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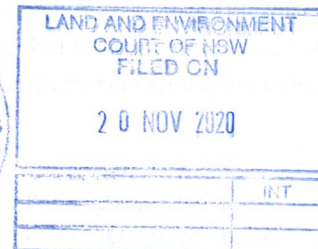
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19 August 2020

Cessnock City Council  
PO Box 152  
Cessnock NSW 2325



Submitted via email: [janine.maher@cessnock.nsw.gov.au](mailto:janine.maher@cessnock.nsw.gov.au)

Dear Janine,

**DA8/2018/539/1 Subdivision at John Renshaw Drive Black Hill NSW 2322**

We are writing to you in regard to actions that came from the Regional Planning Panel Meeting (RPP) held on 5th August 2020. It was requested by the panel, as a result of the adjoining court case, that an assessment of the offsite impacts should be assessed in relation to the proposed development. The offsite works include an extension of reticulated sewer and water to the site and upgrades to John Renshaw Drive and the M1.

Typically, offsite works have been assessed by the authority requiring the works, under Part 5 of the Environmental Planning and Assessment Act via an REF. The court case on the adjoining site at Blackhill, (Stevens Holdings Pty Limited Trading as Stevens Group v Newcastle City Council (No. 2) [2020] NSWLEC 1287), the Stevens Case, found that no assessment was undertaken of offsite impacts, particularly of the road works proposed at the M1 and John Renshaw Drive. The Commissioner stated,

*[246] Relatedly, I find that the Applicant's environmental impact assessment is substantially concentrated on the subject site, and does not include a survey or other environmental impact assessment of the likely environmental impacts arising from offsite road upgrades to John Renshaw Drive and at the southbound merge to the M1 Motorway from John Renshaw Drive in particular.*

Based on the above court case it is proposed to undertake an environmental assessment of the offsite works. However, in undertaking this assessment, we sourced legal advice from McCullough Robertson. In summary their advice found;

1. A development should consider the likely impacts of the development.
2. The likely impacts include offsite development
3. The offsite works needed to be directly linked to the proposed development, as outlined in *Hoxton Park Residents Action Group Inc v Liverpool City Council* (2011) 184 LGERA 104, in this case it was identified that a bridge was required off site to provide access to a school.
4. Works that were not immediately necessary or were unclear as to their final location, it was appropriate for the consent authority to defer the assessment to a later stage - *Australian Coal Alliance Inc v Wyong Coal Pty Ltd* [2019] NSWLEC 31
5. The works needed to be inextricably involved with the overall development, as per *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41



The offsite works proposed for the development, include the upgrading of John Renshaw Drive from the proposed common access to the M1 intersection, The upgrade of then M1 and John Renshaw Drive intersection, the sewer rising main running to the north of the site and a water main.

In considering the above points and the proposed development, being the subdivision of lot 1 in DP 1260203 in the Cessnock LGA for 38 industrial lots, a lot for a substation and a residue lot for E2 zoned land, we make the following points in relation to offsite works;

- The offsite works will have an impact on the environment and the likely impacts should be considered to an appropriate level.
- The proposed works off site, are not exclusively for the benefit of the proposed development. The road network upgrades will provide for the increase in background traffic, the traffic from the adjoining development as well traffic from the proposed development. Similarly, the sewer and water upgrades will provide benefits to the subject lot, the adjoining lot and any other developments that may access the future rising main at a later date.
- It is also important to note that there is existing capacity in the road, sewer and water network for the proposed development, as a result the timing of the upgrades is unknown.
- The road network upgrades will depend on the growth in background traffic against the take up for land within the precinct. Further, the two industrial lots that make up the precinct are proposing very different products, one the subject land, is proposing large lots while the other adjoining lot was proposing 200 smaller industrial lots. Either development could trigger upgrade works, depending on take up of land. As a result, to consider the offsite works that are required for the subject site and the timing of the works, it is difficult to define the extent of works accurately that will be required. It is also difficult to build half an intersection or half a sewer pipe, as a result works may be delivered that are in excess of the demand generated by the subject development and are required to meet other developments.
- As stated above the, offsite works are linked to the subject development, however these are also driven by other sources other than just the subject development. It could also be argued that the subdivision itself does not drive the need for road works, rather the subsequent developments of the industrial buildings are the driver of traffic generation and therefore the development that will set the demand for road works. While this is similar with the sewer and water network, it is acknowledged that lots cannot be created without appropriate sewer and water connections, however the upgrades to these systems is open to influence from a range of other factors such as the take up of land, the users of water and sewer on the site and the speed of development on the adjoining site.
- None of the works are immediately necessary, there is existing capacity in the road system, sewer and water system. In addition, while the works associated with the road system can be accurately located, as they will be an extension of the existing infrastructure, the sewer and water final location is not clear. A sewer and water strategy has been developed which broadly identifies the location of the services, however the exact location will not be known until such time as the final design has been undertaken and submitted to Hunter Water. This location could be adjusted as result of environmental issue, cost related issues, preferences of the Authority, land ownership issues and as such the final location is not clear.
- It is clear that the works will be required to deliver the subdivision, and as a result they are directly linked to the development, however the extent of works may be more than what would be required to serve only the proposed development, providing infrastructure that will serve offsite growth in the immediate area, the adjoining development or the back ground traffic. This is highlighted through he



apportionment discussions that are occurring around the cost of works. Hunter Water already have provisions for the reimbursement of works that are constructed as a result of a single development that then benefit later development that utilise that infrastructure. Similarly, discussions have been ongoing with TfNSW regarding the apportionment of costs around the delivery of infrastructure, as it is recognised that the road upgrades will serve both developments in the precinct and also the background growth of traffic.

- It should also be recognised, that as this infrastructure serves the entire precinct, that depending on sales rates, either development could be required to provide this infrastructure before the other.

Based on the above assessment it can be argued that due to the unknown final location and timing of the sewer and water and the unknown timing of the road works, together with the broad benefit that these infrastructure works provide, an environmental assessment is not necessary based on the findings of *Australian Coal Alliance Inc v Wyong Coal Pty Ltd* [2019] NSWLEC 31 and *Hoxton Park Residents Action Group Inc v Liverpool City Council* (2011) 184 LGERA 104 court cases. However, it is clear that the proposed development has some responsibility for these works and the likely impacts should be considered.

To address this issue, we are proposing to undertake an environmental assessment at a desktop level and only ground truth information if required because of the desktop assessment. Further, to ensure that this assessment is undertaken in a recognized environmental assessment framework the Part 5 format has been adopted. This format also considers likely impacts and provides the base level assessment required to satisfy the relevant agencies, namely Hunter Water and TfNSW regarding their own environmental assessment requirements for the work.

The table in the accompanying Attachment 1, provides a brief outline of what we would expect is reasonable to include within the desktop assessment to satisfy the RPP. We expect that this will provide a suitable assessment to allow for the determination of the development application by the RPP.

If you have any queries regarding this information, please do not hesitate to contact me as below.

Yours sincerely,



Stephen Barr  
**Director**  
sbarr@barrpandp.com.au  
0422 570 345





## Attachment 1

Proposed outline of the desktop assessment.

Section	Comment
<b>1. Introduction and description of the work</b>	
(a) Reason for assessment (b) Site context (c) Proposed works being assessed (d) Location of proposed works	
<b>2. Likely Impacts</b>	
Assessment against EPA Reg 2000 Cl. 228 e.g. (The factors referred to in subclause (1)(b)(ii) are as follows— (a) any environmental impact on a community, (b) any transformation of a locality, (c) any environmental impact on the ecosystems of the locality, (d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality, (e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations, (f) any impact on the habitat of protected animals (within the meaning of the <a href="#">Biodiversity Conservation Act 2016</a> ), (g) any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air, (h) any long-term effects on the environment, (i) any degradation of the quality of the environment, (j) any risk to the safety of the environment, (k) any reduction in the range of beneficial uses of the environment, (l) any pollution of the environment,	Assessing against the REF framework appears to be the most suitable existing environmental structure to consider.



(m) any environmental problems associated with the disposal of waste,  
(n) any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,  
(o) any cumulative environmental effect with other existing or likely future activities,  
(p) any impact on coastal processes and coastal hazards, including those under projected climate change conditions.

### 3. Conclusion and Summary



