| | |
|---|---|
| JRPP No. | 2010STH030 |
| DA No. | DA-2010/1187 |
| Proposed Development | Removal and replacement of BOS No 2 & No 3 Flare Stacks |
| Property | Lot 1 Five Islands Road, Port Kembla |
| Applicant | David de Santi – BlueScope Steel |
| Report by: | Nigel Lamb, Development Project Officer, Wollongong City Council |

# Assessment report and recommendation

## EXECUTIVE SUMMARY

### Reason for consideration by Joint Regional Planning Panel

The proposal has been referred to Joint Regional Planning Panel pursuant to clause 13C of State Environmental Planning Policy (Major Development) 2005 as the proposed flare stacks are structures in excess of 13 metres in height and is located within the coastal zone.

### Proposal

The proposal is for the replacement of two of the Basic Oxygen Steelmaking (BOS) flare stacks. The replacement stacks are of similar height and bulk as the existing stacks. There are currently three stacks on the site; the first stack was replaced under DA-2010/93. The remaining stacks are approximately 30 years old and are approaching the end of their expected life.

### Permissibility

The site is zoned IN3 Heavy Industrial pursuant to State Environmental Planning Policy (Major Development) 2005. The proposal falls under the definition of a "heavy industry" and is permissible in the zone with development consent.

### Consultation

The proposal did not require notification under appendix 1 (public notification procedures for development applications) of Wollongong Development Control Plan 2010

### Main Issues

None identified.

### RECOMMENDATION

It is recommended that conditional approval be granted to DA-2010/1187 subject to the draft conditions contained in Attachment 4.

# ASSESSMENT REPORT

## 1. Background

Basic Oxygen Steelmaking is a method of primary steelmaking in which carbon-rich molten pig iron is made into steel. The stacks are responsible for removal of toxic gases produced through the steelmaking process before release into the atmosphere

The current operations are covered by a licence from the Department of Environment, Climate Change and Water (DECCW). The proposal will not result in any change to this licence.

There are a large number of historical development applications relating to the steelworks.

## 2. Site description

The site is located on Lot 1 Five Islands Road, Port Kembla and is within the steelworks.

Council records list the site as being affected by the following constraints:

- contaminated land
- acid sulphate soils
- flooding
- bushfire

## 3. Proposal

The current proposal is for the replacement of the remaining two BOS flare stacks. The replacement stacks are of similar height and bulk as the existing stacks.

## 4. Environmental Planning and Assessment Act 1979

In determining a development application, the consent authority must take into consideration matters referred to in section 79C(1) of the EP&A Act 1979 as are of relevance to the development. The relevant matters of consideration under section 79C(1) are outlined below.

| Section 79C(1) of the Environmental Planning and Assessment Act 1979 |
|---|
| (a)(i) any environmental planning instrument |
| <u>State Environmental Planning Policies</u><br>• SEPP No. 55 – Remediation of Land<br>• SEPP 71 – Coastal Protection<br>• SEPP (Major Development) 2005<br><u>Regional Environmental Planning Policies</u><br>None applicable.<br><u>Local Environmental Planning Policies</u><br>• Wollongong Development Control Plan 2009<br>Detailed assessment is provided below the table. |

| Section 79C(1) of the Environmental Planning and Assessment Act 1979 |
|---|
| (a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority |
| None applicable. |
| (a)(iii) any development control plan |
| • Wollongong Development Control Plan 2009<br>• Wollongong Section 94A Development Contributions Plan (2009) |
| (a)(iiia) Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F |
| There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development. |
| (a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph) |
| The application involves demolition and as such the provisions of AS 2601-1991: The Demolition of Structures apply.<br><br>The site is located on land to which the Government Coastal Policy applies however the NSW Coastal Policy 1997 only applies to the seaward part of the LGA. |
| b) the likely impacts of development |
| Context and Setting:<br><br>The proposed replacement stacks are of similar bulk, height and scale to the existing stacks, the main difference being the omission of the existing lattice support structure resulting in a more slimline appearance. In terms of height, it is noted that under SEPP (Major Development) 2005 there is no height control. Notwithstanding, it is considered that the proposed height is in keeping with the surrounding development and in context with the surroundings. No additional impacts are expected and the proposal is considered appropriate to the context and setting.<br><br>Access, Transport and Traffic:<br><br>The proposal does not require provision for any additional car parking nor does it result in any additional servicing requirements apart from during the construction phase.<br><br>Public Domain:<br><br>The proposal is not expected to have any adverse impact on the public domain.<br><br>Utilities:<br><br>The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are adequate to service the proposal.<br><br>Heritage:<br><br>No heritage items will be impacted by the proposal.<br><br>Other land resources:<br><br>The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon any valuable land resources.<br><br>Water:<br><br>The site is presently serviced by Sydney Water, which can be readily extended to meet the requirements of the proposed development. |

## Section 79C(1) of the Environmental Planning and Assessment Act 1979

The proposal is not envisaged to have unreasonable water consumption.

Soils:

The proposal does not involve significant earthworks.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Sampling of air quality will continue and is expected to remain the same as existing.

DECCW provided comment with regards to the previous replacement of the first of the stacks and recommended the following condition of consent:

*Air - Stack Sampling Positions*

- *The Licensee must ensure that the design and construction of the flare stacks includes sampling positions that complies with TM-1 as set out in the Approved Methods for the Sampling and Analysis of Air Pollutants in NSW. This requirement is to be reflected on the plans and approved by DECCW.*

Confirmation has been provided that this condition is sufficient for the current proposal for the replacement of the remaining stacks.

Flora and Fauna:

There is no vegetation removal or landscaping proposed or required.

Waste:

A condition will be attached to any consent granted that an appropriate receptacle be in place for any waste generated during the construction.

Energy:

The proposal is not envisaged to have unreasonable energy consumption.

Noise and vibration:

The proposal is located within the steelworks and is a considerable distance from any residential developments. No adverse noise impacts are expected from the proposal given that the proposed materials and equipment will be modernised.

Natural hazards:

Council records list the site as flood affected and Council's Stormwater Engineer has accordingly recommended conditions to be attached to any consent granted.

Technological hazards:

Council records list the site as contaminated land affected. SEPP 55 is applicable to the site and is discussed at section 5 of this report.

Safety, Security and Crime Prevention:

This application does not result in any opportunities for criminal or antisocial behaviour.

Social Impact:

The proposal is not expected to create any negative social impact.

Economic Impact:

The proposal is not expected to create any negative economic impact.

| Section 79C(1) of the Environmental Planning and Assessment Act 1979 |
|---|
| Site Design and Internal Design:<br><br>The application does not result in any departures from development standards or Council's development control plans as outlined above.<br><br>A condition will be attached to any consent granted that all works are to be in compliance with the Building Code of Australia.<br><br>Construction:<br><br>A condition will be attached to any consent granted that WorkCover be contacted for any demolition or use of any crane, hoist, plant or scaffolding.<br><br>Cumulative Impacts:<br><br>The proposal is not expected to have any negative cumulative impacts. |
| c) the suitability of the site for development |
| Does the proposal fit in the locality?<br><br>The proposal is considered appropriate with regards to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.<br><br>Are the site attributes conducive to development?<br><br>There are no site constraints that would prevent the proposal. |
| d) any submissions made in accordance with this Act or the regulations |
| The application did not require notification in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising.<br><br>Submissions from public authorities<br><br>DECCW were consulted regarding the application and their comments are contained at section 10.2 of this report and conditions are included in the draft conditions. |
| e) the public interest |
| The application is not expected to have any negative impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest. |

# 5. State Environmental Planning Policy No. 55 – Remediation of Land

*Contamination and remediation to be considered in determining development application*

*(1) A consent authority must not consent to the carrying out of any development on land unless:*

*(a) it has considered whether the land is contaminated, and*

*(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will bef remediated before the land is used for that purpose.*

It is considered that despite contamination the land is suitable for the proposed development and no rehabilitation is required. Council's Environment Officer has reviewed the application in this regard and has not raised any issues subject to conditions contained at Attachment 4 requiring dust suppression and waste management for the decommissioned stacks.

# 6. State Environmental Planning Policy No. 71 – Coastal Protection

2 Aims of Policy

*(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*

*(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*

*I to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*

*(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*

*(e) to ensure that the visual amenity of the coast is protected, and*

*(f) to protect and preserve beach environments and beach amenity, and*

*(g) to protect and preserve native coastal vegetation, and*

*(h) to protect and preserve the marine environment of New South Wales, and*

*(i) to protect and preserve rock platforms, and*

*(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*

*(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*

*(l) to encourage a strategic approach to coastal management.*

8. Matters for consideration

The matters for consideration are the following:

| Matters for consideration | Comment |
|---|---|
| (a) the aims of this Policy set out in clause 2, | The proposal will not have any negative impacts on the coastal environment and is consistent with the aims outlined in Clause 2. |
| (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved, | The proposal will not affect access to the coastal foreshore. |
| (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability, | The site is not in close proximity to the coastal foreshore. |
| (d) the suitability of development given its type, location and design and its relationship with the surrounding area, | The proposal complies with the objectives of the zone. There are not expected to be any negative impacts on the amenity of the locality and the proposal is considered to be suitable for the location. |
| (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore, | The proposal is not envisaged to detrimentally affect the coastal foreshore. |

| | | |
|---|---|---|
| (f) | the scenic qualities of the New South Wales coast, and means to protect and improve these qualities, | The proposal is not expected to impact on the scenic values of the NSW coast. |
| (g) | measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats, | Flora or fauna are not envisaged to be adversely affected by the proposal. |
| (h) | measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats | There are not expected to be any negative impacts on fish or marine vegetation and their habitats. |
| (i) | existing wildlife corridors and the impact of development on these corridors, | No wildlife corridors are impacted by the proposal. |
| (j) | the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards, | The proposal is not expected to impact on or be affected by any coastal processes or hazards. |
| (k) | measures to reduce the potential for conflict between land-based and water-based coastal activities, | The proposal is not expected to result in any conflicts between land and water based coastal activities. |
| (l) | measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals, | The proposal is not expected to impact on any items of cultural importance. |
| (m) | likely impacts of development on the water quality of coastal waterbodies, | The proposal is not expected to impact on the water quality of any coastal waterbodies. |
| (n) | the conservation and preservation of items of heritage, archaeological or historic significance, | No items of heritage, archaeological or historic significance are affected by the proposal. |
| (o) | only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities, | Not applicable. |
| (p) | only in cases in which a development application in relation to proposed development is determined: | |
| | (i) the cumulative impacts of the proposed development on the environment, and | There are not expected to be any negative cumulative impacts from the proposal. |
| | (ii) measures to ensure that water and energy usage by the proposed development is efficient. | The proposal will not result in excessive energy or water usage. |

Conclusion

The application is overall considered to be consistent with the aims of this policy and there are no significant issues in regards to the matters for consideration.

# 7. State Environmental Planning Policy (Major Development) 2005

### Clause 7 State Significant Sites

Schedule 3 of the SEPP identifies the entire Port Kembla area (incorporating the subject site) as a state significant site.

### Schedule 3 State significant sites

Part 20 Three Ports Site

The site is located within the Three Ports site.

4 Relationship with other environmental planning instruments

The only environmental planning instruments that apply, according to their terms, to land within the Three Ports Site are this Policy and all other State Environmental Planning Policies, other than State Environmental Planning Policy No 1-Development Standards.

7 land use zones

The site is zoned IN3 Heavy Industry.

The proposal falls under the definition of a "heavy industry" and is permissible in the zone with development consent.

8 objectives of land use zones to be taken into account

*The objectives of the IN3 zone are:*

*(1) The objectives of Zone IN3 Heavy Industrial are as follows:*

*(a) to provide suitable areas for those industries that need to be separated from other land uses,*

*(b) to encourage employment opportunities,*

*(c) to minimise any adverse effect of heavy industries on other land uses,*

*(d) to provide transport infrastructure and intermodal facilities,*

*(e) to allow some diversity of activities that will not significantly detract from the operation of existing or proposed industries.*

*(2) Development for any of the following purposes is permitted without development consent on land within Zone IN3 Heavy Industrial:*

*environmental protection works.*

*(3) Development for any of the following purposes is permitted only with development consent on land within Zone IN3 Heavy Industrial:*

*depots; food and drink premises; freight transport facilities; heavy industries; port facilities; roads; transport depots; warehouse or distribution centres; waste or resource management facilities.*

*(4) Except as otherwise provided by this Part, development is prohibited on land within Zone IN3 Heavy Industrial unless it is permitted by subclause (2) or (3).*

The proposal is for the replacement of two BOS flare stacks with similar stacks. The proposal is considered to be consistent with the objectives of the zone.

### Clause 13C Coastal development to which Part applies

Clause 13C (b) applies to development within the coastal zone for:

*buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are greater than 13 metres in height, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,*

As the proposal is 85.651m in height, Clause 13F (1)(b) requires that Council consent functions are to be exercised by the Joint Regional Planning Panel.

# 8. Wollongong Development Control Plan 2009

The DCP does not apply to the Port Kembla land affected by the SEPP (Major Development) 2005. However, it can be utilised as a generic guideline in assessing the proposal

### CHAPTER B5 INDUSTRIAL DEVELOPMENT

The proposal does not alter existing servicing arrangements for the site or require additional car parking. There is not expected to be any change from the existing stack with regards to emissions. The current operations are controlled via a licence from DECCW and the proposal is not expected to require any changes to this current licence. As such, the proposal is considered to be consistent with the aims and objectives of this plan.

### CHAPTER E7: WASTE MANAGEMENT

The proposal is not expected to generate any additional waste through use of the stacks.

### CHAPTER E9 HOARDINGS AND CRANES

A condition will be attached to any consent granted in relation to use of hoardings and cranes.

### CHAPTER E14 STORMWATER MANAGEMENT

Council's Stormwater Engineer has reviewed the application and has not raised any concerns. The proposal will not significantly alter the existing stormwater disposal methods or increase impervious areas.

### CHAPTER E20 CONTAMINATED LAND MANAGEMENT

Contamination is discussed in the assessment against SEPP 55 contained within this report.

### CHAPTER E21 DEMOLITION AND ASBESTOS MANAGEMENT

Conditions of consent are recommended at Attachment 4 in relation to demolition.

### CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

The proposal does not involve significant earthworks and the conditions at Attachment 4 are considered adequate to mitigate against any potential impacts from erosion or sedimentation.

# 9. Wollongong Section 94A Development Contributions Plan (2009)

The estimated cost of works is $7,000,000 and as such as section 94A levy of 1% of the development cost would normally be applicable.

However, the proposal is exempt from the levy pursuant to clause 9 (m) as the application is for an industrial development with no increase in floor space. A submission arguing the case for exemption has been submitted and reviewed as satisfactory by Council's Section 94A Officer.

# 10. Consultation

## 10.1 Internal consultation

Stormwater

Satisfactory subject to conditions.

Environment

Satisfactory subject to conditions.

## 10.2 External consultation

Department of Environment and Climate Change and Water

DECCW provided comment with regards to the previous replacement of the first of the stacks and recommended the following condition of consent:

*Air - Stack Sampling Positions*

- *The Licensee must ensure that the design and construction of the flare stacks includes sampling positions that complies with TM-1 as set out in the Approved Methods for the Sampling and Analysis of Air Pollutants in NSW. This requirement is to be reflected on the plans and approved by DECCW.*

Confirmation from DECCW has been provided that this condition is sufficient for the current proposal for the replacement of the remaining stacks.

# 11. Recommendation

This application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. The proposed replacement stacks are of similar bulk, height and scale to the existing stacks and are in keeping with surrounding development and the locality. It is recommended that conditional approval be granted to the application.

### ATTACHMENTS

1 Aerial Photograph

2 Zoning Map

3 Plans

4 Draft Conditions