

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-108 – DA2021/01515
<b>PROPOSAL</b>	Road realignment and widening including associated pavement work, earthworks, retaining wall, construction of part new bridge over Ironbark Creek, drainage works, utilities, vegetation clearing and temporary construction access/works.
<b>ADDRESS</b>	Maitland Road (RD 20869 – Gazetted 15/03/2019) and Lot 7314 DP 1160521 - 257 Maitland Road, Sandgate
<b>APPLICANT</b>	Transport for NSW
<b>OWNER</b>	Department of Planning - Crown Lands
<b>DA LODGEMENT DATE</b>	22 November 2021
<b>APPLICATION TYPE</b>	Development Application (Designated) and Crown Development
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 4, Schedule 7 of the SRD SEPP: Crown development over \$5 million
<b>CIV</b>	\$24,045,365.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Not Applicable
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Biodiversity &amp; Conservation) 2021;</li> <li>• State Environmental Planning Policy (Planning Systems) 2021;</li> <li>• State Environmental Planning Policy (Resilience &amp; Hazards) 2021;</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021; and</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	The proposal was publicly notified in accordance with the City of Newcastle's Community Participation Plan and the provisions of <i>Environmental Planning and Assessment Regulations 2000</i> . The notification period was from 16 November to 14 December 2021 and 12 unique submissions were received. Submissions were also received from the Department of Primary Industry (DPI) - Fisheries and the Environmental Protection Authority (EPA). The agency and public submissions received are discussed further below.

<p><b>DOCUMENTS SUBMITTED CONSIDERATION</b></p> <p><b>FOR</b></p>	<p>Environmental Impact Statement (Nov. 2021) and associated studies and reports as follows;</p> <ul style="list-style-type: none"> <li>• Appendix A – Secretary’s environmental assessment requirements and checklist</li> <li>• Appendix B – <i>Environmental Planning and Assessment Regulation 2000</i> checklist</li> <li>• Appendix C – Design drawings</li> <li>• Appendix D – State Environmental Planning Policy (Coastal Management) 2018 requirements</li> <li>• Appendix E – Biodiversity development assessment report</li> <li>• Appendix F – Coastal processes assessment</li> <li>• Appendix G – Aboriginal Cultural Heritage Assessment Report</li> <li>• Appendix H – Urban design, landscape character and visual impact assessment</li> <li>• Appendix I – Consultation</li> <li>• Appendix J – Statement of heritage impacts</li> <li>• Appendix K – Phase 1 soils and contamination assessment</li> <li>• Appendix L – Land use, property and socio-economic assessment</li> <li>• Appendix M – Flooding and hydrology assessment</li> <li>• Appendix N – Surface water and groundwater assessment</li> <li>• Appendix O – Air quality impact statement</li> <li>• Appendix P – Noise and vibration impact assessment</li> <li>• Appendix Q – Traffic and transport assessment</li> <li>• Appendix R – Drainage design figures</li> <li>• Appendix S – Construction staging figure</li> </ul> <p>The following additional or amending information submitted in response to a Request for Further Information letter dated 10 March 2022:</p> <ul style="list-style-type: none"> <li>• Table of Responses to Issues</li> <li>• Attachment 1 – Responses to Biodiversity and Flooding Impacts</li> <li>• Concept Bridge Design (Ironbark Creek)</li> <li>• Stage 2 Contamination and Waste Classification Assessment</li> <li>• Acid Sulfate Soil Management Plan</li> <li>• Appendix 1 – Design Features including drainage in proximity to wetlands and affected Plant Communities in EIS Areas</li> <li>• Appendix 2 – Vegetation in EIS Areas to be offset</li> <li>• Appendix 3 – Additional Flood Figures</li> </ul>
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<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	Not Applicable
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	The draft conditions of consent in Attachment A have been agreed with the Applicant in accordance with s4.33(1)(b) of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).
<b>SCHEDULED MEETING DATE</b>	2 June 2022
<b>PREPARED BY</b>	Brian Cameron Principal Development Officer (Engineering)
<b>DATE OF REPORT</b>	26 May 2022

## EXECUTIVE SUMMARY

Transport for NSW (TfNSW) is proposing to widen a six-kilometre section of the Pacific Highway (Maitland Road) from four lanes to six lanes, starting about 290 metres south of the intersection with the Newcastle Inner City Bypass at Sandgate, and extending through to about 760 metres north of Hexham Bridge, in Hexham, NSW (the project). The project would create two additional lanes in each direction and replace the twin bridges across Ironbark Creek. The section of road is known as the 'Hexham Straight' and is located within the City of Newcastle local government area (LGA).

The subject development (the proposal) being considered under DA2021/01515 is described as *'Road realignment and widening including associated pavement work, earthworks, retaining wall, construction of part new bridge over Ironbark Creek, drainage works, utilities, vegetation clearing and temporary construction access/works'*.

The development is *regionally significant development* pursuant to Section 2.19(1) of SEPP (Planning Systems) 2021 as it satisfies the criteria in Clause 4 of Schedule 6 of the SEPP in that the proposal is development for 'Crown Development over \$5 million'. Accordingly, the Hunter and Central Coast Regional Planning Panel (the Panel) is the consent authority for the application.

DA2021/01515 relates only to three areas (totalling approximately 3.5 hectares) of the total project site that are within land mapped as 'Coastal Wetlands'. Accordingly, the proposal is 'Designated Development' and requires consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Applicant has prepared an Environmental Impact Study (EIS) that addresses the Secretary's Environmental Assessment Requirements (SEARS) issued for the designated development component of the project (referred to herein as EIS Area). The remainder of the overall project outside of the EIS Area is being considered by TfNSW under Part 5 of the EP&A Act (herein called the REF Area) and which forms no part of this assessment report. Refer to Figures 1 and 2 below for location diagrams.

The proposed development is characterised and defined as 'Road' and is permissible, with consent, in the relevant land zones (SP2 – Infrastructure (SP2), C2 – Environmental

conservation (C2) and W2 – Recreational Waterway) under Newcastle Local Environmental Plan 2012 (NLEP2012).

This section of Maitland Road is a Classified Road that carries significant volumes of light and heavy vehicles and, at times, is subject to significant traffic congestion and delay.

The proposed works are wholly located on the eastern side of the existing Maitland Road formation. No existing residential, commercial or industrial uses are located within or immediately adjacent the EIS Areas. These land uses are typically located on the western side of this length of Maitland Rd with the majority of the residential receivers being found between Shamrock St and Clark Street. Beyond the southern extent of the proposed development (at 240 Maitland Rd, Sandgate) exists an aged care facility and nursing home. To the east, exists the southern arm of the Hunter River and part of the broader Hunter Wetlands National Park.

DA2021/01515 was lodged on 16 November 2022 and statutory referrals and public exhibition, in accordance with the Regulations relating to Designated Development, commenced on that day. Since then, the Panel has received a 'Kick-Off' briefing from the Applicant (02 Dec. 2022), an Assessment Briefing from Council (03 Mar. 2022) and completed a site inspection. One Request for Further Information letter was sent to the Applicant (10 Mar 2022) and the Applicant's response to RFI received on 30 March 2022. A subsequent joint briefing of the Panel by Council and the Applicant was undertaken on 31 March 2022.

The principle planning considerations relevant to the proposal include;

- Secretary's Environmental Assessment Requirements
- State Environmental Planning Policy (Biodiversity & Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience & Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Newcastle Local Environmental Plan 2012
- Newcastle Development Control Plan 2012

The 'key issues' arising from Council's assessment of the proposal include coastal wetlands, biodiversity, land contamination, acid sulfate soils and flooding which have been satisfactorily addressed or are resolved by the recommended draft conditions.

The application was referred to Ausgrid and Transport for NSW in accordance with cl 45 and 103 of SEPP (Infrastructure) 2007 (now repealed and replaced with SEPP (Transport and Infrastructure) 2021). No concerns or objections were raised.

A total of 12 unique public submissions were made during the 28-day public exhibition period (16 November to 14 December 2021), noting that most submissions raised issues relating to the REF Area of the project and not relating to that part in the EIS Area, subject of DA2021/01515. Written submissions were also received from Department of Primary Industry – Fisheries and the Environmental Protection Authority and the matters raised have been satisfactory addressed and/or appropriate conditions of consent are proposed.

A number of Pre-conditions/jurisdictional prerequisites are required to be satisfied prior to the granting of consent. These are as follows and are considered to have been satisfactorily addressed by the documentation submitted.

State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 4: Koala Habitat Protection 2021</p> <ul style="list-style-type: none"> <li>• <b>Clause 4.9(2)</b> - whether the development is likely to have any impact on koalas or koala habitat</li> </ul>
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> <li>• <b>Section 2.7(4)</b> – certain development in coastal wetlands or littoral rainforest on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i></li> <li>• <b>Section 2.8(1)</b> - Development on land in proximity to coastal wetlands or littoral rainforest</li> <li>• <b>Section 2.10(1) &amp; (2)</b> - Development on land within the coastal environment area</li> <li>• <b>Section 2.11(1)</b> - Development on land within the coastal use area</li> <li>• <b>Section 2.12</b> - Development in coastal zone generally —development not to increase risk of coastal hazards.</li> <li>• <b>Section 2.13</b> - Development in coastal zone generally - coastal management programs to be considered.</li> </ul> <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> – consideration of contaminated land planning guidelines.</li> </ul>
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>• <b>Section 2.48(2)</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>• <b>Section 2.120(2)</b> - Development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of specified roads.</li> </ul>
Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> <li>• <b>Clause 2.3</b> – Zone Objectives and Land Use Table</li> <li>• <b>Clause 5.1/5.1A</b> – Land acquisition</li> <li>• <b>Clause 5.7</b> – development below mean high water mark</li> <li>• <b>Clause 5.10</b> – consideration of Aboriginal and non-aboriginal heritage</li> <li>• <b>Clause 5.21</b> – consideration of flood impacts</li> <li>• <b>Clause 6.1</b> – consideration of Acid Sulfate Soils</li> <li>• <b>Clause 6.2</b> – consideration of earthworks</li> </ul>

Any issues of concern identified during the assessment of the application were identified in the Request for Further Information (RFI) letter dated 10 March 2022 and satisfactorily resolved by the Applicants Response to RFI dated 30 March 2022 or have been addressed in the agreed conditions of consent.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, the proposal is considered to be in the Public Interest and is supported.

Section 4.33(1)(a) and (b) of the EP&A Act, respectively, do not permit a consent authority to refuse consent for a Crown development application except with the approval of the Minister and conditions must not be imposed on a consent except with the approval of the applicant or the Minister.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the EP&A Act, DA 2021/01515 is recommended for approval subject to the conditions of consent contained at Attachment A of this report.

In accordance with Section 4.33(1)(b) of the EP&A Act written agreement has been obtained from the Applicant to the proposed conditions of consent. A copy of the written agreement is contained at Attachment B of this report.

## **1. THE SITE AND LOCALITY**

### **1.1 The Site**

Transport for NSW (TfNSW) is proposing to widen a six-kilometre section of the Pacific Highway (Maitland Road) from four lanes to six lanes, starting about 290 metres south of the intersection with the Newcastle Inner City Bypass at Sandgate, and extending through to about 760 metres north of Hexham Bridge, in Hexham, NSW (the project). The project would create two additional lanes in each direction and replace the twin bridges across Ironbark Creek. The section of road is known as the 'Hexham Straight' and is located within the City of Newcastle local government area (LGA), with a small portion of the construction area on the eastern side of the Hunter River within the Port Stephens Council LGA.



**FIGURE 1 (Source – EIS Figure 1.1)**

However, DA2021/01515 only relates to three areas (totalling approximately 3.5 hectares) of the total project site that are within land mapped as 'Coastal Wetlands' when considering State Environmental Planning Policy (Resilience and Hazards) 2021. As such, that part of the proposal (known as the EIS Area) is subject to approval under Part 4 of the EP&A Act and are referred to in the application as EIS Areas 1, 2 and 3 with the following descriptions.

**EIS Area 1** – a small area located to the south of Ironbark Creek on the eastern side of Maitland Road and to the west of a parcel of Crown land and a section of the neighbouring Hunter Wetlands National Park. The land mapped as Coastal Wetlands includes areas of remnant mangrove and saltmarsh vegetation and also crosses sections of an existing track that provides access to the south bank of Ironbark Creek and to the base of Ironbark Creek Bridge.

**EIS Area 2** – a small area located to the north of Ironbark Creek on the eastern side of Maitland Road. The land mapped as Coastal Wetlands includes areas of remnant mangrove, saltmarsh and freshwater wetland vegetation.

**EIS Area 3** – a small area located on the west bank of the south channel of Hunter River to the east of Maitland Road and to the northwest of Millams Road and the Ash Island Bridge. The land mapped as Coastal Wetlands includes areas of the road shoulder and remnant mangrove vegetation.

EIS Area 1 is comprised of a parcel of Crown land (Lot 7314 DP 1160521) and areas of road reserve within the Maitland Road corridor owned by TfNSW. EIS Area 2 and EIS Area 3 are comprised of areas of waterway that are identified as Crown land and areas of road reserve within the Maitland Road corridor owned by TfNSW.

The following map shows the overall total project area being considered by TfNSW under Part 5 and subject to a Review of Environmental Factors (shaded orange) and those parts of the overall project that are subject to DA2021/01515 and the EIS (shaded yellow).



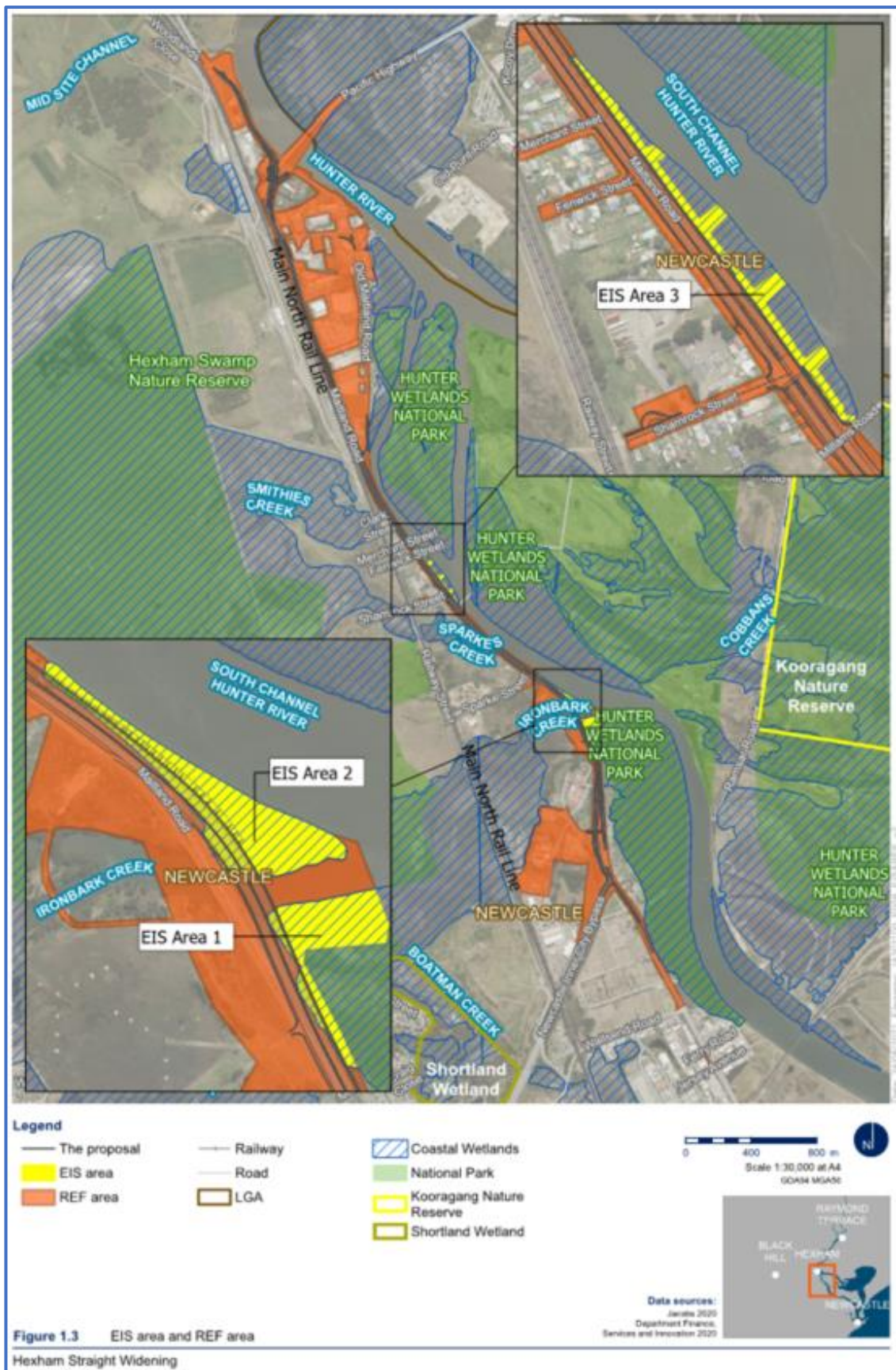


FIGURE 2 (Source – EIS Figure 1.3)



## 1.2 The Locality

Figure 2 above shows the location and general extents of the proposal and more detailed plans of each EIS Area are contained in Attachments D and E.

No existing residential, commercial or industrial uses are located within or immediately adjacent the EIS Areas. These land uses are typically located on the western side of this length of Maitland Rd with the majority of the residential receivers being found between Shamrock St and Clark Street. A number of properties zoned IN3 'Heavy Industrial' are located to the west of Maitland Rd with access off Sparke St.

Beyond the southern extent of the proposed development (at 240 Maitland Rd, Sandgate) exists an aged care facility and nursing home.

To the east exists the southern arm of the Hunter River and part of the broader Hunter Wetlands National Park, although this land is not directly affected by the proposal.

## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal

The proposal seeks development consent for *'Road realignment and widening including associated pavement work, earthworks, retaining wall, construction of part new bridge over Ironbark Creek, drainage works, utilities, vegetation clearing and temporary construction access/works'*. As mentioned above in this report, DA2021/01515 forms a small percentage of the broader Hexham Straight Widening project proposed by the Applicant.

More specifically, the proposal involves:

**EIS Area 1** – Road pavement, part of the bridge deck, stormwater drainage, retaining walls, earthworks and construction staging areas associated with the northbound approach to the new bridge over Ironbark Creek. Relocation and realignment of an existing tributary to Ironbark Creek and removal of remnant mangrove, saltmarsh and freshwater wetland vegetation.

**EIS Area 2** – Road pavement, part of the bridge deck, stormwater drainage, earthworks and construction staging areas with the southbound approach to the new bridge over Ironbark Creek. Removal of remnant mangrove, saltmarsh and freshwater wetland vegetation.

**EIS Area 3** – Minor pavement and road shoulder widening to the east, new or adjusted stormwater drainage outlets and associated removal of predominantly marine vegetation.

Refer to Attachment D containing the following submitted plans:

- Appendix 1 Figures A.1 to A.6 – *'Concept design features within Coastal Wetland areas and next to Coastal Wetlands Proximity Areas'*;
- Appendix 1 Figures B.1 to B.4 – *'Plant Community Types'*;
- Appendix 1 – Figures C.1 to C.4 – *'Drainage design'*; and
- Appendix 1 – Figures D.1 to D.4 – *'Construction activities'*

## 2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 7 October 2021 where various issues relating to the required documentation and lodgement process associated with Designated Development.

The development application was lodged on 16 November 2021 but not formally made until fees were paid on **22 November 2021**. However, to align with the Applicant's exhibition of the remainder of the overall project, the exhibition and public consultation process for DA 2021/01515 was also commenced on 16 November 2021.

A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 1: Chronology of the DA**

DATE	EVENT
12 September 2019	SEARS issued by DPIE. A one-year extension was granted on 10 June 2021 along with revised SEARS.
16 November 2021	Exhibition of the application commenced including signage exhibited at various locations around the development site (cl. 78 of the Regs)
16 November 2021	DA referred to external agencies (Ausgrid and TfNSW - cl 45 and 103 of SEPP (Infrastructure) 2007)
16 November 2021	Notice of the DA given to other public authorities and external bodies (DPIE, EPA, NPWS, DPI Fisheries, HWC, Jemena, Telstra, NBN Co., Awabakal LALC & Mindaribba LALC) (cl. 77 of the Regs)
2 December 2021	Applicant's 'Kick-Off' Briefing to the Panel
23 December 2021	Panel and DPIE Secretary notified of submissions received
January 2021	Site inspection by Panel
3 March 2022	Assessment Briefing Report presented to the Panel
10 March 2022	Request for Further Information letter sent
30 March 2022	Applicant's response to Request for Further Information received
31 March 2022	Update briefing given to the Panel

## 2.3 Site History

Maitland Road (Pacific Highway) is an arterial road and Classified Road that has progressively been upgraded and improved over the years to account for increased traffic movements and congestion and to replace infrastructure damaged by flood water.

Being adjacent to the Hunter River and associated tributaries feeding the Hexham Wetlands it would be reasonably expected that the land was used by the local Aboriginal inhabitants.

Further, according to the EIS, there has also been multiple crossing points (causeways and bridges) over Ironbark Creek in this vicinity.

TfNSW are concurrently considering the remainder of the overall Hexham Straight Widening project under Part 5 of the EP&A Act, 1979. A determination on that assessment has not yet been publicised.

## 3. STATUTORY CONSIDERATIONS

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### 3.1 RELEVANT COMMONWEALTH LEGISLATION

<i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act)	<p>No referral was necessary under <i>Environment Protection and Biodiversity Act 1999 (EPBC Act)</i> as the proposal did not constitute to <i>controlled action</i>. Notwithstanding that there are two RAMSAR listed nearby these are not within the subject site of the proposal. There is a very limited area of plant community types (PCT's), 0.2 hectares, which meet the criteria for the <i>EPBC Act</i> list but these are not considered to constitute to impact matters of national environment significance or impact areas of Commonwealth land.</p> <p>Ramsar Wetland - The subject site and the wetlands which are covered by the EIS are not listed as a RAMSAR Wetland. The nearest listed RAMSAR wetland is located on the western portions of the Kooragang Island which is on the opposite side of the South Arm of the Hunter River when compared to the subject application</p>
<i>Native Title Act 1993</i> (NT Act)	<p>The subject site is not affected by any native title or Indigenous Land Use agreements under the provisions of the <i>Native Title Act 1993</i> (NT Act) and its associated registers (The National Native Title Register, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements)</p>

### 3.2 RELEVANT STATE (NSW) LEGISLATION

In addition to the EP&A Act, the following State (NSW) legislation has been considered within the EIS. Where relevant, further detailed assessment of the proposed development against the various Acts is included throughout this report.

<p><i>Biodiversity Conservation Act 2016</i> (BC Act)</p>	<p>In accordance with Part 6 of the BC Act, If the proposed development is likely to significantly affect threatened species, the application for development consent is to be accompanied by a BDAR. A BDAR was prepared for the EIS area in accordance with the Biodiversity Assessment Method (BAM).</p>
<p><i>Coastal Management Act 2016</i> (CM Act)</p>	<p>The objectives for Coastal Wetlands have been considered as part of this EIS being completed for the proposal within areas designated by the Resilience and Hazards SEPP as being Coastal Wetlands.</p>
<p><i>National Park and Wildlife Act 1974</i> (NP&amp;W Act)</p>	<p>The Hunter Wetlands National Park is located immediately to the east and a short distance to the west of the proposal. The national park estate area to the west is also known as Hexham Swamp Nature Reserve. In accordance with the SEARs TfNSW have consulted with Environment, Energy and Science Group, specifically the National Parks and Wildlife Services (NPWS) regarding the proposal.</p> <p>Part 6 of the NP&amp;W Act relates to Aboriginal heritage. An Aboriginal Cultural Heritage Assessment Report (ACHAR) was undertaken for the proposal. The EIS Area would result in the destruction of one Aboriginal object Hexham Straight Isolated Find 1 (HS-IF 1). An assessment of significance for the item concluded that the item is a common isolated surface artefact in a disturbed context and that the overall significance is considered low. An Aboriginal Heritage Impact Permit (AHIP) will be required for proposed impacts to Aboriginal site HS-IF 1.</p>
<p><i>Roads Act 1993</i> (Roads Act)</p>	<p>The proposal requires construction work on Maitland Road, which is a classified road within the Newcastle LGA, and temporary interruption to traffic along the proposal. A road occupancy licence is required for any activity likely to impact on traffic flow, even if that activity takes place off-road. TfNSW is the proponent and the relevant roads authority for the proposal.</p> <p>As a roads authority, TfNSW has the power to construct bridges across navigable waters under Section 78 of the Roads Act. The Roads Act provides that such bridges are lawful obstructions of navigable waters.</p>

<p><i>Fisheries Management Act 1994</i> (FM Act)</p>	<p>The proposal would be constructed within and adjacent to the Hunter River and its tributaries that are mapped as Class 1 Major Key Fish Habitat by the Department of Primary Industries (DPI). Potential impacts to aquatic habitats and species are assessed in the BDAR completed for the EIS.</p> <p>Two PCTs have been identified as saline wetland formations within the EIS Area and includes areas of mangrove and saltmarsh.</p> <p>Within the EIS Area, the proposal would include work on the banks of the South Channel Hunter River and Ironbark Creek for the upgrade of culvert outlets and the bridge replacement. These areas include areas of vegetation that are classified as protected marine vegetation. A permit would be required under Section 205 of the FM Act.</p> <p>The proposal would involve work within the EIS Area, where a small unnamed drainage channel to the south-east of Ironbark Creek would be relocated about 10 metres to the east of its existing location. Work for the relocation of the drainage channel would be staged such that fish passage is maintained at all times. As such, a permit would not be required under Section 219 of the FM Act.</p> <p>Section 199 of the FM Act states that an approval is not required for a public authority to undertake dredging or reclamation work. TfNSW is however required to consult with NSW Fisheries before carrying out or authorising dredging or reclamation work. Notwithstanding, no dredging or reclamation works are identified in the EIS Areas.</p>
<p><i>Contaminated Land Management Act 1997</i> (CLM Act)</p>	<p>There is a risk that construction within the EIS area of the proposal may encounter potentially contaminated land during construction. The Applicant has completed appropriate investigations and assessment of potentially contaminated land and any required remediation.</p>
<p><i>Protection of the Environment Operations Act 1997</i> (POEO Act)</p>	<p>The proposal within the EIS area would not trigger the requirement for an Environmental Protection Licence under the POEO Act.</p> <p>Notwithstanding, the POEO Act requires proponents to manage and limit the potential to cause water, noise, air pollution and potential waste streams during construction.</p>
<p><i>Crown Land Management Act 2016</i> (CLM Act)</p>	<p>The CLM Act sets out the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with.</p> <p>The acquisition of Crown land is not required in the EIS area but the Applicant has identified that a lease would be required during construction within EIS Area 3.</p>



<p><i>Water Management Act 2000</i> (WM Act)</p>	<p>Section 56 of the WM Act establishes access licences for the taking of water within a particular water management area within a water sharing plan. Under Schedule 4 1(2) of the <i>Water Management (General) Regulation 2018</i>, TfNSW, as a roads authority, is exempt from the need to obtain an access licence in relation to water required for road construction and road maintenance. However, notification to the water owner would be required.</p> <p>Should water be required to be drawn from the Hunter River, a water supply approval would be required for the EIS Area under Section 90(2) of the WM Act.</p> <p>The proposal would likely meet the requirements for needing a controlled activity approval under Section 91(2) given that there would likely be works within 40 metres of waterfront land. However, under Clause 41 of the <i>Water Management (General) Regulation 2004</i>, public authorities (such as TfNSW) are exempt from the requirement to obtain a controlled activity approval. A notification of the activity would need to be provided to the NSW Office of Water at least 30 days before the activity commences.</p> <p>The EIS area would potentially intercept groundwater as part of excavation work required for the footings for the bridge abutments. Further consultation with Department of Primary Industries (Water) will be undertaken to confirm the licencing requirements.</p>
<p><i>Land Acquisition (Just Terms Compensation) Act 1991</i></p>	<p>The proposal would not require any acquisition within the EIS Area.</p>
<p><i>Waste Avoidance and Resource Recovery Act 2001</i> (WARR Act)</p>	<p>Waste generation and disposal reporting will be carried out during the construction and operation of the proposal in accordance with the WARR Act. The Applicant advises that Procedures would be implemented during construction to promote the objectives of the WARR Act.</p>
<p><i>Biosecurity Act 2015</i> (Biosecurity Act)</p>	<p>Under Section 21 of the Biosecurity Act, any person who deals with any plant, who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised as is reasonably practicable.</p> <p>The Biosecurity Act and Regulations provide specific legal requirements for high-risk activities and State level priority weeds.</p> <p>If present, priority weeds on the site would need to be assessed and controlled to fulfil the General Biosecurity Duty and minimise biosecurity risks. The BDAR provides mitigation measures to manage weeds within the EIS area.</p>

## **Biodiversity Conservation Act 2016 (BC Act)**

The *Biodiversity Conservation Act 2016* (BC Act) provides for the conservation and protection of threatened species, populations, ecological communities of animals and plants and Areas of Outstanding Biodiversity Value through specific objectives relating to the conservation of biodiversity and promoting ecologically sustainable development.

Detailed seasonal flora and fauna studies consistent with the Biodiversity Assessment Method (BAM) (OEH, 2017) were completed and reported in 2019 and 2020.

A Biodiversity Assessment Report (BDAR) (Jacobs, 2021) has been provided with the application and covers a study area inclusive of the REF and EIS Areas.

A total of 27.3 hectares of native vegetation is identified to be disturbed by the proposed works. The vegetation types are listed below and the mapped extents are shown on Figures A.1 to A.4 of Attachment E.

### **Existing vegetation**

Four Plant Community Types (PCTs) were identified in areas to be disturbed by the proposal. The PCTs were identified on basis of floristic composition, geology, and landscape position and consistency with the NSW Vegetation Classification Database.

- Grey Mangrove low closed forest (PCT 1747)
- Saltmarsh Estuarine Complex (PCT 1746)
- Swamp Oak swamp forest fringing estuaries, Sydney Basin Bioregion and South East Corner Bioregion (PCT 1234)
- *Phragmites australis* and *Typha orientalis* coastal freshwater wetlands of the Sydney Basin Bioregion (PCT 1071).

### **Threatened ecological communities**

There are three Threatened Ecological Community's (TEC) listed under the BC Act in the study area which correspond to PCT 1234, PCT 1071 and PCT 1746 respectively:

- Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (Endangered)
- Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (Endangered)
- Coastal saltmarsh in the NSW North Coast, Sydney Basin and South East Corner bioregions (Endangered).

One threatened ecological community listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was also identified in the EIS area:

- Subtropical and Temperate Coastal Saltmarsh (Vulnerable).

### **Threatened species**

No threatened fauna species were recorded within the EIS area during surveys by WSP. However, the native vegetation to be removed provides habitat (or potential habitat) for four threatened animal species that were either identified in the adjacent study area (i.e.

Southern Myotis) or have important area mapping in the EIS area (Curlew Sandpiper, Black-tailed Godwit, Terek Sandpiper, Eastern Curlew, Bar-tailed Godwit, and Red Knot).

The Southern Myotis has been recorded actively foraging, roosting and breeding beneath Ironbark Creek Bridge adjacent to the EIS Area (WSP 2020). Ironbark Creek Bridge is within the REF area for the proposal and impacts to this habitat are assessed separately in the REF. Given the close proximity of records, it is likely that the Southern Myotis would use the vegetation within the EIS Area for foraging and therefore this species is assumed present for the purposes of this BDAR (in accordance with the BAM).

The Hunter Estuary Important Areas map for Migratory Shorebirds (DPIE) covers the EIS Area. The Curlew Sandpiper, Black-tailed Godwit, Terek Sandpiper, Eastern Curlew, Bar-tailed Godwit and Red Knot are listed for the Hunter Estuary and have therefore been assumed as present within the EIS Area in accordance with the BAM. These species breed in the northern hemisphere, however the loss of approximately 2.55 hectares of foraging (important) habitat within the EIS Area will require offsets.

The Curlew Sandpiper and Eastern Curlew are identified in the Threatened Biodiversity Data Collection as potential 'Serious and Irreversible impacts' (SAIL), with the threshold being 'mapped important areas' and both species have been assumed present for the purposes of the BDAR.

#### Overview of biodiversity impacts within the EIS area

The proposal would have direct impacts on native vegetation by removal to allow for construction. Under the current design the estimated clearing of PCTs is about 2.73 hectares within the EIS Area.

The area of proposed impact on PCTs and the calculated credits to be retired in accordance with the BDAR are shown in Table 2 below. The Applicant has confirmed that the areas shown include the physical footprint of the proposed infrastructure and adjacent areas that are expected to be impacted upon due to construction staging, vehicle manoeuvring and temporary materials storage.

**Table 2: Plant Community Types impacted**

<b>Plant Community Type (PCT)</b>	<b>Area impacted (hectare)</b>	<b>Credits Determined</b>
Grey Mangrove low closed forest	1.58	32
Saltmarsh Estuarine Complex (Good)	0.41	15
Saltmarsh Estuarine Complex (Modified)	0.56	13
Swamp Oak swamp forest fringing estuaries, Sydney Basin Bioregion and South East Corner Bioregion	0.06	1
<i>Phragmites australis</i> and <i>Typha orientalis</i> coastal freshwater wetlands of the Sydney Basin Bioregion	0.12	1

Species credits that are required are outlined in Table 3 below.

**Table 3: Species impacted**

<b>Species</b>	<b>Credits</b>
Myotis macropus (Southern Myotis)	67
Calidris ferruginea (Curlew Sandpiper)	96
Limosa limosa (Black-tailed Godwit)	65
Xenus cinereus (Terek Sandpiper)	65
Numenius madagascariensis (Eastern Curlew)	96
Limosa lapponica baueri (Bar-tailed Godwit)	65
Calidris canutus (Red Knot)	65

It is noted that Table 8.9 of the EIS "Species credits required" is incomplete, listing only four of the bird species in Table 3. Table 12.2 in the BDAR provides the full complement of seven species (including 1 bat) and their associated credits. This inconsistency has been highlighted to the applicant, however the truncated table (as shown in the EIS) was repeated in the Applicants Response to RFI dated 10 March 2022 (titled Attachment 1 – Responses to Biodiversity and Flooding Impacts") without amendment.

The complete Species Credits data, as above, are presented in Table 12.2 of the BDAR and recommended consent conditions are proposed to clarify the anomaly.

Other consent conditions to confirm the various biodiversity management controls and the offset requirements are also proposed.

The proposed development has been assessed having regard to the *Biodiversity Conservation Act 2016* and subject to the amended recommended conditions of consent contained at **Attachment A** is considered satisfactory.

### **3.3 Part 4 Environmental Planning and Assessment Act, 1979 (NSW)**

#### **Matters for Consideration - general (Section 4.15)**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act. These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

- (iii) *any development control plan, and*
- (iiia) *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, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

It is noted that the proposal is considered to be (which are considered throughout this report):

- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

### **Secretary's Environmental Assessment Requirements SEARs**

The Applicant sought the Secretary's Environmental Assessment Requirements (SEARs) and have submitted an EIS for the proposal that satisfactorily assesses the impacts of the development in accordance with the criteria outlined within the SEARs (as detailed within Appendix A of the EIS).

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

The proposal constitutes *designated development* under the provisions of Clause 2.7(2) of SEPP Coastal, requiring the preparation of an Environmental Impact Study ('EIS').

The development involves works under Clause 2.7(1), as extract below:

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

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

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

*(c) the carrying out of any of the following—*

*(i) earthworks (including the depositing of material on land),*

*(ii) constructing a levee,*

*(iii) draining the land,*



- (iv) *environmental protection works,*  
(d) *any other development.”*

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

The Applicant has not elected to lodge the proposal on an integrated development basis and, as such, referrals under cl 4.46 of EP&A Act are not required. Notwithstanding this, the submitted EIS assesses the relevant provisions under the various Acts and acknowledges that subsequent approvals and permits will need to be obtained under Acts such as the *Protection of the Environment Operations Act 1997, the Fisheries Management Act 1994 and the National Parks and Wildlife Act 1974.*

#### **Notification of submissions to the Secretary of the Department of Planning, Industry and Environment ('the Department') (Section 4.16(9)(b))**

An application which constitutes designated development cannot be determined until 21 days after the Planning Secretary has been provided copies of submissions received during both public notification periods of the development. in accordance with Section 4.16(9)(b) of the EP&A Act.

The Secretary of the Department was provided copies of the submissions and has not objected or provided any further requirements within the required 21-day period, allowing the panel to determine the application.

#### **Determination of Crown development applications (Section 4.33)**

The Applicant is TfNSW and, therefore, DA2021/01515 is a Crown development application for the purpose of Section 4.33 of the EP&A Act.

Section 4.33(1)(a) and (b) of the EP&A Act, respectively, do not permit a consent authority to refuse consent for a Crown development application except with the approval of the Minister and conditions must not be imposed on a consent except with the approval of the applicant or the Minister.

In accordance with Section 4.33(1)(b) of the EP&A Act written agreement has been obtained from the Applicant to the proposed conditions of consent found in Attachment A of this report. A copy of the written agreement is contained at Attachment B of this report.

### **3.4 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

#### **(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

It is noted the SEARS and EIS refer to the former State Environmental Planning Policies (SEPPs) and provisions as both were prepared prior to 2 December 2021, being the date on

which the NSW Government published 11 new thematic SEPP's as part of a consolidation process to simplify the State's planning policies.

On March 1, 2022, 11 new State Environmental Planning Policies (SEPPs) commenced, which re-organised and repealed 45 former SEPPs. With no savings and transitional provisions, these new SEPPs apply to the assessment and determination of pending development applications.

Section 30A of the *Interpretation Act 1987* which applies to the transfer of provisions states that the transfer "does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred". This section applies subject to any amendments made to the provision in the new instrument. Accordingly, the operation and meaning of the transferred provisions has not changed, unless modified (none have been identified during this assessment) in the new SEPPs.

Accordingly, the following instruments are applicable to this application.

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

**Table 4: Summary of Applicable Environmental Planning Instruments**  
(Preconditions in **bold**)

EPI	MATTERS FOR CONSIDERATION (BRIEF SUMMARY)	COMPLY (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas • Clause 2.14 – does not apply in this instance as consent is being sought for removal of vegetation.	Yes
	Chapter 4: Koala Habitat Protection 2021 • <b>Clause 4.9(2)</b> - whether the development is likely to have any impact on koalas or koala habitat	Yes
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 4 of Schedule 6 as it comprises Crown Development over \$5 million.	Yes
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 2: Coastal Management • <b>Section 2.7(4)</b> – certain development in coastal wetlands or littoral rainforest on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i>	Yes

	<ul style="list-style-type: none"> <li>• <b>Section 2.8(1)</b> - Development on land in proximity to coastal wetlands or littoral rainforest</li> <li>• <b>Section 2.10(1) &amp; (2)</b> - Development on land within the coastal environment area</li> <li>• <b>Section 2.11(1)</b> - Development on land within the coastal use area</li> <li>• <b>Section 2.12</b> - Development in coastal zone generally — development not to increase risk of coastal hazards.</li> <li>• <b>Section 2.13</b> - Development in coastal zone generally - coastal management programs to be considered.</li> </ul> <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> - Contamination and remediation has been considered in the Phase 1 and Phase 2 Contamination Reports and the proposal is satisfactory subject to conditions.</li> </ul>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> <li>• <b>Section 2.48(2)</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>• <b>Section 2.120(2)</b> - Development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of specified roads.</li> </ul>	Yes
Proposed Instruments	No compliance issues identified.	Yes
Newcastle Local Environmental Plan 2012 (NLEP2012)	<ul style="list-style-type: none"> <li>• <b>Clause 2.3</b> – Zone Objectives and Land Use Table</li> <li>• <b>Clause 5.1/5.1A</b> – Land acquisition</li> <li>• <b>Clause 5.7</b> – development below mean high water mark</li> <li>• <b>Clause 5.10</b> – consideration of Aboriginal and non-aboriginal heritage</li> <li>• <b>Clause 5.21</b> – consideration of flood impacts</li> <li>• <b>Clause 6.1</b> – consideration of Acid Sulfate Soils</li> <li>• <b>Clause 6.2</b> – consideration of earthworks</li> </ul>	Yes

The proposed development is not declared State significant development or infrastructure or Regionally significant development under Chapter 2 of State Environmental Planning Policy (Planning Systems) 2021. The proposed development is also not in a declared Precinct under State Environmental Planning Policy (Precincts – Regional) 2021.

Consideration of the relevant SEPPs is outlined below.

#### ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

The proposal has been assessed, having regard to Clause 4.9, as partly extracted below:

#### ***4.9 Development assessment process—no approved koala plan of management for land***

- (1) *This section applies to land to which this Policy applies if the land—*
- (a) *has an area of at least 1 hectare (including adjoining land within the same ownership), and*
  - (b) *does not have an approved koala plan of management applying to the land.*
- (2) *Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*
- (3) *If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application."*

A Biodiversity Development Assessment Report (BDAR) has been completed for the EIS area of the proposal. The BDAR has identified that the Koala would be unlikely to inhabit the construction area due to no evidence of Koala habitation or population and the proposal being unlikely to contain suitable habitat.

It is considered that the proposed development is acceptable in terms of the provisions of Clause 4.9.

## **State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')**

### Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 4 of Schedule 6 of the Planning Systems SEPP as the proposal is development for 'Crown Development over \$5 million'. Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

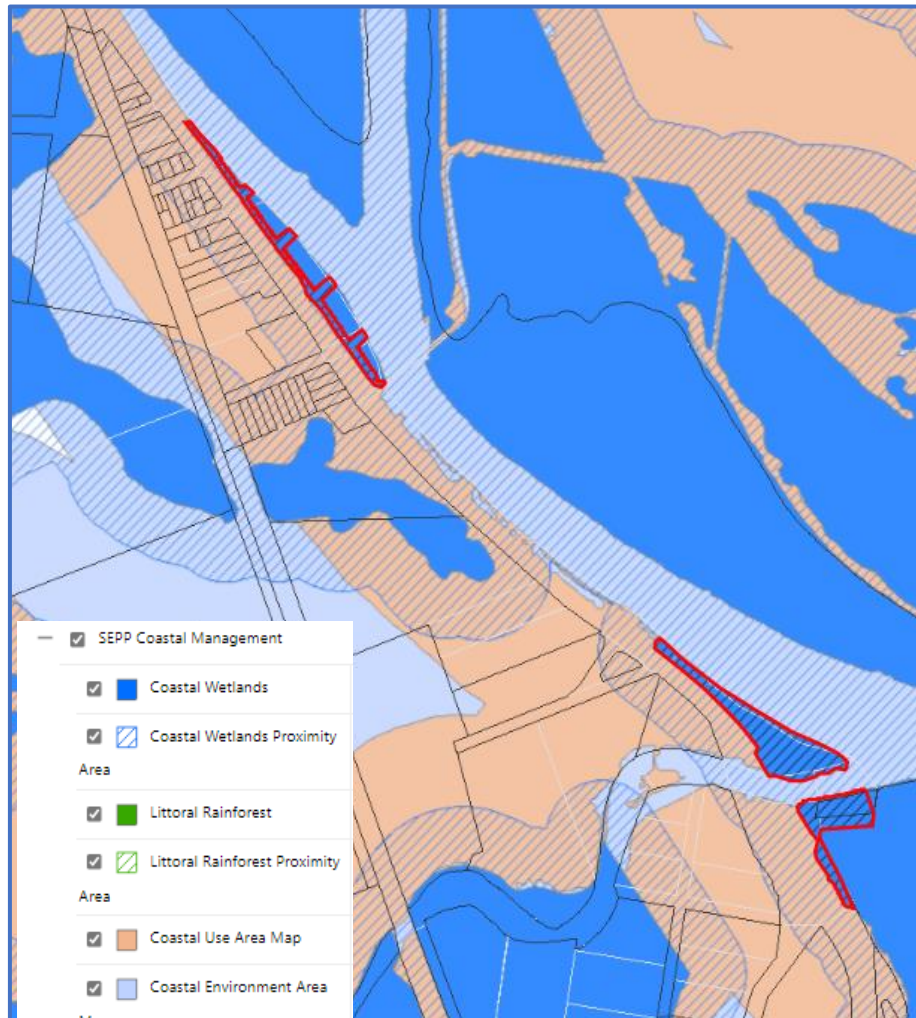
### Chapter 2: Coastal Management

*Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

Refer to Figures A.1 to A.6 in Attachment D showing the footprint of the proposed physical construction works and areas of land proposed to be used during construction for staging, vehicle manoeuvring, and material storage overlaid on land mapped as Coastal Wetland (or associated land) having regard to Chapter 2 – Coastal Management. Figure 3 below provides an overview of the EIS Aras (outlined in red) overlaid on the mapped Coastal Management areas.

It is noted that in Figures A.4 to A.6, there are a number of locations within EIS Area 3 where the EIS Area is 'jutting out' from Maitland Road to the Hunter River. In these locations the extent

of new or upgraded stormwater discharge controls associated with piped outlets from Maitland Road have not yet been the subject of detailed design. In this regard, the Applicant has assumed a 'worst case' scenario when assessing the potential impact on the Coastal Wetland and associated mangrove vegetation and more refined detail designs to be prepared prior to construction are expected to reduce the extent of impact from that assessed under the EIS.



**FIGURE 3 (Source CN - EIS areas over SEPP (Coastal Management) areas)**

The proposed development constitutes designated development subject to Clause 2.7(2) of the Resilience and Hazards SEPP and is in proximity to coastal wetlands. As such, the provisions of the Resilience and Hazards SEPP apply, and the development application has been assessed against the mandatory pre-conditions of consent and is determined to be satisfactory:

**Clause 2.3** – *Land to which the policy applies* – The Resilience and Hazards SEPP applies to land the whole or any part of which is within the ‘coastal zone’. All of the proposal under the submitted application falls within *coastal wetlands* category but this also overlaps with several categories of the *coastal zone* as defined under Clause 2.4, as follows:

- Coastal Wetlands - the majority of the proposal, as submitted is affected.
- Coastal Wetlands Proximity Area – as small portion of the site adjacent Ironbark Creek and eastern side on the existing Maitland Road is affected.



- Coastal Use Area - the majority of the proposal, as submitted is affected.
- Coastal Environment Area – all of the proposal is affected.

**Clause 2.7 - Development on certain land within coastal wetlands and littoral rainforests area:** Clause 2.7 requires development consent for certain works including earthworks and any other development, and as such applies to the proposed development. It is noted that Clause 2.7(2) provides that the subject development constitutes designated development. The application has been assessed as designated development.

In regards to Clause 2.7(6), the EIS Areas are not located on land reserved under the *National Parks and Wildlife Act 1974* and, therefore, cl. 2.7 applies.

**Clause 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest:** Clause 11 provides that development consent must not be granted to development on land identified as 'proximity area of coastal wetlands' or 'proximity area for littoral rainforest' unless that the consent authority is satisfied that the proposed development will not significantly impact on a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

The subject site is predominately mapped as coastal wetlands with coastal wetland proximity area directly adjacent. In terms of the land on which the proposal is located, the associated 'proximity' areas are relatively small and directly adjacent Maitland Road. As demonstrated within the overall assessment report, it is considered that the development is acceptable in terms of biophysical, hydrological or ecological integrity impacts on the adjacent coastal wetlands

**Clause 2.9 – Coastal vulnerability area:** The proposal does not affect any Coastal Vulnerability Area.

**Clause 2.10 - Development on land within the coastal environment area:** Clause 2.10 provides that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage.

The proposal's impacts in terms of biophysical, ecological and hydrological environment, including surface and groundwater; as detailed within overall assessment are considered to be acceptable. The main impacts in this regard are related to impacts on ecology, potential for erosion and water quality impacts and appropriate conditions of consent are recommended at Attachment A.

The development will have impacts on the coastal environmental values and processes due to the works associated with those parts of the bridge construction at Ironbark Creek within the EIA Area and the unnamed drainage channel south of Ironbark Creek. It is considered that the mitigation measures proposed by the applicants to manage impacts and the works so to ensure that fish passage is maintained is acceptable. Appropriate conditions of consent are recommended at Attachment A.

The proposed development, due to the impacts on marine vegetation, native vegetation and

fauna and their habitats, includes Biodiversity Offsets due to the loss of vegetation (e.g. mangroves and saltmarsh), loss of foraging habitat for the Southern Myotis and loss of habitat of threatened migratory birds (under Hunter Estuary Important Areas Mapping for threatened migratory birds (DPIE). The proposal will remove up to approximately 2.55 hectares of vegetation and the overall development is considered to be acceptable subject to the conditions of consent are recommended at Attachment A. Refer to the detailed assessment of impacts on biodiversity conservation within this report.

The proposal does not unreasonably impact on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability. One existing informal access currently exists to the southern bank of Ironbark Creek and east of the existing bridge and will be impacted by the proposed development. This access is used infrequently, most likely by persons fishing, and the loss of this access would have minor and acceptable impacts given multiple other options for land-based fishing are in the vicinity.

The development will impact on one Aboriginal object which is considered to be a common isolated surface artefact in a disturbed context is considered acceptable in this instance. Refer to the detailed assessment of Aboriginal Cultural Heritage within this report.

**Clause 2.11 - Development on land within the coastal use area** – Clause 2.11 specifies that development consent must not be granted to development on land within the coastal use area unless the consent authority has considered whether the proposal is likely to have an adverse impact on existing, safe access to foreshore, beach, headland or rock platform by the public (including those with a disability); overshadowing, wind funnelling, loss of views, visual amenity and scenic quality of the coast, aboriginal cultural heritage and cultural/built heritage; and that the consent authority is satisfied the proposal is designed such to avoid these adverse impacts or is otherwise managed to minimise the impacts.

The proposal does not unreasonably impact on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability. One existing informal access currently exists to the southern bank of Ironbark Creek and east of the existing bridge and will be impacted by the proposed development. This access is used infrequently, most likely by persons fishing, and the loss of this access would have minor and acceptable impacts given multiple other options for land-based fishing are in the vicinity.

It is considered that the proposal would have minor and acceptable impacts in terms of overshadowing, wind funnelling and the loss of views from public places to foreshore.

The proposal will have an impact on the visual amenity and scenic aspects in regard to the new bridge proposed across Ironbark Creek. The nature of the proposed development and the wider/taller bridge proposed will have a noticeable impact visually. Additionally, the removal of the existing bridge over Ironbark Creek and realignment of the Maitland Road will be a noticeable visual change resulting from the proposal. It is noted that the majority of the new bridge and the removal of the existing bridges is dealt with under the REF. Overall, the impacts from the proposal are considered to be acceptable on balance. Refer to the detailed assessment of Visual Amenity within this report.

The development will impact on one Aboriginal object which is considered to be a common isolated surface artefact in a disturbed context is considered acceptable in this instance. Refer to the detailed assessment of Aboriginal Cultural Heritage within this report.

**Clause 2.12 - Development in coastal zone generally – development not to increase risk of coastal hazards:** Clause 2.12 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal has been assessed and will not increase risk of coastal hazards.

**Clause 2.13 - Development in coastal zone generally – coastal management programs to be considered:** Clause 2.13 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

The Hunter Estuary Coastal Zone Management Plan (HECZMP) (BMT, 2009 – Revised Dec 2017) applies to the land subject to the EIS. The HECZMP was certified on 24 April 2018 and remains the relevant coastal plan for the area it covers. Coastal Zone Management Plans are being replaced by Coastal Management Plans (CMPs) and it is understood that work has commenced on preparation of a Hunter River Estuary CMP.

Under Schedule 3, Clause 4 of the *Coastal Management Act 2016*, a certified CZMP continues to have effect until it is replaced by a certified CMP (or until 31 December 2023).

The proposed development has been assessed having regard to the guiding principles, objectives and recommended strategies of the HECZMP, which are noted as being generally consistent with the Resilience and Hazards SEPP. Overall, the impacts from the proposal are considered to be acceptable on balance.

The proposed development has been assessed having regard to the objectives and pre-conditions contained within the Resilience and Hazards SEPP and subject to the amended recommended conditions of consent contained at Attachment A is considered satisfactory.

#### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (*‘the Resilience and Hazards SEPP’*) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Phase 1 Soils and Contamination Assessment (Phase 1 SCA) (Jacobs, 2021a), a Sampling Analysis and Quality Plan (SAQP) (Jacobs, 2021b) and a subsequent Stage 2 Contamination and Waste Classification Assessment (Stage 2 CWCA) (Jacobs, 24 March 2022). These studies and reports have been prepared for the entire Hexham Straight Widening project and do not deal with the EIS areas in isolation of the areas covered by the REF.

The soil and sediment field investigations for the Stage 2 CWCA was completed by Jacobs environmental scientists in June 2021 and involved shallow soil sampling and analysis along the eastern verge of Maitland Road targeting areas of environmental interest (AEI's) and sediment sampling and analysis along the Hunter River foreshore and the bed sediments from beneath Ironbark Creek bridge and the banks of Ironbark Creek.

As part of the Stage 2 CWCA, further target sampling has been undertaken of areas of concern identified in the Phase1 SCA.

This further sampling has indicated some surface asbestos fragments and mostly minor exceedances of ecological investigation levels in other contaminants. No significant higher risk contaminants such as BTEX, volatiles or hydrocarbons were detected in the areas considered to be of most concern.

The Stage 2 CWCA concludes that *"The results of the Stage 2 Assessment indicates that the impacts associated with soil and contamination risks identified from the site investigation of the proposal are unlikely to be significant. While exceedances of the SAC (Site Assessment Criteria) are noted, the site condition is considered suitable for the proposal. Consequently, the proposal would not trigger a notification under Section 60 of the Contaminated Land Management Act 1197 and would not require remediation of the site or any subsequent validation reporting such as a Remediation Action Plan (RAP). As such an independent site auditor is not required for the proposal."*

However, a Contaminated Land Management Plan (with unexpected finds protocol) is proposed to be incorporated into the Construction Environmental Management Plan.

This approach is considered acceptable as a RAP is more focussed on making the land suitable for a landuse, whereas for this project, it is considered that the objective is to manage the relatively minor existing contamination from historical filling and nearby potentially contaminating land uses as part of the civil works and use as a road.

Accordingly, the Stage 2 CWCA is considered sufficient for the purpose of allowing a consent authority to be satisfied the land is suitable for the intended landuse consistent with Chapter 4, subject to appropriate conditions of consent.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

### **Chapter 2: Infrastructure**

- Section 2.108 of SEPP (Transport and Infrastructure) 2021 permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent.

However, Section 2.108 of the SEPP does not apply to works located on land regulated under Chapter 2 of SEPP (Resilience & Hazards) 2021. The land within the EIS Areas is within land so regulated (refer to SEPP (Resilience and Hazards) 2021 section in this report for further information).

Those other parts of the overall Hexham Straight Widening project located outside of the land regulated by Chapter 2 of SEPP (Resilience & Hazards) 2021 are, for the purposes specified under section 2.108, permitted to be carried out by or on behalf of TfNSW, and can therefore be assessed under Division 5.1 of the EP&A Act (referred to as the REF Area).

The SEPP (Transport and Infrastructure) 2021 does apply under both the following sections:

- Section 2.48(2) - Development involving penetration of ground within 2 m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower, near substations or within 5m of exposed overhead electricity power lines; and
- Section 2.120(2) - Development that involves the penetration of ground to a depth of at least 3 m below ground level (existing) on land that is the road corridor of specified roads.

For the purpose of Section 2.48, the proposal was referred to Ausgrid who raised no objection but noted that any alterations or adjustments to Ausgrid's assets is Contestable Works and are required to be funded by the proponent.

This length of Maitland Road forms part of the Pacific Highway that, for the purpose of Section 2.120, is a 'specified road'. The proposal was referred to Transport for NSW who confirmed that they have "*no comments or requirements with respect to the nominated (referral) trigger*".

Overall, the proposal is considered to be acceptable in terms of SEPP (Transport and Infrastructure) 2021.

#### Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the Newcastle Local Environmental Plan ('NLEP') 2012. The aims of the NLEP under Clause 1.2(2) include: -

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services, to facilitate the development of building design excellence appropriate to a regional city.*

The proposal is consistent with these aims as the proposal will contribute to the expansion and ongoing management of this significant piece of built resource and contribute to the economic wellbeing of the city and wider region.

#### *Zoning and Permissibility (Part 2)*



The EIS area of the proposal is located within the following land use zones pursuant to Clause 2.3 of the Newcastle Local Environmental Plan 2012 (NLEP2012).

**EIS Area 1** is located within SP2 – Infrastructure (SP2) and C2 – Environmental Conservation (C2)

**EIS Area 2** is located within SP2 – Infrastructure (SP2) and C2 – Environmental conservation (C2) and W2 – Recreational Waterway

**EIS Area 3** is located within C2 – Environmental conservation (C2) and W2 – Recreational waterway.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of Road which is a permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

Zone	Objectives of zone
SP2 - Infrastructure	<ul style="list-style-type: none"><li>○ To provide for infrastructure and related uses.</li><li>○ To prevent development that is not compatible with or that may detract from the provision of infrastructure.</li></ul>
C2 - Environmental Conservation	<ul style="list-style-type: none"><li>○ To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li><li>○ To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li><li>○ To provide for the management of the majority of the Hunter River floodplain by restricting the type and intensity of development to that compatible with the anticipated risk to life and property.</li><li>○ To provide for the conservation, enhancement and protection of the Hexham Wetlands.</li></ul>
W2 – Recreational waterway	<ul style="list-style-type: none"><li>○ To protect the ecological, scenic and recreation values of recreational waterways.</li><li>○ To allow for water-based recreation and related uses.</li><li>○ To provide for sustainable fishing industries and recreational fishing.</li></ul>

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposal will contribute to the delivery of key infrastructure;
- The proposal will not unreasonably impact on ecological, cultural and aesthetic values;
- The proposal will not unreasonably increase risk to life and property within the Hunter River Floodplain; and
- The proposal will not unreasonably impact on fishing industries and recreational fishing.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Table 1: Consideration of the LEP Controls**

CONTROL	REQUIREMENT	PROPOSAL	COMPLY
Land acquisition (CI 5.1/5.1A)	Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.	The proposal does not involve any land reserved for acquisition	Yes
Development below Mean High Water Mark (CI 5.7)	Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	<p>Clause 5.7 of the LEP is applicable to development below mean high water mark to ensure appropriate environmental assessment for development carried out on land covered by tidal waters. Development consent is also required to carry out development on any land below the mean high-water mark of any body of water subject to tidal influence (including the bed of any such water).</p> <p>Clause 2.108(1) of SEPP (Transport and Infrastructure) 2021 permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent. The SEPP prevails only on land that is outside the Coastal Wetlands areas, being the REF areas only, and does not apply to the EIS Areas.</p> <p>Within the EIS Areas, Chapter 2 of SEPP (Resilience and Hazards) 2021 applies for parts of the proposal within the Coastal Wetlands boundaries that occur in the Hunter River and Ironbark Creek below the mean high water mark.</p>	Yes

		Refer to the detailed assessment of Biodiversity in this report.	
Heritage (CI 5.10)	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	<p>No items of State or Local heritage significance are impacted by the proposal. One item having potential Local significance (is considered to be an archaeological 'work') will be impacted and cannot reasonably be avoided.</p> <p>One isolated find (distal portion of a silcrete flake) relating to Aboriginal heritage was located within the EIS area and in proximity to the existing edge of pavement on the water edge to the Hunter River. No additional Aboriginal sites or areas of potential archaeological deposit (PAD) were identified.</p> <p>Refer to the detailed Heritage assessment in this report.</p>	Yes
Flood planning (CI 5.21)	<p>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p><i>(a) is compatible with the flood function and behaviour on the land, and</i></p> <p><i>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p><i>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the</i></p>	<p>Comprehensive flood modelling undertaken by the Applicant indicates that the works proposed within the EIS areas are not expected to have any noticeable adverse impact on flood behaviour or increase risk to life or property.</p> <p>Refer to the detailed flood assessment in this report.</p>	Yes

	<p><i>surrounding area in the event of a flood, and</i></p> <p><i>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p><i>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p><i>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</i></p> <p><i>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</i></p> <p><i>(b) the intended design and scale of buildings resulting from the development,</i></p> <p><i>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i></p> <p><i>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i></p>		
Acid sulphate soils (CI 6.1)	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has	An Acid Sulfate Soils Management Plan has been prepared and submitted in support of the development.	Yes

	been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.		
Earthworks (CI 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of disturbing relics,</i></p> <p>(g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p>(h) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>	The extent of proposed earthworks is commensurate with that required to construct the proposed road and bridge infrastructure and is not expected to be contrary to the matters that must be considered. The quality of any fill material to be imported to the site will be controlled by appropriate conditions of consent.	Yes

The proposal is assessed to be generally consistent with the LEP based on the following considerations.

#### Clause 5.10 - Heritage conservation

##### Aboriginal cultural heritage

An Aboriginal Cultural Heritage Assessment report (ACHA) has been provided with the application. The ACHAR has identified that the project will result in direct impacts to one recorded Aboriginal site, HS-IF-1 (AHIMS ID 38-4-2026), located in the north-western most part of EIS Area 2 and in proximity to the existing edge of pavement near the water edge to the Hunter River (see **Figure 4** below). No other Aboriginal sites or areas of potential archaeological deposit (PAD) were identified.

HS-IF-1 is a distal portion of a silcrete flake relating to Aboriginal heritage and is shown in **Figure 5** below.



FIGURE 4 (Source – Extract from ACHA Figure 4.1)



**Table 4.3 Summary of Aboriginal sites recorded**

Site name	Location	Features	Survey Unit	Landform
Hexham Straight Isolated Find 1 (HS-IF1)	GDA94 Zone 56 378437E 6364343N	One isolated distal portion of a silcrete flake. Dimensions: 17 mm (W) x 16 mm (L) x 4mm (T)	6	Modified

**Plate 4.1 HS-IF 1 ventral surface****Plate 4.2 HS-IF 1 location (orange flag) view northeast to Hunter River****FIGURE 5 (Source – Extract from ACHA Table 4.3)**

The ACHA also notes that there is potential to encounter Aboriginal objects "sporadically within the study area in an unpredictable pattern... however if present are likely to be of very low density in highly disturbed locations divorced from their original depositional context." The ACHAR has found that no additional areas of Potential Archaeological Deposit (PAD) have been identified.

A Cultural Values Assessment (CVA) for the proposal was prepared by Waters Consultancy for EMM on behalf of TfNSW, with the aim of assessing the potential impact of the proposed works on intangible Aboriginal cultural heritage values. The assessment of Aboriginal cultural heritage values was undertaken collaboratively with the Registered Aboriginal Parties and four identified Aboriginal knowledge holders and is considered within the ACHA.

The ACHA recommends the following:

- An Aboriginal Heritage Impact Permit (AHIP) is required prior to works commencing.
- Completion of Cultural Heritage Awareness training for all employees and contractors during the project construction.
- Development of an Aboriginal Heritage Interpretation Plan to promote understanding and awareness of the cultural values of the study area, including but not limited to interpretive signage.

These recommendations are to be reinforced in the proposed conditions of consent should the development be approved.

## European heritage

A Statement of Heritage Impact (SHI) (Jacobs, 2021) has been provided with the application and covers a study area inclusive of the REF and EIS Areas. The SHI identifies that there are 16 listed heritage items with Local significance within or in proximity to the study area.

None of these listed Local items are within or in proximity the EIS Areas.

There are also no items listed on the State Heritage Register within the study area.

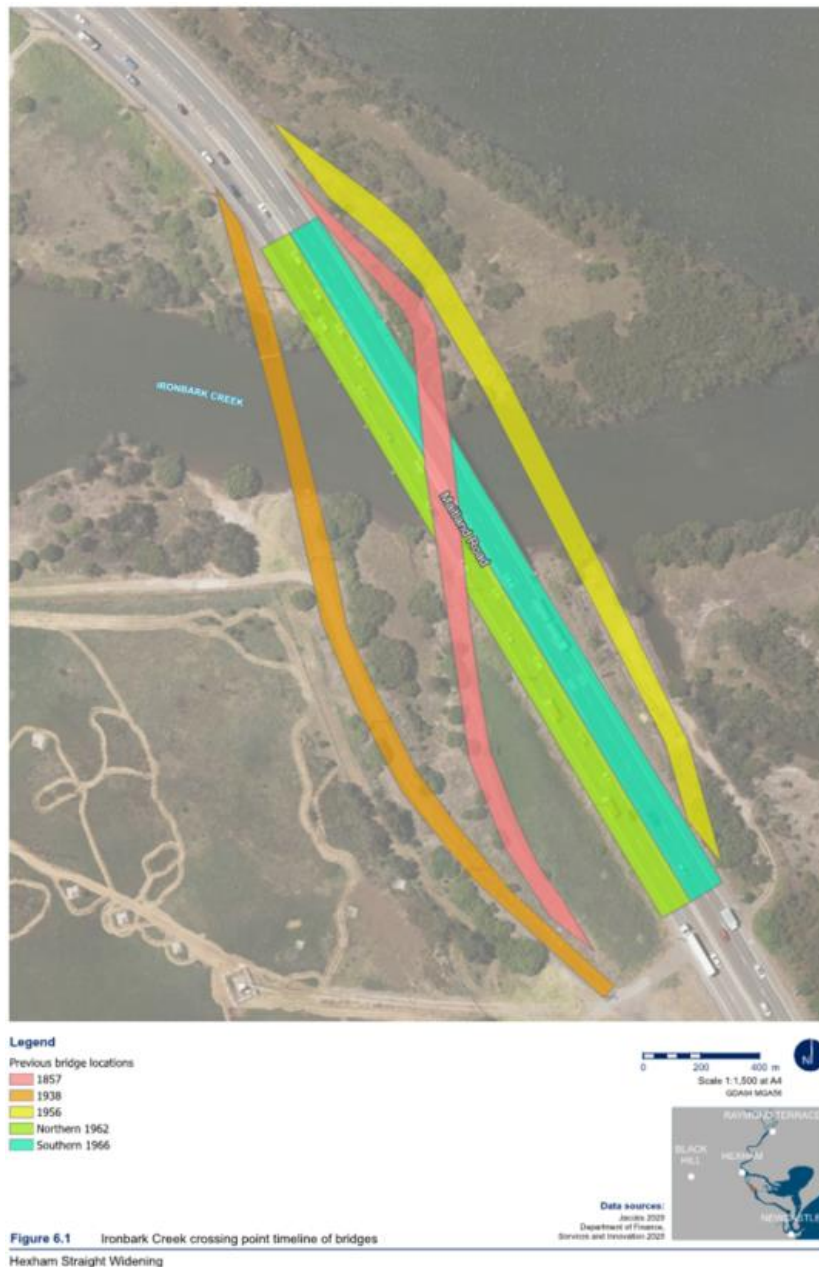
There are no Section 170 (Heritage Act, 1977) listed items in the study area.

There are no identified archaeological 'relics' within the study area.

There is, however, one archaeological 'work' within the EIS Areas in the vicinity of Ironbark Creek which the SHI refers to as the 'Ironbark Creek Crossing Point' (ICCP). The Heritage Act identifies 'works' as a category separate to 'relics'. The SoHI has noted that as evidence of former road infrastructure, the crossing point is considered to be a 'work' rather than a 'relic' and as such does not trigger reporting requirements under the Heritage Act.

In proximity to the current bridge over Ironbark Creek there are remnants of several former bridges as the road alignment (refer to **Figure 6**) has been altered several times. The SHI notes that physical remains visible above the ground surface and water level indicate that at least some degree of fabric of each of the 1875, 1938 and 1956 bridges remain in situ, and that further bridge/crossing remains may be present subsurface.





**FIGURE 6 (Source – SHI Figure 6.1)**

The ICCP is identified as remnants of a former bridge (circa 1875) that will be directly impacted by the proposal. The ICCP is not listed in the NLEP2012, however, the SHI contains a heritage significance assessment of the Ironbark Creek crossing point. The assessment concludes that the crossing point demonstrates historical significance and research potential at a local level. The SHI notes that the area likely contained a corduroy crossing or other informal crossing prior to the 1875 bridge, which is described as a class of heritage sites which are becoming increasingly rare, with only 2 other examples listed on a heritage register.

The Applicant was asked to provide further consideration and information regarding potential alternate solutions that would not impact on the ICCP. In summary, the response identified that;

- Over time there have been 4 main crossing alignments over Ironbark Creek. Remnant infrastructure associated with the former crossing alignments are identified as 'works' rather than 'relics', being past evidence of infrastructure, which may be buried, and therefore 'archaeological' in nature.
- Previous investigations looked at locating the crossing to the west of the existing bridge, however it was found that this would create significant impacts to public utilities and an existing retirement home, which led to the western alignment option being discounted.
- The proposed design for the crossing is located to the east of the existing bridge. The proposed eastern alignment impacts on two of the 4 previous crossing locations. A western alignment would also impact on two of the 4 previous alignments.
- An option to avoid all previous alignments would mean crossing Ironbark Creek in an alternative location, resulting in significantly more impact on biodiversity, flooding and hydrology and water quality.

The response provided is satisfactory on balance with the constraints of this particular location, acknowledging that any bridge alignment will impact on any former bridge infrastructure present, and that options to avoid this area entirely would have greater unacceptable impacts on currently undisturbed areas of the creek.

The SHI has recommended that detailed archaeological investigation and archival recording is undertaken prior to any works commencing and any finds included in an archival record of the ICCP. This approach is acceptable and appropriate conditions of consent are proposed.

#### Clause 5.21 – Flood planning

A single Flooding and Hydrological Assessment (FHA) (Jacobs, 2021) has been prepared covering the whole of the Hexham Straight Widening project including both the REF and EIS Areas.

As the proposal is located on flood prone land, changes in flood behaviour is highly sensitive to minor changes to vertical road alignment or safety barriers. Accordingly, the FHA has considered changes to both horizontal and vertical road alignment, proposed and existing drainage, changes to Ironbark Creek bridge and proposed safety barriers based on the current concept design details.

The modelling was completed using an existing flood model (Jacobs, 2020) developed for the M1 Motorway to Raymond Terrace (M12RT) project, which was further updated to incorporate information relevant to the Hexham Straight Widening proposal area. The M12RT project modelling was carried out in a TUFLOW two-dimensional flood hydraulic model of the Lower Hunter River which was adopted in the Williamstown and Salt Ash Floodplain Risk Management Study and Plan (BMT WBM, 2017). The TUFLOW hydraulic model of the Lower Hunter River was originally developed for a flood study for the Williamstown and Salt Ash district for Port Stephens Council (WBM,2005).

The Hexham Straight Widening flood model extends five kilometres upstream on the Hunter River and four kilometres upstream on the Williams River from the junction of the Hunter River and the Williams River at Raymond Terrace and includes the floodplains of those rivers as well as some areas of Coastal Wetlands and areas within Hexham Swamp Nature Reserve. The model extends in the downstream direction to the river's outlet into the Tasman Sea to the east of the City of Newcastle and extends north to include Fullerton Cove and the Tilligerry Creek outlet at Port Stephens.

The project SEARs (and referenced guidelines) do not prescribe specific Flood Management Objectives (FMO's) to be adopted by the project. The FHA states:

*"The proposal has been developed with a target of minimising newly flooded areas where practical. For the proposal, the increase in flood level (afflux) should be minimal. A target maximum afflux of 50 mm has been adopted for habitable floors where there is above floor flooding under the existing scenario. This target is unlikely to result in a significant impact to land use or flood hazard. A 50 mm afflux threshold is considered reasonable in relation to the magnitude of flooding in the Hunter River in combination with tide and wind, vertical accuracy of the terrain data, accuracy of the flood model and the overall susceptibility of urban development in the floodplain (large majority is above the 1% AEP; most of the impacted area is rural) (refer Section 3.3.3 of the Flooding and Hydrology Assessment).*

*For the remaining areas a target of 100 mm afflux outside the proposal has been generally adopted."*

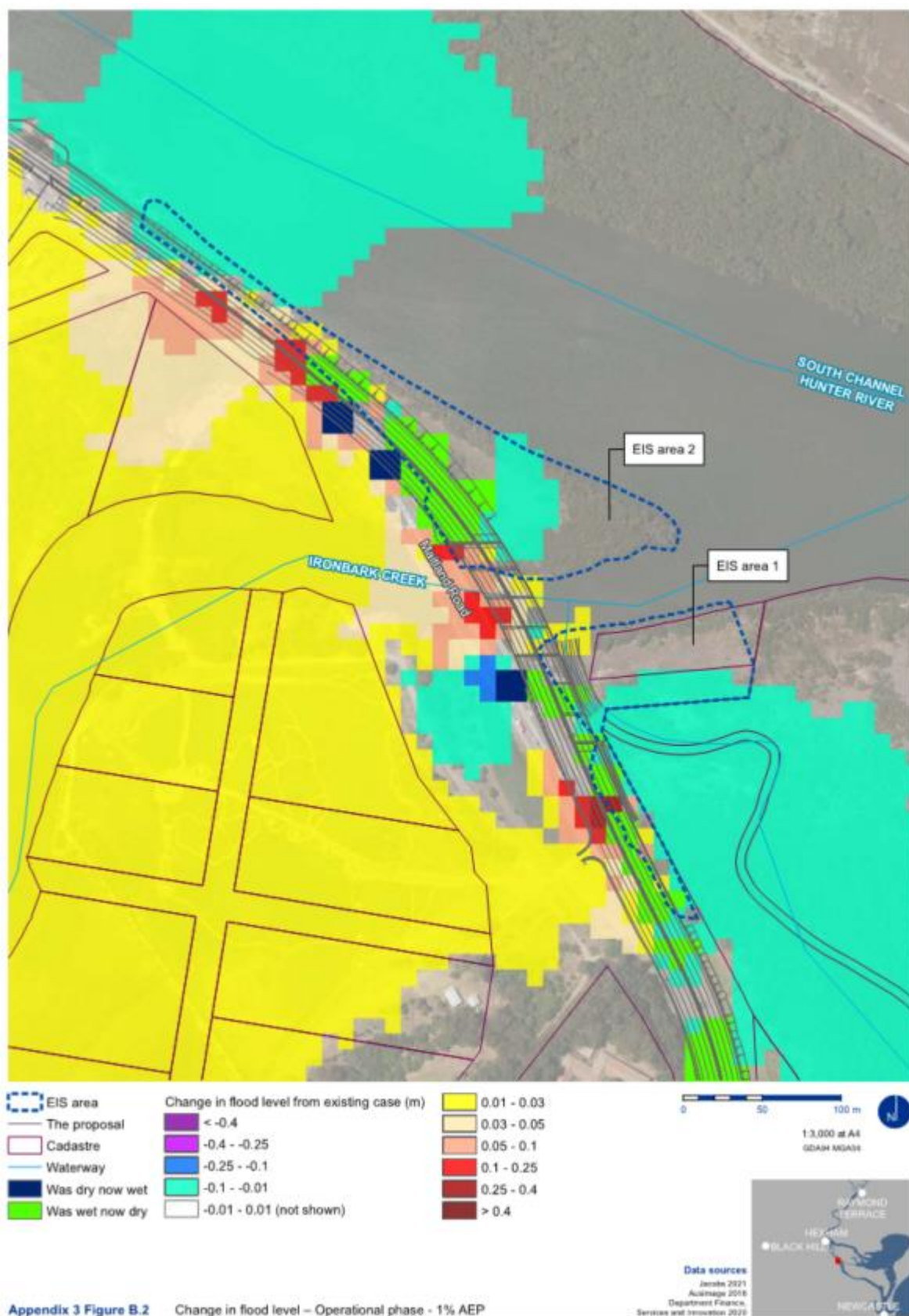
In response to questions asked about the magnitude of the FMO's the Applicant has advised;

*"TfNSW has developed infrastructure design specifications that include a FMO of 50mm afflux at residential receivers and 100mm for other urban and recreation areas. This specification has been utilised on other Transport projects across the State and was adopted for the M1 Motorway to Raymond Terrace EIS. As noted above consideration of specific site locality and sensitivity of land uses should inform the adopted afflux for a development. As the land use in the three EIS areas are primarily SP2 and C3 and as there are no residential receivers or privately owned property, the quantitative design objective relevant to these areas would be 100mm, in accordance with the definition of the FMO "Other urban and recreational".*

*However, as can be seen in Appendix 3 Figures B.1 to B.3 the project achieves a much lower afflux within the EIS areas for the 1% AEP than the nominated 100mm. For the majority of the EIS areas in the 1% AEP the proposal has no effect or a slight reduction in flood height. Noting that under existing conditions, the three EIS areas experience flood heights ranging from 2 to 4m.*

The way in which the flood model is set up and run means it cannot extract impacts from discrete areas (such as the three small EIS areas) rather it assess regional flood impacts based on the entire project. This is a result of the nature of flooding which tends to be typified by overland sheet flow once drainage channels exceed their capacity.

The following **Figure 7** is extracted from the additional information received on 30 March 2022 and shows the predicted changes in flood levels as a result of the REF and EIS works in the vicinity of Ironbark Creek.



Appendix 3 Figure B.2 Change in flood level – Operational phase - 1% AEP  
Hexham Straight Widening

FIGURE 7 (Source – Appendix 3 to RFI Response)

The Applicant was asked to consider and provide a response to questions about the impact just the works proposed within the EIS areas might have on flooding. That is, assuming no works were proposed outside of the EIS areas. In reply, the Applicant has advised;

*"Jacobs Flood Modelling team have indicated that by introducing the new bridge over Ironbark Ck, the associated volume of the approaches and embankments would have a negligible impact upon flood levels in this area due to the size and behaviour of the overall catchment.*

*The three areas assessed under the EIS are located on the eastern side of Maitland Road on the banks of the Hunter River. The works proposed for these three areas include construction of the new bridge over Ironbark Creek, modification and upgrades to existing drainage, construction of new road embankment and realignment of a minor tributary. Areas outside of the EIS areas that are within the REF area of the proposal have been assessed separately within the REF."*

The works proposed within EIS Area No. 3 are essentially an extension of the existing pavement levels and are unlikely to have any noticeable or measurable impact on existing flood levels on the residential properties located on the western side of Maitland Rd. It should be noted that these existing properties are already subject to significant inundation during flood events.

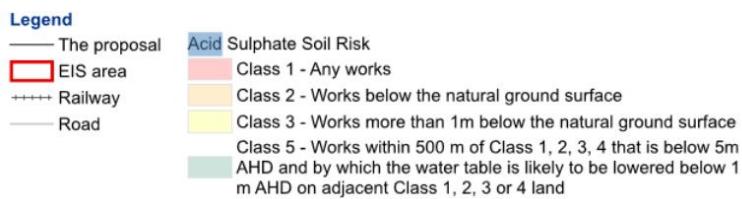
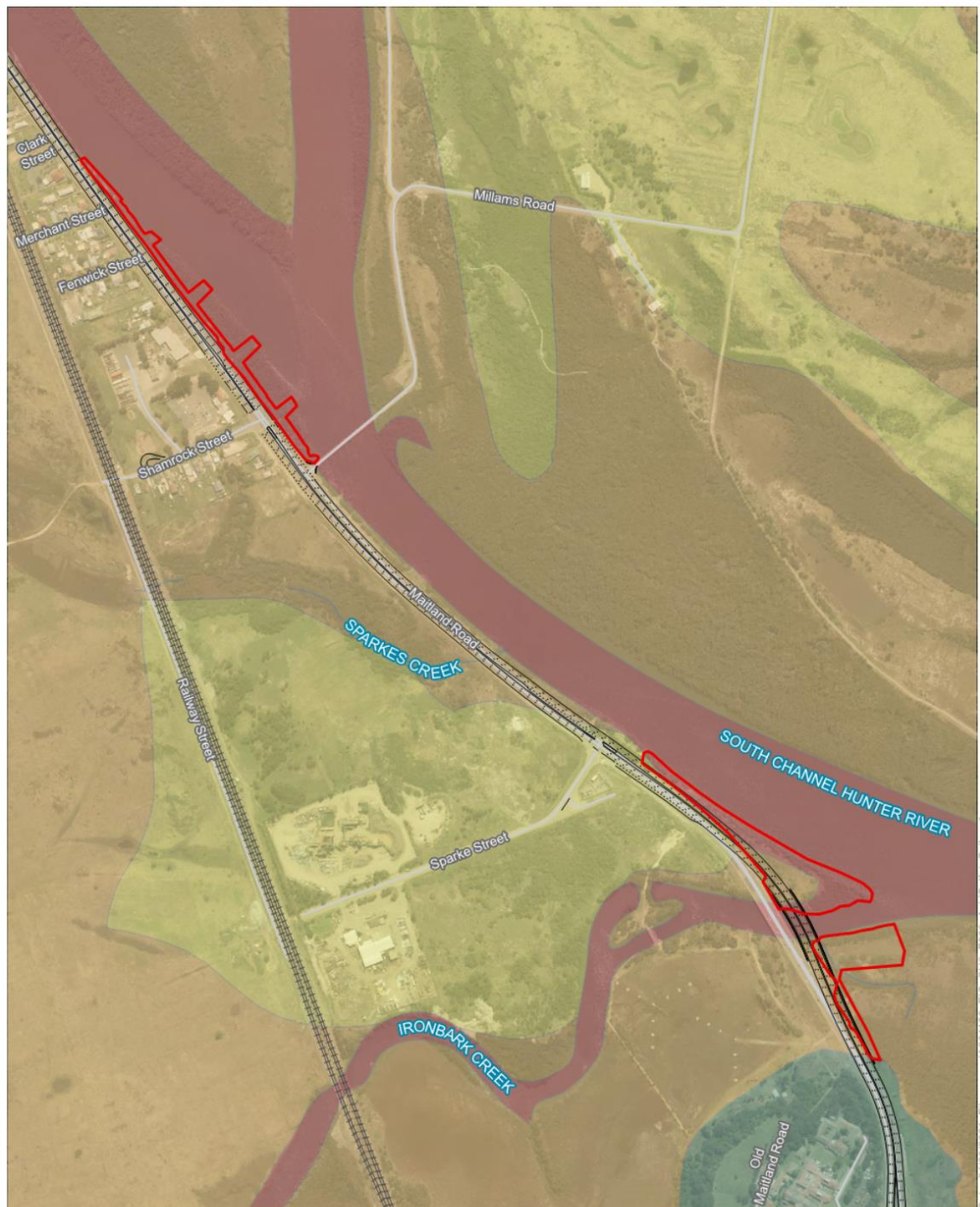
It is also noted that the Applicant has identified that new features are available to flood modelling software that allow a greater refinement of results to be produced. The Applicant has advised that these new features will be used in the detailed design phase of the project to *"reduce the current assessed afflux which are present in the concept design and to verify impacts identified by the assessment of the 80% concept design"*. A condition of consent is proposed to require this more refined flood modelling be done to support the detailed design phase of the project.

Accordingly, it is assessed that the works proposed within the three EIS areas have been properly considered and that the works may result in minor afflux but is not expected to result in detrimental increases of potential flood affectation on the surrounding area or other properties.

#### Clause 6.1 – Acid sulfate soils

Clause 6.1 seeks to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within cl.6.1(2) is noted as requiring development consent when carried out on land shown on the Acid Sulfate Soils Map. The majority of EIS Areas 1, 2 and 3 are located on Class 2 ASS. There are small areas in the northern and central portion of the proposal, adjacent to the Hunter River and around Ironbark Creek Bridge, located on Class 1 ASS. (see **Figure 8**)





**Data sources:**  
Jacobs 2020  
Department Finance,  
Services and Innovation 2020

**Figure 8.3** Acid sulfate soils risk  
Hexham Straight Widening

**FIGURE 8 (Source – EIS Figure 8.3)**

Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. However, cl.6.1(4) provides that despite subclause (2) where consent under the clause is not required if:

- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and
- (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

The EIS considers that the risk of encountering ASS within the EIS areas is 'Moderate'.

An Acid Sulphate Soil Management Plan (ASSMP) (Douglas Partners, 2021) has been submitted in accordance with the provisions of Clause 6.1. The Plan has been prepared in accordance with appropriate guidelines and provides methods and strategies to minimise the potential for adverse impacts associated with the disturbance of acid sulfate soil during construction works. Adoption of the plan is addressed in the recommended consent conditions, both as a component of the CEMP and the Contaminated Land Management Plan.

## Clause 6.2 - Earthworks

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The clause specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

The EIS states that work the EIS Areas "*would result in about 2,500 cubic metres of bulk cut and/or fill material throughout construction. The suitability of cut material for reuse within the proposal would be determined during the construction of the proposal. Any material unsuitable for reuse within the proposal would be classified in accordance with the NSW EPA Waste Classification Guidelines (EPA, 2014) and disposed of at an approved materials recycling or waste disposal facility. Any shortfall of site won fill material or replacement of unsuitable on site fill material would be imported as required. The final earthwork requirements and source of materials would be confirmed during detail design.*"

The majority of earthworks are anticipated to be as a result of the construction of road embankments, road pavement, bridge abutments, retaining walls and the re-alignment of the existing tributary to Ironbark Creek (within EIS Area 1).

Clause 6.2(3) provides several matters that the consent authority must consider prior to granting development consent as outlined below.

Matter	Comment
Disruption/detrimental effect on drainage patterns and soil stability.	The proposal has been designed to have minimise impact on drainage patterns and soil stability. The majority of the proposed earthworks associated with new or widened road pavement is proposed at similar levels to the existing road levels. The submitted flood modelling confirms that the proposed new bridge over Ironbark Creek and the associated approaches (when considering the entire Hexham Straight Widening project, including demolition of the existing bridge and approaches), will improve (lower) flood conditions within the vicinity of Ironbark Creek.
Effect on future use or redevelopment of the land.	The proposal would not prohibit any future use or redevelopment of the land.
The quality of fill and/or soil to be excavated.	The soil has been tested and assessed in terms of land contamination and acid sulfate soils and it is considered that the proposal can be completed without unacceptable impacts. Appropriate mitigation measures have been development in relation to land contamination and acid sulfate soils. Conditions have been imposed regarding any soil to be imported to ensure it is virgin excavated natural materials (VENM).
The effect of the development on the existing and likely amenity of adjoining properties.	The proposal will have minimal impact on neighbouring properties in terms of earthworks. Proposed works is suitable distant from neighbouring properties to have negligible impacts.
The source and any fill material and destination of any excavated material	<p>Appropriate conditions have been imposed on the removal and importation of any fill.</p> <p>Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.</p> <p>Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the <i>Protection of the Environment Operations Act 1997</i> and the <i>Protection of the Environment (Waste) Regulation 2014</i>.</p>



The likelihood of disturbing relics.	The impacts on European and Aboriginal cultural heritage has been assessed in detail under Clause 5.10 of the NLEP 2012 and is considered to be acceptable notwithstanding that both European and Aboriginal cultural heritage will be impacted.
Impact to any watercourse, drinking water catchment or environmentally sensitive area.	The proposal has involved a detailed assessment of impacts on watercourses/environmentally sensitive areas due to the developments position relative to watercourses and <i>coastal wetlands</i> . The proposal does not impact a drinking water catchment. It is considered that the proposal is acceptable in this regard.
Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	The proposal is considered to be acceptable subject to the conditions of consent recommended at Attachment A.

Consideration has been given to the matters prescribed under cl.6.3(3) and the proposed earthworks are acceptable.

**(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are several proposed instruments which have been the subject of public consultation under the EP&A Act. Those relevant to the proposal, include the following:

- *Draft Remediation of Land SEPP*

A proposed Remediation of Land State Environmental Planning Policy ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and *Contaminated Land Planning Guidelines*, and seeks to provide a state-wide planning framework to guide the remediation of land, including; outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The Remediation of Land SEPP is aimed at improving the assessment and management of land contamination and its associated remediation practices. The modified proposal is consistent with the draft provisions and is considered to be acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (Resilience and Hazards) 2021.

**(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- *Newcastle Development Control Plan 2012* ('the DCP')

The most relevant considerations arising from the NDCP 2012 in respect of the proposed development are as follows:

#### **Section 4.01 Flood Management**

As discussed above, in detail, under Newcastle Local Environmental Plan 2012 – Clause 5.21 (Flood Planning) it is assessed that the works proposed within the three EIS areas have been properly considered and that the works may result in minor afflux but is not expected to result in detrimental increases of potential flood affectation on the surrounding area or other properties.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

#### **Section 4.02 Bush Fire Protection**

The land within the EIS Areas is not located on land mapped as being bushfire prone on the certified Bush Fire Prone Land map.

#### **Section 4.03 Mine Subsidence**

The proposal is not affected by mine subsidence.

#### **Section 4.05 Social Impact**

Those parts of the overall Hexham Straight Widening project contained within the EIS Areas are generally well removed from any existing residential or commercial use and are not expected to have any detrimental social impacts on the local or wider community.

The proposed development, as a necessary part of the overall Hexham Straight Widening project, is expected to provide positive social and economic impacts as a result of reduced traffic congestion and travel time.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

#### **Section 5.01 Soil Management**

Appropriate consideration of earthworks, contaminated land and acid sulfate soil has been completed and is addressed in detail throughout this report.

The EIS also confirms that *"A soil conservation specialist will be engaged for the duration of construction of the proposal to provide advice on the planning and implementation of erosion and sediment control including review of the Construction Surface Water Management Plan and Erosion and Sedimentation Control Plan"* and that *"A Construction Coastal Impacts Management Plan would be developed and implemented to manage potential coastal process impacts resulting from temporary in-stream works in Ironbark Creek."*

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012. Appropriate conditions to address these aspects are included within **Attachment A**.

#### **Section 5.02 Land Contamination**

Land contamination has been investigated and is considered suitable as detailed under SEPP (Resilience and Hazards) 2021 within the report above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 5.03 Vegetation Management**

The impacts on existing vegetation have been comprehensively considered within this report as part of the biodiversity assessment under the *Biodiversity Conservation Act 2016*.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items & Section 5.06 Archaeological Management**

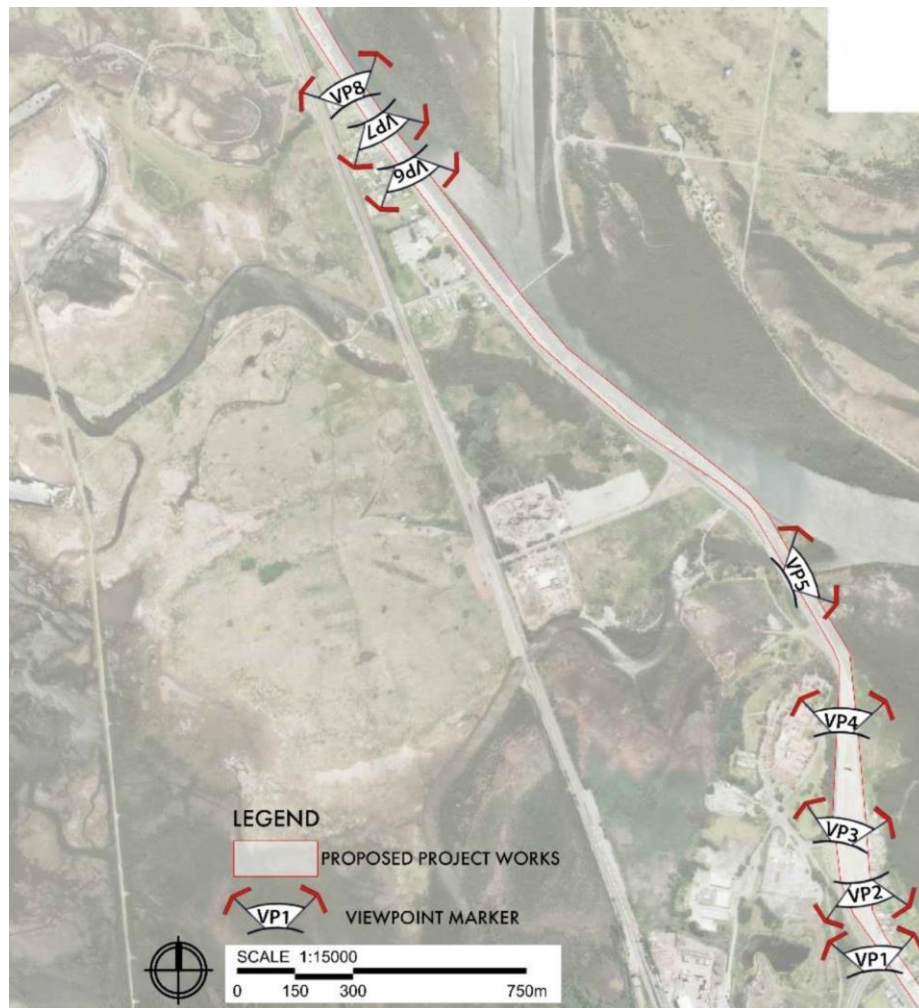
These matters were addressed under Clause 5.10 of the NLEP 2012 above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 7.02 Landscape, Open Space and Visual Amenity**

The application is supported by an Urban Design, Landscape Character and Visual Impact Assessment (UDLCVIA) (Jacobs, 2021). This UDLCVIA identifies that the overall impacts on the EIS Areas *"would be moderate to high as the proposal would impact on the existing vegetation that is identified as Coastal Wetlands along Ironbark Creek and along the South Channel Hunter River to the north of Millams Road and the Ash Island Bridge. These impacts would however be temporary as revegetation would occur as part of the landscape strategy"*.

This UDLCVIA has also considered the impact of visual amenity from a number of locations in and adjacent the EIS Areas. Of relevance, are View Points (VP) No's. 4, 5, 6 and 7 as depicted below in Figure 9.



**FIGURE 9 (Source – UDCLVIA Figure 6.1)**

The UDCLVIA has assessed the overall impact to VP5, which looks out over Ironbark Creek, areas of Coastal Wetlands and sections of the Hunter Wetlands National Park, to of moderate to high impact. The higher impacts at VP5 reflects the 'views' role either as a key urban interface or an area of environmental sensitivity.

For VP6 and VP7 the UDCLVIA has assessed the overall impacts to be moderate to low because of the clearing of vegetation along the bank of the southern channel of the Hunter River.

The UDCLVIA identifies management measures, predominantly revegetation and offsetting of removed vegetation, that respond to and address the identified impacts. It is noted that the submitted concept Landscape Works plans (refer Attachment A in UDCLVIA) do not adequately show revegetation works associated with the proposed construction staging areas within EIS Areas 1 and 2. Appropriate conditions of consent are included requiring full details of supplementary and revegetation works to be provided in Landscape Plans prior to construction.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 7.03 Traffic, Parking and Access**

When operational, the proposed development is not a traffic generating development but is

proposed, as part of the overall Hexham Straight Widening project, to improve traffic congestion and safety along this section of Maitland Rd (Pacific Highway).

Similarly, the proposal does not generate the demand for additional car parking.

However, during construction, temporary increased disruption to traffic flow and the resulting increase to traffic delay is anticipated.

One existing bus stop in EIS Area 3 (southbound at Shamrock St) is proposed to be relocated. The Traffic and Transport Assessment advises that the final location will be determined in consultation with the public transport operator during detailed design but confirms it will be located as close as possible to the existing stop and will be connected via appropriate pathways for access.

It is assessed that these expected temporary impacts can be managed during construction by the preparation and operation of a Construction Management Plan. Appropriate conditions of consent are included in this regard.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.06 Stormwater**

It is noted that the project SEARS require that the hydrology assessment be undertaken with reference to the ANZECC (2000) *Guidelines for Fresh and Marine Water Quality* or equivalent water quality guidelines as opposed to the requirements of this section of DCP 2012.

An assessment of the impacts to quality of surface and groundwater resources and the impacts to groundwater quantity is included in the Hexham Straight Widening Surface Water and Groundwater Assessment (SWGA) (Jacobs, 2021) and has considered the abovementioned ANZECC (2000) guidelines. It is noted the ANZECC(2000) guidelines have been updated and are now referred to as Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018 (ANZG, 2018).

The SWGA confirms "*The surface water quality of waterways and wetlands within the surface water and groundwater study area generally does not meet the default guideline values for protection of nominated environmental values based on results of existing water quality data. Elevated nutrients and turbidity together with low dissolved oxygen and occasional elevated metals are the key water quality indicators that frequently exceed the ANZG (2018) guidelines.*"

The construction and operation of the proposal could further impact on these indicators, particularly as increased sediment, generated from many construction activities such as cut and fill, excavation, stockpiling, instream work and vegetation clearing could further impact water quality.

MUSIC modelling was undertaken for both the entire project area and specifically for the EIS Areas. Results show that there is a slight reduction on the annual average pollutant loads of each of these parameters by around two to five per cent such that operational impacts within the entire project area would be slightly better than existing conditions if the proposed treatment and mitigation measures identified in the SWGA are implemented. These reduced pollutant yields are less than the targets set by this section of the DCP 2012 but are a comparison against existing conditions which includes the existing Maitland Road carriageway that has limited existing stormwater control measures in place.

The SWGA also determines that the increase in percentage of impervious area within the EIS Areas ranges from 5% to 15% depending on the specific catchment. These increases are considered minor and are unlikely to result in significant additional runoff or pollutant load.

Again, considering the overall project area, the SWGA notes the minimal available land between the edge of the existing and proposed road carriageway and the Hunter River or Ironbark Creek in which new or additional water quality control measures could be introduced to manage all flows from the existing and new road infrastructure.

The risk of groundwater systems being impacted by the proposal is also considered low provided the recommended management measures are adopted.

In summary, the SWGA states;

*"To minimise impacts to surface water and groundwater quality during construction, water quality control measures have been incorporated into the design of the proposal. These include a wide range of typical measures deployed by Transport for road construction projects.*

*Surface water and groundwater management measures would be detailed in a Construction Soil and Water Management Plan that would outline procedures for the management of activities such as excavation and treatment of acid sulfate soils, stockpiling, tannin leachate dewatering, discharging temporary sediment basins and emergency spill response. During operation, the key surface water objective of the proposal is to minimise ongoing impact to surface water environments. As such a range of permanent water quality treatment measures have been proposed as part of the design including grassed swales, permanent water quality basins, spill containment measures and scour protection to avoid erosion and sedimentation impacts.*

*Surface water and groundwater quality monitoring programs will be implemented during construction as a management measure to observe any changes in water quality that may be attributable to the proposal and inform appropriate management responses."*

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.08 Waste Management**

The proposal will not involve any on-going waste management when operational. Appropriate measures will be included in the Construction Management Plan to deal with waste generated during construction.

## **Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020)**

The following Local Infrastructure Contributions Plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020) (NLICP)*

Section 1.6 of the NLICP does not provide for an exemption or any reduction to contributions levied for this nature of development.

**(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the development.

**(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

The following relevant matters contained in the EP&A Regulation must be taken into consideration by a consent authority in determining a development application:

- Matters contained in Clause 92(1) including:
  - If demolition of a building proposed – the provisions of AS 2601;
  - If on land subject to subdivision order under Schedule 7, provisions of that order and any development plan;
  - Dark Sky Planning Guideline if applicable;
  - *Low Rise Housing Diversity Design Guide for Development Applications* (July 2020) if for manor house or multi dwelling housing (terraces).
- Matters contained in Clause 92A(1) including the *Wagga Wagga Special Activation Precinct Master Plan* published by the Department in May 2021.
- Matters in Cause 93 where the consent authority must be satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use (CI 93(3)).
- Matters in Clause 94 where the consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

These prescribed matters have been considered and been found to not be applicable to the proposed development.

**3.5 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed development is an extension of the existing Pacific Highway.
- Access and traffic – The proposed development itself does not generate additional traffic or parking demand. The development is proposed in order to increase the capacity of

the existing road network and improve road safety. One bus stop will require minor relocation and the final location will be determined by TfNSW and the service provider during detailed design.

- Public Domain – The proposed development will result in loss of one informal access point to the southern bank of Ironbark Creek. This access is used infrequently, most likely by persons fishing, and the loss of this access is not considered to be significant given multiple other options for land-based fishing are in the vicinity.
- Utilities – Appropriate street lighting will be provided to the new road infrastructure. Any other adjustments to public or private utilities will be undertaken by the proponent.
- Heritage – The proposal does not impact on any listed item of European heritage identified on any Local or State register. One un-listed item having potential Local heritage significance (the ICCP) will be impacted by the works associated with the new bridge crossing of Ironbark Creek. It is assessed that avoidance of this item is not feasible and appropriate archival recording will be required.

One isolated find relating to Aboriginal cultural heritage was located in EIS Area 2. An application for an AHIP will be required.

- Other land resources – the proposal will not have adverse impacts on water catchments or the neighbouring Hexham Wetlands National Park.
- Water/air/soils impacts - Contamination and remediation has been considered in the Phase 1 and Phase 2 Contamination Reports and the proposal is satisfactory subject to conditions. A reduction in traffic congestion is considered to result in a potential minor decrease in emissions from vehicles currently using this road. Impacts on water and soils, including erosion and sedimentation, will be appropriately managed by the mitigation measures proposed.
- Flora and fauna impacts - The impacts on existing vegetation have been comprehensively considered within this report as part of the biodiversity assessment under the *Biodiversity Conservation Act 2016*. The proposed development is considered to be acceptable
- Natural environment – Acceptable minor changes to landform will occur in relation to widening of the existing road formation and approaches to the new crossing over Ironbark Creek.
- Noise and vibration – Operational use of the future road elements contained within the EIS Areas will not have any noticeable adverse impacts on existing neighbouring land or properties. Construction impacts will be managed by the preparation and implementation of a Construction Management Plan.
- Natural hazards –The site is affected by flooding across a range of rainfall events, however, the impact of this on the proposed development, and on proposed users of the road, is considered to be acceptable. Similarly, the proposed works within the EIS Areas have been assessed as having negligible adverse flooding impact on nearby lands.

The site is not subject to risk from bushfire or geotechnical related considerations.



- Safety, security and crime prevention – The proposed development is considered acceptable having regard to CPTED Principles. The development will result in the removal of one informal access point to the southern bank of Ironbark Creek which has limited to no passive surveillance.
- Social impact – The proposed development is assessed as having no adverse impacts on the health and safety of the community, sense of place, community facilities or interactions between the new development and the community.
- Economic impact – The proposal is assessed as providing minor positive economic benefits resulting from reduced traffic congestion and travel time and improving road access to the CBD and port related lands.
- Site design and internal design – The concept designs for the proposal are considered acceptable. Investigations undertaken by the proponent in relation to the location and alignment of the new Ironbark Creek crossing have determined that the location shown is preferred for both environmental and economic reasons.
- Construction – Potential and likely impacts during the construction phase have been appropriately considered and are acceptable subject to the preparation and implementation of a Construction Management Plan.
- Cumulative impacts – The proposed development forms a small part of the overall Hexham Straight Widening project which, more broadly, forms part of major road infrastructure upgrades in the locality, including the proposed 'M1 to Raymond Terrace' (M12RT) extension.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **3.6 Section 4.15(1)(c) - Suitability of the site**

The proposal is considered to be suitable for the site, in that the proposed development is an extension of the existing Pacific Highway.

### **3.7 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 4.3 of this report.

### **3.8 Section 4.15(1)(e) - Public interest**

The development is in the public interest as it will assist in the delivery of the overall Hexham Straight Widening project that will reduce traffic congestion, reduce travel times and increase road safety and overall performance.

## **4. REFERRALS AND SUBMISSIONS**

### **4.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

AGENCY	CONCURRENCE/ REFERRAL TRIGGER	COMMENTS (ISSUE, RESOLUTION, CONDITIONS)	RESOLVED
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Water NSW	Section 8.9(1) of the Biodiversity and Conservation SEPP (Chapter 8 – Sydney Drinking Water Catchment)		N/A
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>		N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>		N/A
<b>Referral/Consultation Agencies</b>			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Ausgrid have advised that the proposal is satisfactory subject to conditions	Yes
Transport for NSW	<i>Section 2.120(2) – State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of specified roads.	This length of Maitland Road forms part of the Pacific Highway that, for the purpose of section 2.120, is a 'specified road'. Transport for NSW advised that they have " <i>no comments or requirements with respect to the nominated (referral) trigger</i> ".	Yes

Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.		N/A
<b>Integrated Development (S 4.46 of the EP&amp;A Act) (NOTE: The Applicant has not nominated the application as Integrated Development)</b>			
NPWS	S90 – <i>National Parks and Wildlife Act 1974</i> Grant of Aboriginal heritage impact permit	The Applicant has acknowledged the potential impact of one Aboriginal heritage item (isolated find – a 'distal portion of a silcrete flake') and the need to obtain an AHIP prior to works commencing.	N/A
Transport for NSW	S138 - <i>Roads Act 1993</i> for works in the road reserve.	Development is not integrated development in respect of the consent required under section 138 of the <i>Roads Act 1993</i> if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.	N/A
Heritage NSW	S58 of the <i>Heritage Act 1977</i> for demolition or works etc to an item listed on State Heritage Register or with an interim heritage order.	No interim heritage order or listing on the State Heritage Register exists in relation to the EIS Areas. The application was not referred.	N/A
DPE Water (Natural Resources Access Regulator)	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The EIS states;  "The proposal would likely meet the requirements for needing a controlled activity approval under Section 91(2) given that there would likely be works within 40 metres of waterfront land. However, under Clause 41 of the <i>Water Management (General) Regulation 2004</i> , public authorities (such as	N/A

		<p><i>Transport) are exempt from the requirement to obtain a controlled activity approval. A notification of the activity would need to be provided to the NSW Office of Water at least 30 days before the activity commences.</i></p> <p><i>The EIS area would potentially intercept groundwater as part of excavation work required for the footings for the bridge abutments. Further consultation with Department of Primary Industries (Water) would be undertaken to confirm the licencing requirements."</i></p>	
DPI Fisheries	<p>S201 and S205 - <i>Fisheries Management Act, 1994</i></p> <p>Dredging or reclamation works and the harm of marine vegetation</p>	<p>No dredging or reclamation works are proposed in the EIS Area. See below for other comments received from DPI-Fisheries.</p>	N/A
<b>Designated Development (CI 77 of the EP&amp;A Reg) –</b> In accordance with CI 77 notice of the proposal was given to the following public authorities and external bodies			
NSW EPA		<p>The EPA provided a single letter responding jointly to TfNSW and CN re the REF and EIS components of the full project and raised concerns over;</p> <ul style="list-style-type: none"> <li>• noise modelling and mitigation measures (REF only),</li> <li>• acid sulfate soil characterisation and management,</li> <li>• water pollution management associated with dredging works,</li> <li>• construction stage stormwater quality management,</li> <li>• land contamination.</li> </ul>	Yes

		Further, the EPA noted that the combined REF and EIS parts of the project the is likely to require an Environmental Protection Licence (EPL) for "Road Construction", as defined by section 35, (3) (b) of Schedule 1 of the POEO Act.	
DPI Fisheries		<p><i>"The Department has reviewed the documents provided and would advise:</i></p> <ul style="list-style-type: none"> <li><i>• The Department would point out that a permit to harm marine vegetation is required under s205 of the Fisheries Management Act to clear the 1.58 ha of mangroves for the proposed work.</i></li> <li><i>• The Department would also note in Table 7.4, referring to mangroves being offset under the BOS. Mangroves are considered marine vegetation under the Biodiversity Conservation Act (BC Act) and are therefore not offset under the BOS but the Fisheries Management Act. Note s.1.4 of the BC Act;</i></li> </ul> <p><i>'1.4 Application of Act to terrestrial environment This Act applies in relation to animals and plants and not (unless otherwise provided) in relation to fish and marine vegetation. Note— The Fisheries Management Act 1994 contains provisions in</i></p>	Yes (Conditions)

		<p><i>relation to fish and marine vegetation.'</i></p> <ul style="list-style-type: none"> <li>• DPI Fisheries requires an offset of 2:1 for mangrove removal.</li> </ul> <p>The Department would require consultation with Transport during final design phase to ascertain any potential impacts from construction after final design and to determine final details for the offset strategy under the Fisheries Management Act, as outlined in DPI Fisheries response to Transport dated 24 February 2021.</p> <p>Consequently the Department would require the following conditions of consent to be included;</p> <ol style="list-style-type: none"> <li>I. Transport NSW will require a permit to harm marine vegetation under s.204-5 of the Fisheries Management Act for the removal of the estimated 1.58 ha of mangroves in the construction footprint.</li> <li>II. Transport NSW is to assess potential offsets strategies that may be implemented to meet the requirements of the DPI Fisheries offset policies in relation to marine vegetation. This can be negotiated with the Department post approval. This offset must meet the 2:1 requirements of DPI Fisheries offset policies for marine vegetation.</li> </ol>	
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		Transport NSW is required to consult with Fisheries NSW to obtain approval for works of dredge and reclamation under s.199 of the Fisheries Management Act.	
Hunter Water Corporation (HWC)		<p>Hunter Water Corporation advised that:</p> <ul style="list-style-type: none"> <li>• Transport for NSW (TfNSW) is actively engaging with Hunter Water in regard to asset protection, asset relocation, easements and associated land matters related to the project.</li> <li>• Hunter Water is satisfied that TfNSW is addressing issues raised during the EIS stakeholder consultation phase and presented in Table 7.4 of the EIS document.</li> </ul>	Yes
DPIE		No response received	
NPWS		No response received	
Jemena		No response received	
Telstra		No response received	
NBN Co.		No response received	
Awabakal LALC		No response received	
Mindaribba LALC		No response received	

## 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined below.

OFFICER	COMMENTS	RESOLVED
Planning	Council's Principal Development Officer (Planning) has reviewed the application against relevant Commonwealth, State and Local planning Acts and planning controls.	Yes
Engineering	Council's Engineering Officer reviewed the submitted flooding and hydrology assessment, stormwater concept plans and additional information and considered that there were no objections subject to conditions.	Yes (conditions)
Environmental	Council's Environment Protection Officer reviewed the submitted reports and additional information relating to contamination, ASSMP, noise/vibration and biodiversity (BDAR) and considered that there were no objections subject to conditions.	Yes (conditions)
Public Domain/ Assets	Council's Asset Services team reviewed the application and considered that there were no objections subject to conditions.	Yes (conditions)
Heritage	Council's Heritage Officer reviewed the submitted Heritage Impact Statement ('HIS') and additional information prepared for the applicant and concurred with the conclusion of the HIS that there would not be any unacceptable impacts on heritage values arising from the proposal. It was also recommended that conditions are to be imposed on any consent issued regarding provision of a photographic archival recording of the former Ironbark Creek Crossing Point (circa 1875). Conditions of consent have been recommended.	Yes (conditions)

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

## 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan and cl. 78 of the EP&A Regulation from 16 November 2021 until 14 December 2021. The notification included the following:

- a total of nine signs were installed across various locations within proximity of the site of the proposed Designated Development (Cl. 78 EP&A Regs);



- a total of 79 notification letters were sent to adjoining and adjacent properties;
- Notification on the Council's website.

Notification of the proposal was done in concert with the notification by TfNSW of the REF component of the overall Hexham Straight Widening project. Any submissions received by TfNSW as a result of the REF notification period are to be considered by TfNSW under Part 5 of the EP&A Act and are not considered in this report.

The Council received a total of 12 unique submissions raising concerns over the proposal. The issues raised in these submissions are considered in the table below.

The amended or additional information received on 10 March 2022 with the Applicant's Response to Request for Further Information was made 'publicly viewable' on Council's website (DA Tracker) however a second formal public notification period was not done.

In accordance with the designated development provisions of Clause 4.16(9)(b) of the EP&A Act, copies of all submissions received were sent to the Planning Secretary at the Department of Planning, Industry and Environment on 23 December 2021 and 1 March 2022. No comments were received from the Planning Secretary within 21 days after the date on which copies of the submissions were provided.

ISSUES RAISED	COMMENT
Proposed changes to local streets such as Shamrock St and Fenwick St	No local roads are within the EIS areas <b>(this is a matter for the REF)</b> .
Widening of Maitland Rd to 3 lanes in each direction will increase vehicle speeds, noise, vibration, dust, vehicle emissions and accident severity, remove existing kerb side parking, reduced setback between travel lanes and dwellings and increase risk when entering and exiting existing properties	No existing dwellings, structures or privately owned land is adjacent the EIS Areas <b>(this is a matter for the REF)</b> .
Increase in flood effects and inadequate local drainage affecting existing residences	Most submissions related to existing poor drainage or flooding in the local streets. As discussed above, those parts of the overall project within the EIS Areas are unlikely to have significant adverse impacts on flooding and stormwater discharge quality in the locality and these can be addressed by conditions of consent. Minimal additional impervious area is proposed within the EIS Area 3 adjacent the existing residential properties. The works within the EIS area are not expected to exacerbate any existing stormwater or flood conditions affecting these residences. <b>(this is predominantly a matter for Council (existing conditions) or the REF)</b> .
U-Turn bays for heavy vehicles in local roads and recommendations for right turn	The U-turn abys and Sparke St and Old Maitland Rd intersections are not within the

lanes from Sparke St and Old Maitland Rd	EIS areas <b>(this is a matter for the REF).</b>
Lack of road infrastructure to support a proposed service station at 354 Maitland Rd, Hexham	The requested infrastructure to support development of 354 Maitland Rd is not associated with work in the EIS areas <b>(this is a matter for the REF).</b>
Inadequate footpath provisions	One existing bus stop in EIS Area 3 (southbound at Shamrock St) is proposed to be relocated. The Traffic and Transport Assessment advises that the final location will be determined in consultation with the public transport operator during detailed design but confirms it will be located as close as possible to the existing stop and will be connected via appropriate pathways for access. <b>The other matters raised regarding footpath provisions in and around the existing residences is a matter for the REF.</b>
Impacts on flora and fauna	The comments made are generally broad statements regarding 'the impact on flora and fauna' with no specific matters identified. As discussed within this report, a comprehensive BDAR has been completed the Applicant and the impacts on flora and fauna found to be acceptable.

## 5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 5.1 Coastal Wetlands

This matter is discussed in more detail above under SEPP (Resilience and Hazards) 2021.

Resolution: The proposed development has been assessed having regard to the objectives and pre-conditions contained within the SEPP (Resilience and Hazards) 2021 and, subject to the amended recommended conditions of consent, is considered satisfactory.

### 5.2 Biodiversity

This matter is discussed in more detail above under the *Biodiversity Conservation Act 2016*.

Resolution: The Applicant has adequately surveyed the study area and completed a comprehensive BDAR that has determined the extent of impact on biodiversity and also

determined the value of credits to be retired as a result of the proposed work contained within the EIS Areas. The proposed development is considered to be acceptable subject to appropriate conditions of consent.

### **5.3 Contamination**

This matter is discussed in more detail above under SEPP (Resilience and Hazards) 2021.

Resolution: The Applicant has prepared Phase 1 Soils and Contamination Assessment (Phase 1 SCA) (Jacobs, 2021a), a Sampling Analysis and Quality Plan (SAQP) (Jacobs, 2021b) and a subsequent Stage 2 Contamination and Waste Classification Assessment (Stage 2 CWCA) (Jacobs, 24 March 2022) and these reports adequately demonstrate that the land is suitable for the intended use as 'road'.

In addition, a Contaminated Land Management Plan (with unexpected finds protocol) is proposed to be incorporated into the Construction Environmental Management Plan.

The proposed development is considered to be acceptable subject to appropriate conditions of consent.

### **5.4 Acid Sulfate Soils**

This matter is discussed in detail above under NLEP 2012 – Clause 6.1.

Resolution: An Acid Sulphate Soil Management Plan (ASSMP) (Douglas Partners, 2021) has been submitted in accordance with the provisions of Clause 6.1 that satisfactorily demonstrates how acid sulfate soils will be managed during construction activities. The proposed development is considered to be acceptable subject to appropriate conditions of consent.

### **5.5 Flooding planning**

This matter is discussed in detail above under NLEP 2012 – Clause 5.21.

Resolution: A Flooding and Hydrological Assessment (FHA) (Jacobs, 2021) has been prepared covering the whole of the Hexham Straight Widening project including both the REF and EIS Areas.

The flood modelling team have also confirmed that, in regards to EIS Areas 1 and 2, *"by introducing the new bridge over Ironbark Ck, the associated volume of the approaches and embankments would have a negligible impact upon flood levels in this area due to the size and behaviour of the overall catchment."*

The works proposed within EIS Area No. 3 are essentially an extension of the existing pavement levels and are unlikely to have any noticeable or measurable impact on existing flood levels on the residential properties located on the western side of Maitland Rd.

The Applicant has also proposed to undertake further refined flood modelling as part of the detailed design process to ensure the flood afflux, as currently modelled, is not exceeded and where reasonably possible, is reduced.

The proposed development is considered to be acceptable subject to appropriate conditions of consent.

## 6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It has been assessed that the site is suitable for the proposed development which is considered to be compatible with the locality. Key issues of the development relating to coastal wetlands, biodiversity, contamination, acid sulfate soils and flooding have been satisfactorily addressed or are resolved by the recommended draft conditions at **Attachment A**.

## 7. RECOMMENDATION

That the Development Application DA No 2021/01515 for *'Road realignment and widening including associated pavement work, earthworks, retaining wall, construction of part new bridge over Ironbark Creek, drainage works, utilities, vegetation clearing and temporary construction access/works'* at Maitland Road (RD 20869 – Gazetted 15/03/2019) and Lot 7314 DP 1160521 - 257 Maitland Road, Sandgate be APPROVED pursuant to Section 4.16(1)(a), Section 4.16(9)(b) and Section 4.33(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the agreed draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Approval from the Crown (applicant) for imposition of Conditions
- Attachment C: Secretary's Environmental Assessment Requirements (SEARS) and Checklist (by Applicant)
- Attachment D: Appendix 1 Figures A.1 to A.6 – *'Concept design features within Coastal Wetland areas and next to Coastal Wetlands Proximity Areas'*; Figures B.1 to B.4 – *'Plant Community Types'*; Figures C.1 to C.4 – *'Drainage design'*; and Figures D.1 to D.4 – *'Construction activities'*
- Attachment E: Appendix 2 Figures A.1 to A.4 – *'Vegetation in EIS Areas to be offset'*
- Attachment F: Concept Bridge Design (Ironbark Creek)