



SYDNEY WEST PLANNING PANEL

Panel Reference	2019WCI034
DA Number	DA0036/19
LGA	Hawkesbury City Council
Proposed Development	Waste management facility - Construction and material crushing and recycling plant processing facility.
Street Address	100 Fairey Road South Windsor
Applicant/Owner	Andrew Irwin
Date of DA lodgement	7 February 2019
Number of Unique Objections	<ul style="list-style-type: none"> 6
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	<p>Schedule 7 Regionally significant development</p> <p>7 Particular Designated development Clause 7:</p> <p>Development for the purposes of:</p> <p>(c) waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Regulation 2000 Clause 32 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy No. 55 (Remediation of Land) SEPP (Infrastructure) 2007 Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Hawkesbury Local Environmental Plan 2012 Hawkesbury Development Control Plan 2002 Flood Policy 2020
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Environmental Impact Statement Ref: 181025_EIS_Rev6 October 2019; Specialist Road Traffic and Transport Assessment Ref No: 18023r2; Stormwater & Flood Management Report Ref No: 17208 Rev 2 Issue 1 Rev 3; Soil and Water Assessment 181025_SoilWater_Rep_Rev4; Flood Impact Assessment Ref No: Rp311012_00201rg_vrt201008 (rev C-Final); Air Quality Impact Assessment Ref No: 181025_AQIA_Rev4; Noise Impact Assessment Ref No: 181025_NIA_Rev5; Civil Works plans Job No: 17208 Sheet No. 2.01 Rev 3, Sheet No. 3.01 Rev 4, Sheet No. 3.05 Rev 4, Sheet No. 3.11 Rev 4, Sheet No. 4.01 Rev 6, Sheet No. 4.11 Rev 2 and Sheet No. 4.12 Rev 1.
Clause 4.6 requests	<ul style="list-style-type: none"> Not applicable
Summary of key submissions	<ul style="list-style-type: none"> Environmental concerns from proposed earthworks; Incompatibility with Flood Policy 2020; Impact on usability of RU1 zoned land; Overdevelopment of site; and Unresolved traffic issues.
Report prepared by	Natalie Piggott
Report date	18 November 2020



Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

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?	Yes
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e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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?	Not applicable
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	No
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Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?	No
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Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report



Executive Summary

1. Executive Summary

The following report is an assessment of a development application for the use of the site as a Waste Management Facility and involves the following works:

- Create levelled 62,000m² sized platform to RL17.8 – 18m within IN1 General Industrial zone;
- Earthworks comprising of approximately 128,000m³ of soil cut from the RU1 Primary Production zone to provide the fill for the IN1 General Industrial zone levelled platform;
- Installation of security access gate, access road, weighbridge, wheel wash, demountable office (3m x 12m), demountable facilities (3m x 6m), main shed (60m x 30m), water reuse tanks, concrete jaw crusher with triple decked screen, 25 tonne excavator and front loader;
- Unload and load waste materials for processing including material handling and sorting, crushing and screening of sandstone, recycled crushed concrete, brick and excavated rock products;
- Storage of materials in 2 x stockpile storage bays (40m x 10m);
- Stormwater management works; and
- Landscaping provisions.

The application is subject to Clause 7 of State Environmental Planning Policy (State and Regional Development) 2011 which states:

7 Particular designated development

Development for the purposes of—

- (a) *extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000, or*
- (b) *marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000, or*
- (c) **waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.**

The development has been assessed in respect to the relevant planning framework and consideration by various referral bodies, including Transport for NSW (previously known as the RMS and now referred as TfNSW) and EPA, and the following fundamental issues have been identified below:

- The earthworks within the RU1 Primary Production Zone does not relate to a land use;
- The creation of a 62,000m² sized platform to facilitate a development area of less than 15,000m² is considered to be overdevelopment of the site;
- State Environmental Planning Policy (Coastal Management) 2019 has not been adequately addressed due to the earthworks being within the proximity area;
- State Regional Environmental Planning Policy (Hawkesbury-Nepean No. 20) has not been adequately addressed;
- Works proposed on the site are incompatible with Council's adopted Flood Policy 2020 and therefore does not satisfy Clause 6.3(3)(a) of Hawkesbury LEP 2012;
- Earthworks proposed exceed maximum 1m cut under Council's Flood Policy 2020; and
- Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 identifies the proposal as traffic generating development requiring referral to TfNSW for which clause 104 is applicable. The application was referred to TfNSW numerous times and currently the application is not supported due to insufficient information. Additional information was provided by the applicant, the latest of which on 5 November 2020, and was referred to Transport for NSW. A response has not been provided at the time of submission of this report.

2. Applicant Details

Name of applicant: Andy's Earthworks Pty Ltd

Owner of site: Andrew Irwin

Estimated value of works: \$439,369.00

Disclosures: No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

3. Site Description

The site is legally described as Lot 4 in DP264159 and formally known as 100 Fairey Road South Windsor. The site slopes from the front north-west corner of the site to the rear south-east corner, with an approximate change in levels of 13m across the site. The site has a watercourse adjoining the rear of the site and is affected by overland flooding.

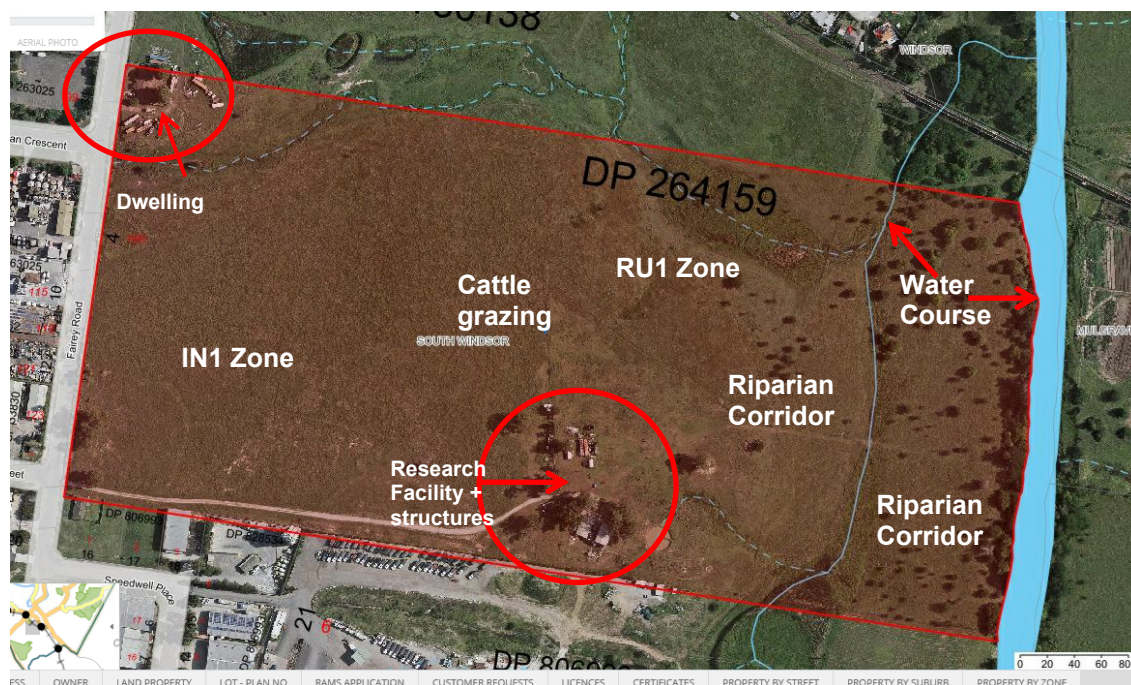


Figure 1: Aerial site map

The site has two zonings being IN1 General Industry and RU1 Primary Production. The site has a number of uses including cattle grazing, residential purposes and research purposes.

The site supports the following facilities:

- Single storey dwelling in the north-western corner;
- Evoqua Water Technologies research facility comprising of two warehouse buildings of 9m x 15m x 5m and 9m x 15m x 3m and small ancillary shed; and
- Two caravans to house groundskeeper.

The proposed development is located within the portion of the site that is zoned IN1 General Industry with the proposed fill for the development taken from the RU1 Primary Production section of the site. The battering is also proposed on the RU1 Primary Production section of the site.

4. Site Application History

The site has been subject to several previous development applications dating back to 1985. The most recent development application relevant to this application is DA0183/10 for the construction of a building for the purpose of a research facility, which is currently onsite and still in use.

5. Proposal

The application seeks consent for a Waste Management Facility - Construction Material Crushing and Recycling Plant Processing Facility and involves the following works:

- Excavation of 128,000m³ of soil from the RU1 Primary Production zone to be used to create a 62,000m² sized levelled platform within the IN1 General Industrial zone by increasing the site level of between 17.3m to 18.0m AHD from existing levels of 13.8-18.13m AHD;
- Construction of 1 x 1,800m² main shed for the processing of waste materials;
- Construction of 2 x 200m² storage bays to store stockpiles of materials;
- Installation of security access gate, weighbridge, wheel wash, 1 x demountable office (3m x 12m), 1 x demountable amenities (3m x 6m), water reuse tanks, concrete jaw crusher with triple decked screen and 25 tonne excavator and front loader;
- Unload and load waste materials for processing including material handling and sorting, crushing and screening of sandstone, recycled crushed concrete, brick and excavated rock products;
- Construction of a 12m wide by 30m long access driveway into the site comprising of a split access road of 7.5m and 4.5m to provide separate vehicular access to the new waste facility and existing research facility at the rear;
- Construction of a 24 space car park, hard stand building platform and trafficable surface area;
- Installation of batter and stormwater provisions; and
- Landscaping provisions.

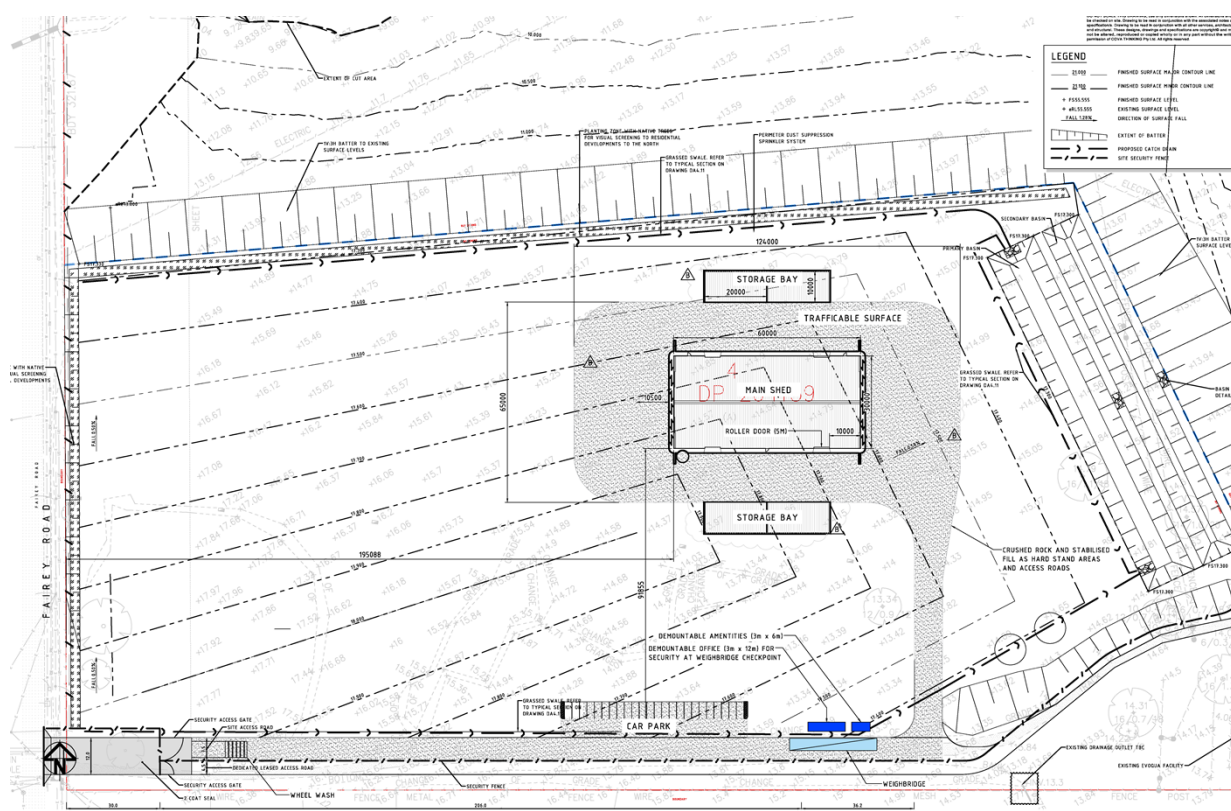
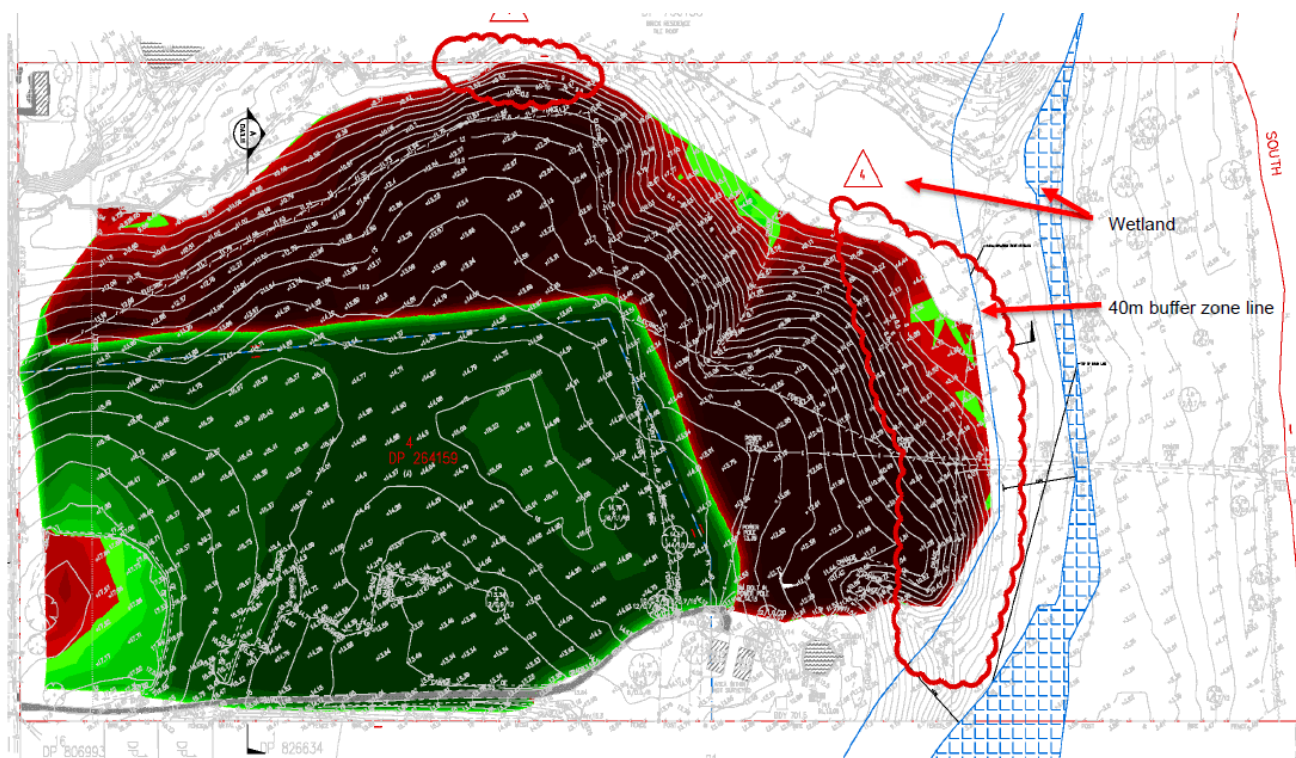


Figure 4: Site plan (partial)



LEGEND			
CUT:		FILL:	
-5.0 TO -2.5m		0.0 TO 0.1m	
-2.5 TO -1.5m		0.1 TO 0.25m	
-1.5 TO -1.0m		0.25 TO 0.5m	
-1.0 TO -0.75m		0.5 TO 0.75m	
-0.75 TO -0.5m		0.75 TO 1.0m	
-0.5 TO -0.25m		1.0 TO 1.5m	
-0.25 TO -0.1m		1.5 TO 2.5m	
-0.1 TO 0.0m		2.5 TO 5.0m	

Figure 5: Excavation plan extract showing green as fill and red to brown as cut

6. Background

7 February 2019
18 February to 28
February 2019
12 March 2019

Application lodged with Council.
Referrals sent to internal officers and external bodies.

15 March to 15 April
2019

Initial Review letter sent to applicant identifying the following issues:

- SEPP Coastal Management 2018 to be addressed; and
- Site rehabilitation/Landscape plan required.

Notification carried out with six submissions received raising the following concerns:

- Volume of waste to be brought onto site and stockpiles;
- Cut and fill proposed and landscaping;

	<ul style="list-style-type: none"> • Inconsistent information within the documentation; • Air quality impacts; • Traffic and carparking impacts; • Amenity impacts including noise, lighting and dust; and • Stormwater runoff and pollution impacts.
22 March 2019	Meeting with applicant and EPA officers to discuss the proposed development. Issues identified included: <ul style="list-style-type: none"> • State Significant development as waste materials to be processed on site is over 100,000 tonnes; • All recycling plant, machinery and processing are to be within enclosed buildings; • Weigh bridge software details to be provided; • Waste management processes to be provided; and • All EPA requirements set out in the SEARS Report to be addressed.
29 March 2019	Correspondence from EPA detailing all requirements discussed at meeting received.
28 March 2019	Additional information request received from TfNSW requesting the following information: <ol style="list-style-type: none"> 1. Lack of assessment of the proposed development , being a Waste/Recycling Facility or Industrial development, as prescribed under Schedule 3 of <i>State Environmental Planning Policy (Infrastructure) 2007</i>, indeed the Environmental Impact Statement contends that the ISEPP does not apply to the development as it is not Infrastructure at Item 3.2.4.3 on page 3-16; 2. No assessment or identification appears to have been undertaken of the proposed truck route to/from the land and relevant assessment of the impact of that truck route on the local, regional and State road system and indirect impacts on other land uses, possibly including residential areas; 3. Provision of a Copy of the SIDRA modelling for standard assessment by RMS Network and Safety Officers.
4 April 2019	Additional Traffic response provided by Transport and Urban Planning Pty Ltd to address TfNSW concerns.
12 April 2019	Additional water drainage from site statement from applicant
15 April 2019	Response from Endeavour Energy received.
23 April 2019	Response from TfNSW received advising issues remain outstanding with application as additional information from Transport and Urban Planning Pty Ltd did not address previous concerns raised.
26 April to 7 June 2019	Various email correspondence regarding updates on application and requested information including requesting confirmation of whether development will be amended.
3 June 2019	General terms of approval received from NRAR.
24 June 2019	Briefing to Sydney Western Planning Panel held identifying the following issues: <ul style="list-style-type: none"> • The application is state significant development in accordance with Section 23(2) in Schedule 1 of the State Environmental Planning Policy (State and Regional Development) 2011 as the application is for the processing of 105,000 tonnes of waste; • Cut and fill within RU1 Primary Production Zone
27 June 2019	Applicant provided Sydney Western Planning Panel Briefing record and requested to respond within 14 days.
11 July 2019	Applicant response to Sydney Western Planning Panel briefing record received and forwarded onto the Sydney Western Planning Panel.
17 July 2019	Discussion and email to applicant's planning consultant detailing issues identified with applicant and further comments from TfNSW.
19 July 2019	Submission from applicant's planning consultant with interim response to issues identified in email dated 17 July 2019.

1 August 2019	Email to applicant's planning consultant identifying outstanding issues to be addressed: <ol style="list-style-type: none"> 1. Amended site plan detailing all works, including all building structures, finished hardstand levels and the car parking provision locations; (provided) 2. Swept paths demonstrating the manoeuvrability of vehicles and trucks (heavy freight vehicles) within the site and that the 31 vehicles spaces and the 20 service bays can be accommodated in AS compliant spaces on the site; 3. Vegetation Management Plan (VMP) by a suitably qualified person; 4. Amended Landscape plan, in conjunction with the VMP, identifying existing vegetation onsite including existing trees numbered and identified, trees to be removed, planting schedule, landscape treatments of battering, etc; 5. Amended stormwater plans and calculations; 6. The current bushfire assessment report has an APZ of 10m but does not clearly identify where this APZ is to start from – will this APZ be from the building structures? 7. Confirmation that the Bushfire Assessment report has been carried out by a certified bushfire consultant; 8. The APZ is to be clearly identified on both the Landscape Plan and VMP; 9. A Statement of Environmental Effects is to be provided addressing all relevant legislation, environmental planning instruments and policies; 10. The Soil and Water Assessment and Flora and Fauna Report need to address what the impacts of the resulting excavation/earthworks will have on the wetlands and vegetated riparian zones, as per previous comments, and what rehabilitation measures will be put in place (The GTA for NRAR also require a rehabilitation plan) in conjunction with the VMP; 11. All information required by the EPA.
5 August 2019	Email to applicant requesting all amended documentation to be provided by 2 September 2019 and determination date set for 23 December 2019.
19 September 2019	Amended architectural plans only submitted. No other additional information provided.
1 October 2019	Email to Sydney Western Planning Panel Secretariat S Jatten advising that all amended documentation had not been provided and seeking cancellation of the 23 December meeting date due to insufficient time to carry out notification and relevant referrals.
1 October 2019	Email to applicant requesting confirmation of when the information requested on 1 August 2019 will be submitted with response from applicant that amended EIS would be submitted shortly.
16 October 2019	Amended EIS received and additional fees paid.
1 November 2019	Re-referrals sent to internal and external referral bodies including EPA, NRAR, TfNSW
12 November 2019	Soil and Water Assessment received.
14 November to 16 December 2019	Amended plans notified to surrounding properties, notice in paper and site sign put up.
20 November 2019	Referral response from NRAR received with no amendments to the GTAs previously provided.
25 November and 9 December 2019	EPA referral response received requesting further information and forwarded to applicant's planning consultant.
10 December 2019	Submissions received.
15 January 2020	Sydney Trains request for application to be referred in accordance with Clause 84 of ISEPP 2007.
1 February 2020	Referral to Sydney Trains lodged on e-Portal.
5 February 2020	Additional information requested from EPA received from applicant's planning consultant and referred back to EPA.
6 March 2020	Further request for additional information received from EPA and forwarded to applicant's planning consultant.
17 March 2020	Referral response from Transport for NSW requesting additional information and forwarded to applicant's planning consultant.

24 March 2020

Email to applicant's planning consultant advising the following:

- The development proposes major earthwork to take fill from the flood liable land and raise a portion of land within the lot above the flood planning level to allow for the proposed waste recycling facility construction.
- The information provided with the application solely addresses the matter in relation to no loss of flood storage volume due to the proposed earthworks. The application has not demonstrated as to how this can be achieved.
- It is considered that in addition to the flood storage matter another critical matter in relation to the impact on flood behaviour or regime due to the proposed development is required to be addressed.
- A detailed flood study and modelling is required to be carried out to assess the impact and changes in flood behaviour due to the development. The modelling must be carried out for 5, 20, 50 and 100 years ARI flood events.

7 April 2020

Response to EPA provided by applicant's planning consultant together with the following response to Council's email dated 24 March 2020:

The request from the flooding engineer has been discussed with Sparks and Partners and the following responses is proposed:

1. *Sparks and Partners will issue their 3D site model to Council (development engineer)*
2. *Council already have a flood model for this area, which can be merged with the provided 3D site model*
3. *Results and findings are presented by Council to Sparks and Partners*
4. *Any departures identified can be addressed by Sparks and Partners, and where relevant, form a condition of consent*

We believe this approach is appropriate for the context of the proposal and the information provided to date. Once this approach has been confirmed with the development engineer, Sparks and Partners can issue the 3D site model directly.

This was referred to Council's Senior Development Engineer who contacted the applicant's stormwater consultant Morgan Walter from Sparks and Partners to discuss the flood study issue.

23 April 2020

Council's Senior Development Engineer referral response after discussing the application with the applicant's stormwater consultant Morgan Walter from Sparks and Partners:

In my conversation Morgan confirmed that they have not carried out flood behaviour modelling for the development. He suggested that they could supply their 3D earthworks model and engage Council's flood modelling consultant to input their data to re-run the model to assess the impact as a result of the development.

Morgan advised that as the council's flooding consultant would already have the initial/baseline model it is more appropriate for them to input the data supplied and run the model.

Should the flood modelling demonstrate that the development will not have any undue impact for various flooding scenarios and event no objection would be raised on engineering grounds to approval of this development.

The applicant has already demonstrated that there would be no loss in terms of flood storage due to the development.

Therefore, it is recommended that the applicant be advised to engage the

BMT WBM consultant to undertake the flood modelling and provide a report to Council in relation to flood behaviour, velocities and potential impact of the development for a range of flooding events e.g. 1:5, 1:20, 1:50 and 1:100 year ARI events.

12 May 2020	Additional information requests from Council's Parks and Recreation Officer and Environmental Health Officer sent to applicant together with a list of outstanding issues yet to be resolved including; <ul style="list-style-type: none">• Flood study and modelling to be received; and• Outstanding information for TfNSW
21 May 2020	Response to Council's additional information request dated 12 May 2020 including amended statement of commitments received from applicant's planning consultant.
25 May 2020	EPA General Terms of Approval received.
26 May 2020	Referral to Transport for NSW with additional information from applicant.
11 June 2020	Email from applicant's planning consultant advising no further additional information, including flood study, would be submitted.
25 June 2020	Request for additional information received from TfNSW and forwarded to applicant's planning consultant for a response.
3, 6 and 7 July 2020	Various email correspondence regarding additional information.
25 August 2020 & 24 September 2020	Email from applicant's planning consultant with additional information to be sent to TfNSW with response received from Transport for NSW advising application not supported and requesting further information.
7 October 2020	Additional information received and referred to Transport for NSW.
9 & 12 October 2020	Flood Impact Assessment and Vegetation Management Plan submitted and referred to relevant officers for assessment.
27 October 2020	Flood Policy 2020 adopted by Council.
29 October 2020	Referral response received from TfNSW advising application not supported and requesting further information.
5 November 2020	Email from applicant's planning consultant with additional information for TfNSW and referral sent. Response not received to date.

Council has provided the applicant multiple opportunities over a long period of time to address issues identified with the application which, upon submission, remain outstanding.

7. Referrals

External Referrals

Environmental Protection Authority (EPA)

A referral was sent to the EPA and after a number of additional information requests, General Terms of Approval have been issued and include the following conditions:

- The amount of waste received at the Premises cannot exceed 98,000 tonnes in any 12 month period.
- The authorised amount of waste permitted on the Premises cannot exceed 20,000 tonnes at any one time.
- All waste handling, loading, unloading, processing and storage must occur on hardstand. Hardstand areas where waste is being kept must be graded so to prevent runoff from water that has come into contact with waste. Water that comes into contact with waste must be collected and disposed of through a licensed waste contractor to a facility that can lawfully accept that type of waste.
- The Licensee must engage a suitably qualified and experienced person(s) to prepare a Surface Water Discharge Characterisation Assessment.
- No polluted water is to be discharged from the Premises.

Transport for NSW (TfNSW)

In accordance with Clause 104 and Schedule 3 of SEPP Infrastructure 2007 the application was referred to the TfNSW and comments were received which requested further information.

Multiple requests for additional information have been received and provided to TfNSW with the most recent correspondence advising that the application in its current form is not supported due to the following:

1. *The swept path diagram in the traffic report indicates that the proposed largest design vehicle, 25m B-Double, have to utilise the opposing lane to perform a turn, which has serious safety impact on the operation of the Macquarie Street and Argyle Street intersection.*

The applicant should provide mitigation measures, including the need/associated funding for upgrading or road improvement works to minimise or eliminate the impact.
2. *TfNSW has reviewed the submitted SIDRA models and notes that the SIDRA models do NOT fit for purpose for the traffic impact assessment. The SIDRA models should be updated and address the following concerns.*
 - ☐ *The lane geometry parameters in the SIDRA model do not replicate the existing traffic condition, such as length of short lanes;*
 - ☐ *Priority parameters haven't been set up properly;*
 - ☐ *Modified Basic Saturation Flow rates, between 2100 tcu/h and 2200 tcu/h, are used in the model without any information and data being provided to support this modification;*
 - ☐ *Since SCATES signal data was provided, the user-given-phase-times should be modelled to replicate the existing traffic signal operation;*
 - ☐ *Modified Peak Flow Factors of 80% are used for the through movements along Macquarie St without any information and data being provided to support this modification;*
 - ☐ *Modified Gap Acceptance parameters were used in the model without any information and data being provided to support this modification;*
 - ☐ *The parameters of Signal Coordination are set up 4 or 5, even on side road, which does not replicate the existing vehicle behaviour. The nearest signalised intersections on both upstream and downstream are greater than 500m apart, through traffic along Macquarie Street, therefore, should be considered random arrivals;*
 - ☐ *Modified All-Red time of 1 second are used in the model without any information and data being provided to support this modification; and*
 - ☐ *TfNSW has previously requested the SCTAES recorded traffic volumes should be modelled and has provided a set of SCATES count traffic data. However, no further information and assumptions have been provided to show how the traffic volumes used in SIDRA models were calculated. The details of calculation steps and assumptions should be documented and submitted to TfNSW for review.*
3. *The Truck Access Routes diagram indicates that all heavy vehicles, including 25m BDouble, will access the site via Argyle Street and Fairey Road. However, TfNSW must notes that Argyle Street and Fairey Road are not approved haulage routes for BDouble vehicle. As such, alternative approved route should be investigated for BDouble vehicle access.*
4. *The crash report, previously provided by TfNSW, indicates that there were 40 reported accidents along the proposed truck haulage route between July 2013 and June 2018. TfNSW is concerned that proposed increasing B-Double traffic associated with the proposed development will have significantly adverse impact on the road safety condition along the haulage route.*

Therefore, the application is to be modified showing the abovementioned issues are addressed and submit to TfNSW for review prior to the determination of the application. Upon receipt of the above requested information, TfNSW will undertake further assessment and provide a response accordingly.

Comment: This response has been provided to the applicant's planning consultant, however the above issues raised by TfNSW remain outstanding.

The application has therefore not been provided concurrence in accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007.

Department of Industry – Water - Natural Resources Access Regulator

The application, being integrated development, was referred to the Natural Resources Access Regulator which provided General Terms of Approval (GTA) for the part of the development that requires a controlled activity approval.



Sydney Trains

The application, being in close proximity to a railway crossing, was referred to Sydney Trains in accordance with Clause 84 of State Environmental Planning Policy (Infrastructure) 2007 for concurrence.

Concurrence was provided on 25 March 2020 subject to the imposition of operational conditions.

Department of Defence

The application was referred to the Department of Defence who raised no objection to the proposal.

Internal Referrals

Heritage Advisor

No objections raised as the proposal will not have any detrimental impacts to the neighbouring heritage item at 124 Mulgrave Road in terms of vistas to and from the item due to the considerable mature vegetation on either side of South Creek.

Building Surveyor

No objections subject to recommended draft conditions.

Environmental Health Officer

No objections subject to recommended draft conditions.

Sewer Management Facilities Officer

The wastewater and sewerage generated by the demountable amenities and office are proposed to be managed by a private contractor, however no details have been provided as to what system will be used or how it will be managed. Council is the sewer authority in South Windsor and where connection to sewer is available.

Senior Development and Subdivision Engineer

An assessment of the application and subsequent Flood Impact Assessment was carried out and it was found that:

1. *The Flood Impact Assessment carried out detailed flood modelling. The assessment documents the findings of investigations undertaken to assess flood behaviour for pre- and post-development terrain for the following two flood mechanisms:*
 - a. **Local Catchment Flooding** – i.e. flooding originating from rainfall across the South Creek catchment, including Eastern Creek; and
 - b. **Regional flooding** – flooding caused by Hawkesbury River dominated flooding.
2. *The results of this flooding analysis have been applied to justify compliance with Council's Flood Policy (2012) and LEP Clause 6.3.*
3. *The development proposes to undertake maximum depths of cut and fill of 5.3 and 4.2 meters respectively, with no net loss in flood storage volume in 1:100 year ARI. The purpose of the earthworks is to build a raised fill pad at a level of at least 17.3m AHD in order to ensure the pad is above the peak level of the 1% AEP flood for proposed industrial development.*
4. *The flood impact assessment concludes that:*

The predicted flood modelling across the site for pre- and post-development conditions for local and regional modelling indicates that the development will result in:

 - *No change to peak 1% AEP flood levels outside of the site for both local (South Creek) flooding and regional (Hawkesbury-Nepean River) flooding, and,*

- *Changes to peak 1% AEP flow velocities outside of the site of up to 0.25 m/s will have negligible impact.*
- 5. *The applicant has demonstrated compliance with the Council's Flood Liable Lands Policy 2012.*
- 6. *The Flood Impact Assessment has also satisfied the LEP Clause 6.3 in relation to no adverse impacts on flood behaviour and flood storage loss only. However, the report has not assessed other matters in relation to compatibility of the development for land use.*
- 7. *The application has been assessed for compliance with the recently adopted Flood Policy 2020 and is incompatible with the flood risk category of the land which does not satisfy Clause 6.3(3)(a). The application can therefore not be supported.*

Comment: An assessment of the application under Clause 6.3 Flood Planning is provided further in this report.

Environmental Parklands Officer & Parklands Officer

An assessment of the application has been carried out and the following issues were identified:

- *There is a small pocket of approximately 50 trees, the majority are *Eucalyptus crebra* (Narrow-leaved Ironbark) and 5% are *Eucalyptus amplifolia* (Cabbage Gum) re-growth. These are remnant trees from the Cumberland Plain Woodland however, there is no understorey as the site has been heavily grazed. It is therefore recommended to retain this small pocket of trees and have the applicant regenerate the understorey back to Cumberland Plain Woodland. The 3 x *Eucalyptus tereticornis* (Forest Red Gum) located at the front of the site should be retained, however it is noted that one of these trees is located within the proposed driveway requiring its removal.*
- *The VMP document does not appear to provide any management plan recommendations with respect to the **ongoing operational phases** of the proposal, beyond the stated 5 year lifespan of the VMP.*
- *The actual, proposed width of the 'Watercourse Buffer' area (within Figure 1) is not defined in the VMP. The 40m buffer width is required to be identified on the plan to enable an assessment with respect to its adequacy. It is also noted that at various locations around the site, Figure 1 proposes the encroachment of the proposed 'Cut and Fill Impact Area' to be well **within** the area mapped as 'proximity area for coastal wetlands'. This has not been addressed in terms of impacts the earthworks will have to the coastal wetlands or how the revegetation will manage these impacts.*
- *The VMP (regarding 'Zone 1') states that 'if any *Eucalyptus crebra* ... or *Eucalyptus tereticornis* ... are required to be removed ... they should be replaced ... within this zone, from species representative of Cumberland Plain Woodland (Table 1).' The above-quoted statement is to be amended to read '.... within this zone, from species representative of Cumberland plain Woodland (Table 1), **including an appropriate mix of tree, shrub and ground layer species**. All individual trees are required to be replaced at the ratio of 3:1, **exclusive of the total numbers of shrub and ground layer specimens also used to replace any trees removed**.' With respect to this issue, Council recommends that the VMP also include the regeneration of **the understorey** back to Cumberland Plain Woodland. This can be conditioned.*
- *Page 4 of the VMP (also regarding 'Zone 1') states that 'All cattle should be excluded from this zone.' Continued grazing of cattle on the site, during the construction and/or subsequent operational phases of the project, is unlikely to be continued and this aspect of the applicant's proposal has not been addressed as to how the remaining RU1 Primary Production zoned area of the site is to be managed or used.*
- *The VMP does not appear to be supported by an updated landscape plan.*

Planning Comment: The applicant was advised that an amended landscape plan was required to be submitted clearly identifying the existing vegetation currently onsite and was to be prepared in conjunction with a vegetation management plan. The plan was to; include all existing trees numbered and identified, identify trees to be removed, a detailed planting schedule and what landscape treatments were to be proposed for the battering. The 10m asset protection zone was also requested to be placed on the landscape plan in order to ascertain limitations of plantings within close proximity to the proposed buildings.

The landscape plan submitted with the application has not been amended to provide the requested information above. The submitted plan has only provided landscape details along the front of the site and within the bioretention swales. The landscape plan has shown, in red, six trees to be removed however these trees have not been identified nor has

an assessment of their useful life expectancy, landscape significance or retention value been carried out. The fifty *Eucalyptus amplifolia* (Cabbage Gum) and *Eucalyptus crebra* (Narrow-leaved Ironbark) trees onsite have not been identified anywhere on any of the plans and no assessment of the impact of the earthworks on these trees has been carried out.

The submitted vegetation management plan (VMP) has provided a recommended list of species which has included trees, shrubs and ground covers to be included in the revegetation of the site, however the landscape plan does not include any of the shrub species listed in the VMP nor has it detailed any trees, shrubs or ground covers to be planted anywhere else on the site, including the planting buffer zone identified on the plans along the top northern edge of the platform.

It is unclear from the VMP how many trees, shrubs or ground covers are required within the various zones, particularly as the earthworks within the RU1 Primary Production zone will be heavily reliant on revegetation to stabilise the excavated soil. The VMP does not appear to address this aspect of the application.

8. Planning Assessment

Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP & A Act)

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

a) The provisions (where applicable) of any:

i. Environmental Planning Instrument:

State Environmental Planning Policy (State and Regional Development) 2011

The proposed development is for a waste management facility. The applicant has nominated the application as designated development under Schedule 7 Regionally significant development Clause 7 Particular Designated development Subparagraph (c) '*waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.*'

The proposal has been nominated as designated development as it meets the following highlighted items under Clause 32 of Schedule 3 of the Environmental Planning & Assessment Regulations:

32 Waste management facilities or works

- (1) *Waste management facilities or works that store, treat, purify or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and:*
- (a) *that dispose (by landfilling, incinerating, storing, placing or other means) of solid or liquid waste:*
 - (i) *that includes any substance classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste, or*
 - (ii) *that comprises more than 100,000 tonnes of "clean fill" (such as soil, sand, gravel, bricks or other excavated or hard material) in a manner that, in the opinion of the consent authority, is likely to cause significant impacts on drainage or flooding, or*
 - (iii) *that comprises more than 1,000 tonnes per year of sludge or effluent, or*
 - (iv) *that comprises more than 200 tonnes per year of other waste material, or*
 - (b) *that sort, consolidate or temporarily store waste at transfer stations or materials recycling facilities for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse and:*



- (i) *that handle substances classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste, or*
- (ii) *that have an intended handling capacity of more than 10,000 tonnes per year of waste containing food or livestock, agricultural or food processing industries waste or similar substances, or*
- (iii) *that have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or **building demolition material**, or*
- (c) *that purify, recover, reprocess or process more than 5,000 tonnes per year of solid or liquid organic materials, or*
- (d) *that are located:*
 - (i) *in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area, or*
 - (ii) *in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils, or*
 - (iii) *within a drinking water catchment, or*
 - (iv) *within a catchment of an estuary where the entrance to the sea is intermittently open, or*
 - (v) *on a floodplain, or*
 - (vi) *within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.*

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The application has included a Phase 1 Preliminary Assessment which has concluded that the site environmental assessment and history of the site has revealed no evidence of contaminating activities to have been carried out onsite. The assessment has concluded that a Phase 2 Assessment is not required, however the assessment has made the following recommendations:

- *The spilled fertiliser near the shipping containers should be cleaned up;*
- *Waste scattered around the site of the development should be removed appropriately;*
- *Run-off from the concrete batching plant onto the site should be prevented;*
- *An acid sulfate soil management plan is to be prepared.*

Council's Environmental Health Officer has reviewed this Phase 1 Preliminary Assessment and is satisfied that the conclusions and recommendations are acceptable.

Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997)

The aim of this Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The site contains environmentally sensitive areas as it adjoins South Creek at the rear of the property and contains small wetlands, a riparian corridor and contains class 5 acid sulfate soils and is within 500m of class 4 acid sulfate soils. The following assessment under the relevant parts of the SEPP are as follows:

Part 2 Clause 6 Specific Planning policies and recommended strategies:

The application has provided both a Soil and Water Assessment by Benbow Environmental dated November 2019 Rev 4 (SWA2019) and a Stormwater and Flood Management Report by Sparks and Partners dated 2 October 2019 Rev 3 (SFMR2019). The SWA2019 has addressed the following specific planning policies and recommended strategies under Clause 6:

(1) Total catchment management

Policy: Total catchment management is to be integrated with environmental planning for the catchment.

Strategies:

- (b) Consider the impact of the development concerned on the catchment.*

2) Environmentally sensitive areas

Policy: The environmental quality of environmentally sensitive areas must be protected and enhanced through careful control of future land use changes and through management and (where necessary) remediation of existing uses.

Strategies:

- (d) Protect wetlands (including upland wetlands) from future development and from the impacts of land use within their catchments.*
- (g) Consideration should be given to the impact of the development concerned on the water table and the formation of acid sulphate soils.*

(3) Water quality

Policy: Future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.

Strategies:

- (a) Quantify, and assess the likely impact of, any predicted increase in pollutant loads on receiving waters.*
- (b) Consider the need to ensure that water quality goals for primary contact recreation and aquatic ecosystem protection are achieved and monitored.*

(12) Metropolitan strategy

Policy: Development should complement the vision, goal, key principles and action plan of the Metropolitan Strategy.

Strategies:

- (e) Consider the implications of predicted climate change on the location of development and its effect on conservation of natural resources.*

Comment: The SWA2019 has stated that the major impacts to the catchment are associated with the surface and ground water impacts with the major impacts to the surrounding wetlands occurring from potential pollutants being released into the nearby wetlands impacting the aquatic ecosystems. The mitigation measures to address these major impacts have been provided as follows:

- Preparation and implementation of a Construction Environmental Management Plan and Acid Sulfate Soil Management Plan;
- Earthworks to be carried out in stages;
- Installation of a stormwater drainage system consisting of drainage swales, primary and secondary sediment detention basins designed to treat sediment laden runoff and prevent seepage with a sealed liner;
- Construction erosion and sediment controls implemented and maintained;
- Water quality testing of sediment detention basins and groundwater;
- Maintenance of all stormwater infrastructure including drainage swales and sediment detention basins;

The Soil and Water Assessment report has also stated that no wastewater will be discharged onto the site and all rainwater runoff from the roofed areas will be directed into a rainwater tank and used for dust suppression

purposes. Wastewater from the wheel wash will be connected into a reticulated loop system and sewerage and wastewater from the buildings will be managed by a contractor.

Whilst the assessments have concluded that the amount and quality of stormwater runoff is consistent with the aims of SREP No. 20, the strategies listed in the Action Plan of the Hawkesbury-Nepean Planning Strategy and the specific planning policies and recommended strategies contained in Clause 6, the issue of the earthworks within the RU1 Primary Production zone has not been addressed.

The specific planning policies and recommended strategies contained in Clause 6 that have not been addressed are as follows:

6 Specific planning policies and recommended strategies

The specific planning policies and recommended strategies for this plan are as follows:

(8) Agriculture/aquaculture and fishing

Policy: Agriculture must be planned and managed to minimise adverse environmental impacts and be protected from adverse impacts of other forms of development.

Strategies:

- (a) Give priority to agricultural production in rural zones.
- (b) Ensure zone objectives and minimum lot sizes support the continued agricultural use of Class 1, 2 and 3 Agricultural Land (as defined in the Department of Agriculture's Agricultural Land Classification Atlas) and of any other rural land that is currently sustaining agricultural production.
- (c) Incorporate effective separation between intensive agriculture and adjoining uses to mitigate noise, odour and visual impacts.
- (d) Protect agricultural sustainability from the adverse impacts of other forms of proposed development.
- (e) Consider the ability of the site to sustain over the long term the development concerned.
- (f)

(9) Rural residential development

Policy: Rural residential development should not reduce agricultural sustainability, contribute to urban sprawl, or have adverse environmental impacts (particularly on the water cycle or on flora or fauna).

Note—

Refer also to items (1)–(7) and (12) for relevant strategies.

Strategies:

- (a) Give priority to agricultural production in rural zones.
- (b)
- (c) Maintain or introduce appropriate separation between rural residential use and agricultural use on the land that is proposed for development.
- (d)
- (e) Consider the suitability of the land for keeping livestock, whether or not for commercial purposes, and appropriate mitigating measures to prevent land degradation.
- (f)
- (g) Consider any adverse environmental impacts of infrastructure associated with the development concerned.

The site is currently used for the grazing of cattle and contains a rural residential dwelling in the north-western corner of the site. The proposed earthworks within the RU1 Primary Production zone has the potential of significantly impacting upon the availability and viability of continued agricultural use of the site which is inconsistent with the above policies and recommended strategies. This site is mapped as class 3 Agricultural land and the significant change in topography and loss of topsoil as fill has not been addressed within the application.

The Soil and Water Assessment Report No. 181025_SoilWater_Rep_Rev4 by Benbow Environmental dated November 2019 has only provided general information regarding the type of soil the site is mapped as containing the geological composition of T1: Londonderry Clay and Tr: Rickabys Creek Gravel from the Penrith 1:100000 Geological Map Sheet 9030 and as alluvial and beach soil landscape area by the Soil and Land Resources of the Hawkesbury-Nepean Catchment Map. However no geotechnical assessment or soil sampling has been carried out to determine whether the soil type is in accordance with these maps and no testing or analysis of the soil has been carried out to determine its potential for agricultural use in terms of soil type, composition, pH levels, nutrients, drainage and the like. The proposed earthworks are proposed to be revegetated in order to prevent erosion and provide land stability and this will sterilize any potential agricultural activities on the site.

The residential use located on the site has also not been addressed within the application. The dwelling is clearly identified on the survey and all plans as being located on the subject site but no impact assessment has been carried out from the proposed earthworks and partial use of the site as a waste management facility.

Part 3 Clause 11 Development Controls:

The following applicable development controls where additional matters for consideration of the proposed development:

Clause 11(17) Sewerage Systems or Works

(17) Sewerage systems or works

Definition:

Development for the purpose of any sewerage system or work which stores, treats or disposes of sewage (including domestic on-site disposal systems that are ancillary to development which requires consent) but not including a public utility undertaking.

Consent required.

Additional matters for consideration by the consent authority:

- (a) *Whether the proposed development will be capable of connection to a Sydney Water Corporation Limited or council sewerage system either now or in the future.*
- (b) *The suitability of the site for on-site disposal of effluent or sludge and the ability of the sewerage systems or works to operate over the long-term without causing significant adverse effects on adjoining property.*
- (c) *The likely effect of any on-site disposal area required by the proposed development on:*
 - *any water bodies in the vicinity (including dams, streams and rivers), or*
 - *any mapped wetlands, or*
 - *any groundwater, or*
 - *the floodplain.*
- (d) *The scope for recycling and reusing effluent or sludge on the site.*
- (e) *The adequacy of wet weather storage and the wet weather treatment capacity (if relevant) of the proposed sewerage system or works.*
- (f) *Downstream effects of direct discharge of effluent to watercourses.*
- (g) *The need for ongoing monitoring of the system or work.*

The application has stated that the wastewater and sewerage generated by the demountable amenities and office are proposed to be managed by a private contractor, however Council as the sewer authority does not support pump out or private removal of wastewater and sewer.

No details have been provided to demonstrate how the wastewater and sewerage will be collected and given that Council requires sewer connection, this aspect of SREP 20 has not been adequately addressed.

Clause 11(18) Waste management facilities or works

(18) Waste management facilities or works

Definition:

Development for the purpose of waste management facilities or works described in Schedule 3 (Designated Development) to the Environmental Planning and Assessment Regulation 1994.

Consent required.

Additional matters for consideration by the consent authority:

- (a) Any potential for groundwater contamination.
- (b) The adequacy of the proposed leachate management system and surface water controls.
- (c) The long-term stability of the final landform and the adequacy of the site management plan.
- (d) If extraction of material is involved in the creation or other development of the waste management site, whether the extractive operation will have an adverse impact on the river system.

Whilst the application has provided assessments on the matters listed in (a) and (b), the application has failed to carry out an assessment of the matters listed in (c) and (d). The resulting landform from the extraction of soil to provide the leveled platform has not been adequately addressed in terms of site management and usability. Revegetation has been proposed as a management strategy for the earthworks, however excavation of up to 5m is proposed and whilst erosion and sediment control measures to manage runoff to the watercourse have been proposed, this does not address the short and long term soil erosion issue that will occur from the earthworks whilst the site is being revegetated. It has also not been demonstrated that the revegetation proposed will address the stability of the final landform, particularly when the resulting landform has been presented in the following earthwork schematic in the following Figure 5.

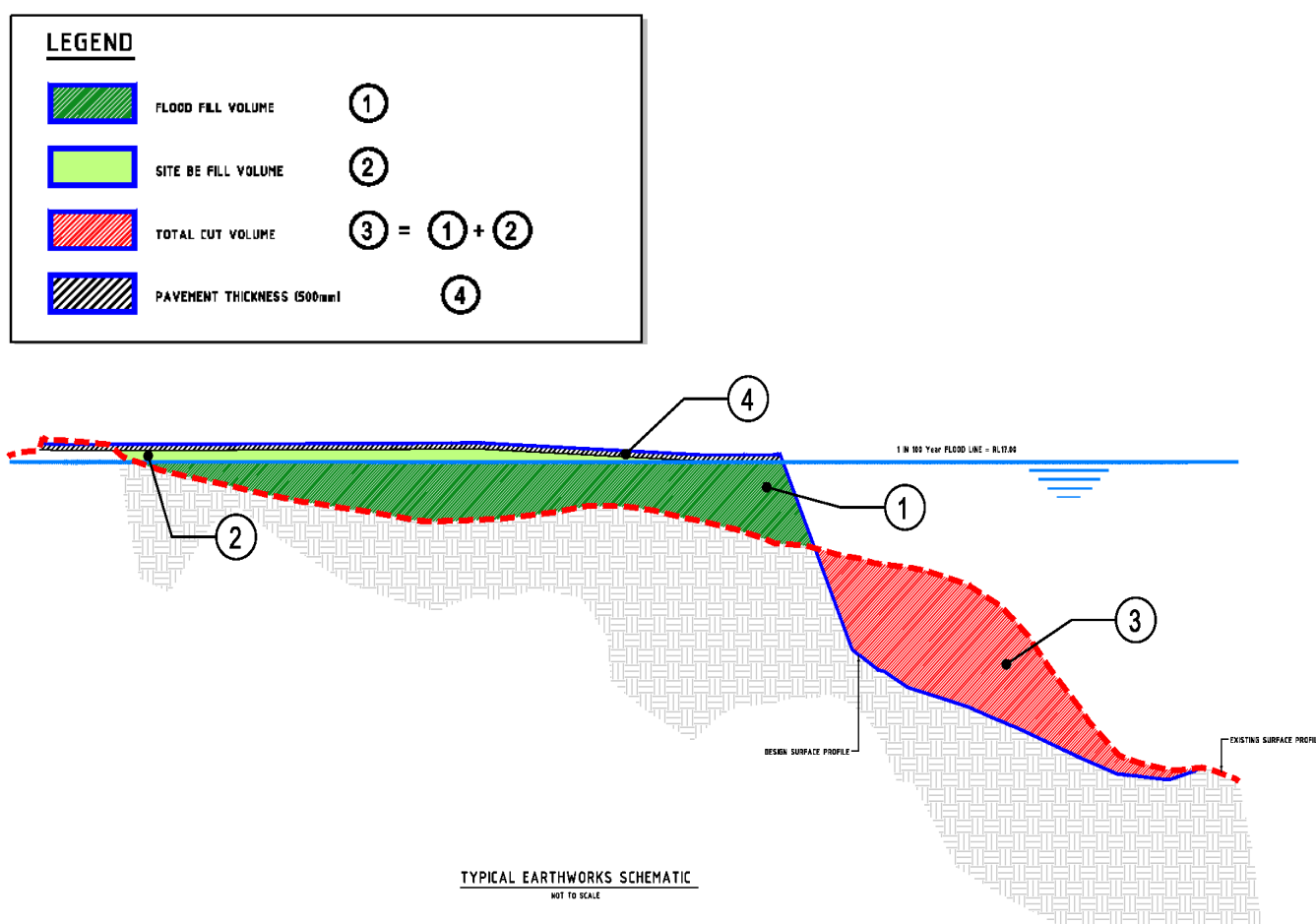


Figure 5: Earthworks Schematic extract

Hawkesbury-Nepean Scenic Quality Study

The site is mapped as being of regional significance on Map 27 of SREP 20 and is within the identified South Creek Catchment area. The mapped regional significance of South Creek extends approximately 400m into the site from South Creek. In accordance with the Clause 3.3.1 Landscape Unit of the Hawkesbury-Nepean Scenic

Quality Study by Department of Urban Affairs and Planning the proposed earthworks are inconsistent with the scenic conservation issues.

State Environmental Planning Policy (Coastal Management) 2018

The aim of this Plan is to promote an integrated and coordinated approach to land use planning in the coastal zone and provide management objectives for each coastal management area.

The site is mapped as Coastal Wetlands, Coastal Environmental Area and Coastal Use Area for which Division 1 Clauses 10 and 11, Division 3 Clause 13 and Division 4 Clause 14 are required to be considered. The proposed development does not encroach into the Coastal Wetlands, Coastal Environmental Area and Coastal Use Area, however the earthworks do encroach into the proximity area for coastal wetlands, as highlighted in hatched blue in Figure 6 below.

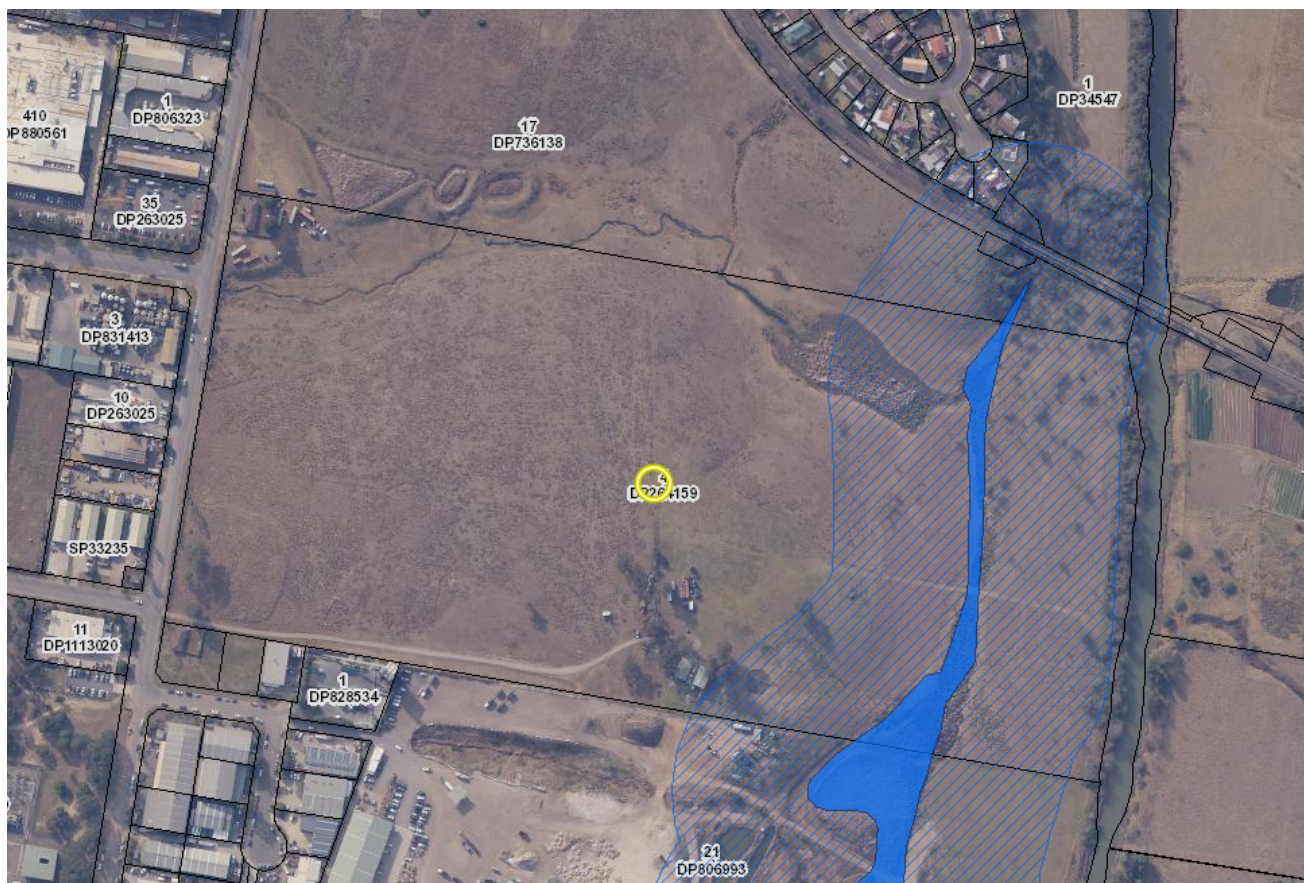


Figure 6: Location of coastal wetlands and proximity area

The relevant clause of the SEPP to be considered is Clause 11 and an assessment against this clause is provided below:

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

The site has been identified on the Coastal Wetlands and Littoral Rainforests Area Map as “proximity area for coastal wetlands”.

Clause 11(1) requires the consent authority to be satisfied that the proposed development will not significantly impact upon:

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*



The application proposes earthworks within the coastal wetlands proximity area and must satisfy the consent authority, under Clause 11(4), *'that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.'*

The plans have not clearly identified the extent of earthworks into the proximity area. Whilst the earthworks have remained outside the 40m buffer zone from the wetland, the earthworks will encroach into the proximity area. This level of cut will fundamentally change the landform and topography of the site and the impact on the proximity area has not been considered in the application.

Accordingly Clause 11 has not been satisfied as the proposed development has not adequately demonstrated that sufficient measures have been or will be taken to protect or, in this instance, enhance the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest as significant earthworks are proposed and no assessment has been carried out in this instance.

State Environmental Planning Policy (Infrastructure) 2007

The proposed application is subject to the requirements of SEPP Infrastructure. The relevant clauses of the SEPP and an assessment against those clauses are provided below:

Clause 2: Aims of the policy

The Aims of the SEPP essentially seek to improve the delivery of infrastructure to the State. The application has been considered against the provisions of this SEPP and is consistent in all relevant respects.

Division 15 Railways:

Clause 84 Development involving access via level crossings

Clause 84 is applicable as the development is in close proximity to a level crossing and has the potential to significantly increase the total number of vehicles or trucks using the level crossing. Accordingly concurrence in accordance with Clause 84(3) is required and has been provided by Sydney Trains.

Division 17 Road and Traffic:

Clause 104 Traffic-generating development

Clause 104 Traffic-generating development is applicable as the development is for a waste management facility which is listed in Column 1 of Schedule 3.

The application was referred to TfNSW in accordance with Clause 104(3) and the comments from TfNSW received have indicated that the application is not supported in its current form for reasons outlined under Part 6 Referrals of this report.

Hawkesbury LEP 2012

Under Hawkesbury LEP 2012, the property is zoned IN1 General Industrial and RU1 Primary Production. The following is a summary of the clauses under HLEP 2012 applicable to the development.

Clause 2.2 Zoning of Land to which Plan applies – Permissibility

The site is zoned IN1 General Industrial and RU1 Primary Production. Waste management facilities are permissible within the IN1 General Industrial zone and prohibited within the RU1 Primary Production.

The waste management facility will be located on the IN1 General Industrial zone which will be levelled by excavated fill from the RU1 Primary Production zone of the site.

Whilst the waste management facility is proposed on the portion of the site which is permissible, the earthworks to facilitate the levelled platform within the IN1 General Industrial zone will be taken from the RU1 Primary Production zoned area of the site.

The amended Environmental Impact Statement has stated, at page 3-23, that the proposed development would include earthworks within the RU1 Primary Production zoned area for the purposes of reducing the flood risk to the surrounding properties and to raise the ground level of the IN1 General Industrial zoned land. Flood mitigation works under Clause 2.2 are permitted with consent, however the EIS has not conclusively demonstrated that the proposed earthworks within the RU1 zone are flood mitigation works as, at page 3-24, it concludes that *'the proposed use of the RU1 zones area of the land may fall under the definition of "flood mitigation work" as it is for the purposes of reducing the flood risk to adjoining properties.'*

For clarity the Flood Impact Assessment by Advisian dated October 2020 has provided, at page 10, that the proposed earthworks are 'compensatory cut around the perimeter of the fill pad to offset any loss in floodplain storage'. However, the flood report concludes that the proposed earthworks will have little to no effect on the flood storage, flood behaviours or velocities and that the cut will only provide additional flood storage.

Therefore, the earthworks proposed within the RU1 Primary Production zone are not considered to be flood mitigation works as the earthworks are not specifically designed to mitigate flood impacts within the RU1 Primary Production zone. The earthworks are to provide a levelled platform on the IN1 General Industrial zone above the 1 in 100 year flood level therefore the works cannot be considered as flood mitigation works.

The applicant has previously submitted that a waste management facility under the RU1 Primary Production zone is permissible under Division 23 Part 3, Clause 121 of State Environmental Planning Policy (Infrastructure) 2007, which provides as follows:

121 Development permitted with consent

- (1) *Development for the purpose of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone.*
- (2) *Development for the purposes of a waste or resource transfer station may be carried out by any person with consent on:*
 - (a) *land in a prescribed zone, or....*

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) *RU1 Primary Production,....*

However, the application does not propose a waste management facility on the RU1 Primary Production zoned portion of the land and has not specifically identified the earthworks as being for the waste management facility on the IN1 General Industrial portion of the land. The proposed earthworks do not facilitate any industrial activity on the RU1 Primary Production zone nor can it be considered ancillary works to the waste management facility as it is taking resource land from one zone and placing it onto another for no other reason than to provide a levelled building platform at the 1 in 100 year flood level. The earthworks in the RU1 Primary Production zone will impact the ability to allow the continued agricultural use of the land to be carried out on this portion of the site.

The earthworks within the RU1 Primary Production zone is therefore considered to be prohibited development as the application has not clearly defined how the earthworks are permissible.

Clause 2.3 – Zone objectives and Land Use Table

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 for IN1 General Industrial zone are as follows:

Zone IN1 General Industrial

1 Objectives of zone

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To allow commercial development for—*
 - (a) *uses ancillary to the main use of land in the zone, and*
 - (b) *the day-to-day needs of the occupants and employees of the surrounding industrial area.*

- *To ensure that industrial development creates areas that are pleasant to work in and safe and efficient in terms of transportation, land utilisation and services distribution.*

Comment: The application for a waste resource facility meets the objectives of the IN1 General Industrial zone.

The objectives for RU1 Primary Production zone are as follows:

Zone RU1 Primary Production

1 Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage agricultural activities that do not rely on highly fertile land.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*
- *To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.*
- *To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.*

The proposed earthworks within the RU1 Primary Production zone is not considered to be consistent with the above objectives as this portion of the site will effectively become unusable for any agricultural purpose. Grazing of livestock or horticultural activities will potentially impact the revegetation of the excavated areas. This revegetation is to provide erosion controls and land stability and any agricultural activities will jeopardise this revegetation's function.

The amount of soil to be removed from this portion of the site will impact the existing agricultural landscape that currently exists on the site and will detract from the existing rural character of the site.

Clause 4.3 – Height of Buildings

The maximum building height under Clause 4.3 for the site is 10m. The proposal includes a main processing shed, office building and amenities building which have a height as follows:

Proposed	Height	Complies
Main shed	10m	Yes
Storage bays	8.185m	Yes
Amenities block	3m	Yes
Office block	3m	Yes

The proposed buildings therefore comply with the maximum building height development standard of 10m.

Clause 6.2 Earthworks

The proposed development seeks to carry out earthworks that will result in approximately 128,000m³ of soil being excavated from the RU1 Primary Production portion of the site and placed onto the IN1 General Industrial zone.

The objectives of Clause 6.2 are:

- (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 separate development consent.*

Further to the objectives, Clause 6.2(3) requires the consent authority to consider the following matters:

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) *the effect of the 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 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 watercourse, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The amount of earthworks proposed is not considered to meet the objectives of this clause as it is likely to impact the environmental functions and processes of the site and, given the volume of soil required to be removed, the matters required to be taken into consideration have not been adequately addressed. The earthworks are likely to disrupt and have a detrimental effect on the soil stability of the RU1 Primary Production zoned portion of the site due to the sheer volume of soil being removed and there are other measures that can be proposed which would avoid this level of earthworks.

This amount of earthworks is to facilitate the provision of a 62,000m² platform to accommodate the waste management facility, however it is unclear as to why the entire portion of the IN1 General Industrial zoned area of the site requires to be filled, particularly as the waste management facility takes up less than 15,000m² and does not propose or require any heavy vehicle parking. The site is of a size that can readily accommodate the relocation of the facility towards the front setback which will move the proposal further away from the neighbouring residential properties and significantly reduce the amount of earthworks required, which may be sourced from the industrial zoned portion of the site and have no impact on the RU1 Primary Production portion of the site.

Clause 6.3 Flood planning

The majority of the site is below the 1 in 100 year flood level of 17.3m AHD for which Clause 6.3 is applicable in accordance with Clause 6.3(2).

The application must be assessed against Clause 6.3(3) as follows:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*
 - (a) *is compatible with the flood hazard of the land, and*
 - (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) *incorporates appropriate measures to manage risk to life from flood, and*
 - (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The applicant has provided a Flood Impact Assessment which has been reviewed by Council's Senior Development and Subdivision Engineer who has concluded that:

The predicted flood modelling across the site for pre and post development conditions for local and regional modelling indicates that the development will result in:

- *No change to peak 1% AEP flood levels outside of the site for both local (South Creek) flooding and regional (Hawkesbury-Nepean River) flooding, and,*
- *Changes to peak 1% AEP flow velocities outside of the site of up to 0.25 m/s will have negligible impact.*

However whilst the report has addressed Clause 6.3(3)(b) in that there will be no change to the flood behaviour and there will be no flood storage loss, the report has not provided an assessment of the compatibility of the

proposal with the flood hazard of the site, which at the time of lodgement was categorised as high to extremely high flood risk.

Further to this Draft Flood Policy 2020 was prepared by Council to address associated issues with floodplain management across the Hawkesbury-Nepean Valley. Council resolved at its meeting on 11 August 2020 to place the draft policy on exhibition from 31 August 2020 to 28 September 2020. During that exhibition time two submissions were received, and the draft policy was amended to address concerns raised within those submissions.

On 27 October 2020 the draft policy was adopted at Council's Ordinary Meeting and Flood Policy 2020 came into effect. The policy replaces the Flood Liable Lands Policy 2012 and has no savings provisions.

The purpose of the policy is to provide the information and development controls to be used for the preparation and assessment of Development Applications for land affected by the 1:100 ARI flood event to address the requirements of Clause 6.3 - *Flood planning of Hawkesbury Local Environmental Plan 2012*.

The Flood Policy 2020 includes a Schedule of Flood Related Development Controls, which provides up-to-date, relevant, and best practice controls to meet the requirements of Clause 6.3 – *Flood planning of Hawkesbury Local Environmental Plan 2012*, and to clearly express how a proposed development's suitability is assessed in relation to the impacts of flooding.

The controls within the Flood Policy 2020 are based on the Hazard Category in which a development will be situated, and provides appropriate controls dependent on whether the proposed is:

- new development, or
- is for the purposes of additions, alteration, intensification, rebuilding or redevelopment of an existing use, or
- if an existing use, whether or not it is within a compatible or incompatible Hazard Category.

The application has been assessed against the new Flood Policy 2020 and Schedule of Flood Related Development Controls as follows:

- The site has a flood level of 17.3m AHD and the exiting ground levels over the site range from 13.34m to 16.67m as provided by the lodged survey and plans;
- According to Figure 1 of Section C Flood Hazard Categories the site falls under Hazard Category H4 and H5 where the filled platform is proposed with the hydraulic classification of the area as Flood Storage Area;
- In accordance with Table 2 Compatibility of Land Uses with Hazard Categories, the proposal is categorised as Commercial/Industrial – Highly Vulnerable Uses where for H1, H2 and H3 Hazard Category this type of development is compatible. For H4, H5 and H6 Hazard Category this type of development is incompatible.
- The proposed earthworks, when assessed against Part 4 Development in Hazard Category H4 Section H4.12, does not comply as the maximum amount of cut and fill is 1m. This 1m cut and fill is also applicable under Part 5 Development in Hazard Category H5 Section H5.12.

The application has therefore been found to be incompatible development in accordance with the Flood Policy 2020 and is therefore unable to be supported as Clause 6.3(3)(a) clearly states that:

- (3) *Development consent **must not be granted** to development on land to which this clause applies **unless the consent authority is satisfied that the development—***
(a) ***is compatible with the flood hazard of the land***

Clause 6.4 Terrestrial Biodiversity

The land is identified as "Significant vegetation" and Connectivity between significant vegetation; on the Terrestrial Biodiversity Map. Accordingly the application must be assessed against the following requirements of Clause 6.4:

- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

- (a) *whether the development—*
 - (i) *is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The application provided a Flora and Fauna Assessment Report by Anderson Environmental Pty Ltd. This assessment has concluded that:

- *'no threatened flora species or populations were identified and none are considered likely to be present';*
- *the 'proposal is unlikely to significantly affect any threatened species or ecological communities or their habitats';*
- *the 'proposed development does not exceed the Biodiversity Offsets Scheme (BOS) threshold';*
- *the 'proposed development is not (proposed to be) carried out in a declared area of Outstanding Biodiversity Value (OBV)';*
- *a 'Biodiversity Development Assessment report (BDAR) is not required';*
- *'items of ecological significance are not present at the site' and*
- *'no impacts on listed matters of national environmental significance under the EPBC Act would occur.'*

The Flora and Fauna Assessment Report has been reviewed by Council and the above conclusions have been substantiated.

Accordingly the requirements under Clause 6.4 have been addressed in terms of impacts to terrestrial biodiversity and Clause 6.4(4) has been satisfied.

Clause 6.5 Wetlands

Clause 6.5 requires a consent authority to consider:

- (a) *whether or not the development is likely to have any significant adverse impact on the following—*
 - (i) *the condition and significance of the existing native fauna and flora on the land,*
 - (ii) *the provision and quality of habitats on the land for indigenous and migratory species,*
 - (iii) *the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity,*
 - (iv) *the growth and survival of native fauna and flora,*
 - (v) *any wetlands in the vicinity of the development, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The application has provided information regarding the native flora and fauna, surface and ground water characteristics, salinity and wetlands within the vicinity of the development.

The application has failed to demonstrate the likely impact of the proposed earthworks into the wetlands as the earthworks are proposed to encroach within the coastal wetlands proximity area and no assessment of the change of landform and topography has been carried out. The application has therefore not demonstrated that the proposed development will not have an adverse impact to the wetland onsite.

Clause 6.7 Essential services

Clause 6.7 requires a consent authority to be satisfied that essential services are available or that adequate arrangements can be made for the provision of these services, which include:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable road access.*

Electricity Supply

Council received a submission from Endeavor Energy on 15 April 2019 and 14 November 2019 which stated that, whilst they were not opposed to the proposal, concerns regarding air quality and dust resulting from the proposed facility, electricity supply and earthworks were raised. Comments were also made that the Environmental Impact Statement had not addressed, in any detail, the suitability of the site for the proposed development in terms of whether there is adequate electricity services available.

These concerns are summarised as follows:

- Dust impacts to the substation and elevated working platforms;
- Spare capacity from the pole mounted substation no. 5515, which provides electricity to 30 premises, may not have spare capacity and an extension/augmentation of the existing local network may be required;
- The earthworks proposed in the RU1 zone, where an extended service line customer owned pole/s is located, should not alter the surface level of the site within 4.5m of both sides of the centre lines of the pole/s (9m width) as excavation can place the integrity of the nearby electricity infrastructure at risk whilst the placement of fill can affect the required safety clearances to the overhead power lines.

It should be noted that Endeavor Energy can provide advice on electricity infrastructure required for proposed development which is done by submitting a Technical Review Request (Form FPJ6007). This form together with Endeavour Energy's submission and other supporting documentation was provided to the applicant's planning consultant at the request of Endeavour Energy.

Given that the applicant has not provided any details on whether a Technical Review Request was submitted to Endeavour Energy and, if so, what advice was provided by Endeavour Energy, it is considered that the application has not satisfied Clause 6.7(b).

Disposal and management of sewage

As previously discussed, Council is the sewer authority for the site and the residential dwelling onsite is connected to Council's sewer. The proposal would therefore be required to be connected to Council's sewer system which has not been proposed.

Given that no details have been provided as to how the sewerage and wastewater would be managed and no justification as to why connection to the sewer is not proposed has been made, Council is not satisfied that adequate arrangements have been made in terms of the disposal and management of sewage.

- ii. **Any proposed instrument** - (Draft SEPP, Draft LEP or 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)

Draft State Environmental Planning Policy (Remediation of Land)

The Explanation of Intended Effect for the above draft SEPP was placed on exhibition from 31 January 2018 to 13 April 2018.



The new SEPP will maintain Category 1 - works that require development consent and Category 2 - works that may be carried out without development consent, however Category 1 is to have new classes of remediation works introduced that require development consent.

The provisions of SEPP 55 to require consent authorities to consider land contamination have been retained within the draft SEPP. The proposed development has been considered under the current SEPP and found to have no potential site contamination that warrants further investigation. Accordingly, the proposal satisfies the requirements of the draft SEPP.

Draft State Environmental Planning Policy (Environment)

The Explanation of Intended Effect for the Environment SEPP was placed on exhibition between 31 October 2017 and 31 January 2018.

The intent of the SEPP is to both simplify the planning rules for environmental areas and consolidate several existing SEPPs to allow simplicity in accessing environmental policies in one accessible location. These existing SEPPs include Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997) which is applicable to the Hawkesbury. SREP No. 20 will be repealed and replaced with the new Environment SEPP.

SREP No. 20 applies to land within the catchment of the Hawkesbury-Nepean River. The general aim of the plan is to ensure that development and future land uses within the catchment are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The Draft SEPP does not remove the requirement for a consent authority to consider the need to protect the environment of the Hawkesbury-Nepean river system.

The proposed development has been considered against the provisions of the existing SREP, provided elsewhere in this report. Accordingly, the requirements of the Draft SEPP have been satisfied.

iii. Development Control Plan applying to the land:

Hawkesbury DCP 2002

A full assessment of the proposal under DCP 2002 is illustrated in the following compliance table. The Non-compliances identified in the table are assessed below.

DCP 2002		
DCP Control	Proposed	Complies
Part A: Introduction		
3.2 Notification		
3.2.1 Waste or resource management facilities		
Designated and Integrated Development		
Letters to adjoining occupiers/owners: required	The proposal was notified from 15 March to 15 April 2019 with the amended plans notified from 14 November to 16 December 2019	Yes
Site Sign: Required	A site sign was placed on the site.	Yes
Notice in Local Newspaper: Not required	Advertising carried out. A total of six submissions were received and the matters raised in these submissions are discussed in the Community Consultation Section of this report.	Yes
Part C: General Guidelines		
1.2 Landscaping Requirements		
A landscape concept plan is required	A Landscape plan was submitted with the	No

DCP 2002		
DCP Control	Proposed	Complies
for most developments in the Hawkesbury. The landscape plan is to be prepared by a suitably qualified person, and must incorporate the requirements detailed below.	<p>application. The Landscape plan has not provided adequate information in terms of buffer plantings along the boundaries which are identified on the site plan nor has it been prepared in conjunction with the vegetation management plan.</p> <p>The EIS states that the proposed development will significantly change the visual aspect of the site and that the screen plantings along the northern and western elevations will reduce this visual impact. However, no details of the '<i>planting zone</i>' along the northern elevation has been provided and only a small amount of plantings along the western elevation are proposed with no canopy tree species capable of attaining heights over 10-15m included in the planting schedule.</p> <p>The Landscape plan has not included the 10m Asset Protection zone in accordance with Planning for Bushfire Protection.</p> <p>Landscape plan</p> <p>An amended landscape plan has not been provided detailing:</p> <ul style="list-style-type: none"> • Tree species to be removed and replacement plantings; • any canopy tree plantings to provide dust suppression; • landscape treatments along the northern or southern elevations; • landscape treatments to the batter along the northern side of the created platform; • landscape rehabilitation to the excavated sections of the site; and • 10m asset protection zone. 	
2.0 Car Parking and Access		
2.5 Rules		
<p>2.5.3 Industrial</p> <p>Industry: 4 spaces per 300m² of GFA and 1 space per 90m² GFA thereafter.</p> <p><i>Required:</i></p> <p>Employee: (1800/300) x 4 = 24</p> <p>Disable: 1 (1% of total carparking requirement per AS)</p> <p>Total: 25</p> <p>EIS and Traffic Impact Assessment:</p> <p>Employee: 25</p> <p>Disable: 1</p> <p>Visitor: 5</p> <p>Service Bays: 20</p> <p>Total: 31 Car spaces & 20 Service Bays</p>	<p>Employee: 24</p> <p>Disable: 1 (per AS)</p> <p>The Traffic Impact Assessment (TIA) and EIS has nominated 31 spaces, inclusive of disabled and visitor parking and 20 Service bays for heavy freight vehicles. The amended plans have proposed 24 car parking spaces with no truck parking bays provided. It is noted, however, that the driveway has been designed to be sealed for the first 35m, with the remaining to be compacted road base, and can accommodate queueing of up to 6 heavy vehicles on site.</p> <p>The TIA proposes 10 loaded trucks per day of 30t capacity with a maximum of 20 loaded trucks per day at maximum capacity. It would therefore</p>	Inconsistent information provided.

DCP 2002		
DCP Control	Proposed	Complies
	<p>appear that no onsite parking for the heavy vehicle delivery trucks have been provided as the trucks are proposed to queue along the driveway instead. However, the staffing proposed for the facility includes 10 drivers of material trucks. It is therefore unclear whether the 10 heavy vehicle delivery trucks will be stored onsite or if they will be sourced elsewhere. Given the site can only accommodate 314t of waste per day (based on a 6 day week and max limit of 98,000t per year) and a weekly limit of 1884t, there is a distinct possibility that delivery heavy vehicles may be parked on the site which the application has not made any provisions for.</p> <p>Furthermore, it should also be noted that the EPA has restricted the amount of waste to be on site at any given time to 20,000t. This will potentially result in the need for lesser truck movements to and from the site to ensure this limit is maintained. However, this may also result in trucks parking on the site that has not been identified on the plans. Concerns are raised that heavy vehicle parking will occur at the front of the site which can easily be accommodated since the waste facility is located towards the rear portion of the building platform.</p> <p>No details regarding pedestrian paths have been provided to demonstrate that no conflicts between traffic movement and pedestrians will occur.</p>	
4.0 Soil Erosion and Sediment Control		
A plan for soil erosion and sediment control was submitted with the application. Appropriate conditions can be applied to manage sediment and erosion for the site were the application to be supported.		
5.0 Bushfire Prone Land		
<p>The application has included a Bushfire Assessment by Anderson Environmental Pty Ltd recommending that an APZ of 10m from the proposed development be established. However, it is unclear as to what part of the proposed development this APZ is to be taken from. The proposed development includes earthworks extending throughout the site and the Landscape plan does not indicate where the APZ is on the site.</p> <p>It is therefore unclear as to how the 10m APZ is to be managed and maintained on the site, particularly as the vegetation management plan proposes plantings which have not been identified on any plan.</p>		
7.0 Effluent Disposal		
As previously discussed, effluent disposal is to be carried out by a contractor who will remove wastewater and sewerage from the site, however Council is the sewer authority and requires connection to this infrastructure. Effluent disposal has not been adequately addressed.		
8.0 Management of Construction and Demolition Waste		
Waste management plan in accordance with 8.7 shall be submitted with any application.	A waste management plan has been provided with the application.	Yes
9.0 Preservation of Trees and Vegetation		
<p>The proposal seeks to remove six trees indicated in red on the submitted landscape plan. These trees are not clearly identified on any of the submitted plans and no existing tree schedule has been provided with the submitted reports to allow an assessment of the trees and vegetation proposed to be removed.</p> <p>An arboricultural assessment report has not been submitted providing the following information:</p> <p>i. Tree identification plan and schedule identifying tree species, size, canopy spread and the like;</p>		



DCP 2002		
DCP Control	Proposed	Complies
ii. Identification of all trees to be removed onsite and assessment of what impact the proposed development will have on trees to be retained; iii. Likely impacts of the tree removal on the site; iv. Likely impact of proposed internal driveways on existing trees; v. Tree protection measures for all impacted trees to be retained; vi. What encroachment into the Structural Root Zones (SRZ) and Tree Protection Zones (TPZ) the proposed development will have on trees to be retained.		
<p>The VMP submitted with the application has proposed a 3:1 replacement planting ratio which the site can support given its size however the location of these replacement plantings have not been shown on any of the plans nor has any consultation with the bushfire consultant been carried out to determine the location of vegetation that will not conflict with the requirements of Planning for Bushfire Protection 2019.</p> <p>The proposed excavation located at the front of the site has the potential of impacting upon the two <i>Eucalyptus tereticornis</i> (Forest Red Gum) in this location. No assessment of the potential impact that this excavation may have has been carried out.</p>		
10.0 Heritage Conservation		
10.5.8 Development in the vicinity of a heritage item or conservation area		
	<p>The subject site is within close proximity to a heritage item listed under Schedule 5 of the Hawkesbury LEP 2002.</p> <p>The proposal has been assessed by Council's Heritage Advisor whose comments have been provided elsewhere in this report.</p> <p>The proposed development does not have any potential impact to the heritage item within the locality.</p>	Yes

iiia. 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:

There are no Planning Agreements or Draft Planning Agreements entered into for this development.

iv. Matters prescribed by the Regulations:

Division 8A of the EP & A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent.

The relevant prescribed conditions would have been included in the conditions of consent were the application to be approved.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The development is not considered satisfactory in terms of environmental impacts as discussed in the body of this report.

c) Suitability of the site for the development:

The site is considered to be unsuitable for the proposed development. The amount of earthworks required to be carried out will have a detrimental environmental impact to the site with potential environmental impacts to the



wetlands and watercourses located on and adjacent to the site due to the unknown impact from soil erosion, runoff and other such matters that have not been taken into consideration by the applicant.

d) Any submissions made in accordance with the Act or the Regulations:

In accordance with Section 3.2 of Part A of HDCP 2002, owners of surrounding properties were given notice of the application. In response, six submissions were received and are summarised as follows:

- Amount of waste to be processed and stockpiles;
- Lack of detailed information;
- Inconsistent information;
- Increased traffic;
- Earthwork impacts to the site and landscaping;
- Amenity impacts from dust, noise, lighting and truck movements;
- Inappropriate and overdevelopment for the site and locality;
- Impact to flood prone land; and
- Stormwater runoff and pollution impacts.

Comment: The above is a summary of the issues raised within the submissions received. An assessment in relation to the issues raised have been carried out and found to be warranted.

It is acknowledged that some of the concerns raised have been addressed, such as noise and dust, and others can be addressed through conditions in terms of landscape treatments, hours of operation and the like.

However, the impact of the earthworks within the RU1 Primary Production zone together with the unresolved traffic issues, revegetation strategy and future use of the RU1 Primary Production zoned portion of the site remains outstanding and Council is unable to support the application, particularly as the site is incompatible with the flood category under Council's Flood Policy 2020.

e) The Public Interest:

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and found to have unacceptable environmental impacts that is considered not to be in the public interest. The application is therefore not supported.

f) Reasons for determination:

The application is not supported for the following reasons:

1. Inconsistent with the requirements of Hawkesbury Local Environmental Plan 2012.
2. Inconsistent with the requirements of State Environmental Planning Policy (Coastal Management) 2018.
3. Inconsistent with the requirements of Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997).
4. Unacceptable environmental impacts to the RU1 Primary Production zoned land onsite.

Development Contributions

Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015)

The following development contributions apply to this development:

- Estimated cost of works: \$439,369.00 with contribution at 1% = \$4,393.69

Accordingly, were the application to be supported a condition of consent would be required to be imposed.



Conclusion

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been taken into consideration. The application is unable to demonstrate that the site is suitable for the proposed development, particularly as the site is incompatible with the flood category under Council's Flood Policy 2020 and will have a detrimental environmental impact due to the significant amount of earthworks proposed.

The proposed 128,000m³ of soil required to be cut from the site to provide a 62,000m² levelled platform to facilitate a waste management facility that will occupy less than 15,000m² of the site is considered to be unnecessary and excessive. This extent of cut will fundamentally change the topography and landscape of the site which will have long term effects on the site and surrounding locality.

The application is therefore recommended for refusal.

Recommendation

That the Sydney Western Planning Panel, as the consent authority pursuant to Clause 4.16(1)(a) of the Environmental Planning and Assessment Act 1979, refuse development consent to DA0036/19 on land known as 100 Faurey Road South Windsor, Lot 4 DP 264159, for Designated Development - Construction Materials Crushing and Recycling Plant Processing Facility subject to the following reasons:

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 – 1997)

1. The development application has not demonstrated that the proposal complies with the "general planning considerations" in clause 5 and the "specific planning policies and recommended strategies" in clause 6 of SREP Hawkesbury Nepean River, and further to this, insufficient information has been provided to enable a proper assessment of whether the prescribed matters for consideration in clause 11(17) and (18) of SREP Hawkesbury Nepean River in relation to the site and the development have been sufficiently addressed.

Particulars

- (a) The application has failed to consider the specific planning and recommended strategies of Clause 6(8) Agriculture /aquaculture and fishing and Clause 6(9) Rural residential development.
- (b) The application has failed to demonstrate that the proposal can provide adequate sewerage disposal in accordance with Clause 11(17) as the application has proposed collection of sewer and wastewater from a private contractor, however connection to Council's sewer is required.
- (c) The application has failed to provide a proper assessment of Clause 11(18)(c). The long-term stability of the final landform has not been adequately addressed considering the significant earthworks proposed within the RU1 Primary Production zone.
- (d) The application has failed to provide a proper assessment of Clause 11(18)(d) as the extraction of the soil on the RU1 Primary Production zone has not been adequately addressed.

Coastal Management SEPP and the Howes Creek wetland

2. The development application has provided insufficient information to demonstrate that the proposed development will not significantly impact upon the biophysical, hydrological and ecological integrity and the quality and quantity of surface and ground water flows to and from the South Creek wetland in accordance with the requirements of Clause 11(1) of the Coastal Management SEPP.

Particulars

- (e) The development application has not provided an assessment of the earthworks proposed within the 'proximity area for coastal wetlands' and no information has been provided that clearly demonstrates that no significant impact to the biophysical, hydrological and ecological integrity and the quality and quantity of surface and ground water flows to and from the South Creek wetland will occur as a result of the earthworks proposed.

Inconsistent with Hawkesbury Local Environmental Plan 2012

3. The proposed development is considered unacceptable having regard to the matters required to be considered under Hawkesbury Local Environmental Plan 2012.

Particulars

- (a) The proposed earthworks within the RU1 Primary Production zone is not considered to be permissible development under Clause 2.2. The earthworks have been categorised as flood mitigation works, however the excavation within the RU1 Primary Production zone is to facilitate a building platform and the Flood Impact Assessment provided with the application has demonstrated that the earthworks will have nominal impacts to flood behaviours therefore the earthworks cannot be categorised as flood mitigation works.
- (b) The proposed earthworks within the RU1 Primary Production zone are inconsistent with the objectives of the RU1 Primary Production zone.
- (c) The proposed earthworks do not meet the objectives or requirements of Clause 6.2 Earthworks. The proposed earthworks are considered to have a detrimental impact to any future use or redevelopment of the RU1 Primary Production zone.
- (d) Clause 6.3 Flood Planning requires the consent authority to be satisfied that the proposed development is compatible with the flood hazard of the land. The site has a flood level of 17.3m AHD and the site has existing ground levels of between 13.34m and 16.67m. In accordance with Figure 1 of Section C - Flood Hazard Categories of Council's Flood Policy 2020 the site falls under Hazard Category H4 and H5 for which a waste management facility is incompatible. The proposed application is not compatible with the flood hazard of the land therefore Clause 6.3 has not been satisfied.
- (e) The application has not demonstrated that the proposed earthworks within the coastal wetlands proximity area will not have an adverse impact to the wetland in accordance with Clause 6.5.
- (f) The application has not adequately demonstrated that the proposed development satisfies Clause 6.7 Essential Services as it has not demonstrated that sewer and electricity can be provided to the site.

Overdevelopment of the site and sustainability

4. The proposed development represents an overdevelopment of the site which does not provide for the ongoing sustainable use of the land.

Particulars

- (a) The proposed removal of approximately 128,000m³ of soil within the RU1 Primary Production zoned portion of the land to create a 62,000m² building platform to facilitate a development that is less than 15,000m² in size is considered to be excessive and unnecessary.
- (b) The removal of this soil from the RU1 Primary Production zone portion of the land will have a detrimental impact to the usability of this portion of the land, particularly as the topography of the site will be radically changed.
- (c) The proposed earthworks is considered to have a detrimental environmental impact to the site.

Insufficient Information

5. The application has not provided sufficient information to carry out an assessment of the proposed development.

Particulars

- (a) An Arboricultural Impact Assessment has not been provided detailing the trees onsite or the potential impact the proposed development will have to the existing trees onsite.
- (b) The application has not carried out an assessment of the likely impacts the proposed development may have on the existing residential use located on the site;
- (c) An updated landscape plan has not been provided in conjunction with the Vegetation Management Plan;
- (d) The car parking provisions provided on the submitted plans are inconsistent with the Environmental Impact Statement Report No: 18102_EIS_Rev6;



- (e) No parking bays have been provided on the lodged plans to accommodate the parking of heavy vehicles which conflicts with the Traffic Impact Assessment by Transport and Urban Planning which proposes twenty (20) 3.5m x 19m Service bays;
- (f) The details of the proposed stabilisation of the earthworks by revegetation has not been clearly detailed, particularly during the period of time the vegetation will require to establish.
- (g) Insufficient information has been provided to satisfy the concerns raised by TfNSW.

Attachments

Attachment 1	Civil and Architectural Plans: Sheet No. 2.01 Rev 3 Sheet No. 3.01 Rev 4 Sheet No. 3.05 Rev 4 Sheet No. 3.11 Rev 4 Sheet No. 4.01 Rev 6 Sheet No. 4.05 Rev 3 Sheet No. 4.11 Rev 2 Sheet No. 4.12 Rev 1 Landscape Plan L-01B Site Layout No. 5388.001-G01 Plan and Traffic Pathways No. 5388.001-G02 Elevations No. 5388.001-G03	Sparks+Partners Site Design +Studio Cova Thinking	02/10/2019 31/01/2019 09/09/2019 Rev B
Attachment 2	Environmental Impact Statement Report No: 18102_EIS_Rev6	Benbow Environmental	10/10/2019 Rev 6
Attachment 3	Soil and Water Assessment Report No. 181025_SoilWater_Rep_Rev4 and Stormwater & Flood Management Report Ref No: 17208 Rev 2 Issue 1 Rev 3	Benbow Environmental Sparks+Partners	12/11/2019 2/10/2019
Attachment 4	Flood Impact Assessment Ref No: Rp311012_00201rg_vrt201008 (rev C-Final)	Advisian	October 2020
Attachment 5	Vegetation Management Plan	Narla Environmental	September 2020
Attachment 6	General Terms of approval from referral bodies	EPA, Sydney Trains & NRAR	Various

Assessment Officer

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