

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-129 - 16-2022-310-1
PROPOSAL	Earthworks – Filling of land
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	\$585,000 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	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	Nil.
DOCUMENTS SUBMITTED FOR CONSIDERATION	Attachment 1 – Recommended reasons for refusal Attachment 2 – Civil plans Attachment 3 – Conceptual earthworks report Attachment 4 – Environmental impact statement Attachment 5 – Earthworks management plan Attachment 6 – Traffic impact assessment Attachment 7 – Survey plan Attachment 8 – PSI Attachment 9 – Flood risk management plan Attachment 10 – BDAR

	Attachment 11 – Air quality report Attachment 12 – Acoustic report Attachment 13 – Aboriginal cultural heritage due diligence assessment Attachment 14 – SEARs
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	16 November 2022

EXECUTIVE SUMMARY

The development application (DA) seeks approval for earthworks, classified as designated development for waste management facilities or works. The proposed earthworks seek to facilitate a future rezoning and residential development of the subject area, which measures approximately 5ha in size.

The proposed development involves earthworks in the form of cut and fill between 9.56m AHD and 2.65m AHD to achieve flood immunity for future development. The flood planning level applicable to the site is 5.7m AHD. The proposed works include cut works of up to 2m in the northern part of the site and fill of up to 2m in the southernmost part of the site. An average fill depth of 2m is proposed along the southern side of the development site.

A total of 100,000m³ material is required for the proposed cut and fill works, including:

- Approximately 40,000m³ of material from the north west of the site will be cut and used as fill in lower lying areas; and
- Import of an additional 60,000m³ (approximately) of excavated natural material (ENM) and virgin excavated natural material (VENM).

The site, legally identified as Lot 232 DP 593512, is an irregular shaped lot that measures an area of 43.5ha. The area subject to the proposed earthworks is a 5ha area in the north-west corner of the site, with frontage to Adelaide Street. The site undulates steeply at various locations due to historic quarrying activities.

The site is currently zoned RU2 Rural Landscape. Immediately to the north the site interfaces with 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 east is more low density residential land. To the east, the site adjoins a large Hunter Water Corporation waste water treatment plant. The Pacific Highway is located to the south of the site and industrial zoned land beyond.

The site is densely vegetated with the exception of a large quarry void filled with water, created by historical sand mining and dredging activities that have now ceased. The vegetation comprises a mix of exotic and native species. One existing site access is located at the midway point between the sites northern and southern extent on the Adelaide Street frontage.

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 a mapped LEP wetland, is located on a floodplain and within 500m of a residential zone. 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 Section 91 of the *Water Management Act 2000*. At the time of writing this report, no response has been received from DPE - Water.

The proposal was notified and advertised in accordance with Council's Community Participation Plan from 17 May 2022 – 14 June 2022. No submissions were received in relation 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 impact to fauna corridors; and
 - Insufficient evidence of measures taken to avoid and minimise ecological impacts.
- **Noise impacts** - A Noise Assessment was provided with the application. Following review from Council's Environmental Health Officer, it was concluded that the report did not adequately assess the proposal in accordance with AS2436:2010.
- **Traffic** - The Traffic Impact Assessment (TIA) submitted does not take into account the cumulative traffic impacts associated with DA 16-2022-295-1 occurring at the same time. In addition, 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 TIA.

- **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). The FIA 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:
 - is compatible with the flood function and behaviour on the land,
 - 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
 - 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.

That the Development Application DA 16-2022-310-1 for Earthworks Filling of Land 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

1.1 The Site

The development site 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. The area subject to the proposed earthworks is a 5ha area in the north-west corner of the site, with frontage to Adelaide Street, as shown in **Figure 1** below. The site undulates steeply at various locations due to historic quarrying activities.

The site is currently zoned RU2 Rural Landscape. Immediately to the north the site interfaces with 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 east is more low density residential land. To the east, the site adjoins a large Hunter Water Corporation waste water treatment plant. The Pacific Highway is located to the south of the site and industrial zoned land beyond.

The site is densely vegetated with the exception of a large quarry void filled with water, created by historical sand mining and dredging activities that have now ceased. The vegetation comprises a mix of exotic and native species. One existing site access is located at the midway point between the sites northern and southern extent on the Adelaide Street frontage.

The site area subject to the proposal contains 2 easements, including an easement for water supply pipeline & access 3.05m wide and easement for sewerage pipeline & water 2.44m wide. Other utility infrastructure nearby includes a Hunter Water Corporation sewer pumping station that is 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.

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 Williamstown - Height Trigger Map;
- RAAF Base Williamstown - 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: Subject Area

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development application (DA) seeks approval for earthworks, classified as designated development for waste management facilities or works. The proposed works seek to facilitate a future rezoning and residential development of the subject area, which measures approximately 5ha in size.

The proposed development involves earthworks in the form of cut and fill between 9.56m AHD and 2.65m AHD to achieve flood immunity for future development. The flood planning level applicable to the site is 5.7m AHD (see **Figure 2** below). The proposed works include cut works of up to 2m in the northern part of the site and fill of up to 2m in the southernmost part of the site. An average fill depth of 2m is proposed along the southern side of the development site.

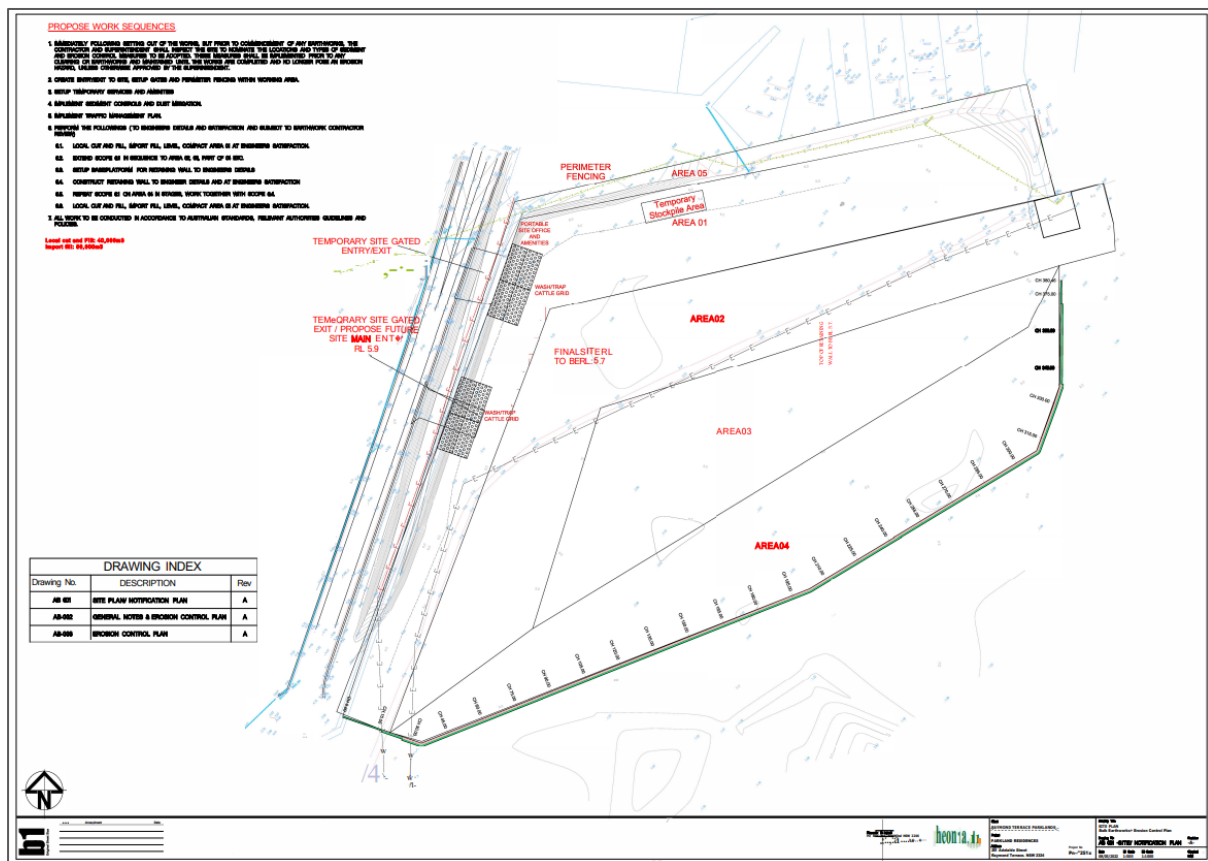
The key elements of the proposal include the following:

- A total of 100,000m³ material is required for the proposed cut and fill works, including:

- Approximately 40,000m³ of material from the north west of the site will be cut and used as fill in lower lying areas;
- Import of an additional 60,000m³ (approximately) of excavated natural material (ENM) and virgin excavated natural material (VENM).
- Gabion retaining wall along the southern extent of the fill pad, me ranging between 1m – 3m in height.
- Operating hours - Monday to Friday 7am to 6pm and Saturday 8am to 1pm. No work on Sundays or Public Holidays;
- Maximum height of material stockpiles – 3m;
- Maximum combined footprint of material stockpiles – 1ha;
- Imported fill material sourced from Sydney, Newcastle, the Hunter region and other sites in NSW;
- Average daily material movement of 440 tonnes (704m³) and peak daily material movement of 640 tonnes (1024m³) (1.5 times the average daily movement rate);
- Average annual material movement of 160,000 tonnes per annum, based on the average daily material movement rate of 440 tonnes; and
- Removal of all vegetation located within the development footprint (see **Figure 3**).

The site is proposed to be accessed from Adelaide Street via two separate temporary ingress and egress gates in the north-west area of the site.

The applicant has submitted an earthworks management plan that outlines the proposed fill material, acceptance and verification procedures, volume and mass estimates, methodology of filling operations, erosion and sediment control measures, ground settlement monitoring, ground treatment and environmental monitoring (air quality and noise).



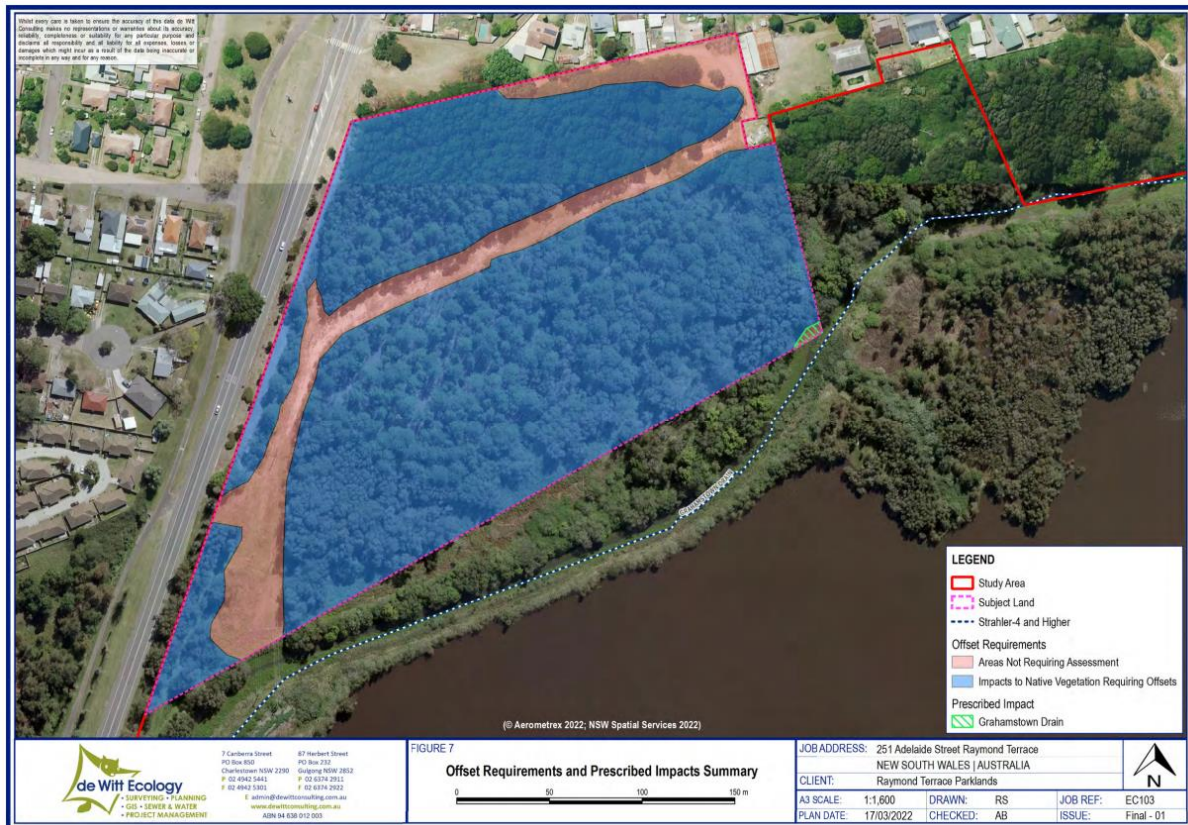


Figure 3: Proposed Vegetation Impact Area

2.2 Background

The portion of land subject of this proposal has been investigated for rezoning potential. A Planning Proposal prepared in relation to the subject area received an approved Gateway Determination on 20 October 2017 to rezone the land from RU2 Rural Landscape to R2 Low Density Residential under Port Stephens LEP 2013. The Gateway Determination on 20 October 2017 identified a number of issues to address including environmental outcomes, mapping, floodplain risk management and consultation with agencies.

Flooding and flood risk have been considered as part of the rezoning process and to date remain unresolved. Advice issued to Port Stephens Council (PSC) from the Biodiversity Conservation Division (BCD) of Department of Planning, Industry and Environment (DPIE) as it was known at the time, was that:

The planning proposal is inconsistent with Ministerial Direction 4.3 Flood Prone Land with its current landform, and that the proponent should undertake any landform works required to address flooding at the site in accordance with any statutory requirements, prior to any rezoning being considered further.

Due to the unresolved flooding matters and other issues, the Planning Proposal was withdrawn by the applicant on 19 October 2020. As a result, there is no current Planning Proposal to rezone the site. The proposed earthworks seek to achieve a flood free area of land to support a future Planning Proposal to rezone the land.

A pre-lodgement meeting was held prior to the lodgement of the applicant on 12 May 2020 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Permissibility;

- Flooding impacts;
- Traffic impacts; and
- Ecological impacts.

A second pre-lodgement meeting was held on 1 October 2020, which identified the following additional issues, not previously discussed in the first Pre-DA meeting:

- Permissibility under Clause 7.2 of the PSLEP 2013;
- Designated development triggers; and
- Referrals to external agencies.

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 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 the late 1950s. 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 16-2022-295-1) has been concurrently submitted to Council for the filling of the quarry void, which is unrelated to the Planning Proposal to rezone the land. The consent authority for this application is the Hunter and Central Coast Regional Planning Panel.

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 <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Schedule 6, Section 7 – Particular designated development, as the proposed is for waste management facilities or works. 	Y
SEPP (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 is satisfactory subject to conditions. 	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <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	Port Stephens Local Environmental Plan 2013 <ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives – Insufficient information has been provided to understand 	N

	<p>potential Impacts to rural character. Permissibility is gained via Clause 7.3 as discussed below.</p> <ul style="list-style-type: none"> • Clause 5.10 – Heritage conservation – Insufficient information has been submitted to address the Aboriginal Cultural Heritage Assessment requirements of the SEARs. There are no local or state listed heritage items on or in proximity to the site. • Clause 7.1 – Acid sulfate soils – The site is mapped as class 2 and 4 acid sulfate soils (ASS). The proposal involves a maximum of 2m cut in areas mapped as class 4 ASS. No excavation is proposed in the areas mapped class 2 ASS. Accordingly, an ASSMP is not required. • 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 – No upgrades to essential services are required to support the development and the application satisfies the requirements of this clause. • Clause 7.9 - Wetlands – Insufficient information has been provided within the BDAR submitted with the application to adequately assess the impacts of the proposal against this clause. • Clause 7.11 – Public Infrastructure buffer – The proposal is located adjacent a Hunter Water Corporation wastewater treatment facility. However, the proposal is not for a sensitive land-use type and therefore is consistent with the requirements of this clause. 	
DCP	<p>Port Stephens Development Control Plan 2014 Chapter B – General Controls</p> <ul style="list-style-type: none"> • B2 – Natural Resources – Insufficient information has been provided within the BDAR submitted with the application to adequately assess the impacts of the proposal against this chapter. • B3 – Environmental Management – The air quality management procedures identified in the air quality impact assessment are appropriate. The Noise Assessment 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 – Insufficient information has been provided regarding how the existing flows from Meredith Street discharging on the site will be conveyed across the site. • B5 – 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. 	N

	<ul style="list-style-type: none"> B8 – Road network – The Traffic Impact Assessment (TIA) submitted with the application is inadequate. Insufficient information has been provided regarding site access and traffic impacts. 	
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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 and/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 provided 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 earthworks have been located to minimise removal of native vegetation, including vegetation within preferred Koala habitat areas. 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, as the proposal is classified as a type of 'waste management facility or works' and is located within 100 metres of a mapped LEP wetland, is located on a floodplain and within 500m of a residential zone. 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.

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. A Preliminary Site Investigation was submitted with the application that concludes that the development area is suitable for residential use, although not proposed under this application.

On this basis, the proposal is considered to be consistent with *SEPP (Resilience and hazards)* subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

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 sent to Transport for NSW (TfNSW) who raised no objection or provided any 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 proposal is defined as earthworks, which are permissible in accordance with Clause 7.3 of the LEP, rather than 2.3.

The proposal is considered to be inconsistent with the zone objectives relating to rural character as insufficient information has been submitted the application to determine whether adverse impact 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. Without any landscaping or selective tree retention proposed, the site would be an entirely cleared site containing a flood mound, devoid of any vegetation or structures, which is not considered to be consistent with the character of the locality.

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 3** below.

Table 3: 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	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:	No

	people in the event of a flood.	<ul style="list-style-type: none"> • 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. <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; (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. 	
Acid sulphate soils (CI 7.1)	The objective of this clause is to ensure that development does not disturb, expose, or	The site is mapped as class 2 and 4 acid sulfate soils (ASS).	Yes

	drain acid sulfate soils and cause environmental damage.	The proposal involves a maximum of 2m cut in areas mapped as class 4 ASS. No excavation is proposed in the areas mapped class 2 ASS. Accordingly, an ASSMP is not required.	
Earthworks (Cl 7.2)	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>The proposal includes significant earthworks involving a total of 100,000m³ of cut and fill works, and final shaping/grading of fill to allow surface water drainage across the final landform and landscaping.</p> <p>No bulk earthworks plan has been submitted with the application to detail the final form and shaping levels. 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>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	
Essential Services (Cl 7.6)	<p>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>	<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>A number of existing Hunter Water Corporation (HWC) assets are located on the site, which require either relocation or protection during works. HWC have confirmed via letter that details of these works can be provided post consent.</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.	<p>The site is partially mapped as a wetland area and this clause applies to the proposal.</p> <p>A BDAR was submitted with the application, which assessed 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:</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 corridors for fauna movement, including in the wetland. • Insufficient evidence of measures taken to avoid and minimise impacts to native vegetation within the wetland. <p>On this basis, with regard to clause 7.9(4), the consent authority cannot be satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided— the development is designed, sited and will be managed to minimise that impact, or</p>	No
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		(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 use conflict between existing and proposed development.	The proposal is located adjacent a wastewater treatment facility managed by the Hunter Water Corporation. However, the proposal is not for a sensitive land-use type and therefore is consistent with the requirements of this clause.	Yes

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), Reference EC103, 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 corridors for fauna movement, noting that the proposed area for clearing would eliminate a fauna corridor (east to west).
- 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 the Port Stephens Koala Plan of Management. Nonetheless, the Comprehensive Koala Plan of Management (CKPoM) applies to the land.

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 proposal involves a maximum of 2m cut in areas mapped as class 4 ASS. No excavation is proposed in the areas mapped class 2 ASS. Accordingly, an ASSMP is not required.

Air Quality

The proposal presents the potential for dust generation from the proposed earthworks. Accordingly, an Air Quality Impact Assessment has been submitted with the application, reference V21-053, prepared by Virid IFC and dated 1 October 2022. The assessment recommends a number of dust minimisation strategies to be implemented during the proposed works which would minimise dust emissions to an appropriate level. The assessment was reviewed by Council's Environmental Health Officer who supported the findings of the report. On this basis, the proposal is consistent with the requirements of Section B3.2 of the DCP.

Noise

The proposal presents the potential for noise generation from the proposed earthworks. A Construction Noise and Vibration Management Plan (reference no. SYD2018-1073-R002C, prepared by Acouras and dated August 22 October 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 in a bulk earthworks plan. Moreover, insufficient information has been provided regarding how the existing flows from Meredith Street discharging on the site will be conveyed across the site.

Accordingly, it is not known how drainage will be managed upon completion of the proposal 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 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:

- The FIA has not been prepared in accordance with the latest Australian Rainfall and Runoff Guidelines.
- Flood impacts of the proposed retaining wall and embankment have not been adequately considered.
- 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.

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 is to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

The proposal does not impact any local or state listed heritage items or conservation areas. The application includes an Aboriginal Heritage Due Diligence Checklist that concludes no impacts are likely to occur to aboriginal heritage.

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 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.

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 16-2022-295-1 occurring at the same time.
- The proposed site access should be consolidated with that proposed in DA 16-2022-295-1 and 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.

As a result of these issues, the proposal as currently proposed 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)(iiia) – 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 to 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 – Insufficient information has been submitted to 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. Without any landscaping or selective tree retention proposed, the site would be an entirely cleared site devoid of any vegetation or structures and contain only a flood mound, which is not considered to be consistent with the character of the locality.
- Access and traffic – The proposed development does not include an appropriate access treatment. The proposed site access should be consolidated with DA 16-2022-295-1 and 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. HWC have recommended conditions for the relocation and protection of existing HWC 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 – 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 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 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 and character impacts.
- Economic impact – The proposal will provide economic benefit through 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, which is reflected by the proposed cut and fill works, which seek to fill and level the land to butt in with existing raised areas.
- Construction – Insufficient information has been submitted regarding noise 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 proposal involves earthworks in the form of cut and fill to improve the flood immunity of the land. Whilst the enhanced flood immunity would increase the prospect of future uses being developed on the site, 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;
- 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

No submission were received in relation to the proposal.

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

The proposed earthworks would improve the flood immunity of the land by providing additional land above the flood planning level. However, the following key issues remain unresolved at the time of writing this report:

- Impacts to the character of the locality;
- Impacts to biodiversity;
- Noise impacts;
- Traffic and traffic safety impacts;
- Flooding and drainage impacts; and
- Impacts to Aboriginal heritage.

Whilst the proposal would improve the flood immunity of the land, 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.

Table 4: 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 Williamtown and a	A referral was made to Defence who in response recommended a condition be included for the	Y

	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
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 have confirmed via letter that details of these works can be provided post consent.	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
Transport for NSW	S138 - Roads Act 1993 for works in the road reserve.	Rejected by TfNSW as TfNSW are not the Roads Authority Adelaide Street.	N/A

4.2 Council Officer Referrals

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

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineering	Additional information was requested regarding the following <ul style="list-style-type: none"> Traffic and traffic safety impacts; Flooding and drainage impacts; and Bulk earthworks. At the time of writing this report, the requested information has not been received.	N
Heritage	Additional information was requested regarding impacts to Aboriginal heritage. At the time of writing this report, the requested information has not been received.	N

Environmental Health	Additional information requested relating to noise impacts. At the time of writing this report, the requested information has not been received.	N
Natural Systems	Additional information requested relating to the BDAR. At the time of writing this report, the requested information has not been received.	N
Development Contributions	s7.12 contributions would be applicable should the application be approved.	N

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.

No submissions were made in relation to the proposal.

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 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.

The proposal involves the removal of all vegetation across the development footprint, leaving no screening of the site from Adelaide Street and nearby dwellings and potentially resulting in significant visual impacts.

It was requested that a tree retention and planting plan be prepared to provide an effective vegetation screen from the above mentioned view points. Retention of vegetation at these locations appears viable given most of this area is already located above the FPL and it is expected that selective retention of vegetation at these locations will be crucial to ensuring the visual screening is adequate.

Along with the tree retention and planting plan, it was also requested that the visual impact assessment within section 6.10 of the EIS be revised to assess the visual impacts once the above mentioned tree retention and planting is accounted for. The assessment should include visual renders depicting the outlook from private and public vantage points. This assessment is also a requirement of the SEARs.

At the time of writing this report, no response from the applicant has been received.

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 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.

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 Noise impacts

The proposal presents the potential for noise generation from plant equipment and truck movements associated with the proposed earthworks. A Construction Noise and Vibration Management Plan (reference no. SYD2018-1073-R002C, prepared by Acouras and dated August 22 October 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.

5.4 Traffic

The proposal involves the generation of traffic through the transport of fill to the site. Accordingly, a Traffic Impact Assessment, prepared by SECA Solution, dated 25 January 2021 was provided with the application. The Traffic Impact Assessment 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.

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 16-2022-295-1 occurring at the same time.
- The proposed site access should be consolidated with that proposed in DA 16-2022-295-1 and 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.

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.

5.5 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:

- 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.

5.6 Impacts to Aboriginal Heritage

The proposal does not impact any local or state listed heritage items or conservation areas. The application includes an Aboriginal Heritage Due Diligence Checklist that concludes no impacts are likely to occur to aboriginal heritage. 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;
- 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 to warrant support.

7. RECOMMENDATION

That the Development Application DA 16-2022-310-1 for Earthworks Filling of Land 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 – Recommended reasons for refusal
- Attachment 2 – Civil plans
- Attachment 3 – Conceptual earthworks report
- Attachment 4 – Environmental impact statement
- Attachment 5 – Earthworks management plan
- Attachment 6 – Traffic impact assessment
- Attachment 7 – Survey plan
- Attachment 8 – PSI
- Attachment 9 – Flood risk management plan
- Attachment 10 – BDAR
- Attachment 11 – Air quality report
- Attachment 12 – Acoustic report
- Attachment 13 – Aboriginal cultural heritage due diligence assessment
- Attachment 14 – SEARs