

7.0 Planning & Related Statutory Provisions

7.1 LOCAL STATUTORY PLANNING FRAMEWORK

7.1.1 *Newcastle Local Environmental Plan 2012*

Under the *Newcastle Local Environmental Plan 2012* (Newcastle LEP 2012) the subject site upon which the majority of the proposed TSF is located is zoned IN3 Heavy Industrial, formerly 4(b) Port & Industry within the Newcastle LEP 2003. The northern part and a small portion in the south west corner of the site is zoned E2 Environmental Conservation, formerly 7(b) Environmental Protection within the Newcastle LEP 2003. The remaining area is zoned SP2 Infrastructure, formerly 5(a) Special Uses within the Newcastle LEP 2003. The current site zoning of the site is represented in Figure 14 below.

The development footprint of the TSF has an area of 38ha. The majority of the TSF (22ha) is located within the IN3 Heavy Industrial zone and 16ha located within the E2 Environmental Conservation zone. The access road is located entirely within the E2 Environmental Conservation zone and during the construction phase there will be a 3ha construction compound located within the E2 Environmental Conservation zone. A 5ha area has also been identified for a temporary compound within the IN3 Heavy Industrial zone in the south.

Components of the proposed development located within the E2 Environmental Conservation zone, which includes part of the TSF and the access road, are prohibited within that zone under the Newcastle LEP 2012. Part of the TSF is located within the IN3 Heavy Industrial zone within which the proposed activity is a permitted use.

Due to the large area required (significant length of track) to accommodate and access the trains it is not possible to contain the proposed development to lands zoned IN3 Heavy Industrial. The assessment of alternative sites in Section 5 has determined that there is no suitable alternative to the location adjoining the existing rail line within the Environmental Conservation zone.

Given that the proposed TSF is being undertaken as a Part 3A Project, the provisions of the Newcastle LEP 2012 do not apply and therefore planning approval from NCC is not required. The only Environmental Planning Instruments that will apply to the proposed TSF will generally be other SEPPs and Regional plans, where applicable.

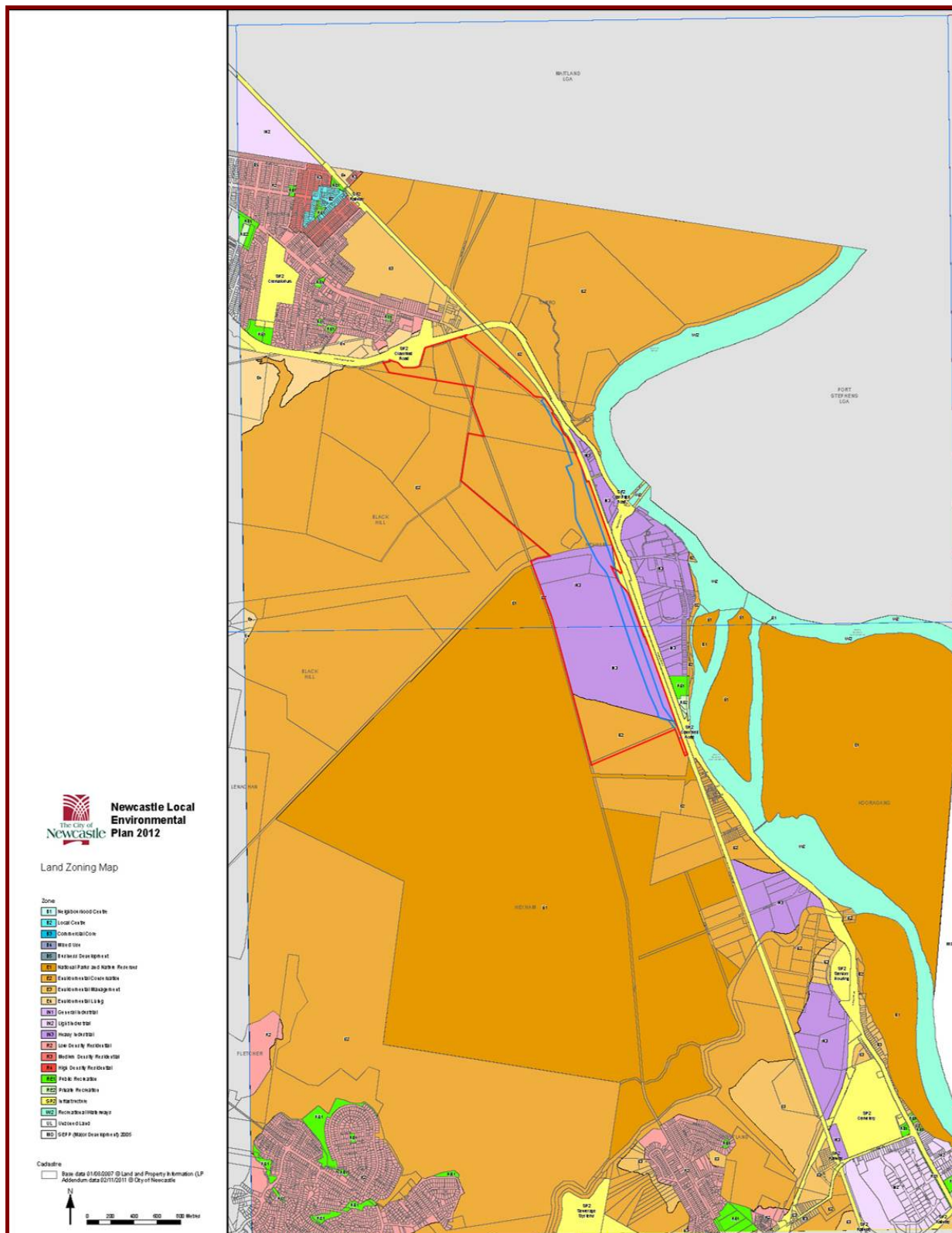


Figure 14: Site Zoning

7.2 REGIONAL PLANNING FRAMEWORK

The relevant regional plans that apply are as follows:

7.2.1 Lower Hunter Regional Strategy (2006)

The majority of the area to be developed for the proposed TSF is identified in the LHRS as 'Employment Lands' as identified in Figure 15.

The proposal is consistent with the LHRS objectives of:

- Ensure that sufficient employment lands are available to cater for 66,000 positions;
- Plan for an additional 160 000 residents and 115 000 new dwellings;
- Establish important green corridors, to protect and even enhance the Region's strong environmental and biodiversity assets; and
- Reinforce the role of the Newcastle City Centre as the Regional City.

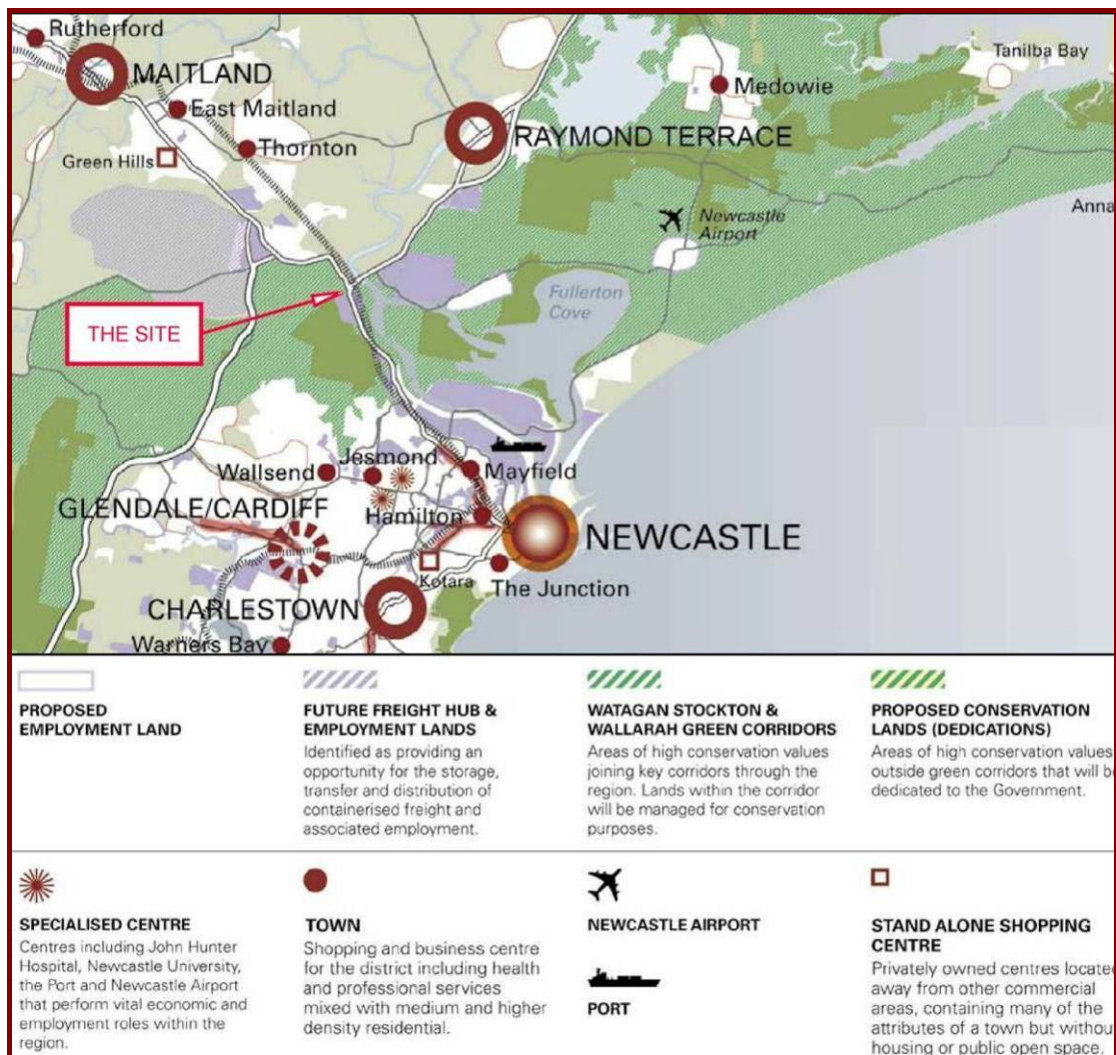


Figure 15: Extract from the Lower Hunter Regional Strategy

A very small part of the proposed TSF being the proposed access road and a portion of the proposed rail line will extend across the green corridor shown on the LHRS map adjoining the north of the subject site. Due to the previously disturbed nature of the site, the impact on the green corridor is considered negligible and appropriate offsets will be negotiated with OEH, details of which can be found in Section 9.2.4.

QR National is not currently pursuing the development of an industrial subdivision and intermodal facility on the adjoining land in conjunction with the TSF. However the TSF project, in the context of the future development of the remainder of the QR National site for industrial purposes, bears consideration in the context of other major proposals in the Hunter Region. The need for industrial land with strategic access to the Port and rail infrastructure has been recognised in strategies and economic planning for the area.

The LHRS identifies land at Stony Pinch/ Beresfield, in the vicinity of the intersection of the Pacific Highway and the New England Highway, as having opportunity to be used, in the long term, as a freight hub. Additionally, future employment lands are identified adjoining the site, to provide support to the freight hub. This site is also identified with an associated rail bypass.

The “Intertrade Industrial Park” is a site located directly on the Port of Newcastle, and was the former BHP site. The draft master plan prepared for the site includes:

- A direct port and industry precinct;
- An intermodal and port support zone;
- A general industry precinct; and
- A technology and commercial precinct.

The QR National site differs from the Beresfield/Stony Pinch and Intertrade Industrial Park sites in a number of key areas. A main difference is the size of the respective sites. The Beresfield/Stony Pinch site has an area of 4,000 ha. Presumably, detailed investigations of the site will reveal some constraints, meaning not all of the area is able to be developed. However the end yield is likely to be many times larger than the QR National site. The Intertrade Industrial Park site covers 150 ha, which again is substantially larger than the QR National site.

The variance in development timelines also represents a key difference between the QR National site and the Beresfield /Stony Pinch site. There is no current timeline in place for an industrial and intermodal development on the QR National site although there are no insurmountable obstacles to the lodgement of an application within the next ten years. The Beresfield/Stony Pinch site is a major long-term development which may require substantial infrastructure upgrades, for example the construction of the associated freight rail bypass, before coming online. The LHRS indicates that the timeline for development for this site is in the “long term”, which, in the context of the Strategy, represents a 25 year horizon.

The differences in scale and timelines between the QR National proposal, Intertrade Industrial Park and, particularly, the Beresfield/Stony Pinch plans are sufficient that the pursuit of each development need not jeopardise the viability of any other. Each site has unique characteristics that ensure its advantages for development. The QR National site has immediate access to the working rail line and is planned for a short-medium timeframe; the Beresfield/Stony Pinch site is

extremely large and represents a major long term infrastructure project, while the Intertrade Industrial Park site enjoys a prime position directly on the Port of Newcastle.

7.2.2 *Fassifern to Hexham Rail Link*

The LHRS incorporates specific regional infrastructure requirements that are identified in the *State Infrastructure Strategy*. Two sections of the LHRS require consideration by the proposal, being the expansion of freight handling and transport.

1. Expansion of Freight Handling – The regional strategy highlights a long term opportunity for the designation of a future freight hub and investigation into a Newcastle freight bypass. The strategy identifies land for a freight hub within proximity to the Port and in the vicinity of the junction of the New England Highway and Pacific Highway at Beresfield. The proposed QR National TSF is not proposed on any land identified for future freight hub.

A freight hub report for the Hunter, completed by Strategic Design + Development Pty Ltd, Cox & Hyder in 2008 for the Hunter Economic Development Corporation (now Hunter Development Corporation), identified two freight rail bypass alignments from Fassifern to Newcastle. The proposed QR National TSF will not impede future development of the identified alignments.

2. Transport – The LHRS seeks to achieve the following:
 - Continue to improve the north – south access through the region, including planning of the linkage of the F3 to the Pacific Highway at Raymond Terrace and upgrades to the Pacific Highway. The proposal will not impact on the potential future linkage of the F3 to the Pacific Highway. For further information refer to Section 9.6 of this EA.
 - Streamline freight movements along the north – south rail corridor between Sydney and Brisbane. In particular, investigate the possibility of constructing a freight rail bypass of Newcastle, which if implemented, would reduce congestion between freight and passenger trains on the Newcastle rail network. The proposed QR National TSF does not impact any land identified for a future freight bypass of Newcastle.

The Lower Hunter Transport Needs Study (Hyder Consulting Pty Ltd), prepared in 2008, considered the long term transport needs for the lower Hunter region. The report identified a possible Fassifern to Hexham Rail Link and freight hub. The proposed QR National TSF will not impede such future development.

Consultation has been undertaken during the EA process in relation to both the proposed TSF and HRR projects. Regular liaison between QR National and Transport for NSW has already occurred and will continue throughout the assessment and design process to ensure that the future development of the Rail Link will not be compromised. The design of the QR National facility has taken into account feedback from Transport for NSW and the concept of the Fassifern to Hexham Rail Link. The TSF design has been developed so as not to affect or limit future development opportunity for the Fassifern to Hexham rail link to proceed.

7.3 STATE STATUTORY PLANNING FRAMEWORK

7.3.1 *Environmental Planning and Assessment Act (1979)*

The EP&A Act is the primary piece of planning legislation in NSW. Among other things, it sets out the process for the assessment of development proposals such as that proposed by QR National.

The proposed development, identified as the 'Hexham Redevelopment Project' by the DP&I, has been declared a potential State Significant Site under Part 3A of the EP&A Act. Furthermore the DG has issued DGRs as part of the assessment of the project application.

In 2007, QR National also submitted an application to the Minister for Planning and Infrastructure for concept plan approval for a freight intermodal facility and further industrial subdivision. At this point in time, QR National is not proposing to proceed with this additional development on land adjacent to the TSF.

On 1 October 2011, Part 3A of the EP&A Act was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011 No. 22*. Despite this, Part 3A continues to apply to the proposed development based on the transitional provision identified in Schedule 6A of the EP&A Act.

Legislation that does not apply to Part 3A projects

Part 3A of the EP&A Act provides that certain additional approvals and authorisations under other Acts are not required in respect of Part 3A projects. Under Section 75U of the EP&A Act, the following authorisations are not required for approved Part 3A projects:

- Concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of that Act;
- A permit under Section 201, 205 or 219 of the *Fisheries Management Act 1994*;
- An approval under Part 4 or an excavation permit under Section 139, of the *Heritage Act 1977*;
- An Aboriginal heritage impact permit under Section 90 of the *National Parks and Wildlife Act 1974*;
- An authorisation referred to in Section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land;
- A bushfire safety authority under Section 100B of the *Rural Fires Act 1997*; and
- A water use approval under Section 89, a water management work approval under Section 90 or an activity approval (other than an aquifer interference approval) under Section 91 of the *Water Management Act 2000*.

Approvals that must be applied consistently to Part 3A projects

Under Section 75V of the EP&A Act, an authorisation of the following kind cannot be refused if it is necessary for carrying out an approved Part 3A project and is to be substantially consistent with the approval under this Part:

- An aquaculture permit under Section 144 of the *Fisheries Management Act 1994*;
- An approval under Section 15 of the *Mine Subsidence Compensation Act 1961*;
- A mining lease under the *Mining Act 1992*;
- A production lease under the *Petroleum (Onshore) Act 1991*;
- An environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act);
- A consent under Section 138 of the *Roads Act 1993*; and
- A licence under the *Pipelines Act 1967*.

The additional authorisations required for the TSF project are considered in further detail later in this chapter.

Compliance with the Objects of the EP&A Act

The proposed development is consistent with the objects of the EP&A Act as outlined below:

a) To encourage:

- 1. The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*

The proposed TSF will service the expansion of the coal mining industry in the Hunter Valley by improving the rail transportation system without increasing the number of trains on the rail network. The establishment of an efficient new facility at Hexham will replace existing facilities within the Newcastle Coal Terminals which are hindering current operations due to the congestion of trains queuing on the Mainline before entering the KCT.

Investigations undertaken as part of the site selection process and concept design seek to identify and minimise adverse environmental effects and provide amelioration measures when these impacts cannot be avoided.

The selected site, adjoining the main rail link between the Hunter Valley mines and the coal loading terminals, has a long association with processing and transportation of coal. The reuse, in part, of an existing industrial site and a focus on minimising the development footprint has limited the loss of sensitive vegetation. The use of adjoining lands for environmental offsets which will enhance the Hexham Wetlands is consistent with best practice in environmental land use planning. An offset strategy has been formulated for the proposed TSF which is consistent with

the 'Policy Framework' (OEI, *Principles for the use of Biodiversity Offsets in NSW*). For further detail refer to Section 9.2.4.

II. The promotion and co-ordination of the orderly and economic use and development of land.

The Hexham site, much of which has had a long association with coal processing and haulage industry, provides a key strategic location in relation to the coal chain corridor. The use of this site will lead to improvements in the Hunter Valley coal network including reduced costs, minimised off track time and improved reliability.

The proposal is consistent with the ARTC's infrastructure enhancement strategy for the Hunter Valley corridor which seeks to ensure that rail corridor capacity stays ahead of coal demand.

The project will maximise existing rail network infrastructure to support increased capacity of the system and access to the port. The improvements will improve competitiveness and at the same time reduce haulage costs which underpin the international competitiveness of the industry.

III. The protection, provision and co-ordination of communication and utility services.

Communication and utility services have been identified and addressed through site investigations and liaison with the relevant authorities and agencies. Consultation with all of the relevant utility providers has been undertaken. A detailed utilities plan has been prepared to ensure the future connection and minimal disruption to existing utilities and services is managed efficiently and that protection of services is undertaken to the satisfaction of service providers.

IV. The provision of land for public purposes.

The proposed development does not interfere with the provision of land for public purposes and is itself not required for public use other than for the utility authorities, which have been accounted for.

NCC have indicated a potential cycle path along the HWC CTGM, which would connect with the potential future Richmond Vale Rail Trail cycle path, and provide a regional link between the Hexham area through to Kurri Kurri and beyond. Consultation with NCC has begun and is ongoing in regard to this matter.

V. The provision and co-ordination of community services and facilities.

The proposed development does not impact on the provision and co-ordination of community services and facilities.

VI. The protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

A detailed overview of the proposed TSF's impact on the environment is addressed within Section 9.2. Mitigation measures will be implemented to ensure the protection and conservation of the environment.

VII. Ecologically sustainable development.

The ecological assessment undertaken for this EA incorporates the results of previous investigations supplemented by additional onsite surveys. Measures to minimise the impact of the project on flora and fauna were identified and mitigation measures to reduce and avoid potential impacts on threatened species and ecological communities and their habitats have been developed. The project includes biobanking offsets in the Hexham locality in response to the assessment that has been undertaken. The offsets strategy is addressed within Section 9.2.4 of this EA.

Throughout the construction and operation of the proposed development, ESD principles and guidelines will be implemented and adhered to (see Section 10.0 Ecological Sustainable Development).

b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.

The assessment and consultation process undertaken for this Part 3A project entails liaison being undertaken with local, State and Federal level government authorities and agencies. DP&I and the proponent have undertaken this liaison through the transfer of project information and direct contact with the relevant agencies.

c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

QR National has undertaken consultation and liaison with community groups and individuals over a number of years with regards to the development of the Hexham site for the TSF. Feedback from this consultation has informed the design process and has led to design modifications which seek to minimise impacts on the neighbouring properties.

In addition the Part 3A process contains extensive formal public consultation provisions which will continue as part of the project assessment process.

7.3.2 SEPP (Major Development) 2005

SEPP (Major Development) 2005 identified the types of development that were subject to Part 3A of the EP&A Act. The TSF fell under Clause 23 of Schedule 1 of the SEPP as a rail and related transport facility and as such was to be assessed under Part 3A.

As part of the previous determination that the project was a Major Project, the Minister for Planning on 30 November 2007 gave notice of receipt of a proposal to amend SEPP Major Developments to include the site as a State Significant Site under Schedule 3. A copy of the notice is included in Appendix S.

On 1 October 2011, Part 3A of the EP&A Act was repealed. Despite this, the project was already lodged in accordance with SEPP (Major Development) 2005, and was therefore development to which the transitional provisions identified in Schedule 6A of the EP&A Act apply. These transitional arrangements confirm (Schedule 6A (3)(2)(a)) that 'any State Environmental Planning Policy or other instrument made under or for the purposes of Part 3A, as in force at the date of its repeal, continues to apply to and in respect of a transitional Part 3A project'. Therefore SEPP (Major development) 2005 continues to apply to the proposed development.

7.3.3 SEPP (State and Regional Development) 2011

The aims of this Policy are as follows:

- (a) To identify development to which the State Significant Development Assessment and approval process under Part 4 of the EP&A Act applies;
- (b) To identify development that is State Significant Infrastructure and critical State Significant Infrastructure; and
- (c) To confer functions on joint regional planning panels to determine development applications.

SEPP (State and Regional Development) 2011 includes a class of State Significant Development which could encompass the QR National TSF project. The description of this class is as follows:

Schedule 19 Road, train and related transport facilities.

(1) Development that has a capital investment value of more than \$30m for the following purposes:

- (a) heavy railway lines associated with mining, extractive industries or other industry;*
- (b) railway freight terminals, sidings and intermodal facilities; or*
- (c) roads (including bridges).*

(2) Development within a rail corridor or associated with railway infrastructure that has a capital investment value of more than \$30m for any of the following purposes:

- (a) commercial premises or residential accommodation;*
- (b) container packing, storage or examination facilities; or*
- (c) public transport interchanges.*

However as the TSF project is a transitional Part 3A project the SEPP (Major Development) 2005 continues to apply to this development and therefore SEPP (State and Regional Development) 2011 will not apply to the assessment and approval of the TSF project.

7.3.4 SEPP 14 (Coastal Wetlands)

SEPP 14 (Coastal Wetlands) ensures that coastal wetlands are preserved and protected for environmental and economic reasons. The policy identifies over 1300 wetlands of high natural value from Tweed Heads to Broken Bay and from Wollongong to Cape Howe. Part of the proposed development will be across SEPP 14 land (see Figure 16 below).

As identified within Figure 16 the site contains two areas of SEPP 14 Coastal Wetlands. The area in the south will not be impacted by the proposed development and is proposed to be conserved as part of the environmental offsets.

The area of SEPP 14 land further to the north in the central part of the site will be impacted by the proposed development where the proposed TSF rail lines will pass through the SEPP 14 area as shown in Figure 16. It is noted that this area is degraded and is also disconnected from more significant wetland areas and so its value is somewhat limited. Despite the minor impact on the

SEPP14 Coastal Wetlands, a good environmental outcome has been proposed, providing environmental offsets of wetlands and EECs to account for the minor impact on SEPP 14 Coastal Wetlands on the site.

The environmental impact and offset strategy is discussed in more detail in Section 9 of this EA.

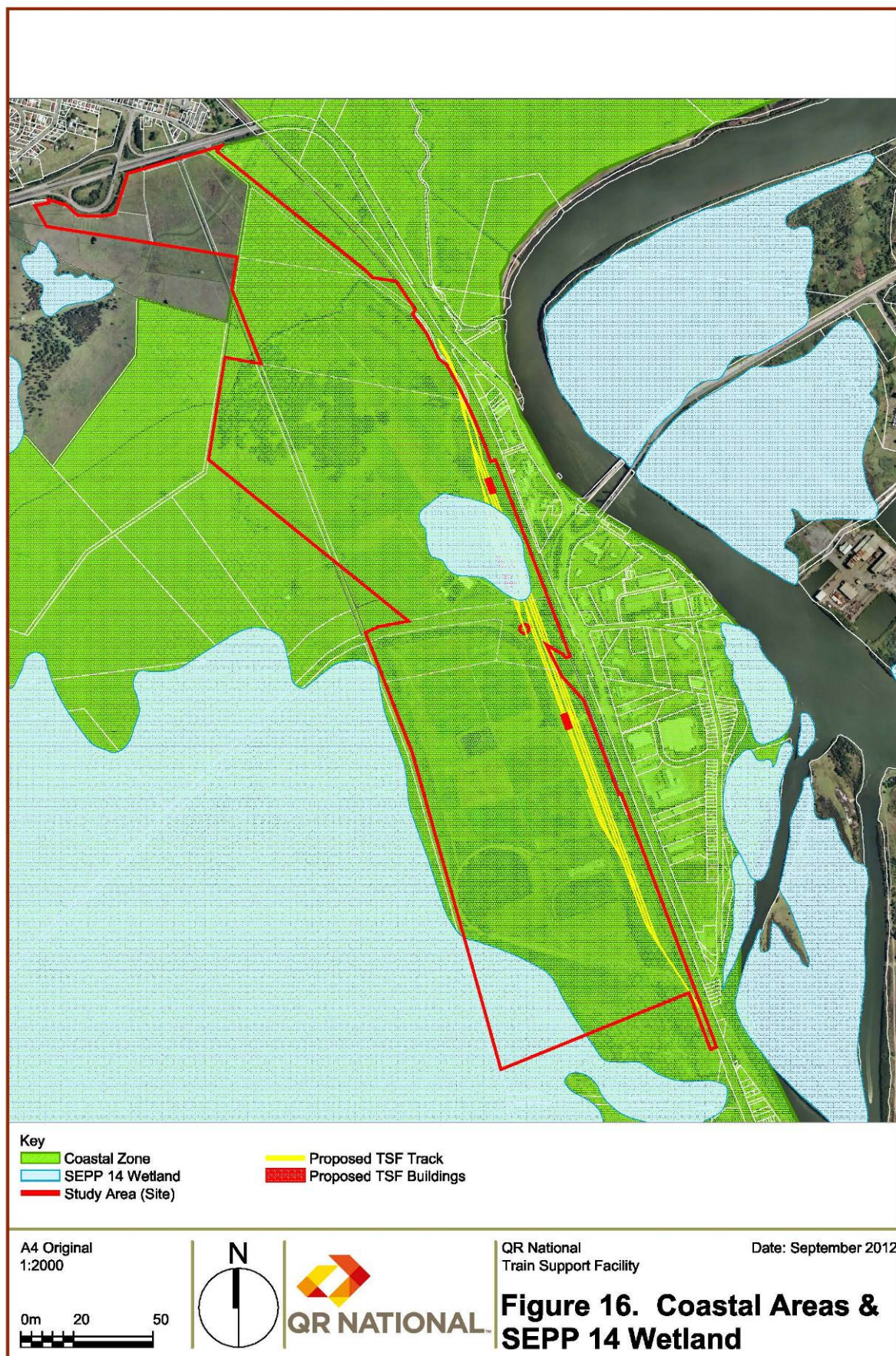


Figure 16: Coastal Areas & SEPP 14 Coastal Wetlands

7.3.5 SEPP 33 (Hazardous and Offensive Development)

This policy regulates the storage of hazardous and offensive materials on a site, including materials such as fuels.

The TSF project requires the storage of diesel for the refuelling of trains and oil on site. Measures will be implemented on site to mitigate against any environmental or human health risks on site as a result of fuel storage and therefore this fuel storage arrangement does not trigger the provisions of SEPP 33. A 200L drum of petrol will also be kept on site for refuelling of a maintenance truck and quad bikes. This will be stored separately from the train refuelling facilities and similarly will not trigger the SEPP 33 provisions. Further detail concerning the storage of hazardous materials and substances is contained within Section 11 of this EA.

7.3.6 SEPP 55 (Remediation of Land)

This SEPP outlines the procedures for remediation of contaminated land. The site contains a number of hotspots requiring remediation. It is intended that this process will comply with the requirements of the SEPP.

Contamination is addressed further in Section 9.9 of this EA, including details of the RAP for the site.

7.3.7 SEPP 71 (Coastal Protection)

The overall aim of this SEPP is to protect the NSW Coastline. The site is located within the coastal zone (identified within Figure 16), therefore consideration will need to be given to the matters contained within the SEPP.

SEPP 71 Coastal Protection requires development within the Coastal Zone must consider Clause 8, Matters of Consideration which are set out below. The following points address these matters:

(a) The aims of this Policy set out in clause 2.

The proposed development is consistent with the aims of the Policy as set out in Clause 2 which are generally to protect and manage the natural, cultural, recreational and economic attributes, vegetation and visual amenity of the NSW Coast as it applies to the site.

(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 is consistent with the aims of this policy; any existing public access will not be impeded by the proposed development.

(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

The proposal is consistent with the aims of this policy. The site is not strategically located to provide additional access points to the coastal foreshore.

- (d) *The suitability of development given its type, location and design and its relationship with the surrounding area.*

It is considered that the site is suitable for the proposed development, and that this suitability is evident from the assessment presented in this EA. The proposed development is consistent with the strategic planning for the locality, providing employment opportunities as envisaged by the LHRS, and is consistent with the industrial zoning of the site. The proposal is consistent with the established industrial development in the locality, and the proposed future character of the area.

- (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 proposed development does not impact on the coastal foreshore amenity.

- (f) *The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.*

The proposal is consistent with the aims of this policy. The location of the site and topography will ensure no significant adverse impact on existing scenic quality will occur.

- (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.*

The proposal is consistent with the aims of this policy. A Flora and Fauna assessment has been undertaken and is presented separately in this EA. Areas of impact have been appropriately offset.

- (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.*

The proposal is consistent with the aims of this policy. Areas of impact have been appropriately offset.

- (i) *Existing wildlife corridors and the impact of development on these corridors.*

The proposal is consistent with the aims of this policy. The proposal has a small intrusion into the Green Corridor identified on the LHRS map however no significant impact will result. Offset strategies will be subject to negotiation with NSW OEH.

- (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 consistent with the aims of this policy. The proposal is not subject to any likely coastal processes. The impact of flooding is discussed separately in this EA, including consideration of sea level rise.

- (k) *Measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposal is consistent with the aims of this policy and does not result in any conflict between land or water based activities.

(l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.

The proposal is consistent with the aims of this policy. An Aboriginal Archaeological assessment has been undertaken and is presented separately with the appendices to this EA. The investigation was undertaken with local Aboriginal stakeholder input. It identifies an area containing a PCD and measures to protect the cultural significance of the area.

(m) Likely impacts of development on the water quality of coastal waterbodies.

This matter is addressed within Section 9.4 of this EA. Measures are proposed to protect water quality, noting the important Hexham Swamp nearby.

(n) The conservation and preservation of items of heritage, archaeological or historic significance.

The proposal is consistent with the aims of this policy. Aboriginal, archaeological and European heritage investigations have been undertaken for inclusion within this EA to ensure conservation and preservation of significant items are addressed and where necessary mitigation and management measures are implemented.

(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.

The proposal is not the subject of consideration under this clause.

(p) Only in cases in which a DA in relation to proposed development is determined:

(i) The cumulative impacts of the proposed development on the environment.

The proposed development will have an insignificant cumulative impact on the environment given that it can be demonstrated how each issue of the proposal will be adequately managed.

(ii) Measures to ensure that water and energy usage by the proposed development is efficient.

This matter is addressed in Section 10.1.2. Water capture and re-use, and energy efficiency and security of supply have been important considerations in designing the proposed development.

7.3.8 SEPP (Infrastructure) 2007

The SEPP provides a consistent planning regime for infrastructure and the provision of services across NSW, along with providing for consultation with relevant public authorities during the assessment process. The SEPP supports greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency. The proposed development is not exempt from the requirement for consent by way of this SEPP.

The proposed development adjoins an existing rail corridor and so the procedures for involving ARTC must be followed including the need to obtain the concurrence from ARTC. The consent authority must also consider the impact of connecting to a classified road. The SEPP requires the RMS to be consulted in relation to the proposed road connection.

7.3.1 State Infrastructure Strategy

The Infrastructure Strategy is a rolling 10 year strategy to plan and fund the infrastructure that supports economic growth and the services that the NSW Government delivers. It is guided by NSW government agencies, and forms the link between the infrastructure plans detailed in the four forward years of each State budget, the 10 year NSW State Plan, and the 25 year metropolitan and regional strategies.

The Infrastructure Strategy includes agency infrastructure plans for human services, justice, transport, electricity and water. The Infrastructure Strategy also maps infrastructure projects by six broad regions being Sydney, Central Coast, Hunter, North Coast, Illawarra, South East and inland NSW.

Of relevance to the proposed TSF is the agency infrastructure report for transport. An initiative of the ARTC detailed in the plan includes the Hunter Valley Investment Strategy, worth \$375m, to provide rail capacity to meet the growing demand for coal haulage.

The needs and objectives of the proposed TSF are consistent with supporting increased rail coal haulage in the Hunter Valley and therefore the proposed project is consistent with the State Infrastructure Strategy.

7.3.2 NSW Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) aims to protect and encourage the recovery of threatened species, populations and communities listed under the EP&A Act. The TSC Act is integrated with the EP&A Act and requires consideration of whether a development or an activity will affect threatened species, populations and EEC or their habitat. To determine this, an ecological survey of sites is required, the finding of which are outlined below.

Three EEC's occur in the study area: Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner bioregions; Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions; and Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner bioregions. The EECs are identified on Figure 19 within Section 9.2.

No threatened flora species were recorded within the study area, though *Zannichellia palustris* was considered a potential occurrence.

Eleven threatened fauna species were recorded within the study area and an additional four threatened fauna species were considered likely to occur. Six Migratory species listed under the EPBC Act are also considered likely to occur. A more detailed discussion of the ecological investigations is contained within Section 9.2 of this EA.

7.3.3 NSW Roads Act 1993

Works within the roadway will also require approval under Section 138 the *Roads Act* 1993 (Roads Act). The Roads Act requires that a person obtain the consent of the responsible roads authority for the erection of a structure, or the carrying out of work in, on or over a public road, or the digging up or disturbance of the surface of a public road.

The RMS is the responsible authority. The proposed site intersection will require approval from the RMS. As described within Section 6.4.3, the approval process requires the proponent to enter into a Works Authorisation Deed (WAD) with RMS to cover the legal requirements. ARTC will manage the WAD process with RMS for construction of the intersection off the Tarro Interchange and the approval for the proposed access road from the intersection to the TSF is sought within this EA. The access will be shared by ARTC and QR National.

7.3.4 Protection of the Environment Operations Act 1997

The purpose of the *Protection of the Environment Operations Act* 1997 is to control pollution and set up a licence regime. This Act requires the issue of an Environment Protection Licence (EPL) for scheduled activities listed in Schedule 1 of the Act.

Railways Systems Activities are identified as a scheduled activity under Clause 33 of Schedule 1 and includes the installation, on site repair, onsite maintenance or on site upgrading of track or the operation of rolling stock on track. In this context, 'track' means railway track that forms part of, or consists of, a network of more than 30 kilometres of track. The construction and operation of the TSF will be a Railways Systems Activities which requires an EPL.

Chemical Storage is also a scheduled activity under Clause 9 of Schedule 1 and includes the storage or packaging of 2,000 tonnes or more of petroleum or petroleum products in containers, bulk storage facilities or stockpiles. The storage of 100,000 litres of fuel on site will be a scheduled activity for which an EPL is required.

Extractive Activities is identified as a scheduled activity under Clause 19 of Schedule 1 if it involves the extraction, processing or storage of more than 30,000 tonnes per year of extractive materials. If more than 30,000 tonnes of coal rejects are to be extracted from the existing coal tailings area per year than an EPL will also be required for this scheduled activity.

An EPL may therefore be required for the TSF for the scheduled activities of Railway Systems Activities, Chemical Storages and Extractive Activities.

7.3.5 Contamination Land Management Act 1997

This Act requires that the Department of Environment, Climate Change and Water be notified of contamination likely to be of "significant risk of harm" to human health or the environment. The Act also details the requirements for investigation and remediation of contaminated land. It is considered on the basis of the work completed that the site will not classify as being of significant risk of harm. Further detail concerning contamination of the site is addressed within Section 9.9 of this EA.

7.3.6 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NP&W Act) applies to adjoining land owned and managed by the National Parks and Wildlife Services (NPWS).

Under Section 90 of the NP&W Act, consent is required to destroy, deface or damage an Aboriginal object or Aboriginal place. Pursuant to Section 75U of the EP&A Act, consent under Section 90 of the NP&W Act is not required for an approved Part 3A project.

The minister can issue stop work orders in relation to an action that may detrimentally affect an Aboriginal object or place. No relics or sites are to be impacted upon as a result of the proposed TSF. In the instance where items of Aboriginal heritage are found, appropriate mitigation action has been identified within Section 9.12.

The NP&W Act also applies to the establishment of two conservation areas that total approximately 53ha in close proximity to Hexham Swamp. These areas are to be managed in accordance with a Conservation Management Plan and are proposed to be subject of a Conservation Agreement under the NP&W Act to ensure long term management and security of biodiversity.

7.3.7 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.

As indicated in Figure 17 below, part of the site is identified as bushfire prone land. Whilst separate approvals under Section 100B of the Rural Fires Act 1997 is not required, the DGRs stipulate that the EA must identify and assess the risk to the project and surrounding land use and development from bushfire hazards. As such a bushfire protection assessment that clearly identifies and describes components of the project and surrounding land uses which may be affected from bushfire hazards has been undertaken and is presented within Appendix F.

Given the nature of the proposed development the fact that the site is substantially cleared, and considering the materials proposed to be used in construction, it is not believed that there is any substantial threat from bushfire.

7.3.8 Noxious Weeds Act 1993

The *Noxious Weeds Act 1993* requires noxious weeds to be managed in a manner that restricts their establishment and dispersal. Appropriate mitigation measures and controls will be included in the Conservation Management Plan to manage the risks associated with noxious weeds identified on site.

7.3.9 Waste Avoidance and Resource Recovery Act 2001 (WARR Act)

The purpose of this Act is to encourage the most efficient use of resources and to reduce potential environmental harm from waste material through a hierarchy of waste management processes (avoid, recover, dispose).

The waste management hierarchy referred to in the Act will be applied to any waste materials generated during construction and operation of the proposed TSF.

7.3.10 Water Act 1912 and Water Management Act 2000

The *Water Act* 1912 (Water Act) and the *Water Management Act* 2000 (WM Act) regulate the licensing and use of surface and groundwater in NSW. The WM Act applies in circumstances where a water sharing plan has been enacted for a specified area and in respect of certain water sources within that area. The Water Act continues to apply to the licensing and use of water in all other areas of the State.

The project area is covered by the *Hunter Unregulated and Alluvial Groundwater Source Water Sharing Plan 2009* (WSP). This WSP applies to surface water and alluvial groundwater in the project area. However, the WSP does not apply to water contained in alluvial sediments downstream of the tidal limits. Section 75U of the EP&A Act provides that a water use approval, a water management work approval or an activity approval (other than an aquifer interference approval) are not required for an approved Part 3A project.

However, a water access licence (WAL) under the WM Act will be required if water is to be taken from Purgatory Creek for the purpose of dust suppression and construction uses. A separate application for a WAL will be made to the NSW Office of Water if required.

7.3.11 Transport Administration Act 1988

This Act regulates the administration of transport activities undertaken in NSW. The Act requires that QR National obtain approval from ARTC prior to connecting to the NSW rail network. This approval from ARTC will be separate to this planning approval process.

7.4 COMMONWEALTH STATUTORY PLANNING FRAMEWORK

7.4.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) 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.

Approval from the Commonwealth Environment Minister is required under the EPBC Act if the action (can include a project, development, undertaking or activity) will, or is likely to, have a significant impact on matters considered to be of national environmental significance (NES matters). NES matters relevant to this study include threatened species, ecological communities and migratory (JAMBA/CAMBA) species that are listed under the EP&A Act.

The EPBC Act does not define significant impact but identifies matters that are necessary to take into consideration. Additional information is available within EPBC Act Policy Statements that provide background information and guidelines on how to survey for, and assess impacts on,

matters of NES. If the matter is referred to the Minister a decision is generally required within 20 days in relation to whether an action requires Commonwealth approval.

So as to seek clarity with regards to EPBC Act approval requirements for NES matters (migratory birds, RAMSAR wetlands, Green and Golden Bell Frog, Grey-headed flying-fox), a referral was submitted to the Australian Government Department of Sustainability, Environment, Water, Population & Communities (SEWPAC). The proposed action was deemed not to be a controlled action on 20 March 2012 (EPBC Act referral 2012/6285), for further detail refer to the SEWPAC correspondence contained in Appendix U).

7.4.2 Native Title Act 1993

The *Native Title Act* 1993 administers processes relating to the recognition, protection and determination of native title and dealings with native title land. Native title is concerned with the rights and interests of Aboriginal peoples in relation to land and water in Australia and its territories.

A search of the National Native Title Register, the Register of Native Claims, and the Register of Indigenous Land Use Agreements has been completed as part of the preparation of the Aboriginal Cultural Heritage Report.

No lands were determined to have native title and no registered native claims or Indigenous land use agreements were located within the Project Area.

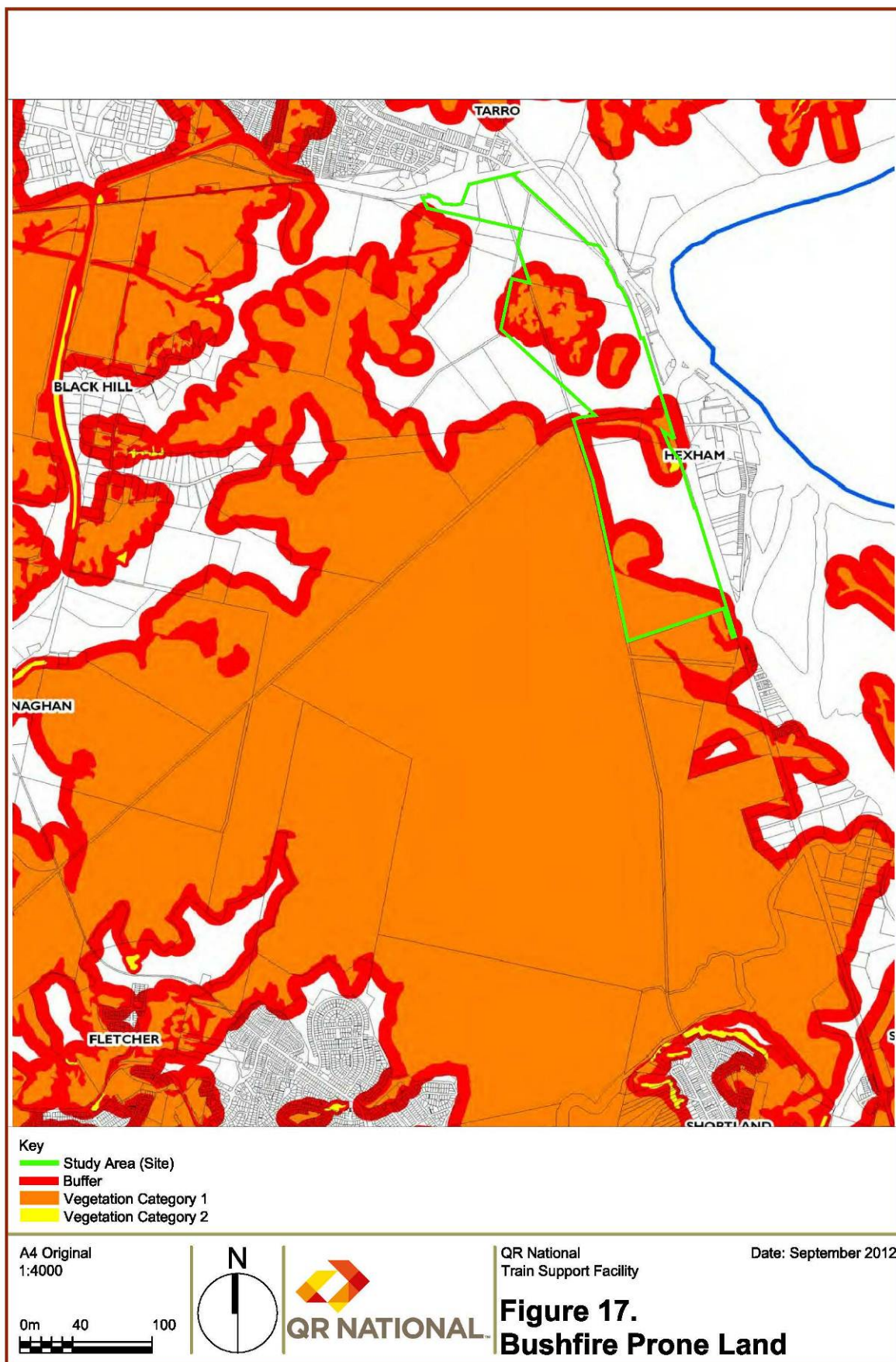


Figure 17: Bushfire Prone Land