

Section 5

Planning & Related Statutory Provisions

The site and proposed development will be subject to a range of planning and related legislation and controls across local, regional, state and Commonwealth level. The following is an overview of those relevant to the proposed development.

5.1 LOCAL

The site is a State Significant Site zoned IN1 General Industrial under the Major Projects SEPP. The Port Stephens Local Environmental Plan is no longer applicable in terms of the site zoning.

The Major Projects SEPP confirms that the only other Environmental Planning Instruments that will apply to the proposed development are other SEPPs, where relevant.

5.2 REGIONAL

As previously identified, the site is included as 'Employment Land' under the Lower Hunter Regional Strategy. This Strategy is a document outlining the forward planning objectives for 2006-31. The proposed development is entirely consistent with the Hunter Strategy objectives to provide for employment opportunities.

The site is also covered by the Hunter Regional Environmental Plan, and the proposed development is consistent with the general principles of ensuring adequate provision of industrial lands, creation of employment opportunities and a sustainable economy.

In accordance with the Major Projects SEPP we note that the regional plans do not specifically apply. Notwithstanding this we have reviewed them and determined that the proposal will be consistent with their broad strategic aims.

5.3 STATE

5.3.1 EP & A Act

The Environmental Planning & Assessment Act 1979 is the primary planning legislation in NSW. Among other things, it sets out the process

for the assessment of development proposals such as that proposed by Redlake.

The proposed development is a Major Project, to which Part 3A of the Act applies. This means that the Minister will determine the proposed development following an assessment of the application by the Director General of the Department of Planning.

A review of all State Environmental Planning Policies (SEPPs) reveals that the following are of particular relevance to the proposed development:

5.3.2 SEPP 11 Traffic Generating Development

A referral to the RTA will be required under this SEPP, relative to the proposed development. The RTA will assess the proposal in terms of impacts on access from Tomago Road, and in terms of traffic volumes and the resultant impacts on Tomago Road.

RTA approval will be required for all works within Tomago Road, in particular the proposed intersection.

5.3.3 SEPP 33 Hazardous and Offensive Development

As previously indicated, paints, lubricants, oils, fuel and a range of other products will be stored on-site. The quantities to be stored will not trigger the requirements of the SEPP, particularly noting the likely distances to boundaries. This issue is addressed in more detail later in this report.

5.3.4 SEPP 55 Remediation of Land

This SEPP outlines the procedures for remediation of contaminated land. It is unlikely that this SEPP will be triggered.

5.3.5 SEPP 71 Coastal Protection

The overall aim of this SEPP is to protect the NSW Coastline. The site is located within the coastal zone and so consideration will need to be given to the matters contained within the SEPP.

5.3.6 SEPP Major Projects

As previously indicated, the site is a State Significant Site under the Major Projects SEPP. Accordingly, given that the value of the development far exceeds 5 million dollars, it will be a project determined by the Minister under Part 3A of the Act.

Amendment 15 to the SEPP outlines the pertinent planning controls for the Tomago Industrial Site. The site is zoned IN1 General Industrial and the following zone objectives apply:

- (a) to provide for a wide range of industrial, warehouse and related land uses;
- (b) to provide suitable areas for those industries that need to be separated from other land uses;
- (c) to encourage employment opportunities;
- (d) to minimize the adverse effect of industry on other land uses and the environment; and
- (e) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.

The proposed development is considered to be consistent with all of the above objectives, subject to careful management of environmental issues.

The proposed development is considered to be a permissible land use within the zone noting in particular that the following are permitted:

“...depots, drainage, earthworks, educational establishments, fill, heavy industries, light industries, office premises, signage, truck depots, vehicle body repair workshop, vehicle repair stations, warehouses or distribution centres...”

5.3.7 NSW Threatened Species Conservation Act 1995

An ecological survey of sites is required to determine if a development proposal will have a significant effect on threatened species, threatened populations or endangered ecological communities. This has been completed, and is discussed in more detail as part of the Environmental Assessment.

5.3.8 Hunter Water (Special Areas) Regulation 2003

This Act applies to the site because it lies partly over the Tomago sandbeds (which provide potable water). The regulation applies controls over agriculture, sewage disposal and pollution. It will be necessary to ensure that water conveyed from the site to the sand beds is not contaminated. It will also be necessary to ensure that water is recharged to the aquifer running across the front of the site as a result of any water loss from the proposed impervious surface.

5.3.9 NSW Roads Act 1993

Part of the land is identified for road widening. Processes for widening are controlled by the Roads Act. Other works within the roadway will also require approval under this Act. The Road & Traffic Authority is the responsible authority. The proposed site intersection will require approval from the RTA.

5.3.10 Protection of the Environment Operations Act 1997

The purpose of this Act is to control pollution and set up a licence regime. The Department of Environment and Climate Change have confirmed that no licence will be required for the proposed development.

5.3.11 Contamination Land Management Act 1997

This Act requires that the EPA be notified of contamination likely to be of "significant risk of harm". It is considered on the basis of the work completed that the site will not classify as being of significant risk of harm.

5.3.12 National Parks and Wildlife Act 1974

This Act applies to adjoining land owned and managed by NPWS. The Act also has controls that apply to aboriginal relics and sites. The minister can issue stop work orders in relation to an action that may detrimentally affect an aboriginal object or place. Relics have been found on site, however it has been determined that the finds do not significantly contribute to the understanding of Aboriginal culture. Approval under the Act would normally be required for relics to be destroyed (Section 90). It should be noted that because the proposal is a matter to be dealt with by the Minister under Part 3A of the EP&A Act then Section 90 approval is not required. The LALC have been consulted, and have indicated that they want the opportunity to collect the relics before construction commences, but have otherwise agreed that the find is of limited significance.

5.3.13 Rural Fires Act 1997

Under this Act, the owner or occupier of land is obliged to take practicable steps to prevent the occurrence and spread of bushfires on their land.

The site is located within bushfire prone land, however, given the nature of the proposed development, the fact that the site is in fact substantially cleared, and considering the materials to be used in construction, it is not believed that there is any substantial threat from bushfire.

A Bushfire Safety Authority will not be required, having regard to the operation of Part 3A of the Environmental Planning & Assessment Act.

5.4 COMMONWEALTH

The EPBC Act 1999 requires consideration of the following:

- Actions that have a significant impact on matters of national environmental significance;
- Actions that have a significant impact on Commonwealth land; and
- Actions carried out by the Commonwealth.

The proposed development has been referred to the Commonwealth Department of the Environment & Water Resources. The referral has determined that the proposal is a 'controlled action' requiring assessment and approval. The proposal will be assessed under bi-lateral arrangements between the Commonwealth and the NSW Government through the Part 3A process. Attached at **Appendix I** is a copy of the required assessment addressing the Schedule 4 requirements of the EPBC Regulations 2000.