

Planning Services

Gateway Determination Report

LGA	Port Stephens
PPA	Port Stephens Council
NAME	Proposed service station at 2A and 2B Lavis Lane Williamtown (0 dwellings, 5 jobs)
NUMBER	PP_2018_PORTS_005_00
LEP TO BE AMENDED	Port Stephens Local Environmental Plan 2013
ADDRESS	2A and 2B Lavis Lane, Williamtown
DESCRIPTION	Lots 1 and 2 DP 1237147
RECEIVED	9 October 2018
FILE NO.	EF18/44038
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to allow a service station as an additional permitted use on 2A and 2B Lavis Lane, Williamtown.

1.2 Site description

The site is substantially cleared and contains a dwelling house (Figure 1). Excluding numerous piles of fill in the northern portion, the site is generally flat, low lying, and consists mainly of grassland. Land in this area is identified as high hazard floodway and is affected by aircraft noise associated with the Williamtown RAAF Air Base and Newcastle Airport. It is also potentially subject to per- and poly-fluoroalkyl substances (PFAS) contamination.

The site has road access to Lavis Lane via a right of carriageway through the McDonalds site to the north. The site is adjoined by farmland to the east and south (cattle grazing), and Nelson Bay Road to the west.

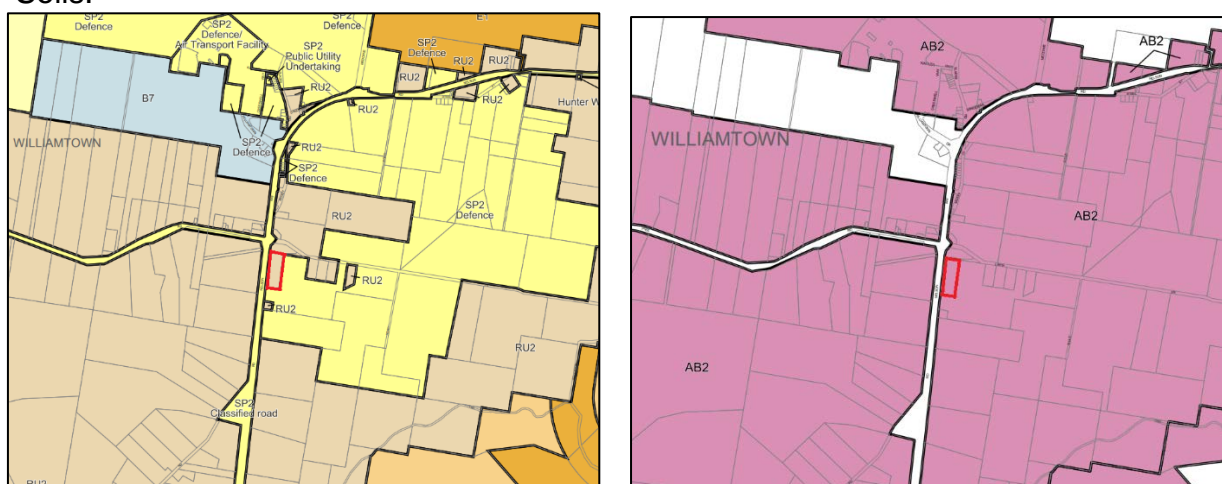
The proposal states that the site is the subject of existing development approvals for a tourist facility (food and drink premises, tourist accommodation) and a KFC. The approvals require filling to address flooding issues and enable road access directly onto Nelson Bay Road. The service station is proposed to be located on the southern portion of the site.



Figure 1: Site map (source: SIX maps)

1.3 Existing planning controls

The site is zoned RU2 Rural Landscape in the Port Stephens Local Environmental Plan 2013 (Figure 2). A 20ha minimum lot size applies. No other development standards apply. The site is mapped in the LEP as containing Class 3 Acid Sulfate Soils.



Figures 2a and 2b: Existing zone and minimum lot size maps (AB2 = 20 ha) (source: PS LEP 2013)

Similar provisions apply to the surrounding lands. Land owned by the Federal Department of Defence is zoned SP2 Defence.

1.4 Surrounding area

The site is in Williamtown which consists of the RAAF Air Base, Newcastle Airport (approximately 1.5 km to the north), business park, two service stations, a McDonalds, a place of public worship, and rural residential dwellings (located along Lavis Lane, Nelson Bay Road, and Cabbage Tree Road) (Figure 3).

Lands adjoining these uses are rural and are generally used for cattle grazing (being held in either private or Defence ownership). Similar to the site, these lands are low lying, flat and subject to flooding/ inundation. They are subject to aircraft noise, contain acid sulfate soils, and either are, or potentially are, subject to PFAS contamination.

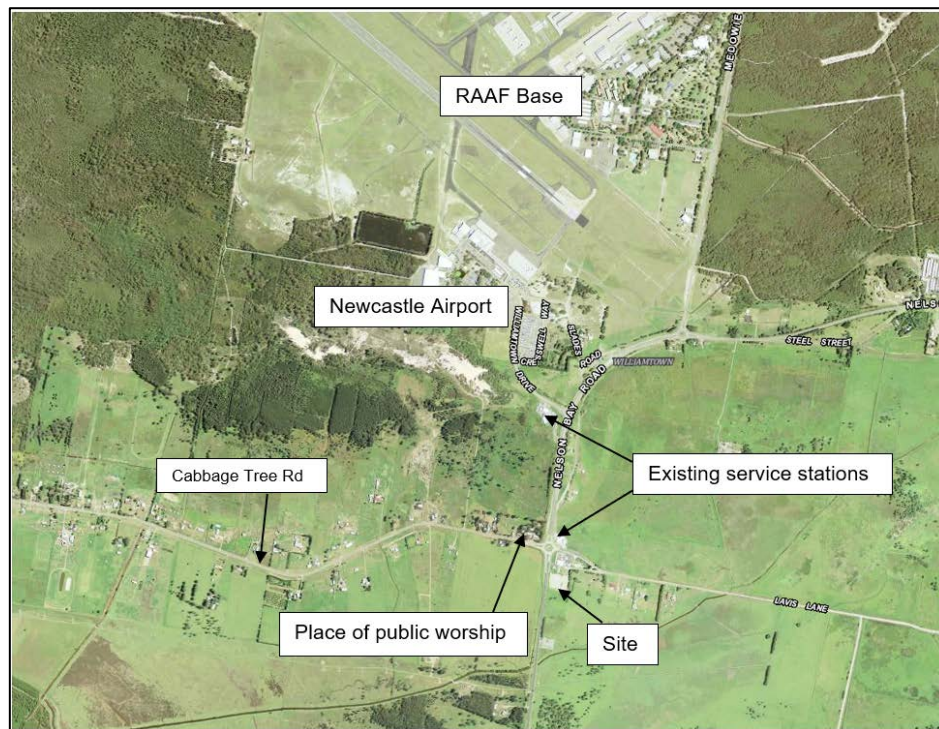


Figure 3: Locality Map (source: SIX maps)

An additional 3,000 jobs are targeted for Williamtown by year 2036 as part of a catalyst area identified in the Greater Newcastle Metropolitan Plan (GNMP) that will facilitate the expansion of existing aerospace and defence-related employment at the airbase (Figure 4).



Figure 4: Williamstown Catalyst Area (source: GNMP)

This employment growth will increase traffic on Nelson Bay Road and Cabbage Tree Road near the site. These roads are already heavily used because they provide access to the base and airport, and to Newcastle/ Kooragang to the south (15 km), Raymond Terrace/ Heatherbrae to the west (13 km), Medowie to the north (10 km), and the Tomaree Peninsula (Nelson Bay) to the north east (Figure 5).

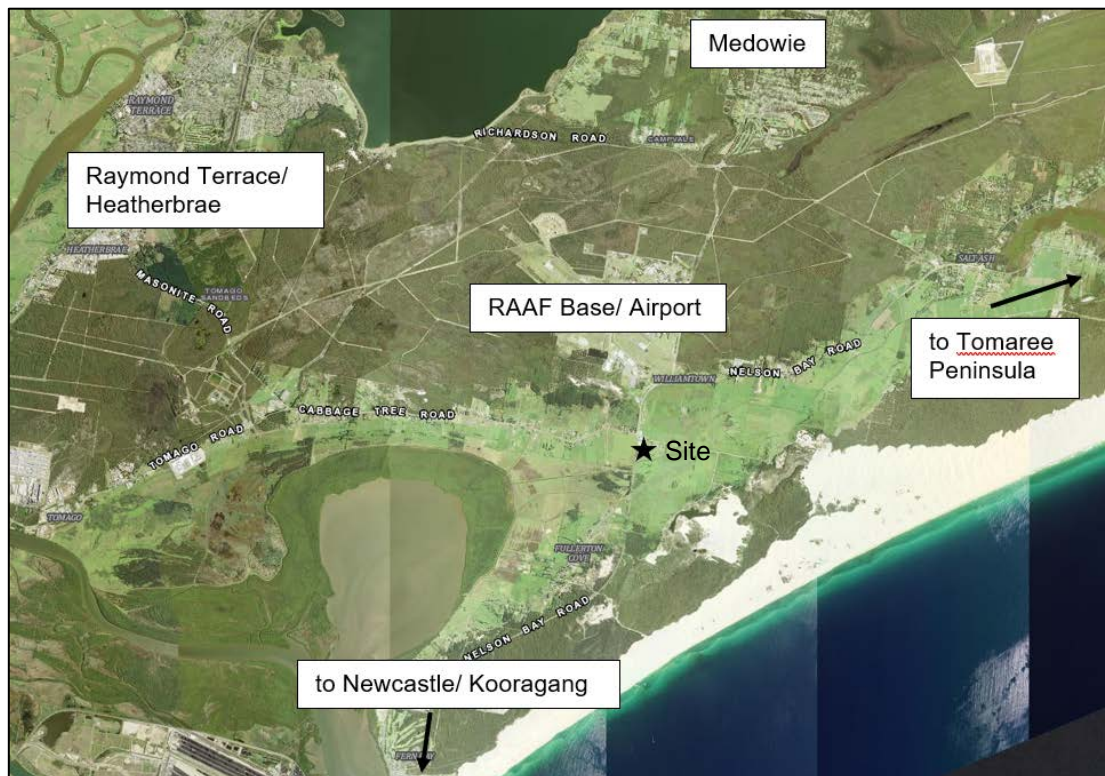


Figure 5: Regional map (source: SIX maps)

1.5 Summary of recommendation

The planning proposal should proceed, subject to conditions. Conditions are required regarding community consultation and completion timeframe. Agency consultation is needed to address the relevant Ministerial directions and site-specific issues (flooding, contamination, access, air base impacts and bushfire).

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the planning proposal is to amend the Port Stephens LEP 2013 to permit a service station on the site. The objectives are clear and no changes are required.

2.2 Explanation of provisions

The explanation of provisions states that the site would be added to Schedule 1 - Additional Permitted Uses in the LEP. The listing would note the property details and that services stations are permitted with development consent on that land. The provisions are clear and no changes are required.

2.3 Mapping

The proposal notes that the LEP's Additional Permitted Uses map (CL1_004) would be updated to identify the site. A draft map is included in the proposal.

Other maps have been included in the proposal to assist with community consultation (e.g. zone, flooding, metropolitan plan). It is noted that the map relating to the Greater Newcastle Metropolitan Plan (GNMP) relates to the draft GNMP. This should be updated to reflect the final version. A Gateway determination condition is proposed.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report.

The proposal states that the proposed service station would provide services, consumer choice and contribute to growth in the locality. It considers the service station as providing support to an expanded aerospace/ Defence precinct at Williamtown, and that it would be compatible with the existing and approved uses in the immediate area. Further, that the traffic volumes, access, parking availability, exposure, site size and dimensions support the development of part of the site for a service station.

The site is well located for a service station. It forms part of a node of similar activities (McDonalds, service stations) which sit within the Williamtown centre and provide motorist-oriented services (fuel and fast food) to passing traffic and Williamtown employees. Both of which are anticipated to increase into the future.

Given this and noting that the site sits outside the Williamtown catalyst area, the proposal is considered compatible with the development outcomes envisaged for Williamtown in the GNMP.

It is also considered that the proposal would not undermine the commercial functions of Raymond Terrace/ Heatherbrae. The use forms part of an existing node of similar activities (i.e. tourism and fast food premises) which provide different functions to the commercial, bulky goods and retail functions of Raymond Terrace/ Heatherbrae.

The proposal considers alternative options to the additional permitted use approach such as rezoning the site to a business zone or permitting services stations in the RU2 zone. Neither of these approaches are favoured in the absence of more detailed strategic planning. The proposal is considered the best means of achieving the proposal's objectives.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State level plans which are specifically relevant to this proposal.

4.2 Regional / District

The site is located on land subject to both the Greater Newcastle Metropolitan Plan 2036 (GNMP) and the Hunter Regional Plan 2036 (HRP). Where the plans refer to similar matters, the guidance provided in the GNMP has been considered as it provides more detailed guidance regarding the outcomes that are to be achieved. For this reason, limited discussion is provided in relation to the HRP.

Greater Newcastle Metropolitan Plan 2036

The proposal states that it is consistent with the GNMP, specifically Strategy 2 - Grow the airport and aerospace and Defence precinct at Williamtown; Strategy 13 - Protect rural amenity outside urban areas; Strategy 14 - Improve resilience to natural hazards; and Strategy 23 - Protect major freight corridors.

This assessment is supported. The proposal does not undermine the planning and development outcomes envisaged for the Williamtown catalyst area as it is situated outside the catalyst area lands (Strategy 2) (Figure 4). It is also compatible with the rural amenity of the area as it forms part of a node of similar activities that sit within the Williamtown centre (Strategy 13).

Further work is required to demonstrate that the proposal would be consistent with Strategy 14. The site is identified in Council's Floodplain Risk Management Plan as high hazard floodway and GNMP action 14.1 requires Council to ensure that new development does not occur in high risk areas. Consultation with the Office of Environment and Heritage (OEH) is required before consistency with Strategy 14 can be determined. Similarly, consultation with the Environment Protection Authority regarding contamination (PFAS) and the Rural Fire Service (RFS) regarding bushfire impacts also needs to occur. Further discussion on flooding and contamination impacts is provided later in this report.

Strategy 23 relates to ensuring that the transport efficiency of freight corridors is not undermined by traffic generating development. Given the site's location (as part of an existing node) and that a service station supports freight corridor activities, the proposal is considered consistent with Strategy 23. Notwithstanding, consultation with the Roads and Maritime Services (RMS) should occur.

Hunter Regional Plan 2036

The proposal states that it is consistent with the HRP, specifically Direction 1 - Grow Newcastle as Australia's next metropolitan city; Direction 2 - Enhance connections to the Asia Pacific through global gateways; Direction 4 - Enhance inter regional linkages to support economic growth; Direction 6 - Grow the economy of MidCoast

and Port Stephens; Direction 7 - Develop enhanced manufacturing, Defence and aerospace hubs; and Direction 13 - Plan for greater land use compatibility.

This conclusion is generally supported. In addition, the proposal is considered consistent with Direction 23 - Grow centres and renewal corridors because the commercial activity proposed would not undermine existing centres (Raymond Terrace/ Heatherbrae).

4.3 Local

Port Stephens Planning Strategy 2011 (PSPS) (not endorsed by DPE)

The proposal states that it is consistent with the PSPS because it adequately responds to environmental constraints, is compatible with aircraft noise impacts, and supports the growth of the airport and development of the Defence and Airport Related Employment Zone (DAREZ) identified in the PSPS.

This conclusion is generally supported. Further agency consultation needs to occur however to clarify the proposal's compatibility with the site constraints.

DAREZ Land Use Development Strategy 2008

The proposal notes the site to be outside the DAREZ lands but consistent with the goals of this strategy.

The DAREZ Strategy (DoP 2007) sought to facilitate the development of lands around the airport for defence and airport related activities. It informed the existing B7 Business Park zoned land and identified a stage 2 development area for further investigation. The strategic planning guidance has been superseded by the guidance in the GNMP. Infrastructure and environmental constraints however generally remain relevant to proposals within its study area.

Port Stephens Rural Strategy 2011 (not endorsed by DPE)

The proposal states this strategy identifies Williamtown as a rural village and notes the proposal to be consistent with the rural land management principles set out in the strategy.

While the site would retain its RU2 zone, its size (2.5 ha approximately) limits its ability for agricultural use. As discussed earlier, the site forms part of an existing node and is considered compatible with the agricultural activities undertaken on the surrounding lands. It is consistent with the intent of the rural strategy to minimise land use conflict with agricultural activities.

4.4 Section 9.1 Ministerial Directions

The planning proposal is either inconsistent or further work is required before consistency can be determined with the following Section 9.1 Directions:

1.2 Rural Zones – permitting a service station on the site is considered to have the effect of increasing the permissible density of land in a rural zone, making the proposal inconsistent with the direction (subclause 4b). As discussed previously, while the site would retain its RU2 zone, the size of the site limits its potential for agricultural use. Further, the service station would form part of an existing node of similar already approved development and would not adversely affect rural activities on surrounding lands.

Given this, the inconsistency is of minor significance and the Secretary should agree to the inconsistency accordingly.

1.5 Rural Lands – the proposal is inconsistent with Direction 1.5 because it does not promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities (subclause 4e). This inconsistency is of minor significance for the reasons detailed in response to direction 1.2. It is recommended that the Secretary agree that inconsistency is of minor significance.

3.5 Development Near Licensed Aerodromes – consultation with the Federal Department of Defence is required before consistency with this direction can be determined (subclause 4a).

4.1 Acid Sulfate Soils – the site is mapped as containing Class 3 Acid Sulfate Soils (ASS). As the proposal would intensify the land uses on the land and no ASS study is to be undertaken, the proposal is inconsistent with this direction (clause 6). This inconsistency is of minor significance because LEP clause 7.1 Acid sulfate soils ensure that ASS issues can be adequately addressed at the DA stage. It is recommended that the Secretary agree that the inconsistency is of minor significance.

4.3 Flood Prone Land – as the proposal would permit development in a floodway (Figures 6 and 7), the proposal is inconsistent with the direction (subclause 6a). The proposal is not supported by a flood study. It justifies the inconsistency by noting that development of the site for a service station would not result in greater flood impacts on other properties beyond that already approved under the existing consents which require filling of the site. It considers risks to customers and workers unlikely, and that flooding impacts can be resolved at the DA stage.

There is insufficient information to determine whether the inconsistency with this direction is of minor significance. Council's Floodplain Risk Management Plan (FRMP) suggests that development within a high hazard floodway not be encouraged unless specific community needs/ benefits are demonstrated – no advice to this effect is provided. The advice about the existing consents and the intention to undertake a local flood study are noted. Consultation with OEH is required to determine consistency with this direction.

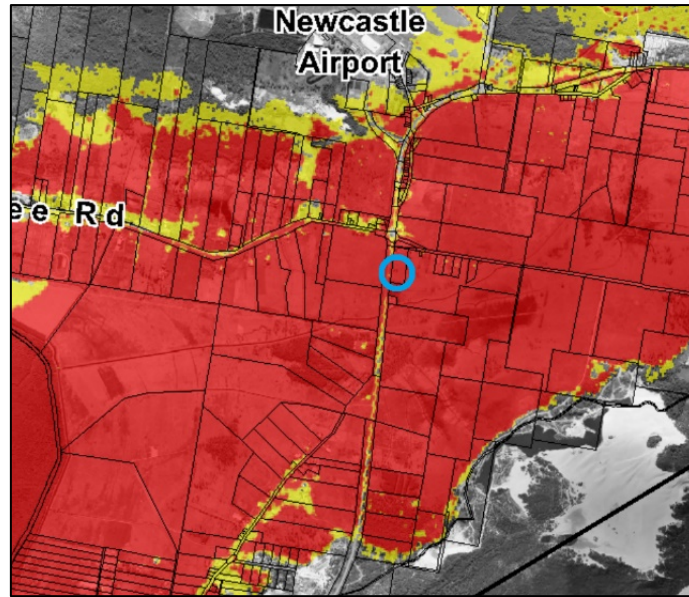


Figure 6: Hazard map (red is high hazard) (source Williamtown Salt Ash FRMP)

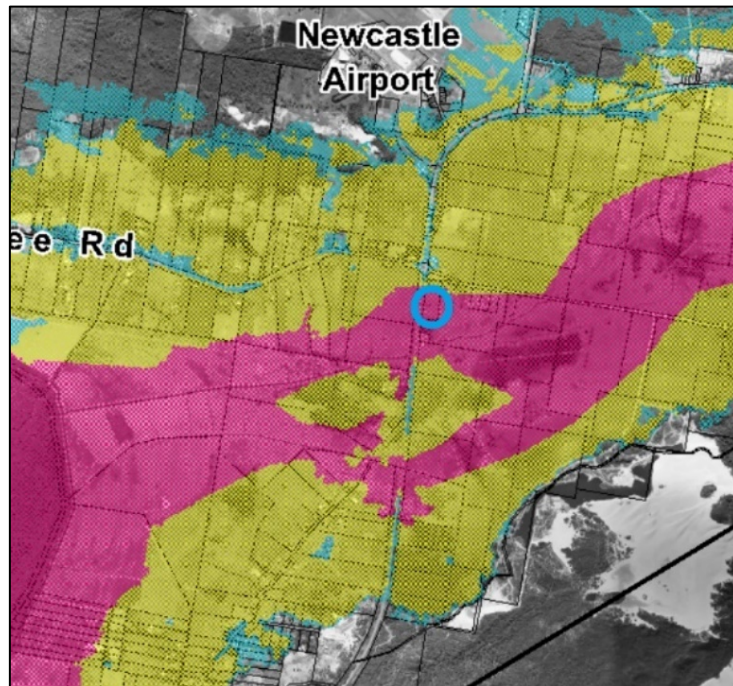


Figure 7: Hazard category (pink is floodway) (source: Williamtown Salt Ash FRMP)

4.4 Planning for Bushfire Protection – consultation with the RFS is required before consistency with this direction can be determined (clause 4).

5.10 Implementation of Regional Plans – as discussed, further investigation into flooding, bushfire and road network impacts is required, with agency consultation recommended.

4.5 State environmental planning policies (SEPPs)

The planning proposal is either inconsistent or further work is required before consistency can be determined with the following SEPPs.

SEPP 55 Remediation of Land

The proposal states that the site is located within the Williamstown Investigation Area associated with the Williamstown RAAF Base and PFAS contamination. The proposal includes advice from EPA (2016) which relates to the existing approved development which concludes that contamination should not unreasonably impact that development.

Notwithstanding, SEPP 55 applies to the planning proposal and so it needs to be considered. Council advises that it considered SEPP 55 in preparing the proposal including a review of the advice provided to the landowner by EPA. Council is of the opinion that a phase 1 assessment should occur following Gateway and at this stage consistency with SEPP 55 clause 6(1) cannot be determined. Further, that based on the nature of the use and advice by EPA, the planning proposal is likely to demonstrate consistency.

Council's intention to undertake a phase 1 assessment is supported. No advice has been provided regarding the past uses of the site and so the potential for contamination from those uses is unknown. Further, the site is within the EPA's secondary management zone which means that the area has detected some levels of PFAS contamination (Figure 8). Consultation with EPA is recommended to ensure that no adverse impacts are likely to result.

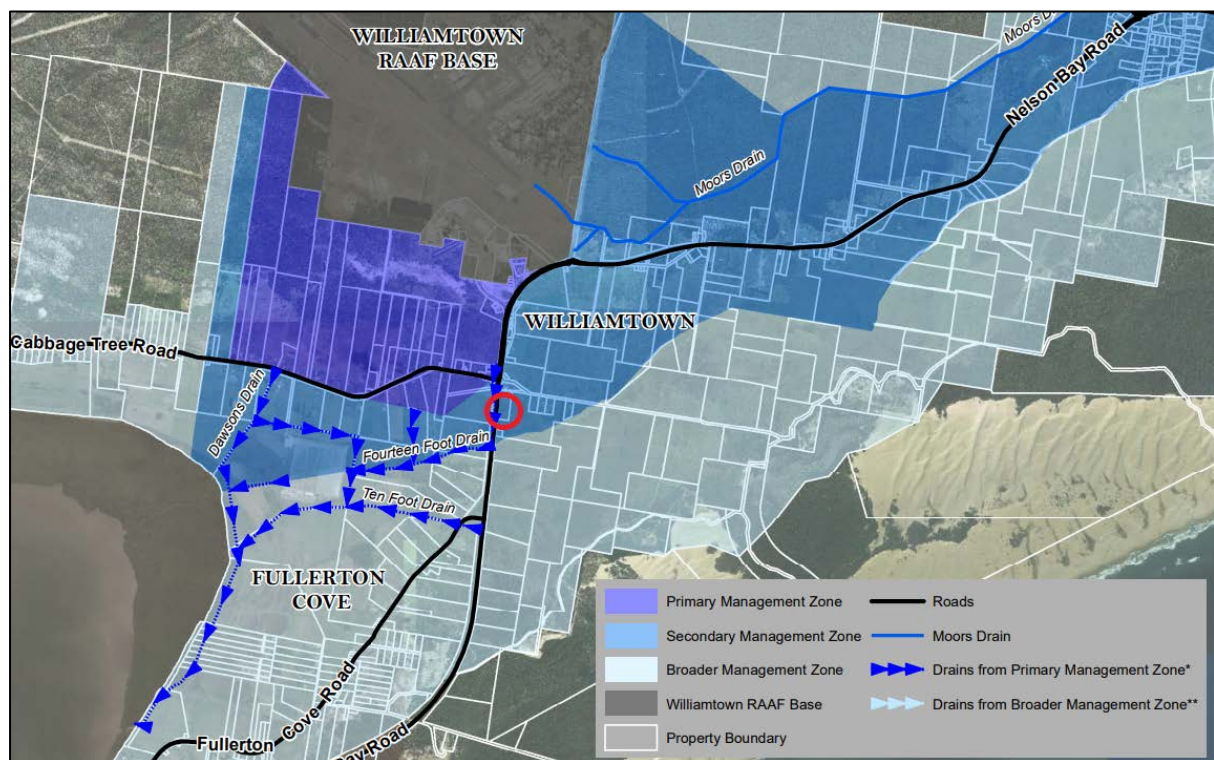


Figure 8: EPA management zone map (source: EPA website)

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal states that positive social benefits would result from developing the site for a service station through increased employment opportunities and by providing improved services to surround residents, workers, tourists and travellers.

It is noted that an additional five jobs may result from the proposal which would have a social benefit. Benefits through increased choice for consumers may also result.

5.2 Environmental

As discussed, the site is subject to environmental constraints being flooding, bushfire and potentially contamination. Further investigation and consultation with agencies are required to evaluate potential impacts. Gateway determination conditions are recommended.

The site is also affected by acid sulfate soils however this can be adequately resolved at the DA stage should the proposal progress to that stage.

5.3 Economic

The creation of five additional jobs is likely to have a positive economic impact.

5.4 Infrastructure

The proposal states that the site is serviced and has access from Lavis Lane. It also notes that access from Nelson Bay Road has been approved as part of the consent for the tourist facility. Consultation with RMS is recommended to ensure that traffic impacts and access arrangements are suitable.

6. CONSULTATION

6.1 Community

A 14 day community consultation period is nominated in the planning proposal. This is supported as the proposal is consistent with the pattern of surrounding land uses.

6.2 Agencies

The following agency consultation is recommended to address site constraints and to satisfy Ministerial directions:

- RMS – access, traffic;
- OEH – flooding;
- RFS – bushfire;
- EPA – contamination; and
- Department of Defence – impacts on RAAF Base.

7. TIME FRAME

The proposal indicates that a nine-month completion. This is supported.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. As the proposed use is consistent with the pattern of surrounding land uses, Council should be authorised to be the local plan-making authority.

9. CONCLUSION

The planning proposal should proceed subject to conditions.

The site is well located for a service station and forms part of a node of similar activities (McDonalds and service stations) which sit within the Williamstown centre and provide motorist-oriented services to passing traffic and Williamstown employees.

The proposal does not undermine the planning and development objectives for the adjoining Airport and Aerospace/ Defence precincts identified in the GNMP, the commercial functions of Raymond Terrace/ Heatherbrae, or the agricultural activities undertaken on nearby rural lands.

10. RECOMMENDATION

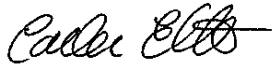
It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions; 1.2 Rural Zones, 1.5 Rural Lands and 4.1 Acid Sulfate Soils are minor or justified; and
2. note that the inconsistencies with section 9.1 Directions; 3.5 Development Near Licensed Aerodromes, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Strategies are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning and Public Spaces, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition Council is to update the planning proposal with the results of the proposed contamination assessment and include advice that demonstrates that the Environment Protection Authority is satisfied that there is either no contamination risk or that the contamination risk can be appropriately managed.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - Roads and Maritime Services;
 - Office of Environment and Heritage;
 - Rural Fire Services;
 - Environment Protection Authority; and
 - Department of Defence.
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.

5. Given the nature of the planning proposal, Council should be the local plan-making authority.
6. Prior to public exhibition, the planning proposal is to be updated to show the adopted Greater Newcastle Metropolitan Plan 2036 Williamstown catalyst area map.



Caitlin Elliott
Team Leader, Hunter



Monica Gibson
Director Regions, Hunter
Planning Services

Contact Officer: Ben Holmes
Senior Planning Officer, Hunter
Phone: 4904 2709