

**JOINT REGIONAL PLANNING PANEL
(HUNTER AND CENTRAL COAST)**

JRPP No	2014HCC015
DA Number	16-2014-353-1
Local Government Area	Port Stephens
Proposed Development	Staged Industrial Subdivision (12 torrens title lots)
Street Address	<p>4 Old Punt Road, TOMAGO (Lot: 4 DP:1043561) 5 Old Punt Road, TOMAGO (Lot: 202 DP: 1173564) 35 School Drive, TOMAGO (Lot: 70 DP: 634535) 35A School Drive, TOMAGO (Lot: 301 DP:634536) 43 School Drive, TOMAGO (Lot:3 DP: 38904) 45 School Drive, TOMAGO (Lot:2 DP: 38904) 51A School Drive, TOMAGO (Lot: 120 DP: 793493) 52 School Drive, TOMAGO (Lot: 121 DP: 793493) 362 Tomago Road, TOMAGO (Lot:22 DP: 556744) 364 Tomago Road, TOMAGO (Lot:21 DP: 556744) 366 Tomago Road, TOMAGO (Lot: B DP: 159856), 372 Tomago Road, TOMAGO (Lot:100 DP: 774443) 374 Tomago Road , TOMAGO (Lot: D DP: 163452) 376 Tomago Road, TOMAGO (Lot:11 DP: 37876) 13 McIntyre Road, TOMAGO (Lot: 3232 DP: 618103)</p>
Applicant/Owner	Tomago Aluminum Company Pty LtC/- ADW Johnson.
Number of Submissions	<ul style="list-style-type: none"> • Round one(8 July 2014 to 6 August 2014 (revised dates)): Six • Round two (4 December 2014 to 4 January 2015): Four
Regional Development Criteria (Schedule 4A of the Act)	The proposed development is captured under Schedule 4A(3) of the <i>Environmental Planning and Assessment (EP&A) Act 1979</i> as the development has a capital investment value of more than \$20 million (being \$50 million).
List of All Relevant s79C(1)(a) Matters	<p>Relevant environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • Port Stephens Local Environmental Plan 2013 • State Environmental Planning Policy (SEPP) 44 – Koala Habitat Protection • SEPP 71 – Coastal Protection • SEPP 55 – Remediation of Land • SEPP (State & Regional Development) 2011 <p>Relevant development control plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Port Stephens Development Control Plan 2013

	<p>Relevant regulations: s79C(1)(a)(iv)</p> <ul style="list-style-type: none"> Section 92 <i>EP&A Regulations 2000</i> – Government Coastal Policy1
List all documents submitted with this report for the panel's consideration	<p>Statement of Environmental Effects prepared by ADW Johnson and dated June 2014, and appendices:</p> <ul style="list-style-type: none"> Appendix B - Development plans, Appendix H - Aboriginal cultural heritage assessment report, Appendix I - Traffic impact assessment, Appendix J - Bushfire threat assessment, Appendix K - Concept landscaping strategy, Appendix L - Preliminary geotechnical assessment and acid sulfate soils management plan, Appendix M - Preliminary contamination assessment. <p>Amended plans and additional information (2014)</p> <ul style="list-style-type: none"> Address of Codes (SEPP) Industrial provisions, prepared by ADW Johnson and dated 22/10/14. <p>Amended plans and additional information (2015);</p> <ul style="list-style-type: none"> Amended Species Impact Statement, prepared by Kleinfelder and dated 11/02/15, Amended Offset Strategy, prepared by Kleinfelder and dated 10/02/15, Stormwater Management Strategy prepared by ADW Johnson and dated 26/3/15, Peer review of the ADW Johnson Amended Stormwater Management Strategy, prepared by Northrop and dated 2/4/15.
List of Attachments	<ul style="list-style-type: none"> Attachment 1: Development Plans Attachment 2: OEH correspondence Attachment 3: HWC correspondence Attachment 4: RMS correspondence Attachment 5: RFS correspondence Attachment 6: Public Submissions (redacted)
Recommendation	Deferral
Report by	Amy Stone, Senior Development Planner
Report reviewed by	<p>Cindy Dickson, Coordinator Planning & Developer Relations</p> <p>Matthew Brown, Manager Development Assessment & Compliance</p> <p>Mike McIntosh, Group Manager Development Services</p>

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a 12 lot staged industrial subdivision off Old Punt Road, School Drive, McIntyre Road and Tomago Road, Tomago. The land is zoned IN1 General Industrial under Port Stephens Local Environmental Plan 2013 (PSLEP2013). The subdivision is permissible in the IN1 General Industrial Zone with consent and is consistent with the objectives of the zone. The development is proposed to occur in five stages over a period of approximately 20 years.

The site currently comprises 15 lots with a total area of 291.7 hectares. Parts of the site have been heavily disturbed containing access tracks and easements. The land is densely vegetated containing three threatened ecological communities, three threatened flora species and 14 threatened fauna species listed under Threatened Species Conservation Act 1995 (TSC Act). The development requires the removal of 209.2 hectares of vegetation including species listed under the TSC Act. The applicant seeks to address the impact to threatened species, populations and ecological communities with the provision of offset land. The Office of Environment and Heritage (OEH) have assessed the Species Impact Statement (SIS) and at this stage concurrence has not been granted given adequate offset land has not been provided, particularly in relation to the offsetting of impacts to significant Koala habitat.

Land to the north of the site includes the AGL Newcastle Gas Storage Facility. Land to the north-east of the study area is zoned Special Activities (SP1) and comprises Hunter Water Special Area (Tomago Sandbeds drinking water catchment). Existing industrial development zoned General Industrial (IN1) is located to the south and south-west. Land between the Pacific Highway and Hunter River to the west is zoned Rural Landscape (RU2) and Environmental Conservation (E2). The RU2 land is primarily used for cattle grazing.

The application was publically exhibited from 8 July 2014 until 6 August 2014 and during the period six submissions were received. The application was notified for a second period from 4 December 2014 to 4 January 2015 as the applicant submitted an amended SIS. During the second exhibition four submissions were received. The key issues raised in the submissions included; impacts to the environment, hydrological impacts, contamination, impacts to groundwater and drinking water catchment, flooding, and traffic impacts. The issues raised are addressed within the body of this report. It is considered that a number of the issues have not been adequately addressed at this point in time.

The development has been assessed under section 79C of the EP&A Act 1979 and is considered unsatisfactory in its current form. Significant consultation with the applicant and external agencies (OEH and Hunter Water Corporation) has occurred during the assessment process, however, issues pertaining to: ecology, engineering and the drinking water catchment remain outstanding. The applicant has provided Council with written confirmation that additional information will be submitted to address the issues raised. An estimate of 6 weeks has been provided by the applicant in order to have this information submitted. Taking into account required advertising and assessment timeframes, it is anticipated the application can be reported to the panel in early September 2015. Council officers believe a significant amount of consultation has been undertaken and that the additional time would enable an informed and conclusive decision to be made regarding the proposal.

Should the matter be deferred, In addition to the previously held sessions, Council officers intend to facilitate further workshop/meetings with relevant stakeholders (the applicant, Council officers, OEH and Hunter Water) to work through the outstanding issues. Accordingly, it is recommended that the application be deferred for the period of approximately four months.

The application is to be determined by the Hunter and Central Coast Joint Regional Planning Panel (JRPP) as the capital investment value of the proposal is over the \$20 million threshold for general development and triggers the regional development provisions set out in schedule 4A(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

OFFICER'S RECOMMENDATION

THAT determination of DA 16-2014-353-1 for a staged Industrial subdivision (12 torrens title lots) off Old Punt Road, School Drive, McIntyre Road and Tomago Road, Tomago be deferred for a period of approximately four months.

SITE DESCRIPTION

The existing site comprises 15 parcels and approximately 298 hectares of land in ownership of Tomago Aluminum Company (TAC). The site has frontages to Old Punt Road and Tomago Road, Tomago. It is zoned industrial, having been zoned 4(a) Industrial General with the introduction of Interim Development Order 23 on 17 May 1974.

TAC is located to the south of the site which has an output of 530,000 tonnes per annum of metal and employees around 1,200 people. The Tomago industrial area is also located to the south and south-west of the site. The north of the site adjoins the Newcastle Gas Storage Facility which facilitates the operation of a 4.5km low pressure liquid natural gas pipeline. Land to the north of the site is zoned SP1 Hunter Water Corporation and is undeveloped land forming part of the Tomago Sandbeds Catchment. The Pacific Highway is located to the north-west.

Part of the site is located within the 'buffer zone' for the exiting Tomago Aluminum Smelter. The buffer area was established as part of the 1981 approval and 1991 expansion (as modified) of the Tomago Aluminum Smelter. The buffer area was identified land likely to be affected by Sulphur (SO₂) and Fluoride emissions from the Smelter. The applicant of the Smelter was burdened with the requirement to acquire land within the buffer. In this regard, end users of the development site would be subject to individual air assessments as Tomago Aluminum's Environmental Protection License identifies that the maximum amount of Sulphur is being released within the locality. Whilst the site is capable of sustaining additional industrial land uses, end users would be unable to engage in uses that result in the additional release of Sulfur.

The site is generally flat in topography and areas of the north western section are subject to flooding. Existing levels vary from 1.2 metres AHD to 13.5 metres AHD. Low lying land generally borders the site, with the higher portions of the site being located towards the center.

The land is largely vegetated and includes large areas of dry sclerophyll forest and swamp forests, the majority of which is remnant and containing a high proportion of mature hollow-bearing trees. Parts of the site to the east and south-east have however been disturbed by historic sand mining activities. Site clearing and

rehabilitation works have occurred within this area between 1983 and 1993. A number of access tracks and easements also traverse the site, including two major transmission lines which bisect the western portion of the site that are 100 meters in width and comprise mainly cleared and managed grassland. The access tracks primarily occur within vicinity to the rehabilitated sand mining area.

The most eastern portion of the site contains Endangered Ecological Communities (EEC) Swamp Sclerophyll Forest and Preferred Koala Habitat. An area of land to the east portion of the site has been retained as offset (reserve land) and contains the threatened flora species *Maundia triglochoides*.

PROPOSAL

The proposal involves the Torrens title subdivision of existing properties; Lot 4 DP 1043561, Lot 202 DP1173564, Lot 70 DP634535, Lot 301 DP634536, Lot 3 DP 38904, Lot 2 DP38904, Lot 120 DP793493, Lot 121 DP793493, Lot 22 DP556744, Lot 21 DP556744, Lot B DP159856, Lot 100 DP774443, Lot D DP163452, Lot 11 DP37876 and Lot 3232 DP618103. The proposed lots range in area from 0.92 hectares (lot 11) to 46.42 hectares (lot 12). A reserve area (Pt. lot 4) of 30.75 hectares is also proposed. The development also includes the provision of a road network from Old Punt Road connecting to Tomago Road.

The development shall occur in four stages and it is estimated that each stage will take five years. Each stage is described as follows:

- Stage one – commences in the north western section of the site and utilises the existing AGL access road (off Old Punt Road) for site access. Includes proposed lots 1 to 4 comprising an area of 43.34 hectares (excluding roads and drainage infrastructure). Drainage infrastructure and the reserve areas to the west of the site will be established including the area of reserve (13.17 hectares) to the east of Old Punt Road which contains *Maundia triglochoides*.
- Stage two – contains lots 5 to 7 (69 hectares excluding roads and drainage infrastructure) and is located to the south of stage one and the Newcastle Gas Storage Facility and to the North of the Tomago Aluminium Smelter. Access to stage two shall be provided via a new road to be constructed off the Newcastle Gas Storage Facility access road and shall extend to the southern extent of stage two. Stage two also involves intersection upgrades to the Pacific Highway and Old Punt Road (subject to upgrades to the Pacific Highway), Old Punt Road and Tomago Aluminium northern access road, and Tomago Road and Old Punt Road.
- Stage three – is located to the south of stage two and to the east of Tomago Aluminium. Stage three includes lots 8 to 11 (63.7ha excluding roads and drainage infrastructure). Lot 10 and 11 will be accessed from Tomago Road. Stage three includes the extension of the access road from stage two through to School Drive. The provision of a left in/left out intersection at Tomago Road is also proposed under stage three. In addition upgrades and roadwork's are also proposed to the Pacific Highway and Old Punt Road (subject to upgrades to the Pacific Highway), Old Punt Road between Pacific Highway and Tomago Aluminium northern access road and the upgrade to stage one internal road.
- Stage four – contains lot 12 (46.42 ha excluding roads and drainage infrastructure) and is the final stage of the development. Stage four is located to

the north of Tomago Aluminium and the south-west of stage two. Access is available via the new road from previous stages and the Tomago Aluminium northern access road.

The development of each stage of the development will involve:

- Vegetation removal. Offset areas are to be obtained and located offsite to mitigate the impacts to the development arising from vegetation removal;
- Bulk earthworks, including the filling of lots to the north western portion of the site to raise the ground level to above the 1:100 year flood level;
- Construction of associated drainage infrastructure;
- Installation of utility services and infrastructure;
- Implementation of sedimentation and erosion control safeguards associated with earthworks; and
- Landscaping including street tree planting, planting within drainage channels and the provision of a landscaped entry feature.

Application plans showing the development proposal in more detail including proposed staging are provided as **Attachment 1** to this report.



Figure 1 – Aerial Image of Subject Site

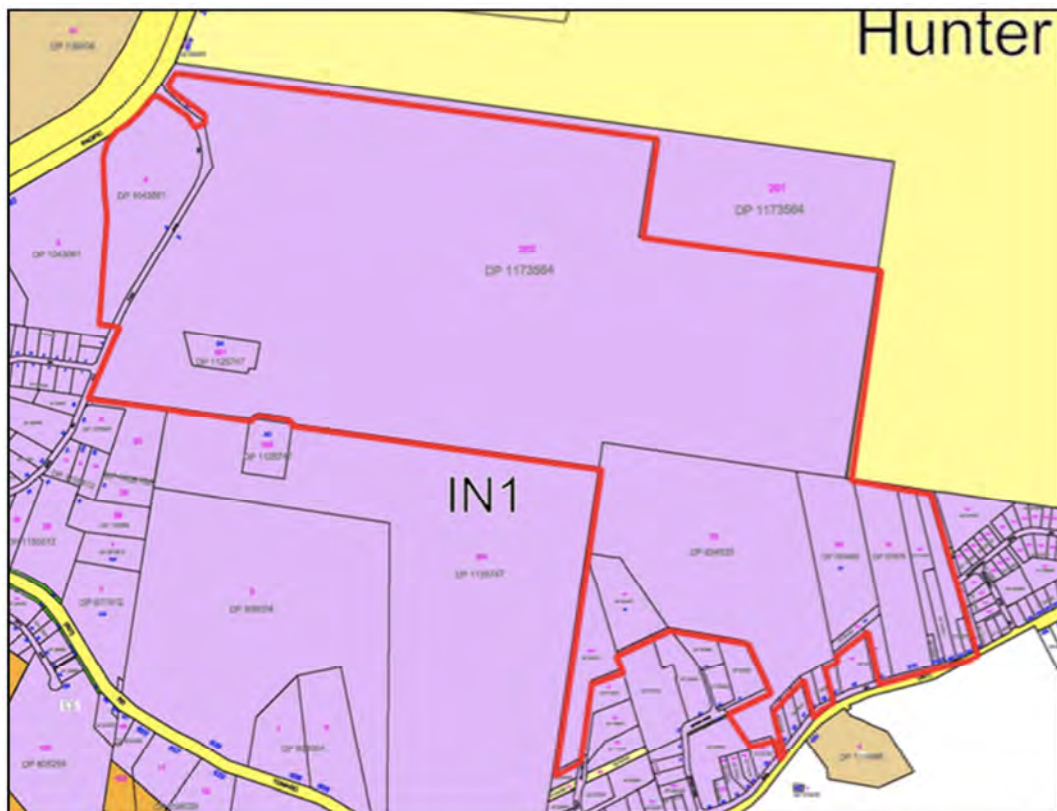


Figure 2 – Zoning Image of Subject Site

BACKGROUND CHRONOLOGY

The application was lodged on 10 June 2014 and following the initial assessment and a meeting on 18 August 2014 with the applicant, a 'request to withdraw' was issued. The request was made given the SIS was not satisfactory, that unacceptable fragmentation of Koala corridor would occur and there would be a significant impact to threatened flora and fauna which had not been appropriately mitigated. Furthermore, the proposal had potential to impact upon the long term viability of a Hunter Water Corporation (HWC) drinking water catchment as a result of inadequacies in the engineering design. The stormwater/water quality infrastructure proposed also presented an unreasonable maintenance burden to Council. The issues identified within the 'request to withdraw' were consistent with advice provided to the applicant during a pre-lodgement meeting held on 9 May 2014. Following discussions with the JRPP on 2 September 2014 the applicant was provided with the opportunity to provide amended plans and additional information to address the issues raised within the 'request to withdraw'. The applicant submitted additional information on 24 October 2014.

The amended SIS was considered adequate and forwarded to OEH for concurrence. The amended application including the SIS was placed on public exhibition for a 30 day period ending on 4 January 2015. On 10 December 2014 the applicant was advised that further information was required in order to facilitate the assessment of the proposal by OEH. Following an assessment of the amended information by Council and HWC the applicant was advised on 11 February 2015 of a summary of outstanding issues.

During the assessment process Council officers have facilitated ongoing consultation between Council officers, the applicant, OEH and HWC. Over 12 formal meetings have been held throughout the process in order to identify and resolve outstanding issues, as well as providing guidance. On 13 February 2015 information was provided by the applicant to address the information request made by OEH. Additional information to address concerns raised by HWC was submitted by the applicant on 16 February 2015. The information provided did not address the concerns raised by HWC and the applicant continued to correspond directly with HWC, particularly with regards to groundwater impacts. The applicant was advised on 26 February 2015 that OEH still required additional information in order to facilitate the assessment and concurrence process.

Following ongoing meetings and discussions with the applicant and HWC, Council issued correspondence detailing all outstanding matters and concerns on 2 March 2015. The key concerns remained unchanged and primarily pertained to the adequacy of the proposed stormwater management design and strategy and the ability of the engineered solution to ensure the protection of the drinking water catchment. Further meetings were also held with the applicant and OEH, following which Council issued correspondence confirming the key outstanding matters pertaining to ecology and in particular; the need to address the viability of the Koala population in the Tomago Sandbed (including consideration of retaining a corridor on lot 1) and adequacy of offsets proposed.

The applicant provided additional information on 18 March 2015 in response to OEH outstanding matters. A revised stormwater strategy was submitted by the applicant on 27 March 2015. The applicant had engaged for an independent review of the stormwater strategy in response to concerns raised by HWC, the independent review was submitted on 2 April 2015.

Correspondence dated 9 April advised that OEH did not grant concurrence at the time of issue. It was identified that there was insufficient information pertaining to the availability of an appropriate biodiversity offset that compensates for the loss of significant Koala habitat. OEH suggested that the uncertainty could be addressed by the undertaking of offset studies within the Tomago area so as to determine whether a suitable offset could be located. It was also suggested that consideration be given to the impacts to connectivity arising as a result of the development occurring on proposed lots 1 and 2. HWC also provided correspondence on 9 April 2015 advising that the amended stormwater strategy required further design verification (or redesign) in order to adequately ensure that the infrastructure adequately responds to addressing potential contamination of the drinking water catchment. It was noted that further information pertaining to hydraulic design and performance in relation to the proposed stormwater conveyance system would also be required. Further, HWC could not support the use of clay for lining of swales as currently proposed.

The applicant has provided Council with written confirmation that they wish to submit an amended proposal and additional information to address the significant issues outstanding in relation to; ecology, engineering and the drinking water catchment (note the proposed subdivision layout would remain the same). It is anticipated that the applicant will require six weeks to submit amended plans and information to Council. Taking into account required advertising and assessment timeframes the application could be reported to the panel within four months (September 2015).

PLANNING ASSESSMENT

Environmental Protection and Biodiversity Conservation Act 1999 (Cth)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. The development will adversely affect two threatened flora species (*Eucalyptus parramattensis* subsp. *decadens* and *Grevillea parviflora* subsp. *parviflora*), three threatened fauna (Koala, New Holland Mouse, and Grey-headed Flying Fox), and migratory species (White-bellied Sea Eagle and Rufous Fantail) listed under the EPBC Act. The development requires referral to the Commonwealth Minister for the Environment for approval. The applicant proposes to undertake an EPBC Act referral subsequent to the development approval process.

Threatened Species Conservation Act 1995 (and Section 79B Environmental Planning and Assessment Act 1979)

The *Threatened Species Conservation Act 1995* (TSC Act) aims to provide for the conservation of threatened species, populations and ecological communities of animals and plants. The TSC Act provides a number of objectives relating to the conservation of biological diversity and the promotion of ecologically sustainable development. Schedules 1 and 2 of the Act contains lists of flora and fauna species and communities that are under threat of serious decline which could ultimately lead to extinction.

The development will affect a number of identified threatened flora and fauna species as a result of vegetation clearing. The applicant has submitted a SIS in

accordance with s 109(1) of the Act and as required by the Director General's Requirements (DGRs) issued by the OEH (dated 14 June 2014). Further, the applicant has provided an 'Assessment of Significance' in accordance with schedule 3 of the Act.

The proposed development is likely to have a significant impact on a number of threatened species and ecological communities under section 5 of the EP&A Act, including their habitat (as listed under the TSC Act) and as such concurrence requirements from OEH were triggered under s 79B(3). OEH have not provided concurrence for the proposal at this stage (refer correspondence dated 9 April 2014 at **Attachment 2**). A full assessment of flora and fauna is provided in section 3.1 of this report.

Hunter Water Regulation 2010

The *Hunter Water Regulation 2010* (HW Reg) prescribes controls applicable to agriculture, sewage and pollution. Part 2 of the HW Reg relates to land identified as being a 'special area'. The Tomago Sandbeds are defined as a 'special area' under the regulation. The northern area of the site is located within the Tomago Sandbeds area (the area is identified on the development plans within Attachment 1). The application was referred to HWC for comment. HWC have provided correspondence indicating that the development is not supported in its current form (refer correspondence dated 9 April 2014 at **Attachment 3**). A full assessment of impacts to the drinking water catchment is provided in section 1.2 of this report.

Rural Fires Act 1997

The Rural Fires Act 1997 (RF Act) seeks to prevent, mitigate and suppress bush and other fires in order to ensure the protection of persons from injury or death and to protect infrastructure and environmental, economic, cultural, agricultural and community assets from damage arising from fires. The site is identified as bushfire prone land. Given the scale of the development the application was referred to the Rural Fire Service (RFS) and recommendations were provided. The proposal is considered consistent with the aims of the RF Act and the Planning for Bushfire Protection Policy 2006.

NSW Coastal Policy 1997

The NSW Coastal Policy sets the context in providing for population growth and economic development at the same time protecting the natural, cultural, spiritual and heritage values of the coastal environment. To achieve this, the Policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD). The proposed development does not satisfy the provisions of the NSW Coastal Policy in its current form as it is likely to result in unacceptable impacts to ecological processes (objective 2.1).

Environmental Planning and Assessment Act 1979

The proposal has been assessed under the relevant matters for consideration detailed in Section 79C(1) of the *Environmental Planning and Assessment Act 1979*. Where reference has been made to elements of the proposal being satisfactory

relevant conditions of consent may be applicable. However given this report recommends the deferral of the application a schedule of conditions has not been finalised at this point in time.

1. Section 79C(1)(a)(i) provisions of any environmental planning instrument

1.1. State Environmental Planning Policies

State Environmental Planning Policy No.44 – Koala Habitat Protection and Port Stephens Comprehensive Koala Plan of Management

State Environmental Planning Policy No.44 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline. The Port Stephens Koala Plan of Management (CKPoM) takes precedence over the requirements of State Environmental Planning Policy No.44 as it satisfies the requirements of the SEPP for preparation of an individual Koala Plan of Management. Compliance with the CKPoM effectively constitutes compliance with SEPP No.44 within the Port Stephens Local Government Area.

The development site offers high quality (both preferred and supplementary) koala habitat, with significant stands of feed trees and important connective/movement habitat across the majority of the site. It is acknowledged that the applicant sought to address the impact to the local koala population by providing offsets within the Medowie area to compensate the habitat loss. OEH considered that the Medowie offset was not suitable given it did not compensate for the loss of connectivity and movement corridors within the Tomago area. In this regard OEH considered that the offset area should be located within the general locale to compensate the impact on the 'local population' of the species.

During the course of the assessment the applicant also sought a deferred commencement condition where each stage of the development could not proceed until such time as appropriately sized koala habitat offsets had been secured within the Tomago area. This proposal was not considered acceptable given there is no certainty that a suitable offset is available within the Tomago area (OEH have supported this and cannot confirm a suitable offset is available). Furthermore, the current SIS does not include all suitable koala habitat (preferred and supplementary), therefore clarification and amendments are required to accurately determine koala species credits and ensure any proposed development offset strategy is acceptable. In this regard, in its current form, the development will have a significant impact upon koala habitat as a result of site clearing and segregation of vegetation corridors. OEH have not provided concurrence for the proposal at this stage given appropriate offset land has not been provided to address the loss of significant koala habitat. In the absence of modifications to the development, or the establishment of mitigation measures (offsets) the development in its current form results in a significant impact upon the local Koala population. The proposed development does not satisfy the provisions of CKPoM as the development may result in the localised extension of the Koala in the Tomago Sand bed locality (refer to section 3.1 of this report for detail). Despite the concerns raised, the applicant has advised that suitable offsets within the Tomago area are currently being sought, hence the recommendation for deferral of the matter to enable further time to consider whether these offsets will be suitable.

State Environmental Planning Policy No.64 – Advertising and signage

State Environmental Planning Policy No.64 Advertising and signage (SEPP No.64) seeks to ensure that signage (including advertising) is compatible with the desired amenity and visual character of an area, and regulates signage but not its content. The development includes signage as an entry feature to the site located within stage one adjacent the Pacific Highway. The applicant has provided indicative details of the proposed signage. The signage has been considered against schedule one of SEPP No.64 and is satisfactory. The proposed signage is compatible with the designed future character of the locality and shall not detract from the amenity of visual quality of the surrounding environment. Further, the signage has been located as such so as not to impact upon local views and vistas and is of a scale that is appropriate to its landscape and streetscape setting. The proposed signage does not adversely impact the safety of public road users (including pedestrians). The applicant will be required to provide specific details of the proposed dimensions and materials for the sign.

State Environmental Planning Policy No.71 – Coastal Protection

State Environmental Planning Policy No.71 Coastal Protection (SEPP No.71) aims to ensure that development in coastal areas protects and preserves natural areas of the NSW coast. A small portion of the western area of the site is located within the NSW Coastal Zone upon the Metropolitan Region Coastal Zone maps and as identified under the *Coastal Protection Act 1979* (NSW). As such the provisions of SEPP No.71 apply to the proposed development. Clause 8 prescribes matters for consideration for a consent authority to address where assessing development located within the coastal zone. The development has been assessed against the provisions of the SEPP and as detailed throughout this report is unsatisfactory at this stage with respect to cl.8 (d) site suitability, cl.8(g) conservation of animals, plants, and their habitats, cl.8(i) impacts to existing wildlife corridors, and cl.8(i) cumulative impact of the development on the environment.

State Environmental Planning Policy 55 – Remediation of Land

State Environmental Planning Policy 55 (Remediation of Land) provides planning controls for the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. Given the historical use of the land for agricultural purposes (lot 21), sand mining activities and use as an aerodrome, the site may contain chemical residues or contamination. The southern area of the site has also been utilised by Tomago Aluminum for temporary storage of waste. A preliminary contamination assessment and geotechnical investigation was undertaken for the proposal by Douglas Partners. The report identified a number of potential low to moderate contamination sources generally associated with the historic uses of the site. Further, the site in its entirety was identified as an area of contamination concern due to atmospheric fallout associated with emissions from the adjacent Aluminum Smelter. Localised dumping that has occurred throughout the site has also resulted in potential contamination. Further, the south-east area of the site has been affected from the discharge of impacted stormwater discharged from the Aluminum Smelter.

Investigations and site observations conclude that potential sources of contamination and associated impacts are likely to be localised, with remediation being possible where required. In this regard the site is suitable for the development subject to further investigation of the potential areas of contamination concern during the civil works construction phase.

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 identifies development that is state significant development, state significant infrastructure and critical state significant infrastructure. The policy confers functions on the JRPP to determine development applications for certain types of regional development. The capital investment value (CIV) of the subject development exceeds \$20million (i.e. \$50million) and as such the development is captured by the SEPP. The Hunter and Central Coast JRPP is the consent authority for the development.

1.2. Local Environmental Plan 2013

Zoning and Clause 2.6 Subdivision Consent Requirements

The subject land is zoned IN1 General Industrial, under Port Stephens Local Environmental Plan (LEP) 2013. Torrens Title subdivision is permissible with consent in the IN1 General Industrial zone in accordance with clause 2.6 (Subdivision Consent Requirements). The development is consistent with the objectives of the zone as the subdivision of the land enables a range of industrial and warehouse land uses, will encourage employment opportunities and is appropriately located so as to minimise impacts on surrounding land uses. The development would extend and form part of the existing Tomago industrial precinct located to the south of the site.

Clause 4.1 Minimum subdivision lot size

The proposal meets the subdivision requirements under Clause 4.1 of the Port Stephens LEP 2013, as the Lot Size Map does not specify a minimum lot size for the subject site. The proposed allotment sizes are acceptable.

Clause 5.10 - Heritage conservation

Clause 5.10 seeks to conserve the significance of heritage items and to conserve Aboriginal objects and Aboriginal places of heritage significance.

European Heritage

The southern portion of the site (Lots 2 and 3 DP38904) is located opposite Tomago House and Chapel. The development site is separated from the heritage items by Tomago Road. Tomago House (including pinetum, pleasure garden and landscape setting) and Chapel (including landscape setting) are State Significant items listed on the State Heritage Register (*NSW Heritage Act 1977*), the items are also listed under Port Stephens LEP 2013. The proposed subdivision will not have an adverse impact upon the heritage value of Tomago House and Chapel.

The development relates to subdivision works only and does not include industrial building works that will detract from the established character of Tomago House or Chapel. Ample separation distances exist to ensure future buildings can be accommodated within the proposed lots whilst minimising the impact on the heritage items. The proposal will result in the consolidation of the exiting lots into proposed Lot 11 (stage three). Future end users of the consolidated allotment (proposed lot 11) would be subject to development approval and it is at this stage that potential impacts to Tomago House and Chapel would require detailed assessment. It is noted that the proposed road works associated with stage three occur approximately 350 metres to the west of the listed items and are not within sufficient proximity so as to warrant an assessment of heritage impact.

In addition Council's Heritage Advisory Committee advised that a portion of the site (refer fig.3) was historically used for several aerodrome projects, including for the purposes of military use (Emergency Landing Ground 1930-8, Landing Ground (Tomago-Hexam) 1938-48, and World War II Aerodromes and associated structures). The proposed development does not adversely impact upon the significance of heritage items as the aerodrome and surrounding war-time infrastructure was substantially changed overtime as a result of ongoing development.

Aboriginal Cultural Heritage

An Aboriginal Cultural Heritage Assessment was prepared by RPS Australia which identified that the subject site had been subject to high levels of disturbance and modification, however portions of the site retain natural vegetation and remain undisturbed. The investigation included a review of previous studies undertaken in relation to the site including that undertaken by Brayshaw in 1981 for the then proposed Tomago Aluminium Shelter and by RPS in 2011 for the Newcastle Gas Storage Facility. In addition, the site was surveyed in accordance with the requirements set out in the 'Code of Practice for Archaeological Investigation of Aboriginal Object in New South Wales' (DECCW 2010).

The field survey investigation registered Aboriginal site AHIMS#38-4-1293 (unspecified artefact) located in the southern portion of the site (refer fig. 4) however the aboriginal objects associated with the site were not observed, with it being likely they were obscured by sand and vegetation. The site is identified as having a low local and regional significance. Aboriginal artefacts may be present within the project area but are likely to be of low significance.

Prior to the vegetation clearance or earthworks the applicant would be required to apply for an Aboriginal Heritage Impact Permit (AHIP) from OEH under s 90 of the *National Parks and Wildlife Act 1974*. Issuing of the AHIP will ensure that the Aboriginal community can collect (salvage) the artefacts in the project area, including AHIMS#38-4-1293 and move these items to a safe location for permanent storage. OEH were consulted during the assessment and confirmed that the management recommendations of the Aboriginal Cultural Heritage Assessment are suitable.

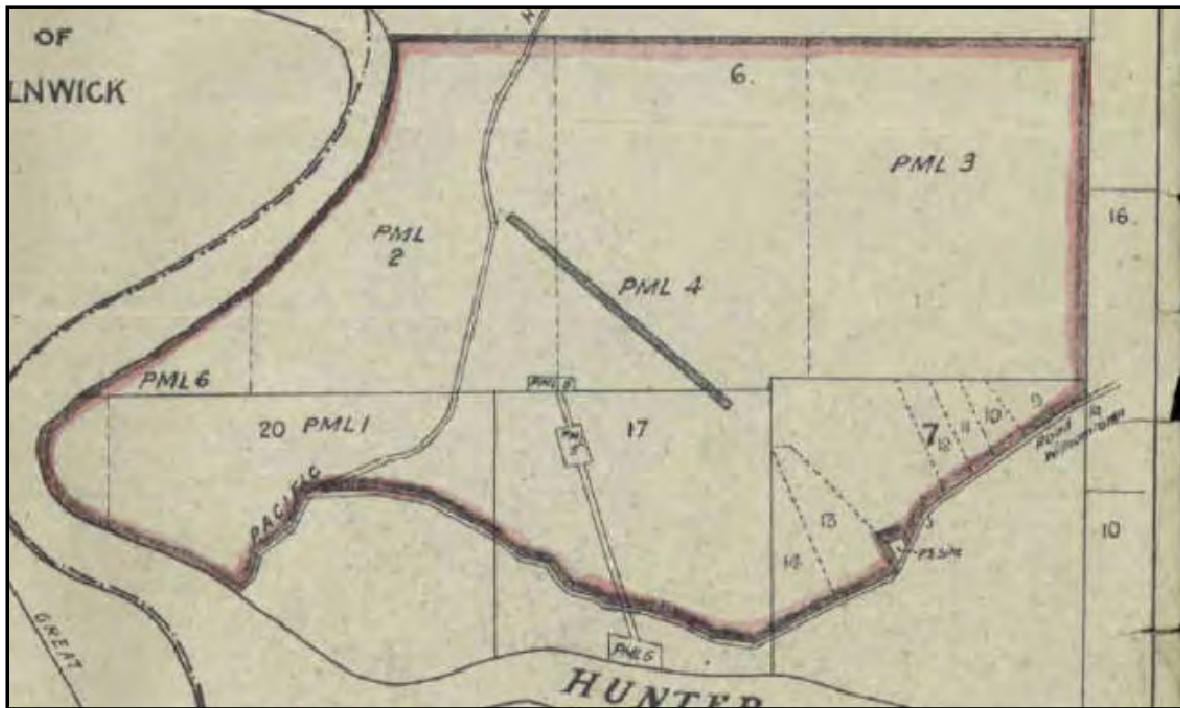


Figure 3 – Extract of site from the National Archives of Australia



Figure 4 – Aerial image depicting location of AHIMS#38-4-1293 as identified by the red box

Clause 7.1 - Acid Sulfate Soils

The site is primarily mapped as class 4 acid sulfate soils (ASS), with small areas of class 3 and 5. Clause 7.1 identifies that the carrying out of development on land affected by ASS must not disturb, drain or expose soils. A Preliminary Contamination Assessment was undertaken by Douglas Partners and identified that subject to mitigation measures during civil construction works that the site is suitable for the development. Acid sulfate soil testing was undertaken and identified evidence of both potential and actual presence of acid sulfate soils at a likely depth of 2-3metres below natural ground level. The proposal does not propose to disturb the soil to these depths and is therefore satisfactory.

Clause 7.2 - Earthworks

Clause 7.2 aims to ensure that earthworks for which development consent is required will not have a detrimental impact upon environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. A bulk earthworks plan and cross sections have been prepared for the site showing filling which aims to ensure all developable land exceeds the 1:100 year flood level. Filling shall predominately occur within the north western portion of the site to raise the ground level to achieve the required levels. The site shall also be regraded to allow sufficient grade to the proposed drainage swales.

The site will be required to be filled to RL 5.0 meters AHD in order to respond to the 1% AEP flood level (2100) including climate change. The maximum fill heights will be approximately 2.0 meters, however, it should be acknowledged that this level of filling is limited to the most severely flood affected lots on the site (lots 1 to 4) and that most of the lots subject to bulk earthworks will have material excavated which will be used to fill other areas on the site. It is anticipated some fill will still be required to be imported to the site. The bulk earthworks (particularly to lots 1 to 4) shall be graded towards the rear of each lot to ensure the finished landform blends with the existing landscape and infrastructure. There are no significant environmental impacts anticipated as a result of the filling of the land and the works shall enable the future industrial development of land zoned for that purpose.

Clause 7.3 – Flood planning

Development consent must not be granted to development on flood prone land unless the consent authority is satisfied that the development incorporates appropriate measures to manage risk to life from flood and will not adversely affect the environment (inter alia). The subject site (northern lots 1 to 4) are flood prone. The applicant proposed to fill the lots on the northern side of Road 1 (Stage One) to RL 4.8 m AHD. However, assessment of flooding impacts indicated that it would be appropriate for the minimum lot level to be raised to RL 5.0 m to equate to the 100 year flood level.

Further, the submitted information does not address the 100 year Average Recurrence Interval flood level on the Stage 3 frontage to Tomago Road. Council considers that the 100 year Average Recurrence Interval flooding is expected to be in the range of RL 3.2 to 3.5 m (plus 0.2 metres). The level of Tomago Road is RL 3.72m existing it is likely that approximately 40 metres of lots 8 and 9 may will require filling to meet the required flood level.

Appropriate documentation to address measures to manage flood risk has not been submitted. In the first stage of development and subsequently until Road 2 is connected to Tomago Road the occupants of the site will be flood bound and cut off from an escape route to other areas. The applicant has not incorporated appropriate measures to manage risk to life from flood for the lots proposed in Stage one. In this regard, the development does not satisfy the provisions of cl. 7.3. Should the application be deferred as recommended the applicant will be provided with the opportunity to address these outstanding matters pertaining to flooding.

Clause 7.6 - Essential services

Arrangements for essential services are available to the development including, water, electricity, sewer, stormwater drainage and vehicular access. Hunter Water Corporation has advised that the land would be required to be sewered in accordance with a developer servicing strategy, to be prepared by the proponent in conjunction with other developers in the Tomago area. The strategy would include pumping stations to discharge sewage to the Raymond Terrace Waste Water Treatment Works. The proposal satisfies clause 7.6.

Clause 7.8 – Drinking Water Catchments

Clause 7.8 aims to protect drinking water catchments by minimising the adverse impacts of development on the quality of water entering drinking water storage areas. The northern section of the site is located within the Tomago Sandbeds drinking water catchment as identified upon the Port Stephens LEP 2013 Drinking Water Catchment Map. The application was referred to HWC who provided correspondence dated 9 April 2015 (**Attachment 3**) confirming the development could not be supported in its current form.

The northern portion of the site overlies the Tomago Sandbeds Catchment Area and groundwater to the north of the site moves in the direction of Tomago Pump Station 20 which supplies on average 500 megalitres/year of drinking water to Newcastle and the Lower Hunter region. The applicant sought to provide a design solution to address concerns regarding potential impact on the drinking water source, however insufficient detail has been provided at this point in time to confirm that the design will operate as intended or is robust for successful long term operation. In particular further information is required in relation to the proposed hydraulic design and performance of the proposed stormwater conveyance system and the use of clay for lining of swales. A detailed assessment of the deficiencies surrounding the proposed stormwater system is considered at section 3.1.

As it is uncertain whether the proposed development will result in potential contamination of the drinking water catchment it does not satisfy cl. 7.8. In accordance with cl.7.8(4) development consent cannot be granted unless the proposal has been designed and sited so as to reasonably manage or mitigate adverse impact to water quality and flows within the drinking water catchment.

Clause 7.9 – Wetlands

Small portions of the east and west of the site are mapped as Wetland areas under Port Stephens LEP 2013. Clause 7.9 seeks to ensure that wetlands are preserved and protected from the impact of development. The impacts of the development upon the natural environment, including mapped wetland areas have been considered in detail elsewhere within this report (refer section 3.1). The proposed development is not satisfactory in its current form as the development has not been designed, sited or managed to avoid significant environmental impact as required under cl.7.9.

2. Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

No Draft Environmental Planning Instruments apply to the proposal.

3. Section 79C(1)(a)(iii) any development control plan

The Port Stephens Development Control Plan 2013 applies to the subject site and contains provisions which relate to industrial subdivision. The relevant considerations under the policy are addressed as follows:

3.1. Port Stephens Development Control Plan 2013

The relevant chapters of Port Stephens Development Control Plan 2013 are discussed below:

Part A1 – Introduction

A.1.10 – Developer Contributions

The development attracts developer contributions under s.94A of the *EP&A Act 1979* and in accordance with the Port Stephens Section 94A Development Contributions Plan. A contribution amounting to 1% of the development cost would be required to be levied for each stage of the development.

A.1.9 – Community Participation

The original development lodged with Council was advertised and notified to adjoining neighbours for a period of 30 days from 8 July 2014 until 6 August 2014. During the period a total of six submissions were received. Following the submission of additional information (including an amended SIS), an amended application was subsequently notified for a 30 day period from 4 December 2014 to 04 January 2015. During the second exhibition period four submissions were received. The main issues raised included:

- Impacts to the environment;
- Hydrological impacts;
- Contamination;
- Impacts to groundwater and drinking water catchment;
- Flooding; and

- Traffic impacts.

The issues raised during the exhibition process are considered in detail under section 7 (s 79C(1)(d)) of this report.

Part B1 – Subdivision and Streets

The development relates to a Torrens title subdivision and is consistent with the relevant requirements of the policy. The proposed lots are of a shape suitable for their future use to allow for adequate vehicle access and location of future buildings. The subdivision provides for lots of varying sizes to allow for a range of end users. A number of larger allotments have been provided to accommodate large scale industrial uses consistent with surrounding development in the locality (i.e. WesTrac). Utility services (water, electricity and telecommunications) are available to be connected to the site. Hunter Water Corporation have advised that the land would be required to be sewered in accordance with a developer servicing strategy, to be prepared by the proponent in conjunction with other developers in the Tomago area. The strategy would include pumping stations to discharge sewage to the Raymond Terrace Waste Water Treatment Works.

Stage one of the subdivision will utilise the access road servicing the Newcastle Gas Storage Facility. The proposed new road to service stages two to four is gently curved as required by the policy and extends to the south to ultimately link up with Enterprise Drive (as required by Roads & Maritime Services (RMS)) providing a connection through the site. Appropriate landscape planting including the provision of street trees has been provided throughout the subdivision as indicated upon the submitted landscape plans.

The proposed infrastructure design and installation is not consistent with Council's Design and Construction Specification, policies and standards. The amended Stormwater Management Strategy prepared by ADW Johnson and dated 26/3/15, included an outline of the maintenance activities that would pass to Council following the completion of the development. The maintenance burden arising out of the development approximately includes;

- 6.2 kilometres of gravel access tracks (to access proposed drainage basins),
- 32 access gravel ramps of 4 meters width and having a maximum 12% grade to access basins,
- 12 passing bays,
- 1.46 kilometres of fencing to road boundaries, and
- Stormwater basins having a total combined area of 25.6 hectares (inclusive of internal slope and base).

Council will be required to undertake maintenance activities that include:

- Routine inspections quarterly or following wet periods or long dry periods with ute and backhoe. The inspections will involve the inspection of outlets from lots, water ponding, rodding of subsoil drains, inspect erosion control rip rap below pipe outlets, clear blockages at culvert inlets, re-seed bare areas, remove dead vegetation, prune significant vegetation, inspect for pest control.

- Routine mowing and slashing routine (4 to 6 times per year). During dry weather mowing and slashing of the drainage basin base and side slopes will need to be undertaken with boom slasher and conventional slasher along base if dry. The use of tracked forestry mulcher may be required for wet and heavily vegetated areas,
- Responsibility for the monitoring and flow control of the area in proximity to the *Maundia triglochinoides* located on the proposed reserve, and
- Visual inspection of the proposed clay liner in the northern drainage basin catchment. However, opportunity for visual inspection is unlikely given the proposed use of topsoil and vegetation.

A large portion of the length of the proposed drainage basin has limited access on one side only. Therefore plant is required to pass from side to side within the basin when undertaking maintenance activities. There is a risk that a wet basin invert may be damaged by maintenance plant during routine maintenance. Further, the flat longitudinal grade of each section of basin would result in areas of ponding which would saturate the soil cover over the clay layer and result in damage during routine maintenance to remove vegetation growth and attempts to grade out the local depressions.

The applicant has proposed a unique stormwater management design in order to try and respond to HWC concerns pertaining to potential contamination of the drinking water catchment, however, as a result of this there may be issues for Council in undertaking routine maintenance of the stormwater/water quality infrastructure. Tracked maintenance equipment would have to be especially purchased for the maintenance work (forestry mulcher) in order to minimise risk of damage to the earth lined basins.

If the system as designed could operate without intrinsic failure (refer to section 3.1) the ongoing maintenance burden to Council is beyond Council's long term resources. The maintenance activities are expected to be a significant cost burden to Council that are not offset by a corresponding community benefit. In addition, a failure of part or parts of the drainage infrastructure would be a considerable cost burden on Council to complete the repair work.

The assessment of the maintenance burden has been undertaken in the absence of a detailed maintenance plan. The applicant has acknowledged the issues raised and advised that a maintenance plan will be submitted to address the concerns. The applicant believes that design amendments in addition to the maintenance plan will provide Council with a level of confidence that a suitable design solution is achievable. Council officers have therefore recommended deferral of the application to enable the applicant an opportunity to provide this information.

Part B2 – Environmental and Construction Management

The application has been assessed against the provisions of Development Control Plan 2013 (DCP2013), B2 – Environmental and Construction Management and the controls applicable to the development are discussed below:

Water Quality Management

A Stormwater Management Strategy was prepared for the development by ADW Johnson (amended submission dated 26/3/15). The site is hydraulically complex as it is characterised by the relatively small size of existing infrastructure (stormwater outlets), the high water table, high infiltration rates and proximity to an active drinking water aquifer. The site is constrained by existing stormwater outlets under the Pacific Highway and Tomago Road that are proposed to be utilised to cater for storm flows generated by Hunter Corporate Park. Flow from the site discharges to Hunter River via the two outlets (North and South Catchment). The water quality management includes detention basins sized to ensure post development peak flows are not greater than predevelopment conditions and that can cater for a 1% AEP storm event. The proposed water quality treatment strategy includes a range of source controls including rainwater harvesting, gross pollutant traps, as well as infiltration and bio retention basins.

A significant portion of the site drains to the Tomago Sandbeds and is in proximity to an aquifer utilised by HWC to harvest drinking water. HWC have specified that the development is required to be designed so as to ensure that stormwater would not discharge to the Tomago Sandbeds. Stormwater infrastructure has been designed, in part to include clay-lined swales that intercept surface water and prevent infiltration into the groundwater table. Surface flows are then diverted away from the Tomago Sandbeds. Areas of the site located outside the catchment (near Tomago Road) have been designed to permit catchment infiltration to maintain pre-existing conditions. The strategy also identifies required on-site controls required for end development in order to remove hydrocarbons and associated pollutants from hardstand and car parking areas before discharge into the drainage swales.

The amended Stormwater Management Strategy has been assessed and both Council and HWC have identified that further information and design amendments are required in order to ensure that the stormwater management strategy is adequate and that infiltration of stormwater into the drinking water catchment will not occur. Additional detail is required regarding to address;

- the use of clay liner as a permanent barrier to basins within the northern catchment in order to ascertain if the liner is sufficient as a permanent barrier to the drinking water catchment,
- potential impacts of the unlined drainage basins in Stage one (located to the west of Road 2) and on-lot water quality swales to infiltrate stormwater into the drinking water catchment,
- the submission of a detailed maintenance plan as the applicant seeks to dedicate the system to Council following the development. At this stage concerns remain that the system is not sufficiently functional and resilient to be accepted as an asset to be transferred to Council,
- the potential for future fluctuation over time of groundwater levels which is likely to result from weather, climate changes and external intervention (arising as a result of the development of the site),
- other minor issues with the design, including use of angular design in basin intersections and corners, and failure to confirm the ability to drain stormwater from proposed lots 1-3,
- clarification of hydrological and hydraulic calculations,

- a response to the outstanding matters raised within the a peer review of the stormwater strategy prepared by Northrop.

The applicant has advised that the concerns raised in relation to the most recently submitted stormwater design can be addressed, including maintenance concerns raised by Council. In this regard, the proposal is recommended for deferral to enable opportunity for additional information and amended plans to be submitted.

Landfill

The clause 7.2 'Earthworks' discussion contained under section 1.1 of this report has considered the suitability of the extent of the earthworks proposed under the development application. It has been identified that the earthworks are acceptable.

Vegetation and Koala Management

The development results in the permanent removal of 209.2 hectares of vegetated area of the site. A SIS prepared in accordance with Director General's requirements (dated 14 June 2014) has been carried out on the site by Kleinfelder. It was identified that the development would result in a significant impact to threatened flora and fauna species listed under the *Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The SIS included review of past studies of the site area including past field surveys undertaken during 2009-2010 and 2012-2013.

Floristics surveys identified three threatened flora species recorded within the study area:

- 1,274 *Eucalyptus parramattensis* subsp. *decadens* individuals;
- 1.6 hectares of *Maundia triglochinos*; and
- eight *Grevillea parviflora* subsp. *parviflora* individuals.

Three Threatened Ecological Communities exist upon the site;

- *Freshwater Wetlands* endangered ecological community (EEC);
- *Swamp Sclerophyll Forest* (EEC), and
- the *River-Flat Eucalypt Forest*.

The development will result in the removal of 8.3 hectares of *Swamp Sclerophyll Forest* (EEC) and 0.6 hectares of *Freshwater Wetlands* (EEC). All 1,274 *Eucalyptus parramattensis* subsp. *decadens* individuals; and eight *Grevillea parviflora* subsp. *parviflora* individuals shall be removed from the site. A potential 37 threatened fauna species have been identified as occurring on the site. A total of 14 threatened fauna species were also identified on the site during surveys including;

- seven species of Microchiropteran bat,
- Koala (*Phascolarctos cinereus*),
- Squirrel glider (*Petaurus norfolcensis*),
- New Hollan Mouse (*Pseudomys novaehollandiae*),
- Grey-headed flying fox (*Pteropus poliocephalus*),

- Little Lorikeet (*Glossopsitta pusilla*),
- Powerful Owl (*Ninox strenua*) and
- Wallum Froglet (*Crinia tinnula*).

Two migratory species were also identified on site; Rufous Fantail (*Rhipidura rufifrons*) and the White-bellied Sea-Eagle (*Haliaeetus leucogaster*). The development results in the removal of known and potential habitat for fauna species and the reduction in habitat connectivity through the removal and fragmentation of vegetation.

Council has identified that the proposed development is likely to have a significant impact under s.5 of the EP&A Act 1979 upon a number of threatened species and ecological communities, including their habitat (as listed under the TSC Act) and as such concurrence requirements from OEH were triggered under s 79B(3). OEH have not provided concurrence for the proposal at this stage (refer correspondence dated 9 April 2014 at **Attachment 2**).

It is considered that insufficient information has been provided in order to facilitate the assessment of the application and as such OEH have not provided concurrence at this stage. The development in its current form results in an overall unacceptable impact upon the local koala population and lacks appropriate biodiversity targets in order to provide suitable compensatory and known habitat within the Tomago 'Koala Management Unit' (KMU as defined within the Port Stephens Comprehensive Koala Plan of Management 2002 (CKPoM)). The applicant has been advised that the proposed biodiversity offset at Medowie is unsuitable as it is 'marginal habitat' under the CKPoM and is not appropriate as it is not within the Tomago locality. An appropriately sized and located Koala habitat offset (based upon the quantum of Koala species credits granted on the development site utilising the BioBanking Assessment Methodology(BBAM)) is required to be secured under a suitable conservation mechanism.

Biobanking is the preferred mechanism to secure any offsets for the site. In order to facilitate OEH concurrence the applicant would be required to conduct appropriate offset studies within the Tomago area utilising the BBAM to ascertain whether a suitable offset can be located. The offset would be required to be based upon Koala species credits generated from the development site and should include all suitable Koala habitat (preferred and supplementary) as well as all suitable habitat within the proposed 'Tomago offset area' which will become isolated and unviable in the long-term due to connectivity being severed by the development of lots 1 and 2 within stage one of the development proposal.

It is also identified that the proposed Medowie offset does not provide suitable compensatory habitat for the loss of known and occupied Koala habitat on the development site. The development site offers high quality habitat across the majority of the site including both preferred and supplementary and significant strands of feed trees and important connective corridors. Any offset should be located and secured within the Tomago locality to compensate for the impact upon the local population of Koala species. Incorporation of all mapped preferred and supplementary Koala habitat including that which will become isolated and unviable as an indirect impact of the development is required to be addressed. The current application fails to take into consideration all relevant Koala habitats.

The applicant has proposed the retention of the Endangered Ecological Community (EEC) *Maundia triglochinos* on site within the proposed reserve area. The species shall be subject to changes in the natural regime of water supply and drainage

resulting from the development. The long-term outcome of the species is unknown as the proponent has elected to make provision for controlling flows from the abutting basin into the *Maundia triglochinos* area. However, Council's assessment has identified that the proposed Stormwater Management Strategy is likely to fail and as a result there is likely to be unacceptable impacts to the *Maundia triglochinos*. The application is unable to be supported in its current form.

Erosion and Sediment Control

The construction phase of the development involves vegetation and bulk earthworks that will disturb soils and the potential for sediment runoff downstream. An Erosion and Sedimentation Control Plan has been prepared by ADW Johnson as part of the Stormwater Management Strategy that identifies controls required during construction, including the sequencing of construction activities to mitigate the risk of adverse impacts to the environment. The following practices are to be implemented during construction to minimise potential for soil erosion and sedimentation:

- Disturbance of only areas to be immediately worked on and regeneration of dust and erosion free surfaces – landscaping, concrete, bitumen sealing as soon as practical,
- Provision and continued maintenance of sediment fencing to low perimeter locations,
- Provision of mesh and gravel or geotextile inlet filters,
- Contract specifications requiring stabilised site access, low flow earth flow earth banks and wind erosion screens,
- Construction of a sediment basin to at the commencement of works for which all site runoff (where practical) to be piped or channeled to the basin for primary treatment/settlement before leaving the site via a mesh supported geotextile filter/riser before discharging to the wetlands, and
- Regular maintenance of all erosion and sediment control structures and devices.

These provisions are considered generally acceptable in order to ensure the landform is stabilised and erosion controlled to prevent sedimentation runoff and protect the surrounding environment (including the local population of *Maundia triglochinos*).

Part B3 Parking and Traffic

Access and Traffic

AECOM Australia prepared a Traffic Assessment Report for the proposed subdivision. Vehicular access to the development area will be provided by an extension of the existing road network commencing from the recently constructed AGL access road (via Old Punt Road) and extending to Tomago Road. The existing road will have to be upgraded (before dedication as a Public Road), as well as the new road which shall be constructed in stages concurrently with required intersection upgrades. The proposed road works shall be constructed in accordance with Council and RMS requirements.

AECOM recommended that the configuration of the intersection arrangement involving Old Punt Road, Road 1 (AGL access Road) and the TAC northern access Road be reconfigured to give priority to the intersection of Road 1 with Old Punt Road with the TAC northern access Road being re-aligned to form a T intersection with Road 1. Should the application progress this arrangement could be finalised with any construction certificate issued.

The traffic modelling undertaken confirms that there are no requirements for intersection upgrades in order to cater for stage one and two of the development. Following completion of stage two both the intersection of Old Punt Road and the Northern Access Road, Tomago Road and Old Punt Road will require upgrades. Should the anticipated upgrades to the Pacific Highway not have been completed by this time an upgrade to the Pacific Highway and Old Punt Road intersection shall also be required. Stage three will require additional upgrades to the Pacific Highway and Old Punt Road intersection. The section of Old Punt Road between the Pacific Highway and the TAC Northern Access Road shall be upgraded to a four-lane road.

The traffic assessment utilises a trip generation rate of 0.33 trips per hour per 100m² GFA for the morning and afternoon peak periods. The gross floor area (GFA) of the site has been assumed to be 35% of the developed site area. Further, traffic modelling has been taken over an anticipated construction period from 2018 to 2035.

It is noted that trip generation results in the traffic study are based on recommended lower bound trip generation rates from the RMS 'Guide to Traffic Generating Developments', together with low site gross floor areas and a generous ratio of traffic assignment. Consequently there is a risk that the actual traffic generation resulting could be substantially higher than what has been modelled. As the development progresses the assumptions that the traffic assessment have been based upon may alter, for example the end uses of the site may exceed 35%. Whilst the submitted traffic assessment is satisfactory for the purposes of the assessment process future traffic assessments are required as the development progresses to ensure the assumptions underpinning the report remain valid. In this regard, RMS have identified that the proposal is satisfactory subject to further traffic impact studies occurring prior to the release of stages two, three and four.

Part B12 Advertising signs

The development includes signage as an entry feature to the site located within stage one adjacent the Pacific Highway. The applicant has provided indicative details of the proposed signage. As detailed within section 1.1 the proposed signage is considered acceptable subject to the submission of additional information regarding dimensions and proposed materials and finishes.

4. Section 79C(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Section 92 of the *Environmental Planning & Assessment Regulation 2000* does not trigger the consideration of the Government Coastal Policy. The NSW Coastal Policy 1997 has been discussed elsewhere within this report and the development has been found unsatisfactory at this point in time.

5. Section 79C(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

An assessment of contamination, flora and fauna, impacts to drinking water catchment, access and traffic, and heritage have been covered in the above sections of this report. The assessment has identified that the development results in significant impacts to the natural environment as a result of large scale vegetation removal. As detailed within this assessment suitable offsets have not been provided at this point in time to address the environmental impacts. OEH have therefore not provided concurrence for the development at this stage.

However, OEH have stated that if the applicant can demonstrate the existence and availability of a suitable off set site within the Tomago Sandbed area and use biobanking mechanisms to offset the environmental impacts, a satisfactory outcome may be achieved.

In addition to the matters assessed elsewhere within this report, it is identified that the development will have positive social and economic impacts in locality by providing for the long term release of industrial land and employment opportunities, further additional employment opportunities will result during the construction phase.

Social & Economic Impact

The proposal is sited in an appropriate location for the scale and type of development proposed. The proposal is satisfactory having regard to the Port Stephens Development Strategy. It is anticipated that in addition to the \$50million construction direct economic output, a further economic output of \$34.9million will occur in terms of supporting goods and services being supplied during the construction (from other sectors in the economy). A further \$10million worth of economic output will occur as those working on the project get paid and spend money in the local economy. The total economic output for the development, direct, indirect and consumption is \$94.9million.

It is anticipated that the development will result in the employment of 4,641 jobs. Further, from a direct increase in output of \$50million the corresponding creation of direct jobs is estimated as being 73 jobs. A further, 137 jobs will be created as a result of employment creation occurring as a result of the indirect and consumption effects. The total employment for this development, direct, indirect and consumption is 210 jobs. The creation of an additional 210 within the local economy will result in social positive benefits be providing employment opportunities for the local population.

6. Section 79C(1)(c) the suitability of the site for the development

The existing constraints on the site include; proximity to Hunter Water Corporation Drinking Water Catchment Area and Pump Station 20, provision of acceptable methods of stormwater disposal, and the location of threatened flora and fauna species on the site. As detailed within this report issues associated with these constraints have not been adequately responded to by the applicant within the present design. However, it is considered that the site may be suitable for the development subject to a design revision to respond to outstanding engineering, drinking water catchment and ecological concerns.

7. Section 79C(1)(d) any submissions made in accordance with this act or the regulations

Submissions from Government Agencies

Office of Environment and Heritage

Concurrence from the Office of Environment and Heritage has not been provided at this stage in accordance with correspondence dated 9 April 2015 (refer **Attachment 3**).

Hunter Water Corporation

The development occurs on land identified as being part of the Tomago Sandbeds Special Area and in proximity to an active drinking water aquifer. Hunter Water Corporation does not support the development in its current form and have advised within correspondence dated 9 April 2015 that further information is required (refer **Attachment 2**).

Roads and Maritime Services

The development site is located within proximity to the Pacific Highway and the proposed location of the upgrading of the F3 project. The development was referred to the RMS for comment. The RMS had no objection to the proposal subject to conditions of consent regarding required upgrades to intersections and the provision of revised Traffic Impact Study (pertaining to 2 to 4).

Rural Fire Service

In accordance with Section 79C of the EP&A Act the Rural Fire Service provided recommended conditions of consent dated 24 July 2014.

Public Submissions

The development application and accompanying information were placed on public exhibition for a period of 30 days from 8 July 2014 until 6 August 2014 (revised dates) and during the period a total of six submissions were received. The application was notified for a second 30 day period from 4 December 2014 to 04 January 2015 as the applicant submitted amended information, including a SIS. During the second exhibition period four submissions were received. The main issues raised by the objectors are summarised below and comment provided:

Issue	Planners Comment
Environmental impacts	
Concerns were raised with the extent of the environmental impacts resulting from the proposed development. Matters identified included the removal of wildlife habitat and corridor and the adequacy of the proposed offsets.	The development is considered to result in a significant impact to threatened flora, fauna and their habitat. The applicant has proposed inadequate biodiversity offsets and OEH have not granted concurrence at this stage. Biobanking is an option available to the applicant in order to offset the detrimental

	impacts to the environment of the proposal. However, as a result of the sites significance to a local Koala population (Tomago Sandbeds) a suitable offset within Tomago must be secured. The applicant has been unable to secure a suitable offset site at this point in time.
Hydrological impacts	
Concerns were raised regarding the potential hydrological impacts of the proposal, including upon adjoining land owners.	The proposed Stormwater Management Strategy is not satisfactory. Based upon the current design the development is likely to result in hydrological impacts to the ground water table and surrounding development due to the high likelihood of the system failing. As such the current proposal has not been supported by Council or HWC.
One submission suggested that the development relied on the existing infrastructure of adjoining sites without consent.	The proposed development does not seek to rely upon the infrastructure of adjoining properties. Consent is not required.
Contamination	
Concern was raised that the proposal was located within the Tomago Aluminium Buffer zone.	The site is located within the 'buffer zone' for the exiting Tomago Aluminium Smelter. The buffer area was established as part of the 1981 approval and 1991 expansion (as modified) of the Tomago Aluminium Smelter. The buffer area was identified land likely to be affected by Sulphur (SO ₂) and Fluoride emissions from the Smelter. The applicant of the Smelter was burden with the requirement to acquire land within the buffer. In this regard, end users of the development site would be subject to individual air assessment as Tomago Aluminium's Environmental Protection License identifies that the maximum amount of Sulphur is being released within the locality. End users would be unable to engage in uses that result in the additional release of Sulphur.
Impacts to groundwater and drinking water catchment	
A number of submissions identified the potential impact of the development upon groundwater and the drinking water catchment.	The site is located within proximity to Pump Station No.20 an active drinking water bore. The current Stormwater Management Strategy is flawed and it is considered likely that the design in its current form would fail and result in potential contamination of the groundwater and drinking water catchment. The applicant is required to undertake a redesign of the Stormwater Management Strategy in order to respond to concerns raised by Council and HWC with regard to the drinking water catchment.

Flooding	
Submissions identified inadequacies in relation to the flood analysis submitted with the development application. Concern was raised that the development would result in adverse flood impacts to adjoining properties.	The development does not satisfy the Council's requirements with regard to flooding (cl. 7.3 PSLEP2013) further information is required to be submitted by the applicant to address outstanding matters pertaining to site filling and emergency evacuation requirements. If the application is deferred as recommended the applicant will be required to respond to outstanding matters pertaining to flooding.
Economic impacts	
Submission noted that insufficient economic analysis had been undertaken. Further, one adjoining land owner raised concern that the development would result in the sterilisation of the ability for surrounding land to be utilised for the purpose of gas fired powerstation.	The economic impacts of the development have been assessed and the proposal is considered to result in a economic benefit to the community. Council is unable to give consideration to the impacts of the development upon future land uses.
Advertising process	
A number of submissions raised concerns with the advertising process; including the initial advertised dates and access to information.	<p>It is noted that the advertised dates were incorrect due to an administrative error. The advertising period was later corrected and the exhibition period was also extended to address any inconvenience to members of the public. In addition the application underwent a second round of notification and exhibition following the submission of an amended SIS.</p> <p>Council current policy in relation to access to information is in accordance with Commonwealth Copyright Legislation in this regard Council is unable to reproduce any documentation subject to copyright. This limitation includes publishing of material on the internet for exhibition purposes. Council made the development application documentation available in accordance with current policy and practice.</p>
Traffic impact	
Submissions raised concern that the submitted traffic analysis was deficient.	<p>The traffic analysis is sufficient for DA concept approval and the release of proposed stage one. It is noted that trip generation results in the traffic study are based on recommended lower bound trip generation rates from the RMS 'Guide to Traffic Generating Developments', together with low site Gross Floor Areas and a generous ratio of traffic assignment. Consequently there is a risk that the actual traffic generation resulting could be substantially higher than what has been modelled.</p> <p>As the development progresses the</p>

	assumptions that the traffic assessment have been based upon may alter, for example the end uses of the site may exceed 35%. Whilst the submitted traffic assessment is satisfactory for the purposes of the assessment process future traffic assessments are required as the development progresses to ensure the assumptions underpinning the report remain valid. In this regard, RMS have identified that the proposal is satisfactory subject to further traffic impact studies occurring prior to the release of stages two, three and four.
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8. Section 79C(1)(e) the public interest

The proposed development represents an efficient use of existing industrial land. The development as currently designed results in adverse impacts to the environment that have not been offset and does not adequately respond to the proximity of the drinking water catchment. Approval of the development in its current form is not in the public interest.

CONCLUSION

An assessment of the application has been carried out under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* as amended. With regard to the relevant matters for consideration under the Act the development application is not considered satisfactory in its current form. It is recommended that the JRPP defer the matter to enable additional time for the applicant to submit information addressing the concerns raised. It is considered reasonable that a time extension be afforded to the applicant given a commitment has been made to submit this information within a timely manner. Further, the applicant has confirmed that they are confident the issues can be adequately addressed. Should the JRPP elect to defer the matter, Council officers intend to facilitate a full day workshop with relevant stakeholders (the applicant, Council officers, OEH and Hunter Water) to work through the outstanding issues.

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