

COUNCIL ASSESSMENT REPORT
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC - 134 – DA2022/00572
PROPOSAL	Site preparation works including bulk earthworks to prepare and remediate the site and the construction and operation of an Organic Processing Facility (OPF).
ADDRESS	Lot 2 DP 1208481 120 Summerhill Road, Wallsend
APPLICANT	COVA Thinking Pty Ltd on behalf of City of Newcastle (CN)
OWNER	City of Newcastle (In this report City of Newcastle means Newcastle City Council)
DA LODGEMENT DATE	27 May 2022
APPLICATION TYPE	Designated Development Application
SEARS	Reference no. 1138 was issued on 11 April 2017 and updated on 7 March 2019 and 12 March 2021.
REGIONALLY SIGNIFICANT CRITERIA	Clause 3, Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 as <i>Council related development over \$5 million</i>
CIV	\$54,080,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	None
LIST OF ALL RELEVANT LEGISLATION	<ul style="list-style-type: none"> • <i>Heritage Act 1977</i> • <i>Protection of the Environment Operations Act 1997</i> • <i>National Parks and Wildlife Act 1974</i> • <i>Biosecurity Act 2015</i> • <i>Rural Fires Act 1997</i> • <i>Contaminated Land Management Act 1997</i> • <i>Waste Avoidance and Resource Recovery Act 2001</i> • <i>Water Management Act 2000</i> • <i>Fisheries Management Act 1994</i> • <i>Coal Mine Subsidence Compensation Act 2017</i> • <i>Hunter Water Act 1991</i> • <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i> • <i>Biodiversity Conservation Act 2016 (BC Act)</i>

	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) • <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regs) • <i>State Environmental Planning Policy (Planning Systems) 2021</i> (SEPP PS) • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (SEPP BC) • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (SEPP RH) • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (SEPP TI) • <i>Newcastle Local Environmental Plan 2012</i> (NLEP) • Newcastle Development Control Plan 2012 (NDCP) and Technical Manuals • Section 7.12 Development Contributions Plan
<p>AGENCY REFERRALS</p>	<p>Referrals (Non-integrated)</p> <ul style="list-style-type: none"> • Transport for NSW (TfNSW) – SEPP TI - Section 2.122 – Traffic Generating Development • NSW Rural Fire Service (RFS)– s4.14 of EP&A Act <p>Referrals (Integrated)</p> <ul style="list-style-type: none"> • NSW Environment Protection Authority (EPA) – <i>Protection of the Environment and Operations Act 1997</i> - s43(b), s48 & s55 - scheduled activity • Subsidence Advisory NSW (SA) – <i>Coal Mine Subsidence Compensation Act 2017</i> - s22
<p>PUBLIC SUBMISSIONS</p>	<p>One</p>
<p>DOCUMENTS SUBMITTED FOR CONSIDERATION</p>	<ul style="list-style-type: none"> • Amended Environmental Impact Statement by COVA Thinking Pty Ltd dated 30 March 2023 • Submissions Report by COVA Thinking Pty Ltd dated 18 August 2023 • Secretary’s Environmental Assessment Requirements (SEARS) • Capital Investment Value Report by Muller Partnership QS dated 28 March 2023 • Design Drawings by The ELLIS Group Architects dated 7 March 2023 • Stormwater Management Plan by Flussig dated 29 November 2023 • Subsidence Advisory Approval by NSW Subsidence Advisory dated 18 February 2022 • Mine Subsidence Grout Remediation Strategy by Douglas Partners dated December 2021 • Community Engagement Report by ERM Stakeholder Engagement dated January 2022 • Pre-DA Meeting Notes dated 14 May 2021 • Consultation undertaken with Agencies • Ecological Assessment prepared by AEP dated 8 March 2023 • Arborist Report prepared by AEP dated 15 March 2023

	<ul style="list-style-type: none"> • Noise and Vibration Impact Assessment by ERM dated 18 August 2023 • Aboriginal and Historical Cultural Heritage Report by ERM dated 29 March 2023 • Traffic and Transport Assessment by Transport and Traffic Planning Associates dated March 2023 Issue F • Supplementary Traffic Memo by GHD dated 14 August 2023 • Supplementary Traffic Memo by TTPA dated 18 August 2023 • Geotechnical Assessment by Douglas Partners July 2021 • Odour and Greenhouse Gas Assessment by ERM dated 18 August 2023 • Level 2 Landfill Gas Assessment by ERM dated 3 July 2023 • Preliminary Hazard Analysis by COVA dated 20 February 2023 • Preliminary Site Investigation by SMEC dated 7 February 2022 • Sampling Analysis and Quality Plan by SMEC dated 25 May 2023 • Detailed Site Investigation by SMEC dated 15 August 2023 • Remedial Action Plan by SMEC dated 17 August 2023 • Draft Long Term Environmental Management Plan (no author) dated August 2023 • Interim Audit Advice by Ramboll dated 18 August 2023 • Waste Management Plan by City of Newcastle Council dated July 2023 • Bushfire Assessment by BLACKASH dated 29 March 2023 • Preliminary Hazards Assessment by COVA dated 20 February 2023
KEY ISSUES	<ul style="list-style-type: none"> • Biodiversity • Contamination • Noise, Air Quality and Odour • Traffic
BRIEFINGS	<ul style="list-style-type: none"> • 6 July 2023 (Kick-Off Briefing) • 21 June 2023 (Briefing) • 18 July 2023 (MS Teams Videoconference) • 25 October 2023 (MS Teams Videoconference)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	27 March 2024
PREPARED BY	Damian Jaeger Principal Development Officer (Planning)
DATE OF REPORT	20 March 2024

1. EXECUTIVE SUMMARY

1.1 Development Application

Development Application (DA) No. DA2022/00572 was lodged on 27 May 2022 for an Organic Processing Facility (OPF) for CN within the Summerhill Waste Management Centre (SWMC) site. The proposed development is classified as designated development under sch. 3, s.16 of the *Environmental Planning and Assessment Regulations 2021* (EP&A Regs) and is Regionally Significant Development under cl.3 sch.6 of State Environmental Planning Policy (Planning Systems) 2021 (SEPP PS), as detailed further below.

1.2 Consent Authority

The consent authority for the DA is the Hunter and Central Coast Regional Planning Panel (HCCRPP) under cl.3 Sch 6 SEPP PS as the proposed development is Council related development with a capital investment value of over \$5 million.

1.3 Site

The site, and land over which the DA is made, is legally known as Lot 2 DP1208481, 120 Summerhill Road, Wallsend and is commonly known as the SWMC and is operated by CN. The site is irregular in shape and with access via Minmi Road and Summerhill Road to the main site access and weighbridge along Summerhill Road. The site has a gentle slope in a northerly direction towards an existing embankment and ponds.

1.4 Zoning and Permissibility

The site is predominantly zoned SP2 – Infrastructure, with the north-eastern portion of the site zoned C4 – Environmental Living Zone, under cl.2.2 of the NLEP. The proposal is located wholly in the SP2 Zone. The proposed development is characterised as a *waste or resource management facility* which is permitted with consent in the SP2 zone under cl. 2.3 of the LEP. The proposed development is also permitted with consent under the provisions of s. 2.153 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP TI). The development application has been lodged under the NLEP.

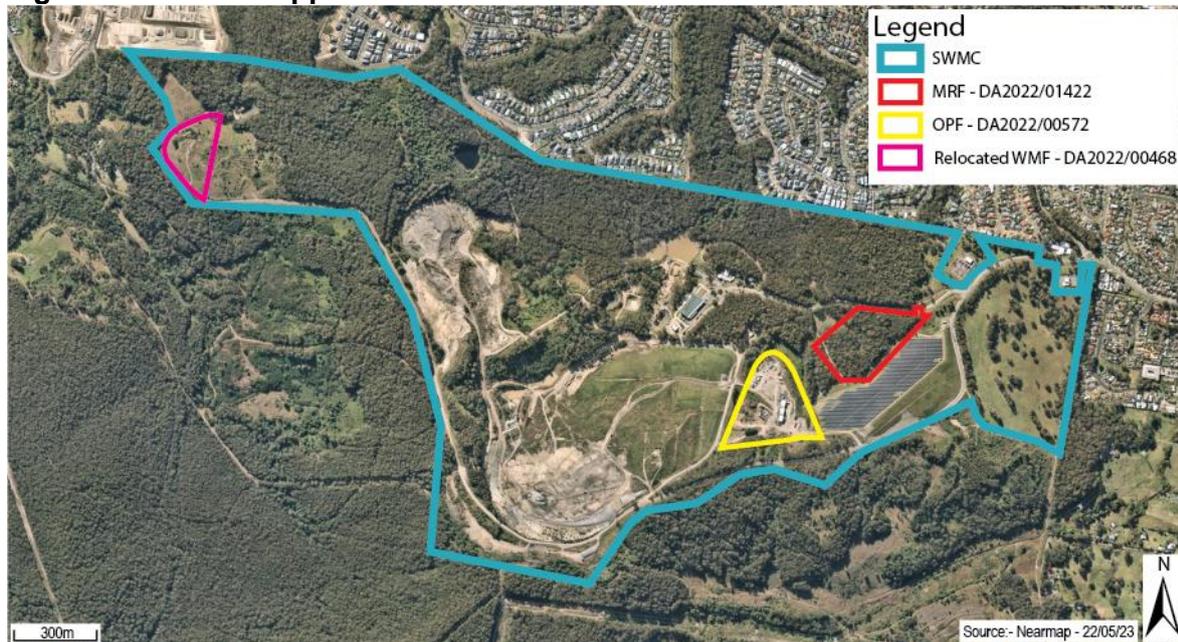
1.5 Related Applications

The DA for the OPF is one of three recent applications relating to the continued and expanded use of the SWMC. The other applications include:

- **Relocated Waste Management Facility (WMF) –** DA2022/00468 (approved on 26 September 2023) involving earthworks and relocation of existing materials processing facility; and
- **Materials Recovery Facility (MRF) –**DA2022/01422 (under assessment) involving the erection of a building and associated plant dedicated to recycling of kerbside waste (recyclables).

Figure 1 provides an overview of the location of the three applications (inclusive of the subject application outlined in yellow).

Figure 1 – Related Applications



1.6 Proposed Development

The proposed development is for site preparation works and the construction and operation of an OPF processing up to 50,000 tonnes per annum into compost. A detailed description of the proposed development is provided in **Section 3** of this report. **Figure 2** provides an excerpt of the south west 3D view.

Figure 2 – 3D View from South West (Source: Design Drawings, March 2023)



1.7 Environmental Assessment

1.7.1 Designated Development

The proposed OPF is designated development under the *Environmental Planning & Assessment Act 1979* (EP&A Act) and Sch 3 s.16 of the EP&A Regs being a composting facility with an intended processing capacity of greater than 5,000 tonnes per year of organic material, requiring Secretary's Environmental Assessment Requirements (SEARs) and the subsequent preparation of an Environmental Impact Statement (EIS) as further detailed under Section 4.1 of this report. The applicant was issued with SEARs on 11 April 2017, which were updated on two occasions on 7 March 2019 and 12 March 2021. The applicant has submitted an EIS addressing the updated SEARS and relevant consideration under s.4.15 of the EP&A Act.

The submissions received were referred to the Secretary in accordance with the provisions of Cl.4.16 (9)(b) of the Environmental Planning and Assessment Act 1979) and no further advice has been provided within the 21 days period applicable under the clause.

1.7.2 Integrated Development

The proposal is Integrated Development under s4.46 of the EP&A as follows:

- **NSW Environment Protection Agency (EPA)**– Scheduled Activity under ss 43(b), 48 and 55 of *Protection of the Environment Operations Act 1997* (i.e. Nominated Integrated Development).
- **Subsidence Advisory NSW (SA NSW)**– Located within a mine subsidence district under s22 of *Coal Mine Subsidence Compensation Act 2017*.

The proposal has received General Terms of Approval from both agencies which are included as part of the draft conditions of consent recommended at **Attachment A**.

1.7.3 Other Referrals

The DA was subject to the following additional external referrals during the assessment:

- NSW Rural Fire Service
- Transport for NSW

Relevant recommendations from these referrals have been incorporated in the draft recommended conditions of consent.

1.7.4 Statutory Pre-Conditions

The statutory pre-conditions to the granting of development consent are considered as summarised in **Table 1**.

Table 1 – Statutory Pre-Conditions to the Granting of Development Consent			
Statutory Pre-Condition	Pre-Condition	Assessment	Satisfied
<i>Environmental Planning & Assessment Act, 1979. Cl.4.16(9)(b)</i>	An application cannot be determined until 21 days after the date on which the Department of Planning,	All submissions received during the four rounds of public notification were provided to the DPHI	Yes

Table 1 – Statutory Pre-Conditions to the Granting of Development Consent			
Statutory Pre-Condition	Pre-Condition	Assessment	Satisfied
	Housing & Infrastructure (DPHI) Secretary has received all submissions to a designated development proposal.	Secretary on the 13 May 2024 and the 21 day period as now expired with no further requirements issued by the Secretary.	
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC)</i> – Chapter 4 – Koala habitat protection 2021 – s.4.9	The consent authority must be satisfied as to the whether or not the development is likely to have any impact on koalas or koala habitat.	The development is likely to have low or no impact on koalas or koala habitat.	Yes
<i>State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH)</i> – Chapter 4 – Remediation of Land – S4.6	The consent authority must be satisfied the land if contaminated can be made suitable for the proposed use.	Subject to the recommendations of the Preliminary Site Investigation (PSI), Detailed Site Investigation (DSI), Remediation Action Plan (RAP), Interim Site Auditors Advice and Long-Term Environmental Management Plan the land can be made suitable for the proposed use.	Yes

1.7.5 Environmental Impacts

The potential impacts of the proposal have been assessed and the key impacts are summarised as follows:

- **Biodiversity** – The site is not mapped as containing biodiversity values under the *Biodiversity Conservation Act 2016 (BC Act)*. While Plant Community Types (PCT) 1592 (*Spotted Gum - Red Ironbark - Grey Gum shrub - grass open forest of the Lower Hunter*) are present on the site, they are in a highly degraded condition. The area and extent of removal of 74 trees does not trigger entry into the biodiversity offsets scheme under the BC Act. The Ecological Assessment prepared by AEP dated 8 March 2023 has been assessed and it is determined the impact is acceptable subject to recommended draft conditions of consent.
- **Contamination** – The proposed remedial/management strategy for the site includes removal of asbestos containing materials (ACM) on ground surface, removal of hydrocarbon impacted fill soils, onsite containment to provide a separation between the waste layers and future site receptors, implementation of gas protection measures, and

ongoing management of containment system and ground gas through a Long Term Environmental Management Plan (LTEMP). The interim advice from an EPA accredited site auditor has confirmed that subject to following the RAP the site can be remediated and managed to be suitable for the proposed use. The proposal is satisfactory.

- **Noise, Air Quality and Odour** – The noise, air quality and odour impacts have been extensively assessed and demonstrated to be capable of remaining within acceptable levels at sensitive receivers and for staff of the OPF.
- **Traffic** – The proposed OPF does not rely on any road upgrades or southern road connection. The supplementary traffic reporting accompanying the EIS and associated traffic reports addresses traffic including cumulative impacts. The continued use of Summerhill Road and existing access routes to the OPF are acceptable given the likely input and output quantity to the site will remain the same or similar.

1.8 Submissions

The DA was notified on four occasions with a total of one unique submission being received by way of objection. The submissions are addressed in Section 5.7 of this report.

1.9 Panel Briefing

The HCCRPP was briefed on three occasions on 6 July 2022, 21 June 2023, and 25 October 2023. The key issue raised at the 25 October 2023 briefing was about the formal amendment to the application and the revocation of the Part 5 approval for an internal access road. The OPF does not rely on the Part 5 access road approval and will utilise the existing internal road network which is demonstrated to be suitable for vehicles accessing the OPF.

1.10 Recommendation

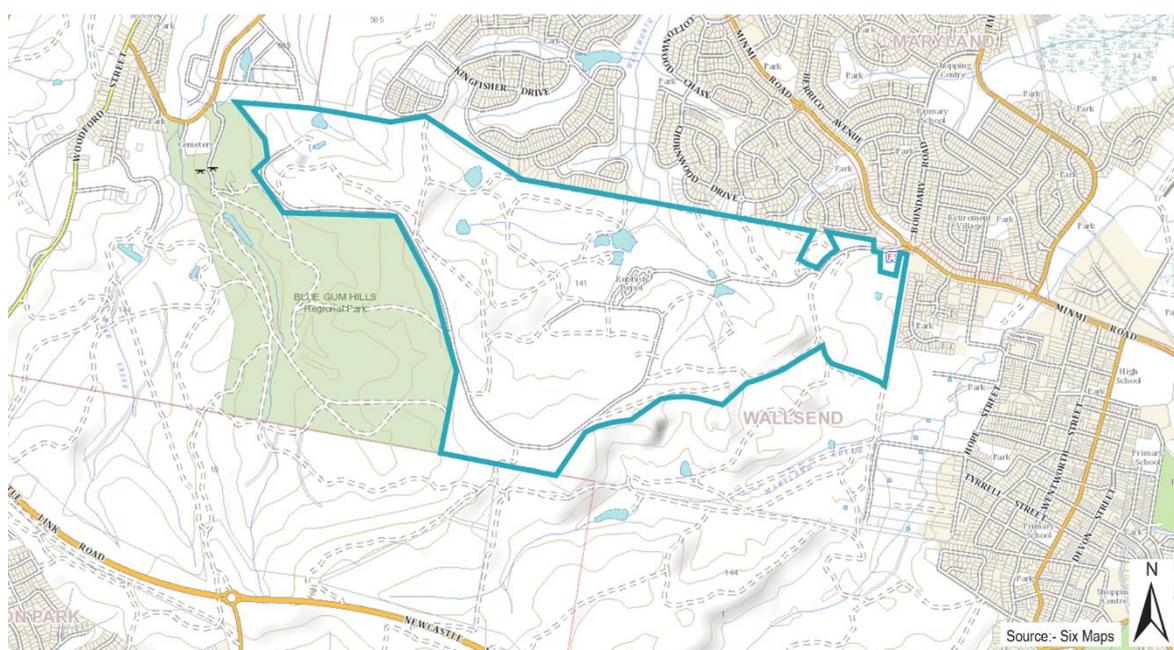
Following a detailed assessment of the proposal, DA2022/00572 is reported to the HCCRPP with a recommendation for approval pursuant to s.4.16(1)(a) of the EP&A Act subject to the recommended draft conditions of consent at **Attachment A** of this report.

2. THE SITE AND LOCALITY

2.1 The Site

The site is legally described as Lot 2 DP 1208481, 120 Summerhill Road, Wallsend and is accessed via Minmi Road. The site is known as the SWMC and is operated by CN. SWMC currently operates as a landfill facility. The development site is irregular in shape and has an area of 261.7 hectares.

Figure 3 – Site Location



The subject site is undulating with several steeper gullies and significant excavation and reshaping has been undertaken as part of the ongoing operations of the Centre. Prior to recent

levelling the site would have been located within a sloped landform with a slope of up to 20%. The site is surrounded by significant bushland buffers and corridors with links to the surrounding residential development.

There is a significant ridgeline to the south of the site which rises to 100m above sea level. The wider region is characterised by broad crests with long side slopes which descend towards the drainage lines of Wentworth Creek.

To the west of the site is the Blue Gum Hills Regional Park and to the north is the residential area of Fletcher. To the east is the Wallsend residential area. To the south is bushland which is privately owned and extends towards the Newcastle Link Road. The site has been operating as a waste management facility since 1995.

The proposed OPF is located in the south eastern section of the site on land that is currently being used as a resource processing area as shown in **Figure 4**.

Figure 4 – Aerial Photograph



The site is zoned SP2 Infrastructure and C4 Environmental Living under the provisions of the LEP.

Land adjoining the site to the north is zoned R2 Low Density Residential and land to the east and south east is zoned C4 Environmental Living. Land to the west and southwest is zoned C1 National Parks and Nature Reserves, whilst land to the south is partially zoned R2 Low Density Residential and partially zoned C1 National Parks and Nature Reserves.

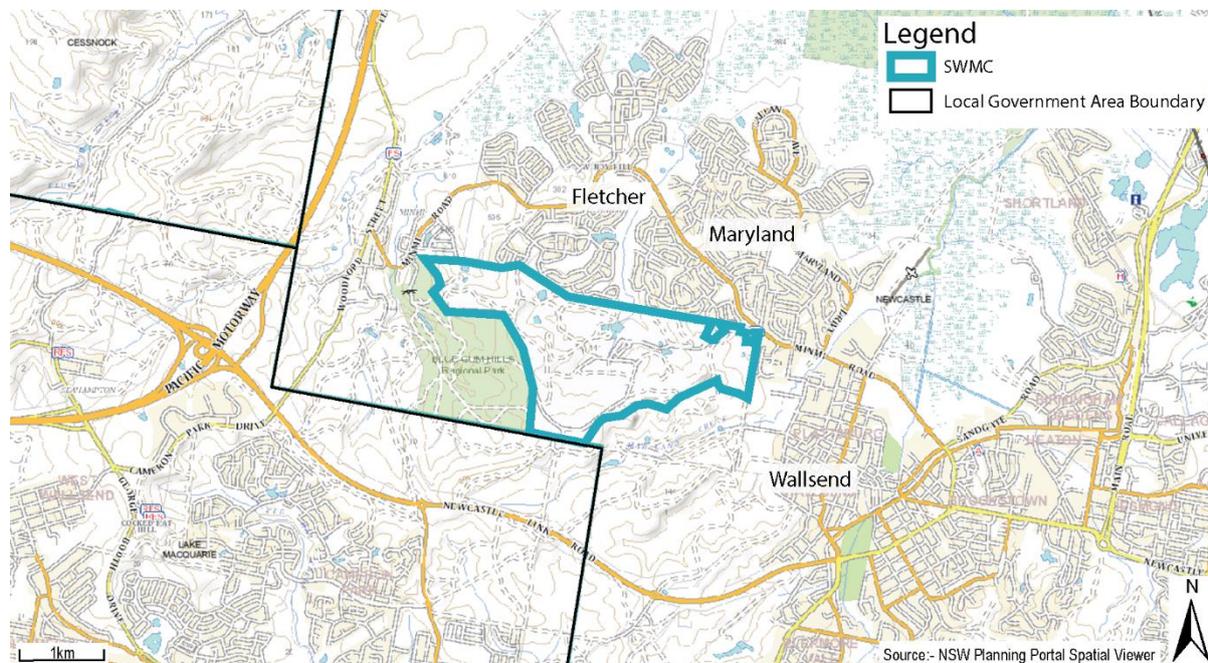
2.2 The Locality

The SWMC is approximately 12km to the north west of Newcastle City Centre.

The suburbs of Fletcher and Maryland located to the north and north east of the site are residential areas (Refer to **Figure 5**). The remainder of the suburb of Wallsend is located to the east of the site and is separated from the site by a large vegetation buffer.

The site borders the Lake Macquarie LGA to the south. The heavily vegetated area to the south of the subject site, located within the Lake Macquarie LGA, is zoned for residential and conservation purposes. Blue Gum Hills Regional Park is located to the west of the site.

Figure 5 – The Locality

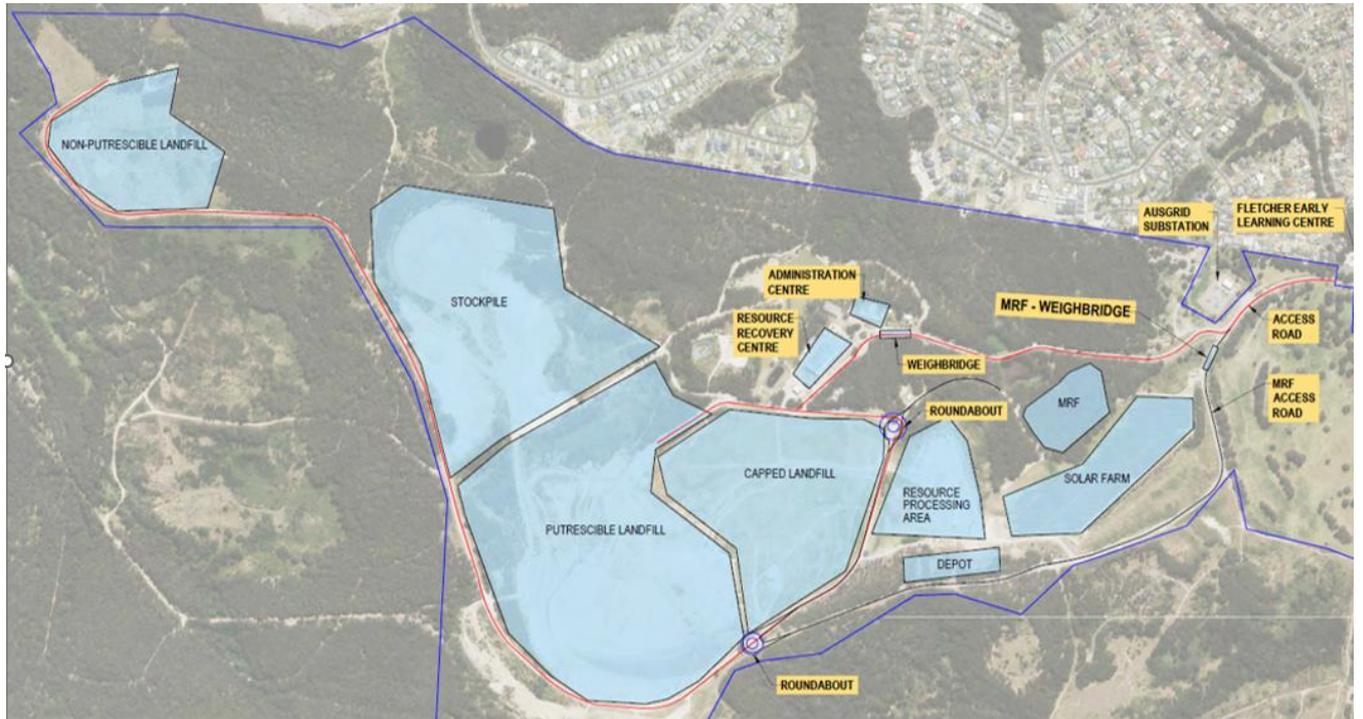


2.3 Summerhill Waste Management Centre

CN has been operating SWMC on the site since 1995. **Figure 6** details the location of the existing functions of SWMC which includes:

- Non-putrescible landfill
- Stockpile
- Putrescible landfill
- Capped landfill
- Solar farm
- Depot
- Resource recovery centre
- Administration centre

Figure 6 – Existing Uses at SWMC



3 THE PROPOSAL AND BACKGROUND

3.1 Site History

Table 2 provides an overview of the site history.

Table 2 – Site History	
Date	Event
1983	Ongoing mining to the east with vacant and disturbed soils to the west.
1990-2020	Summerhill Waste Management Facility (SWMF): <ul style="list-style-type: none">• June 1994 – Original landfill facility approved under DA1992/0506.• 2007 – SWMC operations with small vehicles and stockpiles. Landfilling to the west.• 2010 – Ongoing filling on the Site with vegetation regrowth in surrounding areas.• July 2011 – Additional landfill cells approved and ongoing operation past 2015 under DA10/1319 by the Hunter and Central Coast Regional Planning Panel.• 2012 – several small buildings/containers, vehicles and stockpiles.• 7 February 2017 – Solar farm approved under DA2017/01334 by the Hunter and Central Coast Regional Planning Panel.• 7 May 2021 – Concept approval for connecting road up to southern boundary (for future road connection to Newcastle Link Road).
20 June 2023	Part 5 Authorisation granted by Newcastle City Council for internal access road upgrades within SWMF revoked.

3.2 National and NSW Strategic Direction

The Australian Organics Recycling Industry Capacity Assessment (DAVE, 2020-21), states that NSW could potentially increase its processing capacity from 7.5Mt to 13.9Mt.

The National Waste Policy Action Plan 2019 (DAWE, 2019) sets key action areas critical to achieving the national targets for the National Waste Policy. The OPF takes organic waste that would otherwise be destined for landfill. The NSW Waste and Sustainable Materials Strategy 2041 (the Strategy) aims to mandate food and garden organics collection for all NSW households and select businesses.

The proposed OPF will assist NSW Government to achieve the targets of the Strategy through the collection of 'Food Organics and Garden Organics' (FOGO) and diverting them from landfill.

3.3 The Proposal

The proposed development is for an OPF and involves the construction and operation of a fully enclosed composting facility, with receiving, composting, maturation and storage facilities associated with the process.

The proposal comprises:

- site preparation;
- bulk earthworks to prepare, remediate and ready the site for the OPF;
- the construction and operation of the OPF;
- installation of an amenities block;
- six space car park and workshop container mounted shelter;
- civil infrastructure;
- vegetation removal;
- mine grouting; and
- the temporary rearrangement of the existing material processing operations in the area to the north of the OPF.

Ancillary infrastructure including materials sorting infrastructure for the OPF will comprise:

- 1 MVA substation;
- 200 kVA diesel generator;
- 500 kL fire tanks;
- new road of 473 m around the OPF;
- timber stockpile hardstand;
- existing demountable site shed;
- relocated container shelter workshop; and
- 11 kV underground cable form solar farm

The following temporary elements will be required during the construction phase of the proposed OPF:

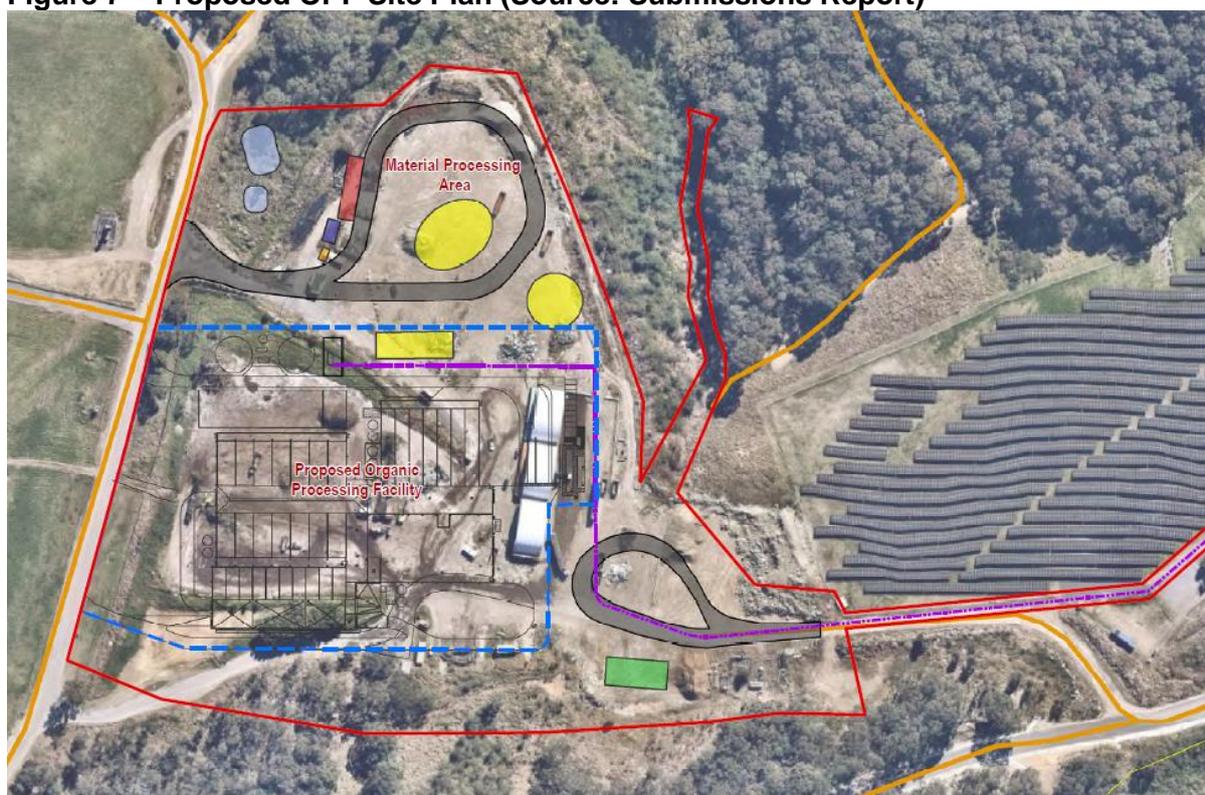
- laydown areas;
- site office;
- car parking; and
- storage area.

Following the completion of the bulk earthworks, the stockpile locations for garden organics, metals and timber is to be relocated approximately 140m to the north of the OPF location to enable the continuation of the material processing facility.

The following key processes will be undertaken in the operational phase of the facility as detailed within **Figure 7** below:

- FOGO receipt;
- Pre-treatment;
- Intensive composting;
- Aerated maturation;
- Compost screening; and
- Passive maturation/Storage/Dispatch

Figure 7 – Proposed OPF Site Plan (Source: Submissions Report)



3.4 Background

A Pre-DA meeting (PR2021/00025) was held prior to the lodgement of the application on 3 May 2021 where the environmental issues associated with the project were discussed.

The key issues in the advice were as follows:

- Site suitability
- Fire & Incident management
- Strategic
- Waste
- Hazard & Risk
- Air Quality
- Noise and Vibration
- Soil and Water
- Traffic and Transport
- Biodiversity
- Flooding & Stormwater Management
- Visual
- Heritage (Aboriginal and non-Aboriginal)

The original DA was lodged on 27 May 2022. A section 37 amendment application was lodged on 11 April 2023. A chronology of the DA since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application.

Table 3: Chronology of the DA	
Date	Event
03 May 2021	Pre- DA Meeting held
27 May 2022	Application lodged
7 June 2022	Exhibition of the application 7 June 2022- 5 July 2022
6 July 2022	Kick-off meeting with HCCRPP
11 April 2023	Section 37 of EP&A Act Amendment of DA lodged
5 May 2023	Application Re-notified from 10 May 2023 – 7 June 2023
8 June 2023	Notification period extended from 8 June 2023 – 7 July 2023 to include additional properties
19 June 2023	Update Briefing HCCRPP
28 June 2023	Request for Further Information (RFI)
25 October 2023	Briefing HCCRPP
15 December 2023	Response to RFI
20 December 2023	Response to RFI – Engineering
17 January 2024	Re-notification 19 January to 17 February 2024
4 April 2024	Re-notification 8 April to 7 May 2024
13 May 2024	Referral of submissions to DPHI Secretary (in accordance with the provisions of CI4.16 (9)(b) of the Environmental Planning and Assessment Act 1979)

4 STATUTORY CONSIDERATIONS

4.1 Designated Development

The DA is designated development under Section 4.10 of the EP&A Act as it is declared to be designated development under Sch 3, s16 of the EP&A Regs being a composting facility with an intended processing capacity of greater than 5,000 tonnes per year of organics.

The DA is accompanied by an EIS prepared in accordance with the required form and content of the EP&A Regs and addressing the SEARs No. 1138 originally issued on 11 April 2017. The project has undergone several design iterations, and a SEARs extension was issued on 7 March 2019. A further extension was granted on 12 March 2021.

The DA was made within two years of the issue date of these SEARs as required by the SEARs.

4.2 Integrated Development

The proposal is Integrated Development under s4.46 of the EP&A as follows:

- **NSW Environment Protection Agency (EPA)**– Scheduled Activity under ss 43(b), 48 and 55 of *Protection of the Environment Operations Act 1997*(i.e. Nominated Integrated Development).
- **Subsidence Advisory NSW (SA NSW)**– Located within a mine subsidence district under s22 of *Coal Mine Subsidence Compensation Act 2017*.

The proposal has received General Terms of Approval from both agencies which are included as part of the draft conditions of consent recommended at **Attachment A**.

4.3 Regionally Significant Development

The development is classified as Regionally Significant Development as it satisfies the criteria of cl.3 of sch.6 of SEPP PS, for '*Council related development over \$5 million*'. The determining authority is the HCCRPP.

4.4 Biodiversity Conservation Act 2016

The DA does not trigger entry into the biodiversity offset scheme as detailed in the biodiversity assessment submitted with the DA.

4.5 Section 4.15(1) of the Environmental Planning and Assessment Act, 1979

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

4.5.1 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 EP&A Regs 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
- Newcastle Local Environmental Plan 2012

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

Table 4: Summary of Applicable Environmental Planning Instruments		
EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 3: Koala Habitat protection 2020 Consent is sought for the removal of limited vegetation comprising 75 trees or 0.45 ha not involving koala habitat trees and is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal as regionally significant development pursuant to cl.3 of Sch 6 as it comprises ' <i>Council related development over \$5 million</i> '.	Y
SEPP (Resilience & Hazards) 2021	Chapter 3: Hazardous and offensive development	Y

Table 4: Summary of Applicable Environmental Planning Instruments		
EPI	Matters for Consideration	Comply (Y/N)
	<ul style="list-style-type: none"> The development is a potentially hazardous or offensive development. A Preliminary Hazard Analysis has been undertaken in accordance with Section 3.11 which states the facility can be appropriately managed and would not result in the facility being a major hazard or offensive. Conditions of consent have been recommended at Attachment A address these matters including necessary bunding and storage measures. <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation have been considered in the Contamination Report and a Remediation Action Plan (RAP) has been prepared for the site and the proposal is satisfactory subject to conditions. 	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> Section 2.121 – Traffic-generating development Section 2.152(a) - Development for the purposes of waste or resource management facility. 	Y
Proposed Instruments	No compliance issues identified.	Y
Newcastle Local Environmental Plan 2012	<ul style="list-style-type: none"> Clause 2.3 – Permissibility and zone objectives Clause 4.3 – Height of buildings – No development standard applies Clause 4.4 – Floor space ratio (FSR) – No development standard applies Clause 5.10 – Heritage Conservation – proposal has been assessed as acceptable subject to conditions Clause 5.21 – Flood Planning – Not in the flood planning area – N/A Clause 6.1 – consideration of Acid Sulfate Soils – Not within 500m of Class 1,2,3 or 4 – N/A Clause 6.2 – consideration of earthworks 	Y
Newcastle Development Control Plan 2012	<ul style="list-style-type: none"> Section 4.03 – Mine Subsidence Section 4.04 – Safety and Security Section 4.05 – Social Impact Section 5.01 – Soil Management Section 5.02 – Land Contamination Section 5.03 – Vegetation Management Section 5.04 – Aboriginal Heritage Section 5.05 – Heritage Items Section 5.05 - Archaeological Management Section 7.03 – Traffic, Parking and Access Section 7.06 – Stormwater Section 7.07 – Water Efficiency Section 7.08 – Waste Management 	Y

Consideration of the relevant SEPPs is outlined below:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposal includes the removal of 75 trees or approximately 0.45 ha consisting of remnant vegetation which predominantly includes a young eucalypt forest. It is recommended, via the draft conditions of consent, that 75 compensatory canopy trees be planted elsewhere on the site.

A Biodiversity Management Plan and Construction Environmental Management Plan addressing the environmental safeguards to be implemented to avoid or minimise biodiversity impacts from the proposed development, and all measures described in Sections 14 of the Ecological Assessment prepared by AEP 8 March 2023, is recommended within the draft conditions of consent.

It is considered that the removal of this vegetation is acceptable in this instance having regard to Part 2.3 of SEPP BC subject to recommended conditions of consent addressing compensatory trees at **Attachment A**.

State Environmental Planning Policy (Planning Systems) 2021

The proposal is *regionally significant development* pursuant to s. 2.19(1) as it satisfies the criteria in cl.3 of sch. 6 of the SEPP PS as the proposal comprises a '*Council related development over \$5 million*'. Accordingly, the HCCRPP is the consent authority. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3: Hazardous and Offensive Development

The proposal has provided a comprehensive assessment of odours, landfill gases and potential hazards. An assessment of the proposal, including by CN and the NSW EPA, has found that the proposal is acceptable subject to the draft conditions of consent recommended at **Attachment A**.

As detailed within this report, the odour assessment meets required standards and would be subject to on-going regulation by the NSW EPA. The risks associated with the landfill gases will be acceptable subject to continued intermittent monitoring and on-going regulation by the NSW EPA.

The submitted hazard EIS and hazard report has made recommendations addressing management and operational measures, including bunding in accordance with AS3780.

The development undertook a risk assessment, including multi-level risk assessment, consideration of *major hazard facility* criteria (under *Work Health and Safety Regulation 2017*) and dangerous goods required under Australian Standard AS3870 (*The storage and handling of corrosive Substances*), and demonstrated that the proposal does not pose any unreasonable risks. The development did not trigger assessment as a *major hazard facility*. Similarly, the proposal, while storing up to 10,000 litres of sulphuric acid, was below the screening threshold and no further hazard assessment was required.

The proposal, based on an assessment of the submitted details, does not constitute an offensive industry or *hazardous industry* in accordance with the provisions of SEPP (R&H). The development, subject to recommended draft conditions of consent at **Attachment A**, and on-going regulation under an EPL by the NSW EPA, will be acceptable and does not pose any unreasonable risks.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP RH) have been considered in the assessment of the DA. Section 4.6 of SEPP RH 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.

The applicant has submitted, a Preliminary Site Investigation ('PSI') prepared by SMEC 7 February 2022, Detailed Site Investigation ('DSI') prepared by SMEC dated 15 March 2023, Remedial Action Plan ('RAP') prepared by SMEC dated 17 August 2023, Level 1 and Level 2 gas-risk assessment prepared by ERM dated 21 March and 3 July 2023 respectively.

The proposal and supporting documents has been assessed and is acceptable subject to draft conditions of consent recommended at **Attachment A**.

A PSI was prepared by SMEC at the concept stage and has been submitted with the application. Historically the site had undergone open mine cutting and associated backfilling since 1976. The PSI identified deep filling with natural 'site won' materials as well as shallow soil contamination including soils impacted with asbestos and polycyclic aromatic hydrocarbons (PAHS) near the surface soils which is inferred to be associated with the current land use as a materials processing area for stockpiled wastes.

ERM undertook a 'Level 1' landfill gas risk assessment and concluded that the risks to the proposed development were 'low to moderate' and recommended a further 'Level 2' gas risk assessment be undertaken. The 'Level 2' gas risk assessment deemed risk from ground gases low to moderate which can be made acceptable subject to gas protection measures.

Subject to carrying out the RAP and Level 2 gas risk assessment recommendations the site can be made suitable for the proposed use as outlined in the RAP:

"manage soil contamination and hazardous round gas at the site so that the site:

- *May be assessed to be suitable for its intended purpose (i.e. industrial organics processing facility and materials processing area). Specifically with regard to hazardous ground gas, that appropriate gas protection measures have been implemented.*
- *Does not pose an unacceptable risk to human health and the environment."*

In addition, the applicant has provided Interim Site Auditor's Advice (prepared by Ramboll Australia Pty Ltd and dated 18 August 2023) which confirmed that the recommendations of the RAP were practical, technically feasible and appropriate for the contamination identified subject to conditions.

This approach is supported, and draft conditions of consent are recommended at **Attachment A** to confirm these stated outcomes are achieved for the site.

Overall, subject to the recommended draft conditions of consent at **Attachment A**, including remediation, it is considered that s.4.6 of SEPP RH has been satisfied as it is considered that the land is suitable in its contaminated state, with its required remediation, for the purposes for which the development is proposed to be carried out.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

The proposal was referred to TfNSW and also assessed by CN.

The submitted development falls under s2.122/sch 3 and s.2.153 of SEPP (T&I) as detailed below:

Section 2.121/Schedule 3 – Traffic generating development to be referred to TfNSW

The application was referred to TfNSW for comment and they have advised that Newcastle Link Road (MR82) is a classified State Road and Minmi Road is a local road. CN is the roads authority for both roads. TfNSW raised no objections or requirements for the proposed development.

Section 2.153(1) & (2) – Development for the purpose of waste or resource management facilities

The proposed waste or resource management facility is zoned SP2 – Infrastructure under the NLEP which is a prescribed zone under the SEPP TI and may be carried out with development consent.

The overall proposal, is acceptable subject to the draft conditions of the consent recommended at **Attachment A**.

Newcastle Local Environmental Plan 2012

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

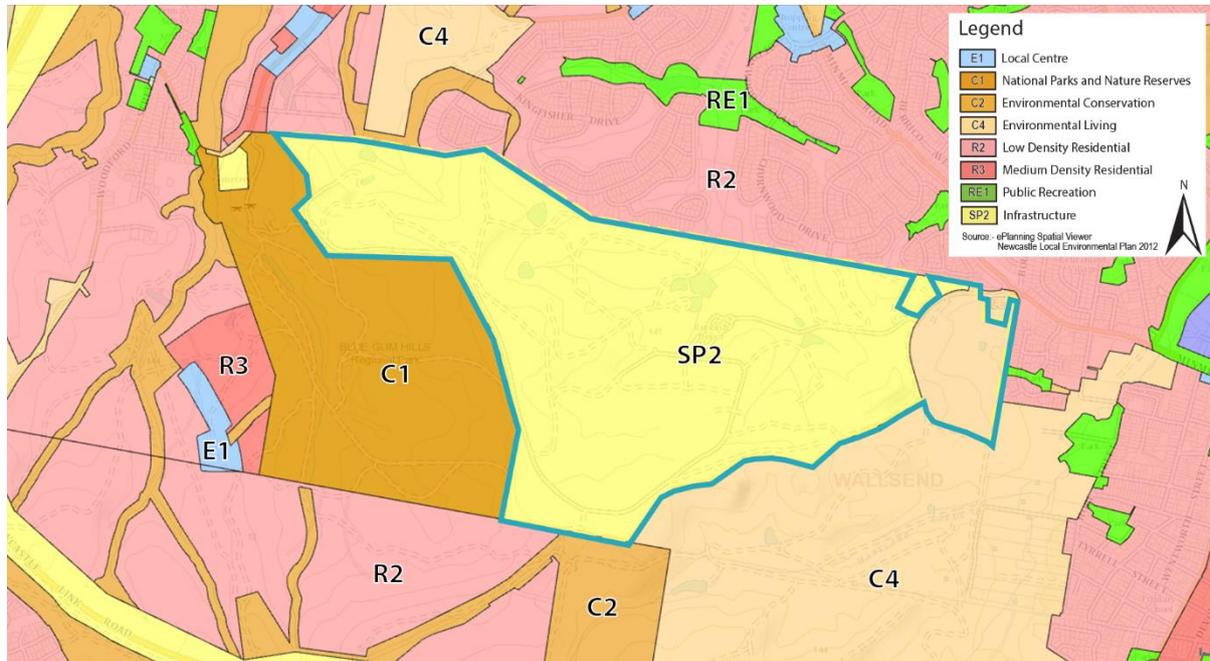
- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve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

The proposal is consistent with these aims, noting the facility will specifically promote the aims of ecologically sustainable development diverting organics from landfill to re-use as compost.

Zoning and Permissibility

The site is located within the SP 2 Infrastructure Zone pursuant to cl2.2 of the NLEP (**Figure 8** below). The proposal is permitted with consent within the SP2 zone under cl.2.3 as a 'waste or resource management facility' (as extracted below).

Figure 8 – Zoning map



waste or resource management facility means any of the following—

- (a) a resource recovery facility,
- (b) a waste disposal facility,
- (c) a waste or resource transfer station,
- (d) a building or place that is a combination of any of the things referred to in paragraphs (a) – (c).

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

- To provide for infrastructure and relates uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

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

- i. The proposed development provides infrastructure in the form of an OPF and related uses.
- ii. The proposal is compatible with the provision of infrastructure and will integrate with other existing uses of the SWMC.

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

The NLEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

Table 5: Assessment against the Relevant Provisions of NLEP		
NLEP 2012 Clause	Comment	Compliance
Part 1 – Preliminary		
Clause 1.2 – Aims of Plan	<p>The proposed development is consistent with aims (a), (b) and (c) of the NLEP 2012:</p> <p><i>(a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,</i></p> <p><i>(b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,</i></p> <p><i>(c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth.</i></p>	Satisfactory
Part 2 – Permitted or Prohibited Development		
Clause 2.2 - Zoning of Land	The OPF site is zoned SP2 Infrastructure (Waste or Resource Management Facility) as shown in Figure 8 (as detailed above).	Satisfactory
Clause 2.3 - Zone Objectives	<p>The objectives of the SP2 Infrastructure zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide for infrastructure and related uses.</i> • <i>To prevent development that is not compatible with or that may detract from the provision of infrastructure.</i> <p>The OPF is most appropriately categorised in the NLEP 2012 Dictionary as a resource recovery facility which is defined as follows:</p> <p><i>"resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not</i></p>	Satisfactory

Table 5: Assessment against the Relevant Provisions of NLEP		
NLEP 2012 Clause	Comment	Compliance
	<p><i>including re-manufacture or disposal of the material by landfill or incineration."</i></p> <p>A resource recovery facility is permitted with consent in the zone.</p>	
Part 4 – Development Standards		
Clause 4.3(2) - Height of buildings	The Height of Buildings Map does not apply a maximum height of building to the site.	N/A
Clause 4.4(2) - FSR	A Floor Space Ratio Map does not apply a maximum FSR to the site.	N/A
Clause 4.6 -Exceptions to development standards	No variation to a development standard is proposed.	N/A
Part 5 – Miscellaneous Provisions		
Clause 5.1 & 5.1A Land acquisition	The proposal does not comprise land acquisition.	Satisfactory
Clause 5.10 -Heritage	<p>Clause 5.10 does not apply to the proposed development as pursuant to sch.5, pt.1 of NLEP 2012, the subject site is not a:</p> <ol style="list-style-type: none"> i. heritage item of State significance ii. heritage item of Local significance iii. within a Heritage Conservation Area iv. identified archaeological site v. within an Aboriginal place of heritage significance vi. within the vicinity of a heritage item <p>Notwithstanding, the SEARs for the development required consideration of heritage.</p> <p>The assessment outcomes included the following for the OPF site:</p> <ul style="list-style-type: none"> • No recorded Aboriginal sites; • No specific information on cultural significance provided by Registered Aboriginal parties; • Low archaeological potential; and • No non-Aboriginal heritage significance. 	Satisfactory
Clause 5.21 - Flood Planning/Clause 5.22 - Special Flood Considerations	The site is not contained within a known flood planning area.	Satisfactory

Part 6 – Additional Local Provisions		
Clause 6.1 - Acid sulphate soils	The site is identified as Class 5 land under the Acid Sulfate Soils (ASS) map, 500 metres from Classes 1-4, and as such, the proposal would not impact acid sulphate soils.	Satisfactory
Clause 6.2 - Earthworks	The proposed earthworks are satisfactory with respect to Clause 6.2 of the LEP.	Satisfactory

The proposal is generally consistent with the relevant provisions of the NLEP and is satisfactory.

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

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

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

The NDCP 2023 became operational from 1 March 2024. Section 11 of Part A -Introduction states the savings and transitional arrangements are as follows:

'DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control Plan (DCP).'

Therefore, the proposed development remains subject to the provisions of the NDCP 2012.

Table 6 provides an assessment against the relevant controls of NDCP 2012.

Table 6 – Assessment Against Relevant Provisions of NDCP 2012		
Control	Comment	Compliance
Section 3 – Land use Specific Provisions		
3.13 – Industrial Development	The site is not land to which this section applies.	N/A
Section 4 – Risk Minimisation Provisions		
4.01 – Flood Management	The site is not land to which this section applies.	N/A
4.02 – Bush Fire Protection	NSW RFS have provided conditions dated 18 May 2023 as detailed in Section 4.2 of this report. A bushfire management plan is recommended as part of these conditions.	Satisfactory
4.03 – Mine Subsidence	Subsidence Advisory NSW have granted General Terms of Approval dated 23 May 2023 as detailed in Section 4.2 of this report.	Satisfactory

Table 6 – Assessment Against Relevant Provisions of NDCP 2012		
Control	Comment	Compliance
4.04 – Safety and Security	Crime Prevention Through Environmental Design has been assessed. The OPF is not open to the public and access will be appropriately controlled through access road gates and existing security measures at SWMC.	Satisfactory
4.05 – Social Impact	The proposed development will have positive social impacts through the minimisation of waste in landfill, employment and reduced transportation distances reducing greenhouse gas emissions. The negative social impacts such as noise and increased usage of SWMC are minimal and can be appropriately mitigated through the recommended conditions of consent.	Satisfactory
Section 5.0 Environmental protection provisions		
5.01 - Soil Management	The extent of the proposed required to prepare, remediate and ready the site for the OFP are acceptable. The quality of any fill material to be imported to the site can be controlled by appropriate conditions of consent as recommended at Attachment A .	Satisfactory
5.02 – Land Contamination	Land contamination has been assessed in detail under the SEPP (Resilience and Hazards) 2021 section of this report above. Subject to the recommended conditions of consent at Attachment A , including remediation, it is advised that Section 5.02 – Land Contamination has been satisfied as it is considered that the land is suitable in its contaminated state, with its required remediation, for the purposes for which the development is proposed to be carried out.	Satisfactory
5.03 – Vegetation Management	Vegetation removal has been assessed in detail under SEPP (Biodiversity Conservation) section of this report above. The proposal includes the removal of 75 trees or approximately 0.45 hectares consisting of remnant vegetation which predominantly includes a young eucalypt forest. The removal of this vegetation is acceptable in this instance having regard to Section 5.03. It is recommended that compensatory trees be planted as compensation for the removal of the 75 trees and as per the recommended conditions of consent addressing compensatory trees at Attachment A .	Satisfactory
5.04 – Aboriginal Heritage	The subject site is not a:	Satisfactory
5.05 – Heritage Items	i. heritage item of State significance	
5.06 – Archaeological Management	ii. heritage item of Local significance iii. within a Heritage Conservation Area iv. identified archaeological site v. within an Aboriginal place of heritage significance vi. within the vicinity of a heritage item	

Table 6 – Assessment Against Relevant Provisions of NDCP 2012		
Control	Comment	Compliance
	<p>The EIS undertook significant heritage investigations and concluded the OPF site contained:</p> <ul style="list-style-type: none"> • No recorded Aboriginal sites; • No specific information on cultural significance provided by Registered Aboriginal parties; • Low archaeological potential; and • No non-Aboriginal heritage significance. 	
Section 7.00 Development provisions		
7.02 – Landscape, Open Space and Visual Amenity	No landscaping of the site is proposed and this is appropriate given the proposed use of the site.	Satisfactory
7.03 – Traffic, Parking and Access	Traffic, parking, and access are acceptable. Sufficient parking (11 spaces including one accessible space) is provided for the eight staff members and occasional visitors to the site.	Satisfactory
7.05 – Energy Efficiency	These controls do not apply to a resource recovery facility.	N/A
7.06 – Stormwater	The revised Stormwater Management Plan (SWMP) submitted meets the objectives of this section and demonstrates compliance with the NDCP. The proposed development is appropriately designed to mitigate any localised impacts as well as impacts on the coastal wetland catchment. The proposed development in terms of stormwater management is acceptable subject to the recommended conditions of consent at Attachment A .	Satisfactory
7.07 – Water Efficiency	The proposal meets the water efficiency provisions of Section 7.07 and appropriate conditions of consent are recommended at Attachment A including the reuse of rainwater in the non-potable supply.	Satisfactory
7.08 – Waste management	Waste management will be incorporated within the Project Environmental Management Plan as required by the mitigation measures of the EIS. – see Section 9.2 of EIS	Satisfactory
7.09 – Advertising and signage	No signage is proposed.	N/A

Contribution Plans

The Newcastle Section 7.12 Development Contribution Plan 2021 applies to non-residential development. The proposed development is exempt from contributions under Section 1.6(2) of the plan as follows:

*"No contribution in respect of development applications (or modifications thereto) made by or on behalf of the Council for infrastructure including, but not limited to, libraries, community facilities, child care facilities, recreational areas or facilities, **waste resource facilities, car parks or the like;**" (bold added)*

Accordingly, as the SWMC is a waste resource facility there are no development contributions required for this application.

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 proposed for the development.

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

Section 58 – Exhibition of notice of designated development

A notice for a DA for designated development was exhibited in accordance with Section 58 of EP&A Regs.

Section 60 – Submissions about designated development to be given to Planning Secretary

The submissions were given to the Planning Secretary in accordance with Section 60 of the EP&A Regs.

Section 61 – Additional matters that consent authority must consider

The land is greater than 200km from Siding Spring Observatory (approximately 380 km) and accordingly the *Dark Sky Planning Guideline* does not apply under S61(3)(b) EP&A Regs.

Section 66A – Council-related development applications

The DA was lodged on 27 May 2022. Under the saving and transitional provisions of the Amendment to the EP&A Act , s.66A does not apply to the proposed development as the DA was lodged but not finally determined before the amendment to the EP&A Regs commencing on 3 April 2023.

Section 173 – Application to Planning Secretary for environmental assessment requirements

An application was made under Section 173 of the EP&A Regs and environmental assessment requirements Ref. SEARS No. 1138 was issued on 11 April 2017 and reviewed in March 2019 and further updated on 12 March 2021.

Section 178 – Duration of environmental assessment requirements for designated development and other activities

The development application was made within two years of the issues of the environmental assessment requirements in accordance with s.178 of the EP&A Regs.

Section 190 – Form of environmental impact statement

Section 5.2.1 of the EIS demonstrates compliance with s.190 of the EP&A Regs.

Section 192 – Content of environmental impact statement

Section 5.2.1 of the EIS demonstrates compliance with s.192 of the EP&A Regs.

Section 61 of the R EP&A Regs contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601.

These provisions of the EP&A Regs have been considered and would normally be addressed by conditions of consent where the proposal was recommended for approval.

4.5.2 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.

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

- **Context and setting** – The development is acceptable in terms of its character and visual appearance impacts and is an appropriate and expected outcome within the location.
- **Access and Traffic** – The development is satisfactory in terms of traffic, parking and access, noting the OPF is an upgrade which will allow for diverting organics arriving at the site from landfill to compost.
- **Heritage** – A heritage assessment is not required to be undertaken under cl.5.10 of the NLEP as no areas of heritage significance have been identified on the site. The outcomes of the Aboriginal heritage assessment are detailed in **Table 5** of this report.
- **Contamination** – The proposed remedial/management strategy for the site includes removal of ACM on ground surface, removal of hydrocarbon impacted fill soils, onsite containment to provide a separation between the waste layers and future site receptors, implementation of gas protection measures, and ongoing management of containment system and ground gas through a Long Term Environmental Management Plan (LTEMP). CN and the interim advice from an EPA accredited site auditor has confirmed subject to the RAP and recommended conditions of consent the site can be remediated and managed to be suitable for the proposed use.
- **Biodiversity** –The relevant biodiversity legislation has been considered (including the BC Act) by and the impacts of the proposed development are acceptable. The site is highly disturbed and the removal of 75 trees is considered acceptable subject to replacement planting.

- **Odour** - An Odour Assessment in accordance with the *Approved Methods* (NSW EPA, 2017) was prepared by ERM, dated 18 August 2023. The odour control system to be employed for the proposed OPF, comprises air being continuously drawn into the building to keep it under negative pressure. Air is then treated before discharge through an acid scrubber (for removal of ammonia) and then a biofilter to further reduce odour concentrations. This makes the biofilter the single source of significant odour emissions.

Dispersion modelling was conducted as part of the Odour Assessment for several emission scenarios representing the routine operation of the OPF and the existing landfill. This modelling determined predicted ground level concentrations of pollutants. Modelled results at all sensitive receivers (e.g. existing and future residential receivers) demonstrates compliance with the assessment criterion (i.e. below 2 odour units).

The proposal will be subject to on-going regulation by the NSW EPA under the associated Environmental Protection Licence (EPL).. The NSW EPA have issued their General Terms of Approval (GTA's) which including conditions regarding air quality and odour control. A odour contingency plan is required to be prepared and maintained by the proposal under these GTA's.

The proposal, based on the above assessment, will be acceptable in terms of odour impacts.

- **Noise and Vibration** – The submitted acoustic report demonstrates that during construction noise management levels will be met without the requirement of any specific noise mitigation measures. to the development can achieve compliance with the operational assessment criteria and the noise contribution of the OPF will be negligible at any receptor above the existing background levels during the operational phase. Suitable conditions are incorporated into the recommended conditions of consent at **Attachment A**.
- **Mine Subsidence** – The proposal is acceptable subject to conditions within the issued General Terms of Approval from Subsidence Advisory NSW addressing engineering and earthworks to mitigate mine subsidence risks. The proposal will include a temporary concrete batching plant to facilitate these works (i.e. estimated to be six months for these grouting works)
- **Construction Impacts** – Appropriate conditions of consent have been recommended to address any potential construction impacts at **Attachment A**. This includes a Construction Environmental Management Plan (CEMP) which will be required to address matters including vegetation management, construction noise and vibration, dust management, waste minimisation, soil and water management, traffic and contaminated soils management.
- **Cumulative impacts** – Overall it is considered that the cumulative impacts of the proposal are acceptable subject to conditions of consent recommended at **Attachment A**.

The proposal will not result in any significant adverse impacts in the locality as and is acceptable subject to the recommended conditions.

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

The site is suitable for the proposed development, subject to the recommended conditions of consent included at **Attachment A**, having had regard to the nature of the existing site and the locality and the intended strategic planning outcomes for the site as a waste management facility.

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

These submissions are considered in **Section 5.7** of this report.

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

The development is in the public interest and consistent with the planning controls (i.e. relevant SEPPs, NLEP and NDCP), as detailed within this assessment report.

4.5.6 Referral to Planning Secretary

A precondition to the determination of a *designated development* application is that any submissions received must be referred to the Planning Secretary and the DA not determined until 21-day period has passed or has been waived by the Secretary. In accordance s.4.16(9), the submissions have been referred to the Secretary and the 21-day period has ended so that the provisions have been met and the DA can be determined.

5 REFERRALS AND SUBMISSIONS

5.5 Agency Referrals and Concurrence

The DA has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 7**.

Table 7: Concurrence and Referrals to agencies			
Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved (Y/N)
Concurrence Requirements (s4.13 of EP&A Act) – the proposal did not trigger any legislation having concurrence requirements.			
Referral/Consultation Agencies			
Transport for NSW (TfNSW)	Section 2.122 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Sch 3.	The DA was referred to TfNSW for comment and they have advised that Newcastle Link Road (MR82) is a classified State Road and Minmi Road is a local road. CN is the roads authority for both roads. TfNSW raised no objections or requirements for the proposed development.	Y
NSW RFS	<ul style="list-style-type: none"> s4.14 of EP&A Act - Consultation for bushfire prone land 	NSW RFS has provided their conditional approval for the proposed development.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Subsidence Advisory NSW	S22 – Coal Subsidence Compensation Act 2017 for approval to alter or erect improvements, or to subdivide land, within a mine subsidence district.	NSW SA has provided their GTAs with relevant conditions for the proposed development.	Y
NSW EPA	s43(b), s48 & s55 - scheduled activity Protection of the Environment and Operations Act 1997	NSW EPA has issued their GTA's with relevant conditions for the proposed development.	Y

5.6 Community Consultation

The proposal was notified in accordance with the CN's Community Participation Plan from 8 June 2022 to 5 July 2022. A total of two unique submissions raising concerns with the proposal were received. Following amendments made to the proposal it was re-notified from 10 May 2023 to 7 June 2023. The notification was extended to include additional properties between the period of 8 June 2023 to 7 July 2023. A total of one unique submission from a previous submitter raising concerns with the proposal was received.

The Amended DA was re-notified on 19 January 2024 – 17 February 2024, with one unique submission from a previous submitter received. A further public notification period from 8 April to 7 May 2024 received one submissions from a previous objector confirming that their concerns were now addressed, resulting in the proposal with one remaining unique objector. The issues raised in the latest round of submissions are considered in **Table 9** below.

Table 9: Community Submissions		
Issue	No of submissions	Comments
Original DA		
<p><i>Odour Modelling</i> The submitters raised concern that the odour modelling has not identified residential zoned land immediately adjacent to the southern boundary of the SWMF under a Concept Approval. The impact of the development cannot be properly assessed due to time constraints and the fact that the odour assessment is not clear. It is unclear how the adoption of the proposed indicative mitigation measures will improve the odour impacts at the sensitive receivers. The EIS only provides the result for the most impacted sensitive receptor. The odour assessment does not include future residences in the vicinity of the SMWC. The assessment has not considered the cumulative impacts of the existing and proposed operations.</p>	2	The odour modelling has been reviewed and is acceptable. The proposal is subject to GTA's and an Environmental Protection Licence from the EPA which specifically addresses air quality and odour controls. The GTA's are incorporated within the draft conditions of consent recommended at Attachment A .
<p><i>Acoustic Modelling</i> The submitters raised concern that the acoustic modelling has not identified residential zoned land immediately adjacent to the southern boundary of the SWMF under a Concept Approval. The submitters also raised concerns</p>	2	An updated acoustic report was provided dated 18 August 2023. The acoustic modelling has been assessed and the noise impacts are well within the NSW Noise Policy for Industry criteria at sensitive residential receivers and can be appropriately managed during construction subject to draft recommended conditions of consent.

Table 9: Community Submissions		
Issue	No of submissions	Comments
<p>regarding the approach to the assessment of the impacts including the cumulative impacts. The lack of information makes it difficult to understand the existing conditions and therefore the likely impacts of the proposed OPF. The submitter raised concerns with the fact that the Acoustic report relied online imagery to conclude that no significant new development has occurred within the area however consent has been granted and progressed for dwellings for Stage 1A of the submitters' development and subdivision construction is underway for Stage 2 of the that development. The Noise Impact Assessment requires updating due to its deficiencies. The submitter requests the opportunity to undertake a comprehensive review of the report once updated.</p>		
<p><i>Community Engagement/ Lack of proper notification</i></p> <p>The submitter raised concern that the landowners in Lake Macquarie LGA particularly adjacent to the site have not been consulted.</p> <p>The submitter states that despite being a landowner adjacent to the proposed development they were not formally notified of the development. The submitter has raised significant concerns regarding the adequacy of impact assessment and denial of procedural fairness. The submitter has requested renotification and has also flagged a potential objector merit appeal.</p>	2	The application has been re-notified on three occasions. There are no further properties within the LMCC LGA that warrant notification.
<p><i>Incompleteness of application</i></p> <p>The submitter requests that the application be amended and renotified and failure to do so would cause the consent to be invalid and a judicial review by the Land and Environment Court will be sought.</p>	1	An amended application was submitted dated 30 March 2023 and renotified for the required period of time.

Table 9: Community Submissions		
Issue	No of submissions	Comments
<p><i>Cumulative impacts</i> The submitter raised concern that CN has lodged numerous smaller DAs relating to the SWMC without notifying adjoining properties which makes it difficult to understand the cumulative impacts thereof.</p>	1	The cumulative impacts of the OPF with the existing SWMC have been assessed, including cumulative traffic impacts, and have been determined to be acceptable.
<p><i>Disregard to Submission</i> The submitter raised concern that, in the past, their submissions have not been taken into consideration.</p>	1	All submissions have been taken into consideration in the assessment of the application.
<p><i>Consultation required by the SEARs and Pre-DA minutes</i> The submitter raised the fact that the SEARs required the Applicant to undertake consultation with the relevant local, State and Commonwealth government authorities, service providers, community groups and surrounding landowners during the preparation of the EIS. The Pre-DA minutes also reflected this requirement. The submitter raised concern with the objective of the Community Engagement Report (CRE) and the fact that they were not consulted during the process despite being an adjoining landowner likely to be impacted by the proposed development. The submitter questions the adequacy of the DAs response to the SEARs.</p>	1	The application has been assessed and is considered to adequately respond to the SEARs.
<p><i>Post-lodgement Notification</i> The submitter questions the fact that CN did not regard Designated Development as having an impact on adjoining land located 870m from the proposed development whilst notifying landowners in excess of 1km from the site. The submitter requested that the DA be amended to address the adequacy concerns raised in the submission and the amended DA be re-notified to include all adjoining landowners or in the</p>	1	The application has been re-notified on three occasions. There are no further properties within the LMCC LGA that warrant notification.

Table 9: Community Submissions		
Issue	No of submissions	Comments
alternative that the DA, if not amended be renotified for 28 days to include all adjoining landowners.		
<p><i>Stormwater and hydrology</i></p> <p>The submitter raised concern that despite the Pre-DA minutes advising that the DA is to consider stormwater requirements of the DCP and recommends MUSIC modelling be undertaken the EIS does not appear to address the DCP requirements and therefore does not satisfy the SEARs. Despite the fact that the proposed OPF is located upstream of a coastal wetland and is identified to be within the Coastal Wetland Catchment, the EIS does not address this. The submitter is of the opinion the EIS should be updated to address the relevant section of the DCP and associated Technical Manual and provide the relevant documentation so that the downstream impacts can be assessed and renotification will be beneficial to allow NPWS the opportunity to provide comments if that has not occurred.</p>	1	The Stormwater Management Plan has been assessed and is acceptable having regard to the NDCP, MUSIC Model submitted and coastal wetlands. Appropriate conditions have been incorporated into the recommended draft conditions of consent.

<p><i>Traffic/Access</i></p> <p>The submitter has raised concerns regarding the traffic impacts associated with the proposed OPF and it is unclear how the EIS can form the opinion that the proposal will have not perceptible impact on traffic capacity or safety on the road system in the vicinity of the site and that no road upgrades are necessary given that clarification has not been provided regarding the types of additional vehicles considered for the proposed development. The Pre-DA Minutes advises of a second access for which Concept approval has been given and notes that it would significantly impact the traffic modelling which should also be considered within any Traffic Impact Statement (TIS). The submitter has indicated that the EIS has not considered the second access. The submitter raised concerns that the SEARs requirements have not been addressed leaving potential gaps in the assessment and the EIS should be updated.</p>	<p>1</p>	<p>The Traffic/Access Impact has been assessed and the existing access and egress arrangement will be utilised and are acceptable.</p>
<p><i>Council Related Development Applications</i></p> <p>The submitter states that the Pre-DA minutes outline the DA will be processed and assessed in accordance with the CN Policy “<i>Assessment of Council Related Development Applications</i>” but that the deficient notification of the application and lack of transparency in the EIS breaches the policy. The submitter suggests that in the interest of managing any perceived conflict of interest an Independent Planning Consultant undertake the assessment and determination of the DA and a peer review of the DA particularly matter relating to noise, odour and traffic.</p>	<p>1</p>	<p>In accordance with the policy the DA will be determined by the HCCRPP who are independent of CN. The determination of the application by the HCCRPP as consent authority meets the provisions of the ‘<i>Assessment of CN Related Development Applications Policy (November 2021)</i>’, the EPA Act and EPA Regs.</p>
<p><i>Development Contributions</i></p> <p>The submitter seeks clarification as to which local infrastructure contribution plan applies to the DA to ensure the appropriate contributions are paid.</p>	<p>1</p>	<p>The Section 7.12 Development Contributions Plan applies to non-residential development. The current proposal is exempt from contributions under Section 1.6(2) of the plan as follows:</p>

		"No contribution in respect of development applications (or modifications thereto) made by or on behalf of the Council for infrastructure including, but not limited to, libraries, community facilities, child care facilities, recreational areas or facilities, waste resource facilities , car parks or the like;" (bold added)
<p>SEARs</p> <p>The submitter has raised the fact that there are discrepancies between the scope of the development described in the SEARs issued by the Planning Secretary in 2017 and reissued in 2019 and 2021 and the submitted EIS. The SEARs were re-issued on the basis that the scope of works remain unchanged however according to the submitter it appears that there is an increase in capacity of 42.8%.</p>	1	An updated letter was issued by NSW Planning and Environment dated 1 November 2022 advising that the Department is satisfied that the existing SEARs and extension for a period of two years remain appropriate.
Section 37 – Amended Application		
<p><i>Previous submission dated 5 July 2022/ Adequacy of Notification</i></p> <p>The submitter raises concerns that the new/amended documentation has not considered the main concerns raised in the previous submission dated 5 July 2022 pertaining to the environmental impacts to the south on future regionally significant residential development within the Lake Macquarie LGA currently under assessment.</p> <p>The submitter disagrees that the original development application was properly notified as they did not receive notification. This is no longer relevant as they have now been notified. However, they raise concern with not being notified prior to the preparation of the EIS as required by the SEARs and the Pre-DA Minutes. They were not included in the letterbox drop. The submitter has questioned why there was no engagement with Lake Macquarie City Council (LMCC).</p>	1	The application has been re-notified on three occasions. There are no further properties within the LMCC LGA that warrant notification.
<p><i>Predominant concerns</i></p> <p>The submitters' predominant concerns relate to odour, noise and traffic, as included in the original</p>	1	Odour, noise and traffic have been assessed and the development is satisfactory subject to the recommended conditions of consent.

<p>submission and further states that the documentation provided with the amended application inadequately addresses the main issues raised previously and seeks amendments to the application to ensure that there is no environmental impact on the proposed development to the south.</p>		
<p><i>Odour and Greenhouse Gas Assessment</i></p> <p>The submitter has requested and provided a peer review of the Odour and Greenhouse Gas report. The peer review undertaken has categorised the observations as:</p> <ul style="list-style-type: none"> • Observation • Low • Medium • High <p>The peer review has identified six issues as being of high significance with the potential to change the conclusion of the Odour and Greenhouse Gas report.</p> <p>These issues include:</p> <ul style="list-style-type: none"> • The year being 2017 selected of the assessment/modelling; • Specific odour emission rates (SOER) adopted may be low; • Clarification as to the actual source characteristics, the area represented by each source, and full justification for adoption of each SOER should be provided to ensure odour emissions from landfill have not been underestimated; <p>As part of the submitters' DA a 1,000m buffer was required by LMCC which would have sterilised approximately 500 lots. An agreement was reached on a temporary buffer of 430m based on a survey. As part of the amended package, it is documented that odour up to 2 OUs is acceptable and that reliance on 10 year old data from another landfill site is reasonable. The submitter raised the concern that the data relied upon for this DA is inaccurate.</p>	<p>1</p>	<p>Odour impacts of the proposal have been assessed above under Section 4.5.2 and is considered to be satisfactory.</p> <p>The proposed odour controls systems for the development, combined with the conditions under the GTA's issued by the NSW EPA and their on-going regulation, will suitably control and mitigate odour impacts.</p>

<p>The submitter insists that new and dedicated odour surveys be undertaken to validate the findings of previous odour assessments.</p>		
<p><i>Stormwater</i> The submitter acknowledges that the EIS is now supported by a Stormwater Management Plan (SWMP) however does not address stormwater modelling and onsite detention requirements for typically modelled storm events. In the submission made on 5 July 2022 the submitter stated that the OPF is located upstream of a coastal wetland which is not recognised by the EIS as the EIS has not addressed the specific requirements of the DCP. The submitter suggests that the EIS and SWMP be updated and re-notified to provide NSW NPWS the opportunity to provide comments.</p>	<p>1</p>	<p>Stormwater Impacts have been assessed and are considered to be satisfactory. The proposal meet the provisions of Sections 7.06 and 7.07 of NDCP in terms of stormwater and has been designed to mitigate any localised impacts as well as impacts on the coastal wetland catchment.</p> <p>The development incorporates a detention system and includes reuse of rainwater in the non-potable supply.</p> <p>The proposed development in terms of stormwater management is acceptable subject to the recommended conditions of consent at Attachment A.</p>
<p><i>Traffic and Access</i> The supplementary Traffic Assessment (STA) differs from the original Transport and Traffic Planning Assessment (TTPA) and it is not clear whether the STA replaces the TTPA. This should be clarified. Furthermore, the REF Part 5 approval for the internal access road was revoked and there is no updated traffic assessment report available on DA Tracker in this regard. The submitter states that if an updated traffic report is available, it should be re-notified for the public to review and comment on, and all EIS documentation should be updated for consistency.</p>	<p>1</p>	<p>The STA is a supplementary report to the TTPA. Traffic impacts have been assessed and given the OFP will be using the existing SWMC access/egress, are considered to be satisfactory.</p>
<p><i>Council related Development Applications</i> The submitter has requested that an Independent Planning Consultant be engaged to undertake the assessment and preparation of a determination recommendation for the DA given that it is a Council related DA. The submitter also suggests that a peer review be undertaken of the relevant specialist consultant reports particularly</p>	<p>1</p>	<p>Refer to comments above that the DA will be determined by the HCCRPP.</p>

regarding noise, odour and traffic impacts.		
---	--	--

6 CONCLUSION

The DA has been considered in accordance with the requirements of the EP&A Act and the Regs as outlined in this report.

Following a detailed assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, the application can be supported.

It is considered that the key issues associated with the proposal have been resolved satisfactorily and the proposed development is acceptable subject to the recommended conditions of consent at **Attachment A**.

7 RECOMMENDATION

That the Development Application (DA 2022/00572) for site preparation works including bulk earthworks to prepare and remediate the site and the construction and operation of an Organic Processing Facility (OPF) at 120 Summerhill Road, Wallsend be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

- **Attachment A:** Draft Conditions of consent - 120 Summerhill Rd Wallsend
- **Attachment B** - Plans - 120 Summerhill Rd Wallsend
- **Attachment B:** Agency Advice –Transport for NSW - 120 Summerhill Rd Wallsend
- **Attachment C:** GTAs –Subsidence Advisory NSW - 120 Summerhill Rd Wallsend
- **Attachment D:** Agency Advice – NSW Fire Rural Service - 120 Summerhill Rd Wallsend
- **Attachment E:** GTAs – NSW EPA - 120 Summerhill Rd Wallsend