

Hunter and Central Coast Regional Planning Panel

JRPP No	2019HCC001
DA Number	16-2018-774-1
Local Government Area	Port Stephens
Proposed Development	Eco tourist facility comprising 44 accommodation units, managers residence, quad bike storage and maintenance area, amphitheatre for educational performances and car park to accommodate 77 spaces, six (6) coach spaces and two (2) drop off areas.
Street Address	27 Stockton Bight Track Fullerton Cove (LOT: 227 DP: 1097995)
Applicant/Owner	Applicant – Environmental Property Services Owners – Worimi Local Aboriginal Land Council (WLALC)
Number of Submissions	Nil
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 7, Part 3 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , being an eco-tourism development with a value over \$5 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 (Building Sustainability Index: BASIX) 2004 (SEPP) • BASIX • State Environmental Planning Policy No 44—Koala Habitat Protection • State Environmental Planning Policy No.33 Hazardous and Offensive Development • State Environmental Planning Policy (Coastal Management) 2018 • Port Stephens Local Environmental Plan 2013 (PSLEP2013) <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 – General Terms of Approval from Rural Fire Service (RFS)</p> <p>Attachment 3 – Recommended Conditions of Consent</p>

	Attachment 4 – Schedule of Appendices for application supporting documentation Attachment 5 – External agency advice from Department of Defence Attachment 6 – External agency advice from Environmental Protection Authority (EPA) Attachment 7 – External agency advice from Hunter Water Corporation
Recommendation	Approval with conditions
Report by	Ryan Falkenmire – Principal Development Planner
Report date	22 October 2019

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a development application (No. 16-2018-774-1) for an eco-tourist facility at 21 Stockton Bight Track, Fullerton Cove (LOT: 227 DP: 1097995). The application involves the construction of 44 accommodation units, a managers' residence, quad bike storage and maintenance area, amphitheatre for educational performances and a car park to accommodate 77 car spaces, six (6) coach spaces and two (2) drop off areas. The proposal intends to consolidate access trails to minimise environmental disturbance and manage traffic. The proposal includes other associated services and activities, such as quad-bike tours, bush-tucker sessions, cultural awareness tours, general flora/fauna tours.

The proposed development includes an extension to the existing 11kV HV electricity transmission line at the eastern end of Lavis Lane. The extension will run above ground approximately 600m south to a pole top substation that will provide power to the site.

The proposed development aims to address the unregulated camping currently occurring on the site due to a lack of accommodation within the area. As a result, the proponents aim to provide sustainable accommodation and amenities for tourists and visitors within a culturally and environmentally diverse area.

The site is zoned E3 – Environmental Management under the Port Stephens Local Environment Plan 2013 (PSLEP 2013). An eco-tourist facility is permitted with consent within the E3 zone. The proposed development is considered to be consistent with the zone objectives.

The site is comprised of a single allotment, legally identified as Lot 227 in DP 1097995. It is irregular in shape and covers areas on both the west and east of Stockton Bight Track. This application pertains to the portion east of Stockton Bight Track which is approximately 49ha in area. The site remains vacant aside from two (2) shipping containers used by the WLALC for storage of equipment used for the fencing and maintenance of the natural sand access tracks.

The application was notified and advertised for 14 days (6 December 2018 – 20 December 2018) in accordance with the Port Stephens Development Control Plan 2014. During this time no submissions were received.

The application was referred to the Rural Fire Service (RFS) in accordance with the provisions of s4.46 of *Environmental Planning and Assessment Act 1979 (EP&A Act)*, requesting a Bushfire Safety Authority under *Rural Fires Act 1997*. RFS issued a Bushfire Safety Authority on 13 August 2019, which included conditions relating to asset protection, evacuation, emergency management and design.

The key issues in respect of the assessment of the application related to vegetation clearing, Aboriginal heritage impact and noise emissions from RAAF Base Williamtown. Additional information from the applicant was submitted during the assessment to address these key issues. This included detailed noise, heritage and ecological studies. The recommendations and mitigation measures outlined in the specialist studies have been included in the conditions of consent where appropriate.

The proposal is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 of the *EP&A Act* as the development involves an eco-tourist facility with a capital investment value over \$5 million.

The development has been assessed under Section 4.15 of the EP&A Act and is considered satisfactory. Accordingly, it is recommended that the application be approved subject to conditions of consent contained in **Attachment 3**.

1. RECOMMENDATION

That DA 16-2018-774-1 for the construction of an eco-tourist facility at 27 Stockton Bight Track Fullerton Cove (LOT: 227 DP: 1097995) be approved subject to the conditions in **Attachment 3**.

2. INTRODUCTION

This report provides a detailed overview of the construction of an eco-tourist facility at 27 Stockton Bight Track Fullerton Cove (LOT: 227 DP: 1097995). The development application is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 of the *EP&A Act* as the development involves an eco-tourist facility with a capital investment value over \$5 million.

3. BACKGROUND

The development application was prepared after members of the WLALC identified that there are few overnight accommodation areas available near the project area. Unregulated camping along Stockton Beach has proved unsustainable with the threats of littering, pollution and damage to

Aboriginal heritage. Restrictions to camping along the beach have been imposed and there are now a limited number of designated campsites available.

Controlled 'camping' facilities are available at various caravan parks in the district, but there are no available approved primitive campsites in the area. WLALC intends to expand its cultural and environmental experiences by offering overnight accommodation on the site in response to market demand and to enable the promotion of cultural and environmental awareness in a significant and suitable setting. The proposal seeks to attract both local and international visitors and provide increased employment opportunities for the WLALC members.

The WLALC has previously replanted some of the disturbed sand mine area with locally native species with the aim of regenerating the site. The applicant advised the WLALC will continue to regenerate and rehabilitate the site. The WLALC will also conduct weed removal operations and environmental education as part of the WLALC ecotourism project. These rehabilitation and site management measures have been included as part of the recommended condition of the implementation of a Management Strategy.

Historical Land Uses

During the Second World War, significant military activities occurred close to the site, with aerial and ground bombardment practice, rifle training, the establishment of Royal Australian Air Force (RAAF) Base Williamtown, the installation of a naval armour proofing range, and the fortification of Stockton Beach with tank traps and barbed wire entanglements.

Approximately 40ha of the site was mined for mineral sands between 1986 and 1992 (**Figure 2**). The mining process involved wet dredging, whereby the entire land surface and sand to a depth substantially below standing groundwater level was excavated and passed through a series of screens installed on a floating barge. The effect of this mining process is that, while only a small percentage of material removed off site as mineral ore, the entire existing vegetation, biota, artefacts, and unexploded ordnance is disturbed.

The mined portion of the site is unlikely to contain in-situ Aboriginal artefacts or old growth vegetation. Rehabilitation efforts by the miner, Mineral Deposits Limited, and WLALC have regenerated some level of cover, but the biodiversity value of the land is considered relatively low.

4. SITE DESCRIPTION

The subject site comprises a single allotment, legally identified as LOT: 227 DP: 1097995. The subject site is irregular in shape, located over the eastern and western sides of Stockton Bight Track. Whilst the entire allotment is segmented into three land areas (**Figure 1**), the subject application pertains to the portion east of Stockton Bight Track, which is approximately 49ha in size.

The subject site is located near the end of Lavis Lane, Williamtown, south east of Newcastle Airport. The subject site is approximately 18.5km south of Nelson Bay and 28km north of Newcastle city centre.

The site remains vacant aside from two shipping containers used by the WLALC for storage, fencing and natural sand access tracks. The site is currently used for quadbike tours operated out of the nearby Murrook Cultural Centre. The quadbike operation utilises fuels and chemicals stored off-site, with maintenance of machinery also occurring off-site.

Surrounding Land Uses

To the north and west of the site are periodically inundated grazing lands.

Immediately to the northeast is the Quality Sands and Ceramic Pty Ltd sand quarry. Further to the east is the large transgressive dune field (owned by WLALC) and is partially used for sand extraction.

To the immediate southwest is the Tollbulk Sands quarrying operation. Further southwest is the Boral Stockton sand quarry.

To the south and seawards, is the Worimi Conservation Lands, used for public recreation and conservation of natural and cultural heritage.

Further to the northwest is the Royal Australian Air Force Base Williamtown (RAAF), and the adjoining civilian Newcastle Airport.

The closest concentration of houses is to the north approximately 1.3 km from the site on Nelson Bay Road. Other residential areas occur along Fullerton Cove Road, Fullerton Cove, along the western end of Lavis Lane, along Cabbage Tree Road at Williamtown, and the new housing estate at Fern Bay.

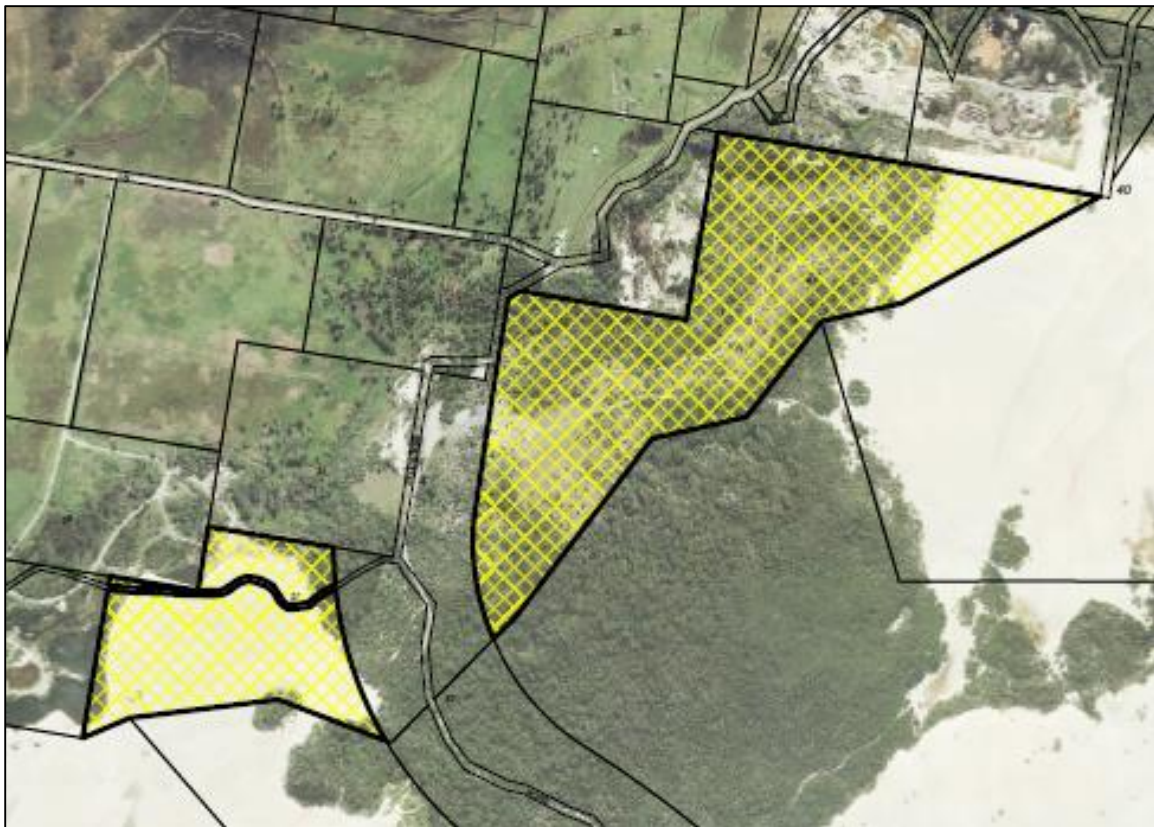


Figure 1: GIS aerial image of subject site

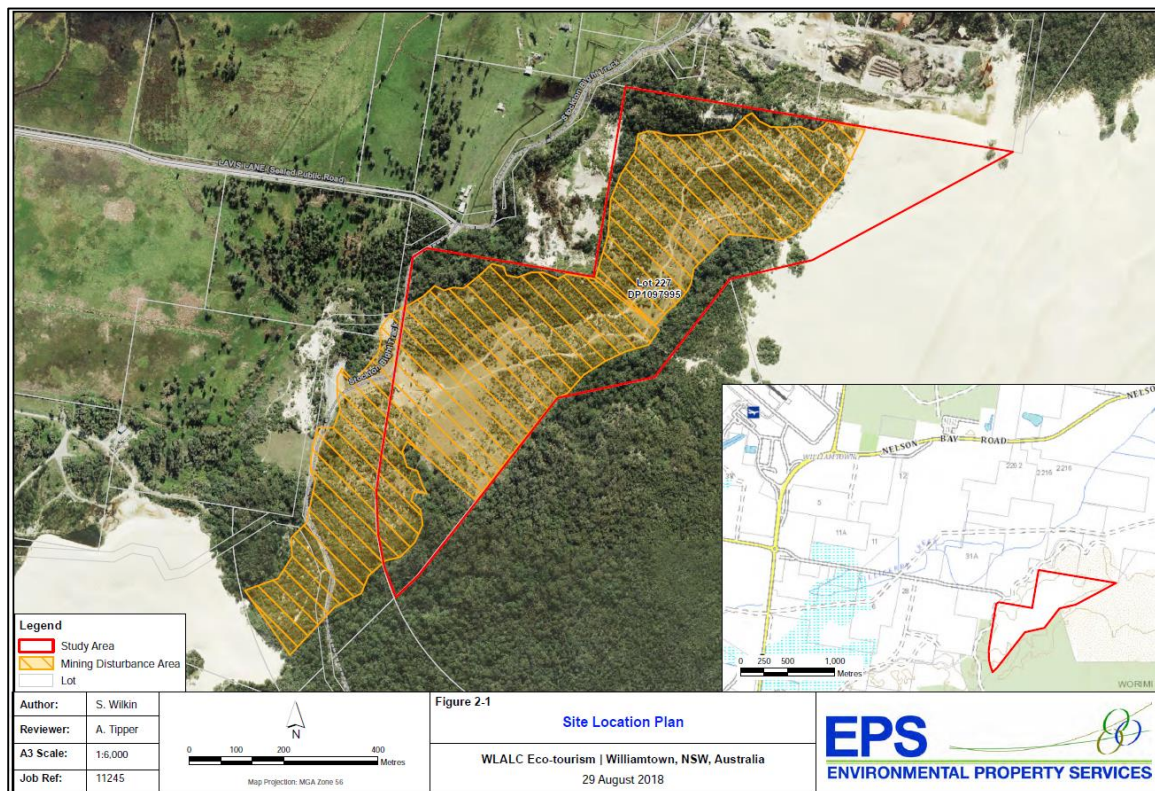


Figure 1: Site location plan and historic mining disturbance area

The site is subject to a number of environmental constraints (as mapped on Councils' GIS system) including:

- Bushfire prone land;
- Acid sulphate soils (Class 3, 4 and 5);
- Supplementary koala habitat;
- PSLEP 2013 – Wetlands;
- Endangered ecological communities including Swamp Sclerophyll Forest;
- Hunter Water Corporation Special Areas (2005);
- PSLEP2013 – Drinking Water Catchment – Stockton Bight Special Areas;
- Heritage – Stockton Beach Dune System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts;
- Weed Affected Land;
- RAAF Base Williamtown PFAS Contamination Management Area – Broader Management Zone;
- Aircraft Noise Planning Area;
- RAAF Base Williamtown and Salt Ash Air Weapons Range – Height Trigger (all structures);
- RAAF Base Williamtown Bird Strike Group B; and
- Extraneous Lighting Area (CASA).

A site inspection was carried out on 24 October 2019. The subject site can be seen in the photos below:



Photograph 1 – Area of proposed lodgings and amphitheatre



Photograph 2 – Existing quadbike track



Photograph 3 – Stockton Bight Track access road



Photograph 4 – Existing car parking area



Photograph 5 – Development footprint area

5. PROPOSAL

This facility is proposed to be utilised in conjunction with the activities and services provided at the Murrook Cultural Centre, and as a stand-alone facility for services and activities including day visits or overnight lodging (**Figure 3**). The facility is proposed to include access to Aboriginal cultural education and performances, flora and fauna tours and environmental education. The facility is targeted at school/other education groups, corporate groups, domestic and/or international tourist groups.

Key aspects of the development includes:

- 44 multifunctional overnight accommodation units, each measuring approximately 25m² in size;
- A manager's residence to oversee security of the premises and manage overnight accommodation. This includes five (5) separate rooms;
- Quad bike storage and maintenance facility located to the north of the development footprint, capable of storing 60 quad bikes in the 'storage area' and 20 quad bikes in the 'maintenance area'. The 'maintenance area' also includes a bunded wash bay with 1 x 5000L water supply tank and 1 x 5000L full retention oil/ water separator for waste water;
- The quad bike storage and maintenance facility includes two (2) visitor bathrooms, and a staff water closet, a staff room/office, a drying room and a first aid room with emergency shower and eye wash station;
- An extension to Ausgrid's existing 11kV HV mains from the power transmission pole located at the eastern end of Lavis Lane to service the site;
- The Commons amphitheatre located adjacent to the multifunctional accommodation units, measuring approximately 752m² in size. This has been designed as a space for Aboriginal

cultural presentations, education and performance. It is also proposed to serve as a Central Safe Refuge in the event of a bushfire;

- The Commons includes a backstage area, including four (4) separate storage rooms ranging between approximately 8m² to 20m², a dressing room, two (2) bathrooms and a camp kitchen/servery; and
- Sealed car park providing 77 car parking spaces (including three accessible spaces), two (2) bus/coach drop off areas and six (6) coach parking spaces.

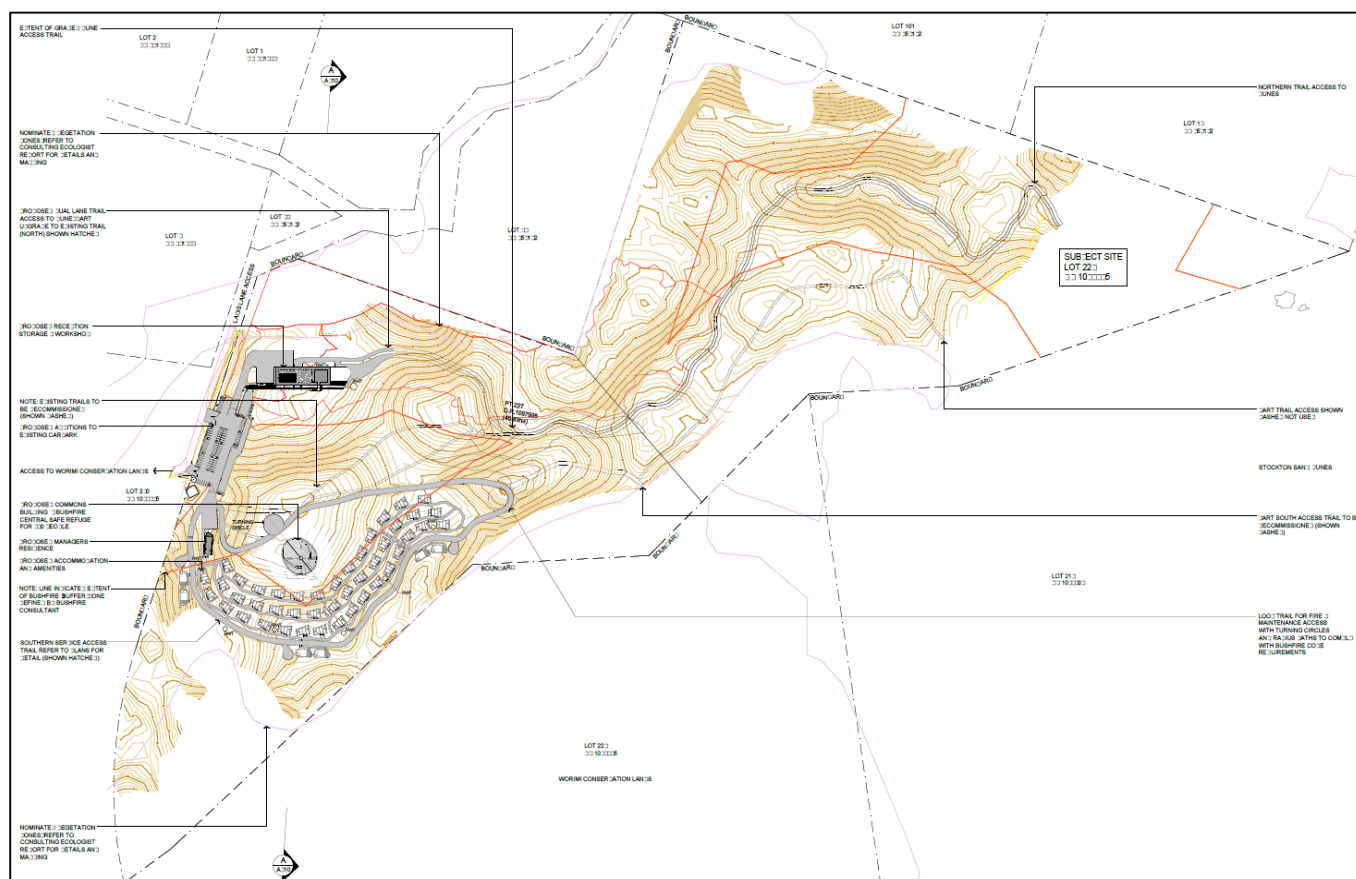


Figure 3: Proposed development layout on-site

Site Layout Rationale

The existing site consists of vacant disturbed land in an irregular shape allotment. The site access point, located to the west of the site, will be maintained as part of the proposed development. As such, for ease of access, the site layout has focused on the western portion of the allotment.

The site layout has been influenced by the former sand mining lease area, which has significantly impacted the site topography and vegetation quality. The entire development footprint is contained within the former sand mining area. Specifically, as a result of the former mining operations, a ridgeline loops around the site and a low-point is located in the south-west of the western portion of the site. The design is considered responsive to the site topography and has placed the carpark and quadbike storage and maintenance facility towards the top of the western ridgeline, and amphitheatre and multifunctional units in the depression, thereby forming a larger amphitheatre.

The site is vegetated to a varying degree. The eastern portion of the site is more densely revegetated than the western portion, hence the design has focused on the western portion.

The site's low-point is predominately vegetated with exotic grassland and scattered shrubs. The site layout has been selected to maintain a buffer between the National Park and the development, to avoid high-quality vegetation as far as practicable, and to avoid the removal of any Hollow Bearing Trees (HBTs).

The layout has been selected to prevent the different site elements from visually intruding on each other, to give the effect of minimal development and seclusion.

6. PLANNING ASSESSMENT

6.1 *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) to be assessed to determine whether the biodiversity offset scheme is to be applied. However, 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*. These arrangements provide for development applications that were lodged prior to the adoption of the BC Act to be assessed under the previous legislative regime.

6.2 *Threatened Species Conservation Act 1995*

The *Threatened Species Conservation Act 1995* (TSC Act) aims to protect and encourage the recovery of threatened species, populations and communities listed under the Act. The TSC Act is integrated into the EP&A Act and requires consideration when assessing development under Part 4 of the EP&A Act that is likely to significantly affect threatened species, populations and ecological communities or their habitat.

The potential impact of development of the study area on any threatened species, populations or communities has been assessed using Assessments of Significance under Section 5A of the EP&A Act (also known as a seven-part test). If the impacts are found to be 'significant', a Species Impact Statement (SIS) and concurrence from the Director General of the Office of Environment and Heritage (OEH) is required.

The proposed eco-tourist facility and associated HV transmission line extension will involve the removal a total of approximately 12ha of disturbed native and non-native vegetation, while approximately 26ha of mapped native vegetation will be maintained within the study area. This does not include areas of native vegetation likely to be increased by WLALC restoration activities.

An Ecological Impact Assessment (August 2018) and subsequent addendum report (June 2019) prepared by EPS was submitted as part of the application, with Council generally supportive of the findings. The proposed development has been sensitively designed to be located within the

previously mined parts of the site and generally avoids the better-quality areas of habitat.. Similarly, the operation phase of the project will consist of low-impact eco-tourist activities and controlled quad biking. Mitigation measures to further reduce the residual impacts to the biodiversity values have been included in the recommended conditions contained in **Attachment 3**.

In summary, the proposed eco-tourist facility is not considered to result in a significant impact on the threatened biodiversity and as such a Species Impact Statement (SIS) is not required.

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

6.3.1 Section 23G – Joint Regional Planning Panels

Section 4.7 and Schedule 2 of the *EP&A Act* and Schedule 7, Part 3 of the *State Environmental Planning Policy (State and Regional Development) 2011* requires the Hunter and Central Coast Regional Planning Panel (HCCRPP) to determine regionally significant development.

The HCCRPP is the determining authority for the subject application as the proposal is regionally significant development as identified under Schedule 7 Clause 2 of *State Environmental Planning Policy (State and Regional Development) 2011* ('SEPP State and Regional Development'), being an eco-tourist facility with a cost over \$5 million. The cost summary report submitted with the application estimates the proposed development cost at \$15,400,000.

6.3.2 Section 4.46 – Integrated development

The proposal is integrated development pursuant to Section 4.46 of the *EP&A Act* as approval is required from the Rural Fire Service (RFS) under section 100B of the *Rural Fires Act 1997*. Under Section 100B of the *Rural Fires Act 1997* authorisation from a bushfire safety authority is required for development of bushfire prone land for a 'special fire protection purpose'. Under subsection 6(d) of the same clause, a 'special fire protection purpose' as '*other tourist accommodation*' includes eco-tourist facilities.

The RFS issued a bushfire fire safety authority on 13 August 2019 (**Attachment 2**) subject to a number conditions including management of asset protection zones, water and utilities and arrangements for emergency evacuation.

6.3.3 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:

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

State Environmental Planning Policy No. 44 - Koala Habitat Protection

The Port Stephens Council Comprehensive Koala Plan of Management (CKPoM), was prepared in accordance with *State Environmental Planning Policy No. 44 - Koala Habitat Protection* (SEPP

44). Compliance with the Port Stephens Council CKPoM will constitute compliance with SEPP 44 for relevant matters in the LGA.

The CKPoM maps the development footprint of the eco-tourist facility as being within the Fullerton Cove/Stockton Bight management unit. Only the peripheral parts of the study area have been mapped in the CKPoM as Supplementary Koala habitat with a small area in the north west of the study area as a mixture of 50m buffer over mainly cleared land and preferred Koala habitat. No Koala feed trees were present within the study area.

Koalas generally are considered likely to occur in low densities throughout the locality, including the adjoining Worimi State Conservation Area that has been mapped as supplementary Koala habitat. The site has connectivity from north to south which would facilitate movements between areas of habitat for the Koala. This area will not be impacted upon by the proposed development and good connectivity will remain post construction.

Further koala studies were requested to assess the impact of the HV Transmission Line extension, which forms part of the application. The HV Transmission Line Study Area is mapped as preferred Koala habitat with a 50m buffer over cleared land surrounding the HV Transmission Line Study Area.

Five *Eucalyptus robusta* (Swamp Mahogany), which are Koala feed trees, were recorded within the HV Transmission Line Study Area in two locations. Four of the *Eucalyptus robusta* trees were located within less than half a metre of each other. Due to the small size of the HV Transmission Line Study Area all the trees were searched for Koalas, scats, pock marks and scratches. No Koalas, scats, pock marks or scratches were observed during the field surveys. The HV transmission line study area has connectivity to the south and east which would facilitate movements between areas of habitat for the Koala (refer to **Figure 4**). The five *Eucalyptus robusta* trees are likely to be removed as a result of the HV transmission line. The *Eucalyptus robusta* trees are small in diameter and low in numbers throughout the study area. In the adjoining patches of the Koala habitat, *Eucalyptus robusta* trees were young and also in small numbers. The trees within the HV transmission line study area are located nearby areas of exotic vegetation where it is likely that the area was cleared in the past with these trees being regrowth.

The addendum Ecological Impact Assessment (June 2019) included an assessment under the CKPoM to determine the level of impact using the koala habitat assessment tool. This assessment concluded that consent for the proposed development should not be withheld on koala habitat grounds.

Council was generally supportive of the findings contained in the Ecological Assessment Impact (August 2018) and addendum report (June 2019) prepared by EPS, subject to a condition that the koala feed trees identified for removal will be offset through the planting of compensatory koala feed trees elsewhere on the site. Therefore, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM.

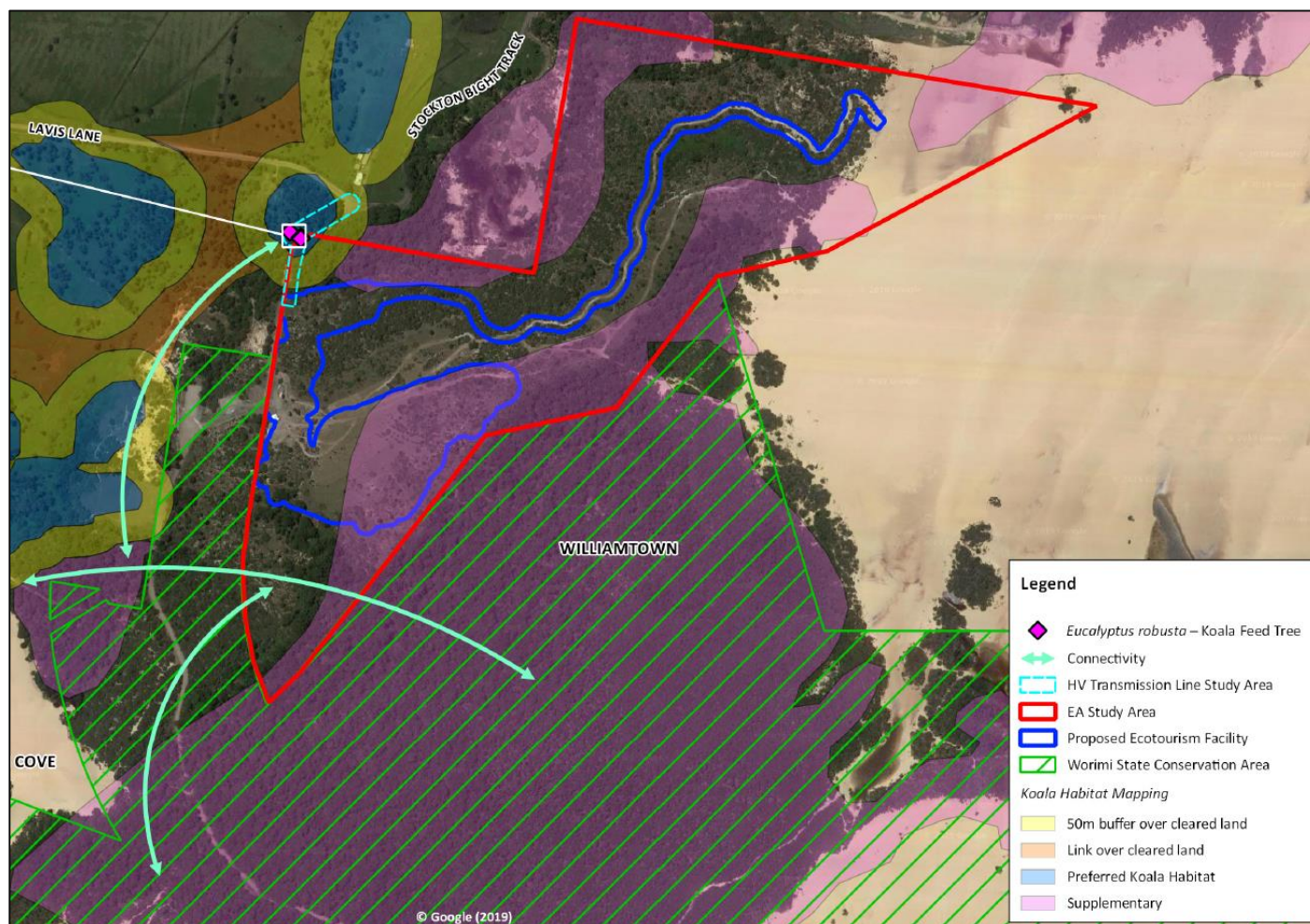


Figure 4: CKPoM Koala Habitat Mapping

State Environmental Planning Policy (Coastal Management) 2018

The SEPP (Coastal Management) 2018 aims to promote an integrated and co-ordinated approach to land use planning through the management of development within coastal management areas. The SEPP protects vulnerable coastal land including various coastal areas, wetlands and rainforests.

The north eastern portion of the subject site is located within the 'Coastal Environment Area', which is part of the Coastal Management zone. No development will occur in the area mapped 'Coastal Environment Area', except for instating a consolidated sand track. Notwithstanding, the provisions of *State Environmental Planning Policy (Coastal Management) 2018* apply to the subject lot.

In accordance with Part 2, Division 3, Clause 13(1), development consent must not be granted unless the impact of the proposed development has been considered with regard to the following matters.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

The proposed development will be contained within land that has previously been disturbed through sand mining. The Ecological Impact Assessment (EPS, August 2018) and Water Cycle Management Plan (ADW Johnson, August 2018) have been prepared to assess, and provide for, management of the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment. Based on these studies, the proposed development is considered unlikely to impact the hydrological or ecological environment and while the biophysical environment will be impacted through clearing, it is considered unlikely to have an adverse impact on the integrity and resilience of this environment.

b) coastal environmental values and natural coastal processes,

The site is approximately 2km from the coastline and as such, works are considered unlikely to interfere with natural coastal processes.

c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

The site is not located within or in close proximity to the Port Stephens Marine Estate or any coastal lakes identified in Schedule 1.

d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

The proposed works will not impact marine vegetation, native vegetation or undeveloped headlands or rock platforms. Works do have the potential to impact native fauna through the removal of vegetation, however adjoining native vegetation of better quality will continue to provide habitat for native fauna.

e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

It is considered the proposed works will improve access and useability of the coastal area following completion of the eco-tourist facility.

f) Aboriginal cultural heritage, practices and places,

The proposal will not adversely impact any sensitive Aboriginal cultural heritage, practices or places. The application was supported by a Due Diligence Assessment report prepared by Umwelt (dated May 2019). The report concluded no Aboriginal Heritage Impact Permit (AHIP) was required for the proposed geotechnical and construction works. The report was referred to Council's external heritage advisor who was satisfied with the findings.

Furthermore, the proponent for the proposed development, the WLALC, own the site and are cognisant of impacts to the Aboriginal cultural heritage, practices and places. The proposed eco-tourist facility will assist in enhancing these aspects through cultural education such as guided tours of the sand dunes.

g) the use of the surf zone.

There are no surf zones at or near the site.

(2) 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 an adverse impact referred to in subclause (1), 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.

It is noted that the proposed development has the potential to result in indirect impacts to the coast including:

- Introduction of pollutants associated with surface water; and
- Erosion during the construction and operational periods.

To avoid and minimise the impacts to the coastal environment, the following safeguards are proposed to be implemented:

- Ensure stormwater is collected and diverted to appropriate stormwater infrastructure;
- Implementation of appropriate erosion and control measures;
- Ongoing management and re-vegetation of the site by WLALC.

These safeguards have been recommended as conditions to any consent via the preparation and implementation of a vegetation management plan and appropriate stormwater solution. Therefore, the objectives of SEPP (Coastal Management) 2018 have been met in this regard.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)

The provisions of SEPP BASIX does not apply to the proposed development due to the Building Code of Australia (BCA) classification of the buildings. The provisions of this SEPP only apply to Class 1, Class 2 and parts of Class 4 buildings under the BCA.

The buildings that are proposed on site are classified as either Class 3 (accommodation and temporary manager residence), Class 5 (office and maintenance facility), Class 9b (amphitheatre) or Class 10b buildings and are subject to Section J energy efficiency requirements under the BCA that would be addressed as part of any Construction Certificate issued.

State Environmental Planning Policy No 33 – Hazardous and Offensive Development

SEPP No. 33 – Hazardous and Offensive Development (SEPP 33) presents a systematic approach to planning and assessing proposals for potentially hazardous and offensive development for the purpose of industry or storage. SEPP 33 aims to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account.

Fuels and chemicals are required in the following quantities on the site:

- 28 x 20 Litre drums of fuel = 560 - 600L at any one time;
- 3 x 200 Litre drums of oil = 600L of oil at any one time;
- 1 x 1000 Litre Oil Waste Disposal drum that is pumped out by licenced contractor; and
- 1 x 20 Litre Drum of Degreaser that is transferred into a small spray bottle.

The applicant has advised fuels and chemicals will be stored in the lowest practicable quantity for the workplace in the area identified as Storage and Workshop. Fuel storage is proposed to be located on the western side adjacent to the bunded wash bay. The applicant has noted all refueling, oil changes and degreasing would occur inside the wash bay within the maintenance facility in accordance with relevant Standards.

Clause 4 of SEPP No. 33, defines a 'hazardous storage establishment' as:

any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on the other land in the locality), would pose a significant risk in relation to the locality:

- (a) to human health, life or property, or*
- (b) to the biophysical environment.*

Fuel and chemical storage will remain below the trigger thresholds in Part 9 Chemical Storage in Schedule 1 of the *Protection of the Environment Operations Act 1997 No 156* at all times.

The detailed design drawings provided with the Construction Certificate application will provide specifications of adequate bunding and details of appropriate storage facilities for fuels and chemicals in accordance with the *Work Health Safety Regulation 2017*. Furthermore, a condition has been recommended that all refuelling activities be undertaken on hardstand areas.

On this basis, the proposal is not considered to satisfy the definition of a 'hazardous storage establishment' given the employment of safety and mitigation measures for the storage of fuel and chemical products will negate any serious or significant risk in relation to the biophysical environment, life or property.

Clause 13 of SEPP No. 33 requires the consent authority to consider the following:

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.*

Based on the scope of activities and amount of chemicals and fuels to be stored on the site, it is considered there is no significant risk associated with the proposal, with consideration to Clause 13 above. The Rural Fire Service General Terms of Approval (Attachment 2) includes construction requirements for the quad bike storage facility. Further, fuel, chemicals, grease and oils at the quad-bike storage and maintenance facility must be stored in an appropriately bunded area in accordance with *Work Health Safety Regulation 2017*, such that any spills will be readily captured and not able to infiltrate to groundwater as per the recommended conditions.

Therefore, the proposal is considered to satisfy the aims and objectives of SEPP No. 33.

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

Under Section 7, Clause 1 of *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55), a consent authority must not grant consent unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site predominantly comprises of coastal vegetated land. No historic contaminating land uses or activities have been identified on the site. However, the site falls within an investigation area designated by the NSW Environment Protection Authority (EPA). This area is being investigated by EPA and the Department of Defence for presence of groundwater contaminated by legacy fire-fighting foams.

The application was referred to the EPA for comment and the correspondence received (**Attachment 6**) advised the development is located within the broader management zone that

falls outside of the primary and secondary management zones. As there is no proposed use of ground or surface water, EPA advised the general conditions outlined in the Guidance Document for Assessing Development Application Referrals in the Williamstown Investigation Area should be considered by Council when developing approval conditions. The relevant conditions have been included in the recommended conditions of consent, including restrictions on derived fill that can be received at the site and management of excavated material and groundwater during construction.

A search of the NSW EPA Contaminated Lands Register was completed by the applicant and did not identify the site on the register. The Stockton Heavy Mineral Sand Mine Rehabilitation Status Report (July, 2007) considered contaminating hazards in the area and did not identify any contamination.

At present there is a single shipping container located on the site. The shipping container does not store fuels or chemicals. The applicant advised quadbike tours operated out of the Murrook Cultural Centre utilises fuels and chemicals stored off-site, with maintenance of machinery currently occurring off-site.

Therefore, it is considered that the development is suitable for the proposed land use. On this basis, the provisions of SEPP 55 have been met.

Port Stephens Local Environmental Plan 2013

Clause 1.3 – Land to which Plan applies

PSLEP 2013 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Land Use Table - Zoning

The development application has been lodged for the purposes of an eco-tourist facility. Eco-tourist facilities are defined in the *PSLEP 2013* as a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and*
- (b) is located in or adjacent to an area with special ecological or cultural features, and*
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.*

The proposal must satisfy the land use definition criteria listed under (a), (b) and (c). Criteria (a) is satisfied as the proposal will be providing temporary or short-term accommodation to visitors on a commercial basis. The proposed multi-functional accommodation sites are typical of this type of visitor accommodation.

Criteria (b) is satisfied as the proposal will be located in an area with special ecological and cultural features. The coastal landscape, together with surrounding land including the Stockton Beach Dune System, contain special ecological and cultural features. The proposal also includes facilities that will educate and inform visitors, and also areas for display and exhibition purposes.

Criteria (c) requires the consent authority to be satisfied that the facility is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

The statutory construction of the PSLEP 2013 also requires the consent authority to be satisfied that each of the elements set out in Clause 5.13(3) are met in order to allow the development to fulfil the test of consistency outlined in the land use definition (*Camberlee Investments Pty Ltd v Shoalhaven City Council [2017] NSWLEC1585*).

Following assessment against the criteria contained in Clause 5.13(3) items (a) – (k) (see below), it is considered that the proposal satisfies the clause objectives. Accordingly, the proposal is consistent with the land use definition.

The site is zoned E3 – Environmental Management. The objectives of the E3 zone include:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

Eco-tourist Facilities are permitted with consent in the E3 zone. The proposal is consistent with the aims and objectives of this zone. The proposal adheres to the provision of protecting, managing and restoring ecological and aesthetic values and reconnecting WLALC and the community to the site. The proposed development is sensitive to the cultural and ecological features of the site and will not have adverse impacts on the values of the site.

Clause 4.3 Height of buildings

The subject site has no maximum height limit under the PSLEP 2013.

Clause 5.10 Heritage conservation

The objectives of this clause are to conserve archaeological and Aboriginal sites and objects of heritage significance. The site is located on land listed under Clause 5.10 of the *PSLEP 2013* as a Heritage Item – General: Stockton Beach Dune System (I34). A component of the local heritage listing is ‘Aboriginal site and shell middens’.

An AHIMS search and an Aboriginal and Cultural Heritage Due Diligence Report (Umwelt, May 2019) has been submitted in support of the application. The Due Diligence Assessment provides further information and evidence about the potential for Aboriginal objects to be disturbed by the proposed development. The Due Diligence Assessment confirms that no Aboriginal objects are present or likely to be present in the footprint of the former mineral sand mine. There is a very low likelihood that objects will be disturbed within the natural dune landforms and dune forest during construction and operation of the facility. It was also concluded an Aboriginal Heritage Impact Permit (AHIP) is not required for the development.

Based on the information discussed in the Due Diligence report, the proposal may proceed without any further Aboriginal cultural heritage or archaeological investigation provided works are

undertaken to avoid disturbance within areas not previously subject to impact from sand mining activities. Mitigation measures recommended in the Due Diligence report and by Council's Heritage Advisor have been included in the recommended conditions, including an unexpected finds protocol, prohibiting activities in the undisturbed areas, surveying / marking undisturbed areas and the use of signage.

Accordingly, subject to conditions that ensure the undisturbed Aboriginal and heritage significance of the site is preserved, the proposed development satisfies the objectives of Clause 5.10. The proposal will enhance the heritage value of the site through physical connection of the community and WLALC to the area. The development of cultural education, information resources and cultural heritage tours on the site will act as conservation incentives for the ongoing operation of the proposed facility.

Clause 5.13 Eco-tourist facilities

Clause 5.13 of the *PSLEP 2013* outlines the objectives and specifies that the consent authority must not grant consent for the purpose of carrying out an eco-tourist facility unless it is satisfied that the proposal addresses the clause objectives and the requirements listed under subclause (3).

The objectives of this clause are:

- (a) *to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out, and*

The proposal aims to improve the environmental values of the site through management of weeds and retention of vegetation, where practicable. The proposal also involves continuation of revegetation activities. The proposal aims to improve the cultural values of the site through education and awareness facilities and programs (e.g. cultural heritage tours of the sand dunes). The proposal has been sensitively designed using a minimal impact approach.

- (b) *to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site, and*

The proposal has been designed, and is proposed to be managed, with sensitivity to the environment. The proposed development footprint is contained within the former sand mine disturbance area. On-site impacts to the environment are limited to the minimal vegetation removal and earthworks proposed. The proposal is not anticipated to have any negative offsite impacts to the environment.

The objectives are considered to be met provided Council is satisfied with the following criteria under 5.13(3):

- (a) *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*

The proposal connects the custodians, the WLALC, to the cultural values of the site. The proposal will enhance the environmental and ecological values of the site through preservation of vegetation and cultural values for amenity of the tourism facility and use in cultural and environmental tours.

- (b) *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*

The proposal has been developed within the former sand mining lease area and proposes disturbance of minimal vegetation and earthworks. A significant portion of the site will be conserved as part of this proposal. A condition has been recommended that a Plan of Management be prepared that outlines how the site and natural environment will be managed prior to the operation of the facility.

- (c) *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*

Overnight accommodation and tours run by the WLALC as part of the proposal will allow visitors to gain an understanding of the cultural and environmental values of the area. The Worimi Conservation Lands are a significant environmental and cultural landscape and this proposal will foster a wider appreciation of the area.

- (d) *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and*

The development footprint is not in close proximity to any watercourses. The proposal has been designed to respond to soil quality and the native flora and fauna prevalent to the site. The cultural heritage values of the site will be preserved through the avoidance of undisturbed areas and celebration of the site through cultural education activities. Further, the supporting studies provided with the application have adequately demonstrated the proposed development will have limited impact on soil quality, native flora and fauna and heritage value.

- (e) *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*

Areas of the site not developed for the overnight accommodation and ancillary facilities will be maintained and the environmental and cultural values preserved. The supporting documentation clearly shows an intent to achieve protection of natural resource and enhancement of the environment.

The applicant also advised the WLALC has previously replanted some of the disturbed sand mine area with locally native species with the aim of regenerating vegetating the site. It was also advised from the applicant that WLALC will continue the work on regeneration and rehabilitation of the site and surrounding areas (i.e. outside the project areas). The WLALC will also conduct weed removal operations and environmental education as part of the WLALC ecotourism project. A condition has been recommended that a Plan of Management be prepared that will include measures for the protection of the natural environment and regeneration activities on the site.

- (f) *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*

There are currently no waste collection services at the site. The applicant provided rudimentary information that waste will be separated and collected via Council service following a new service request, or via a commercial waste removal service. It is proposed waste will be transported from site and treated at an appropriately licenced facility.

There is a lack of detail in the supporting documentation as to how waste will be managed during the construction and operation of the facility. Therefore, a condition has been recommended that a detailed waste management plan be prepared as part of the Construction Environmental Management Plan and Operational Management Plan.

- (g) *the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and*

The proposed development will not be visible above ridgelines or escarpments. The only aspect of the development located towards the top of a ridgeline is the Quadbike Storage and Maintenance Facility and it will be screened by native vegetation. The remainder of the development has been sited to take advantage natural contours of the site to obscure the development from view and reduce earthworks.

Furthermore, the development will not be visually exposed when viewed from Stockton Beach due to the existing vegetation that is being retained.

The selected materials for the proposed buildings are considered to be sympathetic to the surrounding natural landscape and will be integrated with the natural features of the site. Further detail about material finishes is contained at **Attachment A**.

- (h) *any infrastructure services to the site will be provided without significant modification to the environment, and*

A Site Servicing Report (ADW Johnson, August 2018) was submitted with the application, outlining the provision of essential infrastructure services. Onsite water and waste treatment solutions are proposed to service the site.

The supply of electricity is proposed to be provided through a combination of solar panels and extension of the HV Transmission line. Although the extension of the HV Transmission line requires the removal of native vegetation, the addendum Ecological Impact Assessment (EPS, May 2019) assessed the impact of the proposed works on the natural environment and found no significant impact. The modifications to the natural environment were considered acceptable in the context of the proposed development. Council were satisfied with the findings of the report, subject to compensatory koala feed trees being planted outside of the extension area. The offset planting has been included as a recommended condition of consent.

- (i) *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*

The proposed development does not seek to connect to public water supply as rainwater tanks will be provided throughout the site. The proposal includes a 20kW solar panel system that will contribute to powering the storage and maintenance facility. The applicant also advised the proposed multifunctional units and the amphitheatre incorporate operable elements for natural light and ventilation.

- (j) *the development will not adversely affect the agricultural productivity of adjoining land, and*

The site has minimal agricultural value and has been extensively modified through previous land uses of mineral sands mining. No direct adjoining properties support agricultural uses or activities. Notwithstanding, the proposed development is considered to have been sensitively designed so as to have minimal impact on adjoining land.

- (k) *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
- (i) *measures to remove any threat of serious or irreversible environmental damage,*
 - (ii) *the maintenance (or regeneration where necessary) of habitats,*
 - (iii) *efficient and minimal energy and water use and waste output,*
 - (iv) *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - (v) *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.*

No Management Plan or Strategy was submitted with the application. However, the application noted a Management Strategy and monitoring plan will be developed by the traditional owners, the WLALC, and suitably qualified professionals in accordance with the relevant ISO14000 standards. It was also noted the WLALC will continue their revegetation efforts on the wider site and plantings around the proposal.

Based on the supplied documentation with the application, it is considered the site can be appropriately managed to minimise impact to the natural environment. The proposal is considered to incorporate adequate Ecologically Sustainable Development (ESD) principals. Based on the ESD approach and recommended condition that a Management Strategy (Plan of Management) be prepared prior to the release of a Construction Certificate, the proposed eco-tourist facility is considered to satisfy Clause 5.13(3)(k).

Summary

The supplied studies and documentation provide an outline how the proposal satisfies the eco-tourism criteria through the implementation of mitigation measures to avoid detrimental impact on the local sensitive natural and cultural environment. Based on the assessment of the proposed development against the 5.13(3) criteria above, the project is deemed to maintain the environmental and cultural values of the site and provide for a sensitively designed and managed eco-tourist facility. Accordingly, the proposal in its current form satisfies the CI 5.13 objectives and thereby meets the criteria to be characterised as an 'eco-tourist facility'.

Clause 7.1 Acid sulfate soils

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS).

Clause 7.1 states that a person must not, without development consent, carry out works beyond 2m below the natural ground surface within land identified as ASS Planning Category 3, except as otherwise provided in Clause 7.1. No works are proposed beyond 2m below ground level (AHD) as part of this proposal as only minor earth grading works are required and an ASS assessment has therefore not been undertaken for the site.

Notwithstanding, a condition has been recommended that will require the preparation and implementation of an Acid Sulphate Soils Management Plan if ASS is encountered during works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Clause 7.2 Earthworks

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land. The proposed earthworks are not exempt development under this plan or any other applicable environmental planning instrument and therefore require consent from Council.

Only minor earthworks are required for grading the access ways, carparks, storage and maintenance facility and the amphitheatre, along with minor engineering works as detailed in the Architectural and Engineering Plans attached.

In response to the objective of Clause 7.2, the proposed development is satisfactory against the matters for consideration under Clause 7.2(3), as:

- The majority of earthworks are located centrally within the site;
- Swales and stormwater management measures have been proposed to minimise the disruption of drainage patterns;
- Conditions have been recommended to ensure only virgin fill is used on the site;
- The preparation of a Construction Environmental Management Plan (CEMP) will be required prior to works commencing to mitigate the effect of the development on the existing and likely amenity of adjoining properties;
- Control methods including sediment control measures such as the installation of a sediment fencing have been proposed and included in the recommended conditions.

Clause 7.4 Airspace operations

The objective of this clause is to ensure that the operation of the RAAF Base Williamtown is not compromised by proposed development that penetrates the Limitation or Operations Surface.

The Defence Height Trigger Map for RAAF Base Williamtown identifies the height constraints for the subject land as “*Structures higher than 7.5m require assessment.*” Based on the height details provided within the application documentation, the proposed structures will not infringe the Obstacle Limitations Surface (OLS) for RAAF Base Williamtown.

Whilst the proposed development is well below this height, the Department of Defence (DoD) requested that details are required to be provided to DoD for assessment and approval to ensure proposed structure heights will not pose a risk to safety of flying operations. This matter has been addressed through the inclusion of an appropriate condition in the recommended consent.

Clause 7.5 Development in areas subject to aircraft noise

The objective of this clause is to minimise the impact of aircraft noise from the RAAF Base Williamtown Airport and its flight paths, to assist in the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings, and to ensure that land uses and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing safe and efficient operation of that airport.

This clause applies to the project area, as it is on land that is near the RAAF Base Williamtown Airport. In accordance with Clause 7.5(3) the consent authority must consider:

- *whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*
- *the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*
- *must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

The subject land is located within the 20-35 Australian Noise Exposure Forecast (ANEF) contours for RAAF Base Williamtown (ANEF2025). The accommodation component of the proposal is located within the 25-30 noise contour; and the reception, storage and maintenance building within the 30-35 noise contour. Hotel, motel and hostel accommodation is ‘conditionally acceptable’ within the 25-30 ANEF contour under *Australian Standard 2021:2015 “Acoustics – Aircraft Noise Intrusion – Building Siting and Construction”* (AS 2021).

The application was referred to the DoD for comment (advice contained in **Attachment 5**). DoD objected to the proposed development based on impact of aircraft noise, Public Safety Areas, building height restrictions, extraneous lighting and glare.

Specifically on noise, DoD advised developing properties for accommodation purposes within the 25-30 ANEF contour will further constrain the already limited opportunities for the Air Force to mitigate noise impacts both now and in the future at RAAF Base Williamtown. DoD was also concerned the development of noise-sensitive land uses in close proximity to airfields will lead to complaints about aircraft noise. Permitting further accommodation uses in areas affected by ANEF contours was considered to worsen the outcome for the community and Air Force. Should the proposed application be approved, DoD advised it will not be responsible for any future liabilities in relation to military aircraft noise.

In this regard, DoD recommended a condition of consent to ensure that all buildings are designed and constructed to be compliant with indoor design sound levels for determination of aircraft noise reduction as outlined in AS2021-2015 Acoustics – Aircraft noise intrusion – Building siting and construction.

To address aircraft noise from RAAF Base Williamtown, an Aircraft Noise Assessment (ANA) prepared by Muller Acoustic Consulting (August, 2018) accompanied the application. The ANA outlined the proposed Aircraft Noise Reduction (ANR) requirement as per AS2021:2015 and the recommended acoustic attenuation measures, including specified building design/construction requirements, and a management plan for the (covered) common area to avoid use during peak aircraft movements. The ANAR also recommended the relocation of two (2) lodges out of the ANEF 30-35 contour.

Based on the Aircraft Noise Impact Assessment results, it was recommended Council approve the proposed development subject to the noise attenuation requirements provided in the report.

Despite the concerns raised by Defence, development in this area is deemed as being 'Conditionally Acceptable' for residential use in accordance with AS 2021 (2015), requirement B7.1 and Figure BJ of the PS DCP (2014).

The construction materials of the storage and maintenance facility are anticipated to satisfy the Aircraft Noise Reduction (ANR) criteria. The external and internal construction elements of the accommodation units and managers residence will be a total thickness of 15mm to 20mm to satisfy the ANR criteria. Additionally, a management plan will be required for the Commons area to avoid events during peak aircraft movement periods as noise levels will likely exceed the relevant criteria of 70dBA. The recommendations of the Aircraft Noise has been included in the consent.

Furthermore, occupiers of the site will be predominantly be transient visitors staying for short periods, therefore the cumulative noise impacts will limited.

Clause 7.6 Essential services

This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.

A Site Servicing Report (ADW Johnson, June 2019) was submitted with the application, outlining the provision of essential infrastructure services.

The proposed development does not seek to connect to the existing water main or public sewer. Instead, 6 x 65kL static reserve rainwater tanks are proposed along the access road south of the multifunctional units, and 1 x 20kL and 1 x 80kL rainwater tanks located at the quad-bike storage and maintenance facility. Further, the proposal includes dry composting toilets for effluent disposal.

The proposed development includes an extension to the existing 11kV HV electricity transmission line at the eastern end of Lavis Lane. The extension will run above ground approximately 600m south to a pole top substation that will provide power to the site. Advice from Ausgrid contained in the submitted Site Servicing Report (ADW Johnson) have confirmed a pole mounted substation will be required to service the development. The proposed extension to the HV line would run to the proposed Worimi development site aboveground to the pole top substation, where it would be reticulated internally.

Parts of the HV transmission extension are located outside of the site boundaries (refer to Figure 5). ADW Johnson completed a review of the ownership of Stockton Bight Track, where it was determined Stockton Bight Track is a public road, owned by Council. Therefore, any works in the public road reserve, including works to the transmission network, will be subject to a separate approval under s.138 of the *Roads Act Approval 1993*.

The proposed eco-tourist facility does not seek to connect to the existing telecommunications network in order to promote the natural ambience; however, communications will be available via the mobile network as noted in the Site Servicing Report.

It is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site including water, electricity, sewage, drainage and vehicular access. Conditions will be included on the consent to require that that essential services are available prior to the issue of an Occupation Certificate.

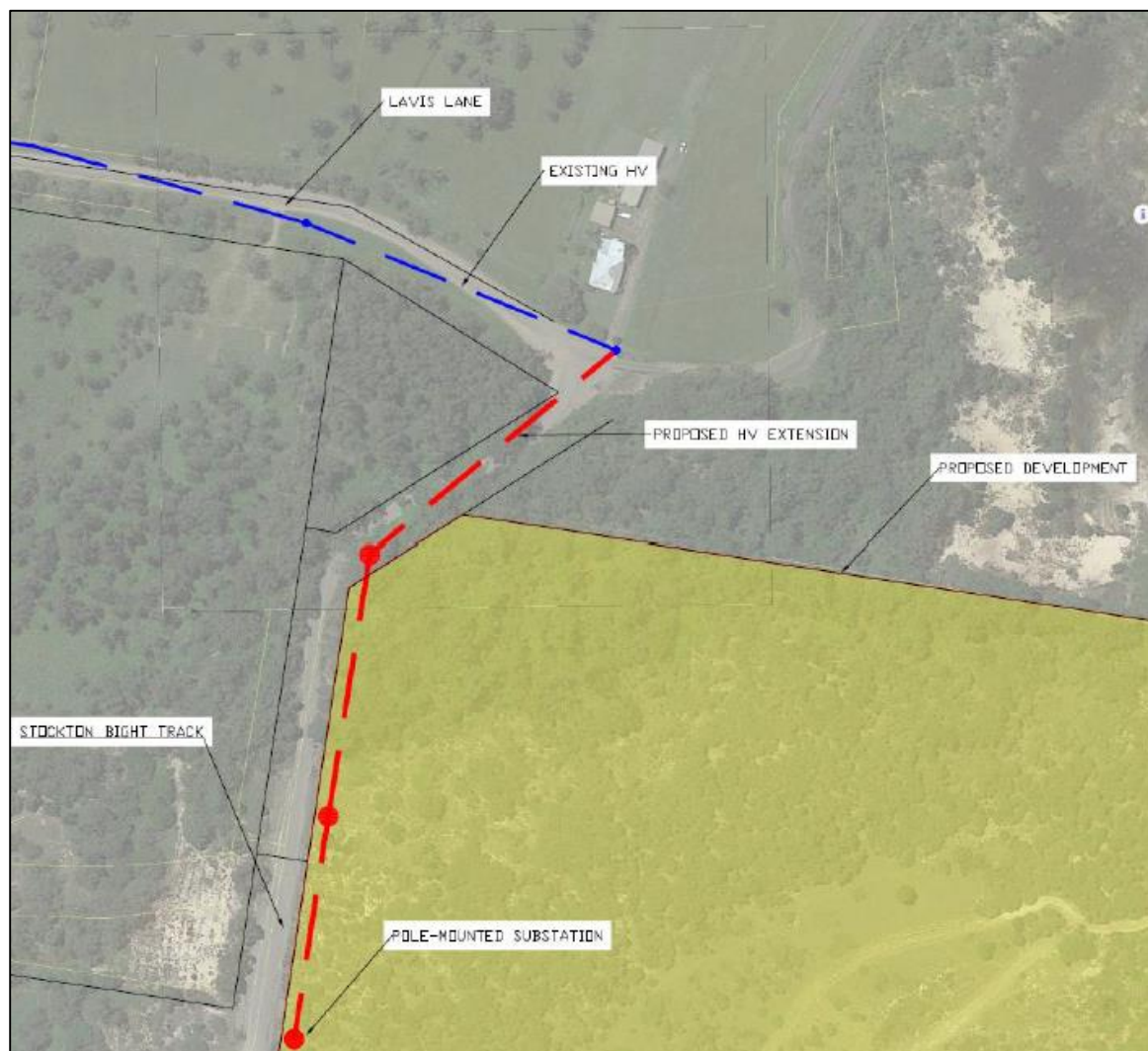


Figure 5: HV Transmission Extension

Clause 7.8 Drinking water catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

The proposed development falls within the North Stockton Catchment Area as declared under the *Hunter Water Regulation 2015*. The application was referred to Hunter Water Corporation (HWC) for comment (Attachment 7). It was advised the Stockton Sandbeds are not currently a water source, however, HWC maintains an interest in ensuring that inappropriate development in the catchment does not occur. HWC requested consideration be given to effluent being contained and appropriately disposed, fuel and chemicals storage areas being bunded and fueling activities only occurring on hardstand surfaces.

A Water Cycle Management Plan (ADW Johnson, August 2018) was submitted with the application. The report outlined measures for water and waste water being appropriately treated

and managed so as to not impact on quality and quantity of water entering drinking water storages. The HWC measures have been included as part of the recommended conditions.

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

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No.55)*. The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

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

The following sections of the Port Stephens Development Control Plan 2014 (DCP) are relevant to the proposal:

Chapter A – Part A.12 Development notification

The original application was advertised and notified for a period of 14 days from 6 December 2018 to 20 December 2018. No submissions were received during this period.

Section B – General Controls

Chapter B3 – Environmental Management

Environmental Significance

An Ecological Impact Assessment (August 2018) and subsequent addendum report (June 2019) prepared by EPS was submitted as part of the application, with Council generally supportive of the findings. The key considerations included:

- Removal of two hollow-bearing trees containing 9 hollows, of which, two are large (>20 cm);
- Removal of preferred koala habitat and habitat buffer area;
- Removal of 5 preferred koala feed trees (*Eucalyptus robusta*);
- Removal of 0.177 ha of native vegetation including:
 - Impacts to 0.06 ha of Swamp Oak Floodplain Forest EEC.
 - Impacts to 0.02 ha of Swamp Sclerophyll Forest EEC.

The assessment of impacts and the mitigation measures provided in the EPS addendum report are considered accurate and appropriate.

The proposed development has been sensitively designed to be located within the previously mined parts of the site and generally avoids the better-quality areas of habitat. Construction impacts are likely to be relatively minor as the majority of the project is located in previously disturbed environments. Similarly, the operation phase of the project will consist of low-impact eco-tourist activities and controlled quad biking. Mitigation measures to further reduce the residual impacts to the biodiversity values have been included in the recommended conditions contained in **Attachment 3**.

Biodiversity Offsets

The 'Addendum Ecological Assessment' (EPS, 27 June 2019) identified five (5) Swamp Mahogany (*Eucalyptus robusta*) trees for removal. As per the Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) and Council's Tree Technical Specification, the removal of these trees will require the planting of compensatory koala feed trees. The offset planting has been included as a recommended condition of consent.

Koalas

The CKPoM maps the development footprint of the eco-tourist facility as being within the Fullerton Cove/Stockton Bight management unit. Much of the central previously sand-mined areas are not mapped as koala habitat in any form. The peripheral parts of the study area have been mapped in the CKPoM as Supplementary Koala habitat with a small area in the north west of the study area as a mixture of 50m buffer over mainly cleared land and preferred Koala habitat. No Koala feed trees were present within the study area. The HV Transmission Line Study Area is mapped as preferred Koala habitat with a 50m buffer over cleared land surrounding the HV Transmission Line Study Area.

A detailed assessment on koala impacts is provided in the preceding sections of this report under the SEPP No.44 – Koala Habitat Protection discussion.

Chapter B3 – Environmental Management

Acid Sulfate Soils

The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS). No works are proposed beyond 2m below ground level (AHD) as part of this proposal as only minor earth grading works are required. On this basis, no ASS assessment has not been undertaken for the site.

Notwithstanding, a condition has been recommended that will require the preparation and implementation of an Acid Sulphate Soils Management Plan if ASS is encountered during works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Air Quality

The proposed eco-tourist facility is not a development type anticipated to produce adverse impacts to air quality or require specific odour control measures. Accordingly, an air quality report was not deemed necessary for the proposed development.

Any potential impacts as a result of the construction phase will be temporary and will be managed and mitigated by appropriate standard measures. The sewage system is proposed to be developed in accordance with the manufacturers specifications and is not anticipated to have any negative impacts on air quality.

Earthworks

A site regrade plan is supplied with the application. Only minor early earthworks are required for grading the access ways, carparks, storage and maintenance facility and the amphitheatre. A condition has been included that fill will consist of Virgin Excavated Natural Material (VENM) as defined under the *Protection of Environment Operations Act 1997* and erosion and sediment control measures are to be installed prior to the commencement of works.

Noise

The proposed development is not anticipated to produce any offensive noise. The proposal is a significant distance from any sensitive receivers, as such adverse construction noise impacts are not anticipated. A condition has been included that construction work and quad bike usage is only permitted to occur within standard working hours.

Chapter B4 – Drainage and water quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the recommended consent requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

Chapter B6 – Essential services

The proposal includes adequate arrangements for the supply of water through on-site supply and storage. The supply of electricity is proposed to be provided for through a combination of solar panels and augmentation of a nearby HV Transmission line. Disposal and management of sewage will occur through on-site facilities. A Water Cycle Management Plan (ADW Johnson, August 2018) has been prepared to provide for appropriate stormwater drainage in accordance with Chapter B4 of the DCP. Suitable vehicular access is included in the proposal in accordance with Chapter B9 of the DCP. Further details on essential services is provided under Clause 7.6 of this report.

Chapter B7 Williamstown RAAF Base – Aircraft Noise and Safety

This Part applies to development that is situated within the aircraft noise planning area, bird strike zone, extraneous lighting area or the Williamstown RAAF Base Obstacle Limitations or Operations Surface Map and Height Trigger Map.

The proposed development is located within the Civil Aviation Safety Authority's (CASA's) 6.0km radius controlled light installation area. To mitigate potential safety issues associated with the proposed development, Defence recommends compliance with the extraneous lighting controls detailed in the CASA Manual of Standards (MOS-139) Aerodromes. This has been included in the recommended conditions.

The site is located within 3 kilometres of RAAF Base Williamtown and in an area mapped by Defence as "Birdstrike Group C Buffer Area." In this buffer area, certain land uses that have the potential to attract wildlife should be avoided as they will potentially increase the risk of bird strike for aircraft operating from RAAF Base Williamtown. Any organic waste and or the storage of commercial bins associated with the proposed development might be attractive to vermin and/or birds and will potentially increase the risk of bird strike for aircraft operating from RAAF Base Williamtown. At the request of Defence, an appropriate condition for the management of organic waste (such as maximum storage onsite and use of covered/enclosed bins) has been included.

Matters pertaining to aircraft noise, Obstacle Limitations or Operations Surface Map and the Height Trigger Map have been assessed in the preceding sections of this report.

B8 - Heritage

An Aboriginal and Cultural Heritage Due Diligence Report (Umwelt, May 2019) was submitted with the application. The report concluded a detailed Heritage Impact Statement is not required as the proposal is unlikely to impact on the Heritage Item: Stockton Beach Dune System (I34). The proposal has been designed with regard to the heritage significance of the site. Further, the proposal area has been significantly disturbed through previous use for mineral sand mining as such likelihood of encountering a heritage object is very low and will be managed through an unexpected finds procedure. Further detail on heritage matters has been assessed in the preceding sections of this report.

Chapter B9 – Road network and parking

Traffic Impacts

The site is close to the end of Lavis Lane and is accessed from Nelson Bay Road near Newcastle Airport. At the end of Lavis Lane is an unsealed road known by various names including Lavis Lane, Stockton Bight Track and Macs Track. This same unsealed road allows four-wheel drive or recreational vehicle access to the Worimi Conservation Lands and Stockton Beach. The proposal is anticipated to increase the number of vehicles accessing Lavis Lane and Stockton Bight track to enter the site. However, storing the quadbikes on site will reduce the current movements of the quadbike trailers on Stockton Bight Track/Lavis Lane/Nelson Bay Road several times per day.

Car parking

The parking requirements as listed in Figure BT of the DCP for eco-tourist facilities include:

Parking requirements	Accessible parking
1 car space for each accommodation unit	1 car space per 20 car spaces

1 car space per 2 employees	
1 bike space per 20 accommodation units	

In accordance with Figure BQ of PSDCP the following car parking calculations have been made:

- 44 accommodation units = 44 spaces
- 32 employees = 16 spaces
- **Total** = 60 car spaces

The proposed development includes 77 parking spaces, including three (3) accessibility spaces (two are located within the main carpark, and one at the northern coach parking). The parking provision is deemed appropriate for the development, particularly in its provision for overflow parking during peak periods.

Access

The internal site access and car parking will be upgraded as part of this proposal, including appropriate parking and manoeuvring areas for coaches. A maintenance access road encircles the multifunctional units and the Commons area and joins back to the main carpark near the southern coach drop off/parking. The maintenance loop-road is proposed to be sealed all-weather access and includes turning circles and pump-out bays. The existing multiple natural sand access tracks throughout the site are proposed to be consolidated into a single access track that extends from the east of the quadbike storage and maintenance facility through to the sand dunes in the eastern portion of the site. The natural sand access track is proposed to be used by the Sand Dune Adventures quadbike operations.

As the proposed eco-tourist facility will be targeting groups travelling to/from the site via buses/coaches, ADW Johnson prepared a series of drawings to demonstrate the turning paths for coaches which have been designed to accommodate the widths and steering angles necessary for safe manoeuvring of up to two coaches at a time within the site.

Council's Traffic Engineer reviewed the proposal and supporting information and raised no objection with regard to access and traffic arrangements. A condition has been included requiring detailed plans of internal roads are provided prior to issue of the Construction Certificate.

Port Stephens Development Contribution Plan

The application attracts Section 7.12 Contributions pursuant to the *Environmental Planning and Assessment Act 1979* and the Port Stephens Development Contributions Plan. A condition has been included that a monetary contribution is to be paid to Council, pursuant to section 7.12 of the *EP&A Act* and the Port Stephens Council Fixed Development Contributions Plan, prior to release of the Construction Certificate.

6.3.3.4 Section 4.15(1)(a)(iia) Planning agreements

No planning agreements are relevant to the proposal.

6.3.3.5 Section 4.15(1)(a)(iv) the regulations (and other plans and policies)

Lower Hunter Regional Strategy

The NSW Government adopted the Lower Hunter Regional Strategy (LHRS) on 12 October 2006. The strategy references tourism as a key generator for new employment in the region during the 2006 – 2031 period. The proposal is commensurate with the strategy as it will create new employment opportunities in the tourism sector.

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 is a 20 year blueprint for the future of the Hunter. Action 6.1 is to *“Enhance tourism infrastructure and connectivity, recognising the importance of local routes such as Nelson Bay Road”*.

Direction 9 of the Hunter Regional Plan 2036 is to *‘Grow tourism in the region’*, and specifically relevant to the proposal is Action 9.2: *“Encourage tourism development in natural areas that support conservation outcomes”*. The proposed development aligns with the Actions and Directions of the Hunter Regional Plan 2036 through the delivery of sustainable tourism facilities.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy aims to provide high level strategic direction for spatial planning in the Port Stephens Local Government Area (Port Stephens LGA) and has replaced the previous Port Stephens Community and Infrastructure Strategy 2006-2010. This Strategy is intended to act as a guideline to be read in conjunction with other planning documents which regulate development in the LGA. The Port Stephens Planning Strategy 2011 highlights recreation and tourism as major industries for the LGA.

6.3.3.6 Section 4.15(1)(a)(v) Coastal management plan

No Coastal Management Plan applies to the site or the proposed development.

6.3.3.7 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

Built Environment

The closest residence is located less than 150m north of the proposed storage and maintenance facility at 36 Stockton Bright Track, Williamtown (Lot 76/DP753192). There is no visibility of the

proposed facility from the residence due to the existing dense vegetation covering the dividing land.

The proposed external finishes are designed to deliver an the ecofriendly theme, including exposed aggregate concrete and spotted gum floorboards, rammed earth walls with weathering steel sheet details, colorbond roofing and lightweight membrane shading fabric fly roofing.

There are no views of the proposed development from Stockton Beach due to the sand dunes and vegetation. It is not anticipated that the constructed facility will have any negative visual impacts on the surrounding area.

Natural Environment

As the environmental value of the site is key to the proposed development, the overriding main aim is to have minimal environmental impact during construction and operation.

The design has been informed by previous sand mining disturbance footprint, information on high-value vegetation and location of hollow-bearing trees from the project ecology team and WLALC's intention to preserve and maintain key environmental features of the site. As such, the proposed development's impact on the natural environment are considered minimal. The key vegetation areas have been avoided and no hollow bearing trees have been proposed for removal.

Social and Economic Impact

The development will have a positive social and economic impact through the provision of additional cultural education and employment within the locality. The proposed development is anticipated to have fluctuating occupancy that will likely prove higher during summer months, school holidays, and peak tourist periods. During periods of high occupancy, it is likely to provide positive economic flow-on support to commercial businesses within the locality as well as the wider area through expenditure and demand for services.

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

The site's location is considered highly suitable for an eco-tourist facility as it is on land owned by the WLALC. The WLALC also owns the majority of the Worimi Conservation Lands to the south of the site, which is leased to the NSW State Government and jointly managed by WLALC and the State Government. As such, the site is ideally positioned in terms of access to surrounding areas that hold high environmental, cultural and recreational value.

The eco-tourist facility will preserve and celebrate the heritage and environmental value of the site through physical connection to the area cultural education information activities, cultural heritage tours of the site as well as promoting appreciation and management of the environment. The proposed site is deemed highly suitable for this use.

Regionally, the site's location in Port Stephens is considered highly suitable for an Eco-tourist Facility, providing support for economic development through tourism, which is a key consideration and objective of the Port Stephens Planning Strategy 2011-2036.

Based on the assessment, it is considered that the site is suitable to accommodate the proposal in its current form and, in particular, allow the operators to sustainably manage any potential impacts. The proposed outcomes will achieve a highly functional eco-tourist facility that is compatible with the surrounding landscape. The site attributes are conducive to a development of this nature subject to conditions of consent.

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

The proposal was exhibited for a period of 14 days from 6 December 2018 to 20 December 2018 in accordance with the *EP&A Act*, *EP&A Regulations* and Section A of the DCP. Council received no submissions during that time.

6.3.3.10 *Section 4.15 (1)(e) the public interest*

Matters pertaining to the public interest have been discussed within this report with approval of the application is considered to be in the public interest. The development does not have any significant adverse impacts on the built or natural environment, and has positive social and economic impacts.

7. CONCLUSION

It is recommended that the Hunter and Central Coast Regional Planning Panel, as the consent authority, approve development consent to 16-2018-774-1 (2019HCC001) for an eco-tourist facility (44 accommodation units, managers residence, quad bike storage and maintenance area, amphitheatre for educational performances and extension of existing car park to accommodate 77 spaces, 6 coach spaces and 2 drop off areas) at 27 Stockton Bight Track Fullerton Cove (LOT: 227 DP: 1097995), pursuant to Section 4.16 of the *EP&A Act* subject to the conditions in **Attachment 3**.

Signed (Assessing Officer)



Date: 30/10/19

Ryan Falkenmire

Principal Development Planner

Reviewed (Supervising Officer)



Date: 30/10/2019

Rean Lourens

Planning and Developer Relations Coordinator

Authorised for submission to JRPP



Date: 30/10/2019.

Kate Drinan

Manager Development Assessment & Compliance