

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-128 - 16-2022-295-1
PROPOSAL	Environmental Protection Works – earthworks for rehabilitation of quarry
ADDRESS	Lot 232 DP 593512 251 Adelaide Street RAYMOND TERRACE NSW 2324
APPLICANT	THE TRUSTEE FOR LIONDARI INVESTMENT TRUST & THE TRUSTEE FOR SKUBITHIA TRUST
OWNER	THE TRUSTEE FOR LIONDARI INVESTMENT TRUST & THE TRUSTEE FOR SKUBITHIA TRUST
DA LODGEMENT DATE	29 April 2022
APPLICATION TYPE	Designated and nominated Integrated Development
REGIONALLY SIGNIFICANT CRITERIA	Clause 7, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Waste management facilities or works
CIV	\$454,000.00
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 PORT STEPHENS LOCAL ENVIRONMENTAL PLAN 2013
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	1 unique submission (petition) with 49 signatories
DOCUMENTS SUBMITTED FOR CONSIDERATION	Attachment 1 – Reasons for refusal Attachment 2 – Backfill Management Plan Attachment 3 – Environmental Impact Statement Attachment 4 – BDAR Attachment 5 – Traffic impact assessment Attachment 6 – Survey plan Attachment 7 – SEARs Attachment 8 – Acoustic report

	Attachment 9 – Air quality Attachment 10 – Contamination report Attachment 11 – Flood risk management report Attachment 12 – Hydrogeological report Attachment 13 – Acid sulfate soils report Attachment 14 – EPA referral response
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	24 November 2022
PLAN VERSION	N/A
PREPARED BY	Dylan Mitchell – Principal Development Planner
DATE OF REPORT	17 November 2022

EXECUTIVE SUMMARY

The Development Application (DA) seeks consent for environmental protection works comprising earthworks for the rehabilitation of a disused quarry. The proposal is classified as designated development for waste management facilities or works. The applicant states that the proposed works seek to enable future recreational use of the site as a golf course.

The proposal involves the backfilling of the disused quarry by disposing an estimated 1,443,000m³ or 2,921,000 tonnes of fill material including excavated natural material (ENM), virgin excavated natural material (VENM) and potential acid sulfate soils (PASS) and other material subject to a NSW EPA Resource Recovery Material Exemption. The proposed works are estimated to take between 8 and a half years to 10 years to complete, with works to be carried out 7am-6pm Monday to Friday and 8am to 1pm Saturday.

The site, legally identified as Lot 232 DP 593512, is an irregular shaped lot that measures an area of 43.5ha, see **Figure 1 below**. The majority of the site area is occupied by a disused quarry filled with water, which covers an area of approximately 20.7ha. A bathymetric survey submitted with the application shows that the quarry void reaches a depth of up to 10.8m. The broader site undulates steeply at various locations due to other historic quarrying activities.

The site is zoned RU2 Rural Landscape, where environmental protection works are permitted with consent. Immediately to the north the site interfaces low density residential land where 14 dwellings share a boundary with the site. To the west, access to the site is available on Adelaide Street. Further west on the opposite side of Adelaide Street is more low density residential land. To the east the site adjoins a large Hunter Water Corporation waste water treatment plant and further east at a distance of approximately 4km is the Grahamstown Dam. The Pacific Highway is located to the south of the site and industrial zoned land beyond that.

The site is densely vegetated with the exception of the quarry void areas. The vegetation comprises a mix of exotic and native species. The site is mapped as containing a number of endangered ecological communities including swamp forests and wetlands. The site is partially mapped as containing biodiversity values. The site is also mapped as containing preferred koala habitat and cleared buffer and link areas.

The proposal triggers the requirements for designated development under Part 4 of the EP&A Act, as the proposal is classified as a type of 'waste management facility or works' and is located within 100 metres of an LEP mapped wetland, is located on a floodplain and within 500m of residential zoned lands. For this reason, under Schedule 3, Section 45 of the *Environmental Planning and Assessment Regulation 2021* (the Regulations), the proposal is designated development.

The proposal is nominated integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') as approval is required from Department of Planning and Environment (DPE) – Water under the *Water Management Act 2000* and the Environment Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997*. No response has been received from DPE Water. The EPA requested additional information to address the following matters:

- Impacts to ASS;
- Importation of PASS;
- Impacts to groundwater;
- Rehabilitation in accordance with the National guidelines for Mine Rehabilitation;
- Water quality; and
- Impacts to aquatic ecology.

At the time of writing this report, the requested information has not been received and General Terms of Approval have not been issued by the EPA.

The proposal was exhibited in accordance with Council's Community Participation Plan from 17 May 2022 – 14 June 2022. Council received 1 unique submissions in the form of a petition that includes 49 signatories objecting to the proposal.

Section 2.19(1) declares the proposal regionally significant development pursuant to Schedule 6, Section 7 – particular designated development, of State Environmental Planning Policy (Planning Systems) 2021 as the proposed is for 'waste management facilities or works'.

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

- **Impacts to the character of the locality** - Insufficient information has been submitted with the application to determine whether adverse impact would occur to the character of the locality. Specifically, a bulk earthworks plan and landscaping plan have not been provided to detail the final form of the land.
- **Impacts to Biodiversity** - A BDAR was submitted with the application which assessed the biodiversity impacts of the proposal. The BDAR has been reviewed by Council's Natural Systems Officer, who identified the following deficiencies:
 - Exclusion of species with insufficient justification;
 - Insufficient surveys undertaken, resulting in the presence of species being assumed;
 - Insufficient information regarding the loss of aquatic habitat; and

- Insufficient evidence of measures taken to avoid and minimise ecological impacts.
- **Acid Sulfate Soils** - Due to historical mining activities ASS may already present in the disturbed soils and the application proposes the filling of potential ASS (PASS). Following review of the proposal by the Environment Protection Authority, additional information was requested and updates to the applicants Acid Sulfate Soils Assessment to address the relevant regulatory framework. This information has not been submitted at the time of writing this report.
- **Air quality and noise impacts** - The application includes an Air Quality Impact Assessment. Following review from Council's Environmental Health Officer, it was concluded that the report did not provide sufficient information regarding long-term air quality impacts and may not accurately assess dust generation, due to discrepancies in the expected truck movements throughout the report.

A Noise Assessment was provided with the application. Following review from Council's Environmental Health Officer, it was concluded that the report did not appropriately assess the proposal in accordance with AS2436:2010.

- **Traffic** – The submitted Traffic Impact Assessment (TIA) does not take into account the cumulative traffic impacts associated with DA 16-2022-310-1 occurring at the same time. In addition, the existing site access is required to be upgraded to provide a minimum Auxiliary Right-turn (AUR) on Adelaide Street to allow vehicles to pass the heavy vehicles waiting to turn right into the site and avoid queuing. However, this is not proposed in the TIA.

The existing culvert across the Grahamstown drain, which is proposed for use as a site access appears to be in a state of disrepair and it is not clear whether the proposed truck movements could safely use this structure. As a result, replacement of the culvert may be required and would need to be included in the DA to ensure any associated environmental impacts are assessed. No information has been submitted to demonstrate that use of the existing culvert can practically and safely occur.

- **Flooding Impacts** - The site is located within flood prone land and a flood impact assessment is required in accordance with B5.8 of the DCP. The application includes a Flood Impact Assessment (FIA). However, the impact assessment has been assessed by Council's Development Engineering section and found to be inadequate. As a result, the consent authority cannot be satisfied that the proposed development:
 - (a) is compatible with the flood function and behaviour on the land,
 - (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;
 - (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.
- **Impacts to Aboriginal Heritage** - Insufficient information has been provided to satisfy the requirements of the SEARs, issued by the Department of Planning and Environment, noting that an Aboriginal Cultural Heritage Assessment Report has not been submitted with the application.

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 cannot be supported.

It is recommended that that the Development Application DA 16-2022-295-1 for Environmental Protection Works – earthworks for rehabilitation of quarry at 251 Adelaide Street RAYMOND TERRACE NSW 2324 be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 subject to the reasons for refusal attached to this report at **Attachment A**.

1. THE SITE AND LOCALITY

The proposal is located within Port Stephens LGA, approximately 1 kilometre south of the Raymond Terrace town centre, 25 kilometres north of Newcastle and 135 kilometres north of Sydney.

The site, legally identified as Lot 232 DP 593512, is an irregular shaped lot that measures an area of 43.5ha, see **Figure 1 below**. The majority of the site area is occupied by a disused quarry filled with water, which covers an area of approximately 20.7ha. A bathymetric survey submitted with the application shows that the quarry void reaches a depth of up to 10.8m. The broader site undulates steeply at various locations due to other historic quarrying activities.

Immediately to the north the site interfaces low density residential land where 14 dwellings share a boundary with the site. To the west, access to the site is available on Adelaide Street. Further west on the opposite side of Adelaide Street is more low density residential land. To the east the site adjoins a large Hunter Water Corporation waste water treatment plant and further east at a distance of approximately 4km is the Grahamstown Dam. The Pacific Highway is located to the south of the site and industrial zoned land beyond that.

The site is densely vegetated with the exception of the quarry void areas. The vegetation comprises a mix of exotic and native species. The site is mapped as containing a number of endangered ecological communities including swamp forests and wetlands. The site is partially mapped as containing biodiversity values. The site is mapped as containing preferred koala habitat and cleared buffer and link areas.

One existing site access is located at the midway point between the sites northern and southern extent on the Adelaide street frontage. The private access is unsealed and includes a small bridge, crossing the Grahamstown drain. Adelaide Street is a single lane (each travel direction) local road with sealed shoulders and grass verges, with a posted speed limit of 70km/h.

The north-west of the site contains 2 easements, including an easement for water supply pipeline and access 3.05m wide and easement for sewerage pipeline and water 2.44m wide. Other utility infrastructure includes a Hunter Water Corporation sewer pumping station located in proximity to the northern boundary of the site, to the rear of the dwellings located on Meredith Avenue. The Grahamstown Drain passes through the site from north-east to south-west. An Ausgrid overhead power line also runs from the north-east to south-west of the site.

A Site Water Balance Report submitted with the application found that the site is underlain by a regionally important aquifer system known as the Tomago Sandbeds. The report also states that within the inundated quarry void, the depths to water level are generally expected to be

less than 2m when measured from the existing surface level around the quarry perimeter but the water levels generally vary according to seasonal changes. Subsurface and surface water within the quarry void is expected to discharge to either the manmade Grahamstown Drain in the north or the Windeyers Creek in the south, which eventuates to a confluence in the south-west before flowing further to the broader Hunter River system. Grahamstown Dam discharges to Windeyers Creek which then also flows to the Hunter River.

The site is mapped as containing the following constraints:

- Bushfire Prone Land – Category 1 & 2;
- Acid Sulfate Soils – Class 4, 2;
- Koala Habitat Planning Map – Preferred, Clbuff & Clink;
- Endangered Ecological Communities;
- Biodiversity Values Map;
- RAAF Base Williamtown - Height Trigger Map;
- RAAF Base Williamtown - Bird Strike Group A & B;
- Prime Agricultural land;
- Combined Corridor map;
- LEP mapped wetlands;
- Weed infestations;
- NSW Wildlife Atlas – fauna (koala, white & bellied sea eagle; and
- Flood Prone Land.



Figure 1: Site Plan from EIS

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for environmental protection works comprising earthworks for the rehabilitation of a disused quarry. The proposal is classified as designated development for waste management facilities or works. The applicant states that the proposed works seek to enable future recreational use of the site as a golf course.

The proposal involves the backfilling of the disused quarry by disposing an estimated 1,443,000m³ or 2,921,000 tonnes of fill material including excavated natural material (ENM), virgin excavated natural material (VENM) and potential acid sulfate soils (PASS) and other material subject to a NSW EPA Resource Recovery Material Exemption. The proposal involves 4 key phases, including the following:

1. Widening/sealing the existing access road from Adelaide Street;
2. Preliminary earthworks, erosion and sediment control measures and fencing;
3. Transport fill material to the site and backfill quarry void with approximately 1,443,000m³ or ~2,921,700 tonnes of fill material; and
4. Shaping/grading of fill to allow surface water drainage across the final landform and landscaping.

The proposed works are estimated to take 8 and a half to 10 years to complete, with works to be carried out 7am-6pm Monday to Friday and 8am to 1pm Saturday. Further details regarding the works proposed in each stage are provided below.

Preliminary works (Phases 1 and 2)

The existing access road from Adelaide Street is proposed to be widened to allow for the transport vehicles to enter/exit the site and any upgrades required to ensure it is appropriate. Preliminary earthworks including erosion and sediment control measures will be established within the site as well as security fencing and construction signage as required.

Transportation of Materials (Phase 3)

The proposed timeframe from start to completion of backfilling and construction of the final landform is a maximum period of 10 years. The Traffic Impact Assessment submitted with application provides that a maximum 50 truck movements per day may be accommodated, resulting in an average of 5 truck per hour entering and exiting the site (5 inbound and 5 outbound), which is 1 entering every 10-15 minutes.

Assuming the backfill delivery trucks to be a 'truck and dog' combination with a carrying capacity of 32 tonnes and assuming 50 truck movements per day, this corresponds to a maximum backfill import rate of 1,600 tonnes per day. If it is assumed that the available delivery time for backfill material is 235 days per annum (assuming a 5.5 day working week (to allow for late deliveries to be backfilled), including an assumed allowance of 15% due to lost production due to adverse weather and allowing for public holidays), it is estimated that it will take approximately 8 and a half to 10 years to backfill the site. In consideration of the above, an indicative backfill programme for 8-year period (including preliminaries and project set up) has been developed with respect to the proposed backfill staging areas.

Backfill Materials (Phase 3)

The quarry void is estimated to require 1,443,000m³ or 2,921,000 of material to complete the proposed backfilling and final landform works, See **Figure 3** below.

Backfill materials are proposed to be sourced from various locations and hence the material properties of the backfill are anticipated to be variable. For the purpose of estimating backfill

volumes, masses and the duration of quarry rehabilitation, it is assumed that the Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM), Potential Acid Sulfate Soils (PASS) and Resource Recovery Exempt (RRE) material would typically comprise clayey sand material.

A backfill management plan has been submitted with the application which details the proposed backfill material, backfill acceptance and verification procedures, volume and mass estimates, methodology of backfilling operations, erosion and sediment control measures, PASS contingencies, ground settlement monitoring, ground treatment and environmental monitoring.



Figure 3: Plan of Void Elevation

Backfill Methodology (Phase 3)

The quarry void is proposed to be backfilled progressively in continuous Stages A to G as shown in **Figure 4** below. Filling would commence in the north western part of the quarry near to the location of the former quarry ancillary works area and work in a clockwise direction from west to east.

The proposed backfilling method is a combination of placement methods including dump short and push, conveyor delivery system and/or using conventional long reach excavators. Each stage is to be filled in a series of cells that are to be suitably sized to manage control of filling in consideration of the rate and type of backfill accepted and with a nominal size of 100m x 100m, as shown in **Figure 4** below.

Continuous dewatering has not been proposed by the applicant on the grounds that the small volume of fill (relative to the quarry void) to be deposited in the specified programme and the inferred discharge channel to the south-west of the site.

Final land form shaping and landscaping (Phase 4)

Final shaping and grading of the site is proposed to allow surface water to drain across the final landform. Following completion of filling, topsoil is proposed to be placed over the

backfilled areas and the landform suitably vegetated to stabilise the material and reduce erosion and dust emission.



Figure 4: Backfill staging plan

2.2 Background

The development application was lodged on 29 April 2022. The proposed development is defined as environmental protection works, which are permissible with consent in the RU2 Rural Landscape zone under the Port Stephens Local Environmental Plan 2013.

The proposal triggers the requirements for designated development under Part 4 of the EP&A Act, as the proposal is classified as a type of ‘waste management facility or works’ and is located within 100 metres of an LEP mapped wetland, is located on a floodplain and within 500m of residential zoned lands. For this reason, under Schedule 3, Section 45 of the *Environmental Planning and Assessment Regulation 2021* (the Regulations), the proposal is designated development.

The proposal is considered to be a type of waste management work as the definition of waste, as provided within Schedule 3, Section 1(2) of the Regulations is encompassing of both VENM and ENM, being material that is ‘discarded or is refuse from process or uses’. Moreover, the definition specifically provides that “A substance is not precluded from being waste merely because it can be re-used or because it is sold”. The imported fill material for the proposal is expected to be sourced from other development sites where the material has been excavated and therefore would be refuse from the process.

Drawing from this definition and relevant case law regarding the classification of waste management facilities or works, including *Ryan & Anor V Jarret & Anor [2006] NSWLEC183* it is Council’s view that the proposed earthworks are appropriately characterised as a form of waste management works.

This interpretation is supported by the Department of Planning and Environment (DPE) who have issued the Secretary's Environmental Assessment Requirements (SEARs No. 1571) accordingly. The proposal is supported by an Environmental Impact Statement (EIS) which addresses the SEARs in accordance with Section 4.12(8) of the EP&A Act and Schedule 3 the Regulations.

The development application was lodged on **29 April 2022**. 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
29 April 2022	DA lodged
17 May 2022	Exhibition of the application
5 May 2022	DA referred to external agencies
28 June 2022	Request for Information from Council to applicant
1 June 2022	Panel briefing

At the time of writing this report, all information requested by Council remains outstanding.

2.3 Site History

The wider site has historically been used as a sand quarry since at least the late 1960s, see **Figure 5** below. Council does not hold any record of a consent being granted to the original use, however, a letter was issued by Port Stephens Council in 1974 advising that:

“Council has no objections to the continuation of the above extractive industry on the site. The extractive industry was in existence prior to the introduction of Council's varying scheme and has existing use rights upon the land.”

In 1975, a development consent for a proposed sand plant and site shed was approved on the site. The consent included only 1 condition of consent requiring the preparation of a plan of restoration work to be submitted to Council for approval prior to the usage of plant and buildings covered by this consent. However, Council does not have any record of this plan and it is unknown whether it was ever submitted to Council. A number of other miscellaneous DAs for ancillary site infrastructure at the quarry have been approved since this time.

The previous landowner, Rocla Quarry Products, had an Environmental Protection Licence (EPL) (No. 7485) for a Scheduled Activity being 'extractive activities', and the Fee Based Activity listed as 'land-based extractive activity' at a scale of >50,000 to 100,000 tonnes. The quarrying activities ceased in 2010 and the EPL was surrendered in 2012.

The site has been used for water sports such as water skiing since the quarries closure, approved in 2013 under DA 16-2013-141-1.

A separate DA (DA 16-2022-310-1) has been concurrently submitted to Council for the filling of 5ha of land in the north-west corner of the site, for the purposes of supporting a future rezoning of the land for residential purposes. The proposed earthworks under this DA include up to 2m of fill including a total of 60,000m³ of imported material to reach the flood planning level of 5.7m AHD.



Figure 5: Satellite Image from 1966

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('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.*

These matters are further considered below.

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

- Integrated Development (s4.46)
- Designated Development (s4.10)

3.1 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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Port Stephens Local Environmental Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 3: Koala Habitat Protection 2020 The proposal is consistent with the Port Stephens Comprehensive Koala Plan of Management which constitutes compliance with Koala SEPP 2020.	Y
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 Schedule 6, Section 7 – Particular designated development, of State Environmental Planning Policy (Planning Systems) 2021 as the proposed development is for waste management facilities or works.	Y
State Environmental Planning Policy (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal could satisfy the requirements of this SEPP, subject to conditions. The EPA have requested additional 	Y

	information regarding the types of materials to be imported to the site to confirm they would not cause contamination.	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission – Correspondence from Ausgrid has indicated that the proposal is satisfactory subject to conditions. • Section 2.118(2) - Development with frontage to classified road – the site has frontage to the Pacific Highway which is a classified road. A referral was made to Transport for NSW (TfNSW) who raised no objection or requirements relevant to the application. TfNSW noted the proposal will have no significant impact on the nearby classified road network. 	Y
LEP	<p>Port Stephens Local Environmental Plan 2013</p> <ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives – Permissibility is gained via Clause 7.3 as discussed below. Insufficient information has been provided to understand potential Impacts to rural character. • Clause 5.10 – Heritage conservation – Heritage conservation – Insufficient information has been submitted to address the Aboriginal Cultural Heritage Assessment requirements of the SEARs. • Clause 7.1 – Acid sulfate soils – No impacts are expected to ASS as per the geotechnical report submitted with the application. • Clause 7.2 – Earthworks – Insufficient information has been submitted to properly assess the impacts of the proposed earthworks against this clause. • Clause 7.3 – Insufficient information has been provided to properly assess the flooding impacts of the proposal against this clause. • Clause 7.6 – Road upgrades are required to support the proposed development, including turning treatments into the site, which have not been adequately detailed within the applicants TIA. <p>No other upgrades to essential services are required to support the development and the application satisfies the requirements of this clause.</p> <ul style="list-style-type: none"> • Clause 7.9 - Wetlands – Insufficient information has been provided within the BDAR submitted with the application to properly assess the impacts of the proposal against this clause. • Clause 7.11 – Public Infrastructure buffer – The proposal is located adjacent a Hunter wastewater treatment facility. However, the proposal is not for a sensitive land-use type and therefore is consistent with the requirements of this clause. 	N
DCP	Port Stephens Development Control Plan 2014 Chapter B – General Controls	N

	<ul style="list-style-type: none"> • B2 – Natural Resources – Insufficient information has been provided within the BDAR submitted with the application to properly assess the impacts of the proposal against this chapter. • B3 – Environmental Management – Insufficient information has been provided in the air quality impact assessment to properly assess the impacts of the proposal against this clause. The acoustic report is inadequate and additional information is required relating to the assessment of noise generated by truck movements and justification of the background noise data used for the assessment. • B4 – Drainage and Water Quality - The proposal does not involve the establishment of any new hardstand areas that require stormwater management. However, once the proposed backfilling of the quarry void is completed, the application indicates that the final landform will be shaped to facilitate the appropriate drainage and detention of water across the site. Despite this, no plans have been submitted detailing the proposed final form and shaping levels, the location, depth and volume of fill works atop the filled void. • B5 – Flooding - The Flood Risk Management report submitted with the application is inadequate. Specifically, insufficient information has been provided regarding potential offsite flooding impacts. • B7 – Heritage – Insufficient information has been submitted to address the Aboriginal Cultural Heritage Assessment requirements of the SEARs. • B8 – Road network – The Traffic Assessment submitted with the application is inadequate. Insufficient information has been provided regarding site access and traffic impacts. 	
--	--	--

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3 Koala Habitat Protection 2020

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

The study area supports known or potential habitat for Koalas. The development is therefore required to demonstrate compliance with Chapter 3 of *SEPP (Biodiversity and Conservation) 2021*. As per, Clause 3.8 of the SEPP, compliance with the provisions of Appendix 4 of the Port Stephens Council Comprehensive Koala Plan of Management (CKPoM) constitutes compliance with Koala SEPP 2020.

The application includes a Biodiversity Development Assessment Report (BDAR) which includes an assessment of the proposal against the CKPoM. The subject land contains habitat mapped as preferred Koala habitat within the Port Stephens Koala Habitat Planning Map.

However, the BDAR confirms that no Koala habitat is proposed for removal and the development has been located to minimise removal of native vegetation, including vegetation within preferred Koala habitat. The BDAR concludes that the development will be consistent with the objectives of the CKPoM, and therefore with Koala SEPP 2021, subject to a number of recommendations.

The BDAR was reviewed by Council's Natural Systems officer, who concurred with the findings of the CKPoM assessment. Accordingly, the proposal is consistent with the requirements of Chapter 4 of *SEPP (Biodiversity and Conservation) 2021*.

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) Clause 7, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 - waste management facilities or works that are located within 100 metres of an LEP mapped wetland, located on a floodplain and within 500m of residential zoned lands. For this reason, under Schedule 3, Section 45 of the Environmental Planning and Assessment Regulation 2021 (the Regulations), the proposal is designated development. Accordingly, the Hunter and Central Coast Regional Panel is the consent authority for the application. The proposal is consistent with this Policy.

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

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 Detailed Contaminated Land Assessment has been prepared for the site, including soil, sediment, surface water and groundwater investigations with field and laboratory analysis for each. A conceptual site model has been developed which identifies potential sources of on and off-site contamination as the previous industrial quarry activities and uncontrolled fill (onsite) and Raymond Terrace Wastewater Treatment Works and Grahamstown Drain (offsite). The assessment concludes that:

"Based on the CSM and investigation results, the Site has not been contaminated based on current or historic land use. The Site is environmentally suitable for the proposed commercial/industrial land use. In addition, overall, given the proposed backfilling of the quarry void with environmentally benign and appropriately placed PASS, this is a positive environmental outcome for the site and restoration of a site after an industrial history in order to facilitate positive recreational future use."

The proposal could be satisfy the requirements *SEPP (Resilience and hazards)*, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted. However, the EPA have requested additional information regarding the types of materials to be imported to the site to confirm they would not cause contamination.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure:

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State. A referral was sent to Ausgrid as per Clause 2.45 of the policy, as the development is being carried out adjacent to overhead power lines. Ausgrid recommended several conditions relating to the works being carried out in accordance with the Ausgrid specifications.

The site has frontage to the Pacific Highway which is a classified road and therefore Section 2.118(2) - Development with frontage to classified road applies. A referral was made to Transport for NSW (TfNSW) who raised no objection or requirements relevant to the application. TfNSW noted the proposal will have no significant impact on the nearby classified road network.

Port Stephens Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Port Stephens Local Environmental Plan 2013* ('the LEP'). The aims of the LEP include the following:

- (a) *to cultivate a sense of place that promotes community well-being and quality of life,*
- (b) *to provide for a diverse and compatible mix of land uses,*
- (c) *to protect and conserve environmental values,*
- (d) *to facilitate economic growth that contributes to long-term employment,*
- (e) *to provide opportunities for housing choice and support services tailored to the needs of the community,*
- (f) *to conserve and respect the heritage and cultural values of the natural and built environments,*
- (g) *to promote an integrated approach to the provision of infrastructure and transport services,*

- (h) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts.*

Insufficient information has been provided to determine whether the proposal is consistent with (b), (c), (f) and (g).

Zoning and Permissibility (Part 2)

The site is located within the RU2 Rural Landscape zone pursuant to Clause 2.2 of the LEP. The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To facilitate a variety of tourist and visitor-orientated land uses that complement and promote a stronger rural sector appropriate for the area.*

The application is described as environmental protection works, which are permissible with consent in the RU2 Rural Landscape zone under the Port Stephens Local Environmental Plan 2013.

The definition of environmental protection works is as follows:

'environmental protection works' means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental

degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works'

The proposal is considered to be inconsistent with these zone objectives relating to rural character as insufficient information has been submitted the application to determine whether adverse impacts would occur to the rural character of the land. Specifically, a bulk earthworks plan and landscaping plan have not been provided to detail the final form of the land. Moreover, insufficient information has been provided in the acoustic and air quality impact assessment reports to determine the impacts the proposal may have regarding noise emission and air quality. Accordingly, impacts to rural character are unknown.

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

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

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Heritage (CI 5.10)	The objectives of this clause are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.	The application includes a search of the Aboriginal Heritage Information Management System (AHIMS). No Aboriginal sites were recorded in or near the study area and no Aboriginal places have been declared in or near the above location (50m buffer). However, insufficient information has been provided to satisfy the requirements of the SEARs, issued by the Department of Planning and Environment, noting that an Aboriginal Cultural Heritage Assessment Report has not been submitted with the application.	No
Flood Planning (CI 5.21)	The objectives of this clause are to minimise flood risk to life and property, ensure development is flood compatible, avoid cumulative flooding impacts and enable the safe occupation and efficient evacuation of people in the event of a flood.	The site is located within flood prone land. The application includes a Flood Impact Assessment (FIA). The impact assessment has been assessed by Council's Development Engineering section and found to be inadequate for the following reasons: <ul style="list-style-type: none"> • A survey of the site has not been completed. • The FIA has not been prepared in accordance 	No

		<p>with the latest Australian Rainfall and Runoff Guidelines.</p> <ul style="list-style-type: none"> • Cumulative flood impacts from DA 16-2022-310-1 have not been considered, nor has the Hunter River Tail water conditions. • The FIA has not adequately considered regional flooding impacts. The proposed filling may cause changes to the velocity of high hazard floodwaters. <p>On this basis, with regard to clause 5.21(2), the consent authority cannot be satisfied that the proposed development:</p> <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land, (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; (c) 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. 	
Acid sulphate soils (CI 7.1)	The objective of this clause is to ensure that development does not disturb, expose, or drain acid sulfate soils and cause environmental damage.	<p>The site is mapped as class 2 and 4 acid sulfate soils (ASS).</p> <p>The application includes a geotechnical report which states that no impacts to ASS are expected, noting that the proposed works consist of filling and no excavation is proposed.</p>	No

		<p>However, due to historical mining activities ASS may already present in the disturbed soils. In addition, the application proposes the filling of potential ASS (PASS). Following review of the proposal by the Environment Protection Authority, additional information was requested, including the updating of the applicants Acid Sulfate Soils Assessment to address the relevant regulatory framework, including the Environment Operations (Waste) Regulation 2014, NSW Acid Sulfate Soils Management Advisory Committee (ASSMAC)(1998), the NSW EPA's Environmental Guidelines Solid Waste Landfills. This information has not been submitted at the time of writing this report.</p>	
--	--	--	--

Earthworks (Cl 7.2)	<p>The objectives of clause 7.2 are to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>	<p>The proposal includes significant earthworks involving backfill of an existing quarry void with approximately 1,443,000m³ or ~2,921,700 tonnes of fill material and shaping/grading of fill to allow surface water drainage across the final landform and landscaping.</p> <p>The proposal includes a backfill management plan. However, no bulk earthworks plan has been submitted with the application to detail the final form and shaping levels, the location, depth and volume of fill works atop the filled void. Insufficient information has been submitted to properly assess air quality impacts associated with dust generated from filling and limited information regarding impacts to Aboriginal heritage have been provided, which do not satisfy the requirements of the SEARs. As discussed against Clause 5.21 above, inadequate information has been provided to assess the flooding and drainage impacts of the proposed filling.</p> <p>On this basis, inadequate information is available to form a conclusive opinion with regard to the following matters for consideration listed under clause 7.2(3):</p> <ul style="list-style-type: none"> (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development, (b) the effect of the development on the likely future use or redevelopment of the land, 	No
---------------------	---	---	----

		<p>(c) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(d) the likelihood of disturbing relics,</p> <p>(e) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	
Essential Services (CI 7.6)	This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.	<p>Road upgrades are required to support the proposed development, including turning treatments into the site, which have not been adequately detailed within the applicants TIA.</p> <p>No other upgrades to essential services are required to support the development and the application satisfies the requirements of this clause.</p>	Yes
Wetlands (CI 7.9)	The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development.	The site is partially mapped as a wetland area and this clause applies to the proposal.	No

		<p>A BDAR was submitted with the application which assessed the biodiversity impacts of the proposal, including to the areas mapped as a wetland. The BDAR has been reviewed by Council's Natural Systems Officer, who identified the following deficiencies:</p> <ul style="list-style-type: none"> • Exclusion of species with insufficient justification • Insufficient surveys undertaken, resulting in the presence of species being assumed. • Insufficient information regarding the loss of aquatic habitat. • Insufficient evidence of measures taken to avoid and minimise ecological impacts. <p>On this basis, with regard to clause 7.9(4), the consent authority cannot be satisfied that—</p> <ul style="list-style-type: none"> (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact. 	
Clause 7.11 – Public Infrastructure buffer	The objective of this clause is to provide appropriate buffers around certain public infrastructure to minimise potential land	The proposal is located adjacent a Hunter Water Corporation wastewater treatment facility. However, the proposal is not for a sensitive land-use type and	Yes

	use conflict between existing and proposed development.	therefore is consistent with the requirements of this clause.	
--	---	---	--

The proposal is considered to be inconsistent with the LEP for the reasons outlined in Table 3 above.

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

There are no relevant proposed instruments which have been the subject of public consultation under the EP&A Act.

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

The following Development Control Plan is relevant to this application:

Port Stephens Development Control Plan 2014

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

Section B – General Controls
Section B2 – Natural Resources

The site is mapped in Council's system as containing the following ecological values:

- Koala Habitat Planning Map;
- Endangered Ecological Communities;
- Biodiversity Values Map;
- LEP mapped wetlands; and
- NSW Wildlife Atlas – fauna (koala, white & bellied sea eagle).

Accordingly, Chapter B2 applies to the development.

The application triggers entry into the Biodiversity Offset Scheme, due to the proposed impacts to native vegetation in a biodiversity values mapped area. Accordingly, the application includes a Biodiversity Development Assessment Report (BDAR), prepared by De Witt Ecology, dated 19 April 2022.

The BDAR has been reviewed by Council's Natural Systems Officer, who identified the following deficiencies:

- Exclusion of candidate species credit species with insufficient justification, including the *Haliaeetus leucogaster* and *Crinia tinnula*.
- Insufficient surveys undertaken, due to the presence of 20 species being assumed, without targeted surveys, including species listed as vulnerable, endangered and critically endangered;
- Insufficient information regarding the loss of aquatic habitat, including amphibians and *Myotis macropus*; and
- Insufficient evidence of measures taken to avoid and minimise impacts to aquatic dependent species and arboreal mammals, as required by the SEARs.

The deficiencies in the report have not been addressed at the time of writing this report and as a result, insufficient information is available to determine compliance with Section B2.A.

With regard to Koala habitat, the land is greater than 1 hectare and is mapped as “Mainly Cleared” in the Koala Habitat Planning Map as part of the Port Stephens Comprehensive Koala Plan of Management (CKPoM). The BDAR confirms no koala feed trees will be removed as part of the proposal. In addition, the site does not form part of a Koala corridor. Accordingly, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM and Section B2.D of the DCP.

Chapter B3 – Environmental Management

Acid Sulfate Soils

The site is mapped as class 2 and 4 acid sulfate soils (ASS).

The EIS states no impacts to ASS are expected, noting that the proposed works consist of filling and no excavation is proposed. However, due to historical mining activities, ASS may already present in the disturbed soils. In addition, the application proposes the filling of potential ASS (PASS). Following review of the proposal by the Environment Protection Authority, additional information was requested, including the updating of the applicants Acid Sulfate Soils Assessment to address the relevant regulatory framework, including the Environment Operations (Waste) Regulation 2014, NSW Acid Sulfate Soils Management Advisory Committee (ASSMAC)(1998), the NSW EPA’s Environmental Guidelines Solid Waste Landfills. This information has not been submitted at the time of writing this report.

Air Quality

The proposal presents the potential for substantial dust generation from the proposed earthworks, which would take place over approximately 8 and a half to 10 years. The application includes an Air Quality Impact Assessment, Report no. JUL18116.1, prepared by Air Labs Environmental and dated 15 February 2019. However, following review from Council’s Environmental Health Officer, it was concluded that the report did not provide sufficient information regarding long-term air quality impacts and may not accurately assess dust generation, due to discrepancies in the expected truck movements throughout the report.

On this basis, it is unknown whether the proposal would cause adverse impacts in terms of air quality, and therefore does not satisfy Section B3.2 of the DCP.

Noise

The proposal presents the potential for noise generation from the proposed earthworks, which would take place over approximately 8 and a half to 10 years. A Noise Assessment (reference no. SYD2018-1073-R001B, prepared by Acouras and dated August 19 January 2021) was provided with the application. Following review from Council’s Environmental Health Officer, it was concluded that the report did not appropriately assess the proposal in accordance with AS2436:2010, noting the modelled noise levels emitted by plant equipment did not adopt the noise levels established in AS2436:2010. It was also noted that the background noise survey was conducted in August 2018 and should be updated to ensure the noise profile is still accurate.

On this basis, it is unknown whether the proposal would cause adverse noise impacts, and therefore does not satisfy Section B3.2 of the DCP.

Earthworks

The proposal includes more than 100m² of fill and therefore requires a bulk earthworks plan, in accordance with section B3.4 of the DCP. A bulk earthworks plan has not been provided with the application and therefore B3.4 has not been satisfied.

Chapter B4 – Drainage and water quality

The proposal does not involve the establishment of any new hardstand areas that require stormwater management. However, once the proposed backfilling of the quarry void is completed, the application indicates that the final landform will be shaped to facilitate the appropriate drainage and detention of water across the site. Despite this, no plans have been submitted detailing the proposed final form and shaping levels, the location, depth and volume of fill works atop the filled void.

Accordingly, it is not known how drainage will be managed upon completion of the works and the proposal is inconsistent with Section B4.A and B of the DCP.

Chapter B5 – Flooding

The site is located within flood prone land and a flood impact assessment is required in accordance with B5.8 of the DCP. The application included a Flood Impact Assessment (FIA). However, the impact assessment has been assessed by Council's Development Engineering section and found to be inadequate for the following reasons:

- A survey of the site has not been completed;
- The FIA has not been prepared in accordance with the latest Australian Rainfall and Runoff Guidelines;
- Cumulative flood impacts from DA 16- 2022-310-1 have not been considered, nor has the Hunter River Tail water conditions; and
- The FIA has not adequately considered regional flooding impacts. The proposed filling may cause changes to the velocity of high hazard floodwaters.

Due to the inadequacies identified in the FIA, the following cannot be determined:

- Whether the proposal is compatible with the flood function and behaviour on the land,
- Whether the proposal will adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties; and
- Whether the proposal will adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

On this basis, the proposal is generally inconsistent with the requirements of Chapter B5 of the DCP.

Chapter B7 - Heritage

The objectives of this section are to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The application includes a search of the Aboriginal Heritage Information Management System (AHIMS). No Aboriginal sites were recorded in or near the study area and no Aboriginal places have been declared in or near the above location (50m buffer).

However, insufficient information has been provided to satisfy the requirements of the SEARs, issued by the Department of Planning and Environment, noting that an Aboriginal Cultural Heritage Assessment Report has not been submitted with the application.

Chapter B8 – Road network and parking

The proposal involves the generation of traffic through the transport of fill to the site. Accordingly, a Traffic Impact Assessment (TIA), prepared by SECA Solution, dated 25 January 2021 was provided with the application. The TIA assessed the impact of 50 truck movements per day, resulting in an average of 5 truck per hour entering and exiting the site (5 inbound and 5 outbound), which is 1 entering every 10-15 minutes. The proposed timeframe from start to completion of backfilling and construction of the final landform is a maximum period of 8 and a half to 10 years.

Following review of the Traffic Assessment by Council's Traffic Engineer, the following deficiencies were identified:

- The assessment does not take into account the cumulative traffic impacts associated with DA 16-2022-310-1 occurring at the same time.
- The existing site access should be upgraded to provide a minimum Auxiliary Right-turn (AUR) on Adelaide Street to allow vehicles to pass the heavy vehicles waiting to turn right into the site and avoid queuing. However, this is not suggested in the Traffic Assessment.

In addition, the existing culvert across the Grahamstown drain, which is proposed for use as site access appears to be in a state of disrepair and it is not clear whether the proposed truck movements could safely use this structure. As a result, replacement of the culvert may be required and would need to be included in the DA to ensure any associated environmental impacts are assessed. No information has been submitted to demonstrate that use of the existing culvert can practically and safely occur.

As a result of these issues, the proposal, in its current form is not suitable from a traffic and traffic safety perspective and is therefore not consistent with the requirements of Chapter B8 of the DCP.

The following 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):

- *Port Stephens Local Infrastructure Contributions Plan*

This Contributions Plan has been considered and in the event the application were approved, a condition for contributions would be included the recommended draft consent conditions.

(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 site.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. However, there are no matters relevant the proposed development.

3.2 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 inconsistent with the rural character of the land as insufficient information has been submitted the application. Specifically, a bulk earthworks plan and landscaping plan have not been provided to detail the final form of the land. Moreover, insufficient information has been provided in the acoustic and air quality impact assessment reports to determine the impacts the proposal may have regarding noise emission and air quality to surrounding properties. Accordingly, impacts to rural character and broader compatability with the sites context and setting are unknown.
- Access and traffic – The proposed development does not include an appropriate access treatment. The existing site access should be upgraded to provide a minimum Auxiliary Right-turn (AUR) on Adelaide Street to allow vehicles to pass the heavy vehicles waiting to turn right into the site and avoid queuing.
- Public Domain – With the exception of the existing vehicular access, the proposal is wholly located within private land. No adverse impacts to the public domain are expected.
- Utilities – All essential services are available as per Clause 7.6 – Essential Service of the PSLEP. Ausgrid have recommended conditions relating to work undertaking in proximity to overhead electrical assets.
- Heritage – Insufficient information has been submitted with regard to potential impacts to Aboriginal heritage. No impacts are expected to any Local or State heritage items.
- Other land resources – The EPA, in their referral response have highlighted the potential for impacts to groundwater, which have not been adequately considered. No other adverse impacts are expected to occur to other land resources/uses in proximity to or on the site.
- Water/air/soils impacts – Insufficient information has been submitted regarding air and noise impacts.
- Flora and fauna impacts – Insufficient information has been provided regarding flora and fauna impacts.
- Natural environment – Details regarding the final proposed form and shaping levels, the location, depth and volume of fill works atop the filled void, or landscaping have not been submitted with the application and therefore impacts to the natural environment remain unclear.

- Noise and vibration – Insufficient information has been submitted regarding noise impacts. Conditions restricting construction hours are not alone sufficient to mitigate the noise and vibration impacts of the proposal.
- Natural hazards – The flood impacts of the proposal have not been adequately detailed within the submitted FIA.
- Safety, security and crime prevention – Safety, security and crime prevention measures could be addressed through the implementation of secure fencing on the site and CCTV.
- Social impact – Adverse social impacts could occur as a result of noise, air quality and character impacts.
- Economic impact – The proposal offers a suitable location for the disposing of fill material, providing a valuable service to the broader construction and development industry, particularly given the prevalence of large scale infrastructure projects involving bulk excavations currently occurring across the state.
- Site design and internal design – The proposed site layout adequately responds to the existing geographical features of the land, particularly, the quarry void.
- Construction – Insufficient information has been submitted regarding noise and air impacts generated during filling activities. Conditions restricting construction hours are not alone sufficient to mitigate the noise and vibration impacts of the proposal.
- Cumulative impacts – Cumulative flood impacts as a result of the proposal have not been adequately addressed in the FIA submitted with the application.

Accordingly, it is considered that due to the insufficient information provided with the proposal significant adverse impacts may occur in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

The site could be suitable for the undertaking of environmental protection works, given the presence of a disused quarry void. Despite this, as outlined in this report, insufficient information has been provided to demonstrate how the proposal could avoid and mitigate the resulting impacts of the proposed filling works, including the following:

- Impacts to the character of the locality;
- Impacts to biodiversity;
- Impacts to groundwater;
- Impacts to and filling of ASS;
- Air quality and noise impacts;
- Traffic and traffic safety impacts;
- Flooding and drainage impacts; and
- Impacts to Aboriginal heritage.

In the event the outstanding issues are appropriately addressed, the proposal could potentially be considered suitable for the site, however, in the absence of this information, the site cannot be considered suitable for the proposed development.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

The following key issues remain unresolved at the time of writing this report:

- Impacts to the character of the locality;
- Impacts to biodiversity;
- Impacts to and filling of ASS;
- Air quality and noise impacts;
- Traffic and traffic safety impacts;
- Flooding and drainage impacts; and
- Impacts to Aboriginal heritage.

Whilst the site has potential for environmental rehabilitation, given the presence of the disused quarry void, the key issues relating to the proposal have not been appropriately resolved and accordingly, the proposal is not considered to be in the public interest.

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 in Table 4.

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

Table 3: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			
Referral/Consultation Agencies			
Ausgrid	Section 2.48(2) (Determination of development applications— other development) – electricity transmission	A referral was made to Ausgrid as an overhead powerline is located on the site. Correspondence from Ausgrid has indicated that the proposal is satisfactory.	Y
Department of Defence	The site is located in a birdstrike area due to the site proximity to RAAF base	A referral was made to Defence who in response recommended a condition be included for the	Y

	Williamstown and a referral has been sent to Defence as per the Council and Defence memorandum of understanding.	management of organic waste (such as maximum storage onsite and the use of covered/enclosed bins) be included in any approval.	
Transport for NSW	The application has been referred to TfNSW in accordance with clause 56 of the Environmental Planning and Assessment Regulation 2021. The site has frontage to the Pacific Highway which is a classified road.	A referral was made to Transport for NSW (TfNSW) who in response raised no objection or requirements relevant to the application. TfNSW noted the proposal will have no significant impact on the nearby classified road network.	Y
Department of Primary Industry Fisheries	Clause 56 of the Environmental Planning and Assessment Regulation 2021.	A referral was made to DPI Fisheries, to confirm whether the proposal would require a Fisheries Management Permit. In response, Fisheries confirmed that the proposal does not require a Fisheries management Permit.	Y
Hunter Water Corporation	Clause 56 of the Environmental Planning and Assessment Regulation 2021.	A referral was made to HWC due to their assets being located on the site and on the adjoining lot. HWC raised no objection as the proposal would not impact HWC assets.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Department of Planning and Environment – Water	Section 91 – Activity Approval under Part 3 of the Water Management Act 2000.	No response received.	N
Environment Protection Authority	<ul style="list-style-type: none"> Sections 43(b), 48 and 55 Environment protection licence to authorise carrying out of scheduled activities at any premises. <p>The proposal comprises Waste disposal (application to land) which is a scheduled activity, pursuant to Schedule 1, Section 39 of the Protection of the Environment Operations Act 1997, as the proposed fill includes potential acid</p>	<p>The EPA requested additional information regarding the following matters:</p> <ul style="list-style-type: none"> Impacts to ASS; Importation of PASS; Impacts to groundwater; Rehabilitation in accordance with the National guidelines for Mine Rehabilitation; Water quality; and Impacts to aquatic ecology. <p>At the time of writing this report, the requested information has not been received and General</p>	N

	<p>sulfate soils (PASS) and therefore cannot meet the conditions of an exemption.</p> <ul style="list-style-type: none"> Sections 43(d), 55 and 122 Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity. <p>An EPL for the discharge of water may be required due to the volume of water contained in the quarry void and as dewatering is not proposed to be carried out. It is understood that there is no existing groundwater licence and one is likely to be required.</p>	Terms of Approval have not been issued by the EPA.	
--	---	--	--

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 5**.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineering	<p>Additional information was requested regarding the following</p> <ul style="list-style-type: none"> Traffic and traffic safety impacts; Flooding and drainage impacts; and Bulk earthworks. <p>At the time of writing this report, the requested information has not been received</p>	N
Heritage	<p>Additional information was requested regarding impacts to Aboriginal heritage. At the time of writing this report, the requested information has not been received</p>	N
Environmental Health	<p>Additional information requested relating to noise and air quality impacts. At the time of writing this report, the requested information has not been received</p>	N
Natural Systems	<p>Additional information requested relating to the BDAR. At the time of writing this report, the requested information has not been received.</p>	N
Development Contributions	<p>Should the DA be approved, development contributions would be applicable.</p>	Y

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 and advertised in accordance with Council's Community Participation Plan from 17 May 2022 – 14 June 2022. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

Council received 1 unique submissions in the form of a petition which includes 49 signatories objecting to the proposal. The issues raised in these submissions are considered in **Table 5**.

Table 5: Community Submissions

Issue	No of submissions	Council Comments
Construction Hours Submissions raise concern that the construction hours will cause significant disruption to local residents.	1	<p>The proposal presents the potential for noise generation from the proposed earthworks, which would take place over approximately 8 and a half to 10 years. A Noise Assessment (reference no. SYD2018-1073-R001B, prepared by Acouras and dated August 19 January 2021) was provided with the application. However, following review from Council's Environmental Health Officer, it was concluded that the report did not appropriately assess the proposal in accordance with AS2436:2010, noting the modelled noise levels emitted by plant equipment did not adopt the noise levels established in AS2436:2010. It was also noted that the background noise survey was conducted in August 2018 and should be updated to ensure the noise profile is still accurate.</p> <p>At the time of writing this report, insufficient information has been provided to demonstrate that the noise impacts of construction would be acceptable. Accordingly, this issue forms part of the recommended reasons for refusal of the DA.</p>
Heavy vehicles Submissions raise concern that movement of heavy vehicles will impact travel and	1	<p>Traffic and queuing could occur as the proposed development does not include an appropriate access treatment. Council's Traffic Engineer has recommended that the existing site access should be upgraded to provide a minimum Auxiliary Right-turn (AUR) on Adelaide Street to allow vehicles to pass the heavy vehicles waiting to turn right into the site and avoid queuing.</p>

access to residences.		At the time of writing this report, the recommended intersection upgrade has not been proposed by the applicant. Accordingly, this issue forms part of the recommended reasons for refusal of the DA.
Impacts to water table Submissions raise concern that the proposed work may disrupt the water table, underground water supply.	1	The application was referred to the EPA, who in response identified the potential for impacts to ground water and water quality, and as a result, requested additional information from the applicant to demonstrate that no adverse impacts would occur as a result of the proposal. At the time of writing this report, the requested information has not been submitted and accordingly, this issue forms part of the recommended reasons for refusal of the DA.
Flooding Impacts Submissions raise concern that the proposal may introduce unpredicted changes to the movement of flood water.	1	The applicant submitted a FIA with the application which assess the flooding impacts of the proposal. Following review of this report by Council's Flooding Engineer, it was identified that additional information is required to properly assess the potential flood impacts of the proposal. At the time of writing this report, the requested information has not been submitted and accordingly, this issue forms part of the recommended reasons for refusal of the DA.

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 Impacts to the character of the locality

Insufficient information has been submitted to determine whether adverse impact would occur to the character of the locality. Specifically, a bulk earthworks plan and landscaping plan have not been provided to detail the final form of the land. Moreover, insufficient information has been provided in the acoustic and air quality impact assessment reports to determine the impacts the proposal may have regarding noise emission and air quality. Accordingly, impacts to the character of the locality are unknown.

5.2 Impacts to Biodiversity

The application triggers entry into the Biodiversity Offset Scheme due to the proposed impacts to native vegetation in a biodiversity values mapped area. Accordingly, the application includes a Biodiversity Development Assessment Report (BDAR), prepared by De Witt Ecology, dated 19 April 2022.

A BDAR was submitted with the application which assess the biodiversity impacts of the proposal, including the areas mapped as a wetland. The BDAR has been reviewed by Council's Natural Systems Officer, who identified the following deficiencies:

- Exclusion of candidate species credit species with insufficient justification, including the *Haliaeetus leucogaster* and *Crinia tinnula*.
- Insufficient surveys undertaken, due to the presence of 20 species being assumed, without targeted surveys, including species listed as vulnerable, endangered and critically endangered;
- Insufficient information regarding the loss of aquatic habitat, including amphibians and *Myotis macropus*; and
- Insufficient evidence of measures taken to avoid and minimise impacts to aquatic dependent species and arboreal mammals, as required by the SEARs.

The deficiencies in the report have not been addressed at the time of writing this report and as a result, insufficient information is available to determine compliance with the Biodiversity Conservation Act 2016.

5.3 Acid Sulfate Soils

The EIS states that no impacts to ASS are expected, noting that the proposed works consist of filling and no excavation is proposed. However, due to historical mining activities, ASS may already present in the disturbed soils. In addition, the application proposes the filling of potential ASS (PASS). Following review of the proposal by the Environment Protection Authority, additional information was requested to update the applicants Acid Sulfate Soils Assessment to address the relevant regulatory framework, including the Environment Operations (Waste) Regulation 2014, NSW Acid Sulfate Soils Management Advisory Committee (ASSMAC)(1998), the NSW EPA's Environmental Guidelines Solid Waste Landfills. This information has not been submitted at the time of writing this report.

5.4 Air quality and noise impacts

Air Quality

The proposal presents the potential for substantial dust generation from the proposed earthworks, which would take place over approximately 8 and a half to 10 years. The application includes an Air Quality Impact Assessment, Report no. JUL18116.1, prepared by Air Labs Environmental and dated 15 February 2019. However, following review from Council's Environmental Health Officer, it was concluded that the report did not provide sufficient information regarding long-term air quality impacts and may not accurately assess dust generation, due to discrepancies in the expected truck movements throughout the report.

On this basis, it is unknown whether the proposal would cause adverse impacts in terms of air quality, and therefore does not satisfy Section B3.2 of the DCP.

Noise

The proposal presents the potential for noise generation from plant equipment and truck movements associated with the proposed earthworks, which would take place over approximately 8 and a half to 10 years. A Noise Assessment (reference no. SYD2018-1073-R001B, prepared by Acouras and dated August 19 January 2021) was provided with the application. Following review from Council's Environmental Health Officer, it was concluded that the report did not appropriately assess the proposal in accordance with AS2436:2010, noting the modelled noise levels emitted by plant equipment did not adopt the noise levels established in AS2436:2010. It was also noted that the background noise survey was conducted in August 2018 and should be updated to ensure the noise profile is still accurate.

On this basis, it is unknown whether the proposal would cause adverse noise impacts, and therefore does not satisfy Section B3.2 of the DCP.

5.5 Traffic

The proposal involves the generation of traffic through the transport of fill to the site. Accordingly, a Traffic Impact Assessment (TIA), prepared by SECA Solution, dated 25 January 2021 was provided with the application. The TIA assesses the impact of 50 truck movements per day, resulting in an average of 5 truck per hour entering and exiting the site (5 inbound and 5 outbound), which is 1 entering every 10-15 minutes. The proposed timeframe from start to completion of backfilling and construction of the final landform is a maximum period of 10 years.

Following review of the Traffic Assessment by Council's Traffic Engineer, the following deficiencies were identified:

- The assessment does not take into account the cumulative traffic impacts associated with DA 16-2022-310-1 occurring at the same time; and
- The existing site access should be upgraded to provide a minimum Auxiliary Right-turn (AUR) on Adelaide Street to allow vehicles to pass the heavy vehicles waiting to turn right into the site and avoid queuing. However, this is not suggested in the Traffic Assessment.

In addition, the existing culvert across the Grahamstown drain, which is proposed for use as site access appears to be in a state of disrepair and it is not clear whether the proposed truck movements could safely use this structure. As a result, replacement of the culvert may be required and would need to be included in the DA to ensure any associated environmental impacts are assessed. No information has been submitted to demonstrate that use of the existing culvert can practically and safely occur.

As a result of these issues, the proposal in its current form is not suitable from a traffic and traffic safety perspective and is therefore not consistent with the requirements of Chapter B8 of the DCP.

5.6 Flooding Impacts

The site is located within flood prone land and a flood impact assessment is required in accordance with B5.8 of the DCP. The application includes a Flood Impact Assessment (FIA). However, the impact assessment has been assessed by Council's Development Engineering section and found to be inadequate for the following reasons:

- A survey of the site has not been completed.
- The FIA has not been prepared in accordance with the latest Australian Rainfall and Runoff Guidelines.
- Cumulative flood impacts from DA 16- 2022-310-1 have not been considered, nor has the Hunter River Tail water conditions.
- The FIA has not adequately considered regional flooding impacts. The proposed filling may cause changes to the velocity of high hazard floodwaters.

On this basis, with regard to clause 5.21(2), the consent authority cannot be satisfied that the proposed development:

- (a) is compatible with the flood function and behaviour on the land,
- (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;
- (f) 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.

5.7 Impacts to Aboriginal Heritage

The application includes a search of the Aboriginal Heritage Information Management System (AHIMS). No Aboriginal sites were recorded in or near the study area and no Aboriginal places have been declared in or near the above location (50m buffer).

However, insufficient information has been provided to satisfy the requirements of the SEARs, issued by the Department of Planning and Environment, noting that an Aboriginal Cultural Heritage Assessment Report has not been submitted with the application.

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 cannot be supported.

The key issues discussed throughout this report have not been overcome, due to insufficient information being submitted with the application. The key issues include the following:

- Impacts to the character of the locality;
- Impacts to biodiversity;
- Impacts to and filling of ASS;
- Air quality and noise impacts;
- Traffic and traffic safety impacts;
- Flooding and drainage impacts; and
- Impacts to Aboriginal heritage.

It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily through amendments to the proposal.

7. RECOMMENDATION

That the Development Application DA 16-2022-295-1 for Environmental Protection Works – earthworks for rehabilitation of quarry at 251 Adelaide Street RAYMOND TERRACE NSW 2324 be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment 1 – Reasons for refusal
- Attachment 2 – Backfill Management Plan
- Attachment 3 – Environmental Impact Statement
- Attachment 4 – BDAR
- Attachment 5 – Traffic impact assessment
- Attachment 6 – Survey plan
- Attachment 7 – SEARs
- Attachment 8 – Acoustic report
- Attachment 9 – Air quality
- Attachment 10 – Contamination report
- Attachment 11 – Flood risk management report

- Attachment 12 – Hydrogeological report
- Attachment 13 – Acid sulfate soils report
- Attachment 14 – EPA referral response