

## HUNTER AND CENTRAL COAST REGION REGIONAL PLANNING PANEL

<b>Panel Reference</b>	2019HCC009
<b>DA Number</b>	8/2018/539/1
<b>LGA</b>	Cessnock City Council
<b>Proposed Development</b>	Subdivision of land to create 39 light industrial lots and 1 environmental conservation lot, to be delivered in six stages, including the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use.
<b>Street Address</b>	1134 John Renshaw Drive and 0 John Renshaw Drive, Black Hill  Lot 1 DP 1260203 and Part Lot 119 DP 1154904
<b>Applicant/Owner</b>	Broaden Management Pty Ltd
<b>Lodgement date</b>	22 August 2018
<b>Submissions</b>	21 submissions over the two notification periods, 19 of which are unique
<b>Recommendation</b>	That the application be refused
<b>Regional Development Criteria</b>	Development with a Capital Investment Value (CIV) of more than \$30 million, and development proposing a particular designated development. Accordingly, the DA is identified as being Regionally Significant Development under Clauses 2 and 7 of Schedule 7 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> .
<b>List of all relevant s4.15 matters</b>	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (State and Regional Development) 2011</i></li> <li>• <i>State Environmental Planning Policy (Infrastructure) 2007</i></li> <li>• <i>State Environmental Planning Policy No. 55 – Remediation of Land</i></li> <li>• <i>State Environmental Planning Policy No. 44 – Koala Habitat Protection</i></li> <li>• <i>Cessnock Local Environmental Plan 2011</i></li> <li>• <i>State Environmental Planning Policy (Koala Habitat Protection) 2019</i></li> <li>• <i>Draft Remediation of Land SEPP</i></li> <li>• Cessnock Development Control Plan 2010: <ul style="list-style-type: none"> <li>Chapter C.2 – Flora and Fauna Survey Guidelines</li> <li>Chapter C.3 – Contaminated Lands</li> <li>Chapter C.5 – Waste Management and Minimisation</li> <li>Chapter C.7 – Trees and Vegetation Management</li> <li>Chapter D.1 – Subdivision Guidelines</li> <li>Chapter E.18 – Black Hill Employment Area</li> </ul> </li> </ul>

<b>Enclosures</b>	Appendix A – Development plans Appendix B – Copies of General Terms of Approval Appendix C – Advice from Transport for NSW Appendix D – Applicant’s response to traffic concerns raised by Transport for NSW Appendix E – Photographs of site and surrounds
<b>Report by</b>	Peter Giannopoulos, Team Leader Development Services
<b>Report date</b>	8 October 2020

## RECOMMENDATION

**That:**

**Development Application No. 8/2018/539/1 proposing the subdivision of land to create 39 light industrial lots and 1 environmental conservation lot, to be delivered in six stages, including the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use, at 1134 John Renshaw Drive and 0 John Renshaw Drive, Black Hill, be determined by way of refusal pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*, for the reasons contained in this report.**

<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Not Applicable</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S94EF)?	<b>Yes</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>Not Applicable</b>

## EXECUTIVE SUMMARY

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1. A development application has been submitted seeking approval to create 39 light industrial lots and 1 environmental conservation lot, to be delivered in six stages, including the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use.

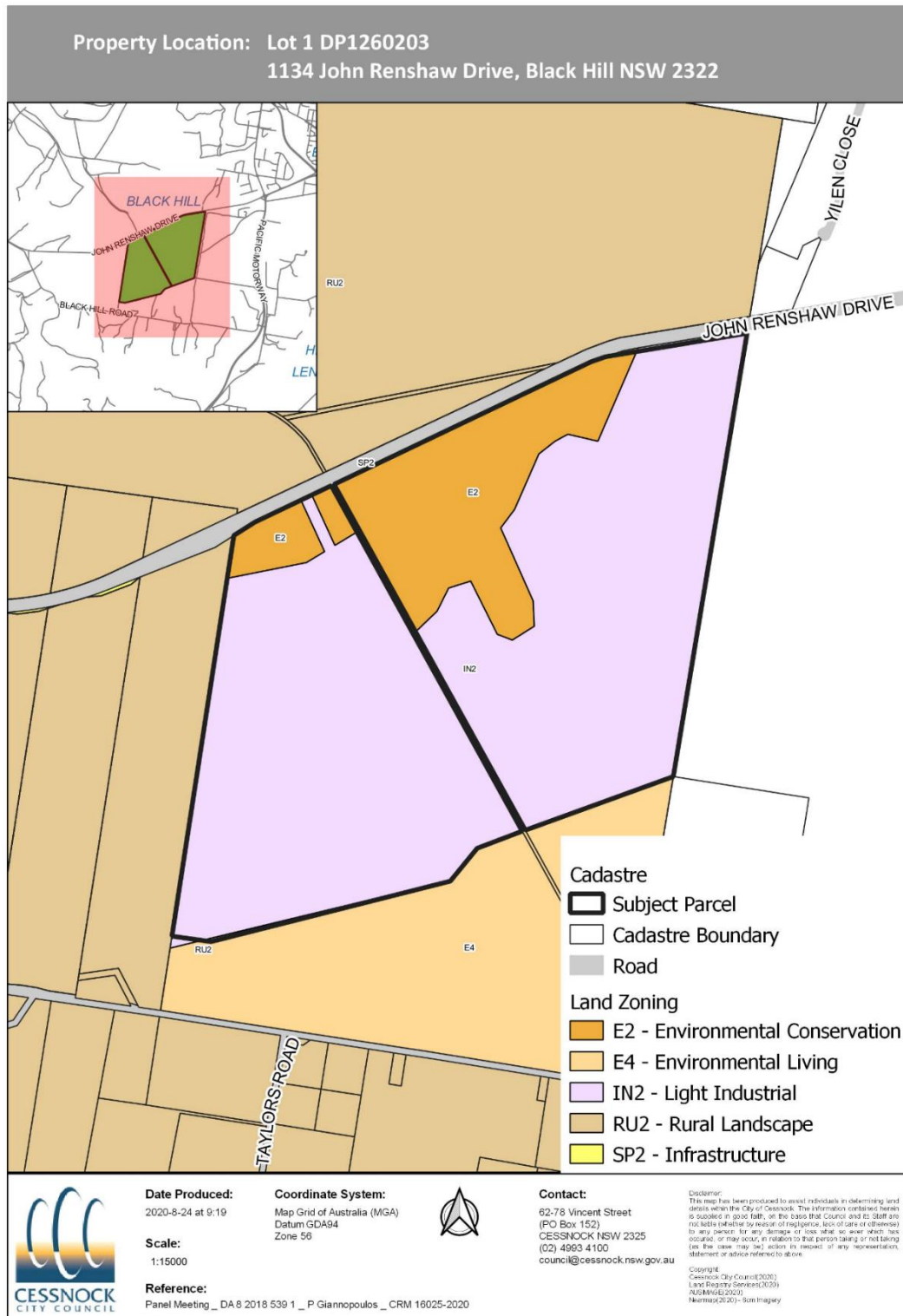
In detail, the application proposes the following:

- Removal of all vegetation present within the IN2 Light Industrial zoned land and a minor portion within the E2 Environmental Conservation zoned land
  - Realignment of existing watercourse (1<sup>st</sup> order stream)
  - Remediation carried out in accordance with the submitted Remedial Action Plan (RAP)
  - Site access from two (2) signalised intersections on John Renshaw Drive
  - Civil earthworks to provide foundation for future industrial development, including cut and fill
  - Extension and augmentation of essential services
  - Construction of a substation and relocation of the existing aboveground high voltage transmission line
  - Construction of a ring-road network for internal access
  - Infrastructure to capture, detain and treat all stormwater collected onsite
  - Subdivision to be carried out in six (6) stages
2. The subject application is referred to the Hunter and Central Coast Regional Planning Panel in accordance with Clauses 2 and 7 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*. Specifically, the proposal has a Capital Investment Value (CIV) of \$77 million, and the cost of construction therefore exceeds \$30 million for general development carried out in accordance with Clause 2 Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*. Furthermore, the development proposes a form of particular designated development carried out in accordance with Clause 7 Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*
  3. The proposed development is categorised as 'Designated Development' due to the extent of earthworks and remediation required. Accordingly, the application was accompanied by an Environmental Impact Statement (EIS) addressing the Department of Planning and Environment Secretary's Environmental Assessment Requirements (SEARs).
  4. The proposed development is also defined as Integrated Development and Nominated Integrated Development, as the following approvals are required:

Approval required	Relevant legislation	Relevant authority	Confirmation that GTA's have been issued
Scheduled Activities Section 43	<i>Protection of the Environment Operations Act 1997</i>	EPA	Yes – 12 April 2019
Controlled Activity Approval Section 91	<i>Water Management Act 2000</i>	NRAR	Yes – 14 June 2019
Aboriginal Heritage Impact Permit Section 90	<i>National Parks and Wildlife Act 1974</i>	OEH	Yes – 17 May 2019
Section 22 Approval	<i>Coal Mine Subsidence Compensation Act 2017</i>	SA	Yes – 24 April 2019
Bush Fire Safety Authority Section 100B	<i>Rural Fires Act 1997</i>	RFS	Yes – 26 February 2019

5. The subject site is located within an area of mixed uses which incorporates a developing industrial area located in Beresfield. The site is located within the Black Hill catalyst area which is identified in both the Greater Newcastle Metropolitan Plan 2036 and the Hunter Regional Plan 2036. Surrounding development includes a disused coal mine and emerging industrial estates. The site also adjoins rural and rural-residential uses.
6. The development is consistent with *Cessnock Local Environmental Plan 2011* and is a permitted form of development in the E2 Environmental Conservation and IN2 Light Industrial zones.
7. The proposed development was exhibited in accordance with the provisions of Council's adopted notification policy and the legislative requirements that apply to designated development. The application was initially exhibited between the 13 February and 15 March 2019. The proposal was re-exhibited following amendments to the development application between 25 May and 29 June 2019. In response, 21 submissions were received over the course of the two (2) exhibition periods, 19 of which are considered unique.
8. Council is in receipt of confirmation from the Director-General that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure, in accordance with clause 6.1 of the *Cessnock Local Environmental Plan 2011*.
9. The applicant has submitted supplementary information on a number of occasions during the development assessment process, which has resulted in confusion in respect of the exact nature of development proposed. For example, the applicant has lodged supplementary plans in respect of the subdivision layout, an amended traffic report identifying additional mitigation measures to those initially proposed in conjunction with the application, and a supplementary report relating to off-site impacts. The supplementary report addresses road upgrades to the John Renshaw Drive/Weakleys Drive/M1 intersection, however, consent has not been sought for these works to be incorporated into the development proposal. In the event the applicant formally seeks to amend the proposal to include such works, the amendment would result in a need for the application to be re-referred, re-exhibited and re-assessed, and would substantially increase the CIV associated with the proposal. It is noted that, due to timing of submission of the report relating to off-site impacts, i.e., the report was received during finalisation of this assessment report, no assessment of the off-site impacts identified, has been undertaken.
10. The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, including site suitability and public interest. It is considered that the application does not adequately identify and address the traffic impacts of the proposed development. Most notably, the proposal is considered to present an unacceptable impact on the existing road network. In addition, concern is raised in respect of the visual impact of the proposal. Finally, it is considered that the level of community consultation carried out by the applicant prior to lodgement, is inadequate and is contrary to the requirements of the Secretary's Environmental Assessment Requirements (SEARs).

# ZONING MAP



## SITE DESCRIPTION

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The subject site is commonly known as 1134 John Renshaw Drive, and 0 John Renshaw Drive, Black Hill, and is legally described as Lot 1, DP 1260203 and Part Lot 119 DP 1154904, as identified in the following table:

Address	Lot/ DP	Size
1134 John Renshaw Drive	Lot 1, DP 1260203	301 ha
0 John Renshaw Drive	Part Lot 119 DP 1154904	2 ha (approx.)
<b>Total</b>		<b>303 ha</b>

When the application was initially submitted, the development site formed part of a parcel of land known as 337 Black Hill Road, Black Hill, being Proposed Lot 1 in a resubdivision of Lot 1131 DP 1057179. On the 26 March 2020 and with the registration of Deposited Plan 1260203, Proposed Lot 1 was created and forms the basis for the land the subject of this application, being Lot 1 DP 1260203.

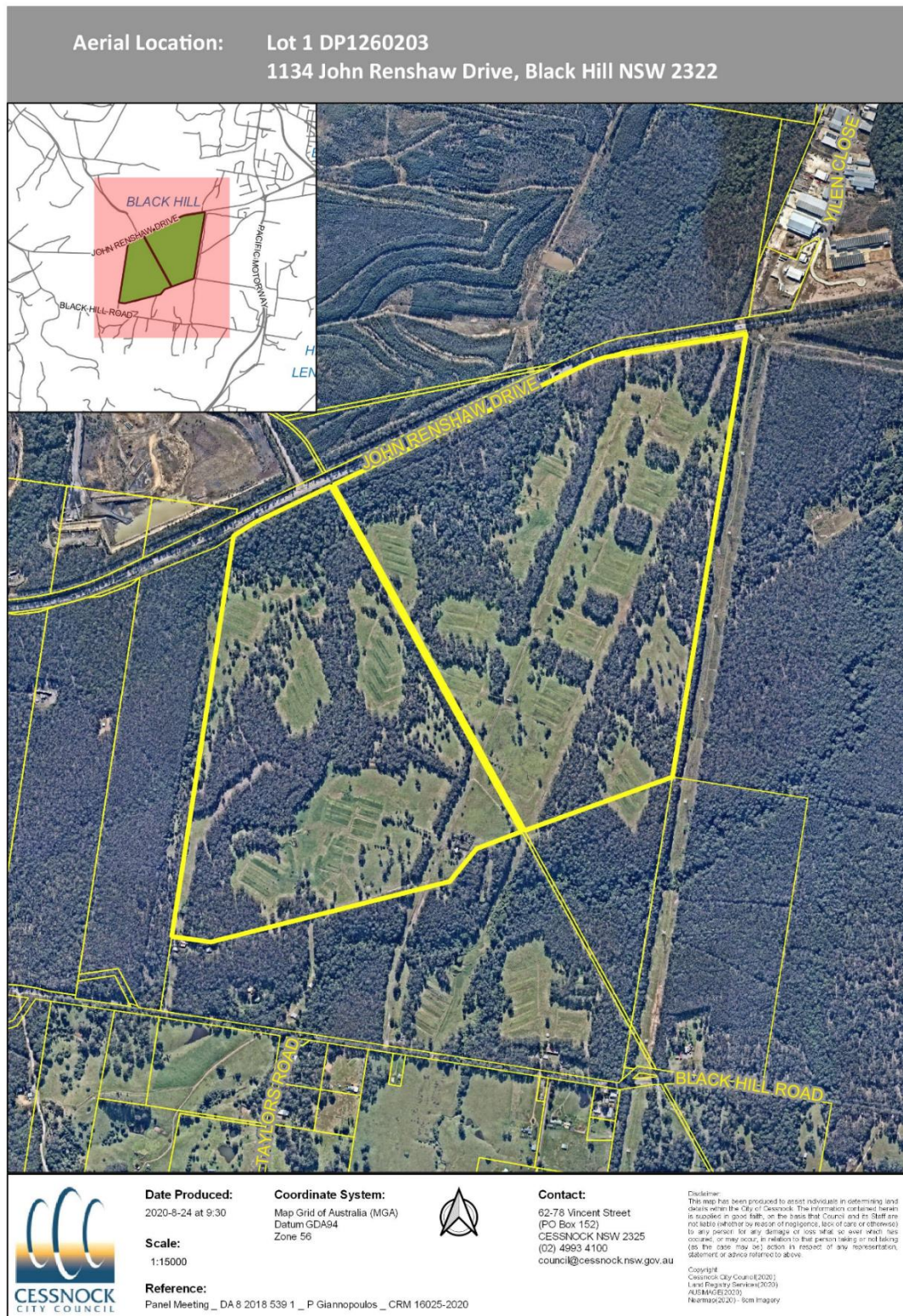
In addition, the principal allotment is divided into two (2) portions via a long, narrow lot (Part Lot 119 DP 1154904), bisecting the site from the north-west to the south-east, which accommodates a Hunter Water Corporation water supply pipeline. The pipeline is underground and does not impede access throughout the site.

Most of the land is slightly undulating, with a gentle slope occurring from south to north (gradients range between approximately 2.5 degrees to 10 degrees). The site is underlain by the Tomago Coal Measures. Two creeks and their tributaries traverse the site in a general east-west direction, comprising Weakleys Flat Creek in the northern portion of the site, and Viney Creek in the southern portion.

The site is a mix of grassy paddocks used for low-scale grazing purposes and tree covered areas. The vegetation on site consists of fragmented patches of eucalypt woodland and riparian vegetation with a significant portion of the site existing as cleared pastoral lands. A large portion of the site has been cleared in the past to accommodate various rural activities and is now vegetated with pasture grasses. Areas of native woodland vegetation remain scattered throughout the site.

The site is mostly void of structures, as the majority of the buildings once used for poultry farming were demolished a number of years ago. The remaining building footprints are predominantly covered in grass.

# AERIAL



## LOCALITY

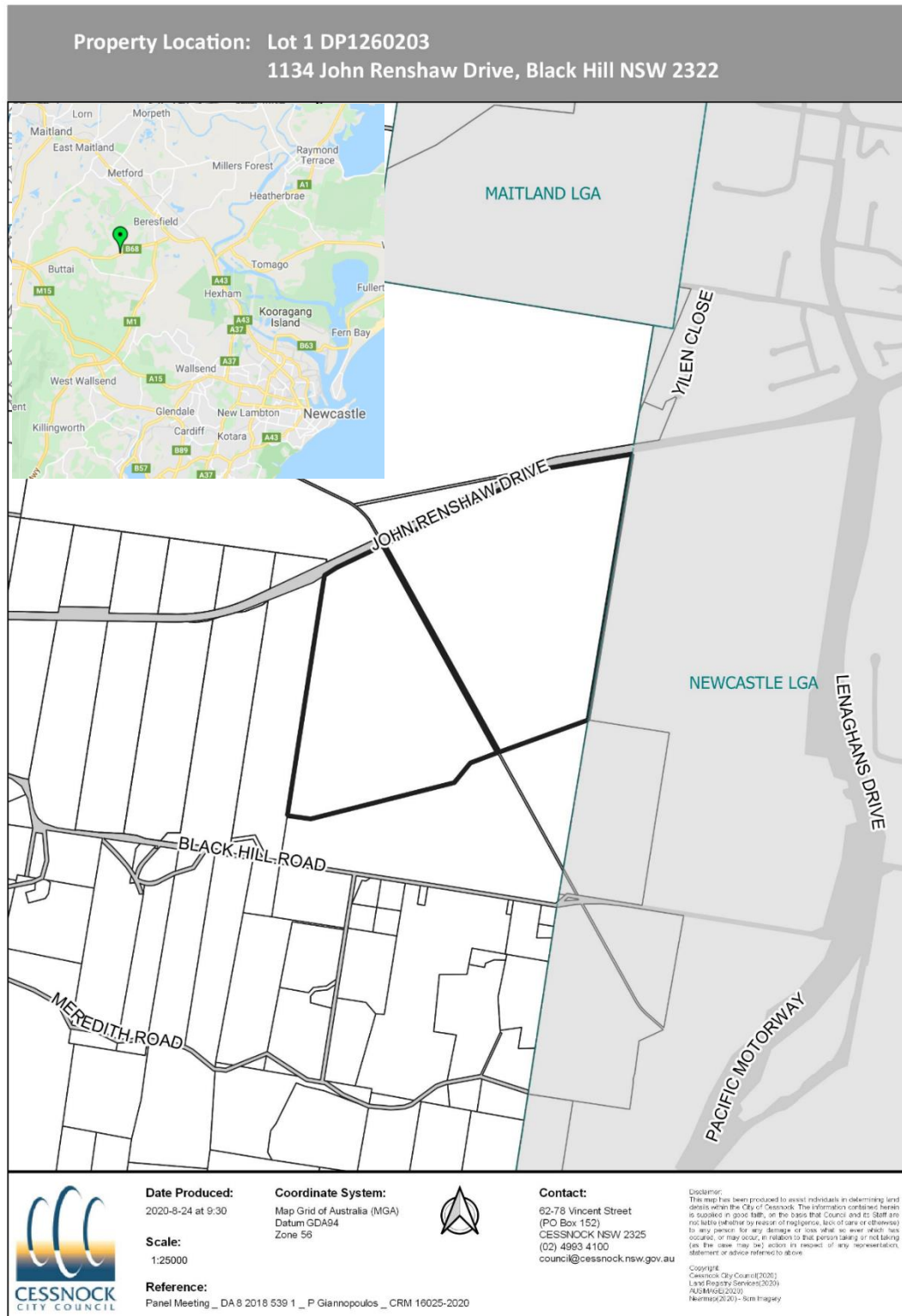
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The subject site is located approximately 20km north-west of the Newcastle Central Business District. It is situated on the boundary between City of Newcastle and Cessnock City Council, and is located approximately 900m west of the traffic light controlled intersection that constitutes the northern extremity of the M1/Pacific Motorway.

The site is bounded by a rural residential lot to the south, industrial land to the east and north-east, and rural land in other directions. Vegetated bushland surrounds the site with an exception to the north where the site adjoins a main road, being John Renshaw Drive. Former Donaldson Open-Cut Mine which ceased operation in 2016 adjoins the site to the north, opposite John Renshaw Drive, with industrial development to the north east. Additional land identified as Black Hill Employment land lies to the east of the site, which comprises predominantly vegetated land except for a strip of land adjoining the subject site where main electrical overhead powerlines are located. The Black Hill Employment land extends east to meet the M1 motorway.

To the south of the subject land, adjacent to Black Hill Road, lies a cluster of rural-residential properties. Apart from non-intensive agricultural uses, there is a public school, a church and a reception centre in this area with an operational quarry located further south and west of the hamlet.

# LOCALITY MAP



## HISTORY OF REZONING AND DEVELOPMENT APPLICATION

The history of the rezoning and the subject development application, is summarised in the following table.

It is noted that regular meetings between Council officers, the applicant and, at times, TfNSW (formerly known as the RMS), have been held over the course of the assessment process. Due to the frequency and volume of meetings held, it is considered superfluous to include details of every meeting held, in the below table. Rather, only critical meetings have been outlined.

Date	Action
13 April 2017	The 'Black Hill Employment Area Rezoning Proposal' was notified on 13 April 2017 as Amendment No. 24 to the <i>Cessnock Local Environmental Plan 2011</i> . The Planning Proposal resulted in the Black Hill Employment Area being rezoned from RU2 Rural Landscape to E2 Environmental Conservation (40.4ha), IN2 Light Industrial (195.6ha) and E4 Environmental Living (64ha and maximum 4 lots).
28 May 2018	Secretary's Environmental Assessment Requirements (SEARs), are issued in respect of 'development for the purpose of soil treatment works and 30 lot industrial subdivision'
22 August 2018	Subject DA is lodged.  At time of lodgement, the DA proposes the subdivision of Part Lot 1131 in Deposited Plan 1057179 to create 39 industrial lots to be delivered in six stages and 1 environmental conservation lot, and the remediation of the site for future occupation for industrial use.  The application was submitted as stage 2 of a concept development application that, at the time of lodgement, had not been approved.
12 September 2018	Meeting held between Council staff and applicant to discuss compliance with the requirements of the SEARs. Council staff outline concern in respect to the extent of community consultation carried out prior to the lodgement of the DA, specifically in reference to the SEARs which require:  <i>During the preparation of the EIS, you must consult the relevant local, State and Commonwealth government authorities, service providers and community groups, and address any issues they may raise in the EIS. In particular, you should consult... the surrounding landowners and occupiers that are likely to be impacted by the proposal. Details of the consultation carried out and issues raised must be included in the EIS.</i>  It is recommended that the DA be withdrawn to allow the applicant to undertake more extensive community consultation.
13 September 2018	Applicant states that there has been a history of consultation with the community and that on this basis, the applicant has no intention of undertaking further community consultation.
19 November 2019	Applicant submits Remedial Action Plan (RAP).

28 November 2018	Meeting held between Council staff and applicant to discuss direction of DA. The subject development application (DA 8/2018/539/1), levers off a staged development application (DA 8/2018/102/1). The undetermined DA (8/2018/102/1), provides a concept masterplan in lieu of an adopted area specific DCP to satisfy clause 6.3 of the LEP. Council staff state that the adoption of the area specific Black Hill chapter of the DCP is imminent and once adopted, it would no longer be necessary for a concept masterplan to be approved for the site.
5 December 2018	Letter issued by Council officers, re-iterating content of discussion which occurred during meeting held on 28 November 2018.
13 February 2019 - 15 March 2019	DA is publicly exhibited.
21 February 2019	Applicant requests to 'opt in' to the new <i>Biodiversity Conservation Act 2016</i> Part 7 approval pathway as obligated under Condition 2(d) of the endorsed Biodiversity VPA.
26 March 2019	Council provides the applicant with a summary of submissions lodged in response to the exhibition period.
16 April 2019	Meeting held with applicant and Council officers, whereby Council officers agree to place the application on hold pending applicant's response to submissions and consideration of agency responses.
17 April 2019	Council adopts a DCP for the Black Hill site to provide additional site specific controls for future development on the land.
10 May 2019	Applicant submits revised information to Council, including an addendum to the EIS dated 25 March 2019.
15 May 2019 – 29 June 2019	DA is publicly exhibited.
27 May 2019	Council agrees to the applicant's request to 'opt in' to the new <i>Biodiversity Conservation Act 2016</i> .
26 June 2019	<p>Meeting held with applicant, (then) RMS and Council to discuss traffic concerns and information contained in traffic assessment submitted. RMS convey concern that the traffic assessment did not provide a solution to intersection outcomes for the M1 and John Renshaw Drive which was shown to fail in the traffic report based on future traffic demand. Further modelling is required to determine the impact and mitigation measures.</p> <p>The role of the outer Newcastle traffic study was discussed. This study largely considered the effect of the M1 extension and the impact on surrounding roads. This included the M1 and John Renshaw intersection among many other roads and intersections in the vicinity.</p>
16 October 2019	<p>Regional Planning Panel briefing held to discuss various key issues associated with the DA, particularly the applicant's proposal to amend the application to initially seek the subdivision of six 'super lots', without constructing roads and infrastructure and instead using a combination of easements and restrictions.</p> <p>The Panel did not support amendment of the proposal to provide six (6) super lots upfront with no legal and physical access, and/or services/facilities. It was considered that this would result in a seven (7) phase development and would require re-notification and referral to external authorities.</p>

30 October 2019	<p>Meeting held with applicant to discuss their proposal to amend the application to propose six (6) super lots upfront.</p> <p>Applicant contends that the application was submitted in a manner that that enables the development to be approved to create six super lots upfront, and that the super lots may be created without the need for physical and legal access or services. Council states that:</p> <ul style="list-style-type: none"> <li>• The application as lodged, did not propose the creation of six super lots upfront, and in fact, the development description makes no reference to super-lots;</li> <li>• It (along with the Panel) does not support any further amendments being made to the application; and</li> <li>• The creation of super-lots without physical and legal access and servicing commensurate with the needs of the proposed lots, is not supported by the Council as the lots will not be fit for purpose.</li> </ul>
18 December 2019	<p>Council obtains legal advice specifically in respect to the matter of the super lots, i.e., the DA file and all associated documents are referred to Council's solicitors to enable them to provide Council with their legal opinion as to whether or not the application, as lodged, sought creation of super lots upfront.</p> <p>The advice states that:</p> <ul style="list-style-type: none"> <li>• the DA does not propose the creation/registration of 6 super-lots up front, prior to the 40 lot subdivision occurring; and</li> <li>• the DA is unable to be amended without the agreement of the RPP under clause 55(1) of the EPA Regulation.</li> </ul>
17 January 2020	<p>Copy of submissions provided to Department of Planning, Industry and Environment under 4.16 (9)(b) of the <i>Environmental Planning and Assessment Act 1979</i>, and to relevant integrated/concurrence authorities.</p>
26 March 2020	<p>Correspondence sent to applicant requesting:</p> <ul style="list-style-type: none"> <li>• For the certification section of the statement of validity of the EIS to be signed;</li> <li>• To provide a more detailed explanation of the consultation including the persons/properties that were consulted, how the affected properties were determined and the responses that were gathered;</li> <li>• For the DA to address compliance with Chapter E.18 Black Hill Employment Area of the Cessnock Development Control Plan 2010. Applicant requested to provide details in respect to compliance and justification for any variations proposed.</li> </ul>
4 May 2020	<p>Correspondence sent to applicant outlining outstanding matters and requesting:</p> <ul style="list-style-type: none"> <li>• Submission of confirmation that the provisions of Clause 6.1 of the <i>Cessnock Local Environmental Plan 2011</i>, have been satisfied; and</li> <li>• Submission of a response to Council's request of 26 March 2020.</li> </ul> <p>Letter states that final satisfactory comments/conditions from Transport for NSW have not been received.</p>
26 May 2020	<p>Applicant prepares second traffic report (microsimulation model).</p>
26 March 2020	<p>Plan registered that creates the subject site with its separate title (noting that, prior to this, the subject land was a proposed lot in a resubdivision).</p>

26 June 2019	<p>Meeting held with the applicant, Council staff, Transport for NSW staff and an intergovernmental representative.</p> <p>Transport for NSW advises that:</p> <ul style="list-style-type: none"> <li>• The traffic assessment submitted by the applicant does not provide a solution to intersection outcomes for the M1 and John Renshaw Drive, which was shown to fail in the traffic report based on future traffic demand; and</li> <li>• The applicant is required to undertake further modelling to determine the impact of the development and to assist with a 'solution'.</li> </ul>
17 July 2020	Transport for NSW submits correspondence to Council providing both a summary of the history of the matter, along with confirmation as to the outstanding issues relating to the DA. The purpose of the letter is to inform an upcoming briefing of the Panel.
22 July 2020	Council briefs Panel on DA.
5 August 2020	Applicant briefs Panel on DA.
7 August 2020	Transport for NSW correspondence dated 17 July 2020, is forwarded to the applicant with the agreement of Transport for NSW.
12 August 2020	Applicant responds to Transport for NSW letter dated 17 July 2020.
31 August 2020	Applicant provides advice to Council confirming that they are currently undertaking an assessment of offsite works in respect of sewer, water and road works, and that such assessment will be submitted to Council.
8 September 2020	Transport for NSW briefs Panel on traffic matters associated with the application.
11 September 2020	Applicant advises Council that VPA has been signed and that advice in respect to Special Infrastructure Contribution is imminent.
18 September 2020	Applicant advises Council that 'the satisfactory arrangements letter is on the verge of being issued'.
22 September 2020	Applicant submits confirmation from the Director-General (dated 20 September 2020), outlining that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure, thereby satisfying clause 6.1 of the <i>Cessnock Local Environmental Plan 2011</i> .
29 September 2020	<p>Applicant submits a report providing an assessment of off-site impacts. Report identifies the following upgrade works:</p> <ul style="list-style-type: none"> <li>• Extension of sewer services from Black Hill to Chisholm</li> <li>• Upgrade of the intersection of John Renshaw Drive/Weakleys Drive/M1 intersection.</li> </ul> <p>Development description in the report is not amended to include the works associated with the upgrade of the intersection of John Renshaw Drive/Weakleys Drive/M1 intersection.</p>
30 September 2020	Council acknowledges receipt of the report relating to off-site impacts, and advises that, due to timing of submission of the report, i.e., the report was received during finalisation of this assessment report, no assessment of the off-site impacts identified, has been undertaken.

## SITE HISTORY

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### Historical Use/s of the Site

The subject site has historically been used for rural purposes. The use of the land for a broiler farm dates back to 1967. Prior to the decommissioning and demolition of buildings associated with the broiler farm, there were 53 chicken sheds, 16 rural worker's dwellings, a vaccine laboratory, a turkey hatchery, a diagnostic laboratory, two workshops, an administration office and associated toilet blocks, and office/storage buildings located on the site.

On 27 April 2004, consent was granted for the demolition of the existing buildings. The demolition of the buildings was undertaken, however there is evidence to suggest that the demolition did not occur in an orderly manner and/or consistently with the approval. As a result, there is widespread contamination on the subject land.

### Rezoning

On 7 March 2012, a Planning Proposal was lodged with Council in respect of the site. The initial proposal sought to rezone the site from RU2 Rural Landscape to a combination of E2 Environmental Conservation and IN1 General Industrial. It was also proposed to identify the site as an urban release area in the *Cessnock Local Environmental Plan 2011* (CLEP). The Proposal was supported by a range of studies, including a Traffic and Transport Report, prepared by 'Hyder'.

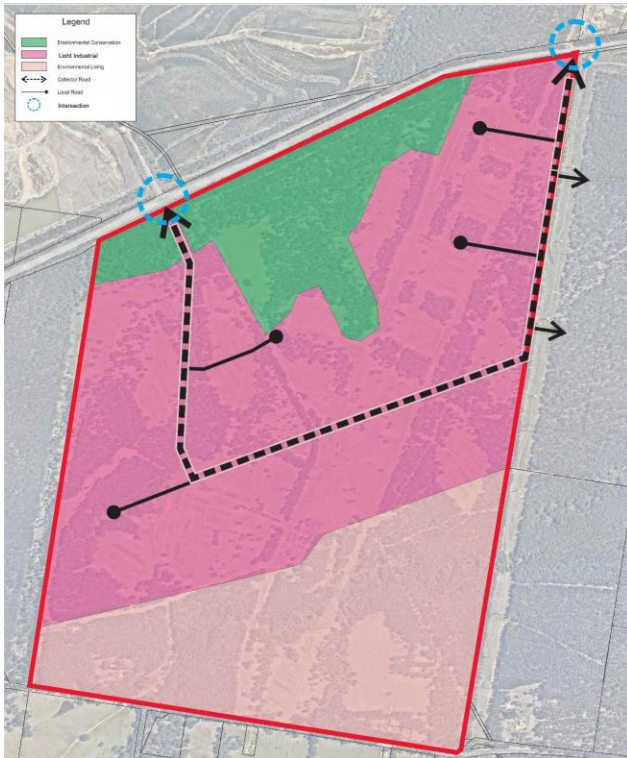
The Planning Proposal was modified on several occasions throughout the assessment process as a result of internal review, government agency feedback and community consultation, as well as direction from the then Department of Planning and Environment (DPE). The most significant amendment to the Planning Proposal occurred on 16 March 2016, whereby the Planning Proposal was amended to rezone the site from RU2 Rural Landscape to E2 Environmental Conservation (40.4ha); IN2 Light Industrial (195.6ha); and E4 Environmental Living (64ha and maximum 4 lots).

The Planning Proposal for the site was complex, with progression occurring over several years with significant involvement from DPE and the community. The Planning Proposal was subsequently notified on 13 April 2017 as Amendment No. 24 to the CLEP.

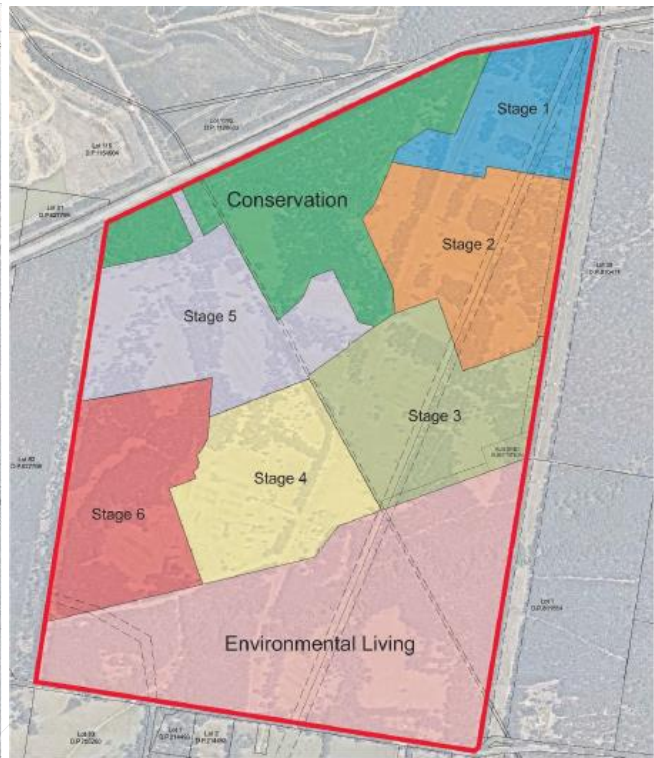
## Adoption of DCP

On 17 April 2019, Council adopted a DCP for the Black Hill site to provide additional site specific controls for future development on the land. The DCP for the site includes a Concept Structure Plan and development Staging Plan, see (a) and (b) below.

(a) Adopted Structure Plan



(b) Adopted Staging Plan



## Other Development Applications

The following Development Applications have been lodged over the subject land:

DA Number	Proposal	Outcome
DA 8/2004/175	Demolition of buildings.	Approved on 27 April 2004.
DA 8/2004/423	Conversion of 19 workers' residences to 19 temporary dwellings.	Approved on 2 June 2004.
DA 8/2006/34	Temporary storage facility of vacant relocatable classrooms.	Approved on 9 February 2006.
DA 8/2006/606	Seven lot subdivision	Approved on 4 April 2007. Note: deferred commencement requirements have not been satisfied and the consent has subsequently lapsed.
DA 8/2018/101	Four lot subdivision	Withdrawn.
DA 8/2018/102	Staged development comprising a concept approval and Stage 1 of the subdivision.	Withdrawn.
DA 8/2018/942	Two lot subdivision providing for the subdivision of the site's parent lot, separating the E4 environmental living zoned land from the balance of the land.	Approved on 25 March 2019.
DA 8/2019/219	Warehouse and distribution centre, relying on the execution of the subdivision the subject of DA 8/2018/539/1, and involving the consolidation of two proposed lots.	Undetermined.
DA 8/2020/123	Two lot subdivision of the subject site to sever stages one and two (combined) of the proposed subdivision, from the balance of the development. The application relies on the granting of consent to DA 8/2018/539.	Undetermined.

## DETAILS OF THE PROPOSED DEVELOPMENT

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### Summary of Proposal and Staging

Development Application No. 8/2018/539/1 seeks approval to subdivide Lot 1 DP 1260203, to create 39 light industrial lots and 1 environmental conservation lot, to be delivered in six stages, including the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use.

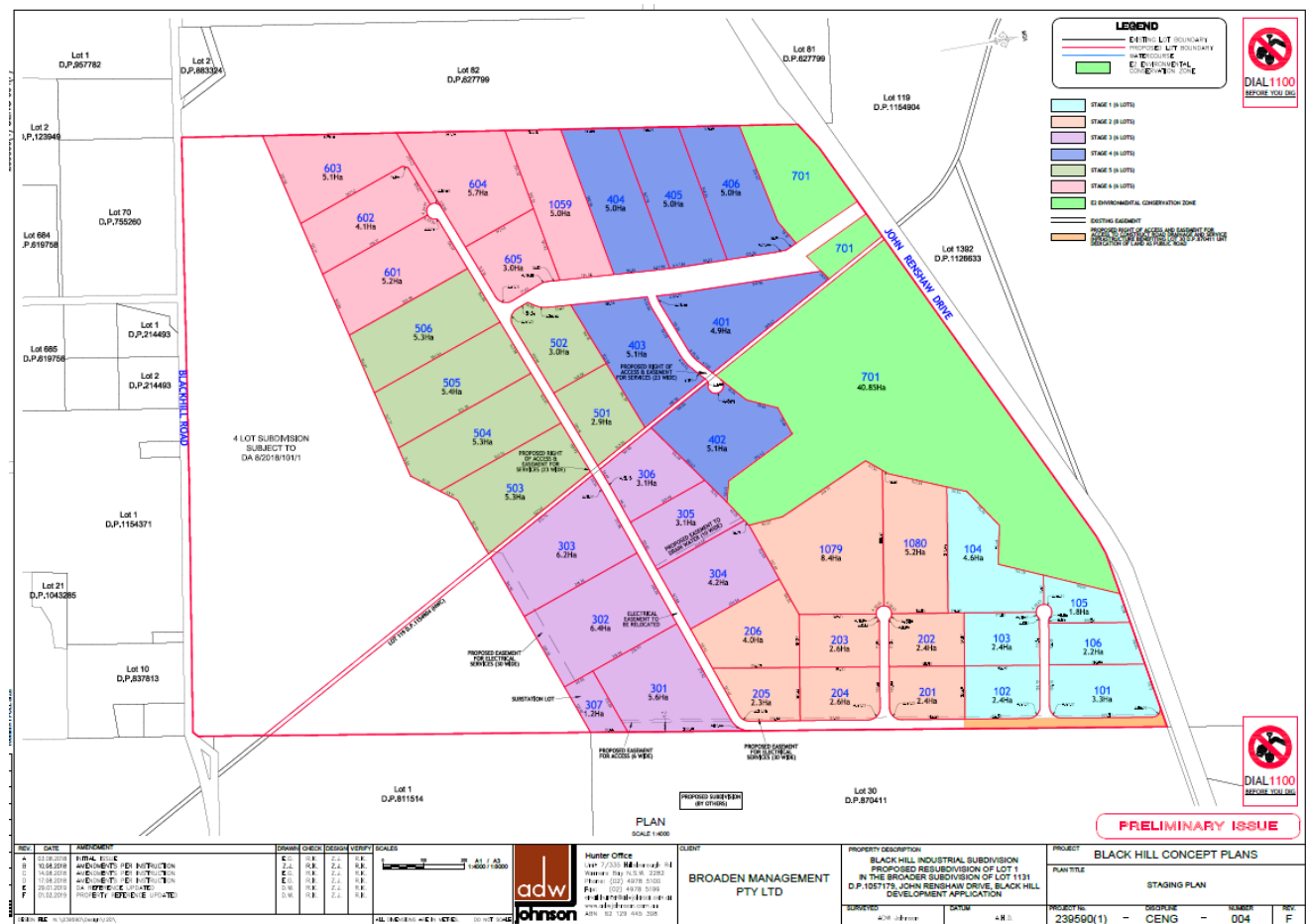
More specifically, the application proposes the following:

- Removal of all vegetation present within the IN2 Light Industrial zoned land and a minor portion within the E2 Environmental Conservation Zoned land
- Realignment of existing watercourse (1<sup>st</sup> order stream)
- Remediation carried out in accordance with the submitted Remedial Action Plan (RAP)
- Site access from two (2) signalised intersections on John Renshaw Drive
- Civil earthworks to provide foundation for future industrial development, including cut and fill
- Extension and augmentation of essential services
- Construction of a substation and relocation of the existing aboveground high voltage transmission line
- Construction of a ring-road network for internal access
- Infrastructure to capture, detain and treat all stormwater collected onsite
- Subdivision to be carried out in six (6) stages, as follows:

Stage	No. of lots (excluding residue)	Area of smallest lot (industrial lots, ha)	Area of largest lot (industrial lots, ha)	Average area of lots (industrial lots, ha)
1	6	1.8	4.6	2.78
2	8	2.3	8.4	3.74
3	7	1.2	6.4	4.26
4	6	4.9	5.1	5.02
5	6	2.9	5.4	4.53
6	6	3.0	5.7	4.68
<b>TOTAL</b>	<b>39 lots</b>			

Note: Proposed Lot 307 is the only lot with an area of less than 1.8ha, and is intended to be dedicated for the purpose of a substation in conjunction with Stage 3.

The proposed development is illustrated in the following plan, which has been lodged in conjunction with the application:



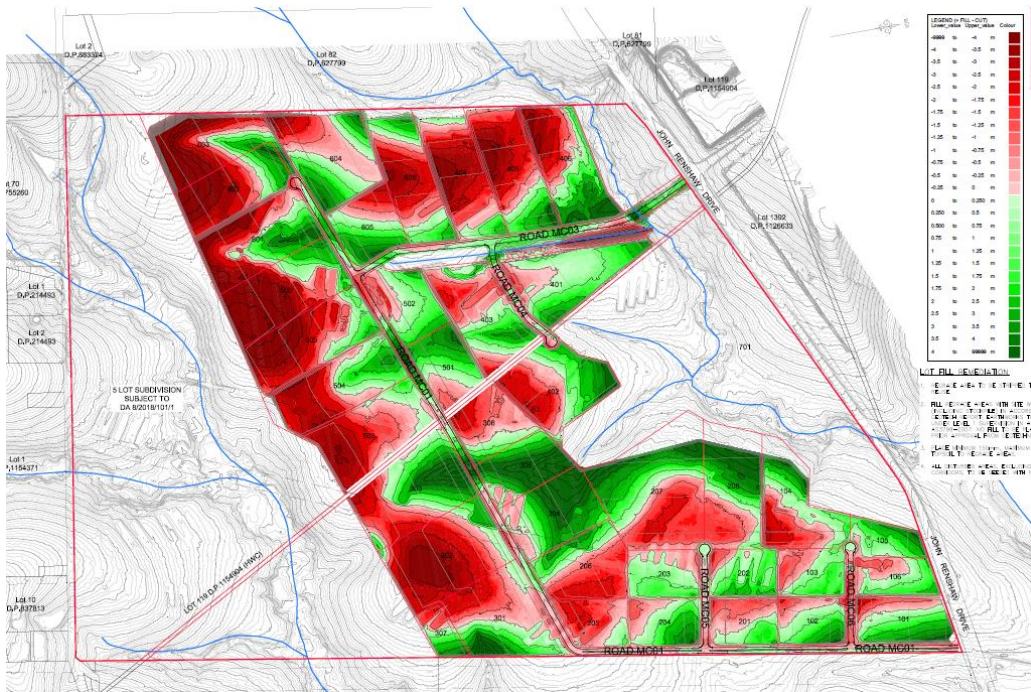
## Remediation

Remediation is proposed to be carried out in accordance with the submitted Remedial Action Plan (RAP), as follows:

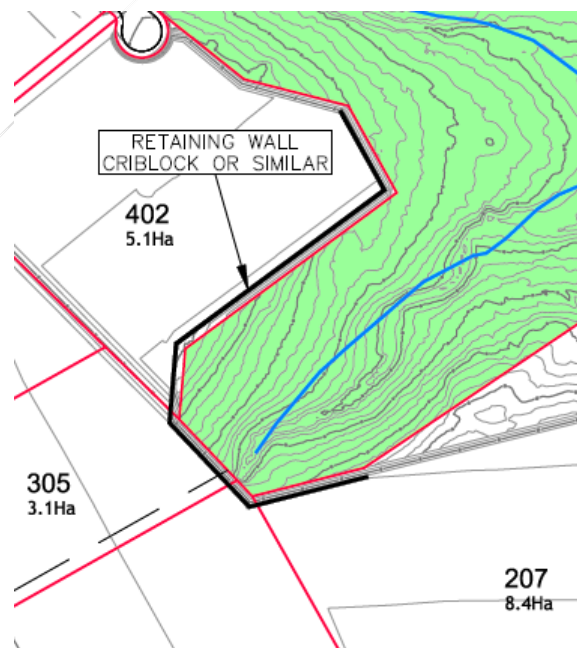
- Excavation and on-site encapsulation of identified Asbestos Containing Material (ACM) impacted Area of Environmental Concern (AEC).
- Excavation and on-site encapsulation of identified ACM, nutrient and bacterial impacted AEC (i.e. areas where all three of these contaminant groups are present).
- On-site treatment (i.e. excavation, drying and aeration) and reuse of nutrient and bacteria only impacted AEC.
- Excavation and disposal of any waste material in fill and on ground (aesthetic), with recycling of this material to the extent practicable and onsite reuse after recycling subject to geotechnical considerations.
- Unexpected finds that may arise following demolition and during remediation or bulk earthworks, will also be required to be addressed along similar lines.

## Cut and Fill

Plans submitted with the application contain details of proposed cut and fill. The plans identify that cut will occur to a depth of over 4m (in red) and fill to over 4m (in green). The plans demonstrate that the site disturbance is not wholly contained within the proposed industrial lots, and some minor earthworks rely on land that is zoned E2 Environmental Conservation. Although the plans do not specifically identify the maximum cut and fill depths, it is implied that cut will be less than 4.5m, and fill of less than 4.5m.



Battering is proposed to transition from the fill to natural ground on the fringes of the development except for a retaining wall proposed adjacent to proposed stages 2, 3 and 4 and the land zoned E2 Environmental Conservation, as depicted below:



There are no details in respect to the manner in which the earthworks will transition to the land adjoining the east and south of the site. That is, it is unclear if there will be battering or retaining structures along the southern or eastern boundaries of the site.

## Access

The application proposes the construction of a 19m wide road network within the subject land comprising of a sealed 14m wide dual carriageway, with kerbed edges and two 4.5m wide verges. The plans do not identify the provision of any pedestrian or bicycle paths.

Access is proposed directly from John Renshaw Drive through the construction of two signalised intersections, which incorporate the following configurations:

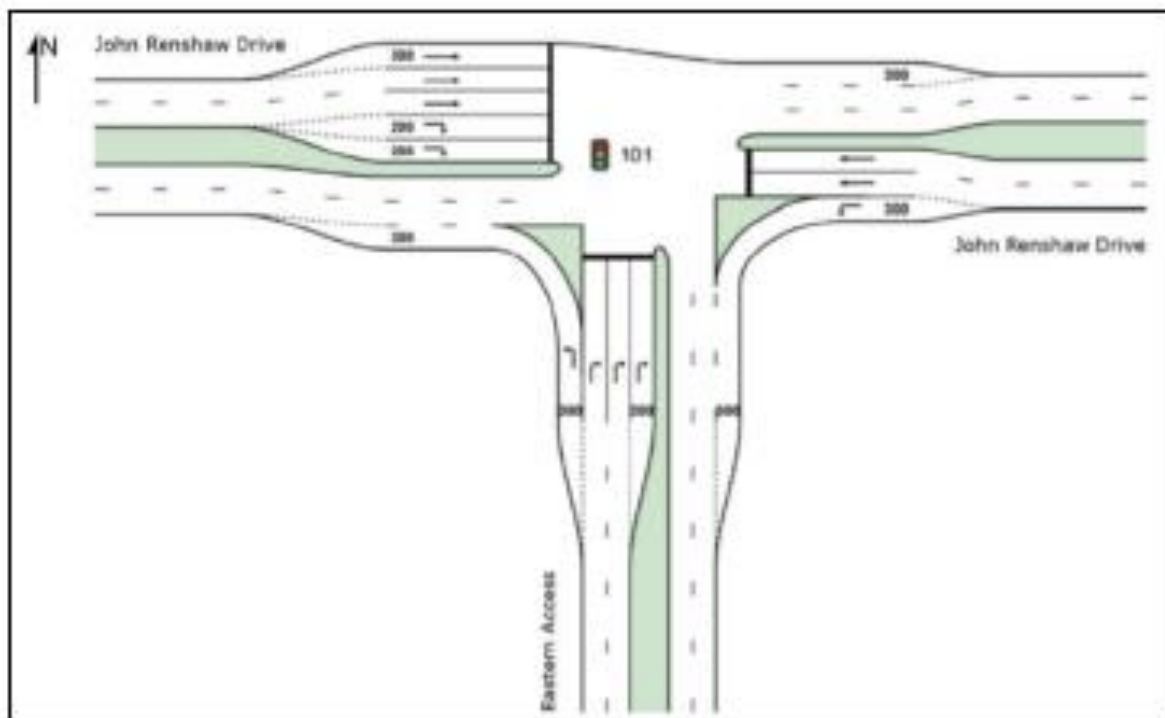
### ***Eastern Intersection:***

The eastern intersection is proposed along the eastern boundary of the site connecting to John Renshaw Drive, and is designed to be a joint access point for the subject development and the site that adjoins the subject land to the east (located within the City of Newcastle Local Government Area).

The intersection is a 'T' intersection with the new road joining John Renshaw Drive to the south and will feature:

- three lanes from the west travelling east (then merging into two)
- two right turn lanes from the west turning south into the development
- two lanes from the east travelling west
- a constant (sheltered) left turn lane, turning left into the site from the east
- two lanes travelling south
- three right turn lanes travelling north and turning to the east
- a constant (sheltered) left turn lane traveling north from the site and exiting in a westerly direction

The design of the eastern intersection is as follows:



The location of the eastern intersection is illustrated in the following aerial:



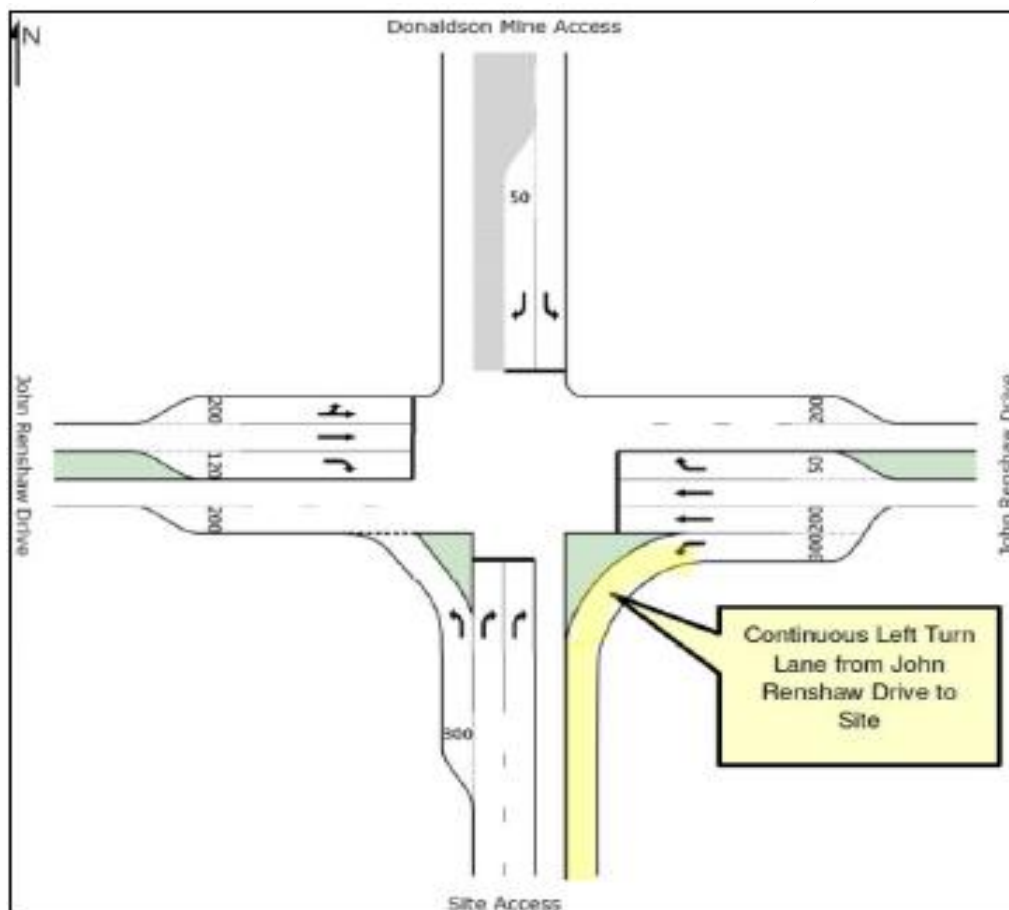
### **Western Intersection:**

It is noted that the western intersection proposes to connect to an existing intersection associated with Donaldson Coal Mine.

The intersection is a 'T' intersection that is to be converted into a four way signalised intersection and will feature:

- two lanes from the west travelling east, one of which is also a left turn lane into Donaldson Coal Mine, which then merges into a single lane heading east
- one right turn lane from the west turning south into the development
- two lanes from the east travelling west, merging into one lane
- a constant (sheltered) left turn lane, turning left into the site from the east
- two lanes travelling south into the subject site
- two right turn lanes turning to the east from the subject site
- a constant (sheltered) left turn lane traveling north from the site and exiting in a westerly direction

The design of the western intersection is as follows:



The location of the western intersection is illustrated in the following aerial:



It should be noted that the above intersection treatments are the result of a traffic modelling report submitted by the applicant on 26 May 2020 (prepared by GTA Consultants).

The assessment documents submitted in conjunction with the application have not been adjusted to fully consider the environmental impacts associated with the construction of the intersections.

In addition, the works proposed on the northern side of John Renshaw Drive, i.e., identified in this report as the western intersection, are not wholly located within the road reserve. Owner's consent to develop that part of the site required to construct the western intersection, has not been provided in support of the application.

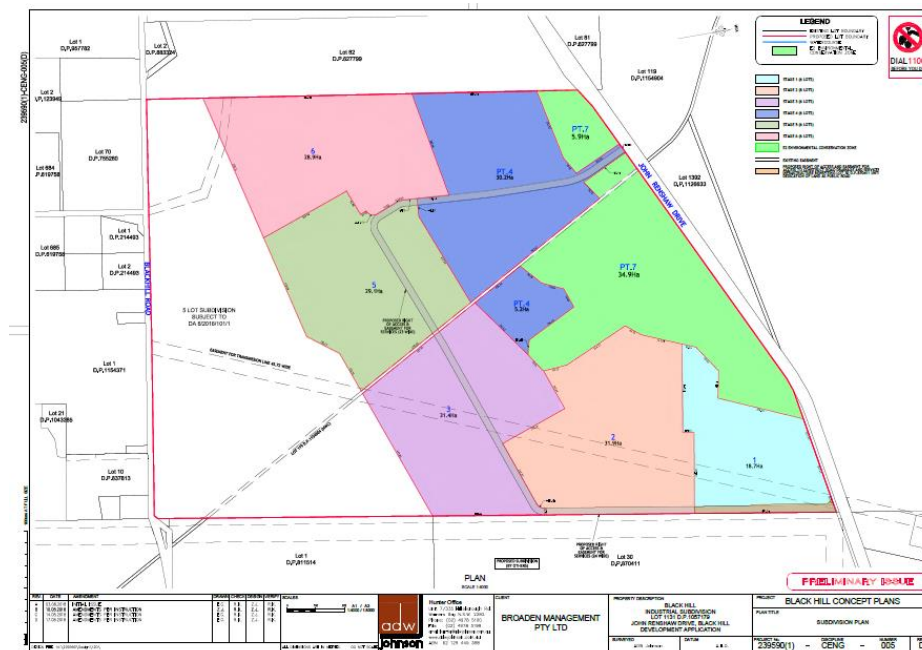
## PRELIMINARY MATTERS

Below is a discussion of a pertinent preliminary matters in respect of this application:

### Composition of development application

The applicant has contended that the development application provides for the creation of six (6) super lots upfront.

Specifically, the applicant states that the inclusion of plan numbered 239590(1) CENG 005 Rev D dated 3/8/2018 (reproduced below), lodged in conjunction with the development application, confirms that it was always intended to create the six (6) super lots, prior to further subdivision of the site occurring.



Council staff have maintained that the above plan is for demonstrative purposes only, i.e., to clarify the proposed stages of the subdivision. Furthermore, it is Council's position that the application, as most recently amended by the applicant in correspondence dated 2 April 2019, proposes:

*'to create 39 light industrial lots and 1 environmental conservation lot; to be delivered in six stages. Additionally, the proposal includes the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use'.*

It is noted that the abovementioned development description does not make any reference to the creation of six (6) super lots upfront. Furthermore, a review of other documents submitted in conjunction with the application, including the EIS (Page 26) and the Aboriginal Cultural Heritage Assessment Report, has identified that none of the documents refer to seeking consent for 6 super-lots up front. In fact, they all refer to the proposed development being for a '39 lot subdivision, to be delivered in 6 stages'. In more detail, the EIS outlines the 6 stages in question and how many lots are to be created in conjunction with each stage. Again, the document is silent on the creation of 6 super-lots up front.

It is further considered that, in the event the applicant had sought consent to register 6 super-lots up front, this would have resulted in the development being for 7 phases (not 6 phases).

To enable resolution of this issue, Council staff sought legal advice from Council's solicitors, i.e., the DA file and all associated documents were referred to Council's solicitors to enable them to provide Council with their legal opinion as to whether or not the application, as lodged, sought creation of super lots upfront.

Council's solicitors advised that:

- the DA does not propose the creation/registration of 6 super-lots up front, prior to the 40 lot subdivision occurring; and
- the DA is unable to be amended without the agreement of the RPP under clause 55(1) of the EPA Regulation.

The abovementioned conclusion/advice was communicated to the applicant.

Notwithstanding that this matter has been addressed by Council staff and Council's solicitors, the applicant has continued to communicate their position that the application seeks to create six (6) super lots, prior to further subdivision of the site occurring. In this regard, it is noted that, when the applicant briefed the Panel on 5 August 2020, the applicant reiterated their position that the development application proposes the creation of six (6) super lots upfront.

### **NSW Land and Environment Court Judgement**

The subject site adjoins land known as 198 Lenaghans Drive Black Hill, which combined with the subject land, is referred to as the Emerging Black Hill Precinct (EBHP) within the Beresfield-Black Hill 'Catalyst Area' identified in the Greater Newcastle Metropolitan Plan 2036.

On 3 July 2020, the NSW Land and Environment Court (Court) dismissed an appeal in respect of a development application for a subdivision creating 200 industrial lots, citation *Stevens Holdings Pty Limited trading as Stevens Group v Newcastle City Council (No2) 2020 NSWLEC 1287*, i.e., refused to grant development consent to the proposal.

There are some notable differences between the appeal and this case, most relevantly that the appeal site is restricted by a Concept Plan Approval that was issued pursuant to Part 3A of the Act. Notwithstanding that there are differences between the two applications, there are matters of significance from the judgement that are of relevance in consideration of this application. In this regard, the Court held that:

- The traffic impacts associated with the development when fully developed are expected to be significant, and due to the site's proximity to the state and national road network, make it essential that the likely environmental impacts of the development in the locality are clearly understood.
- It could not be satisfied that the volume or frequency of vehicles generated by the proposed development to gain access to the site would not adversely affect the safety, efficiency and ongoing operation of John Renshaw Drive or the M1 Motorway.
- For consent to be granted, it is necessary to attain certainty in respect to the detail associated with the road upgrades, and the associated environmental impacts of such works on the built and natural environments. As lodged, the application concentrated on on-site impacts and did not appropriately consider off-site impacts.

The judgement concludes by suggesting that the development, along with the adjoining Broadben site (the subject site for this application):

*"forms part of a 'Catalyst Area' under the Greater Newcastle Metropolitan Plan 2036 and as such there may be public interest in joint master planning between the Cessnock and Newcastle local government areas if a co-ordinated approach to the development of the EBHP is to be found."*

# STRATEGIC CONTEXT

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## Hunter Regional Plan 2036

The Hunter Regional Plan 2036 released in October 2016, was produced by the NSW Government and sets out strategies and actions for sustainable growth of Greater Newcastle which represents the Cessnock, Lake Macquarie, Maitland, Newcastle and Port Stephens local government areas. The Regional Plan provides an overarching framework that will guide the preparation of detailed land use plans.

Key priorities of the Hunter Regional Plan 2036 are to strengthen the region's economy, increase resilience to hazards, provide greater housing choices and employment, and provide a biodiversity rich natural environment.

Black Hill has been identified in the Regional Plan as a catalyst area for sustainable growth of Greater Newcastle.

## Greater Newcastle Metropolitan Plan 2036

The subject site, along with the property to the east, are referred to as the Emerging Black Hill Precinct (EBHP), within the Beresfield-Black Hill 'Catalyst Area' in the Greater Newcastle Metropolitan Plan 2036 (GNMP), as illustrated below:



The GNMP aims to create 800 jobs in the Beresfield-Black Hill catalyst area by 2036 and states that the desired role of this area in Greater Newcastle is:

- *Freight and logistics hub, with complementary manufacturing and light industrial activity*
- *Potential for growth and expansion of industries.*

The planned outcomes for the EBHP are stated as:

*Cessnock City and Newcastle City Council will work with Transport for NSW to prepare a master plan for the emerging Black Hill Precinct that considers freight and logistics uses, the adjoining mine site and includes an internal road network and access points to John Renshaw Drive.*

Whilst the preparation of a master plan is progressing, such a master plan has not been finalised.

### **Local Strategic Planning Statement 2036**

The Cessnock Local Strategic Planning Statement 2036 identifies the subject site in its stated planning priorities. Planning Priorities 13 and 15 reinforce the importance of the site in terms of its locational infrastructure opportunities and its potential to contribute to job growth.

Planning priorities 13 and 15 state:

***Planning Priority 13: Our industrial land is developed in an orderly manner and meets future development needs***

*The Black Hill Employment Area is part of a larger tract of employment land extending into the Newcastle and Maitland LGA's and is recognised as a catalyst area in the Greater Newcastle Metropolitan Plan. The employment lands at Black Hill, Kurri Kurri Industrial Estate and the former aluminium smelter site at Kurri Kurri are priority employment areas due to their proximity to these major transport corridors and regional centres. These strong inter-regional links are favourable for freight and logistics, which is an important growth industry for the LGA and source of future employment opportunities.*

***Planning Priority 15: Key infrastructure is leveraged to support economic growth***

*The Hydro site at Kurri Kurri and the emerging Black Hill Employment Area will provide significant employment land with immediate connections to the HEX and M1, respectively.*

The proposed development is considered to be consistent with the strategic plans in terms of providing for employment lands, thereby facilitating industry growth.

### **Hunter Economic Infrastructure Plan 2013**

The Hunter Economic Infrastructure Plan 2013 identifies key issues for the Hunter region, which include *'the imperative to diversify the industry base and the growing competition for the skilled workforce.'*

# ASSESSMENT

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## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### Section 1.7

Section 1.7 of the *Environmental Planning and Assessment Act 1979*, prescribes as follows:

*'This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment'.*

### **Biodiversity Conservation Act 2016**

On the 25 November 2018, the Cessnock Local Government Area ceased being an Interim Designated Area. As the subject development application was submitted before that date, it is not automatically captured under the provisions of the BC Act.

The *Biodiversity Conservation (Savings and Transitional) Regulation 2017* stipulates the circumstances and assessment tract in respect to biodiversity matters. In this case, the applicant formally requested to 'opt in' to the BC Act under Part 7, Clause 28(2), on 21 February 2019, and Council agreed to this request on 27 May 2019. In providing agreement, it is noted that such agreement was consistent with the Planning Agreement (PA) between Council and the Roman Catholic Church for the Diocese of Maitland-Newcastle. In this regard, Clause 28 states:

#### **28 Former planning provisions continue to apply to pending or interim planning applications**

- (1) The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.*
- (2) However, Part 7 of the new Act applies to the determination of a pending or interim planning application referred to in paragraph (b), (c) or (d) of the definition of pending or interim planning application in clause 27 (1) if the applicant or proponent and the planning approval body for the application agree in writing that Part 7 of the new Act is to apply to the determination of the application instead of the former planning provisions.*

A Biodiversity Development Assessment Report (BDAR) prepared by MJD Environmental dated August 2018, was submitted in conjunction with the application. A review of the BDAR identified a number of inconsistencies with the Biodiversity Assessment Methodology (BAM) which were subsequently addressed. Council's Ecologist, having undertaken a review of the BDAR, determined that:

- *The revised BDAR ... assessment (is) in accordance with the Biodiversity Assessment Method (OEH 2017) and the associated guidelines and operational manuals.*
- *The proposed mitigation and minimisation measures, satisfactorily address the prescribed impacts of the application.*
- *The conclusions-made regarding the presence of ecosystem and species credit species are adequate.*
- *The BDAR correctly identifies and maps the Plant Community Types (PCT) within the proposed development and calculates the credit requirements for the development which are:*
  - *67.28ha of PCT 1592 (which is commensurate with the listed Endangered Ecological Community Lower Hunter Spotted Gum Ironbark Forest of the Sydney Basin) requiring 1,821 ecosystem credits, and*
  - *7,800m<sup>2</sup> of PCT 1584 requiring 24 ecosystem credits*

*In addition the BDAR:*

- *identified that there is no requirement to offset:*
  - *4.83ha of PCT1592 that was assessed to have a Vegetation Integrity score <15;*
  - *105.24ha of pasture; and*
  - *4,400m<sup>2</sup> of non-indigenous planting*
- *did not nominate how the credits would be retired*
- *provided a breakdown of the credit requirements for each stage of the development*
- *determined, based on a preliminary assessment under the EPBC Act, that the proposed action is unlikely to have an impact to MNES based on the assessment criteria set out in relevant Commonwealth policies and advices as at the time of this assessment.*

*The outcome of the BAM assessment was that the entire project will need to retire the below credits:*

<i>Ecosystem Credit Types</i>	<i>Credits</i>
<i>PCT 1592: Spotted Gum - Red Ironbark - Grey Gum shrub - grass open forest of the Lower Hunter</i>	<i>1,821</i>
<i>PCT 1584: White Mahogany - Spotted Gum - Grey Myrtle semi-mesic shrubby open forest of the central and lower Hunter Valley</i>	<i>24</i>

Council's Ecologist has also concluded as follows:

- The proposed development triggers 7.4(1) of the BC Act as the area of the site affected by the proposed development is zoned IN2 and the development will result in the removal of 72.89 ha of native vegetation. In this regard, the development exceeds the biodiversity offsets scheme threshold and therefore the Biodiversity Offset Scheme applies.
- The site is considered suitable for the proposed development as the proposed development is located in the more disturbed part of the site.
- The proposed development will have a relatively minimal impact on the native flora and fauna habitat present within the locality.

It is noted that the abovementioned comments are based on the extent of clearing proposed, as detailed in the application and associated report. The comments do not take into account any further clearing associated with works off-site.

## **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

### **Section 4.10 (Designated Development)**

Clause 4.10 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), states as follows:

#### **4.10 Designated development**

- (1) *Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.*
- (2) *Designated development does not include State significant development despite any such declaration.*

Clause 4 of the *Environmental Planning and Assessment Regulation 2000* refers to Schedule 3 of the Regulation, which contains a list of activities/uses that are declared to be designated development. Specifically, clause 4 (in part), states as follows:

#### 4. What is designated development?

- (1) *Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be designated development by a provision of Part 2 or 3 of that Schedule*

Due to the extent of earthworks and remediation proposed in conjunction with the application, the following premises-based activities will require licencing under s.48 of the *Protection of the Environment Operations Act 1997* (POEO Act), as listed in Schedule 1:

- Clause 15: Contaminated Soil Treatment Works, as defined at Clause 15 of Schedule 1 of the POEO Act; and
- Clause 19: Extractive Industries, as defined at Clause 19 of Schedule 1 of the POEO Act.

Accordingly, prior to the commencement of any works on site, an Environmental Protection Licence (EPL) to carry out the relevant premises-based activities must be granted.

*Schedule 3 Part 1 Item 15 of the Regulations details 'Contaminated Soil Treatment Works'. Where, Contaminated soil treatment works (being works for on-site or off-site treatment of contaminated soils including incineration or storage or contaminated soil, but excluding excavation for treatment at another site):*

- (a) [Not applicable]*
- (b) [Not applicable]*
- (c) That treat contaminated soil originating exclusively from the site on which the development is located and:*
  - (i). [Not applicable], or*
  - (ii). Treat otherwise by incineration and store more than 30,000 cubic metres of contaminated soil, or*
  - (iii). Disturb more than an aggregate of 3 hectares of contaminated soil.*

A previous investigation conducted by JBS&G41 provided a summary of potential volumes of contaminated material to be remediated. This contamination due diligence assessment estimated that approximately 82,000m<sup>3</sup> of contaminated material is present throughout the site.

Due to the level of proposed soil disturbance associated with remediation of the site, the development triggers the Schedule 3 (19) provisions for extractive industries, as follows:

#### **19 Extractive industries**

(1) *Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating) -*

- (a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
- (b) that disturb or will disturb a total surface area of more than 2 hectares of land by—*
  - (i) clearing or excavating, or*
  - (ii) constructing dams, ponds, drains, roads or conveyors, or*
  - (iii) storing or depositing overburden, extractive material or tailings, or*
- (c) that are located—*
  - (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
  - (ii) (Not applicable), or*
  - (iii) in an area of contaminated soil or acid sulphate soil, or*
  - (iv) (Not applicable), or*
  - (v) (Not applicable), or*
  - (vi) (Not applicable).*

(2) *(Not applicable)*

In accordance with Section 4.12(8) of the EP&A Act and Schedule 2 of the Regulations, an Environmental Impact Statement (EIS) prepared in accordance with the Secretary's Environmental Assessment Requirements (SEARs), accompanied the subject application. With the exception of the community consultation, it is considered that the preparation of the EIS has met the SEARs and the provisions under Schedule 2 of the Regulation.

### **Section 4.15(1) Evaluation**

In determining the Development Application, the consent authority is to take into consideration any relevant matters prescribed within s.4.15 of the *Environmental Planning and Assessment Act 1979*, as are of relevance to the development the subject of the development application:

#### **4.15(1)(a)(i) The Provisions of any Environmental Planning Instrument**

The Environmental Planning Instruments that relate to the proposed development are:

1. *State Environmental Planning Policy (State and Regional Development) 2011*
2. *State Environmental Planning Policy (Infrastructure) 2007*
3. *State Environmental Planning Policy No. 44 – Koala Habitat Protection*
4. *State Environmental Planning Policy No. 55 – Remediation of Land*
5. *Cessnock Local Environmental Plan 2011*

An assessment of the proposed development under the Environmental Planning Instruments (EPIs) is provided below.

#### **1. STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011**

As outlined previously, the development is a type of development that is identified as being 'regionally significant' in accordance with Clauses 2 and 7 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*.

#### **2. STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007**

A number of provisions contained within *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure), are relevant to this application, as identified in the following table:

Relevant Division	Requirement	Comment
Division 5 Electricity transmission or distribution	<p>The division provides parameters for certain electrical works to be undertaken as exempt development, however this does not include electrical works that exceed a voltage of 66kV.</p> <p>The proposed development involves works to 132kV lines and these works will therefore be works that will require consent.</p> <p>Division 5 also contains requirements for consultation. Specifically, Clause 45 compels the consent authority to invite comments from the electricity supply authority and take into account any comments made within 21 days.</p>	The application was referred to Ausgrid for comment on three occasions. No response was received on any of these occasions.

Division 17 Roads and traffic	Clause 101 is relevant to this application. Of particular relevance is clause 101(2)(b), which outlines that the consent authority may only grant consent to development on land that has a frontage to a classified road (in this case, John Renshaw Drive), if the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of (i), (ii) and (iii).	The site has a frontage to a classified road, being John Renshaw Drive. Accordingly, the application was referred to Transport for NSW (TfNSW), (formerly known as Roads and Maritime Services), for comment.  As discussed later in this report, the proposed development does not provide adequate measures to mitigate the traffic impacts of the development and threatens to compromise the effective and ongoing operation and functions of classified roads, particularly John Renshaw Drive and the M1.
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### 3. STATE ENVIRONMENTAL PLANNING POLICY NO 44 - KOALA HABITAT PROTECTION

This development application was lodged with Council on 22 August 2018, prior to the commencement of *SEPP (Koala Habitat Protection) 2019*, which occurred on 1 March 2020.

Section 15 of *SEPP (Koala Habitat Protection) 2019* contains a savings provision relating to development applications, that if a development is made, but not finally determined before the commencement of the Policy in relation to land to which the Policy applies, must be determined as if the Policy had not commenced. In consideration of the savings provision contained in *SEPP (Koala Habitat Protection) 2019*, it is noted that the application is required to be assessed and determined against *State Environmental Planning Policy No 44 - Koala Habitat Protection*.

*State Environmental Planning Policy No 44 - Koala Habitat Protection* (SEPP 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.

SEPP 44 requires the consent authority to determine if development impacts on potential or core koala habitat and enables consent to be granted for a development application on land deemed core koala habitat, but only if the consent authority is satisfied that a suitable plan of management has been prepared.

The EIS states:

*Three species of koala feed trees have been identified on the site. However, the trees do not occur at the designated percentages which constitute 'Potential Koala Habitat' as there was evidence of a koala population, but no 'Core Koala Habitat' was found*

The application is supported by ecological information including details of tree species for vegetation that is located on the subject land but that is not within the development area. Council's Ecologist has confirmed that, whilst one species of koala feed tree exists within the riparian zone along Swamp Creek, because the proposal does not involve any construction works or removal of vegetation outside of the existing developed area, koala habitat will be not be impacted.

Council's Ecologist has considered the report and the associated ecological information and concludes:

*Two tree species listed in Schedule 2 of the SEPP as a 'Koala Feed Tree Species' occurs on the site, being Eucalyptus punctata (Grey Gum) and Eucalyptus tereticornis (Forest Red Gum). At no point where Koala feed trees persist on site do they represent 15% or more of the total tree cover. Additionally, investigations did not detect Koalas or signs of Koalas within*

*the study area. Therefore, the vegetation on the site does not constitute Potential or Core Koala Habitat.*

It should be noted however that the assessment is based on clearing determined on the basis of road and access works associated predominantly with the development site. No assessment has been undertaken by Council's Ecologist in respect of any off-site works, for example, traffic upgrades, that may be required.

#### **4. STATE ENVIRONMENTAL PLANNING POLICY NO 55 - REMEDIATION OF LAND**

The intent of this policy is 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.

The applicant has provided information that confirms that the subject land is contaminated. It is the process and activities associated with decontaminating the site that makes it necessary for an EPL to be obtained, thereby triggering the designated development provisions. In respect to the history of the site, the applicant has provided a brief history regarding contamination, it includes:

*The following provides a summary of the historical information obtained within the reports provided:*

- *From 1967 to 2003 the site was used for intense poultry farming, and may have also been used for intensive pig farming within the south western portion of the site;*
- *A total of 17 farm areas may have existed at the site, each with between one and five poultry sheds present at any one time. The sheds have been removed. No documentation of how and when the removal of sheds took place, whether any contamination or asbestos containing material (ACM) clearance was completed, and where the demolished building material was placed. Multiple references were made to the presence of ACM within the sheds;*
- *Three nominated dump areas exist at the site; northern, southern and western, utilised for the disposal of various items including dead poultry carcasses, building materials and laboratory waste;*
- *Burial, composting and incineration of deceased poultry occurred at the site; Dead birds and rotten eggs were originally buried at the site, with only disease-ridden birds being incinerated. Owing to complaints from surrounding properties, all dead birds were reportedly incinerated from circa 2000. Former employees indicated that the incinerator ash was disposed of both on and off site, while dead bird burials occurred primarily in two areas (i.e. northern and southern dump areas). Anecdotal information from previous employees, suggests that a major disease outbreak was not known to have occurred at the site;*
- *Anecdotal evidence suggests that that a combination of Longlife 250S disinfectant, diesel and formaldehyde was used around poultry sheds as a disinfectant, while hydrocarbons were also used as a wood preservative on poultry shed timber posts;*
- *ACM was identified at multiple locations across the site; within building materials, on the surface scattered at multiple locations, and co-mingled with soil at multiple locations;*
- *Portions of the site have been capped with imported or site sourced capping material, including a portion of the northern dump area, as well as a portion of the southern dump area;*
- *Impacts on soil, groundwater and surface water have been identified in previous investigations. This is summarised as follows:*
  - *ACM on the ground surface in some areas as well as within stockpiles of construction waste and fill material. FA/AF have not been identified in soil above the LOR of 0.001%;*
  - *Metals results within soil samples were considered to be predominantly consistent with potential natural background levels, with no detections above commercial/industrial use criteria based on the protection of human health.*

*Some exceedance of Ecological Investigation Levels (EILs) was evident, however, the results did not appear to be indicative of EIL exceedances which warrant remediation;*

- *TRH, Benzene, Toluene, Ethylbenzene, Xylene and Naphthalene (BTEXN) and PAHs have predominantly been identified below the LOR within soils, with the exception of minor TRH concentrations during test pitting and during UST removal. The TRH concentrations from the test pits were considered to most likely be representative of acceptable contamination levels when considering the possible source of the TRH (i.e. possibly not petrogenic);*
- *Total coliforms and E. Coli levels have commonly been detected across the site within soils, with ten samples exceeded the NSW EPA (1997) Environmental Guidelines, Use and Disposal of Biosolids Products criteria of 1,000MPN4/g;*
- *Elevated total nitrogen levels have been identified in soil at the site, although there are no definitive protection of the environment or human health criteria for nitrogen in soil;*
- *Elevated concentrations of ammonia, copper, zinc, E.Coli, faecal coliforms in surface water samples (some exceeding ANZECC 2000 maintenance of ecosystem criteria);*
- *Elevated concentrations of ammonia, nitrate, nickel, zinc, E.Coli, total coliforms and faecal coliforms, with some results exceeding ANZECC 2000 maintenance of ecosystem criteria, in groundwater samples.*

State Environmental Planning Policy No. 55 – Remediation of Land, (SEPP 55), provides statutory requirements that delineate remediation work into two categories, being Category 1 and Category 2. The proposal falls within Category 1 which is defined under Clause 9 as remediation work needing consent, as follows:

*For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14(b) applies) that is -  
(a) designated development, or...*

SEPP 55 provides a framework for dealing with contaminated land that includes notification requirements, parameters for which consent may not be refused, and preventing Category 1 remediation work from being excluded from the SEPP 55 provisions on the basis that it is ancillary to other development.

The key provisions that relate to this development application are contained in clauses 7 and 17. Clause 7, in part, states:

**7 Contamination and remediation to be considered in determining development application**

*(1) A consent authority must not consent to the carrying out of any development on land unless—*

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

*(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*

*(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*

It should be noted that the plans referenced in the preliminary assessment submitted in conjunction with the application are not the current development plans (they are based on a proposed subdivision layout that was never submitted to Council in conjunction with this application), but are similar in respect to the proposed road layout and site disturbance. The only change to the development plans is that the number of lots has been increased by rearranging the layout of the subdivision, however this has no impact on the assessment of contamination.

The information submitted with the application identifies the following, key types of contamination:

- Asbestos Containing Material (ACM) in bonded form (i.e. no evidence of friable asbestos has been detected to date), in some areas associated with inappropriate disposal of demolition wastes;
- Microbiological contamination (e.g. E. Coli, Total Coliforms) in some areas associated with historical animal wastes;
- The potential for aesthetically unsuitable materials related to buried animal carcasses;
- Relatively isolated soils with elevated nutrient concentrations;
- Relatively isolated petroleum hydrocarbon contamination in soil.

A Remedial Action Plan (RAP) has been prepared by the applicant to provide a framework for the remediation and validation of the site. The RAP includes the following remediation options:

*Option 1*

Onsite treatment of the soil so that the contaminants are either destroyed or the associated hazards are reduced to an acceptable level.

*Option 2*

Offsite treatment of the soil so that the contaminants are either destroyed or the associated hazards are reduced to an acceptable level, after which the soil is returned to the site.

*Option 3*

Excavation and offsite removal of the impacted material

*Option 4*

Consolidation and isolation of the soil by onsite containment within a properly designed barrier with ongoing management

The assessment concludes that onsite treatment (where possible), and retention of contaminated soils is the preferred remediation option, with offsite disposal of contaminated materials to be minimised to the extent practicable consistent with the NSW EPA approved hierarchy for remediation and management. The treatment works predominantly relate to microbiological contamination (i.e. onsite stockpiling and aeration), and physical removal of ACM. Soils which are contaminated following treatment will be retained below future industrial lots and capped with either hardstand or a layer of chemically suitable fill material. Long term management of the residual contamination will be subject to lot specific, environmental management plans.

The applicant states that the RAP may not be final, that further discoveries may require further investigation. Specifically the report states that *'pre-remediation investigation works are to be undertaken prior to the implementation of this RAP. This RAP is subject to findings of this investigation being consistent with the findings to date, and if not, the RAP needs to be re-evaluated and amended'*. The report recommends that the preferred remedial approach comprises:

- Excavation and on-site encapsulation of identified ACM impacted areas of environmental concern.
- Excavation and on-site encapsulation of identified ACM, nutrient and bacteria impacted areas of environmental concern where all three of these contaminant groups are present.
- Onsite treatment (i.e. excavation, drying and aeration) and reuse of nutrient and bacteria only impacted areas of environmental concern.
- Excavation and offsite disposal of any waste material (inclusive of intact poultry carcasses), in fill and on ground (aesthetic). Preference is for waste to be recycled at a suitable facility where practicable. Onsite reuse of this material may be considered if deemed satisfactory.

More, specifically, the submitted RAP recommends:

- *Development stage specific Sampling, Analysis and Quality Plan (SAQPs) which consider the SAQP framework provided in this RAP;*
- *Detailed Scope of Works documents for each stage of remediation to detail the development stage specific remediation and validation plan;*
- *A Remediation Environmental Management Plan (REMP) for each stage of the remediation, to document the monitoring and management measures required to control the environmental impacts of the works and ensure the validation protocols are being addressed; and*
- *A Work Health and Safety Management Plan (WHSMP) for each stage of the remediation to document the procedures to be followed to manage the risks posed to the health of the remediation workforce.*

*The REMP and WHSMP will require to be cognisant of the potential occurrence and storage/handling of asbestos contaminated soils on the site.*

*Upon completion of remediation works for each development stage, validation reports are required to be submitted by JBS&G to certify which portions of the site are suitable for the proposed use. A long term management plan (LTMP) should also be implemented at the conclusion of remediation works to manage the encapsulated impacted soils onsite into the future.*

The applicant has determined that further information may come to light, and such information may lead to adjustments to the methods proposed to remediate the site and subsequently require adjustments to be made to the RAP. Notwithstanding that the RAP has not been finalised, the EPA consider that that the site is capable of being remediated to a standard that will make the site suitable for future industrial purposes and, accordingly, have issued General Terms of Approval. It is considered that the application is consistent with the contaminated land guidelines and can be conducted in a manner consistent with legislative requirements.

Notwithstanding that further investigation may result in further finds, the submitted RAP is adequate for the purpose of granting approval, subject to EPA licensing and validation post approval. The EPA, as the licensing authority, is satisfied that the remediation is capable of being conducted in a manner that is consistent with clause 17 of SEPP 55.

#### **17 Guidelines and notices: all remediation work**

- (1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with—*
- (a) the contaminated land planning guidelines, and*
  - (b) the guidelines (if any) in force under the Contaminated Land Management Act 1997, and*
  - (c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines...*

## **5. CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011**

### **5.1 Permissibility**

The site is zoned partly IN2 Light Industrial, and partly E2 Environmental Conservation under the *Cessnock Local Environmental Plan 2011*.

The proposed development is categorised as subdivision of land under Section 6.2 of the EP&A Act, which provides the following:

*The division of land into two (2) or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.*

Pursuant to Clause 2.6 of CLEP 2011, *'land to which this Plan applies may be subdivided, but only with development consent'*.

In consideration of the above, the land can be subdivided, provided development consent has been obtained for such subdivision.

The other aspects of the development, comprising demolition works, remediation works, earthworks, clearing and associated works, are all considered ancillary to the primary purpose associated with the subdivision, and are permitted with consent in the relevant zone/s.

### **5.2 Zone Objectives**

As outlined previously and illustrated in the zoning map contained in this report, the subject site has a split zoning as follows:

- the front portion of land abutting John Renshaw Drive and following the watercourse is zoned E2 Environmental Conservation; and
- the remaining areas of the property where the former chicken sheds were erected is zoned IN2 Light Industrial.

Clause 2.3(2) of the CLEP requires that *'the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone'*.

The objectives of the IN2 Light Industrial zone are as follows:

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses*

The proposed development is generally considered consistent with the objectives of the zone but ultimately, due to unresolved matters associated with the uncertainty in respect of traffic issues and related offsite impacts, it cannot be concluded that the development is wholly consistent with the zone objectives. Whilst the development does not provide any direct ongoing uses, it enables the release and therefore facilitates the activation of industry and associated employment opportunities.

The development:

- Facilitates uses including light industrial, warehouse and other uses, which are permitted in the IN2 Light Industrial zone.

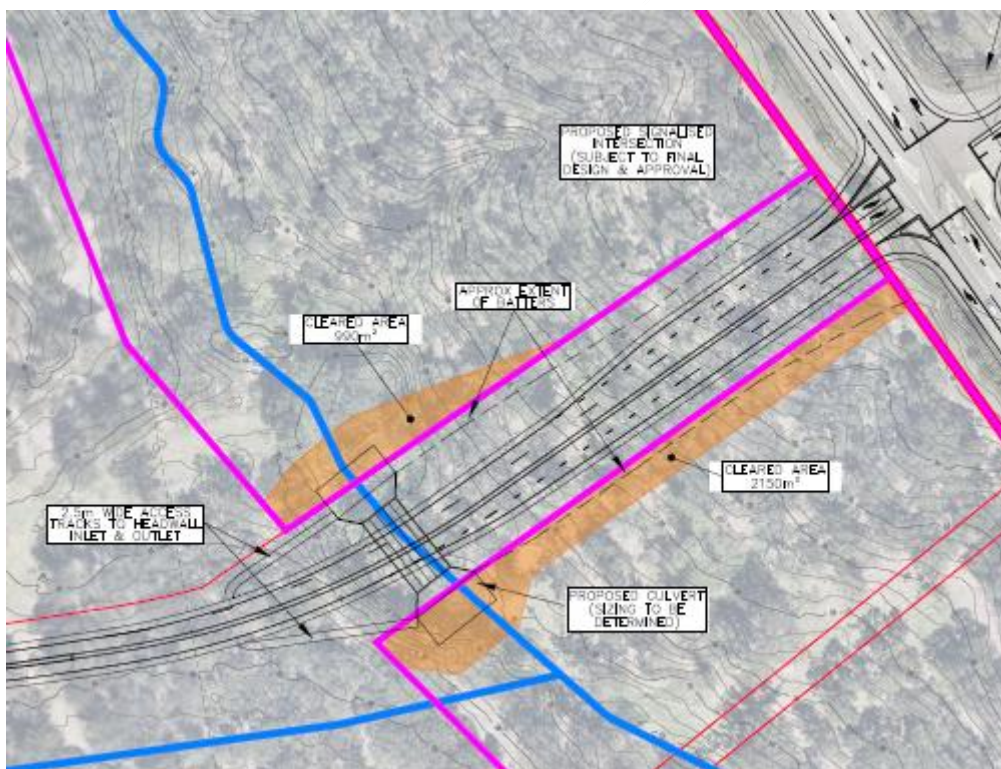
- Provides the basis for employment opportunities and directly involves the creation of jobs.
- Is likely to impact on other land in respect to traffic upgrades, and the impacts of such upgrades on the environment have not been fully assessed.
- Indirectly enables and supports land uses and services other than light industrial, warehouse and related land uses, which will further stimulate the economy.
- Overall, the extent to which this proposal supports and protects industry, depends on its ability to manage the impacts associated with the development, predominantly traffic impacts.

The objectives of the E2 Environmental Conservation zone are as follows:

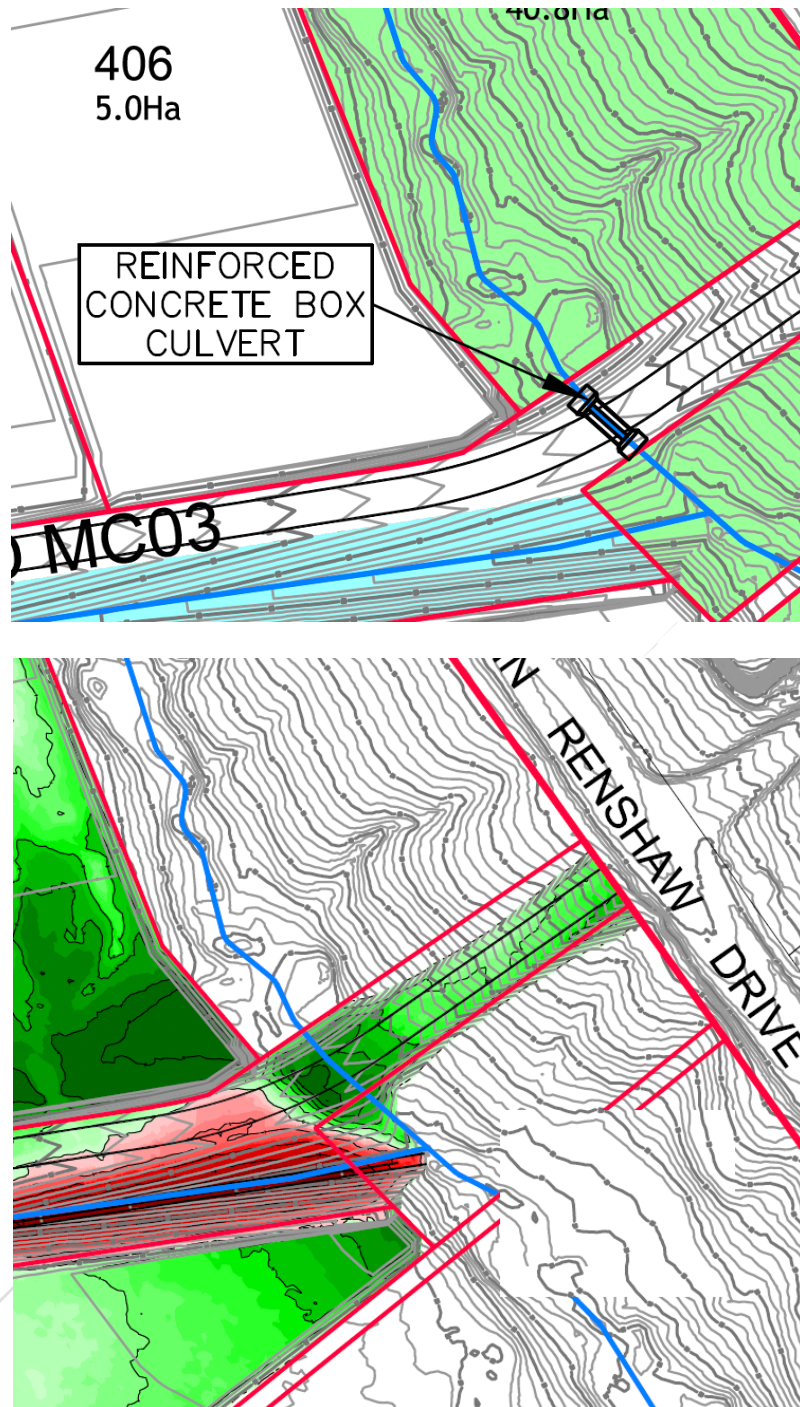
- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values*

Predominantly, all construction activities are contained within the parts of the site that are zoned IN2 Light Industrial. The application proposes to cut and fill the industrial zoned land, but such filling is proposed in a manner where it batters down to the conservation land and therefore softens the transition to the conservation land.

The direct impact on the E2 Environmental Conservation zone consists of clearing, filling and the construction of a culvert crossing of a waterway which extends partially over the E2 Environmental Conservation land. The two diagrams below show the extent of clearing, and cut and fill respectively:



It should be noted however that more recent plans show a different culvert design which presents an opportunity for a reduction in the originally proposed clearing:



The realignment of the watercourse has the potential to impact on the conservation land in terms of altering the hydrological regime and increasing the potential for erosion and sedimentation to occur. The applicant states that the realignment will be undertaken in an ecologically sensitive manner, utilising water sensitive urban design practices. In this regard, the applicant states:

*There is a clear objective to avoid implementation of on-line water quality basins within E2-zoned land. Consideration must also be given to nutrient loading of downstream riparian corridors to prevent algal blooms and exotic overgrowth.*

These are matters that may be managed through a proposed water management strategy.

The above impacts are not considered significant and the development is relatively restrained in respect to its impacts on the E2 Environmental Conservation land.

Accordingly, the proposal is considered consistent with the objectives of the E2 Environmental Conservation zone.

### 5.3 Relevant Clauses

#### 5.3.1 Clause 4.1 Minimum subdivision lot size

The subdivision of land is required to adhere to minimum area standards that are associated with the lot size map referenced under clause 4.1 of the CLEP 2011. Clause 4.1 states:

##### **4.1 Minimum subdivision lot size**

- (1) The objectives of this clause are as follows—
  - (a) to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,*
  - (b) to ensure minimum lot sizes reflect the outcomes of any adopted settlement strategy for Cessnock.**
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land....*

The Lot Size Map does not provide a minimum area for land zoned IN2 Light Industrial.

In respect of land zoned E2 Environmental Conservation, the Lot Size Map prescribes a minimum area of 80 hectares. The subdivision proposes an area of 40.85 hectares for the residue lot, comprising the whole of the E2 Environmental Conservation land. The applicant relies on Clause 4.1B to create the undersized allotment, and this is discussed below.

#### 5.3.2 Clause 4.1B Minimum lot sizes for certain split zones

Clause 4.1B states as follows:

##### **4.1B Minimum lot sizes for certain split zones**

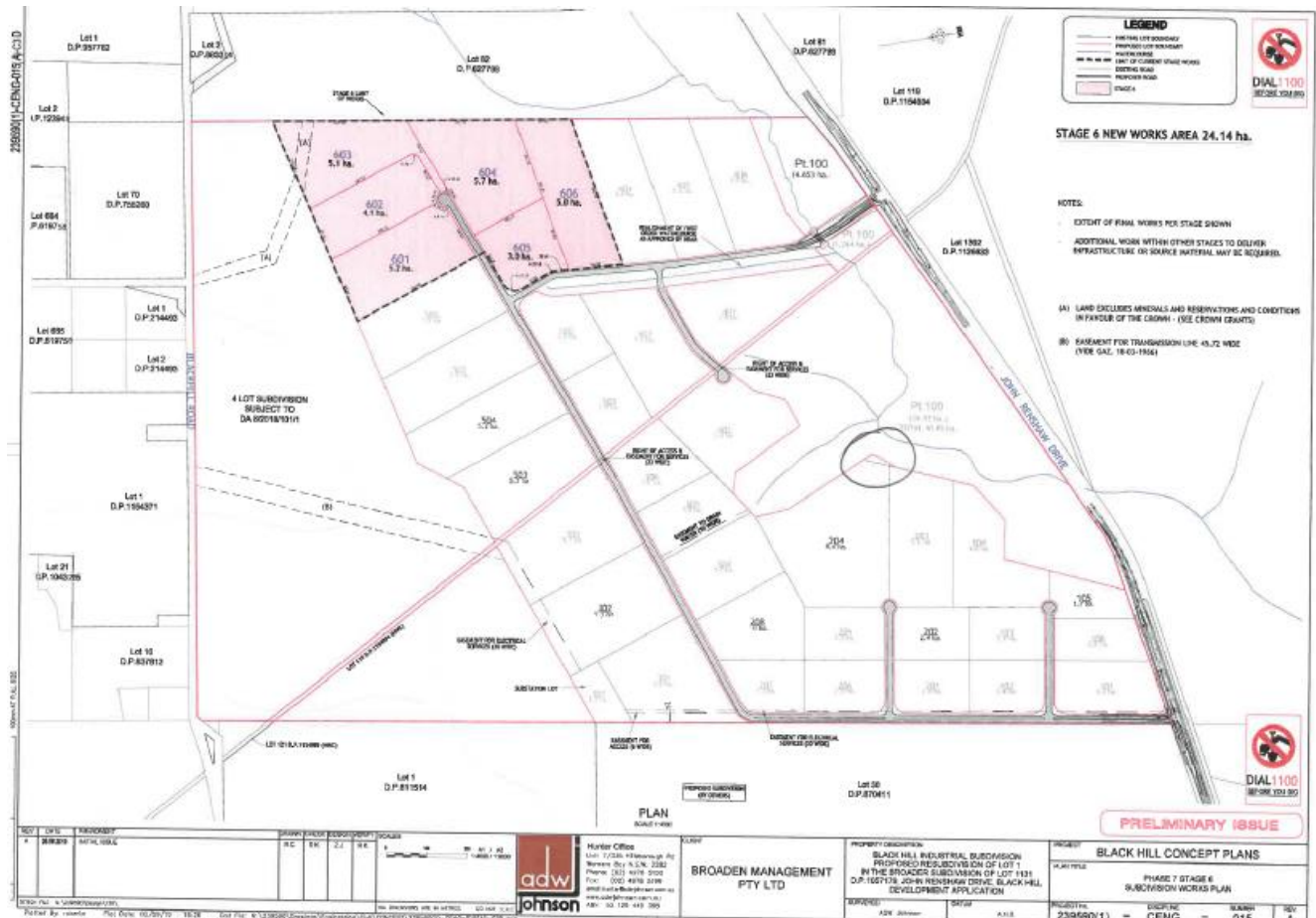
- (1) The objectives of this clause are—
  - (a) to provide for the subdivision of lots that are within more than one zone and cannot be subdivided under clause 4.1, and*
  - (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.**
- (2) This clause applies to each lot (an **original lot**) that only contains—
  - (a) land in a residential, business or industrial zone or in Zone RU5 Village, and*
  - (b) land in Zone RU2 Rural Landscape, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation or Zone E3 Environmental Management.**
- (3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if—
  - (a) one of the resulting lots will contain—
    - (i) land in a residential, business or industrial zone or in Zone RU5 Village that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
    - (ii) all of the land in Zone RU2 Rural Landscape, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and***

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

The applicant relies on Clause 4.1B to enable the creation of an allotment that contains the E2 Environmental Conservation land, despite such lot being below the minimum area standard.

During the assessment process, the applicant submitted a plan illustrating that the residue lot containing all of the E2 Environmental Conservation zoned land, also contains approximately 500m<sup>2</sup> of land zoned IN2 Light Industrial. This plan satisfies the requirements of Clause 4.1B(3) in its entirety.

The plan is reproduced below:



Notwithstanding the above, it is noted that the plan demonstrating compliance with Clause 4.1B, is not consistent with the plans lodged formally in conjunction with the development application and subsequently exhibited.

### 5.3.3 Clauses 6.1 – 6.3 Urban release areas

Part 6 of the CLEP 2011, provides particular controls associated with urban release areas. There are three subsections, which ensure arrangements for state infrastructure contributions, require infrastructure arrangements to be made, and provide for suitable planning policy prior to development.

More specifically, the following is noted:

#### Clause 6.1 Arrangements for Designated State Public Infrastructure

This clause has the effect of precluding the granting of consent to the subdivision of land within an urban release area until such time as Council receives confirmation from the Director-General that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.

Council is in receipt of confirmation from the Director-General, dated 20 September 2020, that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure. Therefore, the provisions of this clause have been satisfied.

#### Clause 6.2 Public Utility Infrastructure

Prior to granting development consent, the consent authority must be satisfied that essential infrastructure is available or that arrangements have been made to provide the infrastructure.

Correspondence has been received in respect to the availability of infrastructure. The applicant has provided evidence of consultation with utilities and has confirmed that the area is capable of being serviced. Therefore, the provisions of this clause have been satisfied.

#### Clause 6.3 Development Control Plan

This clause has the effect of precluding the granting of consent for development of land within an urban release area unless a development control plan has been prepared for the site.

The development control plan is required to address a range of matters, as outlined in clause 6.3. In this case, a development control plan addressing the relevant matters, has been adopted by Council. Therefore, the provisions of this clause have been satisfied.

### **5.3.4 Clause 7.2 Earthworks**

Clause 7.2 seeks to ensure that any earthworks do not result in an adverse impact on the environment, neighbouring properties or heritage items.

Bulk earthworks are proposed to the majority of the site, excluding the land zoned E2 Environmental Protection. The works are required to be undertaken as part of the proposed decontamination of the site, and to prepare the site for the construction of future buildings.

Clause 7.2 states as follows:

#### **7.2 Earthworks**

- (1) *The objectives of this clause are as follows—*
  - (a) *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,*
  - (b) *to allow earthworks of a minor nature without requiring a separate development consent.*
- (2) *Development for the purposes of earthworks may be carried out only with development consent unless—*
  - (a) *the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
  - (b) *the earthworks are ancillary to other development for which development consent has been given.*

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters—*
- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
  - (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
  - (c) the quality of the fill or the soil to be excavated, or both,*
  - (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
  - (e) the source of any fill material and the destination of any excavated material,*
  - (f) the likelihood of disturbing relics,*
  - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
  - (h) any measures proposed to minimise or mitigate the impacts referred to in paragraph (g).*

Earthworks proposed in conjunction with the application are considered to be reasonable and provided they are suitably managed, will not result in any detrimental impact upon the surrounding environment.

- 4.15(1)(a)(ii)** *The provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved*

#### **State Environmental Planning Policy (Koala Habitat) 2019**

This development application was lodged with Council on 22 August 2018, prior to the commencement of *SEPP (Koala Habitat Protection) 2019*, (SEPP KHP) which occurred on 1 March 2020. Section 15 contains a savings provision relating to development applications, that if a development is made, but not finally determined before the commencement of the Policy in relation to land to which the Policy applies, must be determined as if the Policy had not commenced.

Therefore, SEPP KHP is considered a proposed instrument in the assessment of this application. Under Part 2 of the SEPP, Clause 9 applies and states as follows:

*9(1) This clause applies to land to which this Policy applies if the land—*

- (a) is identified on the Koala Development Application Map, and*
- (b) has an area of at least 1 hectare (including adjoining land within the same ownership), and*
- (c) does not have an approved koala plan of management applying to the land.*

*9(2) Before a council may grant consent to a development application for consent to carry out development on the land, the council must take into account—*

- (a) the requirements of the Guideline, or*
- (b) information, prepared by a suitably qualified and experienced person in accordance with the Guideline, provided by the applicant to the council demonstrating that—*
  - (i) the land does not include any trees belonging to the feed tree species listed in Schedule 2 for the relevant koala management area, or*
  - (ii) the land is not core koala habitat.*

In accordance with the requirements of Clause 9(1), the SEPP KHP applies to the site.

In accordance with the requirements of Clause 9(2), the site includes trees belonging to the feed tree species listed in Schedule 2 for the relevant koala management area.

As the development involves native vegetation clearing, the application would trigger the Tier 2 process under the Koala Habitat Protection Guideline. A Koala Assessment Report addressing the criteria must accompany any development application to which Tier 2 applies. In this case, it is noted that a report consistent with the Tier 2 requirements has not been provided in conjunction with the application, as the application was lodged prior to commencement of the SEPP KHP.

In consideration of the above, and the savings provision contained within the SEPP KHP, further assessment under the SEPP KHP is not warranted in this instance as the application must be determined as if the Policy had not commenced.

### **Remediation of Land SEPP**

The proposed Remediation of Land SEPP is intended to repeal and replace SEPP 55 – Remediation of Land . The Draft SEPP was exhibited from 25 January to 13 April 2018 and 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 listing 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 SEPP 55, as discussed earlier in this report.

In respect to the consideration of this application, the Draft SEPP does not propose requirements that warrant further investigation regarding site contamination or remediation.

#### **4.15(1)(a)(iii)      *The Provisions of any Development Control Plan***

##### **Cessnock Development Control Plan 2010**

The following is an assessment of the proposal's compliance with the numerical standards in the DCP:

<b>Cessnock Development Control Plan Part C: General Guidelines</b>		
<b>Chapter – C.2: Flora and Fauna Survey Guidelines</b>	<b>Complies?</b>	<b>Comment</b>
2.2 Flora and fauna survey reports shall be prepared in accordance with the technical details provided in Appendix A: Flora and Fauna Survey Guidelines.	Yes	The application includes an Ecological Assessment Report (Biodiversity Development Assessment Report) that has been assessed by Council's Ecologist, and is considered satisfactory.
<b>Chapter – C.3: Contaminated Lands</b>	<b>Complies?</b>	<b>Comment</b>
Development Applications for, or which include, site remediation works shall be accompanied by a RAP in accordance with the provisions of SEPP 55 - Remediation of Land.	Yes	The remediation of the subject site is adequately addressed. This matter is discussed in other sections of this report.

<b>Chapter – C.5 Waste Management and Minimisation</b>	<b>Complies?</b>	<b>Comment</b>
5.7.1 Potential for Waste Minimisation	No	The application contains a statement in respect of broad principles regarding the intended manner for dealing with waste in section 7.14 of the EIS however a detailed waste management plan, in accordance with the provisions of chapter C.5, has not been provided.
<b>Chapter – C.7 Trees and Vegetation Management</b>	<b>Complies?</b>	<b>Comment</b>
7.3.1 Activities requiring approval	Yes	Chapter C.7 provides the basis for determining the situations where tree removal requires approval and situations where tree removal is exempt. The provisions apply to land zoned IN2 Light Industrial but not to E2 Environmental Conservation. As consent is sought for the clearing of vegetation, the proposal is considered to comply.
<b>Cessnock Development Control Plan Part D: Specific Development</b>		
<b>Chapter – D.1 Subdivision Guidelines</b>	<b>Complies?</b>	<b>Comment</b>
1.8.1 Element 1: Lot Sizes and Shapes. Minimum width a) Lot in an industrial zone, 30 metres at the building line. b) Battle-axe handles, 8.0 metres.	No	All lots comply with 30m minimum width, however access handle to proposed Lot 307 is 6m wide, 2m less than required.
1.8.2 Element 2: Access and Road Layout. Minimum: a) Road reserve width 20m b) Carriageway width 13m c) Footway width 3.5.	Can comply	Application proposes: a) 23m wide road reserves b) 14m carriageway width c) No footway
1.8.3 Element 3: Adjoining Development. a) To be compatible with adjacent commercial and or residential areas	Not applicable	
1.8.4 Element 4: Utility Services a) New industrial lots to be provided with all services	Complies	Services will be provided.
<b>Cessnock Development Control Plan Part E: Specific Areas</b>		
<b>Chapter – E.18 Black Hill Employment Area</b>	<b>Complies?</b>	<b>Comment</b>
<b>18.1.8 Subdivision</b>		
A. A Landscape Masterplan must be submitted with each application for subdivision.	Yes	A landscape plan has been provided for the overall development.
B. Street trees shall be planted to: i. soften the streetscape; ii. act as traffic calming measures through perceived narrowing of the road; iii. provide shade to footpaths and roads; and iv. enhance views	Complies	Street tree planting details have been supplied.

C. Riparian vegetation along watercourses is to be re-established using locally occurring native species from locally sourced seed stock	Can comply	Broad details of riparian vegetation have been provided, with references to utilising locally sources seed stock. Specific planting details have not been provided.
D. Landscape entry features identifying the Black Hill Employment Area (or subsequent "brand") shall be permitted on private land at the intersection of the collector road network and John Renshaw Drive.	Complies	The development application proposes landscape entry feature.
E. The design of a landscape entry feature shall have regard to: i. impact on sight lines; ii. ongoing maintenance; and iii. reflectivity and lighting requirement	Can comply	The submitted landscape masterplan includes entry features but does not include consideration of lighting and reflectivity.
<b>18.1.9 Staging and Servicing</b>		
A. The site shall be developed in stages following the adequate provision of infrastructure to service each allotment in the stage.	Yes	The development proposal contains staging that matches the DCP E.18 Black Hill Employment Area Staging Plan (Figure 4).  The provision of infrastructure to service each allotment is suitably proposed, and such requirement can also be imposed as a condition of consent.
B. The order of release of each stage (Figure 4) may be amended as appropriate to enable the logical and cost-effective development of the site.	Not applicable	The release of the subdivision is consistent with the DCP Black Hill Employment Area Staging Plan (Figure 4).
C. Applicants are required to demonstrate adequate servicing of allotments including access to water, sewer and electricity.	Yes	The provision of infrastructure to service each allotment is suitably proposed, and such requirement can also be imposed as a condition of consent.
D. To facilitate the cost effective and timely release of stages, development should proceed from the north-east corner of the Black Hill Employment Area.	Yes	The release of the subdivision is consistent with the DCP E.18 Black Hill Employment Area Staging Plan (Figure 4) and proceeds, beginning from the north-east corner of the site systematically through the development site.
E. All development lots must be provided with underground services.	Yes	The applicant states that all services will be provided to each lot prior to the issue of a subdivision certificate.  Although the EIS does not specifically state that utilities will be underground, this requirement can be imposed as a condition of consent.
<b>18.1.10 Access and Transport</b>		
A. Access to the Black Hill Employment Area shall be provided generally in accordance with the Concept Structure Plan at Figure 2.	Yes	The proposed access is consistent with the Black Hill Employment Area Concept Structure Plan (Figure 2) in the DCP.  The subdivision plan lodged in conjunction with the application illustrates provision of a <i>'proposed right of access and easement for access to construct road drainage and</i>

		<p><i>service infrastructure benefiting Lot 30 DP 870411', on the proposed road access located on the eastern boundary.</i></p> <p>The intention of the access on the eastern boundary is to utilise such road as a joint access between the site the subject of this application, and the adjoining site (located within the City of Newcastle LGA to the east, being Lot 30 DP 870411).</p>
<p>B. All internal roads will be designed with reference to Chapter D.1 Subdivision Guidelines and Chapter D.3 Industrial Development of the Cessnock DCP and in accordance with Council's Engineering Design Guidelines.</p>	No	<p>The access handle to proposed Lot 307 is 6m wide, however, this is 2m less than required. Therefore, the proposal does not comply.</p>
<p>C. The collector road network shall allow for future access to the east, including the provision of rights of carriageway where necessary.</p>	Yes	<p>Refer to previous discussion, above.</p>
<p>D. Provision for on road cycleways shall be made within the Collector Road network.</p>	No	<p>This matter is capable of being addressed through conditions of consent.</p>
<p>E. Adequate directional signage is required at the vehicular entries and exits of each site.</p>	No	<p>This matter is capable of being addressed through conditions of consent.</p>
<p>F. An Internal Movement Plan (IMP) is to be submitted with a development application for any primary building on a site. The IMP is to clearly identify:</p> <ul style="list-style-type: none"> <li>i. heavy vehicle movement routes;</li> <li>ii. private vehicle movement routes and parking areas;</li> <li>iii. pedestrian access routes; and must include turning circles diagrams for the largest vehicle that is reasonably expected to enter the site.</li> </ul>	Not applicable as no building/s proposed	
<p>G. Development applications for each site must demonstrate that all vehicles can enter and exit the allotment in a forward direction.</p>	Not applicable as no building/s proposed	
<p>H. The road network is to be designed to provide for a clear and convenient bus route throughout the site, including the provision of bus shelters and seating as required.</p>	No	<p>The applicant states that the roads will be suitable for bus transport vehicles. No bus route details have been provided, however the internal road system is relatively simple.</p> <p>There is no commitment to providing bus shelters or seating, however, this requirement is capable of being addressed through conditions of consent.</p>
<p>I. Provide details with the subdivision application for each stage, demonstrating consultation with the relevant bus company and the demand to extend or provide an additional bus route throughout the development including the proposed</p>	Not provided	<p>Refer to above.</p>

location of bus stops to service the development.		
<b>18.1.11 Parking</b>	Not applicable as no building/s proposed	
<b>18.1.12 Landscaping</b>	Not applicable as no building/s proposed	
<b>18.1.13 Water Management</b>	Not applicable as no building/s proposed	
<b>18.1.14 Siting and Separation</b>	Not applicable as no building/s proposed	
<b>18.1.15 Appearance and Materials</b>	Not applicable as no building/s proposed	
<b>18.1.16 Outdoor Storage Areas</b>	Not applicable as no building/s proposed	
<b>18.1.17 Lighting</b>	Not applicable as no building/s proposed	
<b>18.1.18 Residential Development within the E4 Zone</b>	Not applicable as the application does not affect any E4 zoned land	

***4.15(1)(a)(iia) The provision of any Planning Agreement that has been entered into under Section 7.4, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4***

No such agreement has been proposed as part of this application.

The developer entered into a voluntary planning agreement with Council in conjunction with the preceding rezoning process in November 2016. In addition, the applicant has also entered into an agreement with the Department of Planning, Industry and Environment (DPIE) in respect of the Special Infrastructure Contribution (SIC).

***4.15(1)(a)(iv) The provisions of the regulations***

An Environmental Impact Statement (EIS) was prepared in accordance with the requirements prescribed in Schedule 2 of the Regulation.

It is considered that the EIS satisfactorily addresses all but one of the SEARs requirements, which relates to community consultation. This matter has been discussed previously in this report.

**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 on the locality**

As demonstrated by this assessment, the proposed development is likely to have a significant impact on both the natural and built environments and has notable consequences for the social and economic conditions of the locality. The following impacts are of particular relevance:

**Traffic impact/s**

Throughout the course of the assessment process, there have been a number of discussions and meetings held between Council, Transport for NSW (known formerly as the RMS), and the applicant in respect of traffic impacts resulting from the proposed development.

As previously outlined in this report, clause 101 of *State Environmental Planning Policy (Infrastructure) 2007*, is relevant to the assessment of this application. Clause 101 states as follows:

**101 Development with frontage to classified road**

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

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

*(2) 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 and safe, 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.*

Of particular relevance is clause 101(2)(b), which outlines that the consent authority may only grant consent to development on land that has a frontage to a classified road (in this case, John Renshaw Drive), if the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of (i), (ii) and (iii).

In total, the applicant has submitted two (2) reports specifically addressing traffic, as follows:

**1. Traffic Impact Assessment Industrial Subdivision Part Lot 1131 in DP 1057179 John Renshaw Drive, Black Hill, Prepared by Intersect Traffic dated August 2018**

Upon lodgement, the application contained a traffic report that utilised a SIDRA analysis for the development, and proposed the construction of two (2) intersections onto John Renshaw Drive, as detailed previously in this report.

## 2. John Renshaw Drive, Black Hill Industrial Precinct Microsimulation Modelling Options Testing Report, prepared by GTA Consultants dated 26 May 2020

During assessment of the application and following feedback from TfNSW, an amended traffic report was submitted that applied microsimulation methods. Such methods were based on assumptions that are outlined in Appendix A of the report.

The assumptions are considered inadequate for the development. Notably, the report relies on the completion of the M1 to Raymond Terrace bypass to mitigate the impacts of the development. The report also relies on disputable assumptions.

In summary, the report does not adequately address the traffic impacts of the development, because:

- The assumptions that the report relies upon are inadequate. Important travel patterns are not included in the modelling. The assumptions made in respect of joint access between the subject land and adjoining industrial land, cannot be relied upon as such access has not been approved and relies on amendments being made to the concept plan (relating to the adjoining site), that are premature.
- The mitigation measures are unrealistic, for example once the precinct has been fully developed it will result in a reduction in the network speed by half, and the report concludes that this is acceptable.
- The conclusions are not sound, for example there are planned construction works to relocate the M1 Motorway to by-pass the intersection with John Renshaw Drive.
- The report does not adequately assess the cumulative impacts of the development, and in particular, the performance of roads is not suitably assessed.

TfNSW consider that the development, along with the mitigation measures proposed, will compromise the effective and ongoing operation and function of classified roads, including John Renshaw Drive and the M1, and for this reason, the application is not supported.

The traffic report prepared by GTA Consultants, states as follows:

*...it is clear that TfNSW preferred assumptions, which we have been asked to adopt, together with several critical elements outside the scope of the model are significantly influencing the outcomes. These outcomes are unfavourably skewed with respect to the proposed large lot industrial development. In this regard, four critical aspects stand out:*

- *TfNSW preferred background traffic growth*
- *TfNSW preferred traffic distribution*
- *TfNSW assumed traffic generation rates*
- *M1 to Raymond Terrace (M12RT) bypass assumptions and future design uncertainty.*

*Any one of these aspects are likely to profoundly minimise the traffic impacts associated with the proposed development, noting especially traffic distribution and M12RT bypass assumptions.*

*With regard to traffic distribution, TfNSW data suggests 80 per cent of trips will approach and depart via the east along John Renshaw Drive and 20 per cent via the west. Recent demographic data and trip times provided in a research piece by Barr Property and Planning suggest that this is not accurate with the directional split appearing to be more like 55 per cent via the east and 45 per cent via the west.*

*This study recognises that there are already existing constraints in the road network within the study area (and beyond) and note that while TfNSW recently upgraded the M1 / John Renshaw Drive / Weakleys Drive intersection from a roundabout to traffic signals,*

*its own studies conclude that the upgraded intersection would likely fail sometime in the period to 2029 without further mitigating works.*

*This site-specific study identifies the traffic impacts of the development site in its own right and provides context to the traffic being generated by the subject site. It allows for context when compared with the adjoining site and background traffic growth over the life of the study and the expected delivery of the project over the next 13 years.*

In addition, the traffic report prepared by GTA Consultants, states:

*there are several critical variables and TfNSW preferences that need to be highlighted given the extent of impact they have on the modelling outputs.  
In this regard it is noted that:*

- *The original TfNSW survey data is ageing and has needed to be growthed to establish 2019 as the base year.*
- *The local and regional area will undergo significant change over the period to 2032, notably the with the M1 to Raymond Terrace (M12RT) bypass and uncertainty remains over the final alignment and configuration (and hence the extent of benefit it will contribute to local area intersections, including the M1 / John Renshaw Drive / Weakleys Drive signalised intersection).*
- *The TfNSW preferred 1.5 per cent per annum traffic growth rate may not fully account for future commercial and residential development further to the west along the Hunter Expressway and Hunter region generally, an area that is expected to undergo significant growth. This will significantly affect traffic distribution and the resultant background traffic impacts on key intersections.*
- *A nominal shift in traffic distribution has been applied to partially account for greater Hunter region growth to date than that allowed for in the M12RT bypass model. A minor redistribution of traffic to/from the west along John Renshaw Drive has been applied and amounts to an increase from 20 per cent to 25 per cent.*
- *Travel time assessments confirm that use of John Renshaw Drive (west of the site) and the Hunter Expressway to access the M1 and Newcastle Link Road (rather than John Renshaw Drive east of the site and the M1) would be more favourable. This is a result of more consistent travel times (especially for heavy vehicles) and time of day impacts, especially during the future years when background traffic growth affects travel times.*
- *The subject site proposes a large lot industrial subdivision that will generate relatively low traffic volumes during the road network peak hours. Heavy vehicles also comprise a larger proportional share of total traffic with 24/7 operations further 'flattening' the effects during the peaks.*
- *It is recognised that large lot industrial sites are unlikely to generate traffic volumes in the future at the same level as they do today. This is a result of many influencing factors, including technological advancements such as:*
  - *higher mass limits for heavy vehicles and associated incentives (GPS tracking technology)*
  - *ongoing trend towards heavy industrial automation*
  - *autonomous vehicles (including dedicated employee autonomous buses and on-demand buses), and more favourable use of efficient and targeted public transport services*
  - *commercial drones and their practical application to local / regional deliveries etc.*
- *Traffic generation rates are expected to further reduce in future years and be less than the 0.185 trips per 100 square metres adopted in this assessment. In this regard, this model is considered to a 'worse case' scenario or is at least, highly conservative.*

The traffic report prepared by GTA Consultants, outlines the following mitigation measures:

*A preliminary assessment of the road network impacts identified congestion issues for select movements. As such, it was agreed with TfNSW that additional mitigation works could be considered at the M1 / John Renshaw Drive / Weakleys Drive from the 50% GFA developed stage and onwards.*

*The following outlines the mitigation works recommended at the M1 / John Renshaw Drive / Weakleys Drive intersection, as shown in Figure 2.7 and denoted by the following item numbers:*

- 1. Duplication of John Renshaw Drive between the central Industrial Precinct access and M1 in both directions.*
- 2. Extension of Lane 1 to the start of the right turn lane on the M1 south approach to the M1 / John Renshaw Drive / Weakleys Drive intersection.*
- 3. Addition of left turn slip lane on the M1 south approach to the M1 / John Renshaw Drive / Weakleys Drive intersection.*
- 4. Duplication of right turn onto John Renshaw Drive from Weakleys Drive.*
- 5. Signal phase time redistribution to accommodate future year traffic demands in the various scenarios and development stages.*
- 6. Duplication of right turn onto M1 from John Renshaw Drive (introduced as an additional mitigation feature following a review of the 75% and 100% GFA developed stages).*

The above mitigation measures are contained in the most recent traffic report prepared by the applicant in support of the development application. These measures have not been formalised by way of amended plans and/or corresponding updates in the EIS and other documents associated with the development application. Notwithstanding, the report has been considered by TfNSW and essentially found to be inadequate for satisfying the objectives of clause 101 of SEPP Infrastructure and therefore presenting unacceptable impacts on the road system. TfNSW states:

*that the subject development site forms approximately one half of the Black Hill Industrial Precinct. The site is located with direct access to John Renshaw Drive, and within close proximity to the critical intersection of M1, John Renshaw Drive, and Weakleys Drive intersection. This intersection, the M1 and John Renshaw Drive east form part of the National Land Transport Network. The development proposes two direct access to John Renshaw Drive via Signal controlled intersections:*

- Western access with four-way intersection with the adjoining Donaldsons mine,*
- Eastern access to be shared with the Adjoining Stevens site.*

*The development traffic is significant, with full development peak hour traffic volume in the order of 1,600 vehicles, or 3,000 vehicles for the precinct development. For context, John Renshaw Drive currently carries less than 1,200 vehicles in each peak so the development traffic will more than double, and the precinct will more than triple the existing traffic volume on John Renshaw Drive, with potential impacts to the safety, efficiency and ongoing operation of the classified road which has national significance.*

*Notwithstanding TfNSW advice and use of its model, Broaden have failed to provide a satisfactory traffic assessment to date, including the most recent traffic impact report by GTA consultants, dated 26 May 2020. The main issues outstanding remain:*

- Modelling and reporting that inadequately demonstrates the traffic impact from the precinct development on the existing road network,*
- Inadequate infrastructure proposed to mitigate the impact as demonstrated,*

- *No mitigation works, with the exception of the site intersection, prior to 50% precinct development when the report demonstrates that there will be significant reduction in efficiency and significant delay induced into the network (around 8 times delay),*
- *No proposed mitigation proposed other than reliance on future TfNSW project, M1 to Raymond Terrace (M12RT), which is expected to be delivered late 2020's.*
- *Reporting that indicates kilometres of queuing at full precinct development with no commitments to resolve, including the inability for motorists to leave the precinct. The report states '...significant queuing and delays throughout the network and at the key intersection of M1 / John Renshaw Drive / Weakleys Drive can be expected at the 50% (no M12RT), 75% and 100% developed stages indicating that the network is unable to accommodate the additional traffic demand.'*
- *The report fails to address the cumulative impacts of their proposed eastern access location relative to the proposed Stevens site access as contemplated under the approved Part 3A concept plan for the Stevens site (required irrespective of the LEC court refusal).*

*The outcomes of the modelling have been inconsistent with RMS Traffic Modelling Guidelines, RTA Guide to Traffic Generating Developments, and Austroads Guide to Traffic Management, Part 12, Integrated Transport Assessments for Developments.*

*TfNSW Outer Newcastle Study identifies significant upgrades are required to mitigate the impacts on the State road in addition to the M12RT. These have been estimated to be considerable. Further, on 3 July 2020 the Land and Environment Court refused the adjoining Stevens development, DA 2018/00714, which is the other half of the Black Hill Precinct. This refusal indicates that TfNSW concerns relating to appropriate traffic impact assessment of the state road network are valid.*

It should be noted that there are ongoing discussions occurring between a number of government stakeholders in respect to this matter, including TfNSW. Furthermore, TfNSW are in the process of finalising their own traffic modelling with a view to identifying possible options/solutions associated with the traffic impacts for this area due to the expected traffic generation associated with this site and the adjoining industrial site to the east.

### **Social and economic impact/s**

The applicant has provided the following information in respect to the creation of jobs, and to assist with the realisation of the economic significance that the development presents:

*The job prediction from the strategy is considered very conservative given the total area of land and the potential floor space that will be generated. The Department of Planning and Environment delivered a media release at the time of the rezoning, which expected up to 1,000 jobs to be created on the site.*

*Estimates of the number of jobs arising from the release of this industrial land will vary depending on the assumptions made regarding future warehousing, logistical and freight developments on the allotments. However, it is acknowledged that the large lots represent a unique offering in the region. They are also ideally located to make use of regional road transport links to national freight routes, including rail, road, port and airport facilities. The ease of access to these routes provides a significant locational advantage for regionally significant transport-based industry. It is anticipated that the take-up of these opportunities will contribute significantly to employment-generating development within the region.*

*In addition, the proposed development has a CIV of approximately \$77 million, representing direct capital investment in infrastructure including traffic intersections, remediation of a contaminated site, an electricity substation, extension of servicing, new roads and associated landscaping. This significant investment in improvements to the site and surrounding lands represents a direct economic benefit through capital investment.*

More recently, the applicant has stated that job creation is conservatively estimated at 1500 full-time equivalent at the completion of the site. Furthermore, the applicant has stated that approval of the proposal will result in \$131 million investment value for the subdivision component, and \$1.2 - \$1.4 billion for industrial buildings (which will subsequently be constructed on the site).

The Greater Newcastle Metropolitan Plan 2036 uses more conservative projections and states that the Beresfield and Black Hill industrial areas combined are expected to create more than 800 jobs between 2016 and 2036.

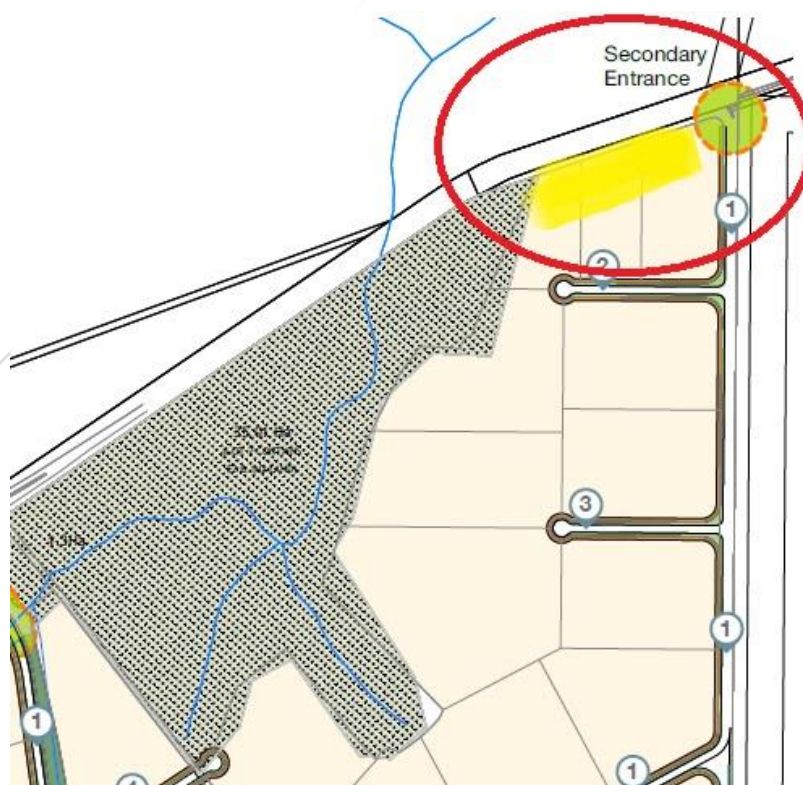
It is evident from the scale of the development, along with the strategic policies that underpin this industrial area, that the subject land along with the adjoining property to the east, feature as significant employment lands, and will provide an important structural base for economic growth in the region.

### Visual impact/s

The proposed development presents a significant road frontage to John Renshaw Drive and the site benefits from natural bushland that generally aligns with the road frontage.

In accordance with the DCP requirements, the applicant has prepared a landscape master plan.

The master plan provides detail in respect to the desired landscape character; concept plan objectives; and preferred species. The plan contains concept perspectives for the two proposed intersections, however fails to address the visual impact of the development and does not propose to screen the development in any meaningful manner. In this regard, the subdivision proposes three lots that have a 294 metre frontage to John Renshaw Drive, and none of these lots incorporate a landscape buffer. Below is an extract from the landscape master plan with the area of concern highlighted and circled.



This proposal is at odds with the industrial precinct to the north-east, known as the Beresfield industrial area, which maintains a landscaped buffer between John Renshaw Drive and the industrial estate.

Furthermore, of note is that the industrial land located directly adjoining the site (to the east), is likely to provide a 20 metre wide visual landscape buffer along the northern boundary of the site. In this regard, such buffer has been approved by the Planning Assessment Commission on the 19 November 2013 (concept plan application for employment lands at Black Hill).

### Archaeology impact/s

The applicant prepared an Aboriginal Cultural Heritage Assessment and Archaeological Test Excavation Report that involved surveys, test excavation and stakeholder consultation. The report found that of the five Aboriginal Heritage Information Management System (AHIMS) sites, one has low significance and four have no significance. Specifically, the applicant's report states as follows:

*Based on the results of the sample archaeological survey, test excavation and stakeholder consultation, sites AHIMS # 38-4-1289, 38-4-1290 and 38-4-1688 are assessed to have nil archaeological significance and the artefact identified on the slope above 38-4-1742 was assessed to have very low archaeological significance. All the sites are considered to have low cultural significance. No further archaeological investigation of these sites within the Project Area is required*

**Table 10.1 Impact assessment**

Site ID / Name	Type of Harm	Degree of Harm	Consequence of Harm	Significance Before Impact
38-4-1289 / CTGM3 AT3	Direct	Total	Total loss of value	Nil
38-4-1290 / CTGM4 MC	Direct	Total	Total loss of value	Nil
38-4-1687 / Beresfield WP-AS2 artefacts	Indirect	Partial	Partial loss of value	Nil
38-4-1688 / CTGM PAD1 artefacts	Direct	Total	Total loss of value	Nil
38-4-1742 / AVC13/A	Direct	Partial	Partial loss of value	Nil to Very Low

The report recommends the deregistering of the sites with nil significance, and that the site be managed in accordance with recognised methods, including procedures for unexpected finds.

The proposed archaeological investigation provides a suitable basis from which it may be concluded that the development will not have a significant impact on matters/objects of archaeological significance. The assessment is limited to the disturbance proposed by the developer and does not take into account any off site works.

### Water quality and pollution impact/s

The application proposes significant areas of site disturbance including the realignment of a first order waterway. The application proposes conventional measures to control and mitigate impacts such as erosion, sedimentation and water quality, which are considered satisfactory. In respect to the realignment of the waterway, that applicant states:

*Realignment of drainage line (Weakley's Flat Creek) to occur in accordance with design and management measures described in the BDAR (Appendix I)*

- Retention of bank and bench vegetation where possible,
- Provenance plant material to be sowed for planting where practicable,

- *Reinstatement of the realigned drainage line to a plant community type characteristic of the EEC – Spotted Gum – Red Ironbark, and*
- *Ongoing management of riparian lands on the site to be in accordance with the VMP, to be prepared.*

### **Noise impact/s**

The development presents a situation where noise impacts are essentially temporary, being during the construction phase. The temporary nature of the construction is likely to be ongoing with the development horizon spanning years, if not decades.

The applicant proposes to manage noise through limiting hours as follows:

- *Construction hours to be limited to 7:00am to 6:00pm, Monday to Friday and 8:00-1:00pm on Saturdays. No work is to occur on Sundays or Public Holidays, and*
- *Further noise management measures to be incorporated into the CEMP as appropriate.*

In their General Terms of Approval, the EPA has included a requirement for adherence to the Interim Construction Noise Guideline published by the Department of Environment and Climate Change in 2009.

It is considered that noise from the development can be suitably managed.

### **Bushfire impact/s**

The subject site is recognised as being bushfire prone according to Council's mapping. Therefore consideration has been given to the aims and objectives of *Planning for Bushfire Protection 2006* (the version of *Planning for Bushfire* which was relevant at time of lodgement of the application).

As previously outlined in this report, the site is Zoned IN2 Light Industrial and E2 Environmental Conservation. 'Dwellings' are a permitted form of development in the E2 zone. Therefore, the proposed subdivision includes an allotment that could be used for residential development, being the E2 lot. In this regard, Clause 100B of the *Rural Fires Act 1997* is relevant, and as such, the application was lodged as Integrated Development and subsequently referred to the Rural Fire Service for comment.

The RFS have issued General Terms of Approval in respect of the application. On this basis, it is considered that the proposal meets the aims and objectives of *Planning for Bushfire Protection 2006*.

#### **4.15(1)(c)      *The suitability of the site for the development***

The site is suitably located for the development that is proposed, in that it adjoins a main road that is located within close proximity to national road and rail infrastructure, and is situated within 30km of an international airport and shipping dock.

In the process of rezoning the site, constraints such as significant remnant vegetation were identified, and for this reason part of the site is zoned for conservation purposes.

All other site constraints have been considered in the assessment of this application and it is considered that there are no known constraints that warrant refusal of the application.

Notwithstanding the above, the proposed development does not take into account the likely significant impact of the proposal on the existing road network or the environmental impacts associated with adequately mitigating those impacts. In this regard, it is considered that site suitability cannot be wholly assessed in the absence of the resolution of traffic related matters.

#### 4.15(1)(d) **Any submissions made in accordance with this Act or the Regulations**

The application was exhibited in accordance with the provisions of Council's adopted notification policy and the legislative requirements that apply to designated development.

The application was initially exhibited between the 13 February and 15 March 2019. The proposal was re-exhibited following amendments to the development application between 25 May and 29 June 2019. In response, 21 submissions were received over the course of the two (2) exhibition periods, 19 of which are considered unique.

The following table outlines the issues raised in the submissions lodged with Council, along with a response to each matter:

Issue/s	Comment/s
<b>Environmental/Ecological</b>	
<ul style="list-style-type: none"> <li>Wildlife corridors should be promoted/protected in order for connectivity to be provided</li> <li>Clearing should be minimised</li> <li>Management of E2 zone in perpetuity</li> <li>The ecological report contains errors and false assumptions</li> </ul>	The ecological impacts of the development are discussed in the body of the report.
<ul style="list-style-type: none"> <li>Development should enhance and protect riparian zones</li> <li>Realigning waterway seems unnatural considering devastation of Murray-Darling Basin</li> <li>The creek catchments should be better protected</li> </ul>	<p>The development application includes measures that relate to the embellishment and management of the riparian zones and the Environmental Conservation land in general.</p> <p>The environmental impacts associated with the realignment of the first order waterway have been assessed, including the provisions of the <i>Water Management Act 2000</i>, via the integrated referral process. The assessment concludes that there are no justifiable grounds to prevent the realignment of the waterway or that the impacts on the riparian areas are unacceptable.</p>
<ul style="list-style-type: none"> <li>Stormwater management should provide for reuse</li> </ul>	The application contains suitable information in respect to stormwater management. The development does not provide an opportunity for stormwater reuse.
<b>Traffic and access</b>	
<ul style="list-style-type: none"> <li>The development is contrary to Infrastructure SEPP due to traffic impact</li> </ul>	The traffic impacts of the development have been considered and the adequacy of the traffic reports have been appropriately assessed. Accordingly, this ground of objection is considered to be justified.
<ul style="list-style-type: none"> <li>There should be only one intersection onto John Renshaw Drive (JRD), and traffic lights should be provided</li> <li>There should be one shared access between the two estates, which should be left in/left out</li> <li>One traffic management plan is required for both estates</li> <li>The traffic volumes peak period assumptions is wrong</li> <li>There is no mention of impact on traffic flow on John Renshaw Drive</li> <li>The proposed Intersection conflicts with 'Yancoals' concept approval</li> </ul>	It considered that the suitability of access is best determined through an appropriate traffic assessment. Furthermore, this application does not apply to the two catalyst sites and therefore does not have the scope of addressing the precinct as a whole.

<ul style="list-style-type: none"> <li>There should be no road connection between the industrial estates and Black Hill Road</li> <li>Shared access to be dedicated as a public road</li> </ul>	<p>The development does not propose access to Black Hill Road.</p> <p>A proposed access point is located on the eastern boundary, and the plans indicate that an easement for access for the adjoining lot (to the east), is proposed. Any access would be dedicated as a public road.</p>
<b>Character</b>	
<ul style="list-style-type: none"> <li>Industrial land is incompatible with the adjacent rural environment</li> <li>There is concern about industrial character of the development and that it will result in a 'concrete jungle'</li> <li>The rural nature and character of Black Hill should be maintained</li> </ul>	<p>It should be noted that the subdivision does not provide for the ultimate use or development of the land, rather, it merely prepares the land for the future construction of development that will be consistent with the light industrial zoning.</p> <p>Whilst it is acknowledged that the development adjoins rural land, the overall locality does not have a homogenous character and includes a mine, a developing industrial area and land zoned industrial but not yet developed.</p> <p>Although, the development is capable of integrating into the area in respect of character, it is considered that the absence of a landscape buffer/screening along John Renshaw Drive prevents a more harmonious integration into the area,</p>
<b>Amenity</b>	
<ul style="list-style-type: none"> <li>The proposed, substantial earthworks will lead to noise impacts during construction</li> <li>The development will impact on air quality</li> <li>The existing primary school should be protected</li> <li>Scale of development is unacceptable</li> </ul>	<p>Construction noise is a matter that may be addressed through conditions of consent.</p> <p>The development is unlikely to result in any other notable amenity impacts other than those relating to traffic, and visual amenity.</p> <p>The application does not propose any changes to the existing primary school.</p>
<ul style="list-style-type: none"> <li>Vegetation buffers should be provided along all boundaries</li> <li>Visual impact from earthworks should be addressed</li> </ul>	<p>The assessment of this application concludes that the vegetation buffer to John Renshaw Drive should be extended, however it is not considered necessary for further buffers to be provided.</p>
<b>Design, layout and requirements</b>	
<ul style="list-style-type: none"> <li>Both industrial estates should be large lot with a minimum area of 1.0ha and an average of 4.0ha to lower traffic impacts, and retain natural features</li> </ul>	<p>The proposed development is consistent with these areas. However, in any event, no minimum lot size is relevant to the light industrial zone.</p>
<ul style="list-style-type: none"> <li>The development does not take into account urban design guidelines</li> </ul>	<p>There are no adopted urban design guidelines for this site.</p>
<b>Legislation/planning policy</b>	
<ul style="list-style-type: none"> <li>The application does not adequately address compliance with the minimum lot size for E2 zoned land</li> <li>The application does not satisfy clause 6.3 of LEP</li> </ul>	<p>At the time these issues were raised in response to the exhibition period, they were justified.</p> <p>However, since that time, the application has been amended and the area specific controls in the DCP (to address 6.3 of the LEP), address the grounds of objection.</p>

<ul style="list-style-type: none"> <li>The EIS does not address statement of objectives, analysis of feasible alternatives and contains ambiguities with respect to clearing</li> <li>The EIS does not address strategic context</li> </ul>	<p>The EIS is considered suitable in respect to addressing objectives, and analysis of the remediation options provided.</p> <p>The matter of clearing is addressed in this report.</p>
<ul style="list-style-type: none"> <li>The SEARs makes reference to a 30 lot subdivision but the development proposes 39 lots. The applicant should obtain fresh SEARs</li> </ul>	<p>Whilst the development has changed since the SEARs were provided, the changes do not alter the ground disturbance, cut and fill, or matters associated with remediation of the land. In this respect the EIS is considered adequate.</p>
<ul style="list-style-type: none"> <li>Formal amendments have not been made under clause 55 of the Regulations</li> </ul>	<p>The amendment to the development application does not present any inconsistency with clause 55 of the Regulations</p>
<ul style="list-style-type: none"> <li>The development is contrary to parts of the act, regulations and LEP</li> <li>Contrary to precautionary principle</li> <li>Development should be refused because of impact on climate change and other reasons associated with a determination against a mine development</li> <li>The Draft Greater Newcastle Metropolitan Plan makes reference to environmental impacts on biodiversity corridor</li> <li>The development is contrary to Ramsar wetland</li> <li>Consideration should be given to SEPP 33 as it applies to the development</li> </ul>	<p>The assessment is considered to appropriately consider all relevant legislation.</p> <p>In respect to the refusal of the mine development, it is considered that the circumstance are not similar and that the grounds of refusal used in that case, do not apply to this development.</p>
<b>Archaeological and geotechnical</b>	
<ul style="list-style-type: none"> <li>Concern that the development may impact on Aboriginal artefacts</li> <li>Concern about surface geotechnical conditions and mine subsidence</li> </ul>	<p>The development will impact on artefacts but the impact is considered acceptable and the OEH have provided a response stating that the archaeological impacts are considered acceptable.</p> <p>Geological and geotechnical matters are best addressed at construction phase.</p> <p>The application has been referred and Subsidence Advisory NSW have provided GTA's in respect of the proposal.</p>
<b>Other</b>	
<ul style="list-style-type: none"> <li>The application does not consider 330kV transmission lines</li> </ul>	<p>The 330kV lines are not on the subject land and do not directly impact on the development.</p>
<ul style="list-style-type: none"> <li>Comments in respect to the DCP, stating it is unconvincing and its contents are lacking</li> <li>Community consultation should be undertaken in respect to the branding of the industrial estate</li> <li>Concern that the report refers to subdivision of rural living zoned land the submission implies that this is erroneous</li> <li>Concern that there is no clarification in respect to bushfire, management of E2 land, environmental living and the relationship of the VPA to the proposal</li> </ul>	<p>These comments and opinions are acknowledged and noted, however they cannot be justified and they do not raise issues that are critical to the determination of the application.</p>

<ul style="list-style-type: none"> <li>• Uncertainty exists in respect to the management of E2 conservation zone</li> <li>• Objection to the reference to industrial site as 'Black Hill', in that this reference will taint the image of the surrounding area</li> <li>• Concern that industrial development will extend to other areas</li> <li>• Existing traffic in area is poor</li> <li>• Proposed development application (being DA 8/2018/101/1), will not comply with minimum area standard</li> <li>• Request that application not be determined until further strategic work is undertaken</li> <li>• Bushfire report does not guarantee that the area will not be affected by bush fire at some time</li> <li>• The DCPs should be consistent between the two estates</li> <li>• Too much flexibility is provided in staging development, how long will it go for, might it be perpetual?</li> <li>• Development is inconsistent with concept approval on adjoining land</li> <li>• It is considered that the industrial estates are in the wrong setting</li> <li>• The buildings should have a large setback</li> <li>• Stevens Group should honour their commitment to local contributions</li> </ul>	
<ul style="list-style-type: none"> <li>• Community consultation in respect to the development application is lacking and inadequately undertaken</li> </ul>	<p>The concern in respect to community consultation is considered justified.</p>

#### **4.15(1)(e)      *The public interest***

The public interest is served through the detailed assessment of this Development Application under the *Environmental Planning and Assessment Act, 1979*, *Environmental Planning and Assessment Regulation 2000*, Environmental Planning Instruments and Council policies. Based on the above assessment, it is considered that the public interest is not served by approval of the application whilst-ever uncertainty remains in respect to the impacts of the development, particularly those relating to traffic.

Notwithstanding the above, it should be recognised that there are broader key strategic interests associated with the activation of not just the subject site, but the Black Hill catalyst area as a whole. In particular, the development of the precinct is likely to result in the generation of economic activity, economic growth and creation of employment opportunities. However, in order for the catalyst area to be developed, key critical issues, associated with traffic predominantly, are required to be addressed.

#### **Section 4.46 (Integrated Development)**

The proposed development is defined as Integrated Development and Nominated Integrated Development.

The following table illustrates the various approvals required:

<b>Approval required</b>	<b>Relevant legislation</b>	<b>Relevant authority</b>	<b>Confirmation GTA's have been issued</b>
Scheduled Activities Section 43	<i>Protection of the Environment Operations Act 1997</i>	EPA	Yes – 12 April 2019
Controlled Activity Approval Section 91	<i>Water Management Act 2000</i>	NRAR	Yes – 14 June 2019
Aboriginal Heritage Impact Permit Section 90	<i>National Parks and Wildlife Act 1974</i>	OEH	Yes – 17 May 2019
Section 22 Approval	<i>Coal Mine Subsidence Compensation Act 2017</i>	SA	Yes – 24 April 2019
Bush Fire Safety Authority Section 100B	<i>Rural Fires Act 1997</i>	RFS	Yes – 26 February 2019

It is noted that the application was originally submitted as Integrated Development under the *Roads Act 1993*, however this aspect was withdrawn on advice from Transport for NSW and Council staff.

Copies of the integrated referral authority responses, including relevant General Terms of Approval (GTA's), are attached to this report.

## **SECTION 7.12 CONTRIBUTIONS**

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The 'Cessnock Section 7.12 Levy Contributions Plan 2017', applies to the application.

The application is not recommended for approval, therefore, contributions have not been calculated.

Notwithstanding the above, in the event the application is support and/or recommended for approval, the contribution payable can be calculated and imposed as a condition of consent.

## INTERNAL REFERRALS

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The Development Application was referred to the following Council officers for comment:

Officer	Comment
Development Engineer	<p>Advice of TfNSW referred to in respect of road network upgrades/mitigation measures etc.</p> <p>Water quality for the proposed road network is addressed through the provision of vegetated swales/open channels and gross pollutant traps (GPTs). Overall, this approach is considered acceptable, however additional information is required in respect to on-site detention and water quality structures.</p> <p>According to Council's mapping system, the site is not within an area that is covered by an adopted or non-adopted flood study. The applicant has prepared a site specific flood study in support of the application. The flood study has determined that the areas of affectation are limited to those areas immediately adjacent to the existing watercourses and are wholly contained within the conservation lands. On this basis, the proposal is considered acceptable with respect to flooding considerations.</p>
Ecologist	<p>The application was submitted before Cessnock LGA ceased being an Interim Designated Area (this occurred on 25 November 2018). The applicant requested approval from council to 'opt in' under Clause 28(2) of the <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>. Council responded on 27th May 2019 confirming that it would allow for the applicant to utilise the <i>Biodiversity Conservation Act 2016</i>, to assess impacts to biodiversity associated with the application.</p> <p>The application is supported from an ecology perspective as impacts have been adequately assessed using the Biodiversity Assessment Methodology. In addition, should the application be approved, relevant conditions of consent would be imposed, including credit retirement requirements along with the proposed minimisation and mitigation measures.</p>

## EXTERNAL REFERRALS

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The Development Application was referred to the following external agencies for comment/concurrence:

Agency	Comment or concurrence?	Outcome
EPA	Concurrence	GTA's issued on 12 April 2019
OEH	Concurrence	GTA's issued on 17 May 2019
NRAR	Concurrence	GTA's issued on 14 June 2019
SA	Concurrence	GTA's issued on 24 April 2019
Rural Fire Service	Concurrence	GTA's issued on 26 February 2019
TfNSW (RMS)	Comment	Objection raised due to likely significant impact on the nearby classified (state) road network.
Ausgrid	Comment	No comments received.

## CONCLUSION

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The development proposal provides for the activation of a site which is recognised in a number of strategic plans as a catalyst area for a planned industrial precinct of regional significance. There are substantial social and economic benefits associated with the proposed development, and there is interest, particularly from relevant government agencies, in enabling the development of the precinct to proceed.

Notwithstanding the above, as submitted, the application does not fully identify, consider and propose mitigation measures to address the likely impacts associated with the proposal, particularly with respect to traffic impacts and the resultant consequences on the state and national road network. Whilst the applicant has recently submitted a report identifying and assessing the impacts associated with off-site works, such report has not been assessed due to the timing of submission of the report. Furthermore, the mitigation measures identified in the report do not form part of the application, and the applicant has not proposed to amend the application to seek approval for such works. It is further noted that the most recently submitted traffic assessment (prepared by GTA Consultants, dated 26 May 2020), also identifies additional mitigation works not included in the initial development application. In this regard, there is a level of uncertainty and confusion as to the exact nature of the development proposed.

A recent NSW Land and Environment Court judgement relating to the adjoining property recognises that there is significant public benefit associated with the development of the overall precinct. However, despite the Court recognising the public benefit, the appeal was dismissed due predominantly to unresolved traffic issues, and the lack of assessment of off-site impacts. Similarly, the development application the subject of this report is considered to propose a development that does not provide adequate measures to mitigate the traffic impacts of the development and threatens to compromise the effective and ongoing operation and functions of classified roads, particularly John Renshaw Drive and the M1.

The development application has been assessed in accordance with Section 4.16 of the *Environmental Planning and Assessment Act 1979*, and all relevant instruments and policies. Accordingly, Development Application No. 8/2018/539/1 is recommended for refusal due to the reasons provided below.

## REASONS FOR REFUSAL

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1. The application does not demonstrate that the safety, efficiency and ongoing operation of classified roads, including John Renshaw Drive, will not be adversely affected by the development. Accordingly the objectives and provisions of Section 101 of *State Environmental Planning Policy (Infrastructure) 2007* cannot be satisfied (consideration under section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*).
2. The Environmental Impact Statement (EIS) submitted in conjunction with the application has not been properly prepared in accordance with the Secretary's Environmental Assessment Requirements (SEARs), specifically in respect to the adequacy and manner in which community consultation was undertaken (consideration under section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*).
3. The likely environmental impacts of the development on the built and natural environments are not fully and clearly identified. In particular, the traffic impacts of the development and the environmental impacts associated with mitigation works associated with off-site traffic works, have not been fully assessed (consideration under section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).
4. The likely visual impact of the development has not been adequately addressed, particularly with respect to screening the proposed subdivision from John Renshaw Drive (consideration under section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*).

## ENCLOSURES

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Appendix A – Development plans

Appendix B – Copies of General Terms of Approval

Appendix C – Advice from Transport for NSW

Appendix D – Applicant's response to traffic concerns raised by Transport for NSW

Appendix E – Photographs of site and surrounds