design, Construction, Commissioning and Operational stages; and
- (f) details of any interrelationships of timing dependencies between stages.

## RETURNABLE SCHEDULE 2

### DEVELOPMENT DETAILS

The Proponent must describe the facilities required to operate the proposed Cargo Handling Terminals. The Submission must address the design, construction and capital equipment and expenditure required to deliver the Cargo Handling Terminals.

#### **Facilities**

The Submission should fully describe the proposed physical works and demonstrate how their design and construction will meet Newcastle Port Corporation's objectives as set out in clause 1.4 of the ITSDP documents. The Proponent will also provide drawings that clearly show the proposed layout and total area of land required.

The Submission should include details of the anticipated ship sizes for which the facility will be developed, and demonstrate consideration of port capacity and navigational issues at specified stages.

The stages must show:

- i. the initial phase;
- ii. the growth phase; and
- iii. the efficiency phase;

and may show intermediate stages of development. Note that the phase years are to be nominated at the Proponent's discretion.

#### **Design**

The Submission should outline the design activities and the methodologies the Proponent proposes to undertake or follow to deliver Cargo Handling Terminals. The design information to be provided should include but not limited to the following information:

- design development procedures, design program and milestones;
- management's approach to design delivery;
- proposed or completed engineering studies and materials;
- outline proposed staging;
- approach to providing infrastructure services to the Site; and
- management of Local, State and Federal Agencies.

#### **Construction**

The Submission should include the following construction information:

- construction methodology;
- sequencing of works (including interface management and staging diagrams for each significant construction stage);
- anticipated land required for construction purposes (this should be referenced on the above plans);
- provide anticipated capital and recurrent expenditure for each significant construction stage;

- Site access requirements; and
- consideration given to Occupational Health and Safety (OH&S).

### **Capital Equipment**

The Submission should set out the initial and anticipated equipment configuration, including specific details for:

- number, size and types of cranes (including reach and air-space required);
- number, size and types of yard equipment;
- number, size and types of ancillary equipment;
- number of reefer points; and
- anticipated capital expenditure.

### **Expansion Plans**

The Submission should provide the following in relation to expansion plans:

- comprehensive description of each stage, if applicable, including the option area required, equipment, configuration, layout, trade volumes and trigger points for initiating each stage;
- define and demonstrate the maximum container throughput capacity of the Terminal; and
- estimated cost and required throughput for each stage.

## RETURNABLE SCHEDULE 3

### BUSINESS PLAN

Proponents are required to submit a Business Plan that provides information under the headings below. Proponents must also provide a current balance sheet, together with three (3) years profit and loss. This also applies to co-venture partners with an interest greater than 20%.

#### **Vision**

- Statement of vision for the Project; and
- Milestones and comprehensive timetable for each element of the Business Plan outlined below.

#### **Market Analysis**

- Recent and forecast changes in the market;
- Market sectors;
- Target market including source/destination and volumes;
- Customer characteristics; and
- Customer needs analysis including factors influencing customer their decisions.

#### **Competitive Analysis**

- Industry overview;
- Nature of competition;
- Changes in the industry;
- Primary competitors;
- Competitive products/services;
- Opportunities; and
- Threats and risks.

#### **Strategy**

- Strategy overview;
- Implementing the strategy including the approach to securing shipping lines (e.g. incentives);
- Key competitive capabilities and how this influences positioning of the services;
- Key competitive weaknesses and how the Proponent intends to manage these; and
- The role of the transport strategy in meeting the needs of the target market (e.g. interface with the customer logistics chain, container movements between principal markets, use of dedicated road/rail shuttles).
- Compatibility with adjacent operation

#### **Operations**

- Proposed organisational structure;



- Employment potential and recruitment plans;
- Environmental record and management plans;
- Emergency management plans
- Training and recruitment plans
- Occupational Health and Safety regime and anticipated accreditation that will be sought; and
- Operational strategy and expenditure.

The operations strategy should include but not be limited to the following aspects of operation:

- ship to shore transfer and rates;
- ship to rail transfer;
- ship to truck transfer;
- gatehouse management and gate processing;
- yard management including systems to use;
- yard storage, including layout, use of technology, stack height and dwell time;
- storage to inland and inland transfer;
- hours of operation including noise and light pollution management;
- e-business;
- management of empty containers;
- truck, train and ship management;
- reefer handling and storage;
- product and service delivery;
- customer service and support; and
- operational parameters for each year of operation.

#### **Miscellaneous**

- Terms sheet
- Risk allocation matrix
- Insurance arrangements

## RETURNABLE SCHEDULE 4

### INVESTMENT DETAILS

#### **Financial strength and deliverability**

Each Proponent must demonstrate how it will have access to the necessary finance required so that the proposed funding is deliverable with a high degree of certainty. Newcastle Port Corporation also needs to ensure that the proposed principal financiers are aware of the key terms on which the Submission has been prepared and that it will accept the requirements of this ITSDP.

Proponents must provide details of the proposed funding structure, including the sources involved, the quantum of funds to be provided and the key terms upon which these funds are being offered. This information requirement applies to the providers of all classes of finance, including equity, subordinated debt, mezzanine debt, senior debt, equipment finance, etc.

The information submitted must include:

- letters from principal banks and/or financial institutions confirming their financial support to provide debt facilities to the Project Company on the basis of the proforma term sheets submitted with each Submission;
- confirmation that each debt and equity provider has reviewed and approved the financial model and its outputs and that the financial model accurately reflects their principal terms and conditions; and
- the scope and timetable of financier due diligence up to financial close. This information should be provided by principal debt financier and equity provider. In addition, the Proponent should set out the extent of each financier's due diligence that has been performed prior to their Submission.

Proponents must provide explicit support from their financiers for at least the level of funding projected in the Submission and any alternative Submission and should describe as clearly as possible the flexibility of their funding arrangements in respect of funding additional expenditure, howsoever incurred. Any qualifications on the availability of finance must be clearly stated. Newcastle Port Corporation requires that any conditions and precedents are closely restricted and that there are no restrictions on the availability of finance, which are not market standard.

In addition to providing the information above, each Proponent should summarise the funding structure over the life of the Project in accordance with the following table. Each class of debt and equity finance must be recorded as a separate section within the table.

The Proponents must also provide information with respect to the financial strength and on-going commitment of each finance provider, including equity, subordinated debt, mezzanine debt as well as senior debt. The information should include (where relevant) the issuer credit rating, financial statements for the parent company (past 3 years) and a description of the level and type of commitment during the Construction and Operation Phases.

**Newcastle Port Corporation Contribution**

Newcastle Port Corporation sees the Site remediation and construction of Mayfield No.4 Berth and items identified in Table 1 as significant contributions by Newcastle Port Corporation and do not envisage further funding of infrastructure.

**Milestones**

Newcastle Port Corporation intends to enter a Project Delivery Agreement (PDA) for Site improvements and capital expenditure by the Developer/Operator.

This PDA should identify when investment is to be made and may have clauses on failure to perform by the operator which may then “trigger” “step-in-rights”.

Proponents are to indicate the approach regarding milestones which will be adopted for contract administration. Milestones may include capital invested or performance in TEU’s, tonnes of cargo etc.

Proponents are to nominate at which stage in the operation wharf capacity needs to be expanded (TEU’s or million tonnes) and define the length of wharf expansion during the life of the contract.

**Table 4.1 - Capital Investment (dollars 2009)**

Description	Lease Period					
	Initial Phase		Growth Phase		Efficiency Phase	
Year						
Services Infrastructure						
Hardstand Areas						
New Wharf						
Fixed Plant						
Mobile Plant						
Buildings						
Totals						

**RETURNABLE SCHEDULE 5**

**PROPONENT OFFER TO NEWCASTLE PORT CORPORATION**

It is intended that the Developer/Operator will make a reasonable rate of return on their investment.

A lease for ground rent should be the basic agreement. The Proponent is to nominate the area used for operational and non-operational purposes, and propose a rent for each area in each phase. The rental adjustment in each phase will be in accordance with the lease agreement and all dollars are to be real dollars at December 2009 base.

The throughput rent should be based on the number of TEU's and equivalent Revenue Tonnes of cargo. Proponents should specify the proposed throughput charge in real dollars at a base date of December 2009.

All charges/leases etc. should be subject to annual CPI adjustments and periodic market review adjustments. The Proponent is required to confirm in this returnable schedule that their Submission is valid for 12 months.

The expected average Gross Registered Tonnage ("GRT") per vessel should be specified, for the purposes of calculating Newcastle Port Corporation's pilotage and navigation revenues.

**1. Navigation and Port Charges**

Navigation and Port Charges applicable are detailed on the Newcastle Port Corporation website and are adjusted periodically as set out in the website and are inclusive of GST. Proponents are to make their own allowances for these changes.

**2. Ground lease:**

**Table 5.1 – Lease Charges**

Ground Rent \$/ m <sup>2</sup>	Lease Period					
	Initial Phase		Growth Phase		Efficiency Phase	
Year						
Fully utilized area m <sup>2</sup>						
Partially utilized area m <sup>2</sup>						
Unused land m <sup>2</sup>						

Note in respect of the above table:

- A\$ at a 2009 December base.
- Rent in each phase to be adjusted in accordance with CPI movements and periodic market reviews.
- GST status to be defined.

**3. Throughput Rent**

Proponents are advised that a throughput rent will apply irrespective of which wharf is used for the cargo movement. Forty foot containers will be treated as two (2) TEU's.

**Table 5.2 – Throughput Rent**

Description	LEASE PERIOD					
	Initial Phase		Growth Phase		Efficiency Phase	
Year						
<u>Containerised Cargo/TEU</u> - Overseas import - Overseas export - Local - Transshipment - Empty container						
<u>Non-Containerised Cargo/Tonne</u> - Dry bulk cargo - Overseas general cargo and motor vehicle imports - Overseas general cargo and motor vehicle exports - Local general cargo and motor vehicles - Timber - Paper and timber products - Aluminium and metal products - Bulk liquids - Transshipments						

Note in respect of the above table:

- GST status to be defined.
- Refer also to Clause 4.1.4.
- Throughput rent to be adjusted annually within each phase by CPI or other methods as negotiated.

**Table 5.3 – Estimates of Vessels and Cargo Volume**

Note Proponents are invited to nominate the period of the lease and phases referred.

Description	Lease Period					
	Initial Phase		Growth Phase		Efficiency Phase	
Year						
No. of Ships GRT per Vessel						
TEU's - Overseas import - Overseas export - Local - Transhipment - Empty container						
<u>Non-Containerised Cargo/Tonne</u> - Dry bulk cargo - Overseas general cargo and motor vehicle imports - Overseas general cargo and motor vehicle exports - Local general cargo and motor vehicles - Timber - Paper and timber products - Aluminium and metal products - Bulk liquids - Transhipments						

Note in respect of the above table:

- Proponents to note Clause 4.1.4 regarding throughput incentives and nominate proposed arrangements.

**Table 5.4 – Projected Returns to Newcastle Port Corporation From Rent and Throughput**

Description	Lease Period					
	Initial Phase		Growth Phase		Efficiency Phase	
Year						
Total ground rent						
Total container income						
Total non-container income						
Total						

Note in respect of the above table:

- All \$ sums are in A\$ based on 2009 December values.
- Adjustments through the term of the contract are to be proposed here.

## RETURNABLE SCHEDULE 6

### DEPARTURES

#### Information Required

Where Submissions do not conform to the requirements of this ITSDP or any matter deemed to be incorporated in the Submission, the aspects of the departure are to be noted in this schedule.

For each departure, Proponents are to identify their preferred position and explain how their Submission differs from Newcastle Port Corporation's preferred position. Explanations of departures are to provide details of all consequential changes to Newcastle Port Corporation's proposed commercial and contractual structure and suggested drafting amendments, in full, to any of the agreements, lease or deeds.

Any departures are to be detailed for the following:

- risk allocation;
- planning Minister's Approval;
- agreements:
  - (a) Project Delivery Agreement/"draft terms sheet";
  - (b) Agreement to Lease; or
  - (c) Tripartite Deed (if applicable); or
- global trade impacts on the business plan, development rate and returns to Newcastle Port Corporation.

Where possible, Proponents are to include in their submission a financial cost for full compliance in order that NPC may consider the departure and make a risk adjusted value judgement in relation to it.



RETURNABLE SCHEDULE 7

STATUTORY DECLARATION

I, \_\_\_\_\_ [insert name] of \_\_\_\_\_ [insert address]

do solemnly and sincerely declare and affirm in respect of the Submission for the design, construction, operation, maintenance, financing and handover of the Newcastle Cargo Handling Terminals ("Submission") or any contract arising from the Submission, that:

- 1. I hold the position of.....and am duly authorised by .....("Proponent") to make this Declaration on its behalf.
2. \*To the best of my knowledge, neither the Proponent nor any of its employees, contractors, consultants or agents have entered into a contract, arrangement or understanding to pay moneys to a trade association, apart from the normal amount (i.e. annual subscription, turnover or contract fee) imposed by that trade association. \*The Proponent has agreed to pay a special fee to a trade association of \$ \_\_\_\_\_ if it is successful in the Submission.
3. To the best of my knowledge, neither the Proponent nor any of its employees, contractors, consultants or agents had knowledge of the costing of another Proponent prior to submitting the Submission.
4. To the best of my knowledge, neither the Proponent nor any of its employees, contractors, consultants or agents has disclosed the Proponent's Submission or costing to a rival Proponent.
5. The Proponent submitted the Submission in good faith and has not deliberately set its costing above the level of rival Proponent.
6. As at the date of this Declaration, the Proponent intends to do the work the subject of the Submission.
7. To the best of my knowledge, neither the Proponent nor any of its employees, contractors, consultants or agents has entered into a contract, arrangement or understanding having the result that the Proponent or another person may pay money to an unsuccessful Proponent if the Proponent is successful in the Submission (other than for work or services done or materials supplied under a bona fide contract).

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

Subscribed and declared at.....[city or town] on.....[date] before me:

Justice of the Peace/Solicitor Declarant
\* Delete whichever is inapplicable

## RETURNABLE SCHEDULE 8

### SUBMISSION FORM

#### **Design, construct, operate, maintain, finance and handover Newcastle Cargo Handling Terminals**

To: Newcastle Port Corporation

By: \_\_\_\_\_

(Name of Proponent including, if a corporation, its ACN) (Registered address of Proponent)

1. We \_\_\_\_\_ (In block letters)

propose to finance, design, construct, operate, maintain and repair the Cargo Handling Terminals in accordance with the ITSDP Documents and our Submission and will be bound by the contents of our Submission, subject only to any modifications agreed by Newcastle Port Corporation.

2. We warrant that in preparing our Submission we did not communicate (verbally or otherwise) or have any arrangement or arrive at any understanding with any of the other Proponents or with any employee of an association of which we or any of the other Proponents are a member concerning the Project and without limitation further warrant that:

a) we did not engage in:

- any discussion or correspondence with such persons concerning our Submission;
- any collusive Tendering with any of the other Proponents; or
- any conduct or enter into any contract or have any arrangement or arrive at any understanding with any of the other Proponents;

which in any way was or could have the effect of reducing the competitiveness of the ITSDP process;

b) we are not aware of any other Proponent's Submission; and

c) except as disclosed in a statutory Declaration lodged with the Submission, we have not entered into a contract, arrangement or understanding with anyone in connection with this Submission to the effect that a Developer/Operator may pay money to or confer a benefit upon an unsuccessful Proponent or a trade or industry association (above the published standard fee).

3. We:

a) warrant that we have not relied upon the ITSDP Documents as being accurate, adequate, and suitable or complete for the purposes of enabling us to complete the design, construction and maintenance obligations under the commercial arrangements;

b) warrant that we have made our own independent evaluation of the ITSDP Documents' suitability for the purposes of enabling the Developer/Operator to discharge its obligations under the commercial arrangements, and we have based our Submission upon our own independent evaluation; and

c) acknowledge that no representation or warranty (express or implied) has been or is made by Newcastle Port Corporation, DOP, RTA or any other State agency to us that

specifications or drawings included in the ITSDP Documents represent a complete design of the works or that it considers suitable for construction and maintenance purposes.

4. We:

a) acknowledge that the ITSDP Documents were provided to us by Newcastle Port Corporation for our information only;

b) warrant that we have not in any way relied upon:

- the ITSDP Documents;
- the accuracy, adequacy, suitability or completeness of the ITSDP Documents; or
- any summary which appears in an ITSDP Documents,
- for the purposes of preparing our Submission; and

c) acknowledge and agree that:

- Newcastle Port Corporation (or anyone on its behalf) does not warrant, guarantee, assume any responsibility or duty of care for, or make any representation about the accuracy, adequacy, suitability or completeness of the ITSDP Documents, and nor has it (nor anyone on its behalf) done any of these things;
- the ITSDP Documents will not form part of any contract with Newcastle Port Corporation with respect to the Project; and
- insofar as is permitted by law, Newcastle Port Corporation will not be liable upon any claim by us arising out of or in any way in connection with the ITSDP Documents.

5. We:

a) warrant that our Submission is a conforming submission in accordance with requirements of the ITSDP;

b) warrant that we have prepared our Submission and will enter into any contract with Newcastle Port Corporation with respect to the Project based on our own investigations, interpretations, deductions, information and determinations;

c) acknowledge that Newcastle Port Corporation will be entering into any contract with us with respect to the Project in reliance upon the acknowledgments and warranties made by us in this Submission Form; and

d) acknowledge that the warranties given by us in this Submission Form are contractually binding.

6. We acknowledge receipt of the following Addenda, the terms of which are incorporated in the Submission:

Number \_\_\_\_\_ Dated \_\_\_\_\_      Number \_\_\_\_\_ Dated \_\_\_\_\_  
Number \_\_\_\_\_ Dated \_\_\_\_\_      Number \_\_\_\_\_ Dated \_\_\_\_\_  
Number \_\_\_\_\_ Dated \_\_\_\_\_      Number \_\_\_\_\_ Dated \_\_\_\_\_

Address or registered office of Proponent

.....  
Address for service of notices (Not a P.O. BOX)

.....  
Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Proponent's bank: \_\_\_\_\_  
(Name) \_\_\_\_\_ (Branch) \_\_\_\_\_

If a firm, the names and addresses of the individual members are:  
.....

If a company, the related bodies corporate are  
.....

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010

**Executed as a deed poll**

**Signed sealed and delivered by**

in the presence of:

\_\_\_\_\_  
Signature of Secretary/Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Secretary/Director in full

\_\_\_\_\_  
Name of Director in full

**[INSERT ADDITIONAL EXECUTION CLAUSES AS REQUIRED]**

## ANNEXURE A

### A.1 PLANNING INFORMATION

#### A.1.1 Historical Summary

The Site was originally low lying and largely tidal estuarine marshlands. Site reclamation was undertaken approximately between 1866 and 1940.

From approximately 1860 to 1915 a copper smelter operated on part of the Site. BHP operated a major steelworks from 1915 to 1999.

Steelworks operations included:

- (a) sinter making as feed for blast furnaces;
- (b) raw materials preparation (ore and coal blenders);
- (c) coke making and by-products operations;
- (d) iron making (blast furnaces);
- (e) wharf and railway operations;
- (f) raw materials stockpiling and handling;
- (g) steelmaking and bof steelmaking;
- (h) continuous casting;
- (i) foundries and steel rolling mills;
- (j) service shops (trade workshops); and
- (k) roll preparation workshop.

BHP applied for and obtained development consent from the NSW Department of Planning (NSW DoP) for demolition of the steel plant, remediation works, and port related development on the Site in 2001.

BHP carried out demolition of above ground structures on the Site from closure of the integrated iron and steel making part of the steelworks until mid 2004. In July 2002, ownership of the Site was transferred to the New South Wales (NSW) State Government – State Property Authority. At this time an Environmental Deed<sup>17</sup> was entered into between BHP Billiton and the Crown (State) which imposes certain obligations on the State and future owners and tenants in relation to contamination.

#### A.1.2 Zoning

The land is zoned SP1 (Special Activities) under the provisions of the State Environmental Planning Policy (Major Projects) 2005.. This zoning provides certain rights and restrictions.

#### A.1.3 Current Planning Approvals

In 2000 an Environmental Impact Statement<sup>18</sup> was submitted in application to the NSW Department of Planning (then DIPNR). In 2001, DIPNR granted a Development Consent<sup>19</sup> for:

- Demolition of the former steelworks plant within the Closure Area;

- (Part) remediation, being land forming and capping but not including specific details for remediation of groundwater; and
- Development of a Multi Purpose Shipping Terminal.

One of the conditions of the current development consent for demolition and remediation activities requires that an environmental management plan be prepared to the satisfaction of NSW DoP. Hunter Development Corporation (formerly known as the Regional Land Management Corporation RLMC) has prepared an environmental management plan referred to as the "Closure Area Site Preparation EMP"<sup>20</sup>, which has been approved by NSW DoP. Proponents will be required to prepare and gain approval for project specific environmental management issues.

#### **A.1.4 Extension of Shipping Channel**

Newcastle Port Corporation (Newcastle Port Corporation), acting for NSW Maritime, made application to NSW DoP in November 2003 for the proposed extension of shipping channels in the Port of Newcastle, in the south arm of the Hunter River from the existing extent of the shipping channel, to the Tourle Street Bridge. A supplementary submission was made in November 2004.

There is no current intention for the State to undertake dredging for the extension of the shipping channel or for capital dredging of berthing boxes adjacent the existing shipping channel.

Other government and non-government parties are developing projects which involve partial use of the consent for extension of the shipping channel, in particular for channel extension and berths associated with expansion of coal loading from Kooragang Island.

#### **A.1.5 Remediation**

On 14 June 2001, Under Section 21 of the *Contaminated Land Management Act 1997* (CLM Act), the Environment Protection Authority (EPA) declared (Declaration Number 21022) the Closure Area to be a remediation site, because the EPA considered the Site to be contaminated in such a way as to present a significant risk of harm to human health and the environment.

Remediation works were required to manage the risks associated with identified contaminants of concern.

The State has a Voluntary Remediation Agreement<sup>21</sup> with the Department of Environment and Climate Change (DECC formerly the Department of Environment and Conservation).

## **A.2 CURRENT ENCUMBERANCES AND TENANCIES**

The current uses, encumbrances and tenancies are:

### **A.2.1 Koppers**

Koppers Carbon Material and Chemicals Pty. Ltd. (Koppers) utilise Old BHP No.6 Berth for shipping and for a pipeline with associated infrastructure across the land, for handling coal tar and pitch products. Koppers' terms of lease requires 2 years notice for relocation off the Site.

If a ITSDP impacts upon Koppers' existing use entitlements, Proponents will need to consider the Koppers Agreement and come to an arrangement with Koppers at no cost to the State. Newcastle Port Corporation will need to be a party to any discussions between the Proponent and Koppers in connection with any arrangement.

### **A.2.2 BHP Billiton Sediment Work**

BHP Billiton currently occupy a large portion of the Site (over 30 hectares) for the purpose of land based activities associated with the remediation of contaminated sediment in the south arm of the Hunter River opposite the Site. This occupation is facilitated by a Sediment Remediation Licence Agreement between State Property Authority, BHP Billiton, Newcastle Port Corporation and Hunter Development Corporation<sup>22</sup>.

It is currently expected that BHP Billiton may continue to occupy that part of the Site until approximately 1 August 2012.

It is anticipated BHP Billiton's activities may be limited to the Licensed area, apart from haulage trucks carrying treated sediment to Kooragang Island Emplacement Cell, exiting through the Site via David Baker Drive onto Selwyn St. This may potentially be a 24 hour per day operation through until early 2012.

BHP Billiton should return the surface to original remediated condition upon exit from the Site.

### **A.2.3 Hunter Wet Land**

Wet land adjacent to the Site (generally being land below the high water mark) within the defined boundaries of the South Arm of the Hunter River) is held by NSW Maritime. Any lease or licence for use of wet land requires the consent of NSW Maritime and for them to grant a lease (or licence).

The landowner currently holds the following licences over wet land in the South Arm of the Hunter River:

- (a) Koppers Wharf Area (notionally Old BHP No.6 Berth);
- (b) Old BHP Berth Areas 1 – 5 (between Koppers Berth and the eastern end of the Site) ;  
and
- (c) Oil Barrage.

#### **A.2.4 Bulk Liquids Precinct**

The lands bounding the Site immediately to the west have been notionally identified as the Bulk Liquids Precinct by Newcastle Port Corporation. It is approximately 15 hectares in size and primarily targeting fuels. The existing Conditions of Development Consent<sup>23</sup> preclude fuels. Newcastle Port Corporation is shortly submitting a new Environmental Assessment which incorporates this requirement and Newcastle Port Corporation anticipate the revised conditions from the Department of Planning should allow bulk fuels.

The riverfront adjacent to this precinct is anticipated to have a bulk fuels wharf and berth structure developed, to be known as Mayfield No.7 Berth.

Newcastle Port Corporation have made provisions through and underneath the Mayfield No.4 Berth to accommodate bulk fuel pipelines and shipping to service the Bulk Liquids Precinct. This may eventuate as an interim arrangement prior to the development of Mayfield No.7 Berth. It is intended that any interim arrangement will utilise the Koppers structures to support the pipeline(s) across the Site

#### **A.2.5 Newcastle Port Corporation Operations Precinct**

In the medium term Newcastle Port Corporation intend to relocate its Operations Group to operate out of Mayfield. This precinct has been reserved for this purpose. The exact location of the precinct is flexible should a proponent have reasonable need for this land.

The precinct may include small jetty's for several small vessels, a larger wharf for the ports dredge vessel and heliport for pilot transfer.

#### **A.2.6 Intertrade Industrial Park**

In January 2007 the Regional Land Management Corporation commenced a request for development proposals process for all or part of the 150ha former BHP steelworks site. The site was renamed Intertrade Industrial Park and included 90ha of Portside Lands and approximately 60ha of adjacent land.

In December 2008, after a three stage process Buldev Intertrade Consortium Pty Ltd was shortlisted as the preferred proponent for the 60ha component. The Hunter Development Corporation (who took on management of the Intertrade process from 1 February 2008) is now in the process of finalising the development agreement with Buldev and anticipates execution to occur in the last quarter of 2009.

The Buldev development will provide opportunities for a range of general industrial and commercial uses and well as port related support industries. The project includes an intermodal facility designed in a manner which is compatible with the current and future plans for the Portside Lands.

The Buldev development will also deliver trunk infrastructure to which the portside lands may connect to or augment. This infrastructure will be delivered in stages triggered by the commencement of the development agreement. Indicative times for the delivery of the following infrastructure are as follows:

- Stage 1 – 27 months – some trunk roads, water, telecommunications, sewer and gas and an electrical substation capable of upgrade for portside users;



- Stage 2 – 36 months – additional trunk roads (including Steelworks Road) , water, telecommunications, sewer and gas; and
- Stages 3-5 – no relevant infrastructure

The Owner Infrastructure Requirements is a draft document which forms part of Buildev's development agreement. It sets out further details for the provision of the abovementioned infrastructure.

The Proponent should recognise that the delivery of services through the Buildev development area is not certain and accordingly should consider the option of sourcing infrastructure from alternate locations (ie direct from Industrial Drive). Section A.4 provides more detail on the provision of supporting infrastructure

### **A.2.7 Port Security**

The Mayfield Site is located within the Port of Newcastle Security Regulated Port Boundary and is subject to the *Maritime Transport and Offshore Facilities Security Act 2003*.

There are responsibilities under the Maritime Transport and Offshore Facilities Security Act for maritime industry participants to fulfil including the development of a maritime security plan and risk assessment for their respective operations.

More information on the security requirements of maritime industry participants can be found on the Department of Infrastructure, Transport, Regional Development and Local Government website:

[www.infrastructure.gov.au](http://www.infrastructure.gov.au)

or contact Newcastle Port Corporation's Maritime Security Officer on (02) 4985 8225

### **A.2.8 Australian Quarantine and Inspection Services (AQIS) Mosquito Monitoring Zone**

Newcastle Port is an international port under both the Customs and Quarantine Acts.

AQIS is responsible for monitoring mosquito vectors at international ports, in order to detect and respond to any detection of invasive mosquito species.

Provisions should be included in lease documents to require land users to facilitate access by AQIS personnel and their agents to undertake monitoring, and to access land for response procedures in the event a species of concern is detected.

Leases may also contain an obligation for land users within 400m of a port capable of use by an international trading vessel to avoid creation of mosquito breeding habitat.

## A.3 REMEDIATION

### A.3.1 Remediation Overview

The remediation adopted for the Mayfield Site is based principally on containment (through capping and groundwater controls) rather than treatment.

Key elements of the remediation are:

- sealing the Site surface area with a low permeability capping layer. To reduce the infiltration of surface water, and provides a physical barrier between contaminated soils and humans on the Site;
- installation of a subterranean barrier wall to hydraulically up groundwater gradient of the area of most significant contamination to minimise groundwater recharge by reducing flow through the area of most significant contamination;
- improved drainage infrastructure, which should contribute to both the reduction of surface water infiltration and the management of possible contaminated surface water run-off from the Site. Reduction of rainwater infiltration is a key aspect of the remediation strategy, as it reduces the offsite flow of contaminated groundwater;
- contouring of the entire Site to complement the improved drainage infrastructure and further reduce surface water and infiltration; and
- management of contaminated site materials encountered during remediation or site works in accordance with a Materials Management Plan.

The Site has been declared a remediation site under section 21 of the *Contaminated Land Management Act 1997* and is subject to a Voluntary Remediation Agreement (VRA)<sup>24</sup> dated 14 September 2005.

There is also a BHP Billiton Environmental Deed<sup>25</sup> which imposes certain obligations on the State and future owners and tenants in relation to contamination.

The key remediation works, shown in the Land Remediation Design Plans<sup>26</sup>, include:

- **Area 1:** Surface Contouring, Surface Drainage Works, Surface Capping and Installation of vertical Barrier Wall surrounding the entire land based perimeter of Area 1; and
- **Area 2:** Progressive Surface Contouring, removal of designated hot spots, Surface Drainage Works, Staged Surface Capping pending additional investigations. Note that Area 2 is divided into areas A,B,C,D,E.

The Site Plan - Remediation Works<sup>27</sup> shows the approximate division of the Closure Area between the areas noted above. Only four remediation areas, Area 1, 2A, 2B (part) and 2D (part) are relevant to this Site.

The capping and containment work has been carried out in two stages:

- **Stage 1** included the installation of the barrier wall around Area 1, and, regrading and capping of Area 1. Also the construction of major drains (known as Eastern and Western Drains) on the Closure Area and excavation within certain hotspots in Area 2; and

- **Stage 2** will comprise the regrading and capping of the remainder of the Site (Area 2A, and parts of Area 2B and 2D) and removal of any necessary hotspots to enable development.

Stage 1 works have not been fully completed to the requirements of the VRA by the Hunter Development Corporation to allow more cost effective development of the Site in terms of hardstand construction. Stage 1 design drawings are contained within Contaminated Site Management Plan Appendix C<sup>28</sup>.

As part of Stage 1, as set out in the Site Plan - Remediation Works<sup>29</sup>, the land on the eastern side of the originally proposed OneSteel rail alignment (the rail line will now be relocated along the Site western boundary – refer to Figure 1) has 400mm of load bearing fill to a level 400mm below the designed finished surface level. It has been coated with an interim two coat bitumen spray seal to meet permeability requirements under the VRA. Any Proponent wishing to develop this land will be required to complete the filling to the designed finished surface level to fulfil the requirements of the VRA. The existing fill in this region is intended to be suitable as a substructure for container handling pavement.

The land under Stage 1 to the western side of the originally proposed OneSteel rail alignment has been completed with VENM (Virgin Excavated Natural Material) material to the designed finished surface level. This VENM material will not be suitable for a significant load bearing surface. Part or all of the VENM may need to be removed, under the provisions of the Contaminated Site Management Plan<sup>30</sup>, if a load bearing surface is required.

It is anticipated Stage 2 works will be commenced by Hunter Development Corporation in early 2010. Newcastle Port Corporation plan to issue an addenda in December 2009 providing details of the Stage 2 remediation design strategy, including development ready levels relative to the design finished surface levels. It is anticipated that most areas within Area 2A and Area 2B (the area relevant to the Site) will be provided 300mm below design finished surface levels and that Area 2D will be provided at design finished surface levels. It is anticipated both areas will have 500mm of VENM installed below these development ready levels.

Proponents will be required to covenant in respect of the maintenance of remediation works, the prevention of further contamination and not exacerbating risks from contamination and other matters. The detail for these covenants have not been completed but are likely to be in the following form.

- a) Restrictive covenants in respect of land where there are constraints on load bearing, excavation or other uses. There are probably four restrictive covenants that should apply (or, alternatively, four elements to the one covenant) as follows:
  - (i) restrictive covenants preventing excavation within the capped area of Stage 1;
  - (ii) restrictive covenants on load bearing and excavation above the barrier walls;
  - (iii) restrictive covenants preventing load bearing in the area of influence adjacent the barrier walls; and
  - (iv) restrictive covenants on other parts of the Site where there are identified caps, waste cells or a requirement not to excavate.
- b) Positive Covenants requiring maintenance of remediation. Again, there may be a need for a number of positive covenants (or a number of elements to the one covenant) for different parts of the Site and in particular:
  - (i) an obligation to maintain a cap within the containment area;
  - (ii) an obligation to maintain the barrier wall;
  - (iii) an obligation to maintain the grading and capping of other parts of the Site; and
  - (iv) obligations to maintain drainage systems to prevent ponding.

### A.3.2 Capping Requirements

The current consent for Remediation of the Closure Area requires a cap constructed with a permeability of  $10^{-7}$  m/s over most of the Site (land parcels M13, M16, M17, M21, M22, M24 and M26) with selected areas having a lower permeability of  $10^{-9}$  m/s (land parcels M12, M14, M15, M18, M19, M20 and M25). These 'M' areas are shown on the Contamination Sampling Locations Plan<sup>31</sup>.

The VRA makes provision for a review of cap permeability requirements for those parts of the Site that are within Area 2 and currently require a cap permeability of  $10^{-9}$  m/s. Hunter Development Corporation may seek this relaxation of capping permeability requirements following the completion and verification of Stage 1 Remediation Works.

In addition to the permeability requirements, the cap should meet the following requirements:

- (a) designed by a geotechnical engineer to provide the required permeability for a minimum design life of twenty five (25) years when exposed to the environment and proposed land-use;
- (b) design to be renewed and certified by the Site Auditor;
- (c) be either a VENM material or comply with the soil contamination criteria for an industrial land-use; and
- (d) be free of acidic leachate, resistant to erosion, and low dust generation.

### A.3.3 Conformance with Overall Landform and Surface Drainage Strategy

Hunter Development Corporation has prepared Land Remediation Design Plans<sup>32</sup> for earthworks across the whole of the Closure Area. The Land Remediation Design Plans are consistent with:

- (a) remediation requirements for minimum surface slopes of 1%;
- (b) the stormwater strategy for the Site;
- (c) reducing exposure during Site regrading earthworks to contamination, remnant underground structures, and archaeological issues while also limiting the extent of imported fill necessary;
- (d) wharf heights agreed with Newcastle Port Corporation;
- (e) acceptable railway gradings along the proposed alignment for the relocated Morandoo Sidings to One Steel railway line, and at grade access to associated future sidings; and
- (f) typical surface slopes for the types of land-uses envisaged for the Site.

The staged provision of remediation works agreed in the VRA allows opportunity for Site regrading and capping Area 2 to be carried out synergistically with Site redevelopment. However, it is important that development Submissions do not compromise the consistency of the Site regrading and drainage strategy with the factors listed above.

The land remediation design makes assumptions about the future locations of roads. If Submissions include roads in different locations then the earthworks may require redesign to accommodate the new road locations while still maintaining stormwater drainage pathways across the Site.

Proponent Project Works are to be graded so that finished levels at the boundary match those shown on Hunter Development Corporation's Land Remediation Design Plans. The

Proponent's Site drainage system is to accommodate the drainage pathways identified in the Land Remediation Design Plans, and to provide a similar pattern of drainage.

#### **A.3.4 Materials Management Plan**

A Materials Management Plan was developed as part of VRA documentation and is contained within the Contaminated Site Management Plan<sup>33</sup>, and outlines requirements for managing contaminated materials encountered during remediation or redevelopment works. The plan outlines specific controls and procedures regarding the classification, segregation, movement and fate of materials. Guidelines for fate of contaminated materials include restrictions in relation to depth of placement and location.

Following completion of the remediation works within Area 1, Hunter Development Corporation proposes to obtain a Site Auditor's Statement that the earthworks within this area have been carried out in accordance with the Materials Management Plan. Compliance with the Materials Management Plan involves managing the on-site fate of contaminated soils to ensure that the most contaminated soils are placed deeper in the fill, while the soils placed immediately below the cap are less contaminated. This strategy for managing the fate of contaminated soils should reduce the chance of highly contaminated soils being encountered during development activities which disturb the cap, such as trenching or site earthworks for buildings.

#### **A.3.5 Contaminated Site Management Plan**

A Contaminated Site Management Plan<sup>34</sup> (CSMP) September 2009, has been developed for the Closure Area by Hunter Development Corporation. The CSMP is a compilation of management protocols associated with:

- (a) Risk of harm to the environment posed by contaminants in soil and groundwater; and
- (b) Risk of harm to human health posed by ingress of Volatile Organic Compounds into future structures

The CSMP sets out requirements for Site redevelopment and occupation. The CSMP provides a framework for project phases of Design, Delivery and Maintenance such that future occupants are protected against Site contamination risks and contaminated soil and groundwater now encapsulated by the remediation works are managed appropriately.

Relevant requirements included in the CSMP are listed following (as extracted from the CSMP index):

##### **Part 8 – Comply with Environmental Management Plans**

- 8.1.1 Comply with SPEMP (if applicable to current development consent)
- 8.1.2 Comply with CEMP (if applicable to current development consent)
- 8.1.3 Comply with OEMP (if applicable to current development consent)
- 8.2 Work Management Plan
- 8.3 Appoint Geotechnical Expert
- 8.4 Appoint Environmental Scientist
- 8.5 Environmental Management and Reporting

##### **Part 9 – Remediation Works Design**

- 9.1.1 Prepare a Remediation Work Method Statement
- 9.2.1 Obligation to Cap
- 9.2.2 Cap performance/design Requirements
- 9.2.3 Geotechnical Engineer's report
- 9.2.4 Comply with Preliminary Design and other works
- 9.2.5 Plan for future management

- 9.3.1 Vapour Management
- 9.4.1 Area 1 – comply with Site Auditor requirements for supplementary capping
- 9.4.2 Area 1 – protect Barrier Wall
- 9.5.1 Construction of Emplacement Area
- 9.5.2 Management of Emplacement Area
- 9.6 Signage
- 9.7 Technical/Commercial Area – Relaxation of time for Cap placement
- 9.8 Exemption of Cap requirement for specific areas
- 9.9 Site Auditor Confirmation

**Part 10 –Remediation Works Delivery**

- 10.1 Comply with plans, designs etc
- 10.2.1 Obtain report from Geotechnical Engineer
- 10.2.2 Obtain report from Environmental Scientist
- 10.3 Obtain Site Auditor Confirmation

**Part 11 –Remediation Works Maintenance**

- 11.1.1 Ongoing obligation to maintain Cap
- 11.1.2 Obligation to regularly inspect, monitor and repair Cap.
- 11.2 Maintenance of other Remediation Works
- 11.3 Maintenance of VOC vents

**Part 12 –Project Works Design**

- 12.1.1 General design obligation
- 12.1.2 Other design obligations
- 12.1.3 Comply with Parts 11, 14 and 15
- 12.2 Obtain Site Auditor Confirmation

**Part 13 – Project Work Delivery**

- 13.1.1 Comply with designs and plans
- 13.1.2 Obtain Geotechnical Engineer Certification
- 13.1.3 Obtain Environmental Scientist Certification
- 13.2.1 Obtain Site Auditor Certification

**Part 14 – Vapour Management**

- 14.1.1 Assess VOC risks and incorporate into design
- 14.2.1 Additional Requirements Area
- 14.3.1 VOC Management in Area 1
- 14.4.1 VOC Management in Area 2

**Part 15 – Other Specific Requirements**

- 15.1.1 Easement to access and maintain Barrier Wall
- 15.1.2 Restriction on surface development in vicinity of Barrier Wall
- 15.1.3 Work to be designed for differential settlement
- 15.1.4 Control of works affecting capping beam
- 15.1.5 Geotechnical Engineer Certification
- 15.1.6 Control of Piles and Footing
- 15.2.1 Right of access to Monitoring Wells
- 15.2.2 Right to expand Monitoring Wells
- 15.3.1 Control of Work in Level 3 Placement Area
- 15.3.2 Work Management Plans within areas of known Level 2 and Level 3 Contamination
- 15.3.3 Work Management Plans within Area 1
- 15.3.4 Site Auditor Requirements for future landuse
- 15.4 Control of excavation of Area I
- 15.5.1 Heritage Protection
- 15.6.1 Maintenance of Major Drains
- 15.7.2 Right to undertake Remediation Works

**Part 16 Reporting and Information Requirements**

- 16.1.1 Keep records and information

- 16.1.2 Notify the EPA of material changes
- 16.1.13 Notify the EPA of any failure to comply with the VRA

### **A.3.6 Environmental Management Plan**

The existing conditions of planning consent for remediation works require that NSW DoP approve an Environmental Management Plan (EMP) for construction activities prior to commencement of Site preparation works. Hunter Development Corporation has prepared an EMP for construction activities on the Closure Area which addresses many of the environmental requirements arising from the conditions of planning consent. This EMP is referred to as the "Closure Area Site Preparation EMP"<sup>35</sup> and has been approved by NSW DoP.

The Closure Area Site Preparation EMP outlines requirements for environmental reporting, monitoring, controls, and work methods. Hunter Development Corporation currently carries out or has access to environmental monitoring of groundwater levels and water quality, air quality, noise, odours, and weather conditions.

Site preparation and remediation works carried out by the Proponent are to comply with the requirements of Hunter Development Corporation's Closure Area Site Preparation EMP.

For construction activities for which the EMP cannot be completed until the nature and method of work is known, the Closure Area Site Preparation EMP stipulates requirements and principles only. For these specific construction activities, the Proponent may need to prepare a works-specific EMP which should provide more detail, tailor and develop EMP requirements to suit its own construction methodologies, construction plant, and program. NSW DoP approval is required for these work specific EMPs.

### **A.3.7 Site Auditor**

Remediation works on the Site are being regulated under the *Contaminated Land Management Act*, which requires an EPA accredited Site Auditor provide Closure Area audit statements for the remediation works. Hunter Development Corporation has appointed the following auditor for the Closure Area.

Mr Graeme Nyland  
Environ  
Level 5, 60 Miller Street,  
North Sydney NSW

Proponents must use the above Site Auditor.

### **A.3.8 Shipping Channel and Contaminated Sediments in South Arm of the Hunter River**

The south arm of the Hunter River adjacent to the western portion of the Site contains an area of contaminated sediments. BHP Billiton is progressing the removal and treatment of the contaminated sediments.

NSW Maritime, working jointly with Newcastle Port Corporation, made application in November 2003 for the proposed extension of shipping channels in the Port of Newcastle, in the South Arm of the Hunter River. The application also addressed the dredging, contaminated sediment removal and treatment of contaminated materials. A supplementary

submission was made in November 2004. Conditions of Development Consent [DA-134-3-2003-ij]<sup>36</sup> for Shipping Channel Extension were issued to NSW Maritime by NSW DoP in August 2005

A further application by Newcastle Port Corporation to the Commonwealth office for the Department of Environment, Water, Heritage and Arts (DEWHA) to approve an extension of the shipping channel incorporating a swing basin and removal of contaminated sediments, was made in March 2003. An approval from DEWHA titled Hunter River South Arm Dredging<sup>37</sup> was received in May 2007.

During early 2009, BHP Billiton completed an optimisation study (Stage 1) for the remediation. The successful optimisation study triggered BHP Billiton to submit a Section 96 application in mid 2009 to vary the consent to allow progression to Stage 2 which includes full scale remediation of contaminated sediments, and, handling, management and emplacement of sediments. NSW DoP have issued updated Conditions of Development Consent [DA-134-3-2003 ij]<sup>38</sup> in August 2009.



## A.4 SERVICES AND INFRASTRUCTURE

### A.4.1 Overview

Prior to 2000, the BHP integrated steelworks included (but was not limited to) the land areas known as:

- the Primary Steelmaking area ("the Closure Area");
- the Wire Products Division;
- the Rod and Bar Mills; and
- the Technical Training Centre.

The integrated steelworks had developed internal private road, rail, drainage and other utility networks from major connections with public infrastructure. As the steelworks operated as a single steelmaking and processing centre, the private networks were developed during the life of the steelworks to suit the evolving needs of the plant, according to internal steelworks standards and design principles.

In September 1999 the primary steelmaking section of the plant closed. This became known as the "Closure Area". In around 2000, the OneSteel business was formed as a separate business to BHP Billiton.

Remnant electrical, water, sewer and stormwater diagrams<sup>39</sup> provide an indication of where redundant services may lie.

### A.4.2 Mayfield Industrial Estate Association (MIEA)

The Mayfield Industrial Estate Association Incorporated (MIEA) was established under the *Associations Incorporation Act 1984* (NSW) at the time of separation of the Site from the remainder of the BHP Steelworks. The MIEA is an organisation that exists to manage and control Shared Facilities, as defined in the Objects and Rules for the MIEA (MIEA Rules) and detailed in the Shared Facilities Register (SFR).

Not all privately owned infrastructure within the Site is shared, and therefore not all private infrastructure falls under the control of the MIEA.

The following documents provide an understanding for how the MIEA operates:

- MIEA Overview<sup>40</sup>
- Objects and Rules<sup>41</sup>, describing the governance of the MIEA;
- the budget adopted for the 2009/10 financial year<sup>42</sup>;
- a composite plan showing the MIEA Easements<sup>43</sup> over the Mayfield Site and adjacent Intertrade Industrial Park;
- Shared Facilities Register<sup>44</sup> describing the infrastructure currently under MIEA control, the conditions for use of the infrastructure, and the registered users ; and
- a schedule of current resolutions<sup>45</sup>.

Users of MIEA services may be required to pay their apportionment of MIEA administration and management charges. The ability to utilise shared facilities and the capacities of those

facilities which may be available to the Proponent are matters which require MIEA approval. In addition Proponents may need to consult any suppliers of services (such as electricity).

#### **A.4.3 MIEA Costs**

Responsibility for the costs associated with Shared Facilities is set out in the MIEA Rules. Proponents should note that no sinking fund exists at this time.

A number of cost sharing mechanisms may be considered in relation to services and infrastructure required by new development, and that are not otherwise administered by the MIEA. These mechanisms may include:

- integration of costs within lease payments;
- extension of the MIEA;
- a separate administration system; or
- a combination of any or all of the above.

#### **A.4.4 Services and Infrastructure Cost Sharing Mechanisms**

In the event that Proponents rely on any service connections and infrastructure that is not owned by a public service authority or governed by the MIEA, it is anticipated that mechanisms will be required for payment of any infrastructure availability charges, meter reading, maintenance, operation (including any licensing by regulatory authorities), administration, and any other cost associated with provision of infrastructure connections and for consumption of services and utilities. For the avoidance of doubt, this may include roads, stormwater drains, and any other legitimate charge. In the case of electrical energy, this may also include transmission costs and system losses between metering points.

Payment guarantee(s) may be required, particularly if the Proponent is a significant consumer of services and utilities.

Proponents should make their own inquiries with local supply authorities regarding direct utility connections and associated consumption charges. It is Newcastle Port Corporation's preference that direct connections and billing are arranged with the relevant public service authority where this is feasible.

If any infrastructure is used which is not managed by a public service authority, and then publicly owned infrastructure is subsequently installed, the non-public infrastructure should be terminated. At a minimum, it is anticipated that where there is initial reliance on private infrastructure, agreement with Proponents may contain provisions requiring them to:

- cooperate with design and installation of the new infrastructure;
- promptly connect to a connection point (to the new infrastructure) within reasonable distance of the boundary of their Site once a point of connection is available; and
- pay charges legally levied by the relevant authority / service provider.

#### **A.4.5 Road**

The Site is accessed from Industrial Drive, which is a major arterial route into the Newcastle central business district, servicing industrial estates in the immediate area. Industrial Drive connects to nearby interstate routes via the New England and Pacific Highways.

Road access to the Site is as follows:

- the major access route is from the George Street intersection with Industrial Drive leading to Selwyn Street. Several private roads branch off Selwyn Street into the Site through the Intertrade Industrial Park; and
- a secondary access route is from Ingall and Bull Streets, which intersect with Industrial Drive. Ingall Street and Bull Street lead to a private road known as Steelworks Road which is located on the Site. Part of Steelworks Road is a Shared Facility as defined by the MIEA Rules, and shown in the Shared Facilities Register.

Road access may continue to be required to facilitate inspection and operation of the Koppers Pipeline and associated facilities, the BHP Billiton river sediments remediation project until completed, the Hunter Development Corporation land remediation project, and operation of the MIEA infrastructure.

Newcastle Port Corporation have completed a draft Environmental Assessment 2009<sup>46</sup> which includes a Transport Assessment. This assessment provides further details in respect of road transport options and capacities.

#### **A.4.6 Rail**

Rail access to the Site is from Morandoo Sidings to the south of the Site, via a level crossing over Selwyn Street.

An existing railway line traverses the Site and links the Morandoo Sidings to the OneSteel Site (the "OneSteel Railway"). The section of rail located on the Site is a Shared Facility for the purposes of the MIEA Rules. This OneSteel Railway is scheduled to be realigned as shown to the Rail Design Plans (2009)<sup>47</sup>, during 2010. The realignment works should be undertaken by the Hunter Development Corporation and include signalling the level crossing at Selwyn Street. This alignment shadows the Intertrade Industrial Park boundary as close as practicable.

Any new sidings proposed for the Site in relation to cargo handling may connect to the OneSteel Railway but may be subject to MIEA, OneSteel and ARTC approval, in the context of operational approval. New sidings should only be installed where they do not limit the Site's long term functionality and do not cross the designated Bulk Liquids precinct.

Any new sidings connecting to the OneSteel Railway may continue to be governed by the MIEA, or alternatively may become public infrastructure under the control of ARTC.

A 2003 concept level investigation report titled " Summary Report - Operational Scenario for Newcastle MPT Rail Transport "<sup>48</sup> considers the rail scenario between Mayfield and Sydney. Additionally, Newcastle Port Corporation have completed a draft Environmental Assessment 2009<sup>49</sup> which includes a Transport Assessment. This assessment provides further details in respect of rail transport options and capacities.

#### **A.4.7 Port / Wharves**

Access by water for commercial vessels is by the South Arm of the Hunter River. Commercial port operations are managed by Newcastle Port Corporation. Information on port management, including the Ship Handling Safety Guidelines, is available on the Newcastle Port Corporation website [www.newportcorp.com.au](http://www.newportcorp.com.au).

Maintenance dredging of the parts of the Port of Newcastle used for commercial navigation is undertaken by Newcastle Port Corporation. Maintenance dredging is only undertaken at operational wharves. Information from Newcastle Port Corporation on the last recorded depths at these wharves is detailed in the "Mayfield Site – Compilation Plan Showing Depths 2009"<sup>50</sup>.

Construction of any new wharves at the Site may require dredging of berthing boxes and approaches. Capital dredging is the responsibility of proponents. Newcastle Port Corporation has developed an acceptable Berth and Channel Plan<sup>51</sup> for the Site. An AutoCad drawing file of the channel and berth configuration is available upon request. The plan also shows preferred berth pocket depths and potential berth uses. Alternative berth and channel configurations may be acceptable subject to Harbour Master approval. Acceptable berth uses will be determined at the sole discretion of Newcastle Port Corporation.

Newcastle Port Corporation will provide the refurbished Mayfield No.4 Berth (located over half of Berth 3 and 4 in the abovementioned Berth and Channel Plan) and 1 ha of adjacent hardstand. This is due for completion in November 2009. This berth is detailed in the Mayfield Berth Refurbishment Drawings.<sup>52</sup> The Mayfield No.4 Berth will commence operations under Newcastle Port Corporation management in December 2009 as a "common user" berth, under existing consent conditions and a new Mayfield No.4 Berth Environmental Protection Licence<sup>53</sup>, specific to the berth and hardstand. The initial operating layout is detailed in the Mayfield No.4 Berth Operational Layout Plan NC1349.<sup>54</sup>

Newcastle Port Corporation's preference is for Mayfield No.4 Berth to be a common user facility, however other commercial terms for use may be considered.

The Mayfield Data Room Document List contains several reference documents which provide information on the condition of the stability of the river bank and disused (other than barge and tug activities) Old BHP Berths.

#### **A.4.8 Drainage**

The pattern of surface drainage on the Site is generally from the south towards the north and north-east to the South Arm of the Hunter River, which is tidal. The 100 year water level adjacent to the Site is RL 1.34m AHD.

Many of the stormwater culverts which drained the former steelworks site have been abandoned, damaged, or removed during the demolition works carried out by BHP Billiton or during Stage 1 Remediation Works by Hunter Development Corporation. Remaining stormwater culverts are not suitable to be retained in Site drainage schemes since they do not comply with the existing conditions of planning consent which require that the drainage of surface water be isolated from Site groundwater. Hence new drainage infrastructure is required to convey Site runoff to the Hunter River.

Drainage from the Commercial Precinct is primarily to Selwyn St, a public road under care and control of Newcastle City Council. An existing stormwater channel within Selwyn St conveys runoff towards the Hunter River. This stormwater channel presently drains to the Hunter River through stormwater pipes within the north-eastern corner of the Site.

Consultants have prepared a Preliminary Design Stormwater Strategy<sup>55</sup> for the Closure Area. New development will be required to comply with this Stormwater Management Strategy.

As part of the Stage 1 Remediation Works, Hunter Development Corporation has constructed new trunk drains known as the Eastern (Selwyn St) Drain and the Western Drain. The

location of these drains is shown on the Hunter Development Corporation Land Remediation Design Plans<sup>56</sup>. Further details of the drainage design can be provided upon request.

Additional drainage infrastructure may be required to connect new roads and development areas to the Eastern and Western Drains. Proponents will be responsible for these works.

#### **A.4.9 Water**

Existing water connections to potable water mains owned by the local service authority (Hunter Water Corporation) enter the Site opposite Crebert Street. Minor supplies are available from Selwyn Street. Distribution of potable water within the Site is currently by private network.

Water consumption is measured by meter sets at points of connection with the service authority.

The Intertrade Industrial Park (via preferred proponent Buildev Intertrade Consortium) is intended to deliver potable water to the Mayfield Site. The draft Owner Infrastructure Requirements set out these requirements. The timelines for their delivery are indicated in Section A.2.6 Intertrade Industrial Park.

#### **A.4.10 Sewer**

The Site is not currently serviced by a public sewer system. Sewage disposal within the Site relies primarily on an existing sewage treatment plant (STP). The STP is a Shared Facility for the purposes of the MIEA Rules and is located in the Remediation Area Plan.<sup>57</sup>

The STP accepts influent by pressure mains and is licensed by the Environment Protection Authority. There is some use of smaller collection well systems emptied by tankers which serve existing Closure Area users.

The NSW Government has made provision for funding of a new sewerage system, including a sewage pumping station on the Site and a rising main connection to Hunter Water Corporation assets in Mayfield. The Site sewerage system cannot be connected to the Hunter Water Corporation system until upgrading works are completed by Hunter Water Corporation. At present these are scheduled for completion in mid 2011. The sewerage system within the Closure Area would include a main sewage pump station fed by gravity collector sewers within the central catchment, and a series of smaller satellite pumping stations to accept sewer from developments in other catchments. The Closure Area's sewerage strategy is undergoing revision and may be available upon request.

Installation of the new sewerage system should allow the Site to be connected to Hunter Water Corporation's publicly owned infrastructure. It is currently anticipated that this point of connection should be available in late 2010. Following connection of the Site to the public sewerage system, the Site should no longer be reliant on MIEA managed wastewater treatment facility which currently services the Site. It is anticipated the new sewage pumping station be located on the south-eastern side of the Intertrade Industrial Park within the vicinity the intersection of Selwyn St and David Baker Drive. Its location should be agreed between Hunter Development Corporation and Buildev Intertrade Consortium.

The agreement to be entered into with the Developer/Operator may require it to design and install a sewerage system servicing the whole Mayfield Site (71ha) and connecting into the main sewage pumping station. The solution will need to be consistent with the Closure

Area's total sewage strategy. Additionally the Developer/Operator will be required to pay charges levied by Hunter Water Corporation.

#### **A.4.11 Gas**

A gas connection point is located beneath the road surface at the northern edge of Steelworks Road, generally adjacent to the OneSteel Wire Products Division main office area, as noted within the MIEA Shared Facilities Register.

The existing mains including the point of connection are Shared Facilities for the purposes of the MIEA Rules.

There are no gas reticulation systems within the Site.

#### **A.4.12 Electricity Network & Electrical Energy**

The major components of the network currently servicing the Closure Area are as follows:

- (a) a substation known as Waratah West owned by Transgrid;
- (b) 132kV distribution lines owned by Energy Australia which connect the Waratah West substation to 132kV transformers on land owned by BHP Billiton;
- (c) a switch room adjacent to the transformers, owned by OneSteel;
- (d) cables owned by OneSteel from the 132kV substation to the boundaries of the Closure Area, and then across the Closure Area to a 33kV substation;
- (e) a 33kV substation within the Closure Area;
- (f) above and below ground mains from the on-site substation to buildings within the Closure Area; and
- (g) a number of 11kV substations within the Closure Area.

The 132kV substation (including the transformers and switch room) and the cables to the boundary of the Closure Area are Shared Facilities for the purposes of the MIEA Rules.

An additional point of connection may be available at the 132kV substation under MIEA provisions. A limited supply may be available at Selwyn Street from the local energy authority.

The National Electricity Code Administrator (NECA), (now the Australian Energy Regulator and Australian Energy Market Commission), granted to OneSteel Limited an exemption from the requirement to register as a network service provider under the National Electricity Law in respect of One Steel's distribution assets at the former BHP site at Newcastle, New South Wales. The exemption is subject to conditions.

NECA has granted a general exemption from the requirement to register as a network service provider under the National Electricity Law which applies to industrial parks. The exemption is subject to conditions.

The Intertrade Industrial Park (via preferred proponent Buildev Intertrade Consortium) is intended to deliver a new substation (and easements) suitable for expansion and connection to the Mayfield Site. The draft Owner Infrastructure Requirements set out these requirements. The timelines for their delivery are indicated in Section A.2.6 Intertrade Industrial Park.

Options for ongoing provision of the electricity network within the Site include:

- connection to the new substation within the Intertrade Industrial Park via dedicated easements;
- provision of new connections from other public infrastructure; and/or
- alternative cost sharing structures, potentially directly with OneSteel.

The agreement with the Developer/Operator may also require:

- cooperation in relation to the implementation of appropriate arrangements for the operation and maintenance of the electricity network;
- payment of costs in proportion to use of the network; and
- supply agreements with suppliers.

#### **A.4.13 Telecommunications**

Telecommunications distribution infrastructure within the Site is mainly a remnant of former steelmaking activities and should not be relied upon for new development.

It is understood that steelmaking activities utilised fibre optic services and significant telephone capacity. Some residual fibre optic and telephone distribution equipment remains in larger buildings, however the serviceability of this equipment is not known.

A fibre optic cable links the Roll Shop with OneSteel. This link is governed by the MIEA and is used exclusively by OneSteel for its own purposes.

Inquiries regarding the availability of communications services to the Site should be made with local telecommunications service providers.

## ANNEXURE B

### B.1 BASIS ON WHICH SITE INFORMATION IS MADE AVAILABLE – DISCLAIMER

The Site Information is made available to Proponents as set out below.

- (a) No representation or warranty is made in relation to the Site Information, its completeness, accuracy or correctness and in particular and without limitation, no representation or warranty is made that the Site Information:
  - i. is complete, accurate, comprehensive or correct;
  - ii. represents the opinion of Newcastle Port Corporation the State or any State Related Entity or any other person at any time;
  - iii. contains all information held by or available to the State or State Related Entity or any other person at any time;
  - iv. contains all the information that Proponents may require in evaluating their proposed projects or in preparing Submissions or in making any decisions in relation to this ITSDP, the Site or any development on it; or
  - v. can be relied on by a Proponent or any other person.
  
- (b) Each report or other information contained within the Site Information may be subject to further limitations and qualifications express or implied. Those limitations and qualifications continue to apply and are fully acknowledged and accepted by each Proponent. In particular each Proponent acknowledges:
  - i. that consultants reports may not have been prepared for the purpose of this ITSDP or with the Proponent or any person in the position of the Proponent in mind or for the purpose of the redevelopment of the Site and have not been prepared for the purpose of the Proponent's particular redevelopment submissions;
  - ii. contamination and other site and geotechnical conditions can change and move over time so that Site conditions may be different from those described in reports or other Site Information; and
  - iii. that contamination reports are based on the interpreted results of limited field sampling and analysis. Except at each particular sample point all information is only inferred or extrapolated.
  
- (c) Each Proponent assumes all risk in respect of their Submission and the Site Information may not be, and has not been, relied upon by any Proponent or any other person and no recourse may be had against Newcastle Port Corporation the State or any State Related Entity their employees or consultants in respect of any Site Information. .
  
- (d) Each Proponent and each Proponent Related Entity releases Newcastle Port Corporation the State and each State Related Entity from any liability, obligation or duty whatsoever in relation to the Site Information however arising. Without limitation this release extends to:
  - i. any negligence by or on behalf of Newcastle Port Corporation, the State or a State Related Entity (each Proponent and Proponent related Entity specifically acknowledges and agrees that any duty of care that Newcastle Port Corporation, the State or any State Related Entity their employees or consultants may otherwise have



- owed to any Proponent or Proponent Related Entity is specifically excluded and released);
- ii. any misrepresentation, misleading conduct, omission, inaccuracy or other Defect in any information; and
  - iii. any requirement of any law including the *Trade Practices Act (Cth) 1974* or *Fair Trading Act (NSW) 1987* or any other Act to the fullest extent permissible at law.
- (e) Statements by Newcastle Port Corporation, the State or a State Related Entity or any other person their employees or consultants (whether available in the Site Information or otherwise) prior to this ITSDP, or made in relation to this ITSDP or the Site at any time:
- i. are not binding on Newcastle Port Corporation, the State or any State Related Entity;
  - ii. do not commit Newcastle Port Corporation, the State or any State Related Entity to any action or position in respect of any matter;
  - iii. do not or waive, fetter or limit any right, discretion, power or privilege of Newcastle Port Corporation the State or any State Related Entity its employees and consultants. The rights, discretions, powers and privileges of Newcastle Port Corporation the State and each State Related Entity are to the full extent of the law maintained, protected and reserved. This includes all rights, discretions, powers and privileges of the DEC including in relation to contamination; and
  - iv. are, for the purposes of this ITSDP and the redevelopment of the Site, subject to the disclaimers, limitations, qualifications and releases in this ITSDP;
- (f) Proponents acknowledge and represent that:
- i. they are responsible for obtaining and have obtained their own independent qualified and professional advice and opinions on all matters relating to their Submissions including financial, accounting, tax, engineering, site conditions, environmental, legal, technical;
  - ii. they have diligently read and considered the Site Information; and
  - iii. to the extent needed for their Submissions they have diligently carried out their own investigations or made their own enquiries in relation to all matters relevant to their Submissions including the nature, condition and characteristics of the land and infrastructure , and have satisfied themselves about the accuracy, correctness, completeness and comprehensiveness of any Site Information;
- (g) Proponents have executed the Confidentiality Deed on behalf of themselves and each Proponent Related Entity.
- (h) In lodging Submissions, Proponents acknowledge the requirements of the ITSDP and the Confidentiality Deed and warrant and represent that they have fully evaluated on an independent basis all issues relating to required approvals, land preparation, site restrictions, required infrastructure, development costs, operations and any other aspect impacting access, development, or use.

## **B.2 CHANGES TO THE ITSDP DOCUMENTS**

### **B.2.1 Update Notice**

- (a) Newcastle Port Corporation may change or update the ITSDP Documents in any manner Newcastle Port Corporation requires in its absolute discretion by giving an Update Notice to every entity who:

- i. has satisfactorily registered including having executed and returned the Confidentiality Deed to the Project Director; and
  - ii. has been provided with this ITSDP.
- (b) The Update Notice may include changes to the ITSDP Documents including additional documents to be included as Disclosure Material.
- (c) Newcastle Port Corporation may only give Update Notices on or before the Final Update Date. (Note that the State may by Update Notice amend the Final Update Date).
- (d) If requested by Newcastle Port Corporation, the Proponent must acknowledge receipt of an Update Notice.

### **B.2.2 Effect of Update Notice**

- (a) If Newcastle Port Corporation gives an Update Notice, then the relevant document is amended accordingly.
- (b) All conditions of this ITSDP will apply to any Update Notice and any change to this ITSDP.

### **B.2.3 Newcastle Port Corporation may extend dates**

Newcastle Port Corporation may, by Update Notice and in its absolute discretion, at any time before the Final Update Date, change the Submissions Lodgement Date, the Final Update Date or any other date or time.

If Newcastle Port Corporation changes the Submissions Lodgement Date:

- (a) any Proponent that has lodged a Submission may within three (3) Business Days of the issue of the Update Notice, request in writing that Newcastle Port Corporation returns its Submission and Newcastle Port Corporation must promptly return the Submission; and
- (b) unless any Proponent has made such a request, it is regarded as having lodged its Submission on the basis of the changed Submissions Lodgement Date.

## **B.3 MATTERS CONCERNING PREPARATION OF SUBMISSION**

### **B.3.1 Intellectual Property**

Title in all documents comprising a Submission becomes the property of Newcastle Port Corporation on lodgement.

As between Newcastle Port Corporation and each Proponent, all Intellectual Property rights as may exist in the information contained in this ITSDP, the Site Information or any related material are, and will remain, the property of the State.

The Proponent grants to Newcastle Port Corporation, the State and each State Related Entity a licence:

- (a) to use the documents, concepts, ideas, designs, information and materials included in the Submission including all Intellectual Property in the Submission;
- (b) to copy, adapt, modify, amend, disclose or do anything else necessary (in Newcastle Port Corporation's sole discretion) to the documents, concepts, designs, ideas, information and materials included in the Submission including all Intellectual Property in the Submission for the purpose of:
  - i. Newcastle Port Corporation, the State's and the State Related Entity's evaluation and assessment of the Submission;
  - ii. seeking further information or clarification of the Submission or any other Submission and for the scope, content and conduct of any subsequent process;
  - iii. reconfiguring, reconsidering, changing or redesigning the Site, any infrastructure or any other aspect of the Site or its use for the purpose of endeavouring to ensure compatibility between multiple users of the Site, consistency or compatibility of land uses with the Newcastle Port Corporation's Objective or to seek or provide input into this ITSDP process or any subsequent processes; and
  - iv. other matters relating to the evaluation and assessment of Submissions or the conduct of any subsequent process and for purposes such as audit or governmental or Parliamentary reporting requirements.

The Proponent warrants that it has secured all requisite consents, licences and authorisations that are required to grant the foregoing licence to Newcastle Port Corporation, the State and each State Related Entity, including any licences and consents from contractors or consultants that have assisted in preparing the Submission or responding to the ITSDP. Without limitation, the Proponent must obtain from its employees and contractors all necessary unconditional and irrevocable:

- (a) consents permitted by applicable law to any act or omission that would otherwise infringe any of their respective Moral Rights in the Submission whether occurring before or after a consent is given; and
- (b) waivers of their respective Moral Rights in the Submission that are permitted by applicable law;

for the benefit of Newcastle Port Corporation, the State, the State Related Entity and anyone authorised by any of them to do acts comprised in the copyright.

Each Proponent agrees that Newcastle Port Corporation may as part of its consideration of Submissions and in any subsequent process, use information contained in any Submission for the purpose of identifying and assessing any configuration of the Site, any infrastructure or the occupation of land by any one or more Proponents and may use this information to negotiate alternative locations and arrangements with the Proponent and with other Proponents.

### **B.3.2 Behaviour and Probity**

Proponents must comply with the NSW Government Code of Tendering for the Construction Industry, Code of Practice for the Construction Industry and Implementation Guidelines for these Codes. The Codes address the standard of behaviour that the NSW Government requires from all participants in the construction industry when doing business with the Government. A copy of the Codes and the Implementation Guidelines may be obtained from the website [www.construction.nsw.gov.au](http://www.construction.nsw.gov.au)

Newcastle Port Corporation, including the Evaluation Committee, will take any failure to comply with these requirements by a Proponent into account when considering its Submission or any involvement in subsequent processes, and may pass over the Submission and any other future submission for business opportunities.

### **B.3.3 Collusive Tendering**

Proponents and their respective officers, contractors, employees, agents and advisers must not engage in any collusive Tendering, anti-competitive conduct or any other similar conduct that contravenes any laws with any other Proponent or any other person in relation to the preparation or lodgement of Submissions.

In addition to any other remedies available under any law or any contract, the Newcastle Port Corporation reserves the right, in its sole and absolute discretion, to reject any Submission lodged by a Proponent that engaged in any collusive Tendering, anti-competitive conduct or any other similar conduct with any other Proponent or any other person in relation to the preparation or lodgement of its Submission.

### **B.3.4 Unlawful Inducements**

Proponents and their respective officers, contractors, employees, agents or advisers must not have violated and must not violate any applicable laws or State policies regarding the offering of inducements in connection with the preparation of their Submission.

### **B.3.5 NSW Government Policies**

In any subsequent processes the Proponent would be required to demonstrate in detail their ability to carry out their Submission in accordance with NSW Government procurement requirements, including:

- (a) appropriate insurance cover;
- (b) industrial relations management in accordance with the NSW Government Industrial Relations Management Guidelines;
- (c) quality management in accordance with ISO/AS9001:2000 or equivalent;
- (d) Occupational Health and Safety management in accordance with the NSW Government OHS&R Management Systems Guidelines, 3rd Edition; and
- (e) environmental management in accordance with the NSW Government Environmental Management Systems Guidelines, November 1998.

Copies of the Guidelines can be obtained from the website [www.construction.nsw.gov.au](http://www.construction.nsw.gov.au)

Newcastle Port Corporation will ultimately contract only with recognised and acceptable legal entities with appropriate financial assets and capacity. Proponents should identify the legal entity that it proposes would enter any lease or other agreement. Further information and evidence as to the legal entity proposed may be sought during the evaluation process referred to at Part 6 of this ITSDP document.

### **B.3.6 Misleading Statements and Improper Assistance**

If a Proponent is found to have made false or misleading claims or statements, to have received improper assistance from State employees, ex-employees of the State and/or contractors or ex-contractors of the State, or to have used information unlawfully obtained from the State in the preparation of its Submission, the Newcastle Port Corporation reserves the right in its absolute discretion to cease further consideration of any Submission lodged by

or on behalf of the Proponent in respect to this ITSDP and to exercise any or all legal remedies that are available to the Newcastle Port Corporation.

### **B.3.7 Costs and Expenses**

- (a) Participation in any stage of the ITSDP process or any subsequent stage, or in relation to any matter concerning this ITSDP, will be at the Proponent's sole risk, cost and expense.
- (b) Newcastle Port Corporation and the State have no liability for any costs or expenses of or associated with the preparation of a Submission or its lodgement.
- (c) All costs and expenses incurred by a Proponent or any person or organisation associated with the Proponent will be borne solely by the Proponent or that person or organisation. Newcastle Port Corporation and the State will not be liable for or reimburse any such costs or expenses, or for any costs or losses flowing from that Proponent's or such person's or organisation's acts or omissions in any way associated with this ITSDP, or from the Proponent not progressing further in any subsequent process following this ITSDP.
- (d) These rules apply whether or not the Proponent is successful or whether or not Newcastle Port Corporation terminates, varies or suspends the ITSDP process or takes any other action available to it.
- (e) Newcastle Port Corporation or the State will not be liable for any costs, loss, expenses or damages actually incurred or potentially suffered by Proponents in the exercise of such discretion or in the ITSDP process generally, including changes to the timing of the ITSDP process and any subsequent processes.

### **B.3.8 Nature of Process**

- (a) This ITSDP is not a legal offer or a contract and the process it provides for is not a tender process (the subject of, for example, a process contract) ,nor a process that will necessarily end in the identification of a preferred Proponent or Proponents. Newcastle Port Corporation is under no obligation, contractual or otherwise, in relation to any Submission by any Proponent, or otherwise legally bound in any way to Proponents, or obliged in any way to proceed any further with the ITSDP or ITSDP evaluation process or any subsequent processes.
- (b) The information and operational objectives set out in the ITSDP Documents may be modified at any time with limited notice. Proponents proceed with the preparation of Submissions at their own risk.
- (c) Newcastle Port Corporation is under no obligation to give reasons for any decision made or not made in relation to this ITSDP, including but not limited to those relating to any of the Submissions received and the ITSDP evaluation process.
- (d) There is no legal or other relationship between any Proponent and Newcastle Port Corporation enforceable at the suit of the Proponent arising from this ITSDP, the ITSDP Documents or any process, including any subsequent processes, outlined in it.
- (e) There shall be no implied obligation or (if a contract is found) term into this Proposal document whatsoever including an implied obligation on the part of NPC to act in good faith.

### **B.3.9 Discrepancies**

Should a Proponent find or reasonably believe it has found any discrepancy, error, ambiguity, inconsistency or omission (**Defect**) in this ITSDP or any other information given or made available by Newcastle Port Corporation (including the Disclosure Material), the Proponent must notify the Project Director promptly, setting out in sufficient detail the Defect so that Newcastle Port Corporation may take whatever corrective action, if any, it deems appropriate. If applicable, any correction of a Defect will be notified (or the proper information will be made available) to all Proponents on a non-attributed basis.

Any Defect or discrepancy identified at a later date will be deemed to be ineffective in terms of future claims.

### **B.3.10 Probity, Security and Financial Checks**

This ITSDP process will be governed by a Probity Plan and Probity Advisor. All interactions with Proponents by any persons associated with the ITSDP will be guided by the Probity Plan.

Newcastle Port Corporation may perform such probity, security and/or financial checks and procedures as Newcastle Port Corporation, in its absolute discretion, may determine are necessary in relation to the Proponent, its partners or associates and its or their directors, officers and employees. The Proponent agrees to provide all reasonable assistance, at the Proponent's cost, to Newcastle Port Corporation in this regard.

### **B.3.11 Change in Material Circumstances**

Each Proponent is to promptly inform Newcastle Port Corporation in writing of any material change to their financial capacity, technical capacity or corporate status or to any other information contained in the Proponent's Submission following lodgement, and of any other material change in circumstances which may affect the truth, completeness, correctness or accuracy of any information provided in or in connection with the Submission.

The Project Director may also require Proponents to confirm in writing that no such material changes have occurred.

### **B.3.12 Proponent's Acknowledgments**

Every Submission is made on the basis that the Proponent acknowledges and accepts all of the conditions, requirements, qualifications releases and disclaimers in this ITSDP and makes all of the representations, warranties, acknowledgements and commitments required by and set out in this ITSDP and the Confidentiality Deed, including that:

- (a) it has read, taken appropriate advice on and fully understood this ITSDP and its requirements; and
- (b) in lodging its Submission it did not rely on any express or implied statement, warranty or representation, whether oral, written or otherwise, made by or on behalf of Newcastle Port Corporation, the State or any State Related Entity.

### **B.3.13 Newcastle Port Corporation Rights**

- (a) Without limiting its rights at law or otherwise, Newcastle Port Corporation reserves the right in its absolute discretion at any time to, without providing reasons:
  - i. provide additional information or clarification to any or all Proponents;
  - ii. seek information (including by way of statutory declaration) from any Proponent as to its Submission;
  - iii. seek clarification or further information from any Proponent and invite oral presentations without prior notice to any other Proponent or recipient of this ITSDP document;

- iv. change the structure or timing of the ITSDP process or any subsequent process;
  - v. allow a period of time, after Newcastle Port Corporation has sought clarifications or further information, during which all Proponents will have an opportunity to amend or change their Submissions;
  - vi. respond to any questions submitted by any Proponent, in writing, in relation to the ITSDP process or the Site and disclose the details of the questions and the contents of Newcastle Port Corporation's response to any such question to other Proponents;
  - vii. if a question is asked, to seek clarification or amendment of the question, to circulate it or not to all registered Proponents and to summarize it or to exclude from it commercial or strategically sensitive information;
  - viii. seek a written response from any Proponent in respect of any changes to the ITSDP Documents;
  - ix. vary, cancel or amend the information, terms, procedures or processes set out in this ITSDP;
  - x. not proceed with the ITSDP, the ITSDP evaluation process referred to or any subsequent marketing or land allocation processes;
  - xi. proceed with the ITSDP, the ITSDP evaluation process, or any subsequent marketing or land allocation processes, on a basis or on terms different to those described in this ITSDP document (including proceeding with the ITSDP in relation to only some of the land or Sites identified in this ITSDP document), for any reason, including to accommodate particular project or infrastructure proposals and requirements;
  - xii. replace or supersede the ITSDP process or any of the terms set out in this ITSDP document at any time with any other marketing and/or land allocation process, including by way of direct interaction which may lead to negotiations, focussed expressions of interest, call for further detailed proposals or other proposal processes;
  - xiii. vary or extend the Submission Lodgement Date at any time and for such period as NPC considers appropriate;
  - xiv. terminate any negotiations being conducted at any time with any Proponent for any reason;
  - xv. negotiate with any one or more Proponent and allow any Proponent to change its Proposal;
  - xvi. publish the names of some particular or all Proponents; and
  - xvii. not consider further any Proponent or Submission for the purposes of this ITSDP or the ITSDP evaluation process or any subsequent processes for any reason regardless of whether the Proponent's Submission conforms with the requirements of this Proposal.
- (b) All decisions arising out of the ITSDP will be at the NSW Government's absolute discretion. In particular, decisions regarding proceeding with any subsequent processes and who may participate in them will be at the absolute discretion of the NSW Government Budget Committee of Cabinet.
- (c) Proponents will have no claim against Newcastle Port Corporation or its officers, contractors, employees, agents or advisers with respect to the exercise of or failure to exercise Newcastle Port Corporation's rights under this ITSDP.

#### **B.3.14 Amendments and Termination of the Process**

Without limiting its other rights, Newcastle Port Corporation reserves the right in its absolute discretion, to cancel, amend, vary, supplement or replace this document by notice in writing to all Proponents.

Newcastle Port Corporation may also in its absolute discretion:

- (a) consider any non conforming bid;
- (b) modify or terminate the process at any time;
- (c) terminate further participation in the process by any party;
- (d) not select any Proponent as a preferred Proponent;
- (e) proceed with the project on a basis or terms different from those described in this document;
- (f) negotiate with one or more Proponents at any time without prior notice to any other recipient;
- (g) adopt different approaches with different Proponents;
- (h) require additional information or further offers from any Proponent;
- (i) postpone or delay the process; and
- (j) test community reaction to Submissions prior to making any decision on the future use of the Site and its improvements.

No Proponent is entitled to enquire into the basis of Newcastle Port Corporation decisions under this section.

### **B.3.15 Notices**

In respect of notices from Newcastle Port Corporation see Section B.2.

#### **(a) Method of giving notices to Newcastle Port Corporation**

- i. For the purpose of this part, notice means a notice, consent, approval or other communication under this ITSDP or in connection with a Submission.
- ii. Notices must be given to the Project Director by email.
- iii. A notice must be signed by or on behalf of the person giving it, addressed to Newcastle Port Corporation care of the Project Director transmitted by email to that person's address.

#### **(b) Addresses for notices**

For the purpose of this part the address of a person is the address set out below or another address of which that person may from time to time give notice to each other person:

Newcastle Port Corporation  
Ground Floor, Cnr of Scott and Newcomen Street  
Newcastle NSW 2300  
Attention: Simon Bingham Process Manager  
Email Address: [simon.b@newportcorp.com.au](mailto:simon.b@newportcorp.com.au)

### **B.3.16 Freedom of Information Act and Governmental Reporting Obligations**

- (a) Each Proponent should note that Newcastle Port Corporation and the State are subject to governmental and Parliamentary reporting obligations.



- (b) The attention of Proponents is drawn to the *Freedom of Information Act* 1989 (NSW) (**FOI Act**), which gives to members of the public rights of access to official documents in the possession of the State and its agencies. The FOI Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the State, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (c) In addition the FOI Act contains provisions regarding the publication of information regarding successful proponents in relation to government processes. These obligations are contained in section 15A of the FOI Act. NPC may decide to (or may be compelled to) disclose information in accordance with section 15A of the FOI Act and Proponents acknowledge that NPC may so disclose at its discretion..
- (d) Newcastle Port Corporation and the State are not able to give any commitment as to whether or not the information in a Submission will or will not be released.
- (e) Proponents should obtain, and will be deemed to have obtained their own advice on the impact of the FOI Act and all other relevant legislation, and on the State's governmental and Parliamentary reporting obligations, on their participation in this ITSDP process.

#### **B.3.17 No Representation**

All representations, communications and prior agreement in relation to the subject matter are merged in and superseded by the ITSDP Documents.

#### **B.3.18 Applicable Law**

If a contract is found relating to this Process, which is expressly denied, then the law applying in New South Wales applies to this ITSDP and the ITSDP process. Each Proponent must comply with all relevant laws in preparing and lodging its Submission and taking part in the ITSDP process.

#### **B.3.19 Confidentiality**

- (a) Each Proponent must comply with the Confidentiality Deed and ensure that each Proponent Related Entity complies with the Confidentiality Deed.
- (b) Proponents identified for participation or involved in subsequent processes must not advertise, promote or publish the participation, in any form, without the written consent of Newcastle Port Corporation through the Project Director.

#### **B.3.20 Validity Period**

All elements of the Submission will be valid for a 12 month period from the Submissions Lodgement Date.

## **B.4 DEFINITIONS AND INTERPRETATION**

### **B.4.1 Definitions**

A term or expression used in this ITSDP has the meaning given to it as set out below, unless the context otherwise requires.

**BHPB** means BHP Billiton Limited, a global company. Australia's head office is located at 180 Lonsdale Street, Melbourne, Victoria 3000.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in Sydney.

**Cargo Handling Terminals** means terminals on the Site constructed and operated for the purposes of importing or exporting cargoes through the Port of Newcastle.

**Closure Area** means the entire Lot 33 in Deposited Plan 1116571 located in Mayfield. The Site is contained within this area.

**Confidentiality Deed** means the deed poll signed for and on behalf of the Proponent prior to the Proponent proceeding with this ITSDP and the Disclosure Material.

**Declaration** or **Statutory Declaration** means the declaration attached as Returnable Schedule 7.

**Defect** means any discrepancy, error, ambiguity, inconsistency or omission in this ITSDP or any other information given or made available by Newcastle Port Corporation (including the Disclosure Material).

**Developer/Operator** means the successful Proponent or competitor of this process.

**Disclosure Material** means any information and documents provided by Newcastle Port Corporation or any State Related Entity to the Proponents in relation to or in connection with the ITSDP process or the Site.

**Evaluation Committee** means the committee formed to evaluate the Submissions in accordance with a documented process.

**Evaluation Criteria** means the criteria set out in this ITSDP to evaluate Submissions.

**Final Update Date** means the date being three (3) Business Days before the Submission Lodgement Date.

**FOI Act** means the *Freedom of Information Act 1989* (NSW).

**HDC** means Hunter Development Corporation, a NSW Government organisation located at Suite B, Level 5, PricewaterhouseCoopers Centre, 26 Honeysuckle Drive, Newcastle NSW 2300.

**Intellectual Property** means all present and future rights conferred by statute, common law, equity or any corresponding law in or in relation to copyright, trade marks, designs, patents,

circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

**Intertrade Industrial Park** means the part of the Closure Area currently under preferred proponent status for development. The Hunter Development Corporation is managing this project delivery on behalf of the State Property Authority. It totals 60 hectares on the southern side of the Closure Area fronting Industrial Drive, Mayfield.

**ITSDP** means this Invitation to Submit Detailed Proposal.

**ITSDP Documents** means this ITSDP and associated documentation provided.

**Koppers** means Koppers Australia Pty Limited (KAP), a 100% subsidiary of [Koppers Inc.](#) Head office is located at Level 10, 15 Blue Street, North Sydney, NSW, 2060.

**Moral Rights** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature, that exist, or that may come to exist, anywhere in the world in the ITSDP.

**NSW DoP** means NSW Department of Planning, a NSW Government agency located at 23-33 Bridge Street, Sydney NSW 2000.

**Old BHP Berths** means remnants of berths, in various state of nil or restricted use, along the eastern half of the Site numbered No.1 to No.6 starting from the east. No.6 is used by Koppers.

**Place of Lodgement** means Newcastle Port Corporation, Cnr Scott and Newcomen Streets, Newcastle, NSW 2300, Australia

**Portside Land** means the 90 hectares (approximately) of portside land of Lot 33 in Deposited Plan 1116571 at Mayfield under a contract of sale from State Property Authority to Newcastle Port Corporation. The land will be transferred to Newcastle Port Corporation when certain conditions are met, including subdivision.

**Probity Advisor** means the probity adviser appointed from time to time by Newcastle Port Corporation in relation to the ITSDP process.

**Probity Plan** means the plan prepared by the Probity Advisor to set out the probity requirements for conducting this ITSDP process and to describe how the process is planned to satisfy those requirements.

**Process Manager** means the person responsible for managing compliance of the ITSDP process and receiving and issuing communications with Proponents.

**Project** means the development and purchase or lease or both of all or part of the Site, as approved by Newcastle Port Corporation.

**Project Director** means the person appointed by Newcastle Port Corporation to manage this procurement.

**Proponent** means an entity or person who considers or responds to this ITSDP.

**Proponent Related Entity** means any employee, contractor, agent or representative of the Proponent and any of their respective employees.

**Returnable Schedules** means each of the schedules of this ITSDP referred to as such.

**Revenue Tonne** means a mass of 1000 kilograms or 1 cubic meter or 1 kilolitre, whichever gives the largest number of units of cargo quantity.

**Secondary Proponents** means any entity which has proposed a part-of-site development for the Site that has not been invited to participate in this ITSDP process.

**Site** means the 71 hectares of Portside Land of Lot 33 in Deposited Plan 1116571 located in Mayfield offered in this ITSDP.

**Site Information** means the Disclosure Material, Requests or Enquiries, Site Introduction, this ITSDP document and any other information provided by Newcastle Port Corporation or any State Related Entity.

**SPA** means State Property Authority, a statutory authority under the State Property Authority Act 2006 located at Level 9, Bligh House, 4-6 Bligh Street, Sydney 2000.

**State** means the State of NSW.

**State Agency** means any:

- (a) Department, agency or authority;
- (b) Minister or Ministerial corporation;
- (c) State owned corporation or any other corporation owned or controlled by any Minister (in that Capacity), Authority or State Owned Corporation (including Newcastle Port Corporation);
- (d) Council; or
- (e) Other public authority of any type whether or not it represents the Crown in right of NSW.

**State Related Entity** means:

- (a) any employee, contractor, agent, adviser, Minister or representative of the State;
- (b) any State Agency; and
- (c) any of their respective employees, contractors, agents or officers.

**Submission** means a submission lodged in response to this ITSDP.

**Submissions Lodgement Date** means the date nominated, or as extended in accordance with the terms of this ITSDP.

**Tender Box** means the Tender Box at the Place of Lodgement.

**TEU** means Twenty-foot Equivalent Unit.

**Update Notice** means a written or electronic notice of change to the ITSDP Documents given to Proponents pursuant to Part B2.1.

#### **B.4.2 Rules for interpreting this ITSDP**

In this ITSDP, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust or body politic and vice versa;
- (d) a reference to a Part, schedule, annexure or exhibit is to a Part, schedule, annexure or exhibit of or to this ITSDP;
- (e) a schedule, annexure or exhibit forms part of this ITSDP;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to any party to this ITSDP or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a written notice includes a notice by electronic means (including e-mail);
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) headings are for convenience of reference only and do not affect interpretation; and
- (k) A reference to any communication being in writing will include email except:
  - i. In respect of the lodgement or clarification of a Submission by a Proponent;
  - ii. Where otherwise stated.

#### **B.4.3 Business Days**

If the day on or by which any act, matter or thing is to be done under this ITSDP is not a Business Day, that act, matter or thing must be done on the next Business Day.

## B.5 ENDNOTE REFERENCES

The following list of documents, which correspond to endnote references throughout this document, are included in the attached Mayfield Site Primary Data CD for reference.

- <sup>1</sup> Mayfield Data Room Document List
- <sup>2</sup> Aerial Photographs
- <sup>3</sup> Berth & Channel Plan (excerpt from)
- <sup>4</sup> Conditions for Development Consent 2001 [DA-293-08-00] - Multi Purpose Terminal – March 2009 Revision
- <sup>5</sup> Contaminated Site Management Plan September 2009 (CSMP)
- <sup>6</sup> Environmental Assessment Sept 2009
- <sup>7</sup> Subdivision Plan
- <sup>8</sup> Mayfield Site Land Use Plan September 2009
- <sup>9</sup> Sediment Remediation Licence Agreement between State Property Authority, BHP Billiton, Newcastle Port Corporation and Hunter Development Corporation 2008
- <sup>10</sup> Voluntary Remediation Agreement 2005 (refer to Appendix G in the CSMP)
- <sup>11</sup> Voluntary Remediation Agreement 2005 (refer to Appendix G in the CSMP)
- <sup>12</sup> Environmental Deed 2004 (relevant extracts)
- <sup>13</sup> Contaminated Site Management Plan September 2009
- <sup>14</sup> Contaminated Site Management Plan September 2009
- <sup>15</sup> Voluntary Remediation Agreement 2005 (refer to Appendix G in the CSMP)
- <sup>16</sup> Mayfield Berth Refurbishment Drawings (2008)
- <sup>17</sup> Environmental Deed 2004 (relevant extracts)
- <sup>18</sup> Environmental Impact Statement 2000
- <sup>19</sup> Conditions for Development Consent 2001 [DA-293-08-00] - Multi Purpose Terminal – March 2009 Revision
- <sup>20</sup> Closure Area Site Preparation EMP (refer to Appendix B in the CSMP)
- <sup>21</sup> Voluntary Remediation Agreement 2005 (refer to Appendix G in the CSMP)
- <sup>22</sup> Sediment Remediation Licence Agreement between State Property Authority, BHP Billiton, Newcastle Port Corporation and Hunter Development Corporation 2008
- <sup>23</sup> Conditions for Development Consent 2001 [DA-293-08-00] - Multi Purpose Terminal – March 2009 Revision
- <sup>24</sup> Voluntary Remediation Agreement 2005 (refer to Appendix G in the CSMP)
- <sup>25</sup> Environmental Deed 2004 (relevant extracts)
- <sup>26</sup> Land Remediation Design Plans (refer CSMP Appendix J Drawing 6073-P06 Rev B)
- <sup>27</sup> Contaminated Site Management Plan Sept 2009 Appendix C Drawing 6073-101 Rev1 titled Site Plan – Remediation Works
- <sup>28</sup> Contaminated Site Management Plan Sept 2009 Appendix C
- <sup>29</sup> Contaminated Site Management Plan Sept 2009 Appendix C Drawing 6073-101 Rev1 titled Site Plan – Remediation Works
- <sup>30</sup> Contaminated Site Management Plan Sept 2009
- <sup>31</sup> Contamination Sampling Locations Plan
- <sup>32</sup> Land Remediation Design Plans (refer CSMP Appendix J Drawing 6073-P06 Rev B)
- <sup>33</sup> Contaminated Site Management Plan September 2009 Appendix I
- <sup>34</sup> Contaminated Site Management Plan September 2009
- <sup>35</sup> Closure Area Site Preparation EMP (refer to Appendix B in the CSMP)
- <sup>36</sup> Conditions of Development Consent [DA-134-3-2003-i] – HRRP – August 2009 revision

- <sup>37</sup> Hunter River South Arm Dredging Approval - DEWHA - May 2007 (2 documents)
- <sup>38</sup> Conditions of Development Consent [DA-134-3-2003-i] – HRRP – August 2009 revision
- <sup>39</sup> Remnant Electrical, Water, Sewer and Stormwater diagrams (3 documents)
- <sup>40</sup> MIEA Overview
- <sup>41</sup> MIEA Rules 2002
- <sup>42</sup> MIEA 2009/10 Budget
- <sup>43</sup> MIEA Easements 2004
- <sup>44</sup> Refer to Mayfield Data Room Document List
- <sup>45</sup> Refer to Mayfield Data Room Document List
- <sup>46</sup> Environmental Assessment Sept 2009
- <sup>47</sup> Rail Design Plans (2009) – Worley Parsons (draft)
- <sup>48</sup> Summary Report – Operational Scenario for Newcastle MPT Rail Transport 2003
- <sup>49</sup> Environmental Assessment Sept 2009
- <sup>50</sup> Mayfield Site – Compilation Plan Showing Depths 2009
- <sup>51</sup> Berth and Channel Plan (excerpt from)
- <sup>52</sup> Mayfield Berth Refurbishment Drawings (2008)
- <sup>53</sup> Mayfield No.4 Berth Environmental Protection Licence No.13181
- <sup>54</sup> Mayfield No.4 Berth Operational Layout Plan (2009) NC1349
- <sup>55</sup> Preliminary Design Stormwater Strategy 2006 (refer to Appendix L in the CSMP)
- <sup>56</sup> Land Remediation Design Plans (refer CSMP Appendix J Drawing 6073-P06 Rev B)
- <sup>57</sup> Contaminated Site Management Plan Sept 2009 - Appendix C Drawing 6073-101 Rev1