

1.2 PROJECT DESCRIPTION

1.2.3 Justifications

The civic area will be characterised by street- enclosing buildings forming continuous facades of active building frontages, with awnings for weather protection. The main street will connect to the west with the transport interchange; and with the community facilities and public open space to the east.

Development for a component of the WTC, as will be the case with this Project Application, has long been anticipated by the local community and included in various planning strategies, controls and guideline documents prepared by the Department and WSC over a number of years.

The location of the retail premises component of the WTC was the subject of various design options considered for Warnervale, which culminated in a report titled "Review of Warnervale Town Centre Options" by Peter Seamer for the Department of Planning in 2006. This review considered the subject site the preferred location, which resulted in the subject site being rezoned to B2 - Local Centre under the SSS to enable a "retail premises" and the creation of the "Town Centre Civic Precinct" under the WTCDP. This Project Application seeks to implement a development in accordance with these planning intentions and objectives and as such is well justified.



1.3 TOWN CENTRE PLANNING CONTROLS

1.3.1 Commonwealth Matters and 1.3.2 State Controls

This section of the EA considers relevant statutory and non-statutory planning controls.

1.3.1.1 Commonwealth Matter - *Environment Protection and Biodiversity Conservation Act 1999*

The subject site has not been identified as having any known listed threatened species and/or ecological communities under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

1.3.2.1 State Legislation *Environmental Planning and Assessment Act, 1979*

The proponent requests that the Minister approve a Project Application under Section 75J of the *Environmental Planning and Assessment Act, 1979*, which states:

75J Giving of approval by Minister to carry out project

- (1) If:
- the proponent makes an application for the approval of the Minister under this Part to carry out a project, and
 - the Director-General has given his or her report on the project to the Minister, the Minister may approve or disapprove of the carrying out of the project.
- (2) The Minister, when deciding whether or not to approve the carrying out of a project, is to consider:
- the Director-General's report on the project and the reports, advice and recommendations (and the statement relating to compliance with environmental assessment requirements) contained in the report, and
 - if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
 - any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- (3) In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.
- (4) A project may be approved under this Part with such modifications of the project or on such conditions as the Minister may determine.
- (5) The conditions of approval for the carrying out of a project may require the proponent to comply with any obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F).

1.3.2.2 State Environmental Planning Policy (Major Development) 2005

Formerly known as *State Environmental Planning Policy (Major Projects) 2005*, *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP) defines certain developments that are major projects under Part 3A of the *Environmental Planning and Assessment Act 1979* and determined by the Minister for Planning. The Major Development SEPP also lists State Significant Sites. The policy repeals SEPP 34 and SEPP 38, as well as provisions in numerous other planning instruments, declarations and directions.

Clause 6 of the Major Development SEPP enables the Minister to make a declaration with respect to a proposed development under Part 3A of the *Environmental Planning and Assessment Act, 1979* based on the following:

6 Identification of Part 3A projects

- (1) Development that, in the opinion of the Minister, is development of a kind:
- that is described in Schedule 1 or 2, or
 - that is described in Schedule 3 as a project to which Part 3A of the Act applies, or
 - to the extent that it is not otherwise described in Schedules 1–3, that is described in Schedule 5,
- is declared to be a project to which Part 3A of the Act applies.
- (2) However, any such development does not become a project to which Part 3A of the Act applies by the operation of subclause (1) if:
- the carrying out of that development has been authorised by a consent that is in force under Part 4 of the Act before development of that kind is declared under subclause (1), or
 - the development is an activity within the meaning of Part 5 of the Act and the following provisions apply in relation to the activity:
 - the determining authority for the activity has, before 1 August 2005, complied with the requirements of Divisions 2 and 3 of Part 5 of the Act in relation to the activity,
 - the activity is not an activity in respect of which the Minister's approval was required under Division 4 of Part 5 of the Act (as in force before its repeal by schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*),
 - the activity is physically commenced before 1 August 2006, or
 - the Act or the regulations under the Act provide that Part 3A of the Act does not apply to the carrying out of that development (or to the determination of a pending development application under Part 4 of the Act with respect to that development).

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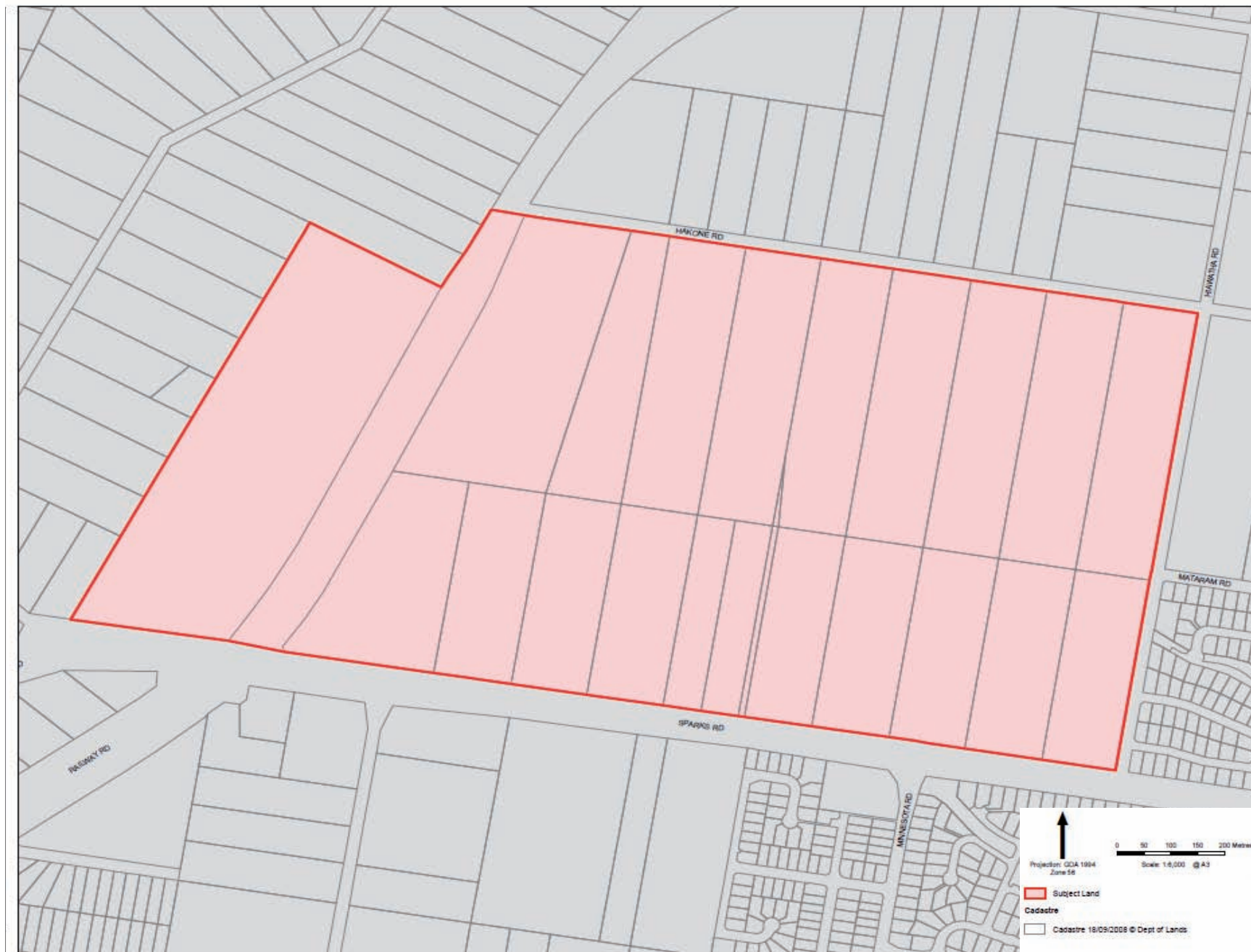


Figure 16: Extract from SEPP Land Application Map

(3) If, after the commencement of Part 3A of the Act, any class of development or activity that was not a project to which that Part applies becomes such a project because of an amendment to this Policy (or because of a change in the application of a provision of this Policy), and:

(a) in the case of development to which Part 4 of the Act applies—a development application in respect of any particular development within that class of development was pending on the commencement of that amendment or change, or

(b) in the case of an activity to which Part 5 of the Act applies—an application for approval (within the meaning of that Part) in relation to an activity that is within that class of development was made to a determining authority and had not been finally determined on the commencement of that amendment or change,

that particular development or activity does not become such a project by the operation of subclause (1) unless the application is withdrawn or the Minister so directs.

Notes.

1. Under section 75B of the Act, development may be declared by a State Environmental Planning Policy or Ministerial Order to be a project to which Part 3A applies.
2. The Minister is the approving authority for such projects and they are generally excluded from Parts 4 and 5 of the Act.
3. Section 75R of the Act limits the application of environmental planning instruments in relation to approved projects, but any prohibition on development imposed by any such instrument continues to apply to any project other than a critical infrastructure project.
4. Schedule 6 to the Act provides that Part 3A of the Act does not apply to the determination of a development application for State significant development that is pending on the commencement of that Part and is not withdrawn by the applicant).

The proposed development was declared a Major Development to which Clause 6 applies on 4 November 2010. Refer to **Appendix A**.

Schedule 3 of Major Development SEPP

On 7 November 2008, the *Major Development SEPP* was amended to list the WTC as a SSS in Schedule 3 of that Policy. Part 16 of Schedule 3 under the Major Development SEPP, has been considered as follows:

Clause 1 Land to which Part applies

This Part applies to the land shown on the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Land Application Map, referred to in this Part as the **Warnervale Town Centre**.

Comment: The subject site is located on the Land Application Map to which the Major Development SEPP applies. Refer to Figure 15.

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Figure 17: Extract from SEPP Land Zoning Map

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Figure 18: Extract from SEPP Height of Buildings Map

Clause 2 Interpretation

(1) In this Part:

allied health and sports medicine services means commercial health services related to sport and recreation that are provided in a room or a number of rooms attached to or within the curtilage of a community facility or recreation facility (indoor) or recreation facility (outdoor).

Height of Buildings Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Height of Buildings Map.

Land Application Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Land Application Map.

Land Reservation Acquisition Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Land Reservation Acquisition Map.

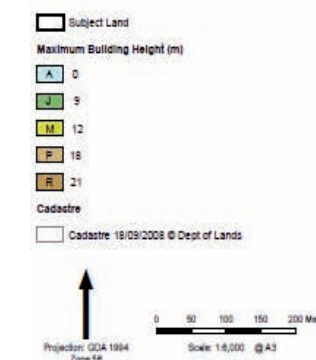
Land Zoning Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Land Zoning Map.

the Wyong DCP means Development Control Plan 2005—Development Controls for Wyong Shire, as adopted by the Wyong Shire Council on 14 May 2008.

Warnervale Airport Obstacle Limitation Surface Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24) - Warnervale Town Centre - Warnervale Airport Obstacle Limitation Surface Map.

water cycle management works means any activity relating to urban stormwater management that retains the natural hydrological regime of receiving environments with the objective of conservation and protection of the whole water cycle and maintaining water quality.

Wyong Shire Council means the Council of the Shire of Wyong.



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(2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the Standard Instrument (Local Environment Plans) Order 2006, unless it is otherwise defined in this Part.

Comment: The definitions have been noted, the *Standard Instrument (Local Environmental Plans) Order 2006* defines “retail premises”.

Clause 3 Consent authority

The consent authority for development on land in the Warnervale Town Centre, other than development that is a project to which Part 3A of the Act applies, is the Wyong Shire Council.

Comment: The consent authority for the proposed development is the Minister for Planning or his delegate under Part 3A

Clause 4 Maps

(1) A reference in this Part to a named map adopted by this Part is a reference to a map by that name:

- (a) approved by the Minister when the map is adopted, and
- (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.

(2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Part to any such named map is a reference to the relevant part or aspect of the single map.

(3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.

(4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

Comment: The Maps have been obtained and considered in relation to the subject site.

Clause 5 Relationship with other environmental planning instruments

The only environmental planning instruments that apply, according to their terms, to land within the Warnervale Town Centre are this Policy and all other State environmental planning policies, except State Environmental Planning Policy No 1 - Development Standards

Comment: Noted

Clause 6 Part 3A projects

Development for the purposes of retail premises within the Warnervale Town Centre that has a capital investment value of more than \$20 million and a floor space area of more than 5,000 square metres.

Comment: Part 16 “Warnervale Town Centre” does not specifically define “retail premises”, however the interpretation at Clause 2 references the *Standard Instrument (Local Environmental Plans) Order 2006* which at the Dictionary includes a definition for “retail premises” as follows:

“**Retail premises**” means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises,
 - (b) cellar door premises,
 - (c) food and drink premises,
 - (d) garden centres,
 - (e) hardware and building supplies,
 - (f) kiosks,
 - (g) landscaping material supplies,
 - (h) markets,
 - (i) plant nurseries,
 - (j) roadside stalls,
 - (k) rural supplies,
 - (l) shops,
 - (m) timber yards,
 - (n) vehicle sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note. Retail premises are a type of commercial premises—see the definition of that term in this Dictionary.

The proposed development is considered to be consistent with the definition of a “retail premises” as defined above, a full description of the proposed development can be found at Section 1.2 of Chapter 1 of this EA. The proponent has obtained a QS Certificate which can be found at **Appendix D**, which demonstrates the CIV is greater than \$20 million. The proposed development has a floor space area of more than 5,000 square metres, and therefore is consistent with the provisions of Clause 6 of Part 16 “Warnervale

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Town Centre” in Schedule 3 of the *Major Development SEPP* and can be considered as a Project Application.

Clause 7 Application of Division

- (1) *This Division applies to development on land in the Warnervale Town Centre, except as provided by subclause (2).*
- (2) *Clauses 9–16, 18–20, 22, 25–27, 30 and 31 do not apply to development within the Warnervale Town Centre to the extent that it is a project to which Part 3A of the Act applies.*

Comment: The provisions of Clause 7(2) apply to the proposed development.

Clause 8 Land use zones

For the purposes of this Division, land within the Warnervale Town Centre is within a zone as follows if the land is shown on the Land Zoning Map as being within that zone:

- (a) *Zone R1 General Residential,*
- (b) *Zone B2 Local Centre,*
- (c) *Zone SP1 Special Activities,*
- (d) *Zone SP2 Infrastructure,*
- (e) *Zone RE1 Public Recreation,*
- (f) *Zone E2 Environmental Conservation,*
- (g) *Zone E3 Environmental Management.*

Comment: The Site is part zoned B2 Local Centre and part zoned RE1 Public Recreation as detailed under the zoning map. An extract of the zoning map can be found in Figure 16.

Clause 9 Objectives of land use zones to be taken into account

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

Comment: The proposed development is considered to be consistent with the objectives of the B2 Local Centre Zone and the objectives of the portion of the site zoned RE1 Public Recreation.

Clause 10 Zone R1 General Residential

- (1) *The objectives of Zone R1 General Residential are as follows:*
 - (a) *to provide for the housing needs of the community,*
 - (b) *to provide for a variety of housing types, tenures, affordability and densities,*
 - (c) *to enable other land uses that provide facilities or services to meet the day to day needs of residents,*
 - (d) *to promote development that is sensitive to the conservation values of the Warnervale Town Centre,*
 - (e) *to maximise public transport patronage and encourage walking and cycling.*
- (2) *Development for any of the following purposes is permitted without development consent on land within Zone R1 General Residential:*

Nil.
- (3) *Development for any of the following purposes is permitted only with development consent on land within Zone R1 General Residential:*

advertisements; bed and breakfast accommodation; boarding houses; car parks; child care centres; community facilities; dual occupancies; dwelling houses; group homes; health consulting rooms; home-based child care; home businesses; home industries; hospitals; hostels; multi dwelling housing; neighbourhood shops; places of public worship; recreation areas; residential care facilities; residential flat buildings; roads; seniors housing; shop top housing; telecommunications facilities.
- (4) *Except as otherwise provided by this Policy, development is prohibited on land within Zone R1 General Residential unless it is permitted by subclause (2) or (3).*

Comment: Proposal not on land zoned R1.

Clause 11 Zone B2 Local Centre

- (1) *The objectives of Zone B2 Local Centre are as follows:*
 - (a) *to provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area,*
 - (b) *to encourage employment opportunities in accessible locations,*
 - (c) *to maximise public transport patronage and encourage walking and cycling,*
 - (d) *to provide uses compatible with the environmental sensitivities and conservation values of the Warnervale Town Centre.*
- (2) *Development for any of the following purposes is permitted without development consent on land within Zone B2 Local Centre:*

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Nil.

(3) Development for any of the following purposes is permitted only with development consent on land within Zone B2 Local Centre:

*bulky goods premises; business premises; car parks; child care centres; community facilities; dual occupancies; educational establishments; entertainment facilities; function centres; information and education facilities; kiosks; medical centres; office premises; passenger transport facilities; public administration buildings; public entertainment; pubs; recreation facilities (indoor); registered clubs; restaurants; **retail premises**; roads; service stations; shop top housing; telecommunications facilities; tourist and visitor accommodation.*

(4) Except as otherwise provided by this Policy, development on land within Zone B2 Local Centre is prohibited unless it is permitted by subclause (2) or (3).

Comment: The proposed retail premises and ancillary development is considered to be consistent with the objectives of the B2 Local Centre land use zone based on the following:

- The proposed development will provide a range of retail, business, entertainment and opportunities for community uses within the floor area proposed should this be the desire of relevant authorities so that the hub will serve the needs of people who live in, work in and visit the local area,
- The proposed development will provide an opportunity to encourage employment opportunities in an accessible location adjacent to the proposed railway station and bus stops,
- The proposed development will be integrated with the railway station in terms of access through appropriate reduced levels to maximise public transport patronage and encourage walking and cycling,
- The proposed development seeks to implement outcomes as envisaged in the WTC DCP to provide uses compatible with the environmental sensitivities and conservation values of the Warnervale Town Centre
- The proposed development is for the purposes of a “retail premises”, and the ancillary development could be described as involving purposes of roads, bulky goods premises, public entertainment, office premises, all of which are permissible in the B2 Local Centre zone of the WTC.

Clause 12 Zone SP1 Special Activities

(1) The objectives of Zone SP1 Special Activities are as follows:

(a) to provide for special land uses that are not provided for in other zones,

(b) to provide for sites with special natural characteristics that are not provided for in other zones,

(c) to facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

(2) Development for any of the following purposes is permitted without development consent on land within Zone SP1 Special Activities:

Nil.

(3) Development for any of the following purposes is permitted only with development consent on land within Zone SP1 Special Activities:

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.

(4) Except as otherwise provided by this Policy, development on land within the Zone SP1 Special Activities is prohibited unless it is permitted by subclause (2) or (3).

Comment: Proposal does not include SP1 zoned land.

13 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 without development consent on land within Zone SP2 Infrastructure:

Nil.

(3) Development for any of the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure:

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.

(4) Except as otherwise provided by this Policy, development on land within Zone SP2 Infrastructure is prohibited unless it is permitted by subclause (2) or (3).

Comment: Proposal does not include SP2 zoned land.

Clause 14 Zone RE1 Public Recreation

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- (1) *The objectives of Zone RE1 Public Recreation are as follows:*
- (a) *to enable land to be used for public open space or recreational purposes,*
 - (b) *to provide a range of recreational settings and activities and compatible land uses,*
 - (c) *to protect and enhance the natural environment for recreational purposes,*
 - (d) *to promote the integration of public open space areas with other land uses within the Warnervale Town Centre,*
 - (e) *to maximise public transport patronage and encourage walking and cycling.*
- (2) *Development for any of the following purposes is permitted without development consent on land within Zone RE1 Public Recreation:*
- environmental facilities; environmental protection works.*
- (3) *Development for any of the following purposes is permitted only with development consent on land within Zone RE1 Public Recreation:*
- allied health and sports medicine services; community facilities; kiosks; recreation areas; recreation facilities (indoor); recreation facilities (outdoor); roads; water cycle management works.*
- (4) *Except as otherwise provided by this Policy, development on land within Zone RE1 Public Recreation is prohibited unless it is permitted by subclause (2) or (3).*

Comment: Proposal has been designed to accommodate the portion of the site zoned RE1 but does not involve development on the land zoned RE1.

Clause 15 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 without development consent on land within Zone E2 Environmental Conservation:*
- environmental protection works.*
- (3) *Development for any of the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation:*
- environmental facilities; pedestrian and cycle paths; roads; water cycle management works.*
- (4) *Except as otherwise provided by this Policy, development on land within Zone E2 Environmental Conservation is prohibited unless it is permitted by subclause (2) or (3).*

Comment: Proposal does not include E2 zoned land.

Clause 16 Zone E3 Environmental Management

- (1) *The objectives of Zone E3 Environmental Management are as follows:*
- (a) *to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values,*
 - (b) *to provide for a limited range of development that does not have an adverse effect on those values.*
- (2) *Development for any of the following purposes is permitted without development consent on land within Zone E3 Environmental Management:*
- environmental protection works; home occupations.*
- (3) *Development for any of the following purposes is permitted only with development consent on land within Zone E3 Environmental Management:*
- dwelling houses; environmental facilities; information and education facilities; pedestrian and cycle paths; roads; water cycle management works.*
- (4) *Except as otherwise provided by this Policy, development on land within Zone E3 Environmental Management is prohibited unless it is permitted by subclause (2) or (3).*

Comment: Proposal does not include E3 zoned land.

Clause 17 Prohibited development

Development, other than development that is permitted with or without consent on land within a zone, is prohibited on land within that zone.

Comment: Noted.

Clause 18 Exempt development

Note. *Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.*

Under the section, exempt development:

- (a) *must be of minimal environmental impact, and*
- (b) *cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), and*

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(c) cannot be carried out in a wilderness area (identified under the Wilderness Act 1987)

- (1) The objective of this clause is to identify development of minimal environmental impact as exempt development.
- (2) Development specified in Chapter 85 of the Wyong DCP that meets the standards for the development contained in that instrument and that complies with the requirements of this Part is exempt development.
- (3) To be exempt development, the development:
 - (a) must meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, and
 - (b) must not, if it relates to an existing building, cause the building to contravene the Building Code of Australia, and
 - (c) must not be designated development, and
 - (d) must not be carried out on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the Heritage Act 1977 or that is subject to an interim heritage order under the Heritage Act 1977.
- (4) Development that relates to an existing building that is classified under the Building Code of Australia as class 1b or class 2–9 is exempt development only if:
 - (a) the building has a current fire safety certificate or fire safety statement, or
 - (b) no fire safety measures are currently implemented, required or proposed for the building.

Comment: Proposal does not involve exempt development.

Clause 19 Complying development

Note. Under section 76A of the Act, development consent for the carrying out of complying development may be obtained by the issue of a complying development certificate.

Under the section, development cannot be complying development if:

- (a) it is on land that is critical habitat of an endangered species, population or ecological community (identified under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994), or
 - (b) it is on land within a wilderness area (identified under the Wilderness Act 1995), or
 - (c) the development is designated development, or
 - (d) the development is on land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or that is subject to an interim heritage order under the Heritage Act 1977), or
 - (e) the development requires concurrence (except a concurrence of the Director-General of the Department of Environment and Climate Change in respect of development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the Threatened Species Conservation Act 1995), or
 - (f) the development is on land identified as an environmentally sensitive area.
- (1) The objective of this clause is to identify development as complying development.

- (2) Development specified in Chapter 86 of the Wyong DCP that is carried out in compliance with:
 - (a) the applicable development standards and requirements listed in that instrument, and
 - (b) the requirements of this Part,is complying development.
- (3) To be complying development, the development must:
 - (a) be permissible, with development consent, in the zone in which it is carried out, and
 - (b) meet the relevant deemed-to-satisfy provisions of the Building Code of Australia, and
 - (c) have an approval, if required by the Local Government Act 1993, from the Wyong Shire Council for an on-site effluent disposal system if the development is undertaken on unsewered land.

Comment: The proposal does not include development that would be complying development.

20 Subdivision—consent requirements

- (1) Land within the Warnervale Town Centre may be subdivided, but only with development consent.
- (2) However, development consent is not required for a subdivision for the purpose only of any one or more of the following:
 - (a) widening a public road,
 - (b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
 - (c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional buildings,
 - (d) a consolidation of lots that does not create additional lots or the opportunity for additional buildings,
 - (e) rectifying an encroachment on a lot,
 - (f) creating a public reserve,
 - (g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.

Note. If a subdivision is exempt development, the Act enables the subdivision to be carried out without consent.

Comment: The proposal does not involve subdivision of land.

Clause 21 Infrastructure development and the use of existing buildings of the Crown

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(1) *This Part does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development that is permitted to be carried out with or without consent or that is exempt development under State Environmental Planning Policy (Infrastructure) 2007.*

(2) *This Part does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.*

Comment: The proposal does not involve use of existing buildings but does involve provision of infrastructure.

Clause 22 Public utility infrastructure

(1) *Consent must not be granted to development on land within the Warnervale Town Centre unless the consent authority 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.*

(2) *In this clause, **public utility infrastructure** includes infrastructure for any of the following:*

(a) *the supply of water,*

(b) *the supply of electricity,*

(c) *the supply of natural gas,*

(d) *the disposal and management of sewage.*

(3) *This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure referred to in this clause.*

Comment: A report on Utilities Infrastructure has been prepared by Mott McDonald and can be found at **Appendix E**, which indicates the proposed development will have access to appropriate infrastructure when complete.

Clause 23 Height of buildings

The height of a building on any land within the Warnervale Town Centre must not exceed the maximum height shown for the land on the Height of Buildings Map.

Comment: The subject site is affected by a number of building heights (refer to Figure 17), including:

- 21m for the southern portion of the Fabcot land,
- 18m in the south-west corner and in the middle portion of the site,

- 12m in the north-west portion of the site, and
- 0m where the land has been zoned RE1 Recreation.

The development at its highest point involving the cinema complex is at RL65.00 to the roof. This when compared to the site topography as shown in the survey information which can be found at **Appendix C** is an overall height of 18.62 metres.

Clause 24 Exceptions to development standards—Part 3A projects

(1) *A development standard imposed by this or any other environmental planning instrument on development that is part of a project to which Part 3A of the Act applies, and is within Warnervale Town Centre, does not apply to that development if the Director-General is satisfied, and issues a certificate to the effect, that:*

(a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *there are sufficient environmental planning grounds to justify exempting the development from that development standard.*

(2) *In deciding whether to issue a certificate, the Director-General must consider:*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

(b) *the public benefit of maintaining the development standard, and*

(c) *any other matters required to be taken into consideration by the Director-General.*

Comment: The overall maximum height at 18.62m complies with the SEPP Height of Buildings Map.

25 Exceptions to development standards—other development

(1) *This clause applies to development, other than development that is part of a project to which Part 3A of the Act applies.*

(2) *The objectives of this clause are:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(3) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development*

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standard that is expressly excluded from the operation of this clause.

- (4) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (5) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (4), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (6) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (4).
- (8) This clause does not allow consent to be granted for development that would contravene a development standard for complying development.

Comment: No variation to a standard is required.

Clause 26 Land acquisition within certain zones

(1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land within the Warnervale Town Centre that is reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions).

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant

authority, section 23 of the (Just Terms Compensation) Act 1991 requires the authority to acquire the land.

(2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

| Type of land shown on Map | Authority of the State |
|----------------------------|------------------------|
| Zone RE1 Public Recreation | Wyong Shire Council |

(3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

Note. If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, this Part is required to be amended to designate the acquiring authority for that land (see section 27 of the Act). The Minister for Planning is required to take action to enable the designation of the acquiring authority under this Part. Pending the designation of the acquiring authority for that land, the acquiring authority is to be the authority determined by order of the Minister for Planning (see section 21 of the (Just Terms Compensation) Act 1991).

Comment: Part of the subject site is zoned RE1.

Clause 27 Community use of educational establishments

- (1) The objective of this clause is to allow the use of educational establishments within the Warnervale Town Centre, including their site and facilities, for other community purposes.
- (2) An educational establishment (including the site and facilities) may, with development consent, be used for any other community purpose, whether or not any such use is a commercial use of the land.
- (3) Nothing in this clause requires development consent to carry out development on any land if that development could, but for this clause, be carried out on that land without development consent.

Comment: The proposal does not include this usage but this can form part of future applications on other land within the Warnervale Town Centre.

Clause 28 Development close to a rail corridor

- (1) The objective of this clause is to ensure that development of land within the Warnervale Town Centre for the purpose of residential accommodation, places of public worship, hospitals, educational establishments or other noise sensitive buildings in the proximity of operating or proposed railways is not adversely affected by rail noise or vibration.
- (2) This clause applies to land comprising, or within 60 metres of, an operating railway line or land reserved for the construction of a railway line (referred to in this clause as a rail

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corridor).

(3) *Development:*

(a) *that is within a rail corridor, and*

(b) *that is likely to be adversely affected by rail noise or vibration, must not be carried out unless the proposed development incorporates all practicable mitigation measures for rail noise or vibration recommended by Rail Corporation New South Wales for development of that kind.*

Comment: The proposed development is located within 60m of the rail corridor, as such the proposed development will need to be referred to RailCorp for a concurrence.

Clause 29 Development in the vicinity of Warnervale Airport

(1) *The objectives of this clause are:*

(a) *to provide for the effective and on-going operation of Warnervale Airport, and*

(b) *to ensure that such operation is not compromised by any proposed development.*

(2) *Development consent must not be granted for the erection of a building, the height of which exceeds the obstacle limitation surface height for that land, unless the consent authority is satisfied that the building will not constitute an obstruction or hazard to aircraft flying in the vicinity.*

(3) *In this clause:*

obstacle limitation surface height, for land, means the height of the obstacle limitation surface for that land shown on the Warnervale Airport Obstacle Limitation Surface Map.

Comment: The height controls have been considered as part of the design development. It is noted that the site is affected by the Aerodrome Obstacle Limitations between RL 52.6 AHD at the south-western corner to RL 70 AHD at the north-east corner of the site.

In this respect the survey information indicates the existing ground level at the south-east corner of RL 38.00 AHD and 54.00 AHD at the north-east corner of the site. The overall maximum height of the development is between RL51 and at its worst point is RL 65 (refer to Section 2.4 Architectural Drawings - Section Figures) which is below the height limitations in Clause 29.

Clause 30 Preservation of trees or vegetation

(1) *The objective of this clause is to preserve the amenity of the Warnervale Town Centre through the preservation of trees and other vegetation.*

(2) *This clause applies to species or kinds of trees or other vegetation referred to in section 7.2 of Chapter 14 of the Wyong DCP.*

(3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which this clause applies without the authority conferred by:*

(a) *development consent, or*

(b) *a permit granted by the Wyong Shire Council.*

(4) *The refusal by the Wyong Shire Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant development consent for the carrying out of the activity for which a permit was sought.*

(5) *This clause does not apply to a tree or other vegetation that the Wyong Shire Council is satisfied is dying or dead and is not required as the habitat of native fauna.*

(6) *This clause does not apply to a tree or other vegetation that the Wyong Shire Council is satisfied is a risk to human life or property.*

(7) *This clause does not apply to or in respect of:*

(a) *the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or*

(b) *the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or*

(c) *trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or*

(d) *action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying Act 2002, or*

(e) *plants declared to be noxious weeds under the Noxious Weeds Act 1993.*

Comment: Noted

Clause 31 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land within the Warnervale Town Centre without development consent.

Note. *The Rural Fires Act 1997 also makes provision relating to the carrying out of development on bush fire prone land.*

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Comment: Noted

Clause 32 Controls relating to miscellaneous permissible uses

(1) This clause applies to development only if it is permitted under this Part or approved under Part 3A of the Act.

(2) **Bed and breakfast accommodation** Development for the purposes of bed and breakfast accommodation that is provided to guests must consist of no more than 3 bedrooms.

(3) **Home businesses**

Development for the purposes of a home business must not involve the use of more than 30 square metres of floor area.

(4) **Home industries**

Development for the purposes of a home industry must not involve the use of more than 30 square metres of floor area.

(5) **Kiosks**

Development for the purposes of a kiosk must not involve the use of more than 80 square metres of gross floor area.

(6) **Neighbourhood shops**

Development for the purposes of a neighbourhood shop must not involve the use of more than 80 square metres for the retail floor area of the shop.

Comment: Noted

1.3.2.3 State Environmental Planning Policy Infrastructure 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) provides a consistent planning regime for infrastructure and the provision of services across NSW, along with providing for consultation with relevant public authorities during the assessment process. The SEPP supports greater flexibility in the location of infrastructure and service facilities along with improved regulatory certainty and efficiency. The proposal provides for the overall concept for the site which involves some 27,040 square metres of retail premises. Under the provisions of State Environmental Planning Policy (Infrastructure) 2007, the proposal triggers the criteria of Schedule 3 being Column 2:

Size or capacity—site with access to any road

Shops – 2,000 square metres in area

Clause 104 of the SEPP is also relevant and states as follows:

104 Traffic-generating development

(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:

(a) new premises of the relevant size or capacity, or

(b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

(2) In this clause, **relevant size or capacity** means:

(a) in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.

(3) Before determining a development application for development to which this clause applies, the consent authority must:

(a) give written notice of the application to the RTA within 7 days after the application is made, and

(b) take into consideration:

(i) any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and

(ii) the accessibility of the site concerned, including:

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development.

(4) The consent authority must give the RTA a copy of the determination of the application within 7 days after the determination is made.

An assessment of the traffic and parking implications of the proposed development has been prepared by Colston Budd Hunt and Kafes and can be found at Appendix S.

As the proposed development will form the first stage of development within Warnervale Town Centre, this transport assessment has considered the effects of the proposed development prior to the area being fully developed with access to the area being a single connection to Sparks Road.

This assessment has concluded that the proposed development will not adversely

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impact on the local network in terms of traffic and provides parking to meet the demands of the development, and the parking reconfiguration of the parking area is satisfactory.

The matter of traffic, parking, access and internal circulation has been discussed in detail in Section 1.07.

1.3.2.4 State Environmental Planning Policy No. 55 Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) relates to the remediation of contaminated land. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected and requires councils to be notified of all remediation proposals. The *Managing Land Contamination: Planning Guidelines* were prepared to assist councils and developers.

The provisions of SEPP 55 state at clause 7:

- 7 Contamination and remediation to be considered in determining development application
- (1) A consent authority must not consent to the carrying out of any development on land unless:
- (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of

the preliminary investigation warrant such an investigation.

- (4) The land concerned is:
- (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

A Phase 1 and 2 Environmental Site Assessment has been completed which can be found at **Appendix H**. Further contamination investigations formed part of the SSS study and this matter is discussed in Section 1.6.

1.3.2.5 Draft State Environmental Planning Policy (Competition) 2010

The Draft Competition State Environmental Planning Policy was introduced for consultation by the NSW State Government to seek to remove artificial barriers on competition between retail businesses in the planning system by the following:

The commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;

The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and

Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

There are currently no restrictions in the environmental planning instrument in this area, the applicant has prepared an application which is considered to be generally consistent with the Council's Retail Strategy and will not impact the commercial viability of individual businesses or the extent and adequacy of

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local community services and facilities. As such the proposed development is considered to be consistent with the provisions of the Draft SEPP.

1.3.2.6 Warnervale Town Centre Development Control Plan 2008

The provisions of the Warnervale Town Centre Development Control Plan 2008 (WTCDCP) have been considered in detail and as assessment of these provisions can be found in the compliance table at **Appendix M**.

In addition, Section 1.6 provides detailed explanation for the specific variations as a result of the proposed layout and justifications for the same.

1.3.2.7 Other Plans

This EA has considered the State strategic planning documents relevant to the proposed development, to form an understanding of where the subject land fits with the current State strategic planning framework and determine whether the proposal is consistent with this framework.

As such, the State Plan along with a number of State strategic plans has been considered as follows.

1.3.2.8 NSW State Plan

On 14 November 2006, the New South Wales (NSW) Premier launched the *State Plan – A New Direction for NSW*. The purpose of the plan is to deliver results from Government services.

The State Plan includes a number of goals which the NSW Government is working towards. Specifically, the proposed development will make a contribution towards achieving a number of the key goals of the State Plan.

1.3.2.9 Central Coast Regional Strategy

The NSW Central Coast is well known for its outstanding environment and coastal lifestyle. Covering 1854 square kilometres and 81 kilometres of coastline, more than half the region is national parks, bushland, open space and aquatic environments.

Currently over 300,000 people live on the Central Coast and the region continues to grow at one of the fastest rates in NSW. Just one hour from Sydney and Newcastle, the region offers great opportunities for business with both land available and skilled local workforce.

The Central Coast Regional Strategy is the NSW Government's long term land use plan for the region, which covers the Gosford City and Wyong Shire local government areas. The regional strategy contains policies and actions designed to cater for the region's projected housing and employment growth over the period to 2031.

Due to an improved long-term water supply outlook, the region's population is expected to grow by around 100,000 over this period. This improved outlook has been brought about mainly through recent measures such as the adoption of the local Water Plan 2050 and the NSW Government's commitment to build Tillegra Dam.

The strategy outlines how and where future development should occur to appropriately accommodate this growth and to provide sufficient capacity to cater for more than 45,000 new jobs, reducing the need for local residents to commute outside of the region for work.

The NSW Government's Central Coast Regional Strategy is a 25-year strategy for sustainable development which seeks to ensure:

- *The majority of new housing will be accommodated within existing urban areas complementing, amongst other things, the plans for the new Warnervale Town Centre and Wyong Employment Zone.*
- *The region's environment and valuable natural resources will be protected via important initiatives such as preventing urban residential development on all land west of the F3.*
- *Existing agricultural areas will continue to be strongly protected from inappropriate*

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development.

- Population forecasts will continue to be monitored and growth projections reviewed accordingly, in particular having regard to the region's water supply outlook.
- New infrastructure for the region will be provided in accordance with the State Infrastructure Strategy.

The Regional Strategy maps growth areas that are available for future urban development. These areas aim to reinforce the Region's settlement hierarchy while supporting scenic green breaks between coastal communities and protecting important assets and resources. The proposed development is considered to be consistent with the strategic planning of the Region and the Central Coast Regional Strategy.

1.3.2.10 NSW Coastal Policy

The 1997 NSW Coastal Policy sets the context in providing for population growth and economic development at the same time protecting the natural, cultural, spiritual and heritage values of the coastal environment. To achieve this, the Policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD).

The Policy addresses a number of key coastal themes including:

- population growth in terms of physical locations and absolute limits
- coastal water quality issues, especially in estuaries
- disturbance of acid sulfate soils
- establishing an adequate, comprehensive and representative system of reserves
- better integration of the range of government agencies and community organisations involved in coastal planning and management
- indigenous and European cultural heritage, and
- integration of the principles of ESD into coastal zone management and decision making.

The management of the coastal zone is the responsibility of a range of government agencies, local councils and the community. The Policy provides a framework for the balanced and coordinated management of the coast's unique physical, ecological, cultural and economic attributes.

The proposed development is considered to have adequately addressed all of the key requirements of the Coastal Policy.

1.3.2.11 NSW Coastal Design Guidelines

The diverse beauty of the NSW coast is at risk from developments which pay little attention to urban design principles. Application of the principles set out in the 'Coastal Design Guidelines for NSW' (Coastal Council of NSW 2003) will ensure that future developments and redevelopments are sensitive to the unique natural and urban settings of coastal places in NSW.

The guidelines provide a world-standard approach for how urban design can be best used in a coastal context.

The detailed design as outlined in the Project Application is considered to be consistent with the NSW Coastal Design Guidelines.

1.3.2.12 Draft NSW Government Sea Level Rise Policy Statement

The NSW Government released the Draft Policy Statement on Sea Level Rise for targeted consultation, including with all coastal councils, in late February 2009 until early April 2009. The draft statement identified sea level rise projections of up to 40 cm to 2050, and 90 cm to 2100, for the NSW coastline. The Department of Planning website advises:

The draft statement includes reference to the Department of Planning preparing guidelines on how sea level rise will be considered in strategic land-use planning and development assessment.

Further advice will be provided to councils on this issue following the consultation period.

When finalised, the statement will provide a consistent approach to addressing sea level rise to assist the NSW Government and local councils in the preparation of land use strategies, local environmental plans and in development assessment.

The statement will also provide clear guidance for developers and landowners along the coastline by identifying considerations for the development of land potentially at risk from sea level rise.

The Department of Planning is working with the Department of Environment and Climate Change to finalise the draft statement following consultation.

The subject site is remote from land affected by this policy.