



NSW GOVERNMENT
Department of Planning

Warner Industrial Park Concept Plan and Project Application (MP 07_0162)



Director-General's Environmental
Assessment Report
Section 75I of the
*Environmental Planning and Assessment
Act 1979*

August 2010

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EXECUTIVE SUMMARY

Warner Business Park Pty Ltd, subsidiary to the Terrace Tower Group Pty Ltd (the Proponent) is seeking approval for the Warner Industrial Park (WIP) Concept Plan and Project Application pursuant to Part 3A of the *Environmental Planning and Assessment Act, 1979* ("the Act").

The site is located within Precinct 14 of the Wyong Employment Zone (WEZ) and is bound by the Sydney Newcastle Freeway, Sparks Road and Hue Hue Road within the Wyong LGA and comprises a total area of approximately 104ha.

The Concept Plan involves the development of an 80ha site into a 90 lot industrial park and the retention of approximately 20 hectares for environmental purposes. The estimated capital investment of the development is \$260 million and is expected to generate between 2,000-3,000 full time jobs on completion. The Project Application involves subdivision of industrial land, site clearing and bulk earthworks, construction of internal and external infrastructure, landscaping, dedication of environmental lands to Council and construction of new traffic intersections at Sparks Road and Hue Hue Road for access to the site.

The proposal was exhibited for a period of 33 days from 20 August to 22 September 2008 where the Department received a total of 10 submissions from the public and from Government agencies.

The Proponent submitted its Preferred Project Report in February 2009 and Supplementary Preferred Project Report in May 2009. The Draft DCP was submitted to the Department in October 2009. The key issues identified through the assessment related to flooding, stormwater infrastructure, biodiversity and the design code for future development.

Following its consideration of the Proponent's assessment, and issues raised in submissions, the Department considers that the proposed development should be approved subject to modifications to the Concept Plan and/or conditions of approval (project application). Key recommendations of the Department are:

- a requirement for further flood modelling to be undertaken once the Proponent has completed the detailed engineering design of the project to confirm that lots are flood free (as committed to by the Proponent), with consideration to marginal increases to the flood planning level to improve flood immunity of the site during climate change scenarios and to reduce the overflow impact on the development site (should the F3 culverts become blocked);
- removal of supporting/service infrastructure from areas containing Endangered Ecological Communities or threatened species (unless these are essential for hydrological reasons), limiting the extent of infrastructure within minimum biodiversity corridor widths and the consolidation of service infrastructure wherever possible.
- to require contributions to be paid to Council, which will go towards local intersection upgrades, acquisition of environmental lands, environmental corridor works and Integrated Water Catchment Management Scheme (water pipeline), totalling \$3,838,842;
- to require State Infrastructure Contributions of \$4,185,416 (if paid before 1 July 2011) and \$6,278,090 (if paid after 30 June 2011) to be paid to the NSW Government for State road upgrades (Sparks Road);
- to permit certain additional uses (Industrial Retail Outlets, Food and Drink Premises, Vehicle body repair workshop and vehicle repair station) as these uses are considered to be compatible with the industrial zone or would provide an appropriate level services to future employees in the site;
- to increase the development standard applying to the neighbourhood shops from 80m² to 200m², and to cap the total amount of retail floor space across the site to 500m² to ensure the site does not become an out-of-centre retail destination; and

- a number of changes to the development code for the site, including the establishment of a minimum lot size standard to ensure the vision for the WEZ is maintained, and to lower the proposed building heights along the site boundaries with Sparks Road and Hue Hue Road.

Consequently, the Department recommends that the Minister:

- (a) approve the concept plan and project application under section 75O, section 75P and section 75J of the *Environmental Planning and Assessment Act 1979* respectively subject to the recommended modifications and conditions of approval;
- (b) determine the future environmental assessment requirements for subsequent project or development applications associated with the Concept Plan; and
- (c) determine that future development is subject to Part 4 or Part 5 of the Act (whichever is applicable) unless the development is, in the opinion of the Minister, development of a kind that is described in Schedule 1 of *State Environmental Planning Policy (Major Development) 2005*.

Should the Minister approve the concept plan (as recommended by the Department), it is recommended that the Minister makes a section 75R(3A) Order to make several prohibited uses permissible and to increase the development standard specified in the EPI for neighbourhood shops from 80m² to 200m². This will ensure that subsequent stages of the project (that includes these uses) can be dealt with by Council under Part 4 of the Act without any limitations under section 79C of the Act.

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1. BACKGROUND

1.1 Wyong Employment Zone

The Warner Industrial Park site (the Site) is located in the Wyong Local Government Area. More precisely, it is situated within Precinct 14 (131.7ha) which forms part of the Wyong Employment Zone (WEZ).

The WEZ (Figure 1 and Figure 2) is listed as a State Significant Site under Schedule 3 of the State *Environmental Planning Policy (Major Development) 2005* and is identified as a major employment node in the *Central Coast Regional Strategy*. It is in the vicinity of the Sydney-Newcastle Freeway at the Sparks Road interchange and is surrounded by the areas of Kiar and Wallarah to the north, Porters Creek wetland catchment to the south, the Great Northern Railway to the east and Hue Hue Road to the west.

The WEZ has a total area of 744 ha, of which 344 ha is zoned industrial and 346 ha is zoned for environmental protection. It is expected that that the WEZ will generate employment for approximately 6,000 people once developed. The WEZ consists of five distinct areas (refer to Figure 2) being:

- Precinct 11 and 13 (Halloran);
- Precinct 14 – **the proposed site**;
- Warner Business Park (existing);
- Warnervale Aerodrome (and surrounds); and
- Automotive Precinct.



Figure 1 – Regional Context

Source: Central Coast Regional Strategy (DoP, 2008)

1.2 The Proposed Site

The site comprises of 11 lots and is under several ownerships, being Warner Business Park Pty Ltd (WBP), Delcare Constructions Pty Ltd and Laurence Gerard Delahunty. WBP owns the majority of the land (86.55ha), and is the Proponent of this application. Landowner's consent has been provided for the remaining sites.

The site is 104.16ha in extent and it is primarily rural residential in nature. A former helicopter maintenance workshop is located in the south-eastern corner.

Topography of the site is characterised as hilly land across the majority of the site with a gentle slope to the south-east. High points are located along the western boundary and north-east corner of the site. Slopes fall down from these high points at slopes of less than 5 degrees to the north-east, east and south-east. The low-lying area is situated to the east and consists of relatively flat ground. The Buttonderry Creek is also situated in low-lying ground which is subject to flooding.

Generally, the majority of the northern and southern part of the site has been cleared. Remnant bushland is mostly contained in the mid-section of the site. Heavily timbered vegetation forms a corridor throughout the site follows Buttonderry Creek, which enters the site at the western boundary of Precinct 14 via culverts under Hue Hue Road. The creek drains through Precinct 14 in a south-easterly direction discharging under the F3 Freeway via existing box culverts.

A transmission line easement traverses the site at the Hue Hue Road and Sparks Road intersection.

1.3 Surrounding Area

Surrounding land uses consist of rural residential development, land subject to mining leases by Kores to the west of the site, open space, public reserve land and the Buttonderry Waste Management site. Significant industrial development in the area such as the proposed Bluetongue Brewery will be developed to the east of the Sydney Newcastle Freeway.

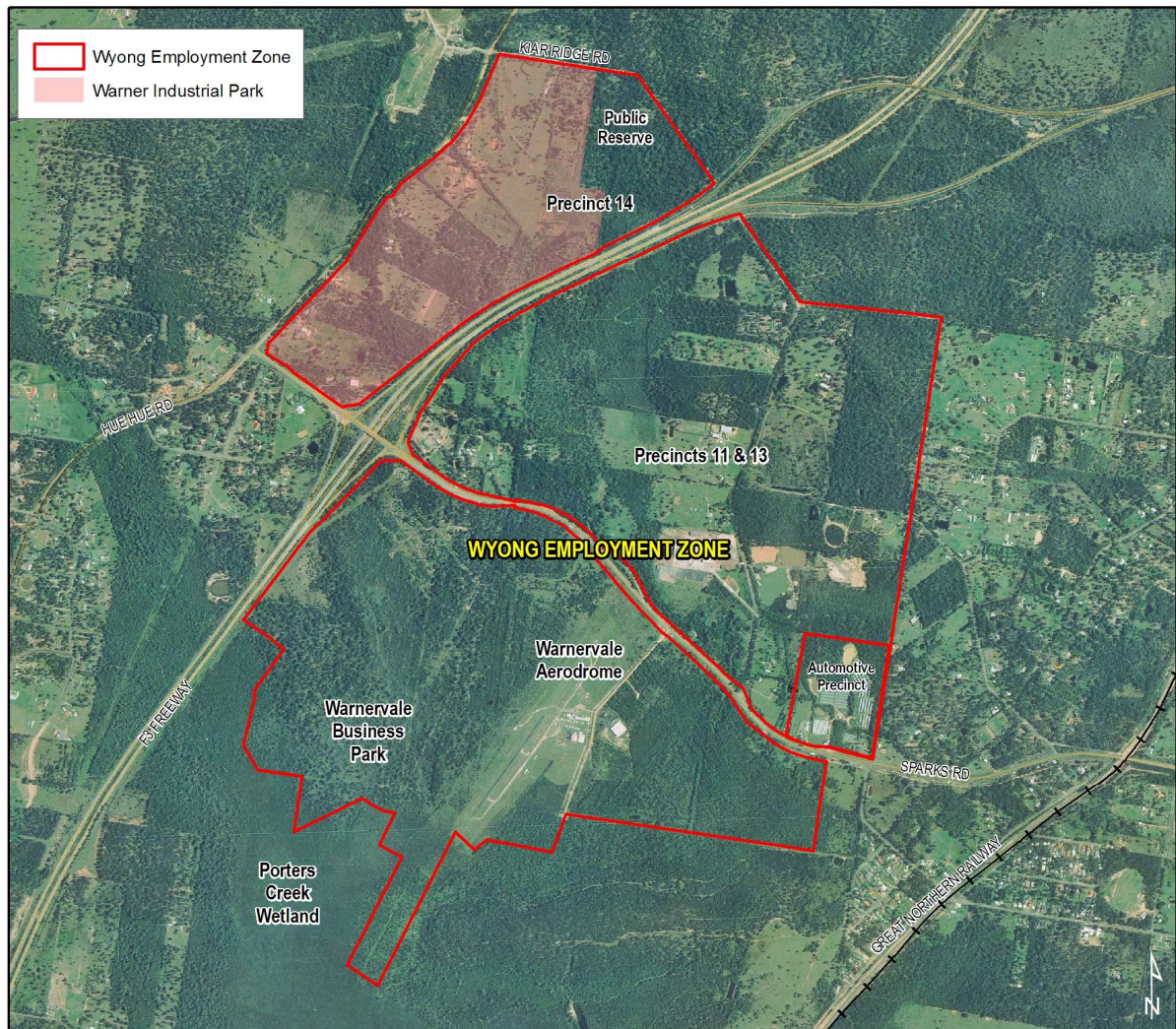


Figure 2 -The site in relation to Precinct 14 and WEZ

The **project application** seeks approval to carry out the staged subdivision and associated works, which include:

- subdivision for the creation of 90 industrial lots;
- site preparation and regrading works, including vegetation clearing and land remediation;
- construction of stormwater infrastructure in accordance with Council's Integrated Water Cycle Management (IWCM) Scheme, and construction of an alternative surplus stormwater transfer pipeline to discharge excess stormwater to Wyong River;
- construction of supporting site infrastructure including construction of external intersection road works for the site entry at Sparks Road (being a single lane roundabout) and the site entry with Hue Hue Road (seagull intersection);
- construction of an bridge over Buttonderry Creek (within the site); and
- rehabilitation of on-site conservation land and creation of a management regime for the ongoing maintenance of the public domain and residual environmental lands.

The capital investment value for the proposed concept plan is approximately \$260 million. The Proponent states that long-term employment generated by the development is expected to be 2000-3,200 jobs.

No works associated with construction of industrial developments are proposed at this stage. These will be subject to future applications by individual developers.

2.2 Staging

It is proposed that the subdivision works will be undertaken in two stages (refer to Figure 4).

Stage 1 (blue) will comprise all land owned by Warner Business Park Pty Ltd, and will result

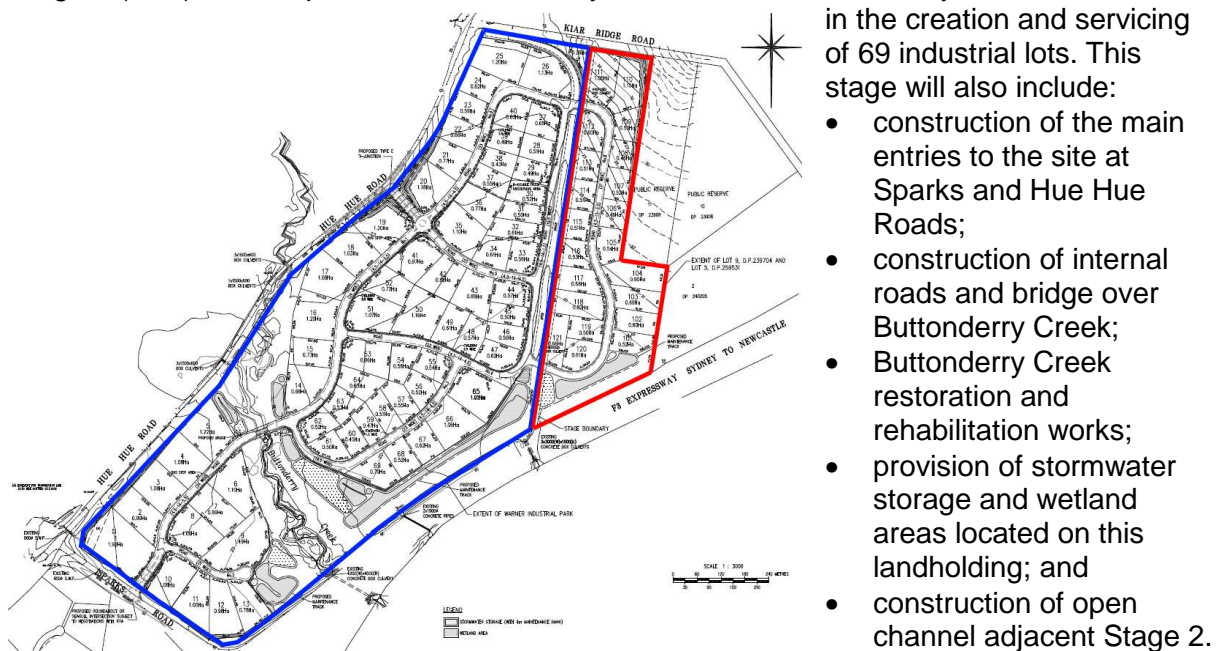


Figure 4 – Proposed Staging (Stage 1 – Blue, Stage 2 – Red)

Stage 2 (red) will create the remaining 21 lots and is located on the land owned by Delcare Constructions and LG Delahunty. This stage of works will include earthworks, service infrastructure, internal road (No.6) and the provision of stormwater storage and wetland areas located on these landholdings.

2.3 Amendments to the Concept Plan/Project Application

In response to the exhibition period, the Proponent submitted a Preferred Project Report.

Key changes to the project included:

- removal of the request for an exempt and complying order;
- changes to controls within the proposed design code, such as landscape setbacks;
- minor relocations to stormwater infrastructure within conservation lands;
- changes to the treatment for the Sparks Road access point (from a roundabout to seagull intersection);
- widening of internal roads to meet Council's circulation requirements; and
- deletion of the alternative pipeline, with the proposal to eventually connect to Council's proposed pipeline.

3. STATUTORY CONTEXT

3.1 Major Project Declaration

On 14 September 2007, the former Minister for Planning declared, by way of a specific Order under section 75B(1) of the *Environmental Planning and Assessment Act 1979* (the Act), that the proposed development is a project to which Part 3A of that Act applies. Consequently, the Minister is the approval authority.

3.2 Concept Plan Authorisation

On 14 September 2007, the former Minister also authorised the submission of a Concept Plan for the proposal pursuant to section 75M(1) of the Act.

3.3 Permissibility

The proposed site is zoned E2 Environmental Conservation and IN1 General Industrial under Schedule 3 of the Major Development SEPP as reflected on Figure 5. The majority of the future intended uses on the site are permissible with consent.

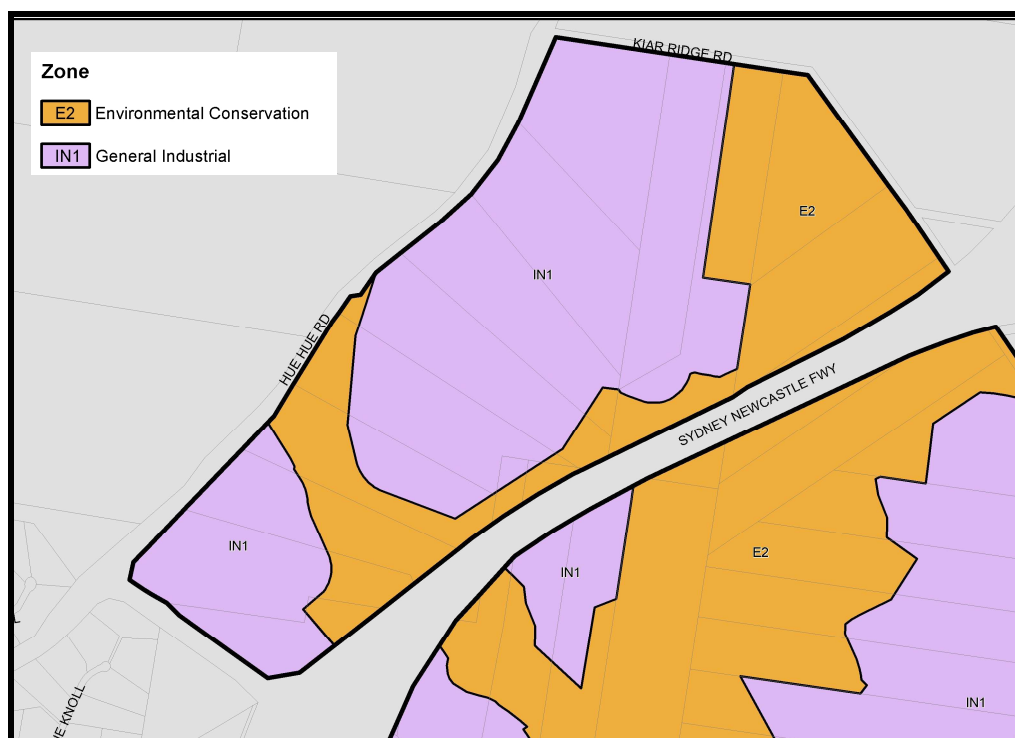


Figure 5 – Land Zoning under the Major Development SEPP

As noted earlier, the Proponent proposes a number of additional uses that are prohibited under the Zone IN1 General Industrial. These include industrial retail outlets, food and drink premises (e.g. cafes), conference centres and self storage premises.

The Minister is able to determine the proposed development in accordance with section 75J and section 75O of the Act, even though it contains prohibited uses, as the site is not classified as being an environmentally sensitive area of State significance or a sensitive coastal location.

The Department's consideration of the prohibited uses being sought is provided in section 5 of this report. If the Minister agrees to determine the concept plan and project application, as

recommended, the Department will prepare a section 75R(3A) order to amend the SSS listing to add the uses as additional permitted uses within the site.

3.4 Objects of the *Environmental Planning and Assessment Act 1979*

The objects of any statute provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a concept plan and project application under Part 3A of the Act must be informed by the relevant provisions of the Act, consistent with the backdrops of the objects of the Act.

Of particular relevance to the assessment of the subject application is consideration of the Objects under section 5(a) of the Act. Relevantly, the Objects stipulated under section 5(a) (i), (ii), (iii), (vi), and (vii) of the Act are significant factors in forming the determination of the concept plan and project application. With regard to 5(c), the proposal has been publicly exhibited in accordance with the provisions of the Regulations. The project does not raise significant issues concerning (iv), (v) and (viii).

With respect to ESD, the Act adopts the definition in the *Protection of the Environment Administration Act 1991* including the precautionary principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms.

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the concept plan application.

3.5 Relevant legislation and Environmental Planning Instruments

Appendix E sets out the relevant consideration of legislation (including other Acts) and environmental planning instruments as required under Part 3A of the Act. They include the following:

- *State Environmental Planning Policy (Major Development) 2005*;
- *State Environmental Planning Policy (Infrastructure) 2007*;
- *State Environmental Planning Policy No. 14 (Coastal Wetlands)*;
- *State Environmental Planning Policy No. 33 (Hazardous and Offensive Development)*;
- *State Environmental Planning Policy No. 44 (Koala Habitat Protection)*;
- *State Environmental Planning Policy No. 55 (Remediation of Land)*; and
- *State Environmental Planning Policy No. 64 (Advertising and Signage)*.

3.6 Commonwealth Legislation

The *Environmental Protection Biodiversity Conservation Act 1999* (EPBC Act) requires that Commonwealth approval be obtained for certain actions that have a significant impact on matters of national environment significance (NES).

Under the EPBC Act, a person proposing to take an action undertakes a 'self assessment' of the proposed action to determine if the proposal will likely have a significant impact on matters of National Significance. If it is concluded that it is likely that a significant impact may occur, then it is the Proponent's responsibility to refer this to the Commonwealth for it to determine if it is a 'controlled action' and therefore require Commonwealth approval.

The Proponent undertook its assessment (provided in the EA) and concluded that the proposed development was not likely to impact on a significant population of nationally listed threatened species, any nationally listed endangered ecological community or on any nationally listed migratory or marine species. The assessment was completed (by the

Proponent) and forwarded (24 April 2008) to the Environment Assessment Branch of DEWHA.

The Proponent concluded that "the proposal is not likely to have a significant impact on any matter of national environmental significance", therefore concluded that a referral to DEWHA was not required.

3.7 Director General's Report

The Director General's report to the Minister for the proposed concept plan satisfies the relevant criteria under Section 75I of the Act and clause 8B of the *Environmental Planning and Assessment Regulation 2000* as detailed in Table 1 .

Table 1 – Section 75I(2) and Clause 8B Criteria

Section 75I(2) criteria	Response
Copy of the proponent's environmental assessment and any preferred project report;	The Proponent's EA and Preferred Project Report are located on the assessment file and Appendix B and C of this report.
Any advice provided by public authorities on the project;	Copies of the submissions provided by public authorities on the project for the Minister's consideration are set out in Section 4 and Appendix D of this report.
The Director-General's report is to include a copy of any report of the Planning Assessment Commission in respect of the project.	There was no requirement for the referral of any report to the Planning Assessment Commission in respect of the project.
Copy of or reference to the provisions of any State Environmental Planning Policy that substantially govern the carrying out of the project;	Each relevant SEPP that substantially governs the carrying out of the project is identified in Appendix E , including an assessment of the impact of the SEPP on the development proposal in Section 3 of this report.
Except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division,	An assessment of the development relative to the prevailing environmental planning instrument is provided in Section 3 of this report.
Any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate;	The environmental assessment of the Concept Plan and Project Application is this report in its entirety.
A statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.	The proposal has adequately addressed the Director General's requirements.
Clause 8B criteria	Response
An assessment of the environmental impact of the project.	An assessment of the environmental impact of the proposal is discussed in Section 5 of this report.
Any aspect of the public interest that the Director-General considers relevant to the project.	The public interest is considered in Section 5 and addressed by the Conditions of Approval.
The suitability of the site for the project.	The site is considered suitable for the development as discussed in Section 7 of the report.
Copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.	A summary of the issues raised in the submissions is provided in Section 4 of this report.

4. CONSULTATION AND ISSUES RAISED

4.1 Public Exhibition

Section 75H(3) of the Act requires that after the Environmental Assessment has been accepted by the Director-General, the Director-General must, in accordance with any guidelines published in the Gazette, make the Environmental Assessment (EA) publicly available for at least 30 days.

The Environmental Assessment was exhibited for a period of 33 days from 20 August 2008 to 22 September 2008. An advertisement for the exhibition period was published in the Central Coast Express Advocate on 20 August 2008 and Sydney Morning Herald on 20 August 2008.

The advertisements provided details of the proposal, exhibition locations, relevant dates, and how interested parties could make a submission. Copies of the EA documents were forwarded to the local Council, relevant Government Departments, agencies and non-government organisations.

Copies of the EA and associated documents were placed on the Department of Planning's (DoP) website, and made available for inspection at the following locations: Department of Planning (Sydney and Central Coast offices), Wyong Council (including Community Library) and Lake Haven Library and Council Services.

4.2 Public Submission

One submission was received from the general public, which objected to the proposed development. Key reasons for the objection included the prohibited use that extend beyond normal industrial uses, that the proposal is designed to be developed in a manner similar to the existing Tuggerah Business Park and that it is inconsistent with State Government Centres Policy for the Sydney region. These issues are considered in detail in section 5 of this report.

4.3 Agency Submissions

Submissions were received from nine Government authorities, being the Department of Environment, Climate Change and Water (DECCW), NSW Roads and Traffic Authority (RTA), Department of Environment, Water, Heritage and The Arts (DEWHA), Mine Subsidence Board, the former Ministry of Transport, the former Department of Primary Industries, the former Department of Water and Energy (now known as the Office of Water), Rural Fire Service and Railcorp.

These agencies identified a number of key issues for further consideration/information including flooding, traffic and transport and buffer distances (refer to Table 2 on the following page).

Table 2 – Government Agencies

Agency	Issue	Department Response
DECCW	<ul style="list-style-type: none"> Concerned that WIP will proceed in advance of biocertification of WEZ. WIP places infrastructure and artificial water bodies in E2 zone – which are biodiversity offset lands. Proponent may be required to provide alternate means of offsetting biodiversity loss. 	<ul style="list-style-type: none"> Biocertification (which turns of the need for Species Impact Statements), if made, does not benefit Part 3A projects (as SIS provisions do not apply) Nonetheless, offsets provided are based on the proposed biocertification scheme. Some infrastructure will be allowed in the conservation lands but not where impact is high (e.g. EEC, high quality habitat areas and 30m CRZ).
RTA	<ul style="list-style-type: none"> Raises no objection. SIDRA model should be undertaken of Sparks Road and F3 interchange. Consideration should be given to noise impacts on rural residential area to south west of Precinct 14. No overflowing of F3 Freeway is allowed if culverts blocked. 	The RTA's subsequent submission to DoP addresses these issues, and is discussed further in section 5 of this report.
DEWHA	Noted it has not received a referral under the EPBC Act for Warner Industrial Park.	No Action – Proponent determined no controlled activity on site.
Mine Subsidence Board (MSB)	Recommended conditions for WIP for additional freeboard and limitations on the future built form to address subsidence issues within the site.	Addressed in Proponent's revised Statement of Commitments
Ministry of Transport	<ul style="list-style-type: none"> Implications of the proposal on transport are not adequately addressed. Proposal should demonstrate how it fits into an overall public transport scheme for WEZ. Location of bus route and bus stops requires examination to ensure they are optimal. Concept plan does not indicate where bicycle and pedestrian networks will be located. Statement of commitments should address transport management issues for the site. Start up costs for bus services should form an element of the SIC. Proposal should address staging in proposed public transport provision. DCP should address travel demand initiatives. 	<p>Traffic and intersection studies were prepared for proposal. This has resulted in proposed intersections.</p> <p>Details of possible bus routes and stops have been provided on the Concept Plan and EA.</p> <p>Revised plans identify bicycle/pedestrian/bus stop network.</p> <p>DCP addresses access and car parking, servicing and storage.</p> <p>Government no longer requires start-up subsidies for public transport</p>
Department of Primary Industries	<ul style="list-style-type: none"> Concerned that discharge of stormwater excess downstream of Wyong weir may disrupt migratory fish – discharge would be better upstream of weir. Supports on-site use of stormwater to reduce discharges. Should minimise disturbance of Buttonderry floodplain. Care should be taken in noxious weed removal and disposal. 	<p>The pipeline has been removed from the proposal. Excess stormwater to be discharged to Council pipe once constructed.</p> <p>Issues raised are covered in EA or in the recommended conditions of approval. Refer to section 5 of this report for further detail.</p>
Office of Water	<ul style="list-style-type: none"> Buttonderry Creek riparian zone is generally acceptable. Recommended that water detention works and bushfire asset protection zones should not be included in core riparian zones (i.e. 30m each side of watercourse bank). 	Addressed through a recommended condition of approval
Rural Fire Service	Should adopt recommendations in Appendix 12 of EA with respect to the provision of APZ, fire trails, etc.	Addressed through a recommended condition of approval

Railcorp	<ul style="list-style-type: none"> DoP and MoT should consider how employees would access the site via public transport. 	Addressed in EA
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4.4 Wyong Shire Council

Wyong Shire Council raised concerns in several respects and also suggested conditions of approval. The key issues raised by Council are summarised in the following Table 3.

Table 3 – Issues Raised by Council

Issue	Concerns	Department Response
Stormwater/ flooding	<ul style="list-style-type: none"> Alternate stormwater discharge pipeline proposal is at odds with Council's proposal for WEZ and is not supported. An arrangement needs to be determined regarding stormwater treatment in Precinct 14 prior to implementation of the overall WEZ scheme. There is a lack of information regarding stormwater management prior to construction of the stormwater discharge pipeline. Wants greater clarity on operations of the flooding/retardation/storage system. There should be development standards for water quality controls for individual developments. There should be procedures for dealing with contamination or spills. Should be proper definition as to the actual level of 1% Annual Exceedence Probability flood levels. 	<ul style="list-style-type: none"> Proponent has agreed to comply with Council's IWCM Scheme. Additional information was also provided by the Proponent within the PPR. The Department has recommended conditions relating to flooding, which addresses Council's concerns. Proponent has also agreed to make Council Principle Certifying Authority for infrastructure works to be dedicated to Council. Department has also recommended conditions to stage the development to ensure excess stormwater is managed.
Development Control Plan	<ul style="list-style-type: none"> Notes there are differences between the proposed DCP and the Council's WEZ DCP; Council wants WIP site integrated in its DCP. Disagreed with the proposed exempt and complying code. Questions controls for the minimum allotment size of 2000m² Suggested a number of controls to manage strata subdivision to prevent fragmentation of lot sizes and land uses, controls for loading bays, external storage controls, and on-site vehicle manoeuvring. Height controls should be considered. Parameters to provide for "high quality appearance" (such as guidance on colour scheme, controls for illuminated signage) and "energy efficiency" should be included in DCP. DCP contains no "safety by design" principles. 	<ul style="list-style-type: none"> The Proponent amended the design code to respond to Council's concerns (in part). The Proponent has also removed the exempt and complying code from the design code. The Department has recommended further amendments to the design code in response to building heights, setbacks, and minimum lots size (for example, no lots less than 2000sqm and Only 10% of the site will accommodate allotments between 2000m² and 5,000 m². 26m building height limit except lots facing Hue Road where 18m limit applies.
Visual impact	<ul style="list-style-type: none"> Concerned at visual impact of development of F3, Council wants a minimum 20m setback from F3 – says greater architectural, landscaping and advertising controls are necessary. Management responsibility F3 setback should be clarified. Uses on the site perimeter should have regard to external appearance. 	<ul style="list-style-type: none"> 15m setback to F3 is sufficient as the adjoining 60m ecological corridor provides sufficient visual screening. Proponent will prepare and handover conservation land to Council once completed/ after 3 years. Landscaped setback on Proponent's land will remain under Proponent's ownership.
Infrastructure	<ul style="list-style-type: none"> Bridge design is unclear – impacts must be appreciated. Council wants to sign off on road design and construction and questions who will own the roads. Questions whether 13m wide roads are sufficient to cater for B-doubles; wants road and intersection design to cater for B-triples. Council wants a 24m road reserve with 14m carriageway for major subdivision roads. Damage to local roads by construction traffic. 	<ul style="list-style-type: none"> Further detail on the bridge was provided in the PPR. Footprint of support structure to be reduced to minimise impacts within 30m CRZ. The Proponent has agreed for Council to be PCA for all engineering works resolves this matter. This is reflected within the Conditions of Approval. Recommended conditions include the requirement for the Proponent to

Issue	Concerns	Department Response
	<ul style="list-style-type: none"> Locations of electricity substation have not been identified. 	<ul style="list-style-type: none"> repair any damage to local roads. Final locations are subject to further negotiations with Energy Australia as part of the detail design.
Land Use Zones	<ul style="list-style-type: none"> Proposed permissible land uses in IN1 and E2 zones are broader than elsewhere in Wyong – raises concern of precedent impact arising from the need for consistency of zones in Wyong comprehensive LEP. IN1 and E2 zones are broader than the standard LEP template and inconsistent with the rest of WEZ. Unclear how 'neighbourhood shops' are to be controlled. 	<ul style="list-style-type: none"> The Department has not supported the proposed additional uses apart from Industrial Retail Outlets in the Zone IN1 General Industrial. It is intended that these uses be limited in size and number. Council has agreed with the proposed controls. The Department recommends that neighbourhood shops be permitted with a total retail floor area of 500m² for the entire site with a maximum retail floor area of 200m² per shop.
Voluntary Planning Agreement / Development Contributions	<ul style="list-style-type: none"> Suggests State Infrastructure Contributions should be lowered or waived to improve development feasibility. Council wants contributions requirements concluded though a VPA prior to any Ministerial approval. 	<ul style="list-style-type: none"> SIC will be lowered in accordance with NSW Government's reform only. Conditions of approval have been recommended which have been formulated with consideration to Council's requirements and the Proponent's offer. The imposition of conditions negated the need for a VPA.
Biodiversity	<ul style="list-style-type: none"> Concern that the proponent should pay its share of biodiversity offsetting. Council wants to sign off on plan of management of conservation areas. Boundaries to conservation areas should be clearly fenced to prevent encroachment and illegal use. 	<ul style="list-style-type: none"> Proponent has agreed to dedicate and rehabilitate all conservation land within the site and has offered a monetary contribution for offsetting its impacts. Proponent has agreed for the plan of management to be approved by Council within the EA. Proponent has identified boundaries to be fenced off. Category 3 Landscape Plan to be prepared for areas adjacent to conservation land and approved by Council.

4.5 Preferred Project Report / Response to Submissions

A Preferred Project Report (PPR) and response to submissions was prepared by the Proponent (Appendix B) in reply to the submissions received during the exhibition period. This was subsequently revised in May 2009.

As detailed in section 3 of this report, the PPR proposed minor changes to the proposal. It also included further information on the proposed earthworks, flooding (including climate change), development controls and stormwater management.

The PPR was referred to Wyong Shire Council, DECCW and RTA for comment.

Wyong Shire Council

Council's response to the revised PPR mainly focused on proposed landscape setbacks, complying development provisions within the draft DCP, potential impacts on Council land (road reserves), proposed earthworks and related impacts on flooding and stormwater management, and engineering designs and requirements.

In particular, Council maintained that flooding information was not updated to address Council's previous comments. Given these issues reflected those identified by the Department, an expert review of the flooding impacts (and related issues) was commissioned

by the Department. This study identified that flooding on the site is not an issue provided that certain criteria are met. This study is discussed in detail within section 5 of this report.

Council also requested that any decision regarding the project approval be withheld until Council and the Proponent have entered into a Voluntary Planning Agreement (VPA). In the absence of this VPA being finalised, matters are reflected in the recommended Conditions of Approval. Matters relating to the design code are discussed in further detail in Chapter 5 of this report.

The Department has subsequently consulted with Council on the proposed recommended conditions. Council's comments have been considered, and incorporated where agreed.

DECCW

DECCW maintained its previous concerns about the provision of infrastructure within the proposed biodiversity offset lands. It believes that if the project is approved in its current state, this may compromise the WEZ achieving biocertification. This matter is discussed in detail in Section 5.1 of this report.

RTA

RTA advised that it had no objection to the revised PPR. It proposed conditions with regard to flooding and traffic noise management which were adopted as conditions of approval or as further assessment requirements for the concept plan.

5. ASSESSMENT OF ENVIRONMENTAL IMPACTS

After consideration of the Environmental Assessment (EA), Submissions Report, and Government agency response, the Department has identified the following key environmental issues associated with the proposal:

- Biodiversity;
- infrastructure and flooding;
- additional land uses; and
- draft Design Code.

The Proponent has assessed the potential impacts of the project on geotechnical and contamination, bushfire, utilities and infrastructure. These issues are considered to be minor and although adequately assessed, require consideration and specific recommendations. Where possible, conditions of approval and further assessment requirements have been prepared to ensure that matters are resolved through this approval.

5.1 Biodiversity

The site contains two Endangered Ecological Communities (River-Flat Eucalypt Forest on Coastal Floodplains and Swamp Sclerophyll Forest on Coastal Floodplains), high and low quality habitat and threatened fauna and flora species (such as *Grevillea parviflora*). Areas along Buttonderry Creek and along the F3 Freeway interface are also identified as secondary biodiversity corridors (100m and 50 m widths respectively).

The majority of the EECs and high quality habitat recorded within the proposed site are located within the environmental conservation lands.

The majority of the 30 hectares proposed to be cleared comprises of low quality habitat. Some EECs, high quality habitat, threatened species and habitat trees will be removed as a result of the earthworks within the industrial park footprint or by infrastructure within the conservation corridors. The latter includes an internal bridge, 'public domain' stormwater infrastructure and other service infrastructure (e.g. sewer). Refer to Figure 6.

The proposed site was included in a proposal by Council to seek biocertification of the WEZ (2008). No decision has been made on Council's proposal (due to the review of biocertification legislation) however, the Proponent has considered and is consistent with Council's biocertification proposal and has proposed to mitigate and offset through:

- 'on-site' works – being the rehabilitation and dedication of conservation lands (20.5ha) contained within the site to Council. This includes works within Buttonderry Creek; and
- 'off-site offsets' – being monetary contributions to Council for the purchase of conservation land and rehabilitation of those lands elsewhere within the WEZ.

DECCW has advised the Department that it does not support the proposed infrastructure permitted within the conservation lands across the WEZ because access for routine maintenance will have an impact, and believes that this may compromise the capacity of their Minister to bio-certify the WEZ SEPP. DECCW considers that if the infrastructure remains, then the Proponent must provide an additional offsets for the biodiversity losses within the site.

The Proponent argues that the stormwater infrastructure, as proposed, is consistent with the strategy proposed by Council. Council has advised the Department that the biocertification report did contain concessions for such infrastructure within the conservation lands. However, it is noted by the Department, that the biocertification report did identify the need for further work in identifying the appropriate location and design of stormwater, service and road infrastructure within the conservation lands.

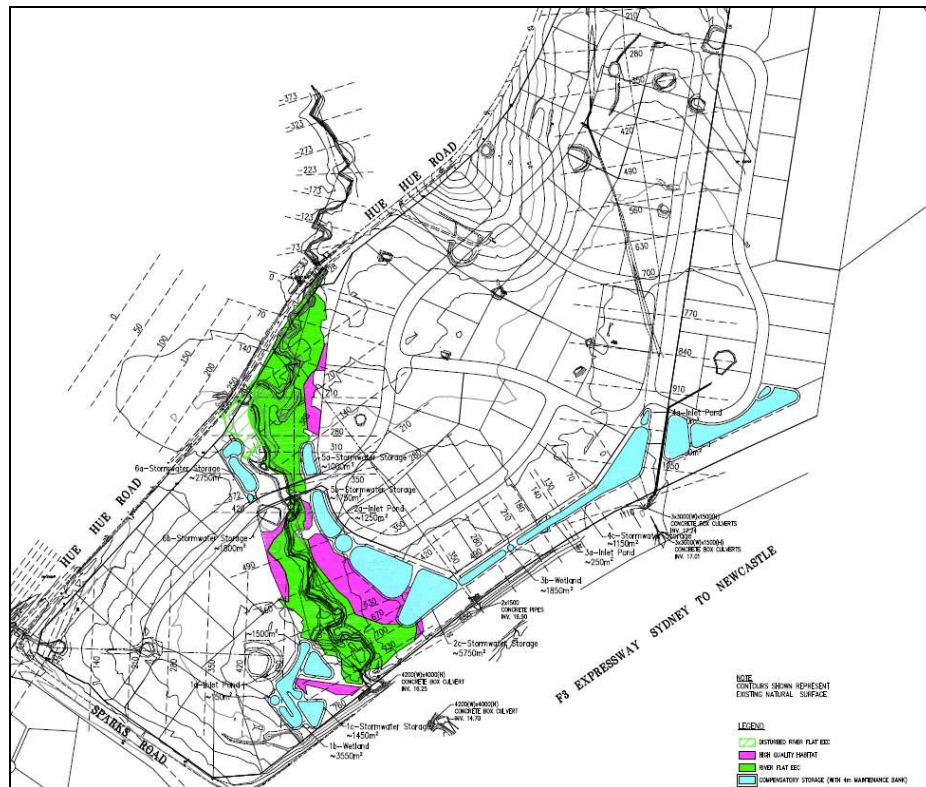


Figure 6: Conservation Corridor

The Department considers that there are two key issues – the appropriateness of the proposed infrastructure within the conservation lands and the implications of the proposal on the biocertification of the WEZ.

The Department accepts that the on-site rehabilitation works and off-site contributions will largely off-set the ecological impacts of the proposed development, and that some allowances should be made for infrastructure contained within conservation area if these can be justified by the Proponent.

As such, the Department recommends:

- removal of stormwater infrastructure from areas containing EECs or high quality habitat within the conservation zones, unless it can be demonstrated to the Director General that the locations are essential for hydrological reasons;
- a review on the design and location of the stormwater infrastructure within the biodiversity corridors to minimise the intrusion into the 50 metre and 100m minimum width along the relevant corridors;
- exclusion of stormwater infrastructure or asset protection zones within the 30m CRZ;
- avoidance of service infrastructure within the conservation land, or provide justification that the crossings cannot be avoided, have been minimised/consolidated wherever possible and avoids high quality habitat, habitat features and EECs; and
- a report to the Director General prior to the issue of a Construction Certificate demonstrating compliance with the above requirements, quantifying the final extent of losses of high quality habitat or EECs, and that any additional loss has been adequately offset through the biodiversity contributions.

The Department has also recommended the following conditions of approval to manage the rehabilitation works, broader construction works and long-term interface issues within the site:

- preparation of a Vegetation Management Plan (consistent with Council's draft Ecological Plan of Management) and Wildlife Management Strategy in consultation with DECCW and Office of Water, and approved by Council prior to the issue of the Construction Certificate;
- that all in-stream works and works within the riparian corridor are prepared in accordance with the relevant Office of Water policies; and
- preparation of a Construction Management Plan for the site to ensure site preparation and construction works are undertaken in a manner that avoids or minimises impacts on fauna (during tree clearing), retained vegetation, water quality or creek stability. This includes soil and erosion controls in accordance with the Landcom's Blue Book.

The Department is satisfied that the above conditions will ensure that a balanced outcome is delivered within the site and for the total WEZ, and that the proposed infrastructure is sensitively placed to ensure that the principles of the biocertification report are maintained. Therefore, the Department considers that biocertification of the remaining areas of the WEZ will not be compromised by this proposal.

5.2 Stormwater and Flooding

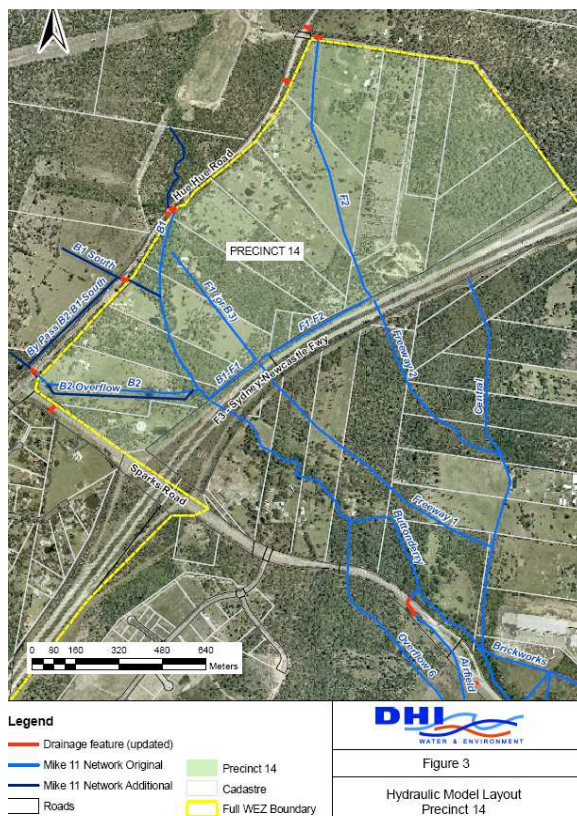
The proposed development requires the placement of up to 3 metres of fill within the site to create the industrial development platform, enabling all lots to be flood immune up to the 1 in 100 year flood event (without climate change influences) (Figure 7 and 8). However, this will result in the loss of floodplain storage and will alter current overland flood flows (which are to be confined to engineered channels and pipeline). To minimise the impact of the development, the Proponent has proposed:

- compensatory and active flood storage to be added on both sides of the creek channel and along the interface of the F3 Freeway in compliance with the *Buttonderry Creek Flood Study – Precincts 11, 13, and 14* (Matrix, 2005) and Council's IWCM Scheme;
- a system of artificial wetlands and stormwater detention basins within the conservation lands, with eventual discharge downstream of the Wyong Weir; and
- a supporting on-site irrigation scheme within the public domain and private stormwater management systems.

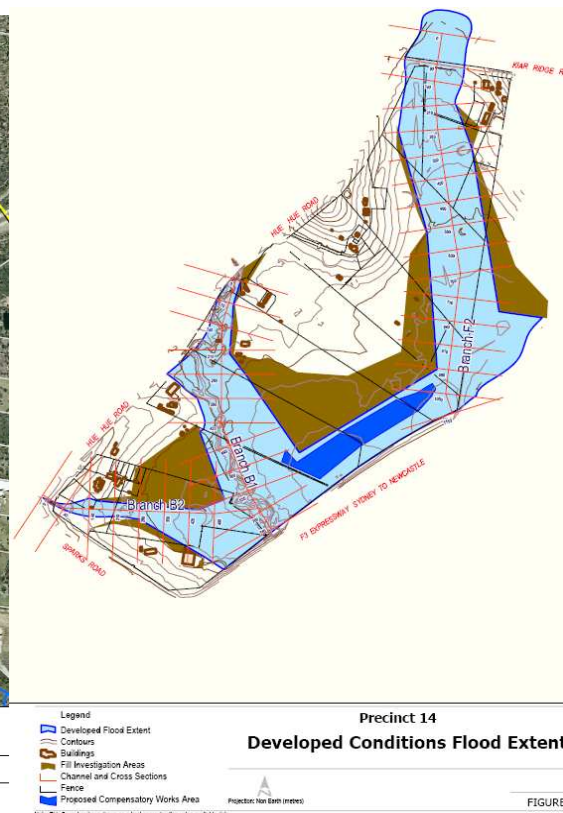
The Proponent's assessment concludes that there will be no adverse external impacts as a result of the above, and that the proposed infrastructure satisfies Council's broader Integrated Water Cycle Management (IWCM) scheme created for the WEZ.

Council raised a number of concerns regarding the proposed civil designs and flood assessment, and requested a number of issues to be addressed before approval is considered. The RTA has requested that the F3 Freeway not be overtopped in any event and that all excess stormwater be managed on-site. As similar concerns were identified by the Department, an expert review on the Proponent's revised flood assessment and engineering designs was commissioned.

This review determined that the proposed designs were generally in accordance with Council's requirements, but identified a number of issues that required further consideration and conditions of approval. The Department is satisfied that the recommendations of the flood review have been incorporated in the conditions of approval to mitigate any flooding on the site.

**Figure 7 - Water flow (as current)**

Source: DHI Water and Environment 2006 and Matrix 2005

**Figure 8 - Flooding for Precinct 14 (as developed)****Final flood planning level and flooding impacts**

The Proponent has committed to ensuring that all allotments are flood free in the 1 in 100 year flood event, under current climate scenarios. Under the worst-case climate change scenario (30% rainfall intensity increase), there is a flood increase of approximately 0.58m along most of Lots 9, 13, 44 to 69, Lot 119 to 121 and portions of Lots 55, 57, and 58.

In the event that culverts along the F3 Freeway are blocked as a result of debris build-up during heavy storms, it is believed that eventual over-topping of the F3 Freeway will be unavoidable. The Proponent has agreed to consult with the RTA regarding flood modelling and drainage design with respect to any impacts in terms of maintenance issues on the functioning of the culverts under the F3 Freeway. This includes measures to minimise obstructions to the culverts.

However, the Department raised concerns about the final flood planning level for the proposed estate, given:

- potential risks to the estate should culverts under the F3 Freeway be blocked during flood events, resulting in a greater inundation of industrial lots (prior to overtopping); and
- impacts of climate change.

The Department considers that the potential risks to the estate by culvert blockage or climate change are within acceptable limits for an industrial estate, however, there is an opportunity to resolve or further minimise these risks with an option to raise the final flood planning level to an equivalent or greater level to the F3 embankment.

The RTA has advised that it does not support this solution, stating that it considers that this would impact on the flood immunity of the F3 Freeway and could increase the pressure on the culverts and embankments. However, the Department's expert suggested that an

increase in final flood planning level should not result in significant changes to that already proposed – subject to more detailed design and flood modelling.

As such, the Department considers that it would not be appropriate to set a final planning level within the approval, given further work and consultation with the RTA is required before this can be deemed acceptable. Further, it is recognised that other related infrastructure conditions and Statement of Commitments will also influence the final planning level. Consequently, the Department has recommended a condition of approval requiring the Proponent to investigate during the detailed design process and in consultation with the RTA if the final planning level can be increased without any unacceptable impacts on the F3 Freeway and associated road infrastructure.

Integrated Water Cycle Management Scheme

The integration of floodplain storage (compensatory storage) and site runoff for stormwater harvesting (active storage) in accordance with the IWCM scheme is likely to minimise changes to the 1% AEP flood behaviour and provide sufficient area for water quality treatment.

Active storage is the volume of site runoff to be harvested from the catchment as required in the IWCM Scheme. The Proponent achieves the requirements for active storage. The Proponent provides 19,127m³ of compensatory storage, where Council requires 20,000m³. Compensatory flood storage area is located in the conservation area along the F3 Freeway and is the volume of floodplain displaced by the development fill platform.

Given Council's concerns with the level of engineering design and flooding assessments, the Department sought expert advice. This concluded that the conceptual designs generally accord with Council's requirements, and that the deferral of the detailed design to post-determination would be acceptable subject to conditions being imposed and Council being the certifying authority (which Council has requested). In this regard, the Proponent has stated, within the Statement of Commitments, that Council would undertake this role.

As such, the Department has recommended that:

- the revised flood model be undertaken based on the final stormwater designs to demonstrate that adequate provision has been made for compensatory storage;
- the Proponent prepare final design specifications for the stormwater treatment facilities;
- the water quality targets and flow/discharge requirements specified within the IWCM and supporting studies are achieved;
- final design of infrastructure within the floodplain ensures sufficient protection for embankments and associated basins during flood events; and
- the detailed design phase and associated revised flood model is completed to the satisfaction of Council, who will eventually own and manage this infrastructure with the Director-General as a final arbitrator.

Water Sensitive Urban Design (Private)

As the WSUD scheme across the Estate relies on both public and private management of stormwater retention and re-use, the Department has recommended the following requirements to ensure the design principles of the WSUD is carried through to individual industrial developments:

- future development applications for industrial developments to demonstrate consistency with the IWCM strategy and WSUD principles, and are to be accompanied by a Water Cycle Management Plan; and
- specifications for on-site storage capacities for individual lots to achieve the 1 in 100 year detention capacity objective are to be identified within the Design Code and section 88B instrument to ensure the entire system proposed across the Site performs as designed.

5.3 Subdivision Layout

Proposed allotment sizes range from 0.43ha to 2ha in size (refer to Table 4). The Proponent envisages amalgamation or subdivision to address market demand. Larger lots are proposed along Sparks Road and Hue Hue Road frontages to allow for an increased landscape setback.

Table 4 - Number of allotments according to size

Allotment Size	Number of Allotments
<5,000m ²	7
5,000-10,000m ²	61
>10,000m ²	22

The Proponent has proposed a minimum lot size of 2,000m² to be consistent with controls elsewhere within the Wyong LGA, but also has proposed a control that no more than 10% of the industrial site will have lots below 2,000m². Council had proposed a minimum lot size of 5,000m² under the draft Development Control Plan for the WEZ.

Submissions from Council and from the general public queried the amount of smaller lots within the site. Council agreed with the above 10% control during discussions with the Proponent on its submission.

Clause 21 of the WEZ listing within the Major Development SEPP requires a consent authority to not grant consent to a subdivision unless it has considered the implications of the fragmentation of large lots and the affect on the supply of land for employment uses.

The Department is satisfied with the current composition of the subdivision lot sizes and accepts that the range of lots sizes will ensure that the site is able to respond to market demand through lot consolidation.

However, the Department considers the Proponent's proposed minimum lot size and proposed development control is contradictory. The Department does not support lot sizes below 2,000m² or a dominance of these lot sizes within the industrial park – given the focus for the WEZ is to provide for major employment generating industries. As such, the Department has recommended a modification to the concept plan to require:

- the minimum lot size on land zoned IN1 within the Concept Plan area is 2,000m²; and
- no more than 10% of the site shall comprise of lots of between 2,000m² – 5,000m².

The Department is satisfied that this will ensure that the site maintains its industrial character.

Further subdivision of the lots will require development consent from Council. The Department considers that this process will ensure lot sizes are not further subdivided without consideration to clause 21 of the WEZ listing and the above controls.

5.4 Design Code

The Proponent has prepared a design code that will guide future industrial development within the site as part of the Concept Plan. At present, no Development Control Plan has been made for the WEZ and there is a restriction on development occurring within the site unless a DCP has been made (clause 22 of the WEZ listing). However, the proposed Concept Plan (by virtue of section 75M) will replace the need for a DCP to be made.

The proposed design code deviates from Council's draft DCP for the WEZ in several instances, namely setback reductions along Hue Hue Road, Sparks Road and the F3 Freeway and building heights.

The Proponent has revised the design code in response to Council's submissions and the Department's assessment. However, the Department considers that there are several points of dispute either between the Department, Council or the Proponent. These are discussed further in Table 5 below.

Further, the Department notes that the term Development Control Plan is not appropriate. As such, the document will now be referred to as the Warner Industrial Park Design Code to ensure there is no misunderstanding on the statutory status of this document.

Table 5 – Design Code Assessment

Development Control Issue	Proponent Response	Council Response	Department's Resolution
Subdivision	No more than 10% of land zoned IN1 General Industrial zone in the WIP DCP area shall have a lot area less than 2,000m ² .	No more than 10% of the land zoned IN1 (General Industrial) shall have an area not less than 2,000m ² .	This has been discussed in section 5.3 of this report.
Setbacks	Landscaped setback of 15m from property boundaries located along the Freeway, Sparks Road and Hue Hue Road.	Setback to Hue Hue Road to be 15m and setback for Sparks Road and F3 Freeway to be 20m.	Support Proponent's setback for the F3 Freeway as there is a 60m ecological setback to the Freeway from the Industrial development site. This will reduce visibility of the development. However, the Department has recommended that no car parking should be permitted within the 15 metre setback.
Fencing	Fencing proposed on edge of conservation areas.	Fencing and landscaping to occur within the development site. Council requires the developer to revegetate and maintain the buffer and any damage to the road reserve in order to preserve the existing character of the area.	Council is only responsible for maintaining any fencing located between a road reserve and conservation land (once dedicated). The Proponent is responsible for the construction and maintenance of all other fencing. Conditions of approval have been recommended to make this clear.
Landscaping	Category 3 Landscape Design report for development adjoining conservation land, F3 Freeway, Sparks and Hue Hue Roads.	Council wants landscaping to be of a high quality in these areas.	The Department notes that the use of Category 3 represents Council's most stringent requirements for landscaping. Further, Council will approve landscaping works on these roads. The Department is satisfied that this will sufficiently control future landscaping.
Height Limits	The Proponent proposes the maximum height limit to be 26m, subject to meeting the Obstacle Limitation Surface Map for the WEZ	12m maximum height limit for all buildings.	The Department does not object to the maximum height being 26 metres, given some industries require such heights and the majority of the estate will not be visible from public areas. However, the Department does not support these

Development Control Issue	Proponent Response	Council Response	Department's Resolution
	listing.		heights where along street frontages external to the site. As such, the Department has recommended heights on properties facing F3 Freeway ramps, Sparks Road and Hue Hue Road are to have a maximum height of 18m within areas located within 50m measures from the property boundary (shared with the abovementioned roads).
Flood Planning Level	Minimum 300mm above the 1% flood level.	Council wants 500mm above the 1% flood level.	To mitigate any chance of flood risk, a flood planning level will be determined once revised stormwater plans have been adopted for the site.

5.5 Proposed Additional Uses

The objectives of the General Industrial Zone for the WEZ are to facilitate employment-generating industrial manufacturing, warehousing, storage or research purposes, including ancillary office space.

The Proponent proposes several additional uses under the Zone IN1 General Industrial that are prohibited uses within the WEZ listing. The Proponent has also sought to increase the maximum size of the retail floor space of neighbourhood shops/food and drink premises from 80m² to 250m² with a maximum cap of 2,000m² across the site.

The Department's assessment of these uses is provided below.

Function centres

A function centre would likely turn the area into a regional attraction, and would need supporting infrastructure and services that are not industrial in nature. This use should also be located where there is easy access to public transport and in close proximity to a centre. It is therefore not supported.

Self storage units

Likewise self storage units would decrease the amount of land available for industrial uses and increase the traffic of members of the public accessing the site. They do not constitute a warehouse or distribution centre, industrial or ancillary use.

Landscape and garden supplies and timber and building supplies

The Department believes that large lot industrial land is limited and the WIP offers the opportunity to realise industrial opportunities in the Central Coast. As a result, other uses such as timber and building supplies, landscape and garden supplies are not supported.

Vehicle body repair workshop and vehicle repair station

The Department supports the proposed automotive related uses as they are industrial in nature and will provide support to the industrial zone. Council had no objection to the inclusion to these uses provided they were not adjacent to residential development. If approved by the Minister, a section 75R(3A) Order has been prepared to give effect to this decision.

Neighbourhood Shops and Kiosks

The Proponent has proposes a maximum gross floor area (GFA) of 2,000m² for neighbourhood shops within the site. A maximum of 250m² is proposed for each individual tenancy.

While it is the intention of the *Central Coast Regional Strategy* (DoP, 2008) that new retail development be located in centres, the Department acknowledges that some local convenience retailing is required within the site and WEZ to service workers employed by future development. However it is considered that any such retail development should be controlled so it does not develop into a neighbourhood centre. Consequently, the WEZ listing limited the size of neighbourhood shops and kiosks to 80m² of retail floor space (note, not GFA as proposed by the Proponent).

The Department agrees that some increase should be permitted individual neighbourhood shops, given the nature of these uses may necessitate larger retail floor space. Kiosks are small by nature, and no change is supported. However, the Department does not agree with the proposed maximum GFA as proposed by the Proponent nor the total retail GFA.

Instead, the Department recommends that neighbourhood shops have a total retail floor area of 500m² for the entire site with a maximum retail floor area of 200m² per shop which will be monitored by Council. This will assist in addressing the retail requirements for the site and reduce vehicle trips out of the site. Any larger retail activities in the form of neighbourhood centres will conflict with the industrial character of the site, which is not the intention of this development. The Warnervale District Centre is located immediately to the east of the WEZ and is planned to contain a mix of retail, commercial and community activities (Leyshon Consulting, 2005). It is expected that this Centre will satisfy any larger retailing needs for the site.

Further, the Department's recommended neighbourhood shop size will be consistent with Council's retail policy (DCP 81) which restricts retailing activity as an ancillary component to a permissible industrial use and general stores (shops that sell a variety of small consumer goods that meet the day-to-day needs of occupants and employees of the buildings within the industrial zone).

Should the Minister agree to approve the concept plan, a section 75R(3A) Order has been prepared to give effect to this decision.

Food and Drink Premises

Food and drink premises are not permissible under the WEZ. These are retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs. This use is supported, subject to the above controls.

If approved by the Minister, a section 75R(3A) Order has been prepared to give effect to this decision.

Industrial Retail Outlet

Industrial retail outlet is defined as a building or place that is used in conjunction with an industry but not in conjunction with a warehouse or distribution centre. This use is to be situated on the land on which the industry is carried out, and may be used for the display or sale of only goods manufactured for the industrial purposes. This is prohibited development under the WEZ listing.

Following discussion with Council, the Department conditionally supports the addition of Industrial Retail Outlets as being a permitted use within the site. It is intended that these uses are limited in size and number so that this use does not become a wider catchment attractor or turn into a retail centre, especially given the lack of proximity to public transport in the area.

As such, the Department's desired controls is for industrial retail outlets to have a maximum retail floor space of 200m², or the retail area to not exceed 20% of a combined gross floor area of the Industrial retail outlet and the industrial building, which ever is the lesser value.

Council has requested that Industrial Retail Outlets are not permitted across the WEZ. The Department concurs with this position. Should the Minister agree to approve the concept plan, a section 75R(3A) Order has been prepared to give effect to this decision to make Industrial Retail Outlets permissible on the site.

5.6 Contributions

State Infrastructure Contributions

In conjunction with the WEZ listing, a Special Infrastructure Contribution (SIC) area was made. The SIC requires developers to provide a monetary contribution towards the upgrade of Sparks Road, and is imposed as a condition of consent or approval.

The SIC plan is in the progress of being reviewed to reflect the NSW Government's 2008 reforms to infrastructure contributions – namely the temporary increase in the contribution made by the NSW Government towards State infrastructure costs (from 25% to 50%) and the deferred payment of contributions beyond subdivision certificate.

The Department has recommended conditions of approval to reflect the two contribution rates – being the payment of \$60,667 per net developable area (NDA) (or \$4,185,416 total) if paid before 1 July 2011; and \$91,000 per NDA (or \$6,278,090) if paid after 30 June 2011.

The Proponent has sought the Department to apply a 25% rate to its development over a three year period as an alternative to the abovementioned rates to improve the viability of the development when considered in conjunction with the section 94 contributions.

This is inconsistent with current NSW Government policy with respect to State Infrastructure contributions. The Department has internally referred this request for consideration in the SIC review for the WEZ.

Local Contributions

Council has not yet finalised its section 94 contributions plan for the WEZ. When listing the proposed site within the Major Development SEPP, the Minister imposed a restriction on the granting of development consents under Part 4 of the Act within the WEZ, in which consents must not be granted until the section 94 contributions plan is made or if a planning agreement is entered into (clause 271A of the *Environmental Planning and Assessment Regulation 2000*).

Although this does not restrict the powers to determine a Part 3A project application, the Proponent (representing all landowners) had entered into negotiations with Council for local infrastructure contributions. It was originally intended by the Proponent to enter into a VPA with Council, however an agreement has not been reached on certain items – being a contribution to a proposed 'link' road, construction of the Hue Hue Road/Sparks Road intersection upgrade (with Council's contribution to be offset by other monetary contributions made by the Proponent) and land valuations for biodiversity corridors.

As a result, the Department has assessed Council's request and the Proponent's position on the proposed s94 contribution, in order to recommend conditions of approval as an alternative to the VPA to enable the Minister to make a determination on the project application.

Overall, the Department believes that the Proponent should be levied for s94 development contributions only for local infrastructure and works that involve the site. A break-down of contributions are as follows:

a)	Intersection upgrade at Hue Hue Road/ Sparks Road intersection	\$383,169
b)	Integrated Water Cycle Management Scheme (water pipeline)	\$1,355,446
c)	Acquisition of environmental lands within WEZ	\$1,771,525
d)	Environmental Corridor works within WEZ	\$328,702
	TOTAL	\$3,838,842

With respect to the disputed items, the Department's consideration is outlined below:

- **Link Road** – The Link Road is located approximately 4 kms from the site. The RTA determined that approximately 19% of all traffic using the Link Road would be generated by the WEZ. Whilst it is acknowledged that some trip movements to and from the proposed site may use the Link Road, the site is also located on the western boundary of the F3 Freeway and is more likely to have traffic movements from the F3 Freeway and Sparks Road (major arterial).

Therefore, the Department believes that no section 94 contribution should be levied for the Link Road as the demand for the road has limited connection with the proposed development.

- **Hue Hue Road/Sparks Road intersection** - the Department has recommended that the Proponent pay the percentage for the upgrade costs that are associated with its development (30%). This does not preclude an alternative arrangement that Council and the Proponent may reach (should the Proponent wish to undertake these as works-in-kind), and the recommended conditions of approval reflect this.
- **Land valuations** - for the monetary contribution rates used for land acquisition costs for biodiversity corridors and biodiversity rehabilitations costs, the Department has used the figures provided by Council (February 2010). Corridor works contribution rate were indexed at \$4,764.5 per ha and the final credit for carrying out corridor rehabilitation works will be determined by the Vegetation Management Plan prepared by the Proponent in consultation with DECCW and Office of Water and approved by Council. The conditions of approval allow these figures to reflect subsequent land valuations and to apply any section 94 plan that may come into effect prior to payment (if the value is lesser).

5.6 Other Issues

Traffic noise

The RTA recommended that a traffic noise assessment be conducted in accordance with the *Environmental Criteria for Road Traffic Noise* (DECC). The Department has recommended that such assessments be conducted at development application stage. These recommendations are intended to protect the amenity of residential development to the south of the site across Sparks Road.

Heritage

The Proponent advised that there is no heritage listed building or site and there is no evidence of European occupation that would give rise to special cultural significance on the site.

An archaeological investigation was prepared for the WEZ Study that investigated Precinct 11, 13 and 14 (Archaeological Surveys and Reports Pty Ltd, April 2005) for Wyong Shire

Council. This study observed that the majority of the properties in these areas were significantly altered. The recommendation of this study was that there are no archaeological constraints to the proposed development of the study area and no constraints on cultural grounds to the proposed development.

The Department is satisfied that the site does not have any Indigenous or European heritage significance however, conditions have been prepared in the event of any heritage items are discovered on the site.

Geotechnical and Contamination Investigations

The majority of the properties in Precinct 14 were undeveloped bushland until the early 1970's, and only used for grazing purposes until the late 1980's. The majority of properties were owned by farmers and graziers since crown grant in 1904/1905.

A Geotechnical Investigation and a Targeted Phase 2 Contamination Assessment (CA) was prepared for the site. The studies made recommendations for further assessment in the event of any Acid Sulphate Soil (ASS) being identified.

The assessment identified areas that require remediation and validation prior to the commencement of earthworks. The study also concluded that further testing would be required for areas containing buried waste material, filling from excavations for the construction of the Freeway, filling platforms from structures and activities, and waste materials and soil stockpiles throughout the site.

The most appropriate time to undertake further assessment and/or remedial works would be immediately following the completion of demolition works of the buildings (to identify possible asbestos) present within the site. The Department has recommended that the above testing and remediation be completed prior to the issue of a construction certificate. The Department has also recommended that the site is validated by an accredited site auditor to verify that the site is suitable for the intended uses prior to the issue of a subdivision certificate.

Utilities and Infrastructure

The Proponent's Environmental Assessment assessed the existing and future capacity of the site in terms of utilities and infrastructure needed. The utilities and infrastructure proposed are water supply, sewerage, telecommunications, gas supply, waste disposal (commercial contractor), stormwater and recycled water, and power supply.

With regard to power supply, Energy Australia requires a new 132kV/11kV zone substation due to the distance from the existing zone substations and probable electrical loads. Adequate road frontage is required to accommodate numerous underground cables. A number of kiosk type substations and underground cables will also be required within the development site.

While the locations of these substations are not identified in the Concept Plan, the Proponent has advised that the final locations are subject to further negotiations with Energy Australia as part of the detail design, and will be incorporated as easements adjoining the road reserve within the frontage of identified lots, with access as required by Energy Australia. It is also likely that if any large power users locate on the site they will require additional power stations as part of their project. The Proponent also advised that Energy Australia will not commence detail design or programming for the work until a project approval has been issued. The Department is satisfied with this arrangement and recommended conditions to this effect.

6. ESD

The Department has considered the concept plan application in relation to the ESD principles and has made the following conclusions:

- **Precautionary Principle**

The EA is supported by technical and environmental reports which conclude that the proposal's impacts can be mitigated. Potential environmental impacts have been identified and addressed. In particular, the Department is satisfied that flooding can be managed appropriately and that the Proponent will comply with the flood studies prepared by Wyong Shire Council across the WEZ (subject to recommended conditions of approval). Further, the Department is also satisfied that contamination shall be mitigated through further detailed site analysis prior to the site being cleared.

- **Integration Principle**

The environmental impacts of the development are appropriately mitigated as discussed in this report. The Department has assessed all issues raised in submissions. The PPR recommended conditions to mitigate the impacts of the development. It is considered that the proposal will not compromise the benefits or opportunities to others.

- **Inter-Generational Principle**

Approximately 20.58ha of environmental conservation land will be contributed to Council to ensure the long term protection of corridor and conservation values of the WEZ. Further, monetary contributions will enable Council to secure higher quality vegetation located outside the proposed site for long term protection. Inter-generational objectives will be served by the Proponent agreeing to be part of the IWCM Scheme for the WEZ. DECCW has expressed concern that the WIP development will proceed in advance of biocertification of the WEZ. However, the Department's assessment has concluded that this proposal could proceed, and not impact on any future biocertification.

- **Biodiversity Principle**

Approximately 24ha of environmental conservation land will be enhanced and dedicated to Council to ensure the long term protection of corridor and conservation values of the WEZ. Further, monetary contributions will enable Council to secure higher quality vegetation located outside the proposed site for long term protection

- **Valuation Principle**

The site is valuable industrial land and the Department has ensured that this will be maintained since it has not supported non-conforming land uses.

7. CONCLUSION AND RECOMMENDATION

The Department has reviewed the environmental assessment and the preferred project report and duly considered advice from public authorities as well as the issues raised in the general submission in accordance with Section 75I(2) of the Act. All the relevant environmental issues associated with the proposal have been assessed.

Several site constraints were identified and assessed. Following an assessment of these constraints, the Department is of the view that the Proponent has satisfactorily mitigated the environmental impacts arising from the development. The Proponent has achieved this by committing to ensuring that all proposed allotments are flood free for all storms up to an including the design 100 year ARI event. A revised flood model and detailed designs will be required, to investigate and respond to a number of recommended conditions of approval, which will ensure the final detailed design satisfies Council's broader Integrated Water Cycle Management Scheme across the Wyong Employment Zone.

The Department does not support all of the prohibited land uses proposed by the Proponent as it is believed that the site should maintain its industrial character and any retailing or supporting uses such as Industrial retail outlets should be ancillary to the industrial use.

The Department is satisfied that the site is appropriate for the proposed development and that the project will provide economic benefits to the region while environmental conservation areas are protected.

On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide environmental and economic benefits to the region. Consequently, it is recommended that the Minister:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the concept plan and project application under section 75O, section 75P and section 75J of the *Environmental Planning and Assessment Act 1979* respectively subject to the recommended modifications and conditions of approval;
- (c) **determine** the future environmental assessment requirements for subsequent project or development applications associated with the Concept Plan;
- (d) **determine** that future development is subject to Part 4 or Part 5 of the Act (whichever is applicable) unless the development is, in the opinion of the Minister, development of a kind that is described in Schedule 1 of *State Environmental Planning Policy (Major Development) 2005*; and
- (e) should the Minister agree to approve the concept plan, the Minister **signs** a section 75R(3A) Order prepared to give effect to this decision to make Industrial Retail Outlets, Food and Drink Premises, Neighbourhood shops and kiosks, and Vehicle body repair workshop and vehicle repair station permissible on the site.

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APPENDIX A – STATEMENT OF COMMITMENTS

APPENDIX B – PREFERRED PROJECT REPORT / RESPONSE TO SUBMISSIONS

APPENDIX C – ENVIRONMENTAL ASSESSMENT

APPENDIX D – SUBMISSIONS SUMMARY

APPENDIX E – ENVIRONMENTAL PLANNING INSTRUMENTS

STATE ENVIRONMENTAL PLANNING POLICIES

The following is the Department's assessment of compliance against Environmental Planning Instruments, including State Environmental Planning Policies, that substantially govern the carrying out of the development. The following SEPPs have been assessed:

- *State Environmental Planning Policy (Major Development) 2005;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy No. 14 Coastal Wetlands;*
- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development;*
- *State Environmental Planning Policy No. 44 Koala Habitat Protection;*
- *State Environmental Planning Policy No. 55 (Remediation of Land); and*
- *State Environmental Planning Policy No. 64 – Advertising and Signage*

State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)

The Major Development SEPP outlines the types of development declared a project for the purposes of Part 3A of the Act. The development is a project to which Part 3A of the Act applies and the site has state significance as a result of being situated in the WEZ. As such, the controls for the WEZ would apply to the site. The following is an assessment relevant clauses of Schedule 3, Part 15 Warner Employment Zone.

Consent Authority

Part 15, Clause 3 states that the “*consent authority for development on land within the Wyong Employment Zone is, subject to the Act, the Wyong Shire Council.*”

On 14 September 2007, the previous Minister, by Order declared that the development described in Schedule 1 of such Order is a project to which Part 3A of the Act applies. As such, the Minister is the approval authority.

Land Use Zones

Clause 6 sets out the Land Use Zones for the WEZ. Clause 6(2) states that the “*consent authority must have regard to the objectives for development in a zone when determining a development application.*”

7 Zone IN1 General Industrial

- (1) *The objectives of Zone IN1 General Industrial are as follows:*
 - (a) *to facilitate development for a wide range of employment-generating industrial, manufacturing, warehousing, storage or research purposes, including ancillary office space,*
 - (b) *to encourage employment opportunities in the Wyong Employment Zone,*
 - (c) *to minimise any adverse effect of industry on other land uses,*

- (d) to ensure development enhances the amenity of the Wyong Employment Zone by including high quality landscaping, adequate building setbacks, high quality external finishes and the like.
- (2) Development for any of the following purposes is permitted with consent on land within Zone IN1 General Industrial:

boat repair facilities; child care centres; community facilities; depots; earthworks; environmental protection works; filming; freight transport facilities; helipads; kiosks; light industries; industries; liquid fuel depots; neighbourhood shops; recreation facilities (indoor); roads; transport depots; truck depots; warehouse or distribution centres.
- (3) Except as otherwise provided by this Policy, development is prohibited on land within Zone IN1 General Industrial unless it is permitted by subclause (2).

8 Zone SP2 Infrastructure

- (1) The objectives of Zone SP2 Infrastructure are as follows:
 - (a) to provide for infrastructure and related uses,
 - (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure.
- (2) Development for any of the following purposes is permitted with consent on land within Zone SP2 Infrastructure:

The purpose shown on the Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.
- (3) Except as otherwise provided by this Policy, development is prohibited on land within Zone SP2 Infrastructure unless it is permitted by subclause (2).

9 Zone E2 Environmental Conservation

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
 - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
 - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted with consent on land within Zone E2 Environmental Conservation:

environmental facilities; environmental protection works; flood mitigation works; roads; waterbodies (artificial).
- (3) Except as otherwise provided by this Policy, development is prohibited on land within Zone E2 Environmental Conservation unless it is permitted by subclause (2).

10 Kiosks, neighbourhood shops and child care centres in Zone IN1 General Industrial

- (1) The consent authority must not grant consent to development for the purpose of a kiosk on land within Zone IN1 General Industrial if the gross floor area of the kiosk exceeds 80 square metres.
- (2) The consent authority must not grant consent to development for the purpose of a neighbourhood shop on land within Zone IN1 General Industrial if the retail floor area of the neighbourhood shop exceeds 80 square metres.
- (3) The consent authority must not grant consent to development for the purpose of a child care centre on land within Zone IN1 General Industrial unless it is satisfied that the child care centre is intended to provide services to people working in the area in which the child care centre is located.

Relevant land use zone objectives have been assessed in Section 5.7 of this report. Where agreed, the Department has recommended that the Minister sign an Order under section 75R(3A) to amend the clauses where inconsistencies occur with the SEPP and the proposed development to ensure the development can be carried out.

Subdivision (Clause 12) & Development Involving Subdivision (clause 21)

Clause 12 (1) applies to subdivision consent requirements and states that “*land within the Wyong Employment Zone may be subdivided only with consent.*”

Clause 21 relates to development involving subdivision. This clause states that subdivision must not be granted unless the consent authority has considered the following:

- “(a) the implications of the fragmentation of large lots of land,*
- (b) whether the subdivision will affect the supply of land for employment purposes,*
- (c) whether the subdivision will preclude other lots of land within the Wyong Employment Zone from having reasonable access to roads and services.”*

The Proponent relies on a study (Pitney Bowes, WIP and Adjoining Lands, Assessment of Need for Proposed Uses, 22 October 2007) which indicated that a job density of 40 persons per hectare was reasonable for a project of this nature given the additional ancillary support services and potential to incorporate non-traditional business uses which would not be located in CBD areas.

The proposed subdivision layout has been assessed in Section 5.5 Layout Plan of this report and is considered to be satisfactory. A condition of approval has been imposed to ensure that larger allotment sizes are protected to maintain the intended industrial character of the site.

Exempt development (clause 13) / Complying Development (clause 14)

Not applicable

Design, Sustainability, height of Buildings and Water re-use

Clause 17 to 20 applies to Design, Sustainability, Height of Buildings and Water Re-use.

These clauses state that the consent authority must not grant consent to development within the WEZ unless it is satisfied with the respective criteria of the relevant clauses.

These matters are covered in the draft DCP and the Proponent has committed to achieving a high quality design for buildings and landscaping which will be assessed under Part 4 of the Act. The Proponent has committed to complying with Council's WSUD and IWCM Scheme.

The Proponent believes that the proposed development is in close proximity to the town. In this regard, employees will have a reduced travel distance to and from employment which will reduce greenhouse gas emissions.

Building heights surrounding the site will be controlled to protect the amenity of surrounding residential areas and impact on the Freeway.

Development Control Plan

Clause 22 applies to the preparation of a development control plan for the WEZ.

The DCP must provide for the following:

- “(a) a staging plan for the development,*
- (b) detailed urban design proposals for subdivision, building and landscaping, including subdivision layout, site coverage, floor space ratio, setbacks and signage,*
- (c) proposals for storm water and water quality management controls to achieve environmentally sustainable water quality and quantity, including water sensitive urban design, water re-use and storm water drainage,*
- (d) recommendations for the built form, including energy efficient design and the building materials and finishes to be used,*
- (e) measures to accommodate and ameliorate geotechnical hazards and land contamination,*
- (f) an overall flora and fauna strategy for the protection and enhancement of the natural landscape and its scenic qualities,*
- (g) proposals for public and private transport facilities, including traffic management, car parking, access and the operation of Warnervale Airport,*
- (h) proposals to conserve items and places of Aboriginal heritage significance.”*

The Proponent has addressed the above matters in the EA and draft Development Design Code.

Public utility infrastructure

Clause 23 applies to public utility infrastructure. It states that the consent authority must not grant consent unless it is satisfied that *"any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required."*

The Proponent has committed to the provision of water, electricity, gas, sewage and telecommunications for the proposed development.

Exceptions to Development Standards

Clause 25 applies to exceptions to development standards.

Not applicable.

State Environmental Planning Policy (Infrastructure) 2007

The development was referred to the RTA for comment. The RTA did not object to the proposed traffic intersections. Conditions of approval were proposed with regard to the impact of flooding on the Freeway. Traffic noise management conditions were set to protect the amenity of surrounding residential development.

State Environmental Planning Policy 33 – Hazardous and Offensive Development

Clause 8 applies to the consideration of Departmental guidelines. In determining whether a development is:

- (a) *a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or*
- (b) *an offensive storage establishment, offensive industry or other potentially offensive industry, consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.*

The proposal is for subdivision, Any future DA or Project Application for industrial development would need to consider SEPP 33.

State Environmental Planning Policy No. 44 Koala Habitat Protection (SEPP 44)

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

SEPP 44 applies to the site as it is located in a local government area listed in Schedule 1. The supplementary ecological assessment provided in the PPR considers SEPP 44.

A detailed assessment of this SEPP is undertaken in section 5.3 which noted that potential Koala habitat occurs within small pockets within the study area. No evidence of core habitat was recorded in the study area. No evidence of individual Koalas was detected by spotlight and scat searches in the study area. No fresh or old scats were evident to suggest a resident population of Koala utilise feed trees in study area.

State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Contamination is assessed in Section 5.10 of this report.

Contamination was not considered to be significant however, the Proponent identified a few areas which contained asbestos and waste buried materials. Clearing of these areas were identified

recommendations was made for further assessment in the event of any Acid Sulphate Soil (ASS) being identified.

The above requirements and the recommendations of the CA studies have been incorporated into the conditions of approval. The Department is satisfied that sufficient geotechnical and contamination assessments have been undertaken for the development to proceed.

State Environmental Planning Policy No. 64 – Advertising and Signage

The policy aims to ensure that signage:

- is compatible with the amenity & visual character of an area;
- provides effective communication in suitable locations; and
- is of high quality design and finish.

Clause 8 applies to granting of consent to signage.

“A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.”*

Clause 3(1)(a) states that signage must be compatible with the desired amenity of an area, provides effective communication, and is of a high quality and design. Specific signage design is unknown at this stage and has been conditioned to comply with Schedule 1 of this SEPP.

Future development on the site will also be subject to the provisions of the draft DCP for the site which addresses advertising and signage controls.

Central Coast Regional Strategy

The Central Coast Regional Strategy (DoP, 2008) states that the Central Coast's economy has evolved to a diverse economy with a strong presence in manufacturing and service industries. Employment growth on the Central Coast is driven by competitively-priced employment lands and the position of the Region between Sydney and the Hunter for industrial and logistics businesses and good interregional transport infrastructure, i.e. the F3 Freeway and rail.

Further, the key opportunities for the Region in terms of industrial development include *“attractive industrial land prices and proximity to Sydney and Newcastle, especially for Sydney-based manufacturing and logistics businesses.”* (ibid)

The Strategy states that to achieve this opportunity, the *“NSW Government is to recognise the regional and state significance of the Wyong Employment Zone in providing appropriate employment lands over the next 25 years by:*

- leading the major strategic planning of this area;*
- ensuring that Ministerial consent is required for major developments and infrastructure in that area; and*
- providing a framework to inform future state and local infrastructure decisions.”*

Finally, it is necessary to ensure that *“bulky goods retailing is not located on industrial land and is located in centres and nominated nodes.”*

The site offers the opportunity to develop large-scale industrial development as a result of the ownership pattern. Also, the development of the site should be limited to industrial and associated use only as a result of the above Strategy assessment. The Concept Plan is generally consistent with the Strategy in providing employment opportunities, and protecting and rehabilitating areas of environmental importance.