

## APPENDIX D – STATUTORY CONSIDERATIONS

- *SEPP (State and Regional Development) 2011;*
- *SEPP (Mining, Petroleum Production and Extractive Industries) 2007;*
- *SEPP (Infrastructure) 2007;*
- *SEPP No. 33 – Hazardous and Offensive Development;*
- *SEPP No. 44 – Koala Habitat Protection;*
- *SEPP No. 55 – Remediation of Land;*
- *Hunter Regional Environmental Plan 1989 (Heritage); and*
- *Port Stephens Local Environmental Plan 2013.*

### **SEPP (State and Regional Development) 2011**

The proposal meets the criteria in Schedule 1 of the State and Regional Development SEPP for classification as a State significant development (see **Section 3.1**). The Department is satisfied that the development can be undertaken in a manner that is generally consistent with the aims, objectives, and provisions of the SEPP.

### **SEPP (Mining, Petroleum Production and Extractive Industries) 2007**

Part 3 of the Mining SEPP lists a number of matters that a consent authority must consider before determining an application for consent for development for the purposes of an extractive industry, including:

- compatibility with other land uses;
- the voluntary land acquisition and mitigation policy;
- natural resource management and environmental management;
- resource recovery;
- transport; and
- rehabilitation.

The Department is satisfied the relatively small scale of the quarry and proposed mitigation measures are sufficient to ensure that it is compatible with nearby rural residential and conservation areas, such as Tilligery SCA. The Department is satisfied that no receivers would experience noise or air quality levels that exceed guideline criteria, subject to a very minor exceedance of noise criteria during short-term vegetation clearing activities. In addition, no land parcels would experience exceedances to more than 25% of their area. Accordingly, no acquisition or mitigation rights are applicable under the *NSW Voluntary Land Acquisition and Mitigation Policy*.

The Department has applied conditions that seek to ensure optimal environmental management outcomes. The Department is satisfied that the quarry would result in acceptable transport outcomes as it involves construction of a new intersection to Cabbage Tree Road with deceleration and acceleration lanes to allow for trucks to safely enter and leave the site. Rehabilitation would be undertaken progressively, as required by recommended conditions. Overall, the Department is satisfied the development is able to be managed in a manner that is generally consistent with the aims, objectives and provisions of the Mining SEPP (as summarised here and outlined in **Section 5**).

The Department considers that the WSS's proposed quarry operation would minimise greenhouse gas emissions, especially when compared to its original proposal. Overall, there would be a reduction of about 25% in total greenhouse gas emissions (Scope 1, 2 and 3 emissions) due to the planned reduction in the quantity of sand to be extracted from the site. Over the life of the project, the operation of the quarry is expected to generate approximately 6,200 tonnes of CO<sub>2-e</sub> Scope 1 and 2 emissions. The greenhouse gas emissions from the quarry are not expected to trigger reporting requirements under the *National Greenhouse Gas Energy Reporting Act 2007*.

Scope 3 emissions, being those associated with indirect emissions associated with the production of diesel fuel, transmission of electricity and third-party transport are calculated to be about 39,000 tonnes of CO<sub>2-e</sub> over the life of the project. Diesel usage by trucks transporting sand to market is the major contributor to Scope 3 greenhouse gas emissions.

WSS has committed to monitoring and reporting on its energy use and to regularly review its operations to seek improvements in energy utilisation efficiency with the twin goals of improving economic returns and reducing carbon intensity.

**SEPP (Infrastructure) 2007**

The development would involve construction of a new intersection on land with frontage to Cabbage Tree Road, which is a classified road. RMS has advised it has no objection to the project subject to WSS meeting its road design standards and other requirements for the new intersection. The Department is satisfied that the volume of additional traffic generated by the project (2% of current traffic flows) would not adversely affect the safety, efficiency or ongoing operation of Cabbage Tree Road, subject to the recommended conditions of consent, which include implementation of construction traffic management measures and construction of the intersection in accordance with relevant road design standards and to the satisfaction of RMS.

**SEPP No. 33 – Hazardous and Offensive Development**

The Department is satisfied that the development is not potentially hazardous or offensive, and that the development is generally consistent with the aims, objectives and requirements of SEPP 33.

**SEPP No. 44 – Koala Habitat Protection**

The site provides suitable habitat for Koalas. However, it does not seem to support a resident population at this time, although it has in the recent past.

The proposal would remove approximately 1.01% of the preferred and 0.78% of the supplementary habitat within the Tomago Sandbeds KMU. The proposal has the potential to displace any Koala individuals with a home-range which includes the extraction area. This is not considered a significant impact as habitat availability is not considered to be a limiting factor on the local Koala population. It is likely that there are areas of suitable habitat that are either un-occupied, or could support a higher density of Koalas, to which the individuals could self-relocate. Due to the relatively small area of habitat removal the proposal is unlikely to significantly impact on the local population.

Concern for the local Koala population is reflected by Council having developed its CKPM which incorporates all the requirements of *SEPP 44 – Koala Habitat Protection*. Generationally persistent populations are known in the Heatherbrae/Tomago area and also to the north of the site. Until the site is permanently re-populated, it provides, and would continue to provide, an important link in the pathway/corridor for Koalas to move between these two known populations.

This pathway/corridor is in the process of being strengthened and secured. The land to the northwest of the site is already secured as part of the Tilligerry SCA. HWC is in the process of converting the lands to the north and west of the site into biobank sites. WSS's proposal to convert 130 ha of the site into a biobank site would provide linkages between these other conservation lands and secure a habitat corridor between the two existing Koala populations (see purple coloured areas on **Figure 15**). WSS's biobank proposals provide a full offset for all Koala species credits that would be affected by the proposed removal of habitat from the site.

**SEPP No. 55 – Remediation of Land**

The Department is satisfied that the development area does not have a significant risk of contamination given its historical and current land uses, and that the development is generally consistent with the aims, objectives and provisions of SEPP 55.

Consideration of the potential for the proposed development to interact with PFAS contamination emanating from the Williamstown RAAF Base is considered in **Sections 5.1.1 to 5.1.6**. The risk of low-level radiation from monazite tailings, known to be buried on the site is considered in **Section 5.1.7**.

**Hunter Regional Environmental Plan 1989 (Heritage)**

This plan was repealed on 4 August 2016 but must be considered in accordance with the transitional arrangements under *SEPP (Integrations and Repeals) 2016*. The Department is satisfied that the development does not affect items of heritage significance on or in the vicinity of the site.

**Port Stephens Local Environmental Plan 2013**

The site is zoned RU2 – Rural Landscape under the local LEP. Development for the purpose of extractive industries is a permissible land use in this zone, with consent. The Department has considered the location of the quarry adjacent to an area of mapped terrestrial biodiversity habitat and is satisfied the development would be consistent with the objectives of this clause. WSS would establish both on-site and off-site biodiversity offset areas in consultation with OEH. Accordingly, the Department is satisfied the project would be consistent with the aims and objectives of the LEP.