

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

HCCRPP No	2018HCC047
DA Number	16-2018-772-1
Local Government Area	Port Stephens
Proposed Development	Concept Proposal for Residential Subdivision and Stage 1 Works including Vegetation Clearing and Establishment of a Conservation Area
Street Address	3221 Pacific Highway KINGS HILL & 35 Six Mile Road KINGS HILL (Lot 41 DP 1037411 & Lot 4821 DP 852073)
Applicant/Owner	Owner - Kings Hill Developments PTY LTD Applicant - Kings Hill Developments PTY LTD
Number of Submissions	17 Unique Submissions Received (21 Total)
Regional Development Criteria (Schedule 4A of the Act)	The development is declared as regionally significant development in accordance with schedule 7 clause 2 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , being general development over \$30 million.
List of All Relevant s4.15(1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 – Remediation of Land; • State Environmental Planning Policy (State and Regional Development) 2011; • State Environmental Planning Policy No 44—Koala Habitat Protection; • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; • State Environmental Planning Policy (Infrastructure) 2007; • State Environmental Planning Policy (Coastal Management) 2018; • Port Stephens Local Environmental Plan 2013 (LEP2013). <p>Development Control Plan: s4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> • Port Stephens Development Control Plan 2014 (DCP2014)
List all documents submitted with this report for the panel's consideration	<p>Attachment 1 – Development Plans</p> <p>Attachment 2 – Recommended Conditions of Consent</p> <p>Attachment 3 – Schedule of Appendices for application supporting documentation</p> <p>Attachment 4 – General Terms of Approval from Rural Fire Service (RFS)</p> <p>Attachment 5 – General Terms of Approval from Transport for NSW</p>

	Attachment 6 – General Terms of Approval from Natural Resource Regulator (NRAR) Attachment 7 – General Terms of Approval from Department of Primary Industries – Fisheries Attachment 8 - External agency advice from Hunter Water Corporation Attachment 9 - External agency advice from AusGrid Attachment 10 - REF Status Letter – Transport for NSW Attachment 11 – VPA Letter of Offer
Recommendation	Approval with conditions
Report by	Ryan Falkenmire (Principal Development Planner)
Report date	14 December 2020

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

The land the subject of this Development Application is the main land holding located within the Kings Hill Urban Release Area (URA). The Kings Hill area is a Greenfield site located north of Raymond Terrace in the Port Stephens Local Government Area. The site has been identified as a major residential release area, and was rezoned in 2010 by Council for development of approximately 3,500 residential dwellings. This Development Application (DA) relates only to the land owned by the lead developer, Kings Hill Developments (KHD), who owns approximately 64% of land within the URA.

This application is seeking Concept Development Approval for a Residential Subdivision, including seven (7) Residential Precincts, Town Centre, Mixed Use Precincts and integrated stormwater and bushfire strategies. These urban precincts will ultimately include all infrastructure and services such as water supply, roads, sewer, recreation areas and stormwater to support future residential development. The Concept Subdivision Proposal identifies an indicative yield of 1,900 residential lots. The land not identified in the footprint of the urban precincts or road corridors will form part of the Environmental Conservation Area.

This application also seeks approval for Stage 1 Works, being the clearing of land within the identified residential development footprint, establishment of environmental protection measures and vegetation enhancement works within the Environmental Conservation Areas. The proposed Stage 1 Works will include the installation of erosion and silt and sediment control infrastructure to ensure protection of the site and the downstream environment. No major earthworks or subdivision works are included as part of Stage 1 Works.

The only physical works sought for approval by this Application are those proposed under Stage 1, while approval to carry out subdivision of the land consistent with the Concept Proposal and any associated internal and external works required to facilitate the Concept Proposal will be the subject of subsequent Development Applications (Stage 2 and beyond).

In support of the Stage 1 Works, the applicant submitted an offer to enter into a Voluntary Planning Agreement (VPA) with Port Stephens Council to act as the legal mechanism to

establish, protect, manage and fund the proposed Conservation Area in-perpetuity. The VPA offer forms part of this assessment as outlined in this report.

Overall, only very limited physical works are permitted to occur under this application. These being weed management, track maintenance/establishment and improvement works in the Conservation Area. Conditions have been recommended in **Attachment 2** to ensure no wide-scale clearing of the site occurs and vegetation removal is only undertaken in conjunction with subdivision works in the urban footprint. Specifically, a condition has been recommended that no vegetation clearing (other than weed management and track maintenance/establishment) be permitted to occur prior to the approval of detailed Development Applications for subdivision in the respective precincts.

Further, a State VPA was executed in October 2019 between KHD and the Minister for Planning and Public Spaces confirming arrangements for the funding and delivery of the infrastructure to enable the KHURA. As part of this VPA, the State government will fund and deliver the Pacific Highway interchange and stormwater drainage channel as enabling infrastructure for the KHURA to ensure development is accelerated. Further detail on the respective Voluntary Planning Agreements is outlined in the following sections of this report.

Concurrently to this application, the design and assessment of the enabling infrastructure required to support development of the URA, being the grade separated interchange from the Pacific Highway and stormwater channel are progressing. As outlined under the State VPA, Transport for NSW (TfNSW) will be the delivery authority for these infrastructure items. Neither the channel nor the interchange form part of this approval, with TfNSW seeking approval for these projects under Part 5 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.0 RECOMMENDATION

THAT DA 16-2018-772-1 for a Concept Proposal for Residential Subdivision and Stage 1 Works including Vegetation Clearing and Establishment of a Conservation Area at 3221 Pacific Highway and 35 Six Mile Road, Kings Hill (Lot 41 DP 1037411 & Lot 4821 DP 852073) be approved subject to the conditions in **Attachment 2**.

2.0 INTRODUCTION

This Development Application (DA) seeks Approval for a Concept Proposal for Residential Subdivision and Stage 1 Works including the clearing of land within the urban development footprint, establishment of environmental protection measures and vegetation enhancement works within the Environmental Conservation Areas. The Concept Proposal seeks approval for the integrated bushfire and stormwater management strategies. All other subdivision components, such as roads, servicing, recreational areas, landscaping and a lot layout will be subject to future detailed applications.

Approval of the Concept Proposal for subdivision under this application will not permit subdivision or construction works on the site. The Concept Proposal will provide a framework for future development on the site and inform the assessment of subsequent Development Applications for subdivision.

The Concept Subdivision Proposal identifies an indicative yield of 1,900 residential lots to be completed over 33 stages. The final lot yield is noted as indicative and will not form part of this approval. The majority of land not identified in the footprint of the urban precincts will form part of the Environmental Conservation Area.

Key aspects of the proposal are provided in Section 5.0, with detailed plans and reports provided in the supporting appendices under **Attachment 3**.

3.0 BACKGROUND

Context

The land the subject of this Development Application is located within the Kings Hill Urban Release Area (KHURA), which identifies the site for future development for urban purposes. The KHURA is a greenfield site located north of Raymond Terrace in the Port Stephens Local Government Area. The site has been identified as a major residential release area, and in 2010 was rezoned for development of approximately 3,500 residential dwellings. The Kings Hill URA forms part of the NSW government's *Hunter Regional Plan 2036* and the *Greater Newcastle Metropolitan Plan 2036*, which identifies the Kings Hill Urban Release Area as the largest and most significant urban release area for the Port Stephens LGA.

This area was subject to the now repealed Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010 prior to being included in the consolidated, Standard Instrument Local Environmental Plan, being the current Port Stephens Local Environmental Plan 2013 (LEP2013).

Application History

This application was originally submitted to Port Stephens Council on 23 November 2018. Following a request for improved clarity in the plans and additional information relating to the ecological assessment, the proposal and the development application was amended and resubmitted in May 2019 to enable public notification between 6 June 2019 and 11 July 2019.

A further request for information was issued to KHD on 11 July 2019 resulting from Council's initial assessment of the application. Community submissions made during the public notification period, and agency comments were also issued to KHD.

The Proposal was further revised and an amended application issued to Council in March 2020 to address the further request for information from July 2019. The amended proposal was re-notified between March and April 2020. The revised application provided additional assessment and details on environmental impact, in addition to a reduced development footprint. Further amendments to the specialist reports has occurred through an independent ecology review undertaken on behalf of Council. These documents form the basis for this assessment.

Community Consultation

In addition to the exhibition of the application by Council, KHD commissioned RPS Group to advertise and conduct two (2) Community Drop-In Sessions in June 2019. The purpose of the sessions was to provide the community an opportunity to familiarise with the proposal and clarify any concerns with the KHD project team. A report as to the outcomes of the consultation is included in **Attachment 3**.

State Voluntary Planning Agreement

Following consultation with the state government, including the Department of Planning, Environment and Industry, Transport for NSW, and NSW Department of Premiers and Cabinet, a VPA confirming arrangements for the funding and delivery of \$80M in infrastructure (stormwater channel and interchange) to enable the KHURA to be developed was executed in October 2019 between the KHD and the Minister for Planning and Public Spaces.

As part of the VPA, the State government will fund and deliver the interchange and the stormwater drainage channel as enabling infrastructure for the KHURA to ensure development is accelerated. The upfront funding by the government and delivery of the infrastructure will be led by TfNSW and recovered wholly through contributions from each landowner within the eastern catchment through the State VPA. TfNSW will be the delivery agency for the interchange and stormwater channel. The accepted design is a grade-separated interchange (Kings Hill Interchange) about 6km north of Raymond Terrace.

The State VPA includes an initial development cap of 400 lots permitted to be released from the KHURA (250 of these lots allocated to KHD) prior to the practical completion of the following:

- Kings Hill Pacific Highway interchange,
- The east-west public road between the Kings Hill interchange and Newline Road, and
- The north-south public road between the interchange and Six Mile Road.

4.0 SITE DESCRIPTION

The site is known as 3221 Pacific Highway and 35 Six Mile Road, and is legally described as Lot 41 DP 1037411 (southern parcel) and Lot 4821 DP 852073 (northern parcel). The site has a total area of approximately 517ha comprised of two separate development parcels. Approximately 205.8ha of the site is zoned E2 Environmental Conservation, whereas some 311.4ha of the site is zoned for urban purposes.

The site is separated into two development parcels dissected by Lot 481 DP 804971, known as 3385 Pacific Highway. The northern lot (Lot 4821 DP852073), consisting of Precincts 1 and 2, straddles Lot 4822 and is bound to the east by the Pacific Highway, to the north by Six Mile Road and to the south and west by existing properties.

The southern lot being Lot 41 DP1037411, consisting of Precincts 3, 4, 5, 6 & 7, is bound to the east by the Pacific Highway, to the west by Newline Road and to the north and south by adjacent properties and wetlands. The Hunter Water Corporation (HWC) Grahamstown Dam spillway is located to the south of the site.

The site includes an existing system of creeks and waterways and a significant area of native vegetation in the northern portion of the southern section. The site is undulating in nature, sloping downward from the north at Six Mile Road to the southern boundary. Access to the site is currently via unsealed fire roads, accessed via Newline Road, the Pacific Highway and Six Mile Road. The elevation within the subject site ranges from 10m AHD to 130m AHD within the upper reaches of the catchment. Existing slope varies from approximately 1% to 30%. The URA comprises an elevated ridgeline traversing the land with a southwest-northeast orientation. The ridgeline forms a backdrop to the urban zoned land, which generally has a south, southeast, and eastern aspect.

The condition of many of the existing watercourses appear to be eroded and in a state of degradation. The watercourses within Precincts 3 (south of the East West Link road), 4,

5, 6, 7 currently drain to the south into the Irrawang Swamp. Watercourses from Precinct 1, 2 & 3 (north of the East West Link Road) currently drain underneath the Pacific Highway via existing drainage culverts to Grahamstown Dam.

The southern development parcel (Lot 41 DP 1037411) comprises approximately 406ha and extends from the Pacific Highway (east) to Newline Road (west) with an irregular shape. There are limited existing improvements on this portion of the site, supporting a dam and formed access road from the Pacific Highway and unformed track accessible from Newline Road. The majority of the site is densely vegetated, with some portions around the dam and access road partially cleared and generally sparsely vegetated with scattered woodland trees. The western portion of this parcel supports a swamp situated adjacent to Newline Road. This swamp is identified as Wetland 803, which forms part of the Irrawang Wetlands catchment.

The northern parcel of the site (Lot 4821 DP 852073) is approximately 111ha, with an irregular shape that straddles a separate allotment (Lot 4822 DP 852073) that does not form part of this application. Existing improvements within this precinct include a residential dwelling with associated outbuildings, together with two existing dams and driveway access from the Pacific Highway. The majority of the site is densely vegetated with limited sections of clearing. The adjoining land located to the north, east and west, is heavily vegetated.

Surrounding Uses

Neighbouring properties primarily include rural residential dwellings and undeveloped land holdings to the north and west of the site.

As stated above, the property at 3385 Pacific Highway (Lot 481 DP 804971) fragments the subject site into two separate parcels. A concept DA (16-2018-769-1), proposing future residential subdivision and site works, has been lodged on the site and is yet to be determined. This property is currently vacant with limited development or improvements. The isolated property under separate ownership, being Lot 4822 DP 852073 in the northern parcel of the KHD site is currently vegetated with no major improvements. This property is under the same ownership as Lot 481 DP 804971, which is identified for future development as part of the KHURA.

The properties situated to the northwest of the southern section, being Lot 31 and Lot 32 DP 554875, are located within the western catchment of the KHURA. These holdings front Newline Road and are identified for future urban development and are currently rural in nature, supporting single residential dwellings and dense vegetation in the western parts. A DA for residential subdivision, site works and clearing (DA-16-2013-599-1) has been lodged on Lot 32 DP 554875. The DA is yet to be determined.

The land located to the east of the site, adjacent the Pacific Highway, includes HWC landholdings and the Grahamstown Dam.

The Riding for the Disabled facility is located to the south of the southern section. This property fronts the Pacific Highway and supports an administration building, associated outbuildings and stables. The property is largely vacant with dense vegetation located in the eastern section.

South of the site is the Irrawang Swamp. Irrawang Swamp, identified as Coastal Wetland 804, is located just north of Raymond Terrace between Newline Road and the Pacific Highway, and is a protected Coastal Wetland under SEPP (Coastal Management) 2018. The mapped extents of Irrawang Swamp comprise approximately 450ha. HWC owns the majority of the holdings within Irrawang Swamp and is currently actively managing the land in accordance with the Irrawang Swamp Plan of Management (Hunter Water,

2012a). The impact of the development on the Irrawang Swamp is assessed in detail as part of this report.

The Suez Raymond Terrace Resource Recovery Park is located south west of the southern section, situated along Newline Road. The facility includes the Newline Road landfill facility, Advanced Waste Treatment (AWT) facility and community drop off area. The former Port Stephens Council landfill site also neighbours the subject site, positioned to the north of the Suez facility on Newline Road and south of Wetland 803. The former Port Stephens Council landfill is undergoing remedial measures including capping of the site. Consideration of air quality and possible gas migration from these waste sites has been addressed in detail as part of this report.



Figure 1 – Aerial image of site - Lot 41 DP 1037411 & Lot 4821 DP 852073



Figure 2 – Site context map

A site inspection was undertaken on 19 June 2019. The following photos depict the site.



Photograph 1 - Frequently inundated zone of Irrawang Swamp that receives flow from Kings Hill South



Photograph 2 - View into Irrawang Swamp from Kings Hill South boundary



Photograph 3 - View west from Pacific Hwy into No. 3385 Pacific Hwy, Kings Hill between Precincts 2 & 3



Photograph 4 - View west within the south-western parts of Precinct 4



Photograph 5 - View north from Six Mile Road into No. 26 Six Mile Rod Eagleton, north of Precinct 1



Photograph 6 - View west of the wetland and lagoon area west of Precinct 4



Photograph 7 - View west within the large environmental corridor between Precincts 2 & 3

5.0 PROPOSAL

5.1 Concept Subdivision Proposal

The Concept Proposal is summarised as seeking approval for the following (see **Figure 3**):

- Establishment of an urban footprint comprising residential and commercial uses, to be developed under future subdivision and development applications, distributed across seven (7) precincts;
- Formalising and creating an Environmental Conservation Area for land that is environmentally sensitive to be retained and managed in-perpetuity;
- The footprint for both the low level, the alternative low level, and the high level water supply reservoirs;
- Stormwater Master Plan strategy including the location of treatment devices and basins;
- Collector road corridors including:
 - A 3.5km long east-west collector road and prospective bus route linking between the residential precincts and the new town centre (providing flood free access for the KHURA between Newline Road in the west, and the Pacific Highway in the east) including eight (8) creek crossings;
 - A 2.5km long north-south collector road linking between the proposed new town centre and Six Mile Road including four (4) creek crossings.

The below subheadings provide further detail on the Concept Proposal.

Urban Precincts

Detail on the seven urban precincts (P1 – P7) is outlined below:

- Precinct 1 (P1) is located in the northern development parcel, adjacent the Pacific Highway and has development area of 14.2ha. Precinct 1 is anticipated to accommodate approximately 102 dwellings.
- Precinct 2 (P2) is located in the northern development parcel of the site and has a development area of 33.5ha. Precinct 2 is anticipated to accommodate approximately 258 dwellings.
- Precinct 3 (P3) is located in the north east corner of the primary development parcel, with frontage to the Pacific Highway and a development area of 32.3ha. This precinct is anticipated to accommodate approximately 323 dwellings. P3 supports the primary commercial hub of Kings Hill, being the Local Centre and supporting mixed use zoning areas, situated to the direct west of the proposed interchange.
- Precinct 4 (P4) is located centrally within the site, comprising the largest precinct in the master plan with a development area of 78.3ha. Precinct 4 is anticipated to accommodate approximately 563 dwellings. This precinct is also anticipated to support two open space areas, school site and a B4 Mixed Use zoning area in

accordance with the DCP D14 Structure Plan (Figure: DAC) and Kings Hill Urban Release Area Community and Recreation Infrastructure Study (April 2020).

- Precinct 5 (P5) is located centrally within the site, to the west of P4. Precinct 5 is indicated for low density residential development anticipated to accommodate approximately 354 dwellings and public open space in the southern portion of the Precinct. P5 has a development area of 44.3ha.
- Precinct 6 (P6) is located in the western portion of the site, to the north of Irrawang Swamp. Precinct 6 precinct is indicated for low and medium density residential development anticipated to accommodate approximately 216 dwellings with a development area of 24.6ha. A large portion of the Precinct supports mixed use zoning.
- Precinct 7 (P7) is located adjacent Newline Road, the most western Precinct in the development. Precinct 7 is indicated for low density residential development anticipated to accommodate approximately 84 dwellings with a development area of 16.56ha. There are no open space or mixed use development areas anticipated for P7.

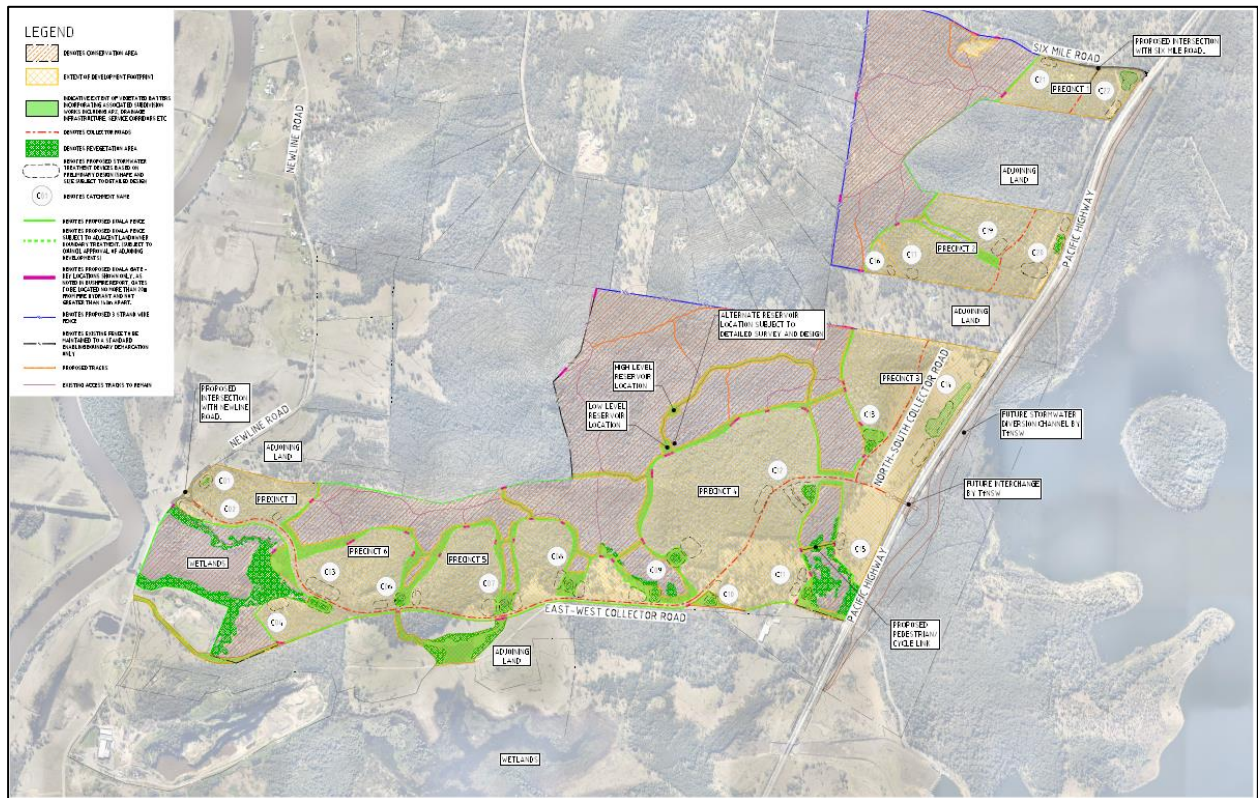


Figure 3 – Concept Subdivision Master Plan

Staging of Urban Release Area

Subdivision works and development of the site will occur over 33 stages as outlined on the submitted staging plan prepared by Northrop (see **Attachment 1**). Clearing and vegetation works will occur in conjunction with future development across the site over.

Environmental and Conservation Area

The remaining residual land with high environmental value and not located within the urban development footprint will form an Environmental Conservation Area. The Conservation Area will be 244.5ha (Approx. 47% of total site area), comprised primarily

of the E2 Environmental Conservation zoned land combined with 38.5ha of urban zoned land which has been avoided as the area contains high biodiversity value.

Works to enhance, manage and protect the Conservation Area has been proposed as part of the Stage 1 works in this application. The conservation works are outlined in the Vegetation Management Plan (VMP) and Biodiversity Management Plan (BMP) prepared by RPS (July 2020). It is proposed to complete the environmental enrichment works specified within the BMP within a five year period and prior to the establishment of an in-perpetuity Agreement for the Conservation Area.

The applicant submitted an offer to enter into a Voluntary Planning Agreement (VPA) to Council on 3 February 2020. The VPA offer will act as the legal mechanism to establish, protect, manage and fund the proposed Conservation Area in-perpetuity.

Once it is determined that the BMP has been adequately implemented by achieving its objectives, the BMP is proposed to be replaced by a separate 'maintenance' focused management regime in the form of a Biodiversity Conservation and Management Plan (BCAMP). The BCAMP would be funded in accordance with the dealings of the VPA offer, and will serve to maintain the establishment works achieved through the BMP by focusing on the maintenance of weeds, feral fauna and infrastructure under an in-perpetuity management framework.

The local VPA will act as the legal mechanism for the ongoing management of the Conservation Area. Further detail on this agreement is outlined in the following sections of this report.

Access and Road Network

The internal road network will consist of collector roads, local streets, perimeter roads and laneways. Two collector roads, denoted as the East-West Link (EWL) and the North-South Link (NSL), will provide the main link between existing road networks, precincts, commercial areas and the local centre. The main access to the site will be via a new grade-separated interchange on the Pacific Highway proposed as part of the enabling works for the KHURA, subject to a separate approval. Further detail on the proposed network arrangements are outlined below:

- The primary access point - a grade separated interchange connecting the East-West Collector Road with the Pacific Highway (subject of separate approval process and to be delivered under State VPA by the TfNSW);
- A roundabout connecting the East-West Collector road with Newline Road;
- An internal, at-grade four (4) leg signalised intersection providing access between the proposed new town centre, the North-South Collector Road, and the Pacific Highway interchange;
- Perimeter roads and associated bushfire asset protection zones within each residential precinct, and along the fenced interface with the proposed Conservation Area;
- A shared pedestrian and cycle path in parallel with both collector roads, interconnecting between the school site, proposed town centre and associated employment areas;
- Pedestrian and cycle bridge linking the town centre with the school site and associated residential precinct.

The proposed Road Hierarchy and Access Plan is detailed below in Figure 4.

The Road Hierarchy and Access Plan is indicative only and does not form part of the Concept Proposal. Local streets, perimeter roads, laneways, cycle ways and pedestrian

paths are subject to future applications. This application only seeks approval for the East-West and North-South Collector road corridors as outlined on Figure 3 and **Attachment 1**.

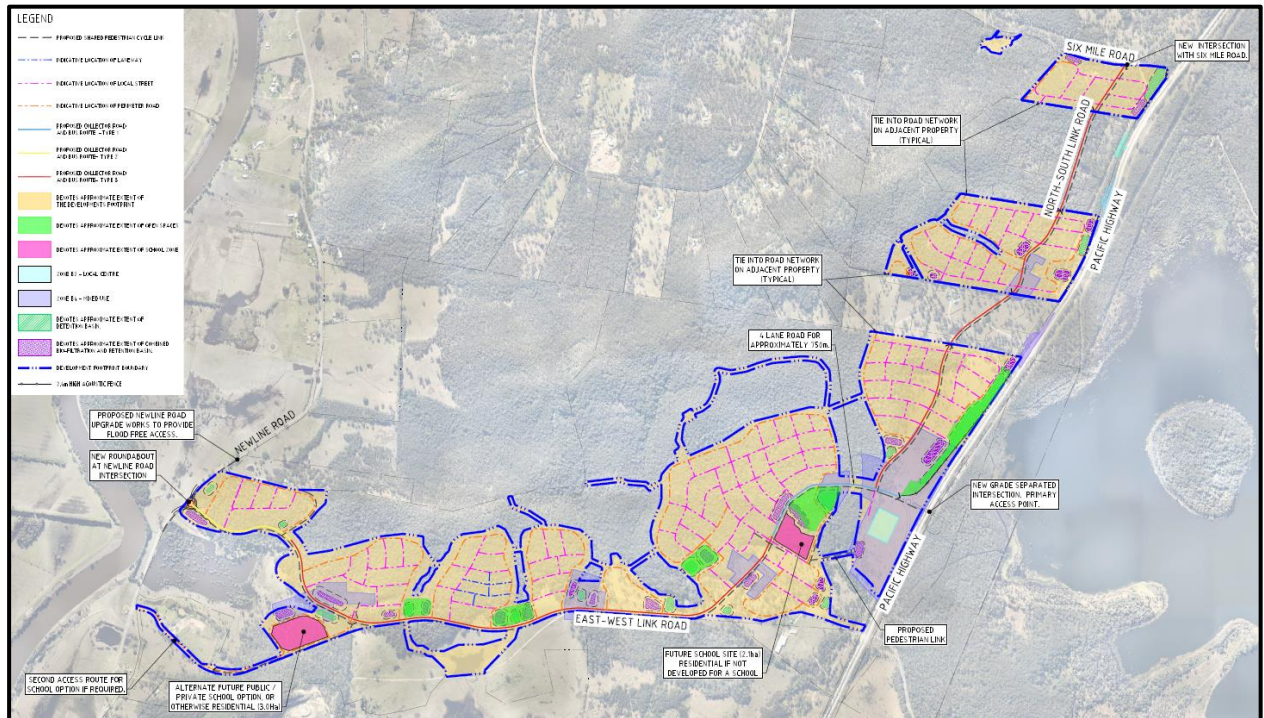


Figure 4 – Road Hierarchy and Connectivity Plan (Indicative)

Upon the Pacific Highway interchange becoming operational, the State VPA and the TfNSW advice require closure of all existing site access points with the Pacific Highway including the existing Riding for the Disabled access point, which will be serviced by a new access within Precinct 4, and the closure of the Six Mile Road intersection with the Pacific Highway.

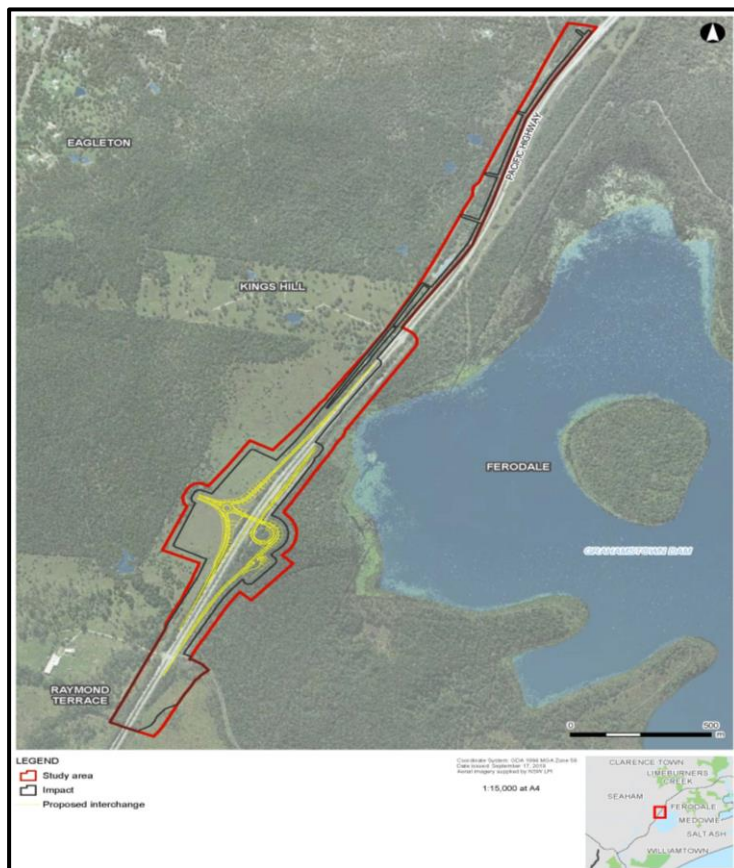


Figure 5 – Concept Design for Pacific Highway Interchange

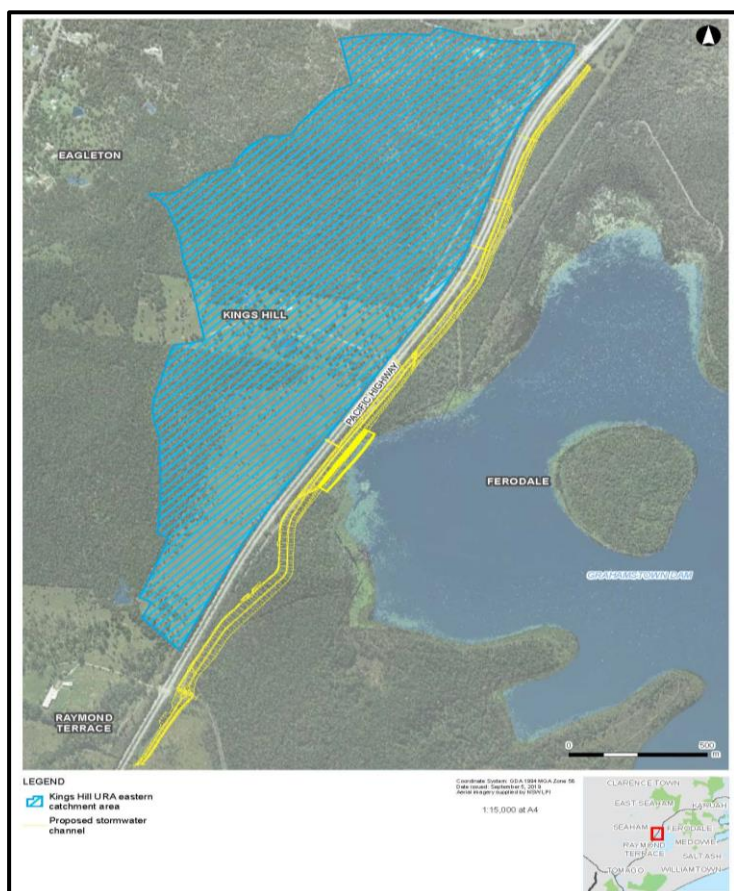


Figure 6 – Concept Design for Pacific Highway Interchange

Stormwater Management

A master plan scale stormwater management approach to model the potential stormwater quality impacts of future development, including the identification of bio-retention basin locations servicing stormwater catchment areas has been proposed as part of the Concept Proposal.

Northrop Engineers developed a stormwater management strategy for the entire site consistent with the *Kings Hill Urban Release Area Water Management Strategy Guidelines* by BMT WBM (dated 16 October 2013) and the Port Stephens Development Control Plan (DCP2014), specifically Section D14.D relating to stormwater. The strategy adopts *Landcom Water's Stretch Targets* for the purpose of managing stormwater impacts from urban development on the Irrawang Swamp.

Detention basins are proposed at 12 different locations across the site. Five (5) of the 12 proposed detention basins will be offline (not within a classified watercourse), while seven will be online within a classified watercourse. Online detention basins are proposed to be located along 1st and 2nd order streams within the site boundary.

The stormwater management plan prepared by Northrop proposes bio-filtration basins in combination with Gross Pollutant Traps (GPTs) for water quality management at a precinct scale. Oversized rain water tanks at a lot scale have also been included as the first step in the treatment train. Preliminary Stormwater Management design for the Concept Proposal are depicted in **Figure 7**.

Conditions have been recommended (**Attachment 2**) that future applications for subdivision must be accompanied by stormwater management plans that are consistent with the Northrop stormwater masterplan strategy to ensure *Landcom Water's Stretch Targets* are achieved. A further condition has been imposed to ensure that the requirement for oversized rain water tanks at a local scale is captured on future applications for subdivision.

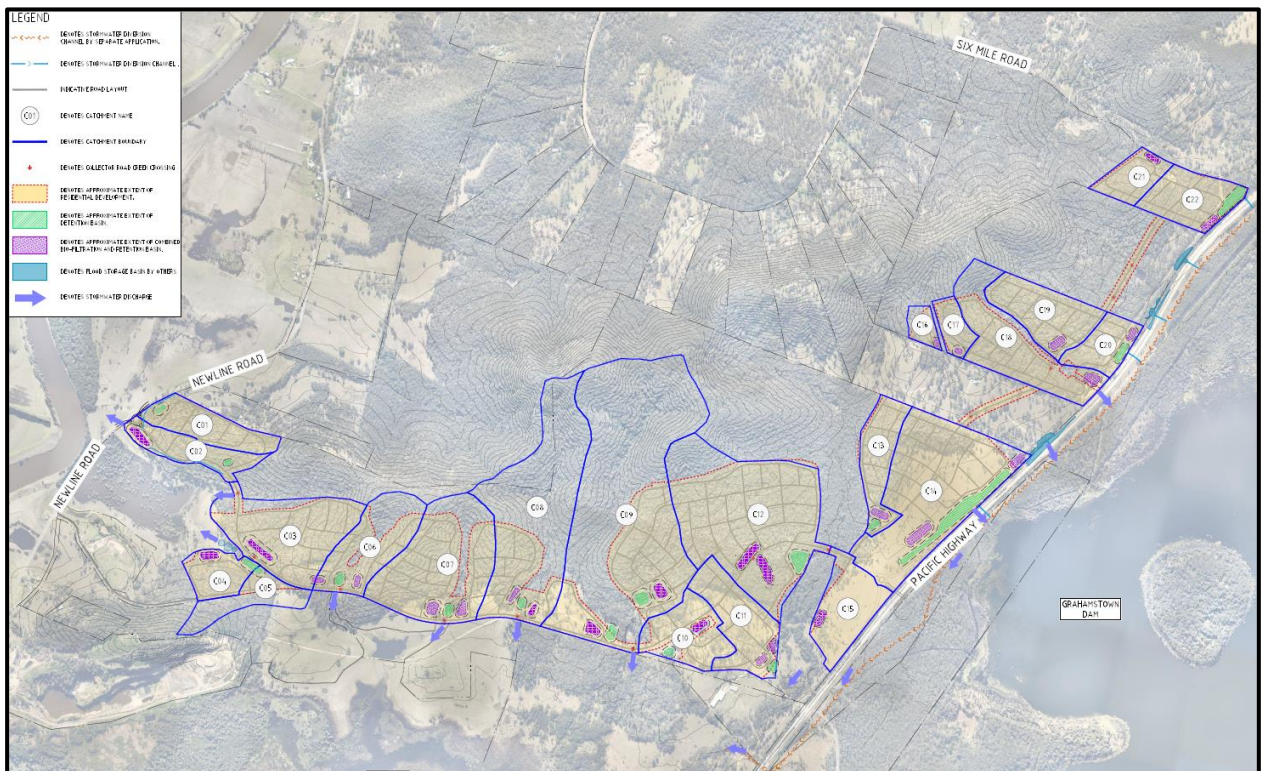


Figure 7 – Stormwater Management Master Plan

Open Space and Recreation

The proposed location and scale of open space (in the form of a district park and multiple local parks) and other recreation and community facilities is identified on the indicative plans provided by the Applicant. However, the specification and the locations of such facilities will be delivered by future applications for subdivision. Consequently, the Concept for which approval is sought excludes open space and recreation items.

The provision of community and recreation assets is to be determined in accordance with the Kings Hill Urban Release Area Community and Recreation Infrastructure Study (GHD, March 2020). The Study specifies the following community and recreation infrastructure to be provided within the Kings Hill Urban Release Area:

- One community centre and library (200m²) to be located in town centre/district park
- Two long dare care centres to be co-located with community centre and/or public school
- One preschool to be co-located with public school
- One RFS Building (to be planned in consultation with RFS)
- Six local parks (total 3.5ha) - four to contain playgrounds
- One district park (3.5ha) near town centre to contain skate park and two multipurpose courts

A condition has been recommended that community and recreation infrastructure be provided under subsequent applications in accordance with Section D14 and Section C1.11 of the DCP, and the Kings Hill Urban Release Area Community and Recreation Infrastructure Study.

Earthworks

Northrop Engineers (December, 2019) have determined during preliminary engineering design that earthworks and regrading will be required across the majority of the site for the provision of access, drainage and the creation of residential lots. Detailed levels and cut/ fill plans will be confirmed within each DA for subdivision. No earthworks are proposed under the Stage 1 Works under this application. Further detail on earthworks will be subject to subsequent development applications.

Ancillary Infrastructure

Water supply and stormwater management infrastructure is identified in the following forms and locations within the Concept Proposal:

- Two water supply reservoirs (high level and low level) with formal vehicle access;
- Prospective Environmental Protection Works Depot in Precinct 1.

Only the footprint for water supply reservoirs is sought for approval under the Concept DA. The Environmental Protection Works Depot and physical works for the water supply reservoirs do not form part of the Stage 1 works and will be subject to subsequent applications.

5.2 Stage 1 – Initial Site Preparation and Vegetation Works

Site preparation works within the development footprint have been proposed which involve the disturbance and progressive clearing of the site over an 8+ year timeframe to enable future urban use in accordance with the Concept Proposal. The proposed Impact Area (comprising urban zoned land, less those parts included in the Conservation Area)

includes a total of 212.14ha of native vegetation comprising threatened species habitat and 59.87ha of pre-existing cleared lands.

The Stage 1 Works are to be carried out in phases under the VMP (RPS, July 2020) to achieve a gradual transition of affected species in impacted areas into the 244.25 ha Conservation Area comprising 'like for like' native vegetation and threatened species habitat restored and improved under the BMP (RPS, July 2020).

More specifically, the VMP provides a program and specifications for works that aim to:

- Restore and protect creek line and riparian areas;
- Manage impacts on threatened species, endangered ecological communities and habitat trees through implementation of a progressive clearing process that allows time for species to adjust and/or relocate from Impact areas to Conservation Areas;
- Outline the management framework for minimising impacts on vegetation and habitat within the Impact Area;
- Identify the appropriate timing of works including site preparation, resource recovery (extraction of timber, native plants and bushrock etc.), planting, weed management, and also providing a schedule of works;
- Identify and assign responsibilities for ongoing management actions over an 8+ year period; and
- Ensure that the project is planned, designed and implemented by informed experienced contractors in order to avoid harm to the quality, stability and natural functions of remnant bushland and riparian areas.

The VMP is aimed at supporting management and habitat enhancement works recommended by the Species Impact Statement (RPS, July 2020) and proposed to be applied under the BMP for the Conservation Area.

The staging of Stage 1 works proposed under this application is summarised in Table 7.2 of the Species Impact Statement (SIS) submitted with this application, and the extent of land subject to site preparation works within each phase of the proposed works are depicted in **Figure 8** below. The phased site preparation works provides a framework that will minimise impact intensity on sensitive biodiversity values. In essence, it allows for the gradual removal of vegetation to enable species relocation into the Conservation Area over the 8+ year period. The Phased approach is provided in detail as part of the SIS.

Site preparation Phases are summarised in Table 1, and the extent of land subject to site preparation works within each Phase is depicted.

Proposal Phases	Objective	Time (years)	Vegetation Change ²⁸ (ha)
Phase 0: Pre-construction habitat restoration and enhancement works	<ul style="list-style-type: none"> Enter a Planning Agreement to secure implementation of the following Phases Commence BMP works to establish the Conservation Area (i.e. early implementation of amelioration measures) Collect baseline dataset for monitoring program Initiate research compensatory measure 	-2 to 1	- 0.00 + 11.23 (Area A) + 3.27 (Area B)
Phase 1: Construction of main east – west road connecting the Pacific Highway interchange with Newline Road plus development of areas with reduced biodiversity value	<ul style="list-style-type: none"> Minimise impacts on <i>Corybas × dowingii</i> Performance test the efficacy of amelioration measures for Phase 1 (monitoring) Finalise establishment of Conservation Area by completing the BMP Continue research compensatory measure Deliver compensatory measures for the Koala, Brush-tailed Phascogale, Large Forest Owls, <i>Pterostylis chaetophora</i>, <i>Corybas × dowingii</i> and <i>Maundia triglochinos</i> 	1 to 3	- 75.88 + 0.53 (Area A) + 1.81 (Area B) + 2.46 (Area C)
Phase 2: Selective construction of development areas with reduced biodiversity value	<ul style="list-style-type: none"> Minimise impacts on <i>Corybas × dowingii</i> Finalise arrangements for the in-perpetuity conservation of the Conservation Area Performance test the efficacy of amelioration measures Conclude research compensatory measure 	>3 to 8	- 48.71
Phase 3: Construction of residual approved development areas	<ul style="list-style-type: none"> Maintain mitigation measures and monitoring program Performance test the efficacy of amelioration measures 	>8 +	- 87.55

Table 1 - Overview of Site Preparation Phases (SIS, July 2020)

The phased site preparation submitted in the SIS and VMP propose that clearing occur progressively throughout the urban footprint in Phases, which are to be carried out in three (3) sequential Steps under each Phase, being:

Step 1: At any time – works include:

- Removal and management of weeds and pests;
- Fencing of proposed Conservation Area;
- Maintenance of existing tracks generally and construction of proposed tracks in the proposed Conservation Area.

Step 2: Post EPBC approval (if required) and post DA approval for subdivision - works include:

- Resource recovery (logs, hollow, rocks) to furnish the Conservation Area.
- Thinning of Vegetation to an Outer Protection Area (OPA) standard, to mitigate bushfire threat to the approved areas for subdivision, and surrounding or adjoining developments.

Under Council recommendations, Step 2 is only to commence within catchments where: EPBC approval obtained (if required); Development Consent is granted for Subdivision; a Subdivision Works Certificate has been issued; and after stormwater management devices constructed to enable the approved works.

Step 3: Within the 6 months of Subdivision Works Commencing

- Clearing of remaining vegetation to enable subdivision construction, other than trees identified in the approved subdivision plans to be retained for landscape, character, and amenity purposes. Clearing limited to extent of Subdivision Works approved.

Under Council recommendations, Step 3 is only to commence where Step 2 works are completed, and only to the extent that Subdivision Works are being carried out under a Development Consent for subdivision.

Despite the staged and phased approach outlined in the SIS, Council has provided conditions (as outlined above) to ensure clearing occurs in conjunction with future development across the site and to restrict wide scale clearing. Conditions have been recommended that prior to complete vegetation clearing (Step 2 and 3 clearing by the SIS), Development Consent must first be granted to enable the carrying out of development or subdivision under the respective subsequent applications.

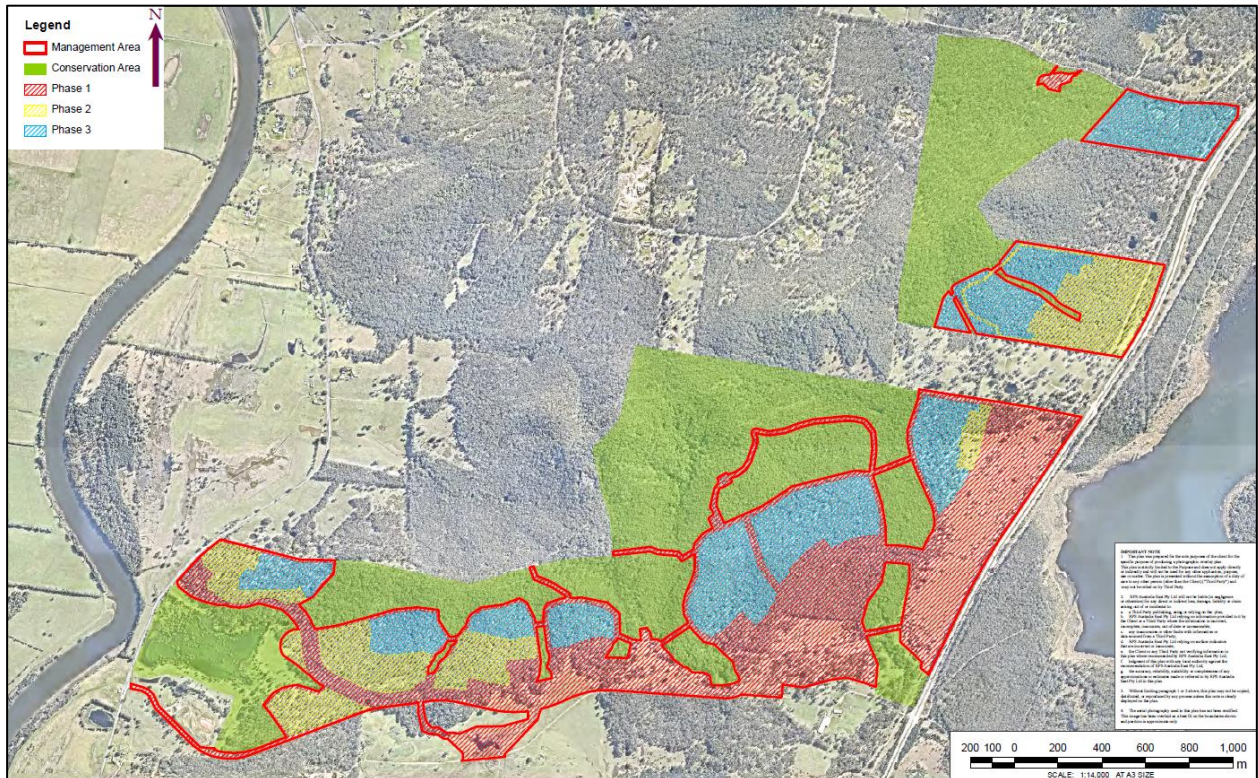


Figure 8 – Staging Plan for Stage 1 Vegetation Works

5.3 External Works for Consideration – Subject to Separate Approval

Pacific Highway Interchange (Separate Approval)

TfNSW proposes to design and construct a new grade separated interchange over the Pacific Highway at Kings Hill (see **Figure 5**). The proposal is required to enable safe and efficient access and egress to the proposed Kings Hill Urban Release Area.

TfNSW are seeking approval under Part 5 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the interchange. The interchange is categorised as development for the purpose of a road and TfNSW is the determining authority for the proposal.

A construction program for the interchange has not yet been confirmed. However, it is expected that construction would take about 14 months, with preliminary utility relocations potentially commencing in 2021.

The recommended conditions (**Attachment 2**) include restrictions on the timing and commencement of future works in the KHURA to align with the delivery of the interchange. This includes a condition that no more than 250 lots are permitted to be developed prior to completion of the interchange.

Further detail for the Interchange is provided at Section 6.5.4.10 of this report.

Grahamstown Dam Stormwater Channel (Separate Approval)

Transport for NSW (TfNSW) proposes to design and construct a stormwater channel that would be located on the eastern side of the Pacific Highway, between the road corridor and the Grahamstown Dam (see **Figure 6**). The proposal would capture stormwater runoff from KHURA, the adjacent Pacific Highway and the proposed grade separated interchange over the Pacific Highway at Kings Hill (which is subject to separate assessment and approval).

The need for the channel is from HWC requiring runoff from the eastern catchment area of the KHURA being prevented from entering the Grahamstown Dam. The stormwater channel would convey post development flows, treated at source within the KHURA on the west of the Pacific Highway, and prevent stormwater entering into the Grahamstown Dam for any rainfall event up to the 0.2% Annual Exceedance Probability (AEP).

The stormwater channel would be approximately 3.5 kilometres in length, parallel to the Pacific Highway between a point 80 metres south of the Pacific Highway and Six Mile Road intersection and the proposed discharge point at Irrawang Spillway.

TfNSW is seeking project approval under Part 5 of the *EP&A Act* for the channel. For the purposes of these works, TfNSW is the proponent and Port Stephens Council (Council) is the determining authority.

A construction program for the channel has not yet been confirmed. However, it is expected that construction would take about 14 months, with preliminary utility relocations potentially commencing in 2021.

According to TfNSW, both the stormwater diversion channel and interchange would ideally be constructed at the same time. This would enable the use of suitable material excavated from the proposed stormwater channel to be used in the construction of ramps, reducing the need to stockpile, import or export material, and associated costs.

The recommended conditions (**Attachment 2**) include restrictions on the timing and commencement of future works in the KHURA to align with the delivery of the channel. This includes no Step 2 or Step 3 (as outlined in the VMP) clearing works or subdivision works being permitted to occur in the Grahamstown Dam Drinking Water Catchment prior to completion of the Grahamstown Dam Stormwater Channel.

Further detail for the Channel is provided at Section 6.5.4.10 of this report.

Water and Sewer Works (Separate Approval)

The Applicant (KHD) as the lead developer for the KHURA lodged a DA for the lead in water and sewer works (DA16-2020-81-1), including pump station on 27 February 2020. This application was approved on 29 September 2020, with the HCCRPP as the determining authority. Essential servicing is discussed in further detail as part of this report.

Other External Works (Newline Road and Six Mile Road)

The Applicant has provided a scope of external works plan. This plan set illustrates the preliminary engineering design of road and drainage works on Newline Road and Six Mile Road anticipated external to the site to enable access in times of flood. The plans have been provided to enable a level of assessment which confirms that the works required are not likely to cause significant environmental impact; do not involve works of a kind that are unlikely to obtain consent or approval; and do involve the acquisition of privately owned land. The scope also includes the Six Mile Road/Pacific Highway intersection

upgrades as required by TfNSW and the GHD Traffic and Transport Study (2019) commissioned by Council.

A supplementary ecological assessment of the works required at each location was also provided by the Applicant.

The flood free access works would be required if lots under the initial 250 development cap are proposed to be released prior to the completion of the Pacific Highway Interchange. A condition has been included that requires external road upgrades to be complete to ensure the development has an appropriate flood access route with 5% AEP flood immunity to the Pacific Highway.

6.0 PLANNING ASSESSMENT

6.1 Environment Protection Biodiversity Conservation Act 1999 (EPBC Act)

The purpose of the EPBC Act is to ensure that actions likely to cause a significant impact on Matters of National Environmental Significance (MNES) undergo a process of assessment. Under the EPBC Act, an action includes a Proposal, undertaking, development or activity that may impact MNES. An action that 'has, will have or is likely to have a significant impact on a MNES' is deemed to be a 'controlled action' and may not be undertaken without prior approval from the Commonwealth Minister for the Department of the Environment and Energy (DoEE).

The first step in considering MNES protected under the EPBC Act (e.g. Section 18 and 18A) is a self-assessment performed in accordance with the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance (DoE 2013). This is performed to determine if there is likelihood for an action to have a significant impact on MNES.

Regulatory approval from the Commonwealth Minister for the Environment is required to be sought by the proponent for actions that have, or are likely to have, a significant impact on MNES prior to works commencing on the site.

Under the Bilateral Agreement between the Commonwealth and NSW governments, the Commonwealth has accredited the NSW assessment process under the EP&A Act, to enable a single integrated assessment of the Project. However, the proponent has the responsibility to refer the proposed development to the Department of Agriculture, Environment and Water Resources to determine whether the development is a controlled action. The Commonwealth's decision-maker maintains a separate approval role, which will be exercised outside of the determination of this development application.

The SIS prepared by RPS addresses the relevant considerations of the EPBC Act and requirements for the Proposal.

6.2 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) came into force on 25 August 2017 and supersedes the Threatened Species Conservation Act 1995 (TSC Act). The BC Act requires all types of development (Part 4 and Part 5 developments) to be assessed to determine whether the biodiversity offset scheme is to be applied.

Assessment under the BC Act is not required for this proposal as it is being assessed under the transitional arrangements defined in the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

6.3 Threatened Species Conservation Act 1995 (TSC Act)

The Application was lodged on 23 November 2018 and at the time of lodgement Port Stephens Council was identified as an interim designated area for the purposes of the transitional arrangements of the *Biodiversity Conservation Act 2016*. As such, the former planning provisions including the *Threatened Species Conservation Act 1995* (TSC Act) apply.

The TSC Act provides for the conservation of threatened species, populations and ecological communities of animals and plants. The TSC Act sets out a number of specific objects relating to the conservation of biological diversity and the promotion of ecologically sustainable development.

A Species Impact Statement (SIS) is required for developments that are to take place on land which contains a critical habitat, or will impact on the life of endangered species of their populations. These statements must be prepared in accordance with Sections 109, 110 and 111 of the TSC Act, which describes the form and content of an SIS.

A review of the proposed zoning, commissioned by Port Stephens Council and at the request of OEH, was completed by EcoBiological Pty Ltd (2009) in 2009. Ecobiological identified areas within the KHURA where land uses within the urban zone could potentially result in a significant impact on the certain threatened species or their habitat. To inform and respond to Ecobiological's recommendations, and to inform the Development Application process (as to whether a significant impact is likely), the Chief Executive Requirements (CERs) for the preparation of a Species Impact Statement (SIS) were obtained from the NSW Office of Environment and Heritage in 2017, and updated at the request of the Applicant in 2018 pursuant to Section 111 of the TSC Act.

In light of the above, RPS prepared an SIS to support the Proposal in accordance with the CERs issued by OEH (now the Biodiversity Conservation Division) on 9 September 2018. The SIS is underpinned by the legislation and policy appropriate to the assessment with specific regard to the NSW Biodiversity Conservation (Savings and Transitions) regulation 2017.

To support the SIS, RPS submitted a VMP as part of the assessment documentation to guide phased site construction and development across the site. The VMP acknowledges the proposed ameliorative and mitigation measures along with recommendations in the SIS.

A BMP has also been provided as part of the assessment documentation to guide establishment and management of the Conservation Area. The BMP acknowledges the proposed ameliorative and mitigation measures along with recommendations in the SIS. Monitoring and reporting underpins the BMP performance. Of key note, all measures detailed in the SIS relating to the Koala have been detailed in the BMP.

If the Proposal is likely to have a significant effect on threatened species, populations or ecological communities (including their habitat), then the concurrence of the Chief Executive of the NSW Biodiversity Conservation Division (formerly OEH) is required before consent may be granted, as stated in the CERs dated 9 September 2018.

Chapter 6 and 8 of the SIS presents a detailed assessment of significance for each entity assessed within the report. The assessment duly considers an initial assessment of all potential threatened species, populations and ecological communities occurring in the locality (Chapter 3). The impact assessment draws on field survey results and appropriate consideration of cumulative impacts. The assessment has determined that no significant

impact will occur to threatened species, populations and ecological communities assessed as a result of the proposal as defined under the relevant framework.

Based on the findings and recommendations of the SIS, the proposal is not likely to significantly affect a threatened species, population, or ecological community, or its habitat. Referral and the concurrence of the NSW Biodiversity Conservation Division (formerly OEH) is therefore not required.

Ecological Impact

A total of 212.14ha of native vegetation comprising threatened species habitat and 59.87ha of cleared lands will be progressively impacted by the Proposal for future urban use over an 8+ year timeframe. The site preparation works involved in this process are to be phased and managed in a sensitive manner in accordance with the VMP prepared by RPS (2020). The works under the VMP will encourage the gradual transition of affected species in impacted areas into a 244.25ha Conservation Area comprising 'like for like' native vegetation and threatened species habitat which will be restored and improved under the BMP. Restoration and improvement works in the conservation area under the BMP will commence prior to impacts managed under the VMP to enable species transition where desirable.

The proposed clearing impact is countered by the establishment of a 244.25ha Conservation Area proposing 'like for like' native vegetation and threatened species habitat. Mitigation that forms part of the Proposal, and detailed in the BMP, is listed below:

- Revegetation works in cleared lands to benefit the Koala and winter-spring nectar dependent species;
- Habitat enrichment works for the Koala;
- Habitat enhancement (i.e. installation of hollows, fauna fencing and emplacement of fallen logs);
- Weed management (e.g. removal of Lantana and African Olive);
- Feral animal control (e.g. wild dogs, feral cats and deer);
- Fencing of Conservation Areas to:
 - curb and deter illegal and uncontrolled activities (e.g. illegal dumping, timber getting, and hunting);
 - manage existing rural activities that impact on native plants and weed dispersal (e.g. grazing by cattle, horses, goats);
- Habitat protection for threatened species; and
- Use of a conservation mechanism to locally protect threatened species and their habitat from future development.

The VPA terms have been endorsed in principle by Council (8 December 2020) for the purposes of delivering an in-perpetuity conservation agreement for the Conservation Area. The establishment and in-perpetuity protection of the Conservation Area under a VPA is consistent with the options outlined in the CERs. The requirements of the VPA offer have been incorporated into the recommended conditions at **Attachment 2**. The motion of Council endorsement is provided at **Attachment 3**.

Stage 1 of the Concept DA proposes the progressive and sequential clearing of vegetation within the urban footprint. The carrying out of approved clearing is proposed to occur in Steps (as discussed in this report). The Applicant has noted the

commencement of clearing under Step 2 and Step 3 is proposed to be deferred until (and carried out only to the extent that):

- approval is granted under the EPBC Act (if required); and
- approval is granted under a Development Consent to carryout subdivision; and
- a Subdivision Works Certificate is in place to enable subdivision works; and
- stormwater management works are constructed within the catchment where Step 2 and Step 3 clearing works are proposed.
- a clear understanding will be provided by the Applicant that can be translated into conditions of consent for future detailed applications to ensure the responsible / sustainable clearing of land.

In adopting these measures, along with others detailed in the SIS, including the funding and delivery of an in-perpetuity conservation outcome, the SIS assessment concluded that the Concept Proposal, derived from the relevant statutory and environmental considerations relative to land use zones, could be delivered with no significant impact likely on threatened species, populations or ecological communities.

To ensure no wide-scale clearing of the site occurs and vegetation removal is only undertaken in conjunction with subdivision works in the urban footprint, a condition has been recommended that no vegetation clearing (other than Step 1 works including weed management and track maintenance/establishment) be permitted to occur prior to the approval of detailed Development Applications for subdivision in the respective precincts.

At the request of Council, an independent ecological review of the assessment documentation informing this Development Application was undertaken. Based on this review, the SIS, field surveys, reporting of results and consideration of alternatives including avoidance and proposed mitigation measures were supported. Information and assessment presented in the SIS report relating to impacts and assessment of significance was also supported. The detailed assessment and measures presented in the SIS and supporting VMP and BMP relating to the Koala was supported.

Subject to the implementation of the VMP, BMP and adoption of a mechanism that achieves the fully funded management and preservation of the Conservation Area in perpetuity, the independent review concluded that the proposed Concept DA will not have a significant impact on threatened species, populations and ecological communities as assessed in the SIS such that a local extinction will occur.

On this basis, Council have supported the level of ecological impact and included the VMP, BMP and VPA requirements as part of the recommended conditions of consent contained at **Attachment 2**.

6.4 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974*, administered by NSW Biodiversity Conservation Division (formerly OEH), is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. Section 86 of that act has been amended and deals with harming and desecrating Aboriginal Objects.

Myall Coast Archaeological Services (MCAS) undertook archaeological investigations of the KHURA to support the rezoning for the site in 2003. It was identified the upper ridge and slopes of the KHURA contain caves, ceremonial grounds and a walking track and hence are identified as having archaeological heritage significance to the Worimi People. Part of the area of significance dissects the north-west corner of the site. This area is

located primarily within the E2 zoned land and is therefore not impacted by this Concept Proposal.

A further report was prepared, *Summary of Archaeological Studies and Findings Kings Hill Urban Release Area – October 2020*, as a summary of assessments and findings made by MCAS since 2002 (contained under **Attachment 3**). The archaeological assessment was carried out in consultation with the Worimi and Karuah Local Aboriginal Land Councils, as well as Worimi traditional owner representatives. According to the Study, further assessment of land within the Conservation Area was not deemed to be required. However, a Plan of Management should be prepared in consultation with the Worimi Local Aboriginal Land Council to ensure recreation and any other land uses, as well as conservation activities within the Conservation zoned area, remain compatible with the areas of highest significance.

Given there is no development or earthworks proposed as part of this application in the vicinity of the identified objects contained in the upper ridge and slopes of the KHURA, the Applicant has also advised no AHIP is required.

To avoid any risk to sensitive archaeological sites, an unexpected finds protocol condition has been included in the event any objects are discovered during Stage 1 vegetation works. Further, Council's Heritage Advisor recommended a condition be included that future detailed applications for subdivision are to be accompanied by an Aboriginal and Cultural Heritage Assessment.

Additionally, a condition has been recommended that a Plan of Management be prepared for the areas identified as being culturally significant in the E2 zoned land prior to any vegetation works commencing.

6.5 Environmental Planning and Assessment Act 1979 (EP&A Act)

6.5.1 Section 2.15 – Regional Planning Panels

Section 2.15 and Schedule 2 of the *EP&A Act* provides that the Regional Planning Panel is the determining authority for regionally significant development. In this case, the Hunter and Central Coast Regional Planning Panel (HCCRPP) is the determining authority for the subject Application, as the proposal is regionally significant development as identified under schedule 7 clause 2 of SEPP (SRD), being General Development having a Capital Investment Value (CIV) over \$30 million. The development has a CIV of \$146,591,361.

6.5.2 Section 4.22 – Concept development applications

Section 4.22 of the *EP&A Act* defines a 'concept development application' as a development that seeks out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of subsequent development applications. Further, it is identified that in the case of a staged development, the application may set out detailed proposals for the first stage of development. However, if consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site unless; consent is subsequently granted through a further development application, or the concept development application included the first stage of the development. The provisions of Section 4.22 of the *EP&A Act* have been outlined below.

4.22 Concept development applications

- (1) *For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—*
 - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

Note—

The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

The Applicant has identified that the subject application is a ‘concept development application’ and therefore Section 4.22 of the *EP&A Act* applies. The application also includes the requisite details of the development comprising the first stage of works, being vegetation clearing, environmental enrichment and protection works. Future applications will be required to be submitted in order for the applicant to obtain development consent for the undertaking of the proposed subdivision works.

Clause 5 of Section 4.22 requires the consent authority, when considering under Section 4.15 of the *EP&A Act* the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

This assessment has considered the impacts of the Stage 1 works, and included an assessment likely impact of future subdivision works on the site. Noting the subdivision component is for concept purposes only, a more detailed assessment of construction impacts for subdivision works is to be undertaken at the subsequent detailed DA stage in

accordance with clause 5 of Section 4.22, when more detailed design of proposals and their construction methods can be fully considered.

Clause 70A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs) specifies the information to be included in concept development applications:

‘Despite clause 50(1)(a), the information required to be provided in a concept development application in respect of the various stages of the development may, with the approval of the consent authority, be deferred to a subsequent development application.’

Detailed investigations have been provided with respect to vegetation works and clearing under Stage 1 works. Details and information for the Concept Proposal relating to subdivision are limited to enabling an assessment of likely impacts of future subdivision development. A satisfactory level of information and investigation was submitted to Council to enable an assessment of the likely impacts of future subdivision development on the site.

6.5.3 Section 4.46 – Integrated development

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals. The proposed development is classified as integrated as it requires approval under the following Acts:

Rural Fires Act 1997

The site is nominated as ‘bushfire prone land’. The proposed development (residential subdivision) constitutes ‘integrated development’ pursuant to Section 4.46 of the EP&A Act as a Bush Fire Safety Authority, under Section 100B of the *Rural Fires Act 1997* (RF Act) is required.

A Bushfire Hazard Assessment prepared by Australian Bushfire Consulting Services, dated March 2020 was submitted with the application pursuant to Section 100B of the *Rural Fires Act 1997*.

The Application was referred to the New South Wales Rural Fire Service (NSW RFS) seeking General Terms of Approval (GTAs) as integrated development. NSW RFS issued GTAs, and a Bush Fire Safety Authority, under Section 100B of the *Rural Fires Act 1997* for the Concept Proposal. The GTAs required future residential subdivisions to comply with ‘Planning for Bush Fire Protection 2019’. The GTAs are included as part of the recommended conditions which can be found in **Attachment 4**. Subsequent referrals to RFS under the *RF Act* will be required for future detailed applications for subdivision.

Roads Act 1993

Transport for NSW (TfNSW) is the roads authority for all State classified roads in the local government area. TfNSW is responsible for setting standards, determining priorities and carrying out works on State roads. TfNSW approval is required prior to Council’s approval of works on classified (Regional) roads under Section 138 of the Roads Act 1993.

The Pacific Highway is a classified (State) road and under Section 138 of the Roads Act 1993 (Roads Act), approval of TfNSW is required if the following is proposed:

- (a) *erect a structure or carry out a work in, on or over a public road, or*
- (b) *dig up or disturb the surface of a public road, or*

- (c) *remove or interfere with a structure, work or tree on a public road, or*
- (d) *pump water into a public road from any land adjoining the road, or*
- (e) *connect a road (whether public or private) to a classified road*

The application proposes the following works:

- Augmentation of utilities and stormwater infrastructure in the Pacific Highway reserve;
- Connection of collector roads from the proposed Pacific Highway Interchange.

The application was referred to TfNSW. Advice from TfNSW (dated 20 December 2019) recommended a number of conditions relating to the staging and delivery of the KHURA road network with regard to the Pacific Highway Interchange and initial development cap for lots, traffic management and access via Six Mile Road. No formal GTAs from TfNSW were provided as the application does not include any physical works in the Pacific Highway. Subsequent applications for subdivision that includes works in the Pacific Highway corridor will be referred to TfNSW. The advice from TfNSW have been included in the recommended conditions at **Attachment 2**.

The revised application received from the applicant in March 2020 was referred to TfNSW for comment. TfNSW advised there were no changes to the previous conditions provided.

Water Management Act 2000

The subject site contains a number of mapped waterways and waterfront land. Section 91 of the *Water Management Act 2000* provides that a *controlled activity approval* is required for any works consisting of a controlled activity that is carried out on waterfront land.

A controlled activity means:

- (a) *the erection of a building or the carrying out of a work (within the meaning of the Environmental Planning and Assessment Act 1979), or*
- (b) *the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or*
- (c) *the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or*
- (d) *the carrying out of any other activity that affects the quantity or flow of water in a water source.*

The Proposal will involve stormwater and vegetation works that constitute a controlled activity as listed at (a) through (d) above in relation to defined waterfront land and works that require reshaping of first order streams. On this basis, the development is classified as integrated development pursuant to Section 4.46.

The Application was referred to the Natural Resources Regulator (NRAR) to review the application with regard to ss 89, 90 and 91 of the *Water Management Act 2000*. NRAR issued GTAs dated 8 August 2019. Conditions relating to the design of structures, erosion and sediment control, rehabilitation and maintenance were included in the GTAs.

The GTAs issued by NRAR does not constitute an approval under the *Water Management Act 2000*. The proponent must still apply to NRAR for the relevant approval after development consent has been issued by Council for subdivision and before the commencement of any work or activity on subsequent applications. The NRAR GTAs have been included in the recommended conditions at **Attachment 2**.

Fisheries Management Act 1994

Development and activities (other than aquaculture) within or adjacent to waterways mapped or defined as Key Fish Habitat require permits that are classified as integrated development under Section 4.46. Department of Primary Industry (DPI) - Fisheries is the 'approval body' for development that requires one or more of the following permits under the *Fisheries Management Act 1994 (FM Act)*:

- *Section 201 - permit to carry out works of dredging or reclamation.*
- *Section 205 - permit to harm (cut, remove, damage, destroy etc) marine vegetation on public water land or the foreshore of such land or on an aquaculture lease.*
- *Section 219 - permit to obstruct the free passage of fish*

Separate licencing requirements outside of the integrated development provisions are under the *FM Act* under Section 220ZW if an action is likely to result in:

- harm to a threatened species, population or ecological community;
- damage to critical habitat; or
- damage to the habitat of a threatened species, population or ecological community.

The Key Fish Habitat Assessment prepared by RPS (dated 22 May 2019) identified two investigation areas for the assessment of Key Fish habitat. Investigation Area One is located on the western boundary of the study area and can be characterised as a mapped Coastal wetland associated with the Williams River (i.e. Wetland 803). Investigation Area Two is located on the southern boundary of the Proposal and is bordered to the south by the Irrawang wetland.

The southern purple spotted gudgeon (*Mogurnda adspersa*) is the only threatened species listed under the *FM Act* which is predicted to occur and may be potentially impacted by the Proposal. The swamp located in Investigation Area One potentially provides key habitat for this species. A 7-part test of significance as listed under Section 220ZZ of the *FM Act* has been conducted for this species as part of the Key Fish Habitat Assessment prepared by RPS. This assessment determined that the proposed action is unlikely to have a significant impact on this species under the assumption that appropriate design principles are applied in the management of water quality (e.g. sediment control plans are adequate to ensure no significant change in water quality occurs as a result of the development). It is also not expected that the changes in water level will adversely impact the survival of this species.

The Proposal may still however impact upon Key Fish Habitat for works associated with proposed creek crossings in Precincts 5 and 7 (identified as 'A' and 'D' in the Key Fish Habitat Assessment by RPS) as well as works associated with the dam and impoundment located within in Precinct 5. Therefore, a licence under "*Section 201 - permit to carry out works of dredging or reclamation*" and "*Section 219 - permit to obstruct the free passage of fish*" of the *FM Act* is required.

The application was referred to DPI - Fisheries as the approval body for permits under the *Fisheries Management Act 1994*. DPI – Fisheries raised no objection to the proposal and issued GTAs subject to any works during construction that involve dredging or reclamation of waterways obtaining a permit and consultation on detailed road design for subsequent applications. DPI - Fisheries GTAs have been included in the recommended conditions at **Attachment 2**.

6.5.4 Section 4.15 Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.4.15 (1) *EP&A Act* as follows:

6.5.4.1 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policy (State and Regional Development) 2011

SEPP (SRD), identifies the types of development that are; State significant development, State significant infrastructure and critical State significant infrastructure, and regionally significant development.

The development is declared as regionally significant development in accordance with Schedule 7 clause 2 of (*SEPP SRD*), being general development with CIV over \$30 million. The cost summary report nominates the project cost as \$146,494,587.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

Clause 15 of *State Environmental Planning Policy (Koala Habitat Protection) 2019* includes savings provisions stating that a development application made, but not finally determined, before the commencement of this policy in relation to land to which this Policy applies must be determined as if this policy had not commenced. Therefore, as the application was lodged prior to the commencement of this policy, *State Environmental Planning Policy No. 44 - Koala Habitat Protection* will apply.

State Environmental Planning Policy No.44 – Koala Habitat Protection

State Environmental Planning Policy No.44 – Koala Habitat Protection (*SEPP No.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. This is achieved through the requiring the preparation of plans of management (i.e. the Port Stephens Comprehensive Koala Plan of Management (CKPoM)), encouraging the identification of areas of core koala habitat, and encouraging the inclusion of core koala habitat in environmental protection zones.

The PSC CKPoM operates for the entire PSC LGA. All development having an impact on koala habitat is to be assessed in accordance with this management plan to avoid, minimise and mitigate any impacts on the koala. The subject site comprises lands mapped by Council as having koala habitat and therefore requires consideration, which was also considered in the 2010 rezoning process by EcoBiological (2009) through the inclusion of high value habitat within the E2 zone. Detailed investigations and evaluation of protecting Koala habitat is provided in Section 5.1.4 of the SIS.

The Proposal will result in the removal of 212.14 ha of native vegetation comprising 152ha of koala habitat (BioLink 2019b) over an 8+ year timeframe. This habitat removal comprises 4,469 preferred feed trees over three Phases (Phase 1 = 1,835 trees, Phase 2 = 961 trees and Phase 3 = 1,673 trees). Refer to Section 5.1.1 of the SIS for further details on the timing of vegetation removal by Phase.

The SIS (Table 5.4) notes the Proposal is not removing any Primary Koala Habitat as identified under the CKPoM.

The Proposal will retain 231.19ha of existing native vegetation (inclusive of 38.47ha of zoned developable land as impact avoidance measures) and 19.40ha of revegetated lands. The majority of this vegetation is to be retained in an in-perpetuity Conservation Area for the protection of koala habitat. The objective of the revegetation works is to provide high value koala feed tree species [i.e. Swamp Mahogany (*Eucalyptus robusta*), Forest Redgum (*E. tereticornis*), Grey Gum (*E. punctata*), Grey Box (*E. moluccana*) and Tallowwood (*E. microcorys*)].

Approximately 143ha of vegetation within the Conservation Area is to be modified through intra-forest tree plantings to 'enrich' foliar nutrient at the stand scale. This long term mitigation has the purpose of improving 'digestible nitrogen levels' at the forest stand scale for the purposes of improving retained vegetation as habitat for the Koala. Intra-forest tree plantings will include high value preferred koala feed tree species.

The revegetation/enrichment works through the respective stages aim to achieve the following outcomes:

- Long term establishment of ~12,900 preferred koala feed trees classed as 'secondary habitat'; and
- Long term establishment of ~4,500 preferred koala feed trees classed as 'primary habitat'.

The SIS states a nett gain in preferred koala feed trees is expected through the revegetation of cleared lands and intraforest enrichment. Koala habitat protection measures such as fencing, road underpasses, grids and bridges are also proposed across the KHURA to prevent mortality. These measures, in addition to the managed protection of koala habitat within the Conservation Area satisfy the requirements specified in the CKPoM. Section 5.1.4 of the SIS provides the detailed assessment of koala habitat impact.

The independent ecology review engaged on behalf of Council supported the level of koala habitat impact, relying on the thorough and detailed assessment being provided in the SIS on the koala, as summarised in Section 5.1.4. It was noted the assessment has considered the CKPoM requirements both in terms of field survey, assessment of impact, rehabilitation and mitigation. Therefore, the Proposal is supported in this regard given the nett gain in koala feed trees and the detailed assessment and measures presented in the SIS and supporting VMP and BMP relating to the koala.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aims of this Policy are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

This instrument applies to land in the Port Stephens LGA within the R1 General Residential, B2 Local Centre and B4 Mixed Use Zones.

A permit or consent is likely required under Part 3 of the SEPP for the clearing of native vegetation on non-rural lands unless matters identified in Clause 8 of the SEPP apply:

8 Clearing that does not require authority under this Policy

(1) An authority to clear vegetation is not required under this Policy if it is clearing of a kind that is authorised under section 60O of the Local Land Services Act 2013 (Clearing authorised under other legislation) or under Part 5B (Private native forestry) of that Act. This subclause does not apply to clearing merely because it is a part of or ancillary to the carrying out of exempt development.

(2) An authority is not required under this Policy for the removal of vegetation that the council or Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals.

(3) An authority is not required under this Policy for the removal of vegetation that the council is satisfied is a risk to human life or property.

Existing use rights apply to the tracks and tails of the Conservation Area with their ongoing maintenance periodically requiring the clearing of native vegetation. The extent to which this clearing is allowable is defined by the classifications assigned to the tracks/ trails and associated intended uses.

To satisfy this requirement, the Applicant has noted in the SIS that tracks and trails will be maintained to the relevant specifications, with the associated periodic management of vegetation to be performed under cl.8(3) of the Vegetation SEPP.

State Environmental Planning Policy No.55 - Remediation of Land

State Environmental Planning Policy No.55 – Remediation of Land (SEPP No.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. Clause 7 of SEPP No.55 provides that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated, and if the land is contaminated, 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.

The development has a history of rural residential use and the site has not been identified as contaminated land on Council's record system. Furthermore, Clause 6 of SEPP No.55 provides that contamination and remediation are to be considered in rezoning proposals. The subject site was rezoned in December 2010 with the gazettal of the *Port Stephens Local Environmental Plan (Kings Hill, North Raymond Terrace) 2010*.

A Preliminary Site Investigation for Contamination (Douglas Partners, 2020) was submitted with the application. The results of the preliminary site investigation (contamination) for the proposed development indicate the following:

- General absence of potentially contaminating activities across a large portion of the site;
- Fill has been placed within a former quarry within the northern area of the site;
- Possible former (small scale) extraction activities within the south-western part of the site
- Possible presence of small-scale timber production, orchard, vineyard, dairy use based on historical use within the greater site area (locations not known);
- Fill has been placed in a number of existing dams on the site and in some areas within the existing access road alignments; and
- Presence of a former Council (PSC) landfill and currently operating Suez Landfill to the west and south-west of the site.

The results of the PSI indicate that the majority of the site is generally unlikely to contain gross contamination associated with the current or former site activities.

The greatest risk is from the former PSC landfill site and nearby Raymond Terrace Resource Recovery Facility. Contamination from these sources is discussed in greater detail below.

Former PSC Landfill Site

Port Stephens Council is undertaking remediation works, in the form of in-situ capping to cease any potential leaching of hazardous materials from the site. Monitoring reports undertaken by Council for the landfill indicate no materials have left the site.

Raymond Terrace Resource Recovery Facility

Suez operate the Raymond Terrace Resource Recovery Park (also known as the Bedminster Waste Facility and Landfill), located at 330 Newline Road incorporating the Newline Road landfill facility, Advanced Waste Treatment (AWT) facility and community drop off area. The existing operations within the Newline Road landfill are not time-limited and may continue for an indeterminate period into the future. These operations may overlap with the timing of other future development plans within the Kings Hills Development site.

Gas and contamination migration is a risk from this site to the KHURA. This risk was identified through a submission received from the Recovery Facility Operator SUEZ and included in D14 of the DCP. The areas mapped within 250m of the Recovery Facility landfill area according to the information provided by SUEZ include residential lots in Precinct 6.

To address these matters, a condition has been recommended that investigations and monitoring in the odour/gas buffer occur prior to development occurring under subsequent applications. The timing and commencement of development in the buffer will be subject to eliminating risk from gas migration and contamination. Further, discussion on this matter is contained under Clause 7.11 of the LEP2013.

Furthermore, a condition has been recommend that all future development applications for subdivision be accompanied by site contamination investigations.

Subject to the recommended conditions and investigations submitted with the application, the development is satisfactory having regards to the requirements of SEPP No.55.

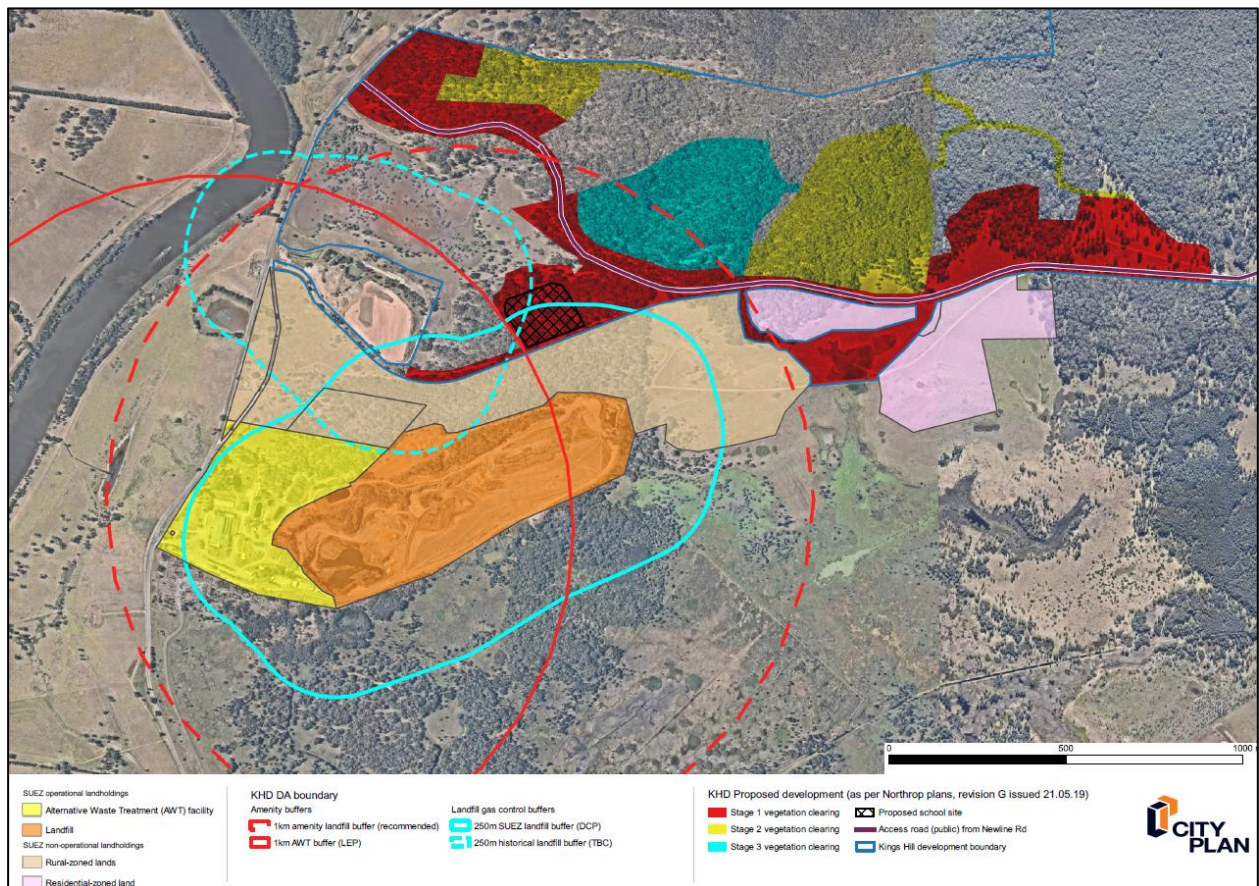


Figure 9 – Map of Landfill Buffer Areas (provided by City Plan of behalf of SUEZ)

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 (SEPP (Coastal Management)) aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*. The policy includes the management objectives for each coastal management area by managing development in the coastal zone and protecting the environmental assets of the coast and establishing a framework for land use planning.

The subject site comprises three main catchments, two of which directly drain into land identified as Wetlands 803 and 804. Kings Hill South drains to Irrawang Swamp (Coastal Wetland 804) which is located between Newline Road and the Pacific Highway. Kings Hill West drains to an unnamed wetland (Coastal Wetland 803) located adjacent to Newline Road to the north of Irrawang Swamp. Kings Hill East currently drains to Grahamstown Dam and runoff from this catchment is proposed to be diverted via a stormwater channel running between the Pacific Highway and the Grahamstown Dam discharging to Irrawang Swamp to protect water quality in the dam.

Irrawang Swamp and Coastal Wetland 803 are both mapped coastal wetlands under SEPP (Coastal Management). The site and the Concept Proposal is mapped relative to the Coastal Wetlands and the associated proximity area in **Figure 10**.

HWC owns all the land within Irrawang Swamp and is currently actively managing the land in accordance with the Irrawang Swamp Plan of Management (Hunter Water, 2012a).

Each wetland contains a number of species that are susceptible to impacts from altered hydrological regimes, and the dominant risks to the vegetation in the wetlands from hydrological changes include:

- extended periods of increased inundation depth; and
- reductions in seasonal drying patterns.

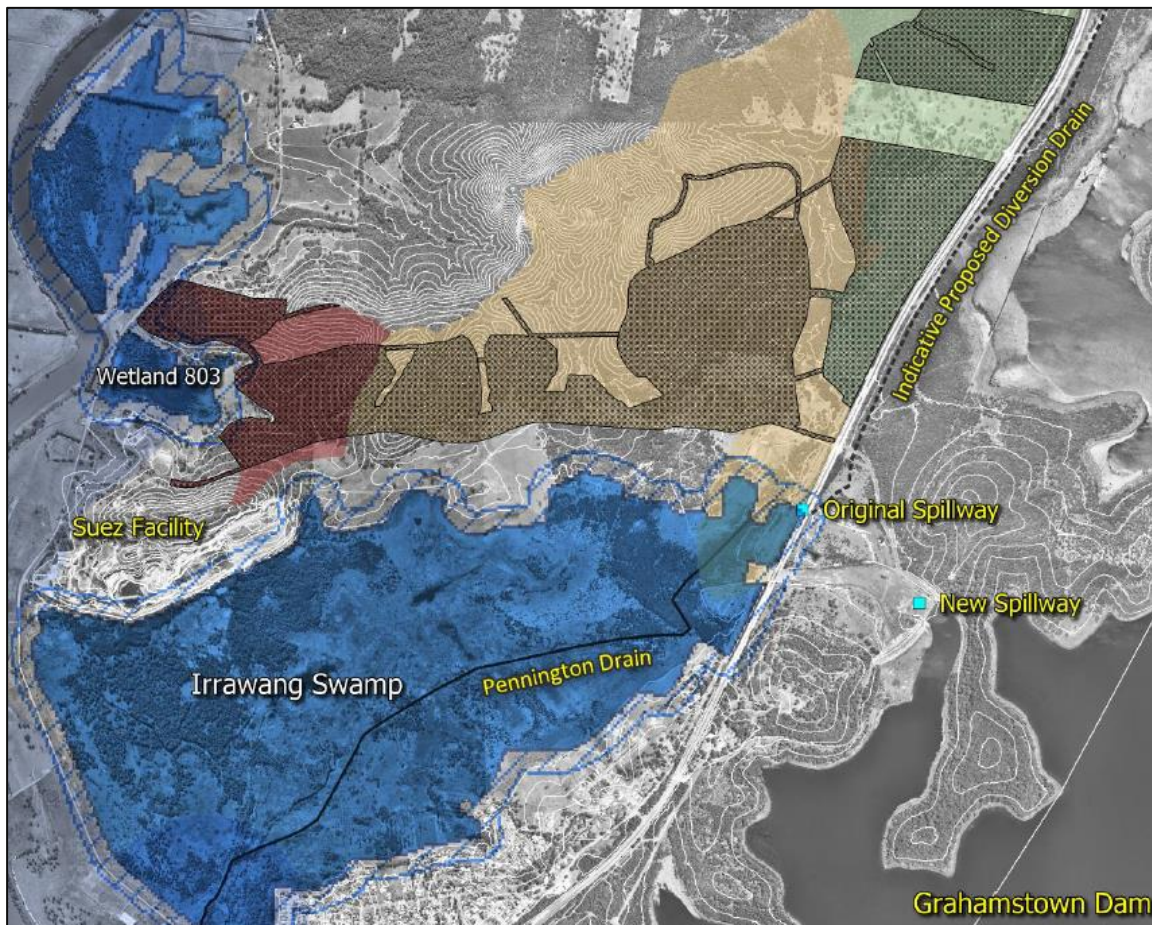


Figure 10 - Irrawang Swamp and Coastal Wetland 803

Clauses 10 and 11 of SEPP (Coastal Management) outlines the criteria that needs to be considered to determine if an impact will occur.

Clause 12, 13, 14, 16 and 17 have not been addressed as they are not applicable to this application under SEPP (Coastal Management).

Clause 10 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

Regarding 1(b), impacts to marine vegetation has been addressed under the *FM Act* in the previous section of this report. The Fish Habitat Assessment prepared by RPS

determined the proposal is not likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction. DPI – Fisheries provided GTAs as outlined in **Attachment 7**.

- (c) *the carrying out of any of the following—*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

No clearing, subdivision or earthworks are proposed in any of the mapped coastal wetlands areas under the SEPP. There are however biodiversity management works proposed in the vicinity of Wetland 803. This includes establishing habitat suitable for *Maundia triglochinos*, revegetating treeless lands surrounding the wetland with preferred Koala feed Tree species and the installation of three White-bellied Sea Eagle nest poles. The aim of the works are to naturally regenerate the previously grazed areas and to provide additional foraging and breeding habitat for koalas and bird species. The works will improve the biodiversity value of lands around the wetland area. The SIS and BMP notes the works are occurring outside of the mapped boundary of the wetland areas.

The constructed habitat for the *Maundia triglochinos* is proposed outside the mapped boundary of Irrawang Swamp comprising a combined area of 3,000m² in three separate, but linked, ~1,000 m² closed depressions of 30-60cm depth located in line and below current incidences. The constructed habitat is to act like a chain of ponds thereby allowing propagules from the source occupied habitat area to be invaded and also to provide an opportunity for the early identification of invasive water plants and their control prior to entry into Irrawang Wetland.

A Wetland Impact Assessment (Alluvium, 2019) and Key Fish Habitat Assessment (RPS, 2019) submitted with the application confirms that subject to the recommendations within the reports, Concept Proposal will not significantly impact on the Wetland environments.

Clause 11 - Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Hydrology and Water Flows

The Wetland Impact Assessment (Alluvium) concluded increased annual high flow volumes from Kings Hill are estimated to be negligible and would have an acceptable impact on increasing water levels in Irrawang Swamp during high flow periods. There will continue to be seasonal dry periods in the Swamp Oak and Melaleuca Woodlands and

Seasonal Swamp Meadow areas and estimated changes in inundation depths are within the ecological tolerance range of the vegetation communities.

Water Quality

Incorporation of effective water sensitive urban design (WSUD) into all stages of the development will be critical for managing water quantity and quality from development areas. Water quantity management strategies are required that focus on reducing stormwater runoff during frequent smaller rainfall events. Measures including disconnecting impervious areas, oversized BASIX rainwater tanks, infiltrating biofiltration systems, stormwater retention and harvesting systems would all have a role to play at appropriate locations within the development. Ensuring that the majority of future runoff passes through appropriately sized stormwater retention/detention measures will be important for protecting ephemeral watercourses from erosion. Conditions have been recommended that require future applications to comply with the water quantity management strategies proposed by the Applicant and to ensure *Landcom Water Sensitive Design Targets* are achieved under future detailed applications, including positive covenants for water quality treatment measures.

The proposed WSUD strategies have been outlined in the Northrop Master Plan Engineering Report (December, 2019). Monitoring protocols for hydrology and vegetation for Irrawang Swamp and Wetland 803 prior to and following development are also outlined in Section 7.1.3.2 of the SIS (RPS, 2020).

Council consulted with HWC to assess the potential impacts on the Irrawang Swamp and Wetland 803. HWC provided conditions for the proposal including the requirement to achieve *Landcom Water Sensitive Design Targets* for future development, controlling erosion and sediment during works and aligning clearing and subdivision works with the construction of the stormwater channel. A condition was also recommended that baseline monitoring and an adaptable surface water plan of management be prepared to minimise any impact to the adjoining wetlands. Based on these measures, it was determined the impact of the Coastal Wetlands would not be significant. These measures have been included in the recommended conditions of consent.

Ecology

An independent consultant review was undertaken for the SIS (RPS) and Wetland Impact Assessment (Alluvium). Based on this review, the Proposal was supported with regard to ecological impact on the wetlands subject to the controls outlined in the SIS (RPS) and conditions in **Attachment 2**.

Detailed assessments to consider the ecological impact of the Proposal on nearby coastal wetlands were submitted to inform the biodiversity, key fish habitat, and stormwater management aspects of the Concept Proposal. Each assessment confirms that subject to the recommendations within the reports, the future development of the site as outlined under the Concept Proposal will not significantly impact on the wetland environments or ecology. The recommendations from the SIS (RPS) and the stormwater management strategy (Northrop) have been incorporated in the recommended conditions of consent at **Attachment 2**. HWC were actively engaged throughout the assessment of the application and endorsed the recommended conditions of consent to ensure the ecological condition and processes of the Irrawang Swamp are preserved.

Noting this proposal is for Concept purposes only, this application establishes the hydrological and ecological framework and requirements for subsequent detailed applications across the KHURA. Future detailed development applications will need to address the impacts on the Irrawang Swamp and Wetland 803 and demonstrate

compliance with the required ecology and hydrology measures included in the recommended conditions of consent at **Attachment 2**.

Clause 15 - Development in coastal zone generally—development not to increase risk of coastal hazards

- (1) Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

The proposed development is unlikely to cause increased risk of coastal hazards on the subject land or any other land as it is well removed both physically and spatially from any coastal foreshore or area.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Determination of development applications—other development

The Proposal involves works adjacent an easement for electricity purposes, therefore Clause 45 is applicable. In part, this clause states:

- (2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:*

- (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

The Application was referred to Ausgrid, with the following comments (**Attachment 10**) provided:

- Should any existing Ausgrid assets require relocating to facilitate the development, this relocation work is generally at the applicants cost.

The applicant will be required to submit the relevant connection application form prior to the release of a Subdivision Certificate as part of future applications for subdivision. A detailed assessment of Ausgrid requirements for future subdivision works will be undertaken on receipt of future application.

Clause 101 Development with frontage to a classified road

- (1) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The Pacific Highway (HW10) is a classified State road. Council is the roads authority for all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*. Given the future subdivision of the site will ultimately connect to the proposed interchange at the Pacific Highway via the north-south collector road, the application was referred to TfNSW for comment.

TfNSW reviewed the proposal and raised no objection in this regard. Advice was provided to Council relating including:

- A maximum of 400 lots are permitted to be released from the Kings Hill URA, with 250 of these lots allocated to be released from Kings Hill Development (lead developer), prior to the operation / practical completion of the following:
 - Kings Hill interchange, and
 - The east-west public road between the Kings Hill interchange and Newline Road, and
 - The north-south public road between the interchange and Six Mile Road.
- Six Mile Road at the Pacific Highway shall be closed following the practical completion of the interchange, with alternate flood free access being provided. Council are to ensure that the closure of Six Mile Road is approved as required via the provisions of the *Roads Act 1993*.
- Council is to ensure that suitable access is to be provided from Six Mile Road to the interchange via either the north-south or east-west link road, prior to the closure of Six Mile Road at the Pacific Highway.
- The east-west public road reserve must be sufficiently formed to Council's requirements to allow flood free access between the Kings Hill interchange and Newline Road prior to the release of the 401st lot within the KHURA
- The north-south public road reserve must be sufficiently formed to Council's requirements to allow access between the Kings Hill interchange and Six Mile Road prior to the release of the 401st lot within the KHURA.

The above advice is largely reflective of the State VPA between the lead developer and Minister for Planning and Public Spaces. The advice relevant for this application has been included in the recommended conditions in **Attachment 2**.

Clause 102 Impact of road noise or vibration on non-road development

This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transit way or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration—

- (a) *residential accommodation,*
- (b) *a place of public worship,*
- (c) *a hospital,*
- (d) *an educational establishment or centre-based child care facility.*

Long-term attended noise monitoring was completed by EMM Pty Ltd (December 2019) along the entire URA frontage to the Pacific Highway to establish existing ambient noise levels and road traffic noise exposure across the subject site.

Measured noise levels were assessed with reference to Clause 102 of the ISEPP and DPIE's "*Development near Rail Corridors and Busy Roads – Interim Guidelines*" (2008). Road traffic noise levels, including a 2.4m high barrier spanning the majority of the eastern boundary of the site.

The results of noise modelling (including noise barrier) indicate that the relevant requirements regarding road traffic noise intrusion will be achieved for the large majority of hypothetical dwellings by adopting standard, complying development construction techniques and including an alternate means of ventilation as per the DPIE's "*Development near Rail Corridors and Busy Roads – Interim Guidelines*" (2008).

For a small number of hypothetical residences fronting the Pacific Highway, the 60dB noise contour marginally encroaches into their respective allotments, which requires consideration of dwelling siting, floor plan and construction type to ensure that category two construction can satisfy the relevant internal noise goals at these locations. A condition has been recommended that subsequent applications for residential development in the Pacific Highway noise impact area be supported by acoustic modelling and noise impact assessment.

Given the Proposal for residential subdivision is concept only, the design and treatment of any acoustic barriers along the Pacific Highway will be subject to further assessment under subsequent applications. The visual impact of the acoustic barrier is discussed elsewhere in this report under Section D14.38 of the DCP.

Clause 104 Traffic-generating development

- (2A) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has:*
- (a) given written notice of the intention to carry out the development to RMS in relation to the development, and*
 - (b) taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*

The proposed development exceeds the threshold of 200 lots required to trigger the referral of the subdivision to the TfNSW under the provisions of ISEPP. The application was referred to TfNSW, who raised no objection to the Proposal with regard to traffic generating development. Noting the residential subdivision is for Concept purposes and does not seek consent for the subdivision of land, future applications will be referred to TfNSW for comment under Clause 104.

Servicing and Utilities

The ISEPP provides the approvals pathway for infrastructure that is required to support development of the land, including:

- *Water reticulation systems* – Clause 126A permits development for the purpose of water reticulation systems to be carried out by any person with consent on any land.
- *Sewage reticulation systems* – Clause 106 permits development for the purpose of sewage reticulation systems to be carried out with consent on any land.
- *Electricity distribution* – Clause 34 permits development for the purpose of electricity generating works to be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone.

- *Stormwater management systems* – Clause 111 permits development for the purpose of a stormwater management system to be carried out by any person with consent on any land.

Port Stephens Local Environmental Plan 2013

Clause 1.3 – Land to which Plan applies

LEP2013 applies to land identified upon the 'Land Application Map'. The subject development occurs upon land located within the land application. LEP2013 applies to the development.

Clause 1.9A – Suspension of covenants, agreements and instruments

Clause 1.9A provides that for the purpose of enabling development on land in any zone to be carried out, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply, to the extent necessary to achieve enable the development to occur. Clause 1.9A does not apply to covenants imposed by Council or other instruments such as bio-banking agreements.

An old systems title covenant (covenant marked '(c)' and referenced in book 3071 No.814) is located to the sites eastern boundary fronting the Pacific Highway and traverses the entire eastern boundary. The covenant restricts the use of land to agricultural (or similar) land uses only and identifies that buildings / structures shall not be used for anything other than agricultural purposes or similar. The covenant is a historic land dealing restricting the development of the subject site in accordance with LEP2013 to the benefit of a historic land holding (Lot 3 in DP 234521). Accordingly, by virtue of clause 1.9A this restriction does not apply, and the application shall be assessed against the provisions of LEP2013.

An 8m wide easement for access to Lot 4822 (isolated lot) from Six Mile Road is also located along the eastern boundary of the site. At the detailed planning stage for Precinct 1, the Applicant will need to address this easement and ensure access is provided for Lot 4822.

In the eastern portion of Lot 41 DP 1037411, easements exist for drainage, reservations for Crown mineral grants, access and transmission lines. The Applicant has advised the existing overhead power lines will be relocated underground within a roadway or footpath in consultation with Ausgrid, which will remove the requirement for the transmission easement along the Pacific Highway boundary.

In the western portion of Lot 41 DP 1037411 carriageway easements are present around Wetland 803 and the isolated parcel of Lot 3 DP 1098770, owned by SUEZ. The easements around Wetland 803 will not be affected by the proposal, with no development identified in this area. Any future applications will need to take into consideration the presence of these easements to ensure access rights are maintained through existing or new roads.

Clause 2.3 - Zone Objectives and Land Use Table

The following land use zones are present on the development site as illustrated in Figure 11 below:

- B2 Local Centre
- B4 Mixed Use
- E2 Environmental Conservation
- R1 General Residential

The Concept Proposal enables future applications to carryout residential subdivision, as permitted with development consent in the R1 General Residential zoned land, and to protect, manage and restore the E2 Environmental Conservation zoned land and those parts of the R1 General Residential zones where the SIS recommends avoiding development. The Concept Proposal is therefore considered consistent with the objectives of the land use zones as addressed in detail below:

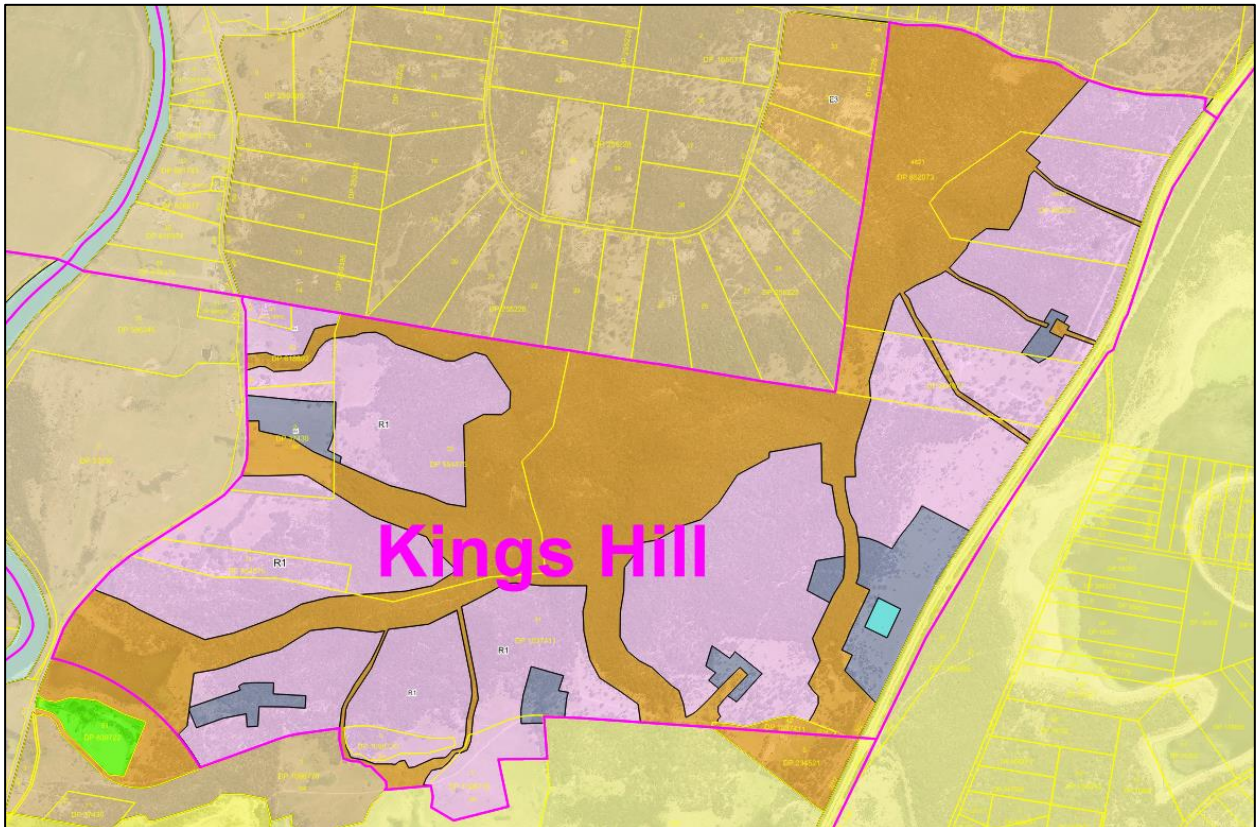


Figure 11 – Site Zone Map

R1 General Residential Zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The Concept Proposal meets these objectives by facilitating approval for residential subdivision development of various lot sizes and densities.

B2 Local Centre Zone

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

The Concept Proposal and indicative structure plan promotes appropriate land uses within the B2 zoned land and the surrounding B4 zoned land. The Road Hierarchy Plan prepared by Northrop demonstrates how collector roads and pedestrian and cycle linkages between residential and business zones can be achieved for future applications.

B4 Mixed Use Zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Concern was raised by HCCRPP during initial consultation in regard to land use planning and design for the B4 mixed use zones, given some areas of B4 land were included in the conservation area and used to support large stormwater basins.

In response, the Applicant suggests the zoned boundaries for B4 Mix Use land are inaccurate given the limited survey information available at the time of rezoning. Further, the extensive environmental assessment across the site identified sensitive areas in both the business and residential zones that support sensitive ecology, which have led to the avoidance of some 40ha of urban zoned land.

In light of this, the recent detailed survey undertaken for the site and necessary biodiversity avoidance measures have reduced the anticipated lot yield (based on the extent of urban zoning) on KHD's land by approximately 20%, which in turn has reduced the demand and the locations suitable for villages centres within B4 Mixed Use zones.

To address this matter in further detail, the Applicant commissioned the original Urban Designer (Peter Richards of Deicke Richards) to review the former masterplan in the context of the Concept Proposal, and to recalibrate the place-making inherent to the original masterplan and zoning scheme, which shows sufficient business zoned land can be accommodated in the proposed urban footprint. Indicative place making opportunities are shown in the figures below.

Council is satisfied with the Applicant's response supported through a reduced quantum demand for business land and site ecological constraints. Given the applicant seeks approval only for the development footprint at this stage, the detailed design of business areas can be resolved at the subsequent stages of precinct planning in the KHURA.

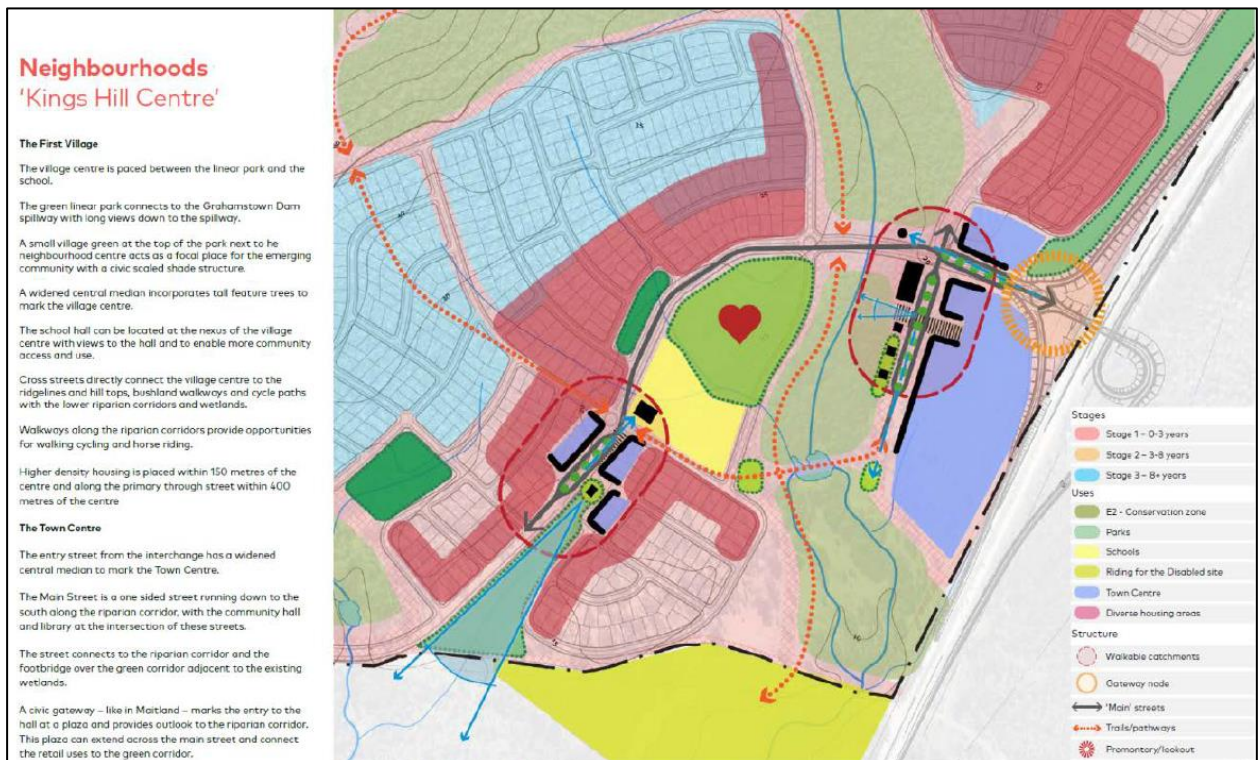


Figure 12 – Indicative Place-making for eastern commercial area

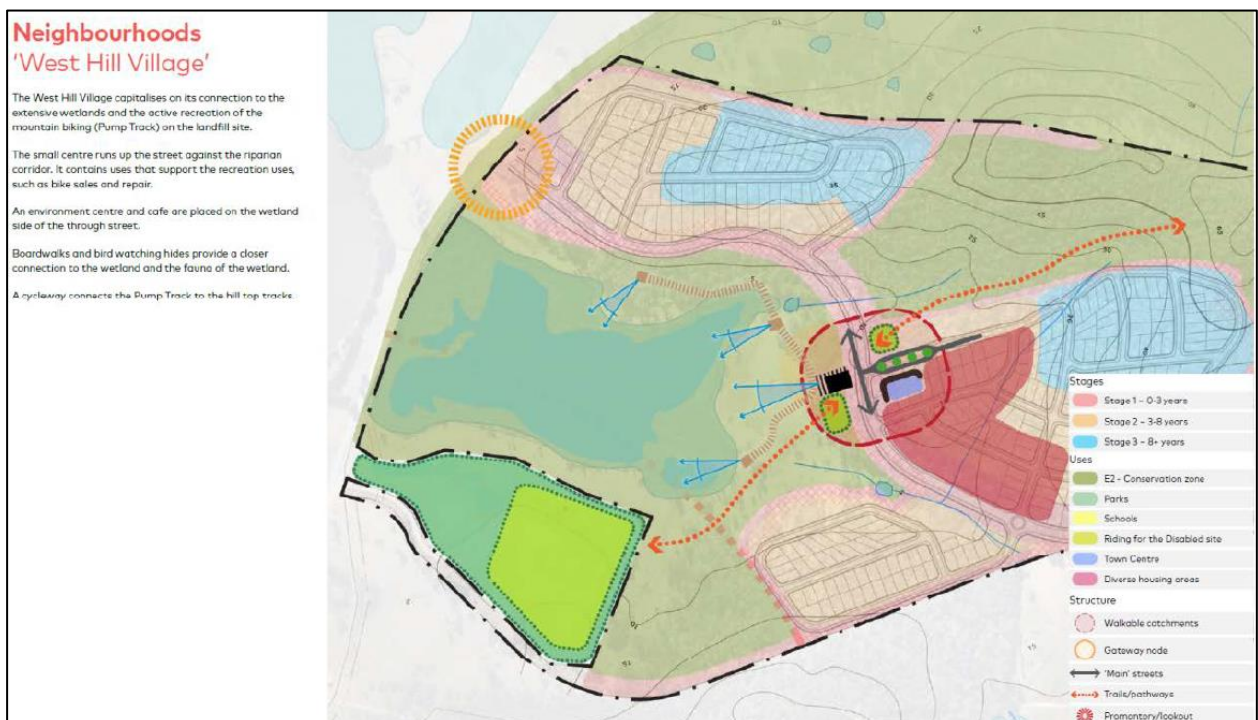


Figure 13 – Indicative Place-making for western commercial area

E2 Environmental Conservation Zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The Concept Proposal includes infrastructure works in the E2 Environmental Conservation zone, including road linkages, stormwater management, and infrastructure works (linkages, water reservoirs etc.). The works proposed in the E2 Environmental Conservation zoned land are listed as permissible under the ISEPP. These works will occur in areas of E2 Environmental Conservation zoned land that are subject to management under a Biodiversity Management Plan which is designed to restore the environment and establish a long term sustainable Conservation Area, consistent with the objectives of the E2 Environmental Conservation Zone.

The land use structure proposed as part of the Concept Master Plan is considered to be compatible with the locality and satisfies the objectives of the sites applicable zoning.

Clause 2.6 – Subdivision – consent requirements

Clause 2.6 provides that land to which LEP2013 applies may be subdivided but only with development consent. The applicant seeks concept approval for subdivision only. Future development application will be required to secure consent for subdivision works. However, it is noted that the proposed future subdivision is permissible with consent pursuant to Clause 2.6.

Clause 2.7 – Demolition requires development consent

Clause 2.7 identifies that the demolition of a building or work may be carried out only with development consent, unless identified as exempt development under an applicable environmental planning instrument.

The applicant has not proposed the demolition of the existing structures located on site as part of this application. However, pursuant to Clause 2.7 the demolition of these structures requires development consent. Future applications will be required to encompass the demolition works.

Clause 4.1 – Minimum subdivision lot size

Clause 4.1 seeks to ensure that lot sizes are able to accommodate development that is suitable for its purpose and that is consistent with relevant development controls. The applicable lot size maps are expressed under Clause 4.1 and it is identified that the site of any lot resulting from a subdivision of land must not be less than the minimum size on the lot size map relating to the land.

While the Concept Proposal does not identify individual lots and lot sizes, the indicative Precinct Plan at in Figure 14 below provides a potential lot yield based on lot sizes above the minimum lot size.

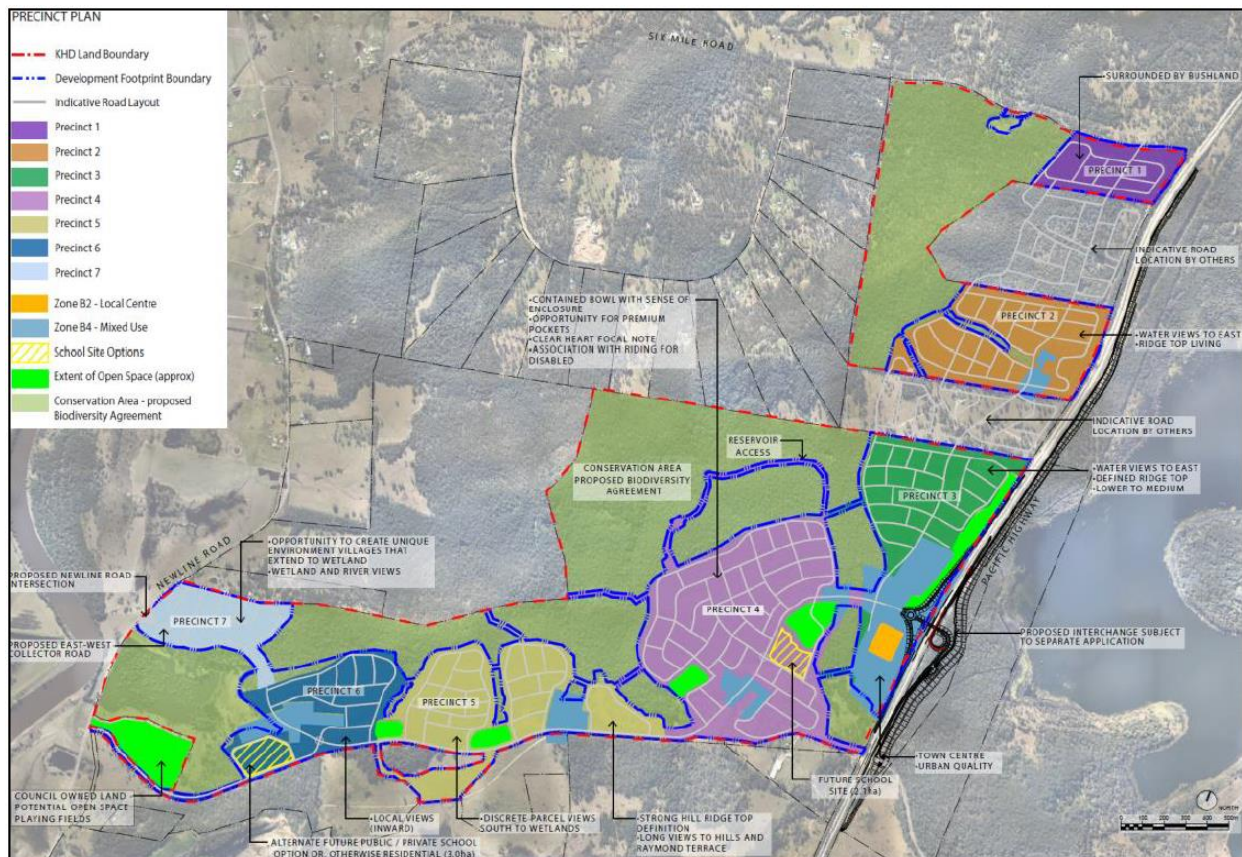


Figure 14 – Lot Yield Map (Indicative only)

The minimum lot sizes in the site have been outlined under the LEP maps as:

- R1 Residential – 450m² ;
- B2 Local Centre – 400m²;
- B4 Mixed Use - 400m²; and
- E2 Environmental Conservation – 40ha.

Given the proposal is for concept purposes only, subsequent DAs for the subdivision of the urban precincts established under this Concept DA will be required to meet the development standard for minimum lot size within each zone.

Clause 4.1D – minimum subdivision lot size for certain split zones

Clause 4.1D seeks to ensure that the subdivision occurs in a manner that promotes suitable land use and development and to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1.

The application of this clause will be subject to future applications for subdivision.

Clause 4.3 – Height of buildings

Clause 4.3 includes maximum height limits for land and aims to ensure the height of buildings is appropriate for the context and character of the area.

There are no building works proposed as part of this application. Subsequent DAs for the development in the Residential Precincts (R1 General Residential zone) and Commercial Precincts (B2 Local Centre and B4 Mixed Use zones) will be required to meet the development standard for respective height of buildings within each zone.

Clause 5.10 – Heritage conservation

Clause 5.10 aims to conserve the heritage significance of heritage items and heritage conservation areas. Aboriginal archaeology and European heritage is discussed below.

Aboriginal Archaeology

Myall Coast Archaeological Services (MCAS) undertook archaeological investigations of the Kings Hill Urban Release Area to support the rezoning for the site in 2003. The Kings Hill and the associated ridgeline is considered to be of Aboriginal Heritage significance, along with the wetlands. The rest of the study area however was not considered to be archaeology significant.

The areas nominated as being of heritage significance were deemed to be conserved through the E2 Environmental Conservation zoning. All other land outside this conservation area was not considered to contain any heritage sites.

A further report was prepared, *Summary of Archaeological Studies and Findings Kings Hill Urban Release Area – October 2020*, as a summary of assessments and findings made by MCAS since 2002 (contained under **Attachment 3**). The archaeological assessment was carried out in consultation with the Worimi and Karuah Local Aboriginal Land Councils, as well as Worimi traditional owner representatives. According to the Study, further assessment of land within the Conservation Area was not deemed to be required. However, a Plan of Management should be prepared in consultation with the Worimi Local Aboriginal Land Council to ensure recreation and any other land uses, as well as conservation activities within the Conservation zoned area, remain compatible with the areas of highest significance.

Future development in the urban precincts have been sited outside of the areas identified as having Aboriginal heritage significance and no major excavation or earthworks are proposed as part of the Stage 1 works. It was also noted in the report the site has been distributed by European activities since settlement. This disturbance plus vegetation regrowth would have potentially impacted any Aboriginal sites located in the lower parts of the site, where future urban development has been identified.

An unexpected finds protocol condition has been recommended in the event any objects are discovered during Stage 1 vegetation works. Further, a condition has been included that future detailed applications for subdivision are to include an Aboriginal and Cultural Heritage Assessment and that a Plan of Management be prepared for the sensitive archaeological sites identified along the upper ridge line.

European Heritage

There are no listed items of European heritage significance or heritage conservation areas identified in Schedule 5 of the LEP2013 as being located on the site or within the URA.

Subject to the recommended conditions, the application is deemed to satisfy the requirements and objectives of clause 5.10.

Clause 6.1 - Arrangements for designated State public infrastructure

This clause requires satisfactory arrangements to be made for the provision of State public infrastructure before the subdivision of land in the urban release area. Clause 6.1 of the LEP2013 dictates that Council must not grant consent unless written certification from the Department of Planning and Environment to the effect that Satisfactory Arrangements have been made to contribute to the provision of State public infrastructure on the subject site.

Clause 6.1 does not apply to a Concept Development Application, but would apply to subsequent DAs seeking consent for subdivision. Despite not specifically being required for a Concept Proposal, the Applicant has executed a VPA with the Minister of Planning and Public Spaces as detailed elsewhere in this report.

Satisfactory Arrangement Certificates (SAC) from DPIE in accordance with the executed State VPA will need to be submitted with future applications for subdivision on the site to satisfy this clause.

Clause 6.2 – Public utility infrastructure

Clause 6.2 stipulates that development consent must not be granted unless Council 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 the required infrastructure available.

Water and Sewer

A water and sewer servicing strategy has been prepared for the KHURA and includes the staging of works to accommodate development progressing concurrently within both the eastern and western precincts.

HWC issued conditional approval of the water and sewer strategy in 2017. The approval was contingent on a number of conditions being satisfied, relating to the design, delivery and staging by the Applicant. HWC provided further advice stating that the conditions have been met due to the substantial progress made on the servicing strategy.

HWC advised it was satisfied that there are provisions in place within the regional water and sewer strategies to service the KHURA. The final internal servicing arrangements will need to be determined as part of the Section 50 process of the *Hunter Water Act 1991* and the requisite infrastructure constructed before lots will be permitted to connect under future applications.

Further, the Applicant as the lead developer for the KHURA lodged a DA for the lead in water and sewer works (DA16-2020-81-1), including pump station on 27 February 2020. This application was approved on 29 September 2020, with the HCCRPP as the determining authority.

Consultation will be required between the Applicant and HWC as the responsible public authority in relation to the final designs, easements for access and the cost sharing of infrastructure, as part of future detailed applications for subdivision.

Given the application is Concept only and relying on the advice of HWC and approval of the lead in servicing works, Council is satisfied Clause 6.2 has been satisfied for water and sewer. Future detailed applications for subdivision will need to demonstrate that water and sewer will be available for respective lots.

Electricity

Preliminary servicing advice for the KHURA was requested from Ausgrid. The following advice (dated 20 August 2019) was provided by relevant the sections within Ausgrid:

- There is currently sufficient capacity on these feeders for the supply of approximately 2 - 3 MVA to the general area including surrounding developments. To realise this total available capacity, the new electrical load needs to be divided across feeders with appropriate interconnections through the new development (from the Pacific Highway to Newline Road). The staging will have an impact on how many lots can be connected without network augmentation. There is presently available capacity for approximately 600 - 800 residential lots in the area including any adjacent developments.
- Network augmentation will be required to supply the full residential development. There are several options for the network augmentation however it is likely that one or more new 11kV feeders will be required from Raymond Terrace Zone Substation. Associated interconnection works between feeders in the area will also be required. The details of the connection requirements will be determined after a formal application is received from the applicant.
- It is envisaged the development will be supplied via underground 11kV cables to kiosk substations at multiple locations.

Relying on the advice of Ausgrid, Council is satisfied Clause 6.2 has been satisfied for the supply of electricity. The applicant advised formal details of the connection requirements will be determined after a formal application is lodged with Ausgrid post determination.

To ratify the above advice from the external utility providers, conditions have been included in the consent that future applications are required to demonstrate energy, communications, water and sewage management is able to be provided to all allotments within the proposed subdivision in accordance with the requirements of the relevant authorities.

Clause 6.3 – Development Control Plan

The PSC DCP 2014 includes Section D for specific areas, which includes a specific chapter for the Kings Hill Urban Release Area. Clause 6.3(3) requires the development control plan to provide the following:

- (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,*
- (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
- (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
- (d) a network of active and passive recreation areas,*
- (e) stormwater and water quality management controls,*
- (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*

- (g) *detailed urban design controls for significant development sites,*
- (h) *measures to encourage higher density living around transport, open space and service nodes,*
- (i) *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
- (j) *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

Part D14 – Kings Hill of the DCP 2014 achieves the above requirements in that it includes the following:

- URA structure plan;
- Transport movement hierarchy;
- Precinct and locality controls;
- Precinct planning requirements for Town and Village Centres;
- Social infrastructure planning requirements; and
- Specific controls for drainage, water quality, natural hazards and resources.

Clause 6.5 – Infrastructure—Pacific Highway access

This clause requires satisfactory arrangements to be made for the provision of vehicular access from the urban release area to the Pacific Highway prior to the granting of development consent for the subdivision of land. Clause 6.5(2) states:

Development consent must not be granted for the subdivision of land in an urban release area unless arrangements have been made, to the satisfaction of Roads and Maritime Services and the consent authority, for the provision of vehicular access from the urban release area to the Pacific Highway, including the closure or modification of any existing vehicular access from any land adjoining the Pacific Highway, if necessary.

The subject Concept Development Application does not seek consent for the subdivision of land and accordingly Clause 6.5 does not specifically apply to this Concept DA.

Notwithstanding, to address this clause the application was referred to TfNSW. The comments provided outlined the requirements for staging and delivery of collector roads and access to the Pacific Highway for all precincts in the KHURA. These comments have been incorporated into the conditions of consent.

For the purpose of the subdivision development in Kings Hill, the Pacific Highway grade separated interchange and collector roads will provide the vehicular access from the urban release area to the Pacific Highway. Until the interchange is operational, the State VPA permits access off Newline Road for up to 400 lots within the KHURA. The Applicant's proportion of that lot allowance is 250 lots.

Future applications for subdivision will need to demonstrate compliance with this clause prior to determination.

Clause 6.6 - Access from precinct areas to Pacific Highway, Kings Hill

This clause provides that consent must not be granted to development on land within the KHURA unless the consent authority is satisfied that arrangements have been made to ensure flood free vehicular access from the Kings Hill Precinct areas to the Pacific Highway.

Once the grade separated Pacific Highway Interchange is complete, flood free access from the Precinct areas to the Pacific Highway is proposed via the East West collector road, extending from the Pacific Highway to Newline Road. Prior to the interchange being complete, flood free access to the Pacific Highway will be provided northbound along Newline Road, then east to the Pacific Highway via Six Mile Road.

Preliminary investigation undertaken by Northrop Engineering on behalf of the Applicant has identified that Newline Road would need to be raised in various sections to approximately RL4.2m AHD to provide immunity to the 1% AEP. Further, Council engaged BMT WBM to prepare a Kings Hill Flood Free Access Study (revision dated November 2017) to address the requirements for flood free access (to the 1% AEP) for the KHURA. Under this study, it was determined road raising and installation of additional culverts would need to be undertaken on Six Mile Road. These works would need to be undertaken in conjunction with the Newline Road upgrades to achieve flood free access. Council is the roads authority for both Newline Road and Six Mile Road, therefore design and impact assessment for these works would be subject to future assessment as part of subsequent applications.

Notwithstanding the above, this application does not seek consent for the subdivision or development of land in the KHURA, and accordingly Clause 6.6 does not specifically apply to this Concept Proposal. Flood free vehicle access to the Pacific Highway will need to be demonstrated for future applications in accordance with this clause. Any civil or road works required to satisfy this clause would need to be considered as part of future assessments.

Clause 7.1 Acid Sulfate Soils

This clause provides that development consent is required for certain works within certain land identified on the Acid Sulfate Soils (ASS) Map. The majority of the land is identified as Class 5 soil, while Wetland 803 is recognised as containing Class 2 soils.

For Class 5 soils, the following works require the preparation of an acid sulfate soils management plan (ASSMP):

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Earthworks below 5 metres are not proposed as part of the Stage 1 works. Therefore, no ASSMP is required for Stage 1 of this application. Details and assessment, including an ASSMP will be required for subsequent applications that propose subdivision and civil works within 500m of Class 2 ASS to satisfy the provisions of the clause.

Clause 7.2 Earthworks

This clause provides that development requiring earthworks must be assessed against select criteria to ensure minimal environmental impacts will be produced during and as a result of development.

Earthworks are not proposed within Stage 1 of the Proposal. Subsequent DAs involving subdivision construction works will be required to address this provision relative to specific engineering design.

Clause 7.3 Flood planning

The objective of this clause is to minimise the flood risk to life and property associated with the use of land and to avoid significant adverse impacts on flood behaviour.

As shown in the Port Stephens Council Flood Hazard Mapping 2016, the proposed development footprint is clear of the High Hazard Floodway area. Part of the Irrawang swamp within the site is mapped as High Hazard Flood Storage, however this is clear of the proposed development footprint. Some existing waterways within the site are mapped as flood prone land, or subject to further investigation and covered by the flood planning level. The remainder of the site is mapped as flood free or minimal risk flood prone land.

According to the Flood Assessment by Northrop, all habitable floor levels can be constructed above the Flood Planning Level (FPL) and all areas of fill located outside of the mapped flood storage area, with no expected impact to regional flood levels.

As discussed under Clause 6.5, the Proposal involves having flood free access provided by East West Collector Road, and the upgrade of existing Newline Road and Six Mile Road for Precinct 8.

Council's Development Engineers reviewed the Proposal and flood studies and were satisfied the development is suitable given the flood characteristics relevant to the site and that future development in the URA would have an acceptable impact on local flood characteristics.

More detail is to be provided at the precinct planning stage for flood assessment on submission of subsequent DAs in regards to the type of development located in the above areas.

Clause 7.4 Airspace operations

The site is identified as being subject to the Williamstown RAAF Base Obstacle Limitations or Operations Surface Map and Height Trigger Map in the DCP2014. Future built form development on the site will require referral to the Department of Defence on this basis.

Clause 7.5 Development in areas subject to aircraft noise

The site is not identified as being with the ANEF 2025 mapping.

Clause 7.6 Essential services

Essential services have been addressed below, with the exception of water, sewer and electricity which is assessed under clause 6.2 above.

Stormwater drainage or on-site conservation:

The Kings Hill Urban Release Area Eastern Channel Flood Study completed by Northrop, details the diversion of flows from the eastern catchment away from Grahamstown Dam. This shows that stormwater from development areas up to 0.2% AEP design flood event is prevented from discharging into Grahamstown Dam via a diversion channel on the eastern side of the Pacific Highway.

A stormwater drainage plan was submitted as part of the Northrop Engineering Report in accordance with the guidelines outlined in the *Kings Hill Urban Release Area Water Management Strategy Guidelines* completed by BMT WBM in 2013. Section 6 of this report addresses drainage and water quality management for the entire catchment. The proposed stormwater control measures for each sub-catchment are shown on drawings DA-08-C4.00 to 4.03, however additional details will be required at precinct level development applications.

HWC and Council's Development Engineers were satisfied with the drainage strategy for the site, subject to the recommended conditions included in **Attachment 2**. Further detail for stormwater and drainage will be required as part of future applications in the KHURA.

Suitable vehicular access:

The proposed road hierarchy plan is shown on drawing DA-08-C3.00 by Northrop, showing the major circulation routes for private vehicles, public transport, cyclists and pedestrians. Access and connectivity is also outlined in further detail in Section 5 of this report.

Drawing DA-08-C3.00 by Northrop shows an indicative transport hierarchy with internal collector roads linking precincts, community facilities, the local centre and school, generally in accordance with the Locality Controls Map at Figure DAC of the DCP2014.

Future development will be required to orientate allotments and dwellings to face and have access from the collector roads, however this level of information will be provided at the respective precinct level development application stage. The local road connections do not form part of the Concept Approval.

Clause 7.8 Drinking water catchments

This clause provides that development proposed within the mapped Drinking Water Catchments areas is required to consider the potential impacts of the development on the quality and quantity of the water entering the drinking water storage areas. As the eastern part of the site forms part of the Grahamstown Drinking Water Catchment, this clause is applicable.

The application was referred to HWC for comment. HWC advised the Proposal is satisfactory with regard to impacts on the drinking water collection areas subject to the adoption of stretch water quality measures, ongoing management and monitoring of water quality, including treating run-off from disturbed areas and the implementation of strict erosion and sediment control measures.

Northrop have undertaken hydrological and hydraulic investigations for the KHURA. As outlined in the *BMT WBM Guidelines*, HWC has confirmed that stormwater runoff from the eastern catchment of the development area will need to be diverted away from Grahamstown Dam. The investigations concluded that, from a hydraulic perspective, the proposed channel has no significant impact on the adjacent highway, Grahamstown Dam, or downstream properties in a 1% AEP event. Furthermore, the capacity of the channel is sufficient to convey a peak 0.2% AEP event.

During consultation between Council and HWC, as part of the assessment, it was recommended that no subdivision works be permitted to occur in the drinking water catchment areas prior to the completion of the stormwater diversion channel. These

restrictions and measures have been incorporated as conditions of consent in **Attachment 2**. Future applications for subdivision will need to be informed by these measures and impact of development on the Grahamstown Dam catchment.

Clause 7.9 Wetlands

This clause requires that development on land mapped as Wetland by LEP2013 must consider the potential impacts of the development on the wetland habitat and water quality, and assess the mitigation measures proposed to minimise these impacts. The Concept Proposal involves land within the mapped wetlands, namely within and around Wetland 803, and the Irrawang Swamp to the south.

Subclause 7.9(3) and 7.9(4) provide the following:

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—*
 - (a) whether or not the development is likely to have any significant adverse impact on the following—*
 - (i) the condition and significance of the existing native fauna and flora on the land,*
 - (ii) the provision and quality of habitats on the land for indigenous and migratory species,*
 - (iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and*
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The above matters to be considered under this clause have been investigated by Northrop Engineers, Alluvium, and RPS Group to assess the potential for development impacts on Wetland 803 and Irrawang Swamp. As per the assessment of the proposal in detail against the provisions of SEPP (Coastal Management), subject to the recommended conditions, the Proposal is unlikely to have a significant impact on nearby wetlands in terms of ecology, water quality and natural flows. Measures to minimise and mitigate any impacts have been included as part of the application and appropriate conditions of consent, as endorsed by HWC.

- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The Proposal and supporting investigations has demonstrated the design and siting of future development on the site can be mitigated to avoid serious adverse impact to the wetland, satisfying the intent of the above clause. The Proposal is considered to satisfy the objectives and requirements of clause 7.9.

Clause 7.11 Public infrastructure buffer

The objective of this clause is to provide appropriate buffers around certain public infrastructure to minimise potential land use conflict between existing and proposed development. Clause 7.11(3) specifies development consent must not be granted for development on land within the buffer area unless the consent authority has considered the following:

- (a) whether the development has been designed, sited or managed to avoid any adverse odour, noise and visual impacts arising out of the authorised use and operation of any public infrastructure on the land to which this clause applies, and*
- (b) if certain adverse impacts cannot be avoided, after having taken into consideration feasible alternatives, whether the development is designed, sited or is to be managed to mitigate those impacts.*

During the rezoning process, an Acoustic Impact Assessment and an Odour Impact Assessment were carried out in 2003 and 2004 (respectively) to determine suitable buffers to the former EWT Bedminster Facility (then owned by *Newline Resources Pty Ltd* and now owned and operated by *Suez*). The site comprises both composting and landfill operations, and the assessment informed the zoning boundaries applicable to Precinct 6 which consists of URA land in closest proximity to such operations.

In 2005 Council commissioned a third party review of both assessments by consultants *Air, Noise Environment Pty Ltd*, who supported the findings and recommendations of *EMS Pty Ltd*. Port Stephens Council subsequently prepared and exhibited the *Kings Hill Local Environmental Study (LES)* which determined that as a precautionary measure, the areas within the KHURA potentially affected by noise and odour should not be zoned for residential purposes. A buffer of 700m was subsequently recommended, regardless of topography.

Council resolved to instead adopt a 1,000m buffer to the composting facility given the public interest of avoiding land use conflicts and the need not to jeopardise the operation of the facility. The decision was made while considering a proposal by *Newline Resources* to rezone their own land surrounding the waste facility to enable residential development (a proposal that ultimately failed due to land use conflicts such as aircraft noise and odour).

However, an additional 1km radial buffer centred on the landfill site, was recommended during consideration of rezoning land immediately adjoining the Raymond Terrace Waste Resource Facility by the Planning Assessment Commission (PAC) in a report from 2012. The buffer around the landfill site was considered an additional consideration to control amenity impacts arising from landfilling operations (including, but not limited to odour, noise, dust, and vibration). This precautionary boundary is not currently reflected in Council's planning controls (LEP2013 or DCP2014).

A submission from the operator of the Raymond Terrace Resource Recovery Facility, *SUEZ*, identified the potential for land use conflicts associated with the ongoing landfill operations, particularly with regard to gas migration and odour from the landfill site.

Although only a relatively small area of developable land within Precinct 6 is within the buffer to each landfill, and although that land is not proposed for subdivision until Stage 15, the Applicant has commissioned *Douglas Partners* to commence the monitoring of landfill gas migration in order to provide preliminary data in the Concept

Proposal prior to determination. The results to date indicate a classification based on the procedures outlined in NSW EPA (202) which is defined as 'very low risk'.

Ongoing monitoring of the installed wells is required to ensure the gas concentrations remain consistent over a longer period, especially prior to applications to enable subdivision of the land within Precinct 6, however initial results indicate that the landfill gas migration risk is very low and unlikely to preclude development in accordance with the urban footprint sought under the Concept Proposal.

Further, based on the submission and information provided from SUEZ, a condition requiring air quality, odour and noise assessment to be provided as part of future applications for subdivision within 1km of the landfill site has been recommended. Development in these buffer areas will need to demonstrate compliance with EPA Guidelines and Technical Framework and the implementation of mitigation measures if required.

6.5.4.2 Section 4.15(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

Nil relevant.

6.5.4.3 Section 4.15(1)(a)(ii) any development control plan (and section 7.11 plan)

Chapter B – General Provisions

Part B1 – Tree Management

To offset the impact of tree clearing, the applicant proposes implementation of vegetation improvement and enhancement works prior to large scale vegetation removal and environmental measures that will protect and mitigate potential damage or degradation to the natural environment. Monitoring of lands set aside for natural regeneration, including specifications for supplementary planting has also been proposed.

The above measures are outlined in the VMP, BMP and SIS submitted with the application. Council's independent ecology consultant was satisfied with the proposed level of tree clearing and environmental protection and regeneration measures proposed in the Stage 1 works.

Part B2 – Natural Resources

It is noted that the DA is considered a pending development application and therefore the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* applies to the application. In accordance with Clause 28(1) the former planning provisions under the TSC Act 1995 applies.

A total of 212.14ha of native vegetation comprising threatened species habitat and 59.87ha of cleared lands will be progressively impacted by the Proposal for future urban use over an 8+ year timeframe. The site preparation works involved in this process are to be Phased and managed in a sensitive manner in accordance with a VMP. The works under the VMP will encourage the gradual transition of affected species in impacted areas into a 244.25ha Conservation Area comprising 'like for like' native vegetation and threatened species habitat which will be restored and improved under a BMP in a timely manner. Restoration and improvement works under the BMP will commence prior to impacts managed under the VMP to enable species transition where desirable.

This impact is countered by the establishment of a 244.25ha Conservation Area comprising 'like for like' native vegetation and threatened species habitat and a number of targeted mitigation measures outlined in the SIS and BMP.

Council's independent ecology review provided support for the level of environmental impact subject to the implementation of the VMP, BMP and SIS measures.

A detailed assessment for koala habitat impact is provided under the SEPP No. 44 section in this report.

Part B3 – Environmental Management

B3.A – Acid Sulfate Soils

The site is identified as containing Class 5 and Class 2 ASS. The proposed Stage 1 works will not include any works that are likely to lower the watertable below 1m AHD on any adjacent Class 1, 2, 3 or 4 lands. Should the subsequent applications for residential development identify that works are likely to affect the adjacent lands, an ASSMP will be required at that time.

B3.BD – Air Quality

The Concept Proposal adopts the LEP2013 mapped buffer to the nearest operating Waste Facility. A condition has also been recommended that odour and air quality testing be submitted for development within 1km of the landfill site as considered under Clause 7.11 of the LEP2013.

B3.C - Noise

The development is unlikely to produce offensive noise.

Acoustic impact from the Pacific Highway and Resource Facilities has been addressed elsewhere in this report.

B3.D – Earthworks

Earthworks do not form part of the works under this application. Each application subsequent to the approved Concept Proposal is to provide a bulk earthworks plan and a detailed Construction Management Plan.

Part B4 – Drainage and Water Quality

The applicant submitted a Stormwater Management Strategy and Plans with the application. As this is a Concept DA, each Precinct Plan is to identify stormwater drainage and water quality management controls for relevant sub-catchments consistent with the relevant catchment-wide stormwater drainage plan required as part of this DA. The subsequent DA's for residential development will be required to include detailed drainage and stormwater plans consistent with Council requirements.

Council's Development Engineers and HWC were satisfied with the stormwater and drainage strategy for the URA.

Drainage and water quality matters have been discussed in further detail in the preceding sections of this report.

Part B5 – Flooding

Flooding has been discussed under Clause 7.3 of the LEP2013 assessment.

Part B6 – Essential services

Essential services for the development has been discussed in detail under Clause 6.2 and Clause 7.2 of the LEP2013 assessment.

Part B7 – Williamtown RAAF Base – Aircraft noise and safety

Noise

The subject site is outside of the 2025 Australian Noise Exposure Forecast for RAAF Base Williamtown.

Bird Strike

The subject site is located in an area mapped by Defence as “Bird strike Group A”. In this area certain land uses that have the potential to attract wildlife should be avoided as they will potentially increase the risk for bird strike for aircraft operation from RAAF Base Williamtown. Residential development is not a high risk use for bird attraction. The application was referred to Department of Defence who provided no response within 21 days, deemed to be no objection to the proposal in this regard.

Part B8 – Heritage

European and Aboriginal heritage has been addressed under clause 5.10 of the LEP2013 in this report.

Part B9 – Road Network

The Proposal provides subdivision information at a precinct level, including primary land uses and major road connections. The plans provide an indicative layout for residential subdivision which facilitates compliance with Council requirements and technical specifications.

The Proposal has adopted the DCP location for the identified collector roads. The proposed typical road sections for the local access street and collector road match with the proposal of the adjoining site and are in line with the requirements of Council's DCP and Infrastructure Specifications.

The subsequent DA's will provide greater detail with respect to the local road network and pedestrian accessibility.

Traffic Impact and Road Network

A Traffic Impact Assessment prepared by SECA is provided as part of **Attachment 3**. The assessment identifies the likely future traffic scenarios for the road network surrounding Kings Hill in five-year increments from 2017 through to 2037. Further, Council engaged GHD to prepare a URA wide Traffic and Transport Study in April 2019.

The proposal will require construction of the North-South Link (NSL) Road and East-West Link (EWL) Road to link development to the Pacific Highway (via a proposed grade separated interchange) and Newline Road. The proposal will trigger upgrades to Newline Road, which will require an intersection to connect it to the EWL. With the proposed grade separated interchange, the intersection with Six Mile Road and the Pacific Highway would need to be closed (as requested by TfNSW).

The DA Masterplan prepared by PDS and Northrop shows defined transport structures and road hierarchy (illustrates shared pedestrian cycle link, laneways, local streets, perimeter roads, collector roads, bus route and proposed Pacific Highway Interchange). Shared paths are shown on collector roads and pedestrian paths are proposed on all roads, satisfying the DCP requirements.

This detail has been shown as indicative only to demonstrate how the Proposal could support compliance under future subdivision applications, thus not forming part of the Concept Approval. Final design of shared pedestrian cycle links, laneways, local streets, perimeter roads and bus routes will subject to future applications.

The proposal involves the EWL providing flood free access to the URA, however Precinct 8 (of the DCP) is not shown to be connected in to the EWL in the Masterplan, nor does it show direct connections to any other precincts within the URA. According to the Applicant, the internal north-south flood free access route linking DCP Precinct 7 with DCP Precinct 8, as depicted in *Figure DAC* of the PSC DCP, was found to have limitations upon more detailed investigation of the options, and with the benefit of detailed survey. The key limitations raised were as follows:

- The internal linkage involves other landowners which is likely to affect the timing and continuity of the flood free route required to service the very initial stages of development. Development by other land owners is unlikely to occur until sewer and water access is feasible, and other connecting roads become available.
- The internal road link involves short lengths of steep terrain on the subject land that would result in road gradients and intersections that are not conducive to heavy vehicle and public transport vehicles. Newline Road is flat and readily accessed by public transport and other heavy vehicles.
- The internal flood free link would involve some 2km of new road and drainage infrastructure through vacant land (until sewer and water is available) owned for most of that length by various other landowners, whereas Newline Road is an existing road with less than 1km of upgrades required. This will result in less cost than a new road, with the upgrade providing a broader public benefit to existing users of the road.

The Applicant sought a variation to the structure plan based on the above factors, suggesting it would be more feasible to deliver the upgrades to Newline Road linking with the east-west collector road as the flood free access. Alternatively, the Applicant would have to invest in only a part of the north-south Collector road (i.e. only that part on KHDs land) with no certainty as to when other landowners will complete the connection).

Notwithstanding the above, the Applicant acknowledged the Concept Proposal does not preclude the ultimate delivery of a western north-south collector road in line with the DCP, progressively as subdivision is approved along the route. On this basis, Council has recommended a condition that future detailed applications for subdivision in DCP Precinct 7 incorporate an internal north-south collector road to DCP Precinct 8 in accordance with Figure DAC of the DCP2014.

Subject to the conditions as provided in the recommended conditions, Council's traffic engineers and TfNSW were satisfied with the Concept Proposal's road layout and connectivity.

Further detail is provided in the Applicant's submission at **Attachment 3**.

Public Transport

As a Concept Development application, the location of public transport facilities is proposed to be detailed in subsequent development applications.

Part B10 – Social Impact

A comprehensive Social Impact Assessment was prepared with the KHURA rezoning proposal and exhibited in 2007. Section 4.11 of the SoEE provides Social Impact comments relevant to the Concept Proposal.

Chapter C – Development Types

Part C1 – Subdivision

The proposed development has been assessed against the provisions of Part C1 – Subdivision within **Table 1** below.

Table 1: DCP assessment Part C1.

Control	Requirement	Assessment comment
C.1.A – Block and street layout	<ul style="list-style-type: none"> - To ensure local streets are well-connected to the street network with obvious pedestrian and cycle links to higher order streets. - To ensure priority is provided to resident's needs when designing local streets to encourage usability. - To ensure pathways follow desire lines. 	The Concept Proposal provides indicative subdivision information at a precinct level, including primary land uses and major road connections. The plans provide an indicative layout for residential subdivision which facilitates compliance with Council requirements and technical specifications. The blocks and street layouts are however subject to future approvals, not forming part of the Concept Proposal.
C1.1 – Block dimensions	<ul style="list-style-type: none"> - Residential: depth 80m / length 160m. - Commercial: depth 50m / length 80m. - Industrial: depth 120m / length 200m. 	<p>The Concept Proposal provides subdivision information at a precinct level, including primary land uses and major road connections.</p> <p>The plans provide an indicative layout for residential subdivision which facilitates compliance with Council requirements and technical specifications. The blocks and street layouts are however subject to future approvals, not forming part of the Concept Proposal.</p>
C1.2 – Technical specifications	<ul style="list-style-type: none"> - Street layout complies with the road network specifications in <i>infrastructure specification – design</i> 	The plans provide an indicative layout for residential subdivision which demonstrates compliance with Council requirements and technical specifications. The street layouts are however subject to future approvals, not forming part of the Concept Proposal.
C1.3 – Street layout attributes	<p>The street layout addresses the following:</p> <ul style="list-style-type: none"> • All street components are integrated, such as kerbing, pavement type, width, street tree planting, footpaths, on road cycleway, shared paths, lighting 	As above.

	<p>and seating are provided as specified in infrastructure specific – design11</p> <ul style="list-style-type: none"> • Road widths accommodate the necessary movements of service and emergency vehicles • Driveways and footpaths are provided at subdivision as a part of the subdivision works • Footpaths and shared paths follow desire lines • Street layout is interconnected to provide a grid-like structure • Street layout is informed by street connections for future subdivisions on adjacent lands • Street layout enables each lot to front a street and for corner lots to face both streets • Street layout seeks to provide a perimeter road between residential dwellings and; - bush fire prone land - open space defined as a regional park, district park or local park • Street layout ensures public access to public open space is maintained and encouraged. 	
C.1.4 – Cul-de-sacs	- Cul-de-sacs are only supported where certain requirements are satisfied.	Addressed under future applications.
C1.5 – Street tree requirements	- Street trees are required as a component of the road reserve.	Street trees will be addressed as part of future applications for subdivision.
C1.B – Lot size and dimensions	- To ensure all new lots have a size and shape appropriate to their proposed use, and to allow for the provisions of necessary services and other requirements	
C1.6 – Lot size	- Subdivision adheres with LEP.	Residential lots will be defined under future applications.

C1.7 – Rectangular footprint	<ul style="list-style-type: none"> - A residential lot must be able to support a rectangular building footprint of 15m x 8m or 10m x 12m. 	As above.
C1.8 – Battle-axe lots	<ul style="list-style-type: none"> - All lots are to provide direct street frontage and battle-axe lots are only considered where there is no practical way to provide direct street frontage. 	As above.
C1.9 – Splay corners	<ul style="list-style-type: none"> - Splay corners are provided for corner lots and must be a minimum of: <ul style="list-style-type: none"> ▪ 4m x 4m for residential zones; ▪ 8m x 8m for commercial and industrial zones; and ▪ 6m x 6m or merit-based approach for other zones. 	As above.
C1.C – Solar access	<ul style="list-style-type: none"> - To maximise solar access for residential dwellings. 	
C1.10 – Solar access	<ul style="list-style-type: none"> - Where possible, lots should be oriented to provide one axis with 30 degrees east and 20 west of true solar north. - Where a northern orientation of the long axis is not possible, lots should be wider to allow private open space, on the northern side of the dwelling. - Topography and landform should inform the subdivision layout in order to maximise solar access opportunities. 	<p>The Concept Proposal provides an indicative layout for residential subdivision which appears to demonstrate compliance with solar access.</p> <p>Further detail on solar access will be assessed at a future application stage, not forming part of the Concept Approval.</p>
C1.D – Public open space	<ul style="list-style-type: none"> - To provide a hierarchy of public open space in accordance with public open space hierarchy. - To provide parks that are multi-functional, - To ensure parks achieve centrality by being located near transport nodes, public buildings waterfronts, libraries, or places of public worship. - To ensure public open spaces meets the demands of the local community to encourage usability and critical mass. 	

C1.11 – Open space hierarchy	<ul style="list-style-type: none"> - Identifies that council may require the provision of public open space in accordance with identified area and catchment or due to merit-based approach. 	<p>The subject site is located in the KHURA and the Specific Area Chapter D14 – Kings Hill – Raymond Terrace applies to the development. Control D14.10 identifies that whilst the principles relating to subdivision layout and procedure are contained within Chapter C1 – Subdivision, there is an exception / qualification made in respect to open space requirements.</p> <p>Open space is to conform to Chapter D14 and is to be provided generally in accordance with the Locality Controls Map and with areas consistent with the local infrastructure contribution requirements for Kings Hill under future applications.</p>
C1.12 – Open space reduction	<ul style="list-style-type: none"> - The quantity of public open space may be reduced if: <ul style="list-style-type: none"> - accessibility is improved, - value of open space is improved through such measures as an increased amount and/or quality of park furniture, amenities, play equipment, sports infrastructure. 	
C1.13 – Open space attributes	<ul style="list-style-type: none"> - Public open space for the purpose of a local park, district park or regional park must: <ul style="list-style-type: none"> - Be regular in shape, - Be generally flat and centrally located, - Provide for safe and convenient access (i.e. located on pedestrian / cycle routes), - Be bounded by a street and facing residential or commercial land, - Designed in accordance with CPTED principles, and - Be appropriately serviced (i.e. water, sewage, waste). 	
C1.14 – Open space attributes.	<ul style="list-style-type: none"> - Land that is unsuitable for public open space includes land that is primarily used for stormwater management and asset protection zones. 	
C1.E – Infrastructure	<ul style="list-style-type: none"> - To ensure detailed consideration is provided to the provision of integrated and quality public infrastructure. 	
C1.16 - Technical specifications	<ul style="list-style-type: none"> - Infrastructure must be provided in accordance with Councils infrastructure specification – design. 	Typical road sections for the local access street and collector road show compliance with the requirements of Council's DCP and Infrastructure Specifications.
C1.17 – Public infrastructure	<ul style="list-style-type: none"> - Subdivision must provide public infrastructure within the adjoining 	The Concept Proposal provides an indicative layout for residential

	<p>road or public land including kerb/gutter, stormwater, drainage, footbaths, etc.</p> <ul style="list-style-type: none"> - Public utilities (such as water and electricity) must be kept within private lot boundaries and are not to be located within the road reserve. 	<p>subdivision which facilitates compliance with Council requirements and technical specifications. Public infrastructure is however subject to future approvals, not forming part of the Concept Proposal.</p>
C1.18- Lifecycle and maintenance	<ul style="list-style-type: none"> - Lifestyle and maintenance costs are a key determinant when considering alternative methods to those specified within Council's infrastructure specification – design. - Life cycle costing and maintenance manual details for infrastructure must be provided to assist in ongoing maintenance. 	<p>Life cycle costing and maintenance details will be addressed as part of future applications.</p>
C1.F – Public scale drainage	<ul style="list-style-type: none"> - To ensure public scale drainage for subdivision is consistent with Chapter B4 Drainage and Water Quality. 	
C1.19 and 20 – Inter-allotment drainage	<ul style="list-style-type: none"> - Each lot must be able to be gravity drained through the drainage system to public drainage. - Inter-allotment drainage may be required for subdivision where a lot does not drain directly to the road kerb. 	<p>A stormwater drainage strategy has been prepared for the entire precinct.</p> <p>As this is a Concept DA, each Precinct Plan is to identify stormwater drainage and water quality management controls for relevant sub-catchments consistent with the relevant catchment-wide stormwater drainage plan required as part of this DA. The subsequent DA's for residential development will be required to include detailed drainage and stormwater plans consistent with Council requirements.</p>
C1.21 – Drainage reserves	<ul style="list-style-type: none"> - An overland flow path is provided for the 1% AEP storm event and is a drainage reserve dedicated to Council as operational land. 	<p>As above comment.</p>

The proposed development has been assessed against the relevant provisions of Part C1 – Subdivision and is considered to be satisfactory.

Chapter D – Specific Areas

Part D14 – Kings Hill – Raymond Terrace

The subject site is situated within the applicable land application map for the Kings Hill – Raymond Terrace DCP. The specific area controls applicable to the development are considered within **Table 2** below.

Table 2: DCP assessment Part D14.

Control	Requirement	Assessment comment
C14.A – Structure planning and precinct planning	<ul style="list-style-type: none"> - The objectives of C14.A include: - To ensure development occurs in a logical and coordinated manner; including the relationship between different land use zones and surrounding major infrastructure (such as the Pacific Highway and Grahamstown Dam). - To ensure development is efficient and results in cost effective infrastructure and adequate access to services by residents 	
D14.1 – 14.7 – Residential precinct plans	14.1 - A Precinct Plan is prepared to accompany the first stage of a development application in any of the development precincts identified on the Local Environmental Plan.	The Concept Proposal included an indicative layout for residential subdivision across the site. The Plan has been prepared to identify how the logical progression of development into the adjoining sites would occur. A detailed Precinct Plan will be required for each respective stage of subdivision under future applications.
	14.2 - Development is generally consistent with the Locality Controls Map at Figure DAC.	The development footprint and proposed collector road layout is generally consistent with the Locality Controls Map (Figure DAC).
	14.3 - Development consent for the purposes of a super lot does not require preparation of a Precinct Plan.	No super lots are proposed.
	14.4 - Staging for the urban release area as a whole will be determined by the provision of essential services and may involve development occurring	Essential services will be constructed across the site as the KHURA progresses. Advice sought from service providers indicates the proposal is able to be serviced. This has been demonstrated in the

	simultaneously in different parts of the locality.	<p>Servicing Strategies and Staging Plan prepared by Northrop.</p> <p>Development of the subject site will not be able to occur until vehicular access is available from either Newline Road or via the new Pacific Highway interchange arrangement.</p>
	14.5 - Each Precinct Plan is to include a Staging Plan that is lodged with the first stage and provides for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing.	Precinct Plans are to be provided with the subsequent DA's for residential development. A URA wide Staging Plan has been submitted as part of this application.
	14.6 - Each stage of development may be subdivided into sub-stages. Any sub-stages should be identified in the SEE to accompany the development application for subdivision, together with a description of the sub-stages and the impact of the sub-stage sequence on the provision of essential services.	To be provided with the subsequent DA's for residential development.
	14.7 - Detail for any land zoned B2 Local Centre or B4 Mixed Use need not be provided until consent for initial subdivision of that land is sought.	No consent for development of B2 Local Centre or B4 Mixed Use sought as part of this application.
D14.8-9 – Town centre and village centre precinct plans.	- Specifies the requirements relating to town centre and village centre precinct plans.	Development consent is not sought for the subdivision of land at this time and will be subject to a separate DA and precinct plan.
D14.10 – Subdivision layout	- Requires that subdivision layout shall enable neighbouring sites / precincts to deliver the outcomes sought by the locality controls map and identifies that Chapter C1 details principles relating to subdivision layout requirements (other than open space which is to be provided in accordance with Chapter D14).	The proposal is consistent with the major street network shown in the DCP chapter and provides logical connections to adjoining land/precincts. Further refinement of collector roads will be required as the detailed design of adjoining land progresses.
D14.11 - 12 – Servicing	- Consent for the subdivision of land (other than a super lot) requires submission of servicing strategy.	A servicing strategy for the provision of sewer and water has been prepared

	<ul style="list-style-type: none"> - All commercial and residential allotments are to be serviced by reticulated water, sewerage, electricity and telecommunication. 	<p>and approved by HWC for the overall KHURA.</p> <p>HWC was satisfied that there are provisions in place within the regional water and sewer strategies to service the subject development. Internal servicing arrangements will need to be determined as part of the Section 50 process and the requisite infrastructure constructed before lots will be permitted to connect. This will be detailed as part of future applications on the site. Further, a DA (16-2020-81-1) for water and sewer lead in works to service the KHURA has been approved.</p> <p>Ausgrid advised there is presently available capacity for approximately 600 – 800 residential lots in the area including any adjacent developments. Network augmentation will be required to supply the full KHURA.</p> <p>The application is for concept purposes, subsequent DA's for residential development will require detailed servicing strategies. Servicing strategies and detail design in collaboration with the relevant authority will progress in line with the detailed design of each precinct.</p>
D14.B – Traffic and Transport	<ul style="list-style-type: none"> - To achieve connectivity between precincts, the local centre and nearby service areas. - To ensure Kings Hill has a defined transport structure and road hierarchy. - To ensure delivery of an east west road link between Newline Road and the Pacific Highway. - To ensure the pedestrian and cycle network provides convenient and safe access to relevant areas. - To ensure the Pacific Highway interchange is the primary access point 	
D14.13-14 – Transport	<ul style="list-style-type: none"> - A precinct plan must detail an overall transport movement hierarchy. 	<p>A road hierarchy and connectivity master plan has been submitted for the</p>

movement hierarchy	<ul style="list-style-type: none"> - Transport movement networks must be positioned and designed appropriately for site constraints. 	<p>entire site, demonstrating that the urban footprint can support major circulation routes in accordance with the map in the DCP chapter. The subject Concept Proposal provides for the setting aside of lands for the collector roads corridors and perimeter roads. A variation has been sought by the Applicant with regard to the western North-South Collector Road between DCP Precinct 7 and 8. This matter is addressed in detail under <i>Part B9 – Road Network</i>.</p> <p>Further details on the transport hierarchy will be required under future applications.</p>
D14.15-16 – Collector roads	<ul style="list-style-type: none"> - Collector roads are to be provided in keeping with the locality controls map. - Adjacent allotments must be orientated to have access from collector roads. 	<p>The proposal includes collector roads, including the EWL and NSL roads, which are located in accordance with the DCP.</p> <p>Comment on western NSL road provided under <i>Part B9 – Road Network</i>.</p>
D14.17 – East-west road (four lane section)	<ul style="list-style-type: none"> - The eastern end of the east-west collector road, for a length of approx. one kilometre, is to have two travel lanes in each direction. 	<p>As noted in the Kings Hill Traffic Study prepared by GHD 2019, the EWL will consist of 4 lanes from the interchange for approximately 750m into the site. The Concept Proposal is for the urban footprint only, therefore future applications will need to address this requirement.</p>
D14.18- 19 – Subdivision certificate	<ul style="list-style-type: none"> - Within each precinct, collector roads are constructed to the boundary of the adjoining precinct prior to the release of a subdivision certificate for a cumulative total of no more than 75% of the lots. - Within precinct 6, the east west road is constructed from the western boundary of the Precinct to Newline Road and collector roads connect to the southern boundary of precinct 7 prior to the release of a subdivision certificate for a cumulative total of no more than 50% of the lots 	<p>This requirement is not relevant for this application as no consent for subdivision of lots is sought.</p>

D14.20 – Newline Road	<ul style="list-style-type: none"> - Maximum number of lots with sole access to Newline Road is 1200. Consent for lots in excess of this number requires connection to the Pacific Highway via the east-west collector road. 	This control has been superseded as TfNSW and the State VPA require the Kings Hill Pacific Highway interchange to be completed to practical completion and operational prior to the release of the 250 th urban lot / dwelling within the KHD land holding.
D14.21 – Pre- Pacific Highway Interchange Access	<ul style="list-style-type: none"> - Development with sole access from Newline Road requires upgrade works to provide 5% AEP flood immunity for the Kings Hill development flood access route consisting of local road raising of two sections of Six Mile Road, being an approximate: <ul style="list-style-type: none"> - 100 metre section at near the intersection of Winston Road. These works also require appropriate raising of Winston Road in the vicinity of the intersection, and - 60 metre section near the intersection of Newline Road. 	The proposed EWL is to provide long-term flood free access to the development, linking the Pacific Highway and Newline Road, as shown in the Locality Controls Map DCP Section D14 Figure DAC. Any future applications that propose development prior to completion of the interchange will be required to undertake the necessary upgrades to Six Mile Road to achieve flood free access. This requirement will be managed under future applications for subdivision.
D14.22 – 23 – Public transport	<ul style="list-style-type: none"> - The identified designated public transport routes must be constructed as bus routes in accordance with Councils technical specification – design, - Bus stops are to be identified prior to final completion. 	In accordance with the Locality Controls Map DCP Section D14 Figure DAC, the proposed EWL and NSL collector roads will provide the public transport routes through the site. The location and type of bus stops under future applications will be determined in accordance with Council's Design Development Specification and consultation with Council and Newcastle Transport as the lot layout is developed.
D14.24 - Paths	<ul style="list-style-type: none"> - Identified pedestrian and cycle paths are to be provided. 	Pedestrian and cycle paths have been provided generally in line with the Locality Controls Map. Detail of path and cycle way design will be provided with the subsequent DA's for residential development.
D14.25 – Pedestrian path	<ul style="list-style-type: none"> - A pedestrian path is provided on one side and a shared path on all: <ul style="list-style-type: none"> - Collector roads, - Roads within B2 and B4 zones, 	Detail on pedestrian paths will be provided with the subsequent DA's for subdivision.

	- Roads within 400m of the primary frontage to a school or major community facility.	
D14.26 – End of trip facilities	- End of trip facilities are provided at precinct centres, community facilities and regional parks.	The development footprint does not contain any detail for precinct centres, community facilities, school sites or regional parks, and accordingly these clauses are not applicable to the proposal at Concept Stage.
D14.C – Social infrastructure	- Social infrastructure must be appropriately located to meet the needs of the community.	
D14.27 – Community and recreation facilities.	- Precinct plans must identify the location of required community and recreation facilities in accordance with the locality controls map.	A public space and connectivity plan has been submitted with the application, however is indicative only and not sought for approval. The plan identifies the location and type of recreational facilities, consistent with the locality controls map in the DCP and the GHD Recreation Study prepared on behalf of Council for the KHURA. Further detail on this space will be required at the future DA stage.
D14.28 – Community facilities	- Community facilities are preferably located within the Town Centre.	Community Facilities have been identified on the indicative plans (not for approval) in accordance with the Kings Hill Urban Release Area Community and Recreation Infrastructure Study (GHD, March 2020). Detailed design for the facilities will be undertaken under future applications.
D14.29 – Schools	- The preferred locations of schools are identified on the locality controls map.	One school site has been included in the indicative Master Plan by PDS. The Applicant has advised the proposed location of the school site was informed through consultation with the NSW Department of Education through the State VPA process and the <i>Planning New Schools School Safety and Urban Planning Advisory Guidelines</i> . The Concept Approval is for the urban footprint and collector roads location

		only, therefore school locations will be a matter for future applications.
D14.D - Drainage and Water Quality	- To ensure environmentally sustainable and affordable water management is provided with a catchment based approach that recognises the flows between Precincts, landholdings and the sensitive nature of the receiving waters.	
D14.30 – Eastern catchment and Grahamstown Dam.	- All stormwater from development areas up to 0.2% AEP design flood event is prevented from discharging into Grahamstown Dam.	<p>The Kings Hill Urban Release Area Eastern Channel Flood Study completed by Northrop Consulting Engineers, details the diversion of flows from the eastern catchment away from Grahamstown Dam. This shows that stormwater from development areas up to 0.2% AEP design flood event is prevented from discharging into Grahamstown Dam via a diversion channel on the eastern side of the Pacific Highway.</p> <p>As stated previously, TfNSW will be the delivery agency for the stormwater channel. The infrastructure is subject to a separate approval under Part 5 of the EP&Act Act.</p> <p>In accordance with the advice and recommended conditions from HWC, no subdivision or development is to occur in the eastern catchment until the stormwater channel is constructed.</p>
D14.31- 32 – Water Management Strategy	<ul style="list-style-type: none"> - Consent for development within the eastern and western catchments first requires lodgement of a stormwater drainage plan addressing drainage and water quality management for the entire catchment, to the satisfaction of the consent authority. - Each Precinct Plan is to identify stormwater drainage and water quality management controls for relevant sub-catchments consistent with the relevant catchment-wide stormwater drainage plan. 	A stormwater management strategy prepared by Northrop has been submitted for the entire site in accordance with this control. The purpose of this report is to provide a stormwater drainage plan in accordance with the guidelines outlined in the Kings Hill Urban Release Area Water Management Strategy Guidelines completed by BMT WBM in 2013. Section 6 of the Northrop strategy report addresses drainage and water quality management for the entire catchment.

		The proposed stormwater control measures for each sub-catchment are shown on drawings DA-08-C4.00 to 4.03, however additional details will be provided at precinct level development applications.
D14.E – Natural Resources	- To ensure that development responds to the biodiversity values of the site.	
D14.33 – Vegetation Management Plan	- Applications for development on land zoned E2 Environmental Conservation or subject to terrestrial biodiversity controls (LEP) within each environmental precinct provide must a VMP with the precinct plan.	Development is proposed on land zoned E2 Environmental Conservation in the form of KHURA enabling infrastructure (roads, pipelines, creek rehabilitation etc.). A Biodiversity Management Plan and Vegetation Management Plan accompany this application.
D14.34 – Illegal dumping.	- Measures such as fencing and block configuration are to be imposed in order to restrict unauthorised access to E2 land.	<p>The SIS recommends that the interface between the Impact Area and the Conservation Area is to be preserved by a Koala proof fence with Koala bridges and grids.</p> <p>Fencing will protect the Conservation Area from undesirable activities (such as illegal dumping, 4WD and motorbike activities, logging) and from existing rural activities that are likely to continue until land in the Impact Areas are developed (e.g. grazing by cattle, horse and goats).</p>
D14.35 – Riparian corridors	- Development involving a controlled activity within waterfront land is to comply with the requirements of the <i>Water Management Act 2000</i> .	GTAs from NRAR has been provided for controlled activities under <i>Water Management Act 2000</i> required for this application. The advice is contained at Attachment 7 .
D14.F – Waste treatment facility	<ul style="list-style-type: none"> - To ensure hazards from former landfills are managed. - To ensure appropriate buffers that will minimise potential land use conflict between existing and proposed development. 	
D14.36 - 37 – Waste treatment facility	- All development within 250m of the Newline Road Waste Disposal Facility or any land in proximity as identified by Council has the potential to have methane concentrations of	Development within 250m of the boundary of land containing past and present landfill cells will require assessment under future applications for development in those areas. This

	<p>greater than 1.25% (v/v) in the subsurface and is to be tested with a tested/calibrated methane detector over regular intervals 12 months prior to a subdivision application being lodged with Council for determination.</p> <ul style="list-style-type: none"> - Development and monitoring should comply with the relevant sections of the NSW Environmental Protection Agency guidelines. 	<p>requirement has been included as a recommended condition of consent.</p> <p>Further, a condition has also been recommended that odour and air quality testing be submitted for development within 1km of the landfill site as considered under clause 7.11 of the LEP2013.</p>
D14.G – Pacific Highway Impacts	<ul style="list-style-type: none"> - To ensure that development in Kings Hill is not adversely affected by noise and vibration from the Pacific highway. - To ensure development is buffered from view of traffic on the Pacific Highway. 	
D14.38 – Acoustic / vibration.	<ul style="list-style-type: none"> - Consent for development in precincts 1 to 4 requires an acoustic report consistent with the requirements of Chapter B3.3 and relevant Australian Standards (i.e. Road Noise Intrusion). 	<p>Long-term attended noise monitoring was completed by EMM Pty Ltd along the entire URA frontage to the Pacific Highway to establish existing ambient noise levels and road traffic noise exposure across the subject site.</p> <p>A 2.4m barrier spanning the eastern boundary of these sites was modelled in order to reduce road traffic noise levels in these areas. The barrier is recommended to extend from the north eastern corner of the northern KHD land holding, spanning the eastern boundary to the south eastern corner of the southern Gwynvill land holding. Provision for a 2.4m high acoustic barrier along the Pacific Highway has been included on the Concept Plan.</p> <p>Other construction and design recommendations for dwellings in the noise impact area were provided as part of the EMM report.</p> <p>Section 4.10 in the SoEE expands further on road noise impact in relation to the development.</p> <p>A condition has been included that any future detailed development application shall be supported by acoustic modelling and noise impact</p>

		assessment for development along the Pacific Highway. Subsequent applications for subdivision must demonstrate compliance with the relevant EPA Road Noise Policy and <i>Development near Rail Corridors and Busy Roads – Interim Guidelines</i> .
D14.39 – Land-use buffers	- Development at Kings Hill is visually buffered from the Pacific Highway by a minimum of 10m of landscaping. This landscaping will be implemented through individual DAs and may be indicated on and Precinct Plans, the stormwater drainage plan for the eastern catchment, and/or plans for construction of the Highway interchange.	The land required for the visual buffer to the Pacific Highway is identified on the concept plans submitted with the application. Future DA's for residential development adjacent this buffer will include detail of future plantings along the Pacific Highway. A condition has been included that requires any acoustic barrier to include landscaping and visual treatment measures.
D14.H – Aircraft noise	- To ensure appropriate consideration is given to land burdened by aircraft noise	
D14.40 – Aircraft noise	- Development is to comply with control B7.1 (aircraft noise).	The site is not located within the aircraft noise planning area and so this clause does not apply to the proposed development.

6.5.4.4 Section 4.15(1)(a)(ia) Any planning agreement or draft planning agreement entered into under section 7.4

KHD formally submitted an Offer to Port Stephens Council seeking to enter a VPA which proposes the following:

- The Developer, at its own cost, will implement the BMP and VMP submitted with the Species Impact Statement for the Concept Proposal.
- The Developer will undertake works over 5 years to enhance the conservation land in accordance with a Biodiversity Management Plan, including fencing and weeding. These works have been costed at \$3,500,000 and will be entirely funded by the Developer.
- The Developer will provide a bank guarantee of \$600,000 as rolling security that these works will be completed.
- If Council is satisfied with the enhancement works completed by the Developer, the Developer will dedicate the conservation land at no cost to Council.

- On dedication of the land to Council, the Developer will make a monetary contribution to Council of \$3,000,000 to fund the ongoing management of the conservation land for 40 years, including weed and pest management, bushfire management, fencing and trail maintenance.
- The draft VPA will not impact the obligations of the Developer to pay local infrastructure contributions under the Port Stephens Local Infrastructure Contributions Plan 2020.
- Once the Conservation Area has been established by the Developer through implementation of the BMP and VMP (measured against the Key Performance Criteria in the BMP, to the satisfaction of Council), the Developer will transfer the Conservation Area to Council for active management of the land.
- At the time of Concept Approval, Council is satisfied with the terms of:
 - a) the VPA offer detailing the funds (Conservation Area Fund) required to be paid by the Developer to Council to manage the Conservation Area in perpetuity, once it is established, and
 - b) the Biodiversity Conservation and Management Plan (BCAMP) detailing management of the land required to preserve the conservation principles.
- Following transfer of the Conservation Area Fund by the Developer to Council, and following transfer of the Conservation Area to Council, Council will continue management of the land in alignment with the BCAMP.
- The Developer's obligations in maintaining the Conservation Area will cease upon transfer of the Conservation Area to Council. The BCAMP will thereafter operate to ensure biodiversity conservation of the Conservation Area in perpetuity. The VPA would then cease and be removed from title, as the BCAMP will constitute a Plan of Management for the land under the Local Government Act 1993.

The VPA offer terms as described above have been endorsed in principle by Council's Development Contributions Analysis Team and Councillors at an Ordinary Council Meeting on 8 December 2020. Once complete, the VPA will be executed in accordance with the VPA protocol process.

A condition has been imposed requiring the VPA to be executed in accordance with the terms in the VPA offer. A further condition has been imposed specifying that no works are to occur until the VPA is executed and referenced on title.

6.5.4.5 Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

No matters prescribed within the regulations apply to the proposed development that have not been addressed in the preceding sections of this report.

6.5.4.6 Section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Economic Impacts

The application was supported by an Economic Assessment prepared by MacroPlan Dimasi (2019). The Economic Assessment indicates that when completed, the KHURA is estimated to provide a direct \$140 million in value into the local economy annually, with expenditure on upfront infrastructure expected to total \$105.4 million whilst the cost of the construction of the development is expected to total \$1.1 billion (2018 dollars).

Construction of the development alone is expected to generate 177 full-time equivalent jobs per annum directly over a 15-year period, and ongoing full-time employment for some 279 residents when the development is completed. Investment from businesses located in the KHURA has the potential to provide direct ongoing employment for at least 885 people.

Direct regional benefits attributable to the release of the KHURA include:

- a timely addition of over 3,000 dwellings, providing affordable housing choices central to the region's main employment locations;
- a strengthening and diversification of the local economy – countering the region's reliance on traditional industries such as manufacturing and mining, which currently support the majority of the region's workforce but are anticipated to recede in importance over the coming decade; and
- an improved retention of young working residents – through its provision of employment opportunities in construction, professional services, education and retail trade industries.

Representing about 65% of development proposed within the KHURA, the scale of the Concept Proposal on its own will have a significant and sustainable positive effect on the social and economic aspects for Kings Hill, the Port Stephens LGA, and the Lower Hunter Region.

Social Impacts

A Social Impact Assessment was completed as part of the KHURA rezoning proposal and exhibited in 2007. Section 4.11 of the SoEE (JW Planning) provides Social Impact comments relevant to the Concept Proposal.

Based on the assessment and materials submitted, it is considered the proposal will result in a positive social impact for the locality by stimulating the local economy during the construction phase of the development and contribute to the strength of the local economy through population increase and contributing to LGA housing supply. The prospective lots are positioned within close proximity to existing and planned essential facilities and services, ensuring positive social outcomes for future residents.

Impacts on the Built Environment

For the purpose of this application, there will be no impact to the built environment. However, future development of the site as intended under this concept application will result in changes to the built environment.

The Concept Proposal is for the purpose of residential subdivision and mixed use development in the business zoned precincts. Although future development will be primarily for the purpose of residential lots and associated works, it will also include a collector road, minor roads, street lighting, detention basins and various related infrastructure.

It is anticipated that future lots on the site will be predominantly developed using detached dwelling typologies that will integrate with the desired density and character of the residentially zoned areas. Visual attenuation of the built form will be considered through appropriate landscaping and fencing along the Pacific Highway.

Further detailed planning and assessment of built form impacts will be undertaken as part of future development applications in the Town Centre and Village Centre Precincts of the URA.

Impacts on the Natural Environment

The proposed development involves the clearing of existing vegetation within the areas zoned for urban development. The vegetation over the site varies from open forest to derived grasslands and shrub lands. To examine the ecological impacts of the development, several detailed ecological studies (including a SIS) have been prepared in support of the Proposal.

Based on the information provided and an independent ecology review, the proposed development, subject to compliance with the recommended conditions, will not likely result in significant impacts upon the natural environments. The impacts to the natural environment from the vegetation removal required to facilitate the proposed development have been mitigated and minimised as required under the *TSC Act 1995*. Conditions have been imposed requiring compliance with the VMP and BMP, including ongoing monitoring for the Conservation Areas.

6.5.4.7 Section 4.15(1)(c) the suitability of the site for the development

The NSW State Government, through the Hunter Regional Plan and Greater Newcastle Metropolitan Plan, has recognised the suitability of urban development on this site. In accordance with the regional strategic direction, Council investigated and rezoned the KHURA for future residential development.

Site specific investigations prepared by the Applicant have been provided to identify a suitable development footprint that accords with ecological and sustainable design principles, in addition to the relevant statutory instruments.

On this basis, the site has been assessed as being suitable for the proposed development for the following reasons:

- The proposal is permissible with consent under the provisions of LEP2013;
- The proposal complies with the relevant environmental planning instruments and DCP2014;
- The concept subdivision proposal has been indicatively designed in accordance with the principles of the Structure Plan and Council's DCP;
- All external agencies have supported the Proposal and provided conditional terms of approval; and

- Site investigations have determined that the land is suitable for its intended purpose of development.

Accordingly, the site is suitable for the residential subdivision as proposed.

6.5.4.8 Section 4.15(1)(d) any submissions made in accordance with this act or the regulations

In accordance with Council's Community Participation Plan (CPP) and the *EP&A Regs*, the application was notified and advertised for 28 days from 6 June to 2019 to 4 July 2019. Fourteen (14) submissions were received during this period.

The amended application and additional information was re-notified for a period of 21 days from 18 March 2020 until 10 April 2020. Seven (7) submissions were received during this period.

It is also noted the Applicant commissioned RPS to design and facilitate two community drop-in information sessions to present the Concept Development Application to the local community. The community sessions were undertaken in June 2019, with a Community Consultation Report submitted as part of the application.

Public Submissions

In total, 21 submission from were received in relation to the proposed development. Two submissions received were in support of the application, with the remainder objecting or raising concerns. The issues raised in the submissions and response has been outlined in the table below.

A more detailed response to submissions has been provided by RPS contained at **Attachment 3**.

Submission No.	Concerns Raised	Comment
1	<ul style="list-style-type: none"> • Dust and truck movements on Six Mile Road; 	Six Mile Road will only be an emergency access when Newline Rd is flooded. TfNSW traffic modelling has determined that based on existing conditions, and on such seldom occasions, up to 400 lots can safely access/egress via Six Mile Rd via the Pacific Highway. Further, once the Interchange and EWL Road is constructed, the Six Mile Road intersection will be closed as required by TfNSW. Truck movements on Six Mile Road will be limited and only temporary.
	<ul style="list-style-type: none"> • Removal of flora and fauna; 	The SIS has assessed all affected species as per the CERs and in accordance with the 7 part test to determine if the Proposal is likely to have a significant impact on these species. Section 8 of the SIS provides these assessments, which concludes that the Proposal is not likely to have a significant

		<p>impact on threatened species and ecological communities. This assessment conclusion is based on the impacts of the Proposal, as described in Section 2 of the SIS, and the amelioration measures outlined in Section 7 of the SIS. The SIS described the establishment and maintenance of an in-perpetuity Conservation Area comprising like for like habitats. It is expected that this provision will contribute to the ongoing persistence of local viable populations of affected threatened species.</p>
	<ul style="list-style-type: none"> • Water quality and surrounding catchment; and 	<p>The Concept DA is accompanied by Stormwater Management Plans, preliminary designs for stormwater treatment (quality and quantity), and detailed wetland impact modelling and assessments. The targets set for the treatment of stormwater water quality exceed Council's water quality controls. Erosion and sediment controls, along with stormwater management devices, will be installed prior to construction activities to prevent downstream water quality impacts. Further, HWC have been active in the preparation of conditions of consent and assessment to preserve the water quality of the surrounding catchment.</p>
	<ul style="list-style-type: none"> • Noise 	<p>The proposed working hours for construction activities (including the delivery of plant and equipment) would be limited to recommended standard hours outlined by Interim Construction Noise Guideline (DECC 2009) for the majority of the works. These standard construction hours are:</p> <ul style="list-style-type: none"> – Monday to Friday: 7am to 6pm – Saturday: 8am to 1pm – Sunday and public holidays: No work. <p>Construction Management Plans (CMP) will be prepared prior to construction to address the issues raised by the submission and in particular, to specify suitable times for construction, construction traffic, and any measures required to minimise dust spread.</p>
2.	<ul style="list-style-type: none"> • Impact to Koala habitat; and 	<p>KHD has tendered a SIS that comprehensively addresses these requirements including a detailed application of the impact mitigation hierarchy (i.e. Avoid, Minimise, Mitigate and Offset). The</p>

	<ul style="list-style-type: none"> Impact to biodiversity and conservation integrity. 	<p>Proposal's impacts are considered in Sections 5 and 6 of the SIS with a detailed account of ameliorative measures outlined in Section 7 of the SIS. Section 8 of the SIS provides a revised assessment of the Proposal impacts following consideration of information provided in Sections 5, 6 and 7 and concludes that the Proposal is not likely to have a significant impact on threatened species and ecological communities affected by the Proposal.</p> <p>This comprehensive assessment process included a thorough and detailed consideration of the Proposal's impacts on the Koala, including advice from Koala experts including Dr Steven Phillips and Dr Grant Brearley (BioLink), Ms Olivia Woosnam (OWAD Environmental) and Dr Kara Youngentob and Dr Karen Marsh (Australian National University).</p> <p>Council engaged an independent ecologist to review the SIS and supporting documents. The review provided support for the findings and agreed there would be no significant impact in accordance with the relevant statutory framework.</p>
3.	<ul style="list-style-type: none"> Impact of the development on koala habitat 	Addressed above.
	<ul style="list-style-type: none"> Inconsistencies with investigations including the Species Impact Statement (SIS) 	A revised SIS was provided that resolved a number of inconsistencies raised by both the community and Council officers.
	<ul style="list-style-type: none"> Potentially adverse effect on water quality, including in the adjacent Grahamstown Dam 	Any potential impact on the adjacent Grahamstown Dam will be resolved through the construction of the stormwater channel by TfNSW. Further, Hunter Water have provided support for the Proposal, with consideration given to impacts on water quality and dam safety and operations.
	<ul style="list-style-type: none"> Impact on fish habitat 	DPI – Fisheries provided General Terms of Approval for the Proposal noting no unreasonable impact on key fish habitat

		would occur. Further, a Key Fish Impact Assessment was provided by the Applicant.
4.	<ul style="list-style-type: none"> Inconsistencies with investigations including the SIS, BMP and VMP 	A revised SIS, BMP and VMP was provided that resolved a number of inconsistencies raised by both the community and Council.
	<ul style="list-style-type: none"> Scale of vegetation removal and impact on local koala populations. 	Refer to above comment on Koala impact.
5.	<ul style="list-style-type: none"> The development will have major direct and indirect impacts on threatened species, populations and ecological communities; our submission specifically addresses the impacts upon key fish habitat, wetlands and water quality; 	Impact to wetlands, ecological communities have been addressed under previous comments and this assessment report.
	<ul style="list-style-type: none"> The development is inconsistent with the Fisheries Management Act 1994; 	<p>The Proposal is consistent with the Fisheries Management Act 1994 as:</p> <ul style="list-style-type: none"> – Assessment has properly identified and assessed areas of key fish habitat. – Listed threatened species and ecological communities that may be affected by the Proposal were considered and assessed with impacts not being regarded as significant. – Fisheries NSW were consulted and issued General Terms of Approval under the Fisheries Management Act 1994.
	<ul style="list-style-type: none"> The development is inconsistent with the Coastal Management Act 2016, NSW Biodiversity Conservation Act 2016 (BC Act) and the Environment Protection and Biodiversity Conservation Act 	The proponent has the responsibility to refer the proposed development to the Department of Agriculture, Environment and Water Resources to determine whether the development is a controlled action under the EPBC Act. The Commonwealth's decision-maker maintains a separate approval role, which will be exercised outside of the determination of this development application. No wide-scale clearing is permitted to occur until the EPBC approval is obtained.

	1999 (EPBC Act); and	<p>Assessment under the BC Act is not required for this Proposal as it is being assessed under the transitional arrangements defined in the Biodiversity Conservation (Savings and Transitional) Regulation 2017.</p> <p>The Coastal Management SEPP has been applied in the assessment of the Proposal and is consistent with the SEPP by:</p> <ul style="list-style-type: none"> – Identifying and excluding development from mapped coastal wetlands – Excluding development from the periphery of coastal wetlands (i.e. application of a minimum 50 m buffer from mapped wetlands) – Application of water sensitive urban design principles to manage and protect water quality and quantity entering coastal wetlands.
6.	<ul style="list-style-type: none"> • The Precautionary Principal has not been applied. 	<p>The Proposal has addressed the four principles of Ecologically Sustainable Development including the precautionary principle by:</p> <ul style="list-style-type: none"> - Providing realistic and achievable mechanisms for the retention of Koalas in the local area through avoidance of high value habitat, provision of wildlife connectivity, management of threats and in-perpetuity protection of habitat (intergenerational equity); - The Kings Hill Koala hub has been properly considered in terms of managing the long term tenure of Koalas in the locality. The Conservation Area will provide an adequate and appropriate contribution to the conservation of biological diversity. In-perpetuity management of those values will enhance and preserve ecological integrity; - The proposed Conservation Area is a like for like biodiversity protection with in-perpetuity management following establishment of the conservation area (Improved valuation, pricing and incentive mechanisms).
	<ul style="list-style-type: none"> • Safety for Six Mile Road associated 	Traffic to and from the KHURA will rely on Newline Road for access to Raymond

	<p>with increased traffic movements;</p> <ul style="list-style-type: none"> Request sealing and widening of Six Mile Road. 	<p>Terrace and beyond. Six Mile Road will only be relied upon very occasionally for access/egress to the Pacific Highway when access via Newline Road is cut due to flooding (on average, once every 2 years for 2 days at a time). TfNSW traffic modelling has determined that on such seldom occasions, up to 400 lots can safely access/egress via Six Mile Road via the Pacific Highway. Consequently the state Planning Agreement only allows for up to 400 lots to be constructed within the KHURA before an interchange is required to be operational.</p> <p>There is no nexus for sealing or widening the road given the intermittent use and the future closure of the intersection between the Pacific Highway and Six Mile Road as required by TfNSW.</p>
7.	<p>Request for documentation and data identifying that subsurface gas has been tested over regular intervals prior to subdivision application being lodged with Council for determination on the identified proposed development Lot.</p>	<p>Preliminary Landfill Gas Migration information has been prepared by Douglas Partners who considers there is no likelihood of gas migration (now or in future) given site specific factors such as the local topography, the site geology, and the proximity of the landfill and associated floor to the R1 zoned land. Further testing will be required prior to development occurring in Precinct 6, as required in D14 of the DCP.</p>
8.	<p>Submission in support of application.</p>	<p>Noted – no response required.</p>
9.	<p>Submission in support of application.</p>	<p>Noted - no response required.</p>
10.	<ul style="list-style-type: none"> Fragmentation of habitat; Impact to local koala population. 	<p>Addressed under above comments.</p>
11.	<ul style="list-style-type: none"> Adequacy of bird surveys; Impact to local bird species; and Impact to Irrawang Swamp and Wetland 803. 	<p>The SIS presents a set of comprehensive targeted surveys for threatened and non-threatened bird species, carried out in accordance with methodology specified under CERs.</p> <p>In the Applicant's response to submissions, RPS acknowledges Hunter Bird Observers Club monthly survey results of Wetland 803 located on private land, however states that</p>

		<p>the HBOCs results can only be considered anecdotal for they are not based on a specified or documented methodology, and the observations infer trespass on to private land (if the survey results are to be taken to be properly carried out and as comprehensive as those carried out under the SIS).</p> <p>The SIS has assessed the phased loss of habitat and determined the impact on affected threatened bird species to not be significant. Further specific information on bird surveys is provided under the RPS response to submissions at Attachment 3.</p> <p>Impact to Irrawang Swamp and Wetland 803 has been addressed in above comments and this assessment report.</p>
12.	<ul style="list-style-type: none"> There is an application with the Biodiversity Conservation Trust to protect sensitive and threatened species on the above property through a Biodiversity Conservation Agreement. Request 1km buffer from the respective Conservation Area; 	<p>A conservation agreement and any requirements under that agreement applies only to the specified area within the lot to which the agreement applies. There is no statutory requirement for a 1km buffer from respective conservation areas on adjoining parcels of land.</p>
	<ul style="list-style-type: none"> Impact to koala corridor to the north; 	<p>Addressed under above comments and this assessment report.</p>
	<ul style="list-style-type: none"> Impact the habitat of the Swift Parrot – endangered species. 	<p>Addressed under above comments and this assessment report.</p>
13.	Impact to local koala population and Irrawang Swamp.	<p>Addressed under above comments and this assessment report.</p>
14.	<ul style="list-style-type: none"> Air quality, gas migration and noise investigations for regard to the nearby Waste Resource Facility. 	<p>Preliminary Landfill Gas Migration information has been prepared by Douglas Partners who considers there is no likelihood of gas migration (now or in future) given site specific factors such as the local topography, the site geology, and the proximity of the landfill and associated floor to the R1 zoned land. KHD has commissioned Douglas</p>

		<p>Partners to install Landfill Gas monitoring wells along the boundary with Suez.</p> <p>The application is for Concept purposes only seeking approval for clearing and the development footprint. Accordingly, air quality, noise and gas investigations will occur at the subsequent application stage for subdivision in accordance with D14 of the DCP. This has been reflected in the recommended conditions of consent.</p>
15.	<ul style="list-style-type: none"> Landfill migration; gas 	Addressed under above comments and this assessment report.
	<ul style="list-style-type: none"> Land use conflicts with Resource Recovery Facility; 	Land use conflicts will be addressed through noise, air quality and gas investigations at the subsequent application stage for subdivision in Precinct 6. Current buffers under the LEP have been incorporated into the Proposal.
	<ul style="list-style-type: none"> Flood access – an easement should be provided to ensure the continuity of temporary access for the Raymond Terrace Resource Recovery Park through the proposed development area. 	The application is for Concept purposes only seeking approval for clearing and the development footprint. Preservation of easements will be addressed at the subsequent application stage.
16.	<ul style="list-style-type: none"> Impact to Wetland 803; 	Addressed under above comments and this assessment report.
	<ul style="list-style-type: none"> Incompatibility of development with Kings Hill wetlands and forest; 	Addressed under above comments and this assessment report.
	<ul style="list-style-type: none"> Loss of bird species habitat; 	Addressed above previous comments and this assessment report.

	<ul style="list-style-type: none"> Proximity of development to Wetland 803. 	Addressed under previous comments and this assessment report
	<ul style="list-style-type: none"> Use of former landfill site as recreation area and historic contamination issues. 	<p>Landfill and contamination has been addressed in this report and under the previous submission from SUEZ.</p> <p>Contamination addressed under SEPP No. 55 of this assessment report.</p>
17.	Sealing and installation of drainage infrastructure on Six Mile Road.	Addressed under above comments.
18.	Development impact on local koala hub.	Addressed under above comments.
19.	Impact to local koala hub, particularly recognising impact from 2019 summer bushfires.	<p>The SIS has appropriately considered the effects of the 2019-2020 bush fires on the Koala and are noted in Section 8.2.20 of the SIS. The Koala is expected to continue utilising habitat within the Conservation Area and lands north and south of Kings Hill as part of the 'Kings Hill hub' (BioLink 2019 as cited in the submission). The Conservation Area will support the ongoing persistence of a local population of the Koala by contributing ~221 ha of suitable habitat for this species in perpetuity.</p> <p>The SIS demonstrates a commitment to the protection of Koala habitat using Koala fencing, bridges and grids. Wildlife connections are to be maintained using underpasses where required.</p>
20.	<ul style="list-style-type: none"> Access for neighbours and fire trucks through conservation fencing; 	The proposed Koala fence and access for fire management is shown in Figure 2.8 of the SIS. The Koala fence is not in common with rural zone land to the west/ north of the development nor does it run alongside Six Mile Road. The Conservation Area is to be managed in accordance with a Biodiversity Management Plan, which shows the tracks and trails and their classification for use by emergency vehicles such as those used by the Rural Fire Service. These tracks and trails are to be maintained to a standard befitting their use.

	<ul style="list-style-type: none"> Effect of conservation fencing on water flow; 	Water management is not proposed in the Conservation Area to an extent that would otherwise interrupt or alter flows onto adjoining rural lands in the north and west. The Koala fence is also not in common with rural zone land to the west/ north of the development nor does it run alongside Six Mile Road and will be of permeable construction.
	<ul style="list-style-type: none"> Maintenance of conservation fencing; 	The fencing is to be managed and maintained in accordance with the BMP. The Proposal makes provision for the maintenance of fencing as part of the in perpetuity agreement for the Conservation Area.
	<ul style="list-style-type: none"> Security and privacy for neighbours from walking trails. 	Access to the Conservation Area is to be limited to the manager of this area and in accordance with the BMP. All trails are contained wholly on KHD land.

6.5.4.9 Section 4.15 (1)(e) the public interest

The Concept Proposal is consistent with the applicable planning instruments and relevant policies as demonstrated in this report. The Proposal is also consistent with the long term strategic direction for the local area and the Hunter Region. As such, the Concept Proposal is consistent with the public interest by providing growth of the community in planned greenfield areas.

Consequently, the Proposal is in the public interest as the development will:

- provide additional housing to meet demand for housing in different market sectors, leading to greater housing diversity within Port Stephens;
- provide development in an area identified by local and regional planning strategies as a growth precinct of Port Stephens;
- provides additional population to the community creating the critical mass needed to ensure businesses and services in Raymond Terrace become economically and socially sustainable, including medical, education, business and public transport services;
- provide housing choice in a central location (close to employment areas of Raymond Terrace, Tomago, Heatherbrae, Williamstown airport); and
- increase the employment generation likely from the Urban Release Area as a result of the multiplier effect.

6.5.4.10 Section 4.15 (1) considerations for related development impacts – External works, Pacific Highway Interchange and Grahamstown Dam Stormwater Channel

In the recent decision of *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41 (*Ballina v Palm Lake*), the Land and Environment Court emphasised the importance of properly considering the matters listed in section 4.15(1) of the *EP&A Act*, including the likely impacts of works that are not part of, but inextricably linked to, the development the subject of a development application. The Court's decision in *Ballina v Palm Lake* does not create new law, but is a reminder of the need to consider the likely impacts of works which are not the subject of a DA if those works are inextricably linked to the development the subject of the DA, particularly, if the works are required by conditions or the development cannot proceed without them.

The Court found that in this matter the Commissioner failed to take into consideration the mandatory relevant matters under s4.15 (1)(b) of the *EP&A Act* because there was no understanding of the likely impacts of the works and instead erroneously deferred for later consideration the environmental assessment of those works by imposing the deferred commencement condition.

Further, the decision in *Hoxton Park Residents Action Group Inc v Liverpool City Council* addressed consideration of matters not covered by the description of development in a development application. The Court of Appeal found that consideration of the likely environmental impacts that flowed from lead in works for a bridge was a mandatory consideration under section 79C (now s4.15).

Relying upon the findings from these cases, the related development impacts associated with the Pacific Highway Interchange, Grahamstown Dam Stormwater Channel and other external works have been considered below, particularly with regard to s4.15(1)(b) as prescribed in the cases. The external activities related to this application are proposed to be carried out by TfNSW, and are being assessed under Part 5 of the *EP&A Act*, as development consent from Council is not required under Clause 94 of ISEPP 2007.

Pacific Highway Interchange

Transport for NSW (TfNSW) proposes to design and construct a new grade separated interchange over the Pacific Highway at Kings Hill (see **Figure 5**). The proposal is required to enable safe and efficient access and egress to the proposed KHURA. The main features of the proposal are:

- A new overpass across the Pacific Highway (about one kilometre north of Irrawang Spillway);
- A new road (the East-West Link road) that would connect the KHURA to the proposed interchange. It would run in an east-west direction from the future Kings Hill town centre intersection (which falls outside the scope of this proposal) ;
- Two northbound (entry and exit) and two southbound (entry and exit) ramps that would connect the East-West Link road and the Pacific Highway and enable all northbound and southbound movements;
- A roundabout that would connect the East-West Link road to the interchange
- Relocation of the existing HWC maintenance track access point
- Relocation of existing utilities;
- Drainage infrastructure (e.g. swales or pipes) that would convey surface flows from the interchange into detention basins, which would discharge into existing culverts located beneath the Pacific Highway.

Section 4.15(1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,...

At the request of Council, TfNSW provided information pertaining to the current status of the Review of Environmental Factors (REF) and level of environmental impact that is currently being developed for the Kings Hill Interchange. The TfNSW advice is included in **Attachment 10**.

- TfNSW is currently working through the review of the Interchange REF and specialist studies, including a detailed Biodiversity Assessment Report. It is anticipated that this REF will be ready for public display in late 2021;
- The draft assessment currently indicates impacts caused by construction of the Interchange will not be significant;
- The Interchange is not considered to be State Significant Development and at this point in time an Environmental Impact Statement and approval from the Minister for Planning and Public Space is not required.

Based on the information provided by TfNSW, it is considered that the Interchange and associated works will have acceptable environmental, social and economic outcomes for the Raymond Terrace area and the Port Stephens region. On this basis, the likely impact of related development for this Concept Development Application are considered satisfactory with regard to section 4.15(1).

The draft REF prepared by (TfNSW, September 2019) concluded a number of potential environmental impacts from the proposal have been avoided or reduced during the concept design development and options assessment. Safeguards and management measures as detailed in the draft REF would ameliorate or minimise these expected impacts.

Overall, based on the findings from the draft REF and TfNSW correspondence, it is considered that the Interchange and associated works would have acceptable environmental, social and economic outcomes for the Raymond Terrace area and the Port Stephens region. It was concluded the benefits of the proposal would outweigh adverse impacts and on balance the proposal is considered justified. Notwithstanding however, the REF is not final and yet to be placed on exhibition.

Despite the Kings Hill Interchange REF still being finalised, the KHD holding is permitted to develop 250 lots under the initial development cap prior to the completion of the interchange (under the State VPA). A condition has been included that no more than 250 lots can be approved prior to the completion of the Kings Hill Interchange.

On this basis, the likely impact of this related development component for the Concept Application are considered satisfactory with regard to section 4.15(1).

Grahamstown Dam Stormwater Channel

Transport for NSW (TfNSW) proposes to design and construct a stormwater channel that would be located on the eastern side of the Pacific Highway, between the road corridor and the Grahamstown Dam (see **Figure 6**). The proposal would capture stormwater run-

off from KHURA, the adjacent Pacific Highway and the proposed grade separated interchange over the Pacific Highway at Kings Hill (which is subject to separate assessment and approval).

The need for the channel is from HWC requiring runoff from the eastern catchment area of the URA being prevented from entering the Grahamstown Dam. The stormwater channel would convey post development flows, treated at source within the URA on the west of the Pacific Highway, and prevent stormwater entering into the Grahamstown Dam for any rainfall event up to the 0.2% Annual Exceedance Probability (AEP).

The stormwater channel would be approximately 3.5 kilometres in length, parallel to the Pacific Highway between a point 80 metres south of the Pacific Highway and Six Mile Road intersection and the proposed discharge point at Irrawang Spillway.

Key features of the proposal include:

- An open-cut, vegetated stormwater channel that would extend 3,485 metres from a point 80 metres south of the Pacific Highway and Six Mile Road intersection, to the proposed discharge point at the disused Irrawang Spillway;
- Extension of existing culverts that run underneath the Pacific Highway conveying stormwater from the western side to the eastern side;
- A Koala land bridge about 300 metres long, constructed where the Grahamstown Dam is closest to the Pacific Highway;
- Relocation of the Hunter Water Corporation (Hunter Water) maintenance access track, a one-lane road that provides access from the Pacific Highway to the western shore of Grahamstown Dam.

Section 4.15 (1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,...

At the request of Council, TfNSW provided the following information pertaining to the current status of the REF that is currently being developed for the Kings Hill Drainage Channel. The TfNSW advice is included in **Attachment 10**.

- TfNSW is currently working through the review of the Drainage Channel REF and specialist studies. It is anticipated that this REF will be ready for public display in late 2021;
- The draft assessment currently indicates impacts caused by construction of the Interchange will not be significant;
- The Channel is not considered to be State Significant Development and at this point in time an Environmental Impact Statement and approval from the Minister for Planning and Public Space is not required.

Based on the information provided by TfNSW, it is considered that the Drainage Channel and associated works will have acceptable environmental, social and economic outcomes. On this basis, the likely impact of related development for this Concept Development Application are considered satisfactory with regard to section 4.15(1).

The draft REF prepared by (TfNSW, September 2019) states the proposal would be unlikely to cause a significant impact on the environment. Therefore, it is not necessary for an environmental impact statement to be prepared and approval to be sought from

the Minister for Planning under Division 5.2 of the EP&A Act. A Biodiversity Development Assessment Report or Species Impact Statement was not deemed required. Noting however, the REF is not final and yet to be placed on exhibition.

A condition has been included that prohibits subdivision works or Step 2 or 3 clearing (as outlined in the VMP) occurring in the Grahamstown Dam Drinking Water Catchment Area prior to the completion of the stormwater channel.

Overall, based on the findings from the draft REF, it is considered that the Channel and associated works would have acceptable environmental, social and economic outcomes for the Raymond Terrace area and the Port Stephens region. The benefits of the proposal outweigh identified adverse impacts and on balance the proposal is considered justified. The likely impacts of related development for the Channel associated with this Concept Development Application are considered satisfactory with regard to section 4.15(1).

External Road Works

Eight locations identified by Northrop are likely to require external works for reasons relating to egress to the KHURA (roundabout works on Newline Road and entrance from Six Mile Road) and flood management (works various low lying lands located along Newline Road and Six Mile Road). The extent of these external works is shown in plans C700 to C708 as supplied by Northrop (dated 9 September 2020). These works do not form part of this Concept or Stage 1 Approval.

Section 4.15 (1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,...

RPS provided an Ecological Memo (dated 11 September 2020) to assess the environmental conditions and likely impacts for external works at the respective locations. The Ecological Memo concluded the impacts of external works shown at each of the eight locations indicated in the Northrop are considered to represent low environmental risk as the impacts are likely to be minor and inconsequential on threatened species, ecological communities, migratory species and their habitats.

The extent of vegetation removal either individually or cumulatively is not likely to result in a significant impact when assessed under Division 5 of the EP&A Act (i.e. REF) or is not likely to require referral under the EPBC Act as the works would not likely be regarded as a controlled action.

Standard mitigation measures such as sediment and erosion controls are likely to provide effective relief from any downstream impacts on sensitive environments such as Coastal Wetlands (i.e. located downstream of Locations 6 to 8). The impacts of these external works, while within the proximity mapping of Coastal Wetlands, are likely to remain localised and be temporary with no expectation of a lasting impact of consequence on nearby sensitive environments.

Council raised no concern with the assessment provided for the external works, subject to detailed environmental assessments being prepared for the respective works as part of future applications/activity approvals. The RPS Ecological Memo and Northrop external works plans are contained in **Attachment 3**.

Noting none of the above external works form part of the Concept Proposal or Stage 1 works under this application, the above assessment is considered adequate to address the findings from *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41 (*Ballina v Palm Lake*), through considering the matters listed in section 4.15(1) of the *EP&A Act* and the likely impacts of works that are not part of, but inextricably linked to, the development the subject of a development application.

6.5.5 Contribution towards provision or improvement of amenities or services (developer contributions)

Local infrastructure contributions are regulated by Part 7, Division 7.1, Subdivision 3 of the *EP&A Act*. Of particular note, Section 7.11(1) states that a consent authority can only apply a condition requiring a contribution where a development will or is likely to require the provision of or increase the demand for public amenities.

This application seeks concept approval for the subdivision of the subject land. It is noted that the consent would only permit the clearing of the land, and further consents would be required to approve the detailed subdivision. Considering land clearing would not require the provision of or increase the demand for public amenities, it has been determined that a condition requiring monetary contributions is not applicable pursuant to Section 7.11.

Additionally, Section 7.13 of the *EP&A Act* outlines that a consent authority can only apply a condition under Section 7.11 if it is of a kind allowed by a contributions plan. The Port Stephens Local Infrastructure Contribution Plan 2020 is currently in force and permits Council to apply contributions under the *EP&A Act*. Section 2.5 identifies the development to which the plan applies, and most notably it applies to “the subdivision of land, where the subdivision would facilitate a potential increase in the number of dwellings permitted on that land”.

As noted above, the concept application would only permit land clearing and therefore there would be no increase in the number of dwellings permitted on the land as a result granting consent.

Additional applications that permit the subdivision of land would be subject to a condition of consent requiring contributions should it be granted (pursuant with Section 7.11 and the contribution plan).

7.0 CONCLUSION

It is recommended that the HCCRPP, as the consent authority, approve development consent to 16-2018-772-1 (2018HCC047) for Concept Development for Future Residential Subdivision and Stage 1 Subdivision Works (Initial Site Preparation). The proposed Concept Development targets a lot yield of 1,900 residential lots within 7 Precincts at Lot 41 DP 1037411 and Lot 4821 DP 852073, 3221 Pacific Highway, KINGS HILL, pursuant to Section 4.16 of the *EP&A Act* subject to the conditions in **Attachment 2**.

Signed (Assessing Officer)



Date: 14/12/20

Ryan Falkenmire

Principal Development Planner

Reviewed (Supervising Officer)



Date: 14/12/20

Rean Lourens

Planning and Developer Relations Coordinator

Authorised for submission to HCCRPP



Date: 14/12/20

Kate Drinan

Manager Development Assessment & Compliance