

COUNCIL ASSESSMENT REPORT
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

Panel reference	PPSHCC-245
DA Number	8/2016/557/2
LGA	Cessnock City Council
Proposed Development	<p>Section 4.55(2) Application proposing to modify Development Consent No. 2016/557 that approved a concept development application consisting of construction of an integrated tourist development to be completed in seven (7) stages - comprising an 18 hole golf course, 50 room hotel, 250 serviced apartments, 300 residential lots, function centre, aboriginal heritage centre, retail and food outlet, and spa and recreation facilities; and Stage 1 comprising a four (4) lot community title subdivision.</p> <p>The Section 4.55(2) Application proposes amendments to the layout and staging of the approved development, along with a modification to the number of community title lots proposed to be registered in conjunction with Stage 1 of the concept approval.</p>
Street Address	<p>Wine Country Drive (Lot 1 DP 1233030) Wine Country Drive (Lot 2 DP 869651) 1058 Wine Country Drive (Lot 3 DP 869651) 1054 Wine Country Drive (Lot 4 DP 869651) 1184 Wine Country Drive (Lot 11 DP 1187663)</p>
Applicant	Hunter Development Brokerage Pty Ltd
Owner	Capital Hunter Pty Limited and Care Capital Corporation
Lodgement Date	23 January 2023
Total number of submissions/Number of unique submissions	Sixteen (16) submissions/ten (10) unique submissions
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	<p>Ten (10) unique submissions were received in response to the public exhibition period; therefore, the Section 4.55(2) Application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents</i>, published on the NSW planning portal on 30 June 2020.</p> <p>In consideration of the above, the Section 4.55(2) Application is to be determined by the Regional Planning Panel, consistent with the provisions of Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i>.</p>
List of all relevant s4.15(1)(a) matters	<p><i>SEPP (Biodiversity and Conservation) 2021</i> <i>SEPP (Resilience and Hazards) 2021</i> <i>Cessnock Local Environmental Plan 2011</i> <i>Cessnock Development Control Plan 2010</i></p>

List all documents submitted with this report for the Panel's consideration	<p>A. Approved/stamped DA Plans for 8/2016/557/1</p> <p>B. Proposed Staged Plans, prepared by HACHEM, Revision 8, amended 8 March 2024</p> <p>C. Proposed Stage 1 Plan, prepared by Monteath & Powys, Revision 16, dated 7 March 2024</p> <p>D. Tourist Area Comparison, prepared ADW Johnson, 24 November 2022</p> <p>E. Residential Area Comparison, prepared ADW Johnson, 5 December 2022</p> <p>F. Golf Course Comparison, prepared ADW Johnson, 5 December 2022</p> <p>G. Vegetation Management and Offset Plan, prepared by MJD Environmental, dated 1 August 2023</p> <p>H. Concept and Management Plan, Revision 5, dated 20 March 2024</p> <p>I. Draft Design Guidelines, Revision D, dated 14 September 2023</p> <p>J. Statement of Environmental Effects prepared by HDB, Revision F, amended 20 March 2024</p> <p>K. Updated Bushfire Assessment Report, prepared by MJD Environmental, Version 2, signed 12 January 2023</p> <p>L. Updated Traffic Impact Assessment, prepared by Intersect Traffic, dated December 2022</p> <p>M. Revised Community Management Statement, prepared by HDB, dated 31 January 2024 (V2).</p> <p>N. Aboriginal Cultural Heritage Assessment, prepared by McCardle Cultural Heritage Pty Ltd, dated 14 December 2022.</p> <p>O. Landscape plan relating to green corridor, prepared by Moir Landscape Architecture, Revision B, dated 17 May 2023.</p> <p>P. Legal advice prepared on behalf of Council (received 3 October 2023) (confidential enclosure)</p> <p>Q. Legal advice submitted by the applicant (prepared by Mills Oakley, dated 20 December 2022) (confidential enclosure)</p> <p>R. Photomontages & Built Form Diagrams, Revision C, amended 29 September 2023</p> <p>S. Draft conditions of consent</p> <p>T. Submissions (previously uploaded to the Planning Portal)</p> <p>U. Advice regarding ecological legislative framework for modification (confidential enclosure)</p>
Clause 4.6 requests	N/A
Summary of key submissions	<p>Broadly summarised as:</p> <ul style="list-style-type: none"> • Visual/built form • Environmental impacts • Aboriginal heritage • Not substantially the same development • Traffic • Miscellaneous/other
Report prepared by	<p>Janine Maher</p> <p>(Principal Town Planner, Hunter Valley Development Services)</p>
Report date	27 March 2024

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not applicable**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. EXECUTIVE SUMMARY

1. A Section 4.55(2) Application has been lodged proposing to modify Development Consent No. 2016/557. DC No. 2016/557 approved a concept development application consisting of construction of an integrated tourist development to be completed in seven (7) stages - comprising an 18-hole golf course, 50 room hotel, 250 serviced apartments, 300 residential lots, function centre, aboriginal heritage centre, retail and food outlet, and spa and recreation facilities; and Stage 1 comprising a four (4) lot community title subdivision.

The Section 4.55(2) Application proposes amendments to the layout and staging of the approved development, along with a modification to the number of community title lots proposed to be registered in conjunction with Stage 1 of the concept approval.

2. The subject application is referred to the Hunter and Central Coast Regional Planning Panel for determination as ten (10) unique submissions were received in response to the public exhibition period. Therefore, the Section 4.55(2) Application is of a kind specified in the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020.

In consideration of the above, the Section 4.55(2) Application is to be determined by the Regional Planning Panel, consistent with the provisions of Section 275 of the *Environmental Planning and Assessment Regulation 2021*.

3. The initial DA was identified as Integrated Development, and the Section 4.55(2) Application was required to be referred to the relevant concurrence authority (RFS) for consideration pursuant to Section 109(2) of the *Environmental Planning and Assessment Regulation 2000*. The below table summarises this matter:

Approval required	Relevant legislation	Relevant authority	Response
Bush Fire Safety Authority Section 100B	<i>Rural Fires Act 1997</i>	RFS	Response provided on 10 August 2023, GTA's re-issued

4. The subject site is located within the vineyards district of the Cessnock Local Government Area and is zoned SP3 Tourist under the *Cessnock Local Environmental Plan 2011*. The development is consistent with the provisions of the *Cessnock Local Environmental Plan 2011* and the development proposed in conjunction with the Section 4.55(2) Application remains a permitted form of development in the SP3 zone.
5. The proposed development was exhibited in accordance with the provisions of Council's adopted Community Participation Plan on three (3) separate occasions. A total of sixteen (16) submissions were received by Council, ten (10) of which are considered unique.
6. The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, pursuant to S4.55(3) of the *Environmental Planning and Assessment Act 1979*. The assessment concludes that the development (as modified), will be substantially the same

development as the development for which consent was originally granted. On this basis, it is recommended that the Section 4.55(2) Application be approved.

2. APPROVED DEVELOPMENT

The approved development (the subject of Development Consent No. 2016/557) was issued pursuant to Section 4.22(1) of the *Environmental Planning and Assessment Act 1979*, i.e., as a concept development application, being a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.

The development consent authorises construction of an integrated tourist development to be completed in seven (7) stages - comprising (in its totality), a four (4) lot community title subdivision, 18 hole golf course, 50 room hotel, 250 serviced apartments, 300 residential lots, function centre, aboriginal heritage centre, retail and food outlet, and spa and recreation facilities; and Stage 1 comprising a four (4) lot community title subdivision.

Stages 2 – 7 (inclusive), are to be subject of a subsequent development application or applications, noting that any such development application/s must be consistent with the approved concept proposal for the site, pursuant to Section 4.24(2) of the *Environmental Planning and Assessment Act 1979*.

In detail, the approved development involves the following components:

Stage	Summary	Specific development
1	Four (4) lot community title subdivision	Registration of 4 super lots under a Community Title subdivision, to allocate land for particular purposes
2	18-hole golf course	Establishment of the golf course, landscaping and connection to necessary services (including road connection to Wine Country Drive)
3	50 room hotel and club house, including ancillary function centre and 50 residential lots	Construction of internal access roads to residential allotments, as well as the construction of the 50 room tourist hotel (and a restaurant, clubhouse and golf shop) and 50 residential lots
4	70 serviced apartments, 70 residential lots, spa & recreation facilities	Construction of 70 tourist and visitor accommodation units (and supporting infrastructure such as day spa and swimming pool), as well as the construction of 70 residential lots and dwellings
5	65 serviced apartments and 65 residential lots	Construction of 65 tourist and visitor accommodation units, as well as the construction of 65 residential lots and dwellings
6	60 serviced apartments and 60 residential lots	Construction of 60 tourist and visitor accommodation units, as well as the construction of 60 residential lots and dwellings
7	55 serviced apartments and 55 residential lots	Construction of 55 tourist and visitor accommodation units, as well as the construction of 55 residential lots and dwellings

Table 1: The approved development (Development Consent No. 2016/667)

Plans illustrating the previously approved development are contained in Enclosure A.

3. SITE DESCRIPTION AND LOCALITY

The subject site is identified in the following table:

Address	Lot/DP	Size
Wine Country Drive	Lot 1 DP 1233030	3.633ha
Wine Country Drive	Lot 2 DP 869651	40.36ha
1058 Wine Country Drive	Lot 3 DP 869651	91.32ha
1054 Wine Country Drive	Lot 4 DP 869651	70.29ha
1184 Wine Country Drive	Lot 11 DP 1187663	39.45ha
Total		245.053ha

Table 2: Land comprising the subject site

It is noted that the following Lot/DP did not form part of the initial Development Application, however it has been incorporated into the Section 4.55(2) Application:

- Wine Country Drive (Lot 1 DP 1233030)

At the time of lodgement of the DA, the land referred to above did not possess a real property description, rather the land was a 'reserved road'. In this regard, whilst the land formed part of the overall site associated with the initial DA, it was not referred to specifically within the land description. Therefore, a condition of consent (Condition 34) was imposed on the development consent requiring the closure of the road.

Following determination of the original DA, the reserved road was closed and registered with a real property description. Due to this occurring, the land has now been included in the overall property description relating to the application.

Condition 34 has been removed from the draft notice of determination as Council is satisfied that the condition has been fully complied with.

For the purposes of this report, the abovementioned sites will be referred to as 'the subject site'. The below aerial depicts the subject site:



Figure 1: Aerial of the subject site

The subject site is approximately 245.053ha in area, and is located 15km north of the Cessnock township, and 8km south of the Branxton township. Wine Country Drive is the main road between Cessnock and Branxton and provides access to the many wineries and tourist-related developments located throughout the vineyards district.

Most of the vineyards district is zoned RU4 Primary Production Small Lots under the *Cessnock Local Environmental Plan 2011*, whilst the subject site and the development located directly to the west of the subject site ('The Vintage'), is zoned SP3 Tourist.

The subject site is located on the eastern side of Wine Country Drive, approximately 1.13km south of the intersection of McDonalds Road and Wine Country Drive and 1.37km north of the intersection between Wilderness Road and Wine Country Drive. The subject site is situated opposite the existing integrated tourist and resident development known as 'The Vintage'.

The land is flat to gently sloping and is rural in character having been substantially cleared and used for grazing and agricultural activities in the past. Black Creek runs through the land generally in a north-south direction and drains further to the north into the Hunter River. Structures on the subject site include fencing, dams, sheds, feed silos, holding yards, a dwelling, and a derelict homestead.

The site is currently utilised for limited grazing activities.

The below photographs depict the site:



Photo 1: The site, as viewed from Wine Country Drive (looking east)



Photo 2: The site, as viewed from Wine Country Drive (looking south)



Photo 3: The site, as viewed from Wine Country Drive (looking northeast)



Photo 4: Development opposite the site (to the west), known as 'The Vintage'

4. DETAILS OF THE SECTION 4.55(2) APPLICATION AND BACKGROUND

REQUESTED MODIFICATION

Introduction

The Section 4.55(2) Application proposes amendments to the layout and staging of the approved development, along with a modification to the number of community title lots proposed to be registered in conjunction with Stage 1 of the concept approval.

The applicant has advised that it is necessary to modify the previously approved development due to the following reasons:

- **Ecological:** The legislation in respect of biodiversity has changed since the introduction of the *Biodiversity Conservation Act 2016*, and a particular area of ecological value has been identified on the site. That area was impacted by part of the golf course and tourist components. It was considered that an improved ecological outcome could be obtained by reconfiguring these components of the proposal.
- **Golf course:** At the time of the initial concept, the golf course was designed to reflect the standards current at that time. However, following a review of the design, it was identified that the golf course could be more appropriately designed to utilise the natural features of the site, reduce its overall size and move it out of the environmental and residential areas.
- **Residential mix:** The existing approval proposed one lot size, being 700m². It was identified that a range of lot sizes should be introduced to meet current housing demands and provide a diversity of lot sizes.

Amendments to the Layout

The plan below illustrates the approved development the subject of Development Consent No. 2016/557.



Figure 2: Existing approval the subject of Development Consent No. 2016/557

By comparison, the plan below illustrates the proposed development the subject of the Section 4.55(2) Application.



Figure 3: Proposed development the subject of the Section 4.55(2) Application (Revised masterplan prepared by HACHEM)

To summarise:

- The area containing the approved tourist development is proposed to be moved to the north to reduce the impact on vegetation of high biodiversity value/s.
- The footprint of the golf course has been reduced and moved to the eastern and north-eastern portions of the site, rather than meandering throughout the site as previously approved.
- The footprint of the areas set aside for residential development has been amended, and varying residential lot sizes have been incorporated into the proposal.
- The total number of stages has been reduced from seven (7) to five (5).
- The number of community title lots associated with Stage 1 has been increased from four (4) to seven (7).

Detailed plans illustrating the proposed development at each stage are contained in Enclosures B and C.

The below table summarises the amendments sought to the staging and provides a comparison between the development approved under the initial development consent and the modifications sought under the Section 4.55(2) Application.

Stage	Original (Development Consent No. 1026/557)	Stage	Proposed (Section 4.55(2) Application)
1	Four (4) lot community title subdivision	1	Seven (7) lot community title subdivision
2	18 hole golf course	2	Construction of 18-hole golf course and establishment of 50m landscape buffer along Wine Country Drive; connection of services; establishment of water quality control; construction of internal roads; construction of Wine Country Drive access; construction of club house
3	50 room hotel and club house, including ancillary function centre and 50 residential lots	3a	Construction of 200 fully serviced residential lots and 200 dwellings
		3b	Construction of 200 tourist accommodation villas
4	70 serviced apartments, 70 residential lots, spa & recreation facilities	4	Construction of 50 villa units and associated infrastructure (including day spa); construction of 50 residential lots and dwellings
5	65 serviced apartments and 65 residential lots	5	Construction of 50 tourist accommodation villas/hotel units; construction of 50 residential lots and dwellings
6	60 serviced apartments and 60 residential lots		
7	55 serviced apartments and 55 residential lots		

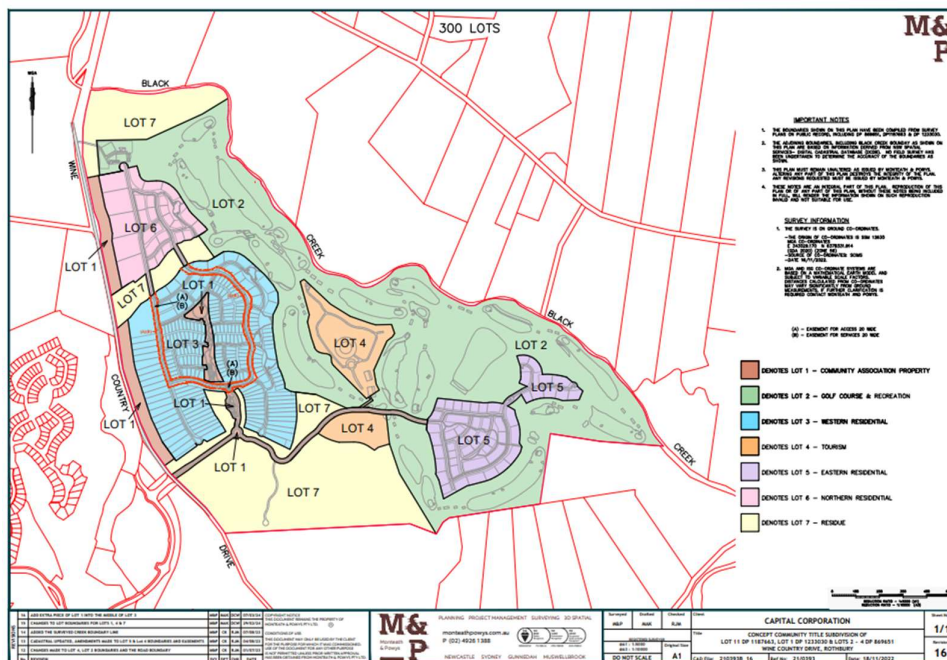
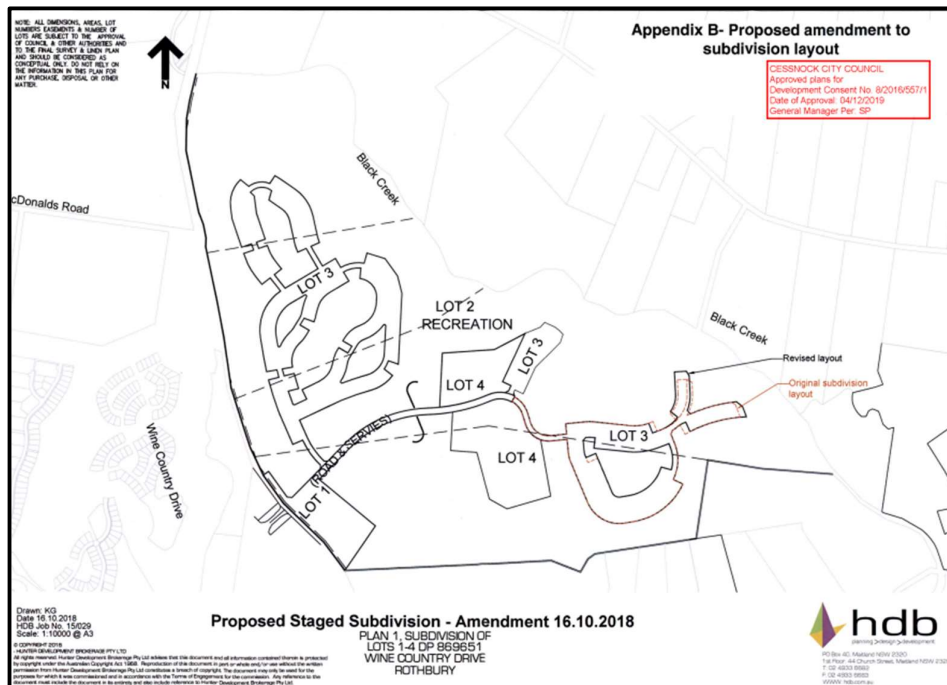
Table 3: Comparison between the initial approval and the amendments sought in conjunction with the Section 4.55(2) Application

Amendments to Stage 1

The initial development consent granted approval for the subdivision of the site into four (4) community title lots.

The Section 4.55(2) Application seeks approval to subdivide the site into seven (7) community title lots.

The below plans illustrate the approved plans associated with Stage 1, and the proposed plan associated with the Section 4.55(2) Application:



Summary

Notwithstanding the changes to the layout and staging of the proposal, overall, the proposed development the subject of the Section 4.55(2) Application will deliver the same development approved in conjunction with the initial development consent, specifically:

- 18-hole championship golf course
- 300 residential allotments and associated dwellings
- A total of 300 tourist and visitor accommodation units comprising a 50-room hotel, and 250 tourist villas (50 of which are located within the hotel building)
- Supporting services such as a day spa; function centre; restaurant (food and drink premises); and sports, recreation and health spa resort providing swimming, tennis and gymnasium facilities
- Interpretive centre for the locality's natural and cultural heritage
- Associated infrastructure including intersection off Wine Country Drive, roads and services
- Landscaping and bush regeneration works

The Section 4.55(2) application does not:

- Vary the uses proposed on the site under the initial approval
- Vary the number of dwellings or tourist and visitor accommodation units proposed on the site under the initial approval
- Vary the point of access to Wine Country Drive, as proposed under the initial approval
- Introduce any new uses to the site

POST-LODGE MENT CHRONOLOGY OF EVENTS

The following table summarises key dates and events in respect of the Section 4.55(2) Application:

Date	Action
4 December 2019	Development Consent No. 2016/557 approved by the Hunter and Central Coast Regional Planning Panel.
23 January 2023	Section 4.55(2) Application lodged with Council.
21 February 2023 to 7 March 2023	Section 4.55(2) Application placed on public exhibition. Two (2) submissions received.
13 March 2023	Additional information (RFI) requested by Council concerning the buffer between private lots and Wine Country Drive (including structures being built in this area). Concern was raised that the amended plans and documentation did not ensure that the development (in terms of visual impact) is substantially the same as that approved under the initial approval.
26 April 2023	Council requested that the applicant provide a response to the RFI issued on 13 March 2023.
27 April 2023	Applicant uploaded amended plans and amended documentation to the NSW Planning Portal (Portal).
27 April 2023	Council advised the applicant that the amended plans and amended documentation do not address the issues previously raised to Council's satisfaction
19 May 2023	Applicant provided further amended plans and amended documentation responding to Council's concerns.

20 July 2023	Additional information (RFS) requested by Council regarding ecological matters.
24 July 2023 to 7 August 2023	Section 4.55(2) Application re-exhibited due to amended plans and amended documentation.
2 August 2023	Technology update resulted in Council's DA Tracker being unavailable for several days during the exhibition of the DA, thereby impacting the ability of stakeholders to lodge a submission. On this basis, a decision was made by Council officers that the Section 4.55(2) Application will require re-exhibition for a third time.
10 August 2023	Applicant uploaded a response to the RFI for ecological matters to the Portal.
14 August 2023 to 28 August 2023	Section 4.55(2) Application re-exhibited for a third time. Fourteen (14) submissions received. Of these, it is determined that ten (10) submissions are considered 'unique submissions'.
9 September 2023	Council provided the applicant with a summary of the objections.
10 September 2023	Council advised the Hunter and Central Coast Regional Planning Panel (RPP) that the Section 4.55(2) Application meets the criteria relating to 'contentious development', in that 10 'unique submissions' were received in respect of the DA.
15 September 2023	Council requested the applicant to provide a cost summary/QS report.
19 September 2023	Applicant uploaded a response to the issues raised in objections, to the Portal.
21 September 2023	Applicant uploaded a further response to the issues raised in objections, to the Portal.
26 September 2023	Applicant uploaded a cost summary/QS report to the Portal.
9 October 2023	RPP confirmed that the Section 4.55(2) Application meets the criteria relating to contentious development. On this basis, the RPP will take over the function of determining the Section 4.55(2) Application.
10 October 2023	Council advised applicant that the RPP will take over the function of determining the Section 4.55(2) Application.
18 October 2023	Council issued a notice to all submitters that the function of determining the Section 4.55(2) Application is now the responsibility of the Hunter and Central Coast RPP.
14 November 2023	RPP Preliminary Meeting/Briefing held with Council and the applicant.
24 November 2023	Council issued an RFI to the applicant relating to matters raised during the Preliminary Meeting/Briefing.
14 December 2023	Applicant uploaded a response to Council's RFI to the Portal.
7 February 2024	RPP Assessment Briefing held with Council.
13 February 2024	Minutes of RPP Assessment Briefing received.
26 March 2024	Assessment Report for RPP Determination Meeting finalised.

Table 4: Chronology of events

5. ASSESSMENT

SECTION 1.7 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The site is identified on the Biodiversity Values Map, as illustrated below.

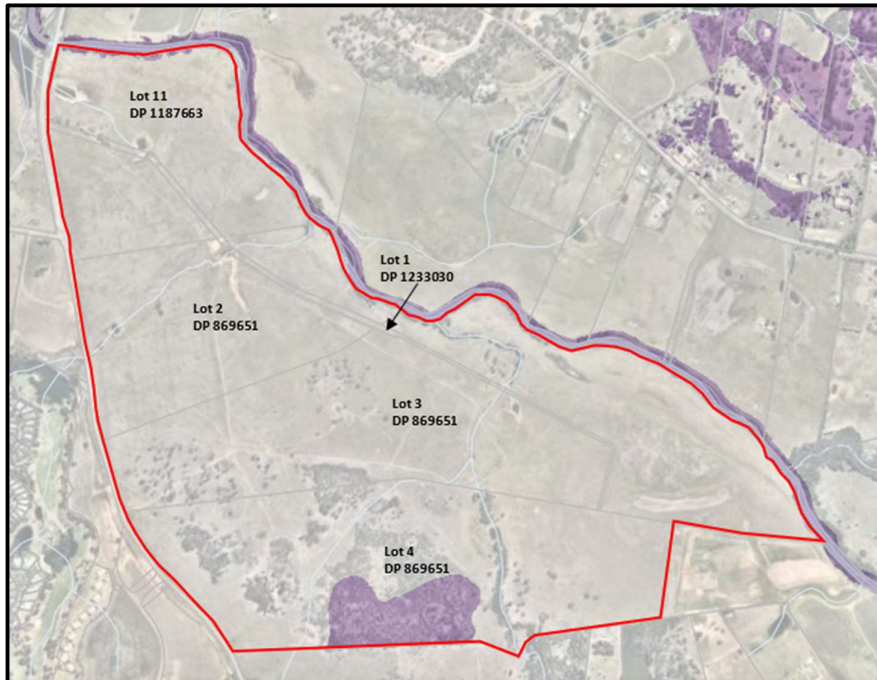


Figure 6: Biodiversity Values Map (with aerial overlay)

It is noted that the initial Development Application was lodged prior to the commencement of the *Biodiversity Conservation Act 2016*.

To assist in determining the legislative requirements that apply to the Section 4.55(2) Application in respect of biodiversity, Council sought advice from the (then) Department of Planning and Environment, specifically the Biodiversity Offsets Scheme (BOS) Help Desk, who advised as follows:

'For modifications of a development consent that was granted prior to the BC Act commencing (or were granted on or after BC Act commencement as a result of a 'pending or interim planning application'), clause 30A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 applies (instead of BC Act section 7.17).

However, both clause 30A and section 7.17 require that the 'original development as proposed to be modified' is considered when determining if a BDAR is required.

The 'original development as proposed to be modified' essentially means the original approved development (including any approved modifications) plus the proposed modification. A simple example would be where a DA was originally approved with a 1.5 ha footprint and the proposed modification would add another 0.5 ha to the footprint, then the total area of 2 ha is the 'original development as proposed to be modified'. This approach considers the cumulative impacts of the proposal.

If it is determined under clause 30A that a BDAR is required for the modification, the BDAR is to assess, using the BAM, only the additional impact on biodiversity values resulting from the modification of the development and not those associated with the development as approved (so only the 0.5 ha in the above example). However, the BDAR must outline available information about the original impact and identify any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the consent before the modification (including offsets that have been discharged). The BDAR for the modification

must also identify any new offset requirements and any new measures to avoid and minimise impacts.

Note: if an application for the 'original development as proposed to be modified' would have been required to be refused because of serious and irreversible impacts on biodiversity values, the application for modification is required to be refused.

Note: a BDAR is not required for a modification if the consent authority is satisfied that the modification will not increase the impact on biodiversity values'.

The final note is the most pertinent.

The documentation that would typically be required to accompany a concept development application of this scale (being a Biodiversity Development Assessment Report (BDAR)) has not been provided in this instance, as the legislation does not require it for modifications to a concept development application which was lodged prior to the commencement of the *Biodiversity Conservation Act 2016*. As such, the Section 4.55(2) Application has not been assessed under the legislation that future development applications for subsequent stages will be. Avoidance and minimisation will need to be demonstrated at each future stage, regardless of the commitments made in the concept approval, as the concept approval has not been supported by a BDAR across the whole site. Approval of the concept plan as it currently stands is not an endorsement of the alignment and its conformance with the requirements of the *Biodiversity Conservation Act 2016*.

An assessment of the impacts associated with the amended proposal confirms that the amended layout has significantly reduced the proposed revegetation area. The initially approved development required substantial revegetation works, particularly surrounding the golf course and in the cleared area to the north. This revegetation was an integral aspect of the original ecological assessment and was used to justify the impacts associated with the initial proposal.

When the Section 4.55(2) Application was initially lodged, it was not accompanied by a clear plan identifying the revegetation of areas to at least the extent of the existing approval. In consideration of this point, Council sought to quantify the issue surrounding avoidance and minimisation of impacts.

Specifically, Council requested that the applicant commit to a site-wide Vegetation Conservation Area, to be managed by a site wide Vegetation Management Plan, providing clear allocation of conservation lands that would support subsequent discussions surrounding avoidance and minimisation of impacts. Council further requested that such detail be added to Stage 1 of the staged plans submitted in conjunction with the S4.55(2) Application. Finally, Council required that additional revegetated areas, substantially the same in scope to those previously approved, be added to the master concept plan. Council advised that the plan could be implemented and refined in stages as the development progresses but must be committed to at the initial stage to allow Council to assess the avoidance and minimisation measures of subsequent development applications.

In response to Council's request, the applicant submitted the below Vegetation Management and Offset Plan, a copy of which is contained in Enclosure G.

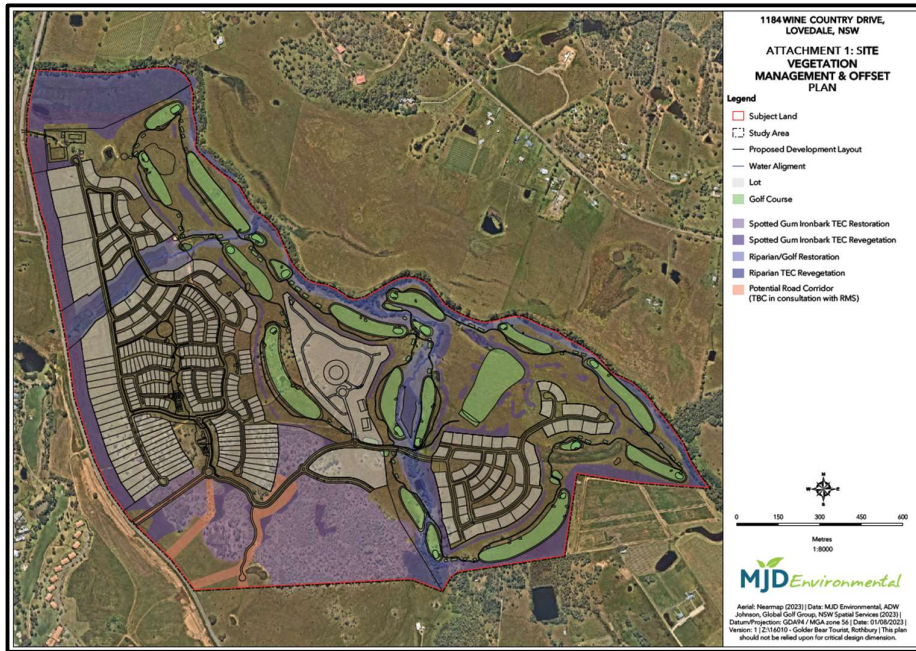


Figure 7: Vegetation Management and Offset Plan (MJD Environmental)

The Vegetation Management and Offset Plan broadly addresses the expectation expressed by Council that revegetation works should be commensurate with those initially proposed.

The following matters are also noted in respect of the Vegetation Management and Offset Plan:

- Further opportunities to require revegetation in areas, such as the southwest of the site, can be discussed/negotiated with the applicant at future stages.
- The limited vegetation surrounding the golf course may be appropriate given other considerations, such as design, rural character and bushfire.

Comparison of the approved site layout against the proposed layout indicates a clear improved ecological outcome. The updated design (as shown in Figure 3) presents an ecological footprint far more likely to meet the expectation of the *Biodiversity Conservation Act 2016*, noting that future development applications for subsequent stages will be assessed under the provisions of the *Biodiversity Conservation Act 2016*.

Council has worked with the applicant to ensure that the revegetation commitments approved in association with the initial concept approval persist in the proposal put forward under the Section 4.55(2) Application.

In summary, although there are changes to the extent and scope of the amended proposal, the applicant has demonstrated to Council's satisfaction that the amendments proposed will not increase the impact on biodiversity values.

Section 4.55(2) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.55(2) of the EP&A Act states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

A response to each of these matters is provided below:

The development is substantially the same as the original development

The Section 4.55(2) Application proposes a number of amendments to the initially approved development. These changes have been outlined in detail previously in this report.

The issue of whether the development to which a consent as modified relates is *substantially the same development* as the development for which the consent was originally granted has been given detailed consideration by the Land and Environment Court of NSW.

In *Moto Projects No 2 P/L v North Sydney Council* (1999) 106LGERA 298, it was noted that:

‘The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted’.

In a case such as this, where a development contains more than one element, identification of the fundamental elements of the original development proposal is required. Following this, a decision must then be made as to whether the Section 4.55 Application proposes to modify those fundamental elements to such a degree that the modified development as proposed would no longer be substantially the same development.

In *Hunter Development Brokerage P/L trading as HDB Town Planning and Design v Singleton* (2022) NSWLEC64, the Court dismissed an appeal as it was not satisfied that the development to which the Modification Application related was substantially the same development as the development for which the consent was originally granted, and therefore concluded that the Section 4.55 Application failed the statutory test set out in the *Environmental Planning and Assessment Act 1979*.

In this case, it was accepted that the provisions of the modification powers contained within the *Environmental Planning and Assessment Act 1979* are 'beneficial and facultative', but that this does not mean that the power to modify exists without constraint. With reference to *Arrage v Inner West Council* (2019) NSWLEC 85, the Court confirmed that the relevant test under the modification powers is the set by the statutory language, whilst also confirming judicial interpretations of 'substantially the same' to mean 'essentially or materially having the same essence'.

Importantly, the Court noted as follows:

'this exercise cannot be undertaken in a numeric 'tick a box' approach. The significance of a particular feature or set of features may alone or in combination be so significant that the alteration is such that an essential or material component of the development is so altered that it can no longer be said to be substantially the same development – this determination will be a matter of fact and degree depending upon the facts and circumstances in each particular case. Such an exercise is not focusing on a single element, rather it is identifying from the whole an element which alone has such importance it is capable of altering the development to such a degree that it falls outside the jurisdictional limit.....'

It is acknowledged that various components of the proposed development have been reconfigured/relocated within the site. Notwithstanding, the proposal importantly retains all components approved under the initial development consent, including:

- 18-hole championship golf course
- 300 residential allotments and associated dwellings
- A total of 300 tourist and visitor accommodation units comprising a 50-room hotel, and 250 tourist villas (50 of which are located within the hotel building)
- Supporting services such as a day spa; function centre; restaurant (food and drink premises); and sports, recreation and health spa resort providing swimming, tennis and gymnasium facilities
- Interpretive centre for the locality's natural and cultural heritage
- Associated infrastructure including intersection off Wine Country Drive, roads and services
- Landscaping and bush regeneration works

It is concluded that the proposed development retains the fundamental elements contained within the original proposal. Furthermore, whilst reconfiguration of some of these components is proposed, it is considered that this will not occur to such a degree that the modified development as proposed would no longer be substantially the same development.

Finally, based on the assessment that has been undertaken in respect of qualitative and quantitative impacts (the findings of which are contained throughout this report), it is considered that the development (as modified), will be substantially the same development as the development for which consent was originally granted.

The applicant sought legal advice in respect of this issue. Independently, Council also sought legal advice regarding this matter. Copies of such are contained in Enclosures P and Q (confidential enclosure).

Consultation with public approval authority in respect of original conditions

The initial DA was identified as Integrated Development, and the Section 4.55(2) Application was required to be referred to the relevant concurrence authority (RFS) for consideration pursuant to Section 109(2) of the *Environmental Planning and Assessment Regulation 2000*.

The below table summarises this matter:

Approval required	Relevant legislation	Relevant authority	Response
Bush Fire Safety Authority Section 100B	<i>Rural Fires Act 1997</i>	RFS	Response provided on 10 August 2023, GTA's re-issued

Table 5: Concurrence authorities

As outlined above, the RFS have re-issued the GTA's in respect of the Section 4.55(2) Application.

Notification and submissions

The Section 4.55(2) Application was publicly exhibited in accordance with the provisions of Council's adopted Community Participation Plan on three (3) separate occasions, as follows:

- between 21 February and 7 March 2023
- between 24 July and 7 August 2023
- between 14 August and 28 August 2023

In total, sixteen (16) submissions were received, ten (10) of which are considered unique, objecting to the Section 4.55(2) Application.

The issues raised in the submissions, and a response to each, are outlined later in this report.

Section 4.55(3) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

In part, S4.55(3) of the *Environmental Planning and Assessment Act 1979* prescribes that *'in determining an application for modification of a consent, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.'*

Section 4.15 Evaluation

The following matters are relevant to the assessment of the Section 4.55(2) Application:

4.15(1)(a)(i) The provisions of any environmental planning instrument

The environmental planning instruments that relate to the Section 4.55(2) Application are:

1. *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
2. *State Environmental Planning Policy (Resilience and Hazards) 2021*
3. *Cessnock Local Environmental Plan 2011*

An assessment of the Section 4.55(2) Application under the environmental planning instruments is provided below:

1. State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3 of *SEPP (Biodiversity and Conservation) 2021* aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

The site is zoned SP3 Tourist and is an 'equivalent land use zone' for the purpose of applying the SEPP. The site has an area of 245.053 hectares, and the SEPP is therefore applicable in accordance with the provisions of Part 3.2 of the SEPP.

An ecological assessment report prepared by RPS Australia East (Date June 2013) and updated by MJD Environmental Pty Ltd (Date 26 April 2016), was submitted in support of the initial development application. Both of these documents were reviewed by Councils Ecologist at the time, who determined that the study area does not constitute 'potential' or 'core' koala habitat as the number of koala feed trees across the site are less than 15% of the total number of trees in the upper and lower strata of the tree component. Some remnant patches of native vegetation contained koala feed trees at a density greater than 15%, however, additional investigations failed to record past or current use by koalas.

While the SEPP applies to the site, an assessment of the application against the provisions of the SEPP has identified that the vegetation on the site does not constitute feed trees for koalas.

On this basis, the site is not considered to comprise potential koala habitat, and therefore, Council is not prevented from granting development consent to the development application, consistent with the provisions of Part 3.6, which states:

(3) If the council is satisfied:

(a) that the land is not a potential koala habitat, it is not prevented, because of this Chapter, from granting consent to the development application...

The Section 4.55(2) Application does not change the results of the conclusions made above with respect to the initial development application, and on this basis, no further consideration of this SEPP is required.

2. State Environmental Planning Policy (Resilience and Hazards) 2021

Section 4.6 of *SEPP (Resilience and Hazards) 2021* requires Council to consider the following before granting consent to a DA:

- a) it has considered whether the land is contaminated, and
- b) 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, and
- c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The applicant submitted a Phase 1 Preliminary Contamination Assessment, prepared by Coffey Geosciences Pty Ltd (date 8 March 2006), in conjunction with the original re-zoning in respect of the site. Historical land ownership searches, a site visit, and aerial photograph reviews were conducted.

The report concluded that *'...it is considered unlikely that there is wide-spread soil contamination that would prevent the site from being suitable for the proposed development. Localised soil contamination may be present around the house locations and shed, especially residual pesticides which may have been used for treatment of cattle grazed on the site, or as a deterrent to termite attack on structures. Building materials containing asbestos may be present in the existing house and shed, and fragments of such material may be present at the former house site'*.

It is noted that the existing development consent contains a condition requiring that future development applications for subsequent stages address the requirements of the SEPP. Such condition is proposed to be retained under the conditions of consent associated with the Section 4.55(2) Application.

3. Cessnock Local Environmental Plan 2011

3.1 Permissibility

The subject site is zoned SP3 Tourist under the provisions of the *Cessnock Local Environmental Plan (CLEP) 2011*, as illustrated below:

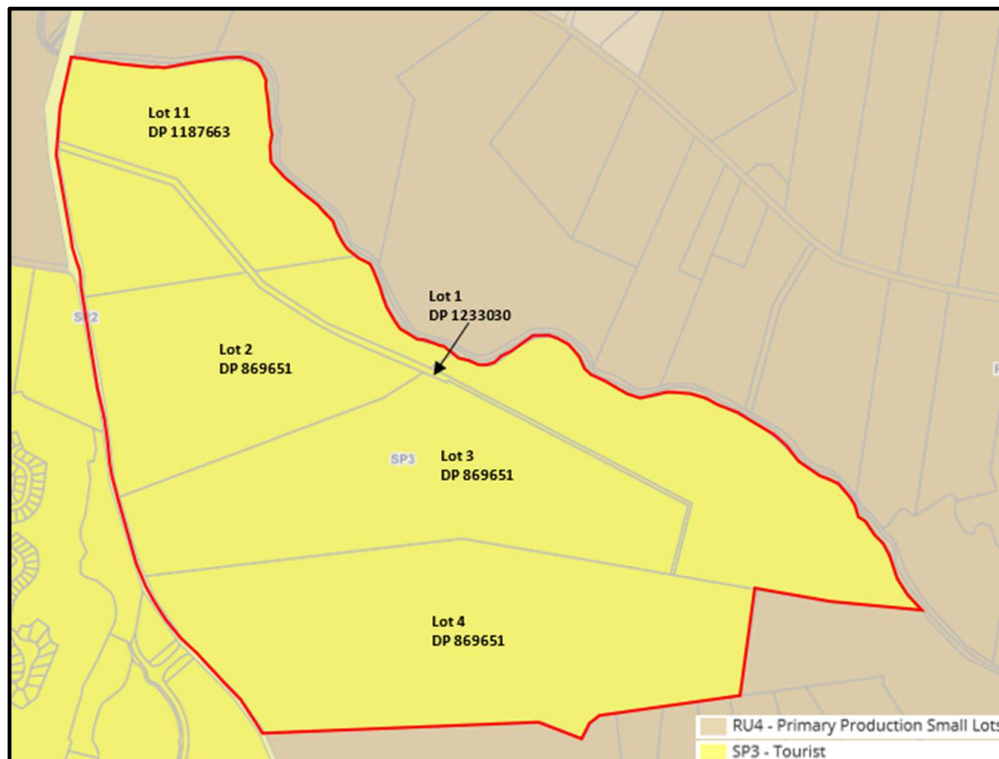


Figure 8: Zoning of the subject site

The approved land use remains the same as that initially approved, being an integrated tourist development. The overall components of the proposed development are retained notwithstanding the amendments to delivery of the development in its entirety. In this regard, the proposal remains a permitted form of development in the SP3 zone, pursuant to Clause 7.11 of the CLEP 2011.

3.2 Objectives

As outlined above, the approved land use remains the same as that initially approved.

The changes sought by the applicant do not result in the proposed development being inconsistent with the zoning objectives. In this regard, the following is noted:

Objective	Comment
<i>To provide for a variety of tourist-oriented development and related uses</i>	The proposed development remains consistent with this objective. In this regard, the overall development remains the same as that initially approved, i.e., an integrated tourist development, which will provide a mix of tourist-oriented development and uses on the subject site.
<i>To allow for integrated tourist development</i>	The proposed development comprises an integrated tourist development, which is specifically envisaged by this objective.

Table 6: Summary of zone objectives

3.3 Relevant Clauses

The Section 4.55(2) Application was assessed against the following relevant clauses of the CLEP 2011:

Cessnock LEP 2011		
Provision	Required	Comment
Clause 2.6 Subdivision	Consent is required for subdivision to which the LEP applies	Consent is sought to modify Stage 1 of the approval, which relates to a community title subdivision, specifically, to increase the number of community title lots from four to seven. The Section 4.55(2) Application is consistent with this clause as consent is sought to facilitate the subdivision of the site.
Land Use Table	Site is zoned SP3 Tourist	As outlined above, the amended proposal remains a permitted form of development, being an integrated tourist development.
Clause 4.1 Minimum lot size	Consideration of minimum lot size	N/A – the Lot Size Map does not prescribe a minimum lot size in respect of the site.
Clause 5.10 Heritage conservation	Consideration of items of heritage significance	<p>European Heritage</p> <p>The subject site is not identified as an item of local heritage significance. However, it adjoins a heritage item of local significance (to the northeast), being <i>Blick Bros graves at Belbourie Winery</i> (1176 under Schedule 5).</p> <p>Council's heritage advisor has raised no concern in respect of the amended layout proposed in conjunction with the Section 4.55(2) Application, and its impact on the abovementioned heritage item.</p> <p>Aboriginal cultural heritage significance</p> <p>The subject site is not identified as an Aboriginal place of heritage significance; however, it does contain a number of known items of Aboriginal cultural heritage significance.</p> <p>The initial application was accompanied by an Aboriginal Heritage Due Diligence Assessment (prepared by L Roberts and dated 12 March 2013).</p> <p>An updated assessment, being an Aboriginal Cultural Heritage Assessment (ACHA) (prepared by McCardle</p>

		<p>Cultural Heritage Pty Ltd (dated 14 December 2022)), was prepared and lodged in conjunction with the Section 4.55(2) Application and is contained in Enclosure N.</p> <p>The ACHA states that a search of the AHIMS register identifies 78 known Aboriginal sites that are recorded within a 2-kilometre radius of the site area, being 76 artefact sites, one grinding groove site and one stone quarry with artefacts. The ACHA confirms that there are no AHIMS sites in the project area (being the subject site).</p> <p>The ACHA also states that a previous assessment of the project area identified a total of nineteen (19) unrecorded sites of Aboriginal cultural heritage significance, being five (5) isolated sites and fourteen (14) artefact scatters. Most of these occurred within 50m of a creek. It is confirmed that none of these sites are registered on AHIMS.</p> <p>The ACHA outlines that the project area was divided into six (6) survey units that were based on landform elements. The survey confirmed that the project area had been previously cleared and evidence of past ploughing was also evident. No new sites were identified in the project areas during the survey.</p> <p>Notwithstanding the above, Site 6 (identified as <i>'an artefact scatter that is well represented both locally and regionally and are highly disturbed through cattle, erosion and tracks, with little to no research or scientific potential'</i>), has now been registered on AHIMS. As it was not relocated during the ACHA assessment process, an AHIP will be required for Site 6 with community collection to occur prior to works commencing.</p> <p>In addition to the above, three (3) Potential Archaeological Deposits (PADs) were identified in conjunction with the ACHA. As Stages 2-5 will partially impact on the identified PADs, further site investigations will be required to be carried out, prior to works commencing.</p> <p>The existing development consent contains a condition relating to the Aboriginal Management Plan that was required to be endorsed by the Local Aboriginal Land Council for each stage of the proposed development. In addition to this condition, four (4) new conditions of consent are proposed to be inserted into the draft notice of determination in respect of the issues identified above. It is noted that, as no physical works are proposed in conjunction with Stage 1, these conditions will only be relevant for Stages 2-5.</p> <p>In summary, the amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to Clause 5.10, noting that no additional items or sites of Aboriginal cultural</p>
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		heritage significance were identified in the project area during preparation of the ACHA.
Clause 5.21 Flood planning	Consideration of flooding	<p>Parts of the site are subject to flooding.</p> <p>The initial application was accompanied by a flood assessment report which was reviewed by Council, and the proposal was assessed against the provisions of the then Clause 7.3 of the CLEP 2011 (which is now Clause 5.21). At that time, Council was satisfied that the proposed development addressed and complied with Clause 7.3.</p> <p>The changes to the layout proposed in conjunction with the Section 4.55(2) Application result in an improved outcome on the site with respect to flooding in that the development footprint is more reflective of available flood free land.</p> <p>In summary, the amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to flooding.</p> <p>It is noted that the existing development consent contains a condition requiring that future development applications for subsequent stages be supported by a flood assessment report. Such condition is proposed to be retained under the conditions of consent associated with the Section 4.55(2) Application.</p>
Clause 6.2 Public utility infrastructure	Ensure public utility infrastructure is available	<p>The initial application demonstrated that all utilities could be provided to support the proposed development.</p> <p>Whilst the Section 4.55(2) Application proposes amendments to the layout and staging of the approved development, the overall development contains the same components as the initial development and servicing requirements therefore remain the same.</p> <p>Notwithstanding the above, the developer has been actively engaging with public utility infrastructure providers, including Ausgrid and Hunter Water, and has provided confirmation of this consultation by way of written correspondence and meeting minutes.</p> <p>In respect of electricity, Ausgrid previously provided preliminary servicing advice which confirmed that the network has spare capacity (in the area in which the proposed development will be located), to cater for a large percentage of the future electrical load of the development.</p> <p>In response to Hunter Water's requirements, the applicant has engaged an accredited design consultant to prepare servicing strategies for the provision of water and sewer to the site. Further to the above, options for the provision of recycled water are being developed/considered.</p>

		It is noted that the existing development consent contains several conditions requiring that future development applications for subsequent stages be supported by detailed plans and documentation in respect of servicing. Such conditions are proposed to be retained under the conditions of consent associated with the Section 4.55(2) Application, inclusive of minor amendments to refer to a water and wastewater strategy and the requirement to obtain approval for such from Hunter Water Corporation.
6.3 Development Control Plan	Consent must not be granted unless a development control plan has been prepared	The initial application was approved as a concept development application pursuant to Section 4.22(1) of the <i>Environmental Planning and Assessment Act 1979</i> . This planning pathway satisfies the requirements of this clause.
Clause 7.2 Earthworks	Consideration of earthworks	Earthworks are proposed in conjunction with the overall development and are consistent with the requirements of this clause. The extent of earthworks required under the Section 4.55(2) Application have been reduced, predominantly as a result of the reconfiguration of the golf course. In addition, future development applications will be required to address this clause in conjunction with specific stages.
Clause 7.11 Integrated tourist development at Wine Country Drive, Lovedale	Consideration of site-specific clause	The amended proposal the subject of the Section 4.55(2) Application remains consistent with the provisions of this clause. Council will be required to ensure that the requirements prescribed in 7.11(2) are complied with via the imposition of appropriate conditions of consent in respect of future development consents that may be granted for specific stages.

Table 7: LEP compliance

4.15(1)(a)(ii) *The provisions of 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).*

A Planning Proposal (Amendment No. 39) was lodged with Council on 20 April 2022 proposing to increase the number of permanent residences on the site to 640. It is noted that the current provision contained within Clause 7.11 of the *Cessnock Local Environmental Plan 2011*, permits 300 permanent residences.

Amendment No. 39 commenced on 15 December 2023, and permits a total of 640 permanent residences to be constructed on the site.

The report prepared in conjunction with the Planning Proposal states that the increase in residential density from 300 permanent residences to 640 permanent residences will occur within the same footprint as the approved concept masterplan. In this regard, it is anticipated that the increased residential yield will be delivered as a variety of dwelling types rather than

the originally intended single, detached dwellings, i.e., the amended proposal is intended to support attached dwellings and apartments.

Notwithstanding the above, it is noted that the Section 4.55(2) Application does not propose any increase in the number of permanent residences on the site, i.e., the total number will remain at 300, consistent with the initially approved development.

Any increase in residential densities on the site in the future will occur via a separate application process.

4.15(1)(a)(iii) The provisions of any development control plan

Cessnock Development Control Plan 2010

The following provisions of the Cessnock Development Control Plan 2010 are relevant to consideration of the Section 4.55(2) Application.

Chapter C1 Parking and Access				
Required	Provided	Complies		
		Yes	No	N/A
All provisions				
No physical works proposed in conjunction with Stage 1 that would require on-site parking to be provided.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The issue of access to Wine Country Drive will be a matter for consideration when future development applications are lodged in the event the proposed development triggers the requirements prescribed within Clause 2.122 of <i>SEPP (Transport and Infrastructure) 2021</i> , i.e., traffic generating development.				
Notwithstanding the above, it is noted that the current condition of consent relating to the construction of a roundabout onto Wine Country Drive, will remain. The access will comprise a four (4) way, single lane circulating roundabout on Wine Country Drive. This access is required to be constructed in conjunction with Stage 2 of the concept approval.				
Future development applications will need to be supported by a Traffic Impact Assessment, depending on the nature of the proposal.				

Chapter C3 Contaminated Lands				
Required	Provided	Complies		
		Yes	No	N/A
All provisions				
Addressed under <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> .		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No further consideration required.				

Chapter C5 Waste Management and Minimisation				
Required	Provided	Complies		
		Yes	No	N/A
All provisions				
No physical works proposed in conjunction with Stage 1.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Future development applications will need to be supported by a Waste Management Plan prepared in accordance with this chapter of the DCP.				

Chapter C8 – Social Impact Assessment and Crime Prevention Through Environmental Design				
Required	Provided	Complies		
		Yes	No	N/A
All provisions				
A Social Impact Assessment (SIA) was lodged in conjunction with the initial development application.		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall, the development remains as initially approved, i.e., an integrated tourist development. On this basis, an amended SIA was not required to be submitted, as it was considered that the social impact of the proposal would not change as a result of the modifications to the layout and staging/delivery of the development.				
It is noted that future development applications will need to be supported by a Social Impact Comment and/or SIA depending on the specific development proposed.				
In addition, a current condition of consent requires submission of a formal crime risk assessment (Crime Prevention through and Environmental Design) for each stage with a particular emphasis on publicly accessible areas, including at night. This condition will remain.				

Chapter C9 Development on Flood Prone Land				
Required	Provided	Complies		
		Yes	No	N/A
Land Use and Hazard Control Matrix				
Categorisation according to land use (sensitivity)	Development footprint considers hazard categories on the site. Overall, all land uses proposed are considered acceptable taking into account the sensitivity of the land uses to flooding.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detailed Survey				
Detailed survey prepared by a registered surveyor, to be submitted	Detailed survey prepared in conjunction with the initial application. Such survey remains relevant.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flood Assessment Report				
Specific requirements in respect of minor and major Flood Assessment Reports	Council adopted flood studies apply to the site.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
General Requirements				
Development controls	Future applications for Stages 2-5 will be assessed having consideration to the controls contained within the DCP. Overall, it is considered that the changes to the layout proposed in conjunction with the Section 4.55(2) Application result in an improved outcome on the site with respect to flooding in that the development footprint is more reflective of available flood free land.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evacuation				
Specific requirements for evacuation	A large portion of the site is impacted by the PMF event. As part of future applications for Stages 2-5, a flood evacuation strategy will be required to address the PMF event. It is noted that Council's flood mapping indicates that Wine Country Drive is, in the most part, located above the PMF and can be utilised as the main flood evacuation route from the site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Flow of Water				
Specific requirements for flow of water	Future applications for Stages 2-5 will be assessed having consideration to the controls contained within the DCP, noting that habitable portions of the proposed development are not located in areas identified as hazard category H5 or H6.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Car Parks				
Specific requirements for car parks	The application does not propose construction of a car park.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
On-Site Wastewater Management				
Specific requirements for on-site wastewater	<p>Servicing in respect of the site is yet to be confirmed, however this provision is not relevant to Stage 1.</p> <p>This requirement will be addressed in conjunction with future development applications for subsequent stages.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Subdivision				
Specific requirements in respect of the subdivision of land	<p>Relevant considerations are addressed, including:</p> <ul style="list-style-type: none"> The application proposes a community title subdivision. The land is identified as an Urban Release Area The application demonstrates that the size and design of the proposed lots are able to accommodate the proposed uses. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Land to Which the Cessnock City Wide Flood Study Applies				
Controls that apply to land to which the Cessnock City Wide Flood Study applies	Council adopted flood studies apply to the site.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Properties Impacted by Low-Risk Overland Flooding				
Specific requirements in respect to low-risk overland flooding	The site is not impacted by low-risk overland flooding.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hydraulic Controls				
Specific requirements in respect to flood storage, and floodway	Initial concept approval complied with these provisions, and the amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to flooding.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
House Raising and Flood Proofing				
Considerations for house raising/flood proofing	No house raising proposed.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Additions and Renovations				
Considerations for additions and renovations	No additions/renovations proposed.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Branxton Commercial Precinct				
Consideration for development within the Branxton Commercial Precinct	Site is not located within the Branxton Commercial Precinct.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Chapter D1 Subdivision Guidelines				
Required	Provided	Complies		
		Yes	No	N/A
All				
The subject site is zoned SP3 Tourist.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

This Chapter does not contain any controls in relation to the SP3 zone.			
No further consideration required.			

Table 8: DCP compliance

4.15(1)(a)(iia) *The provision of 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*

No such agreement has been proposed in conjunction with this Section 4.55(2) Application.

4.15(1)(a)(iv) *The provisions of the regulations*

Section 33(1) of the *Environmental Planning and Assessment Act 1979* prescribes as follows:

33 *Concept development applications*

- (1) *The information about the various stages of development, required by this Regulation to be included in a concept development application, may be deferred to a subsequent development application, with the approval of the consent authority.*

Section 33 is noted. In this case, subsequent development applications will be lodged for Stages 2 – 5.

4.15(1)(b) *The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality*

As demonstrated by the above assessment, the amended development is unlikely to have a significant impact on both the natural and built environments, and the social and economic conditions of the locality. In particular, the following is noted:

Ecological Values

A detailed assessment of the ecological impacts of the proposed development the subject of the Section 4.55(2) Application has been outlined in detail, previously in this report.

Heritage Considerations

A detailed assessment of heritage considerations associated with the Section 4.55(2) Application has been outlined in detail, previously in this report.

Context and Settings

It is acknowledged that the golf course component of the development has been separated from the residential component and relocated into the eastern and northeastern parts of the site. As a result of this, the golf course is no longer located along the frontage of Wine Country Drive.

To ensure the residential development component is not visually obtrusive from Wine Country Drive, a vegetated screen, which will be 50m in depth, will be established along the frontage of Wine Country Drive, to the north of the entrance to the site.

This vegetated screen will be established in conjunction with the golf course, thereby ensuring that it will have adequate time to establish/grow before any residential component of the development is occupied. Furthermore, the area set aside for the buffer will be incorporated into Lot 1, which will remain as community property.

Detailed landscape plans have been lodged in support of the Section 4.55(2) Application, specifically in respect of the proposed landscape buffer, and these are contained in Enclosure O. The landscape plan submitted in respect of the green corridor, (prepared by Moir Landscape Architecture, dated 17 May 2023), states as follows:

‘The planting species will align with the Lower Hunter Spotted Ironbark Forest ecological community, helping to strengthen local ecology and provide fodder and habitat for endemic species. The proposed green corridor will be 50m in width, and include series of vegetative earth mounding to establish instant visual mitigation to the development. A mix of canopy, large shrub, small shrubs and ground covers species will be proposed, as well as creekline corridor species where required’.

The plans for the landscape buffer are illustrated below:

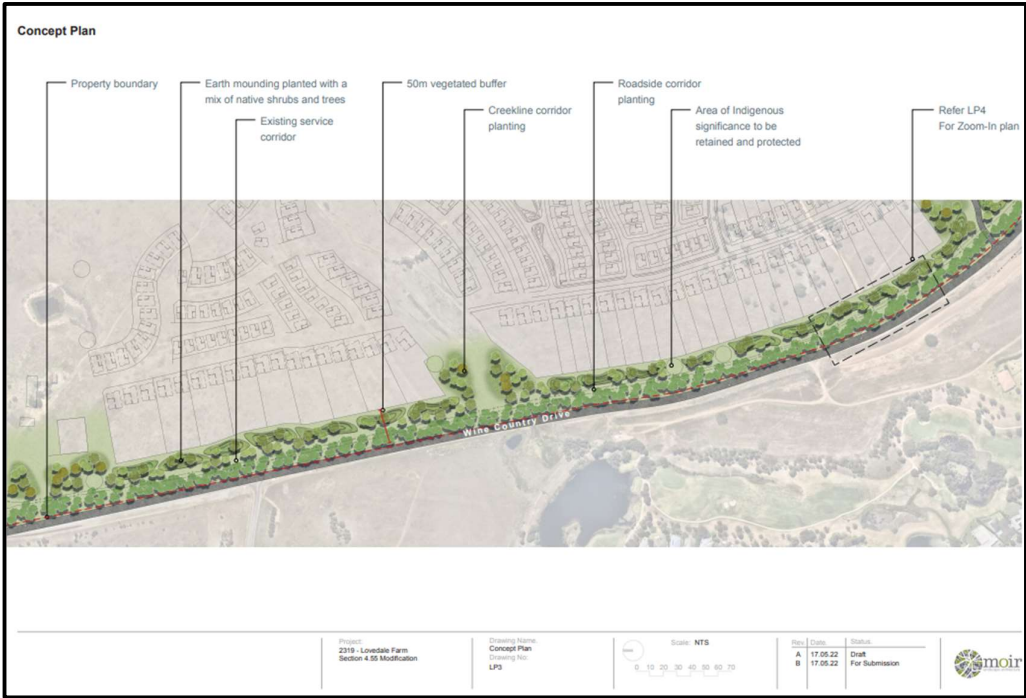


Figure 9: Landscape buffer

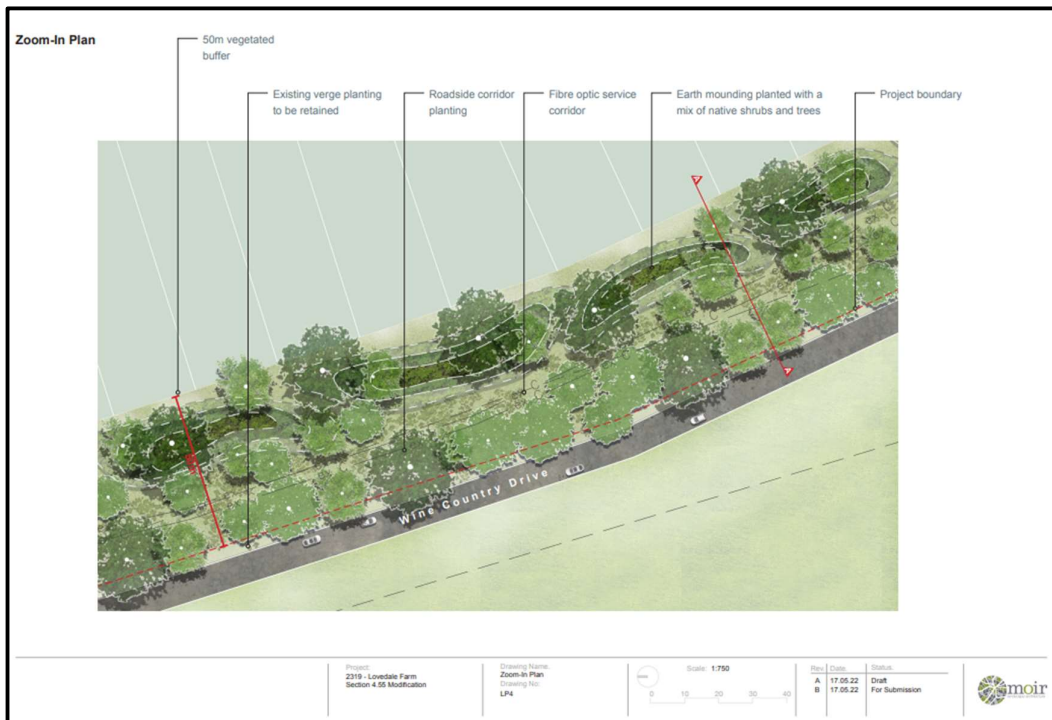


Figure 10: Detail of landscape buffer

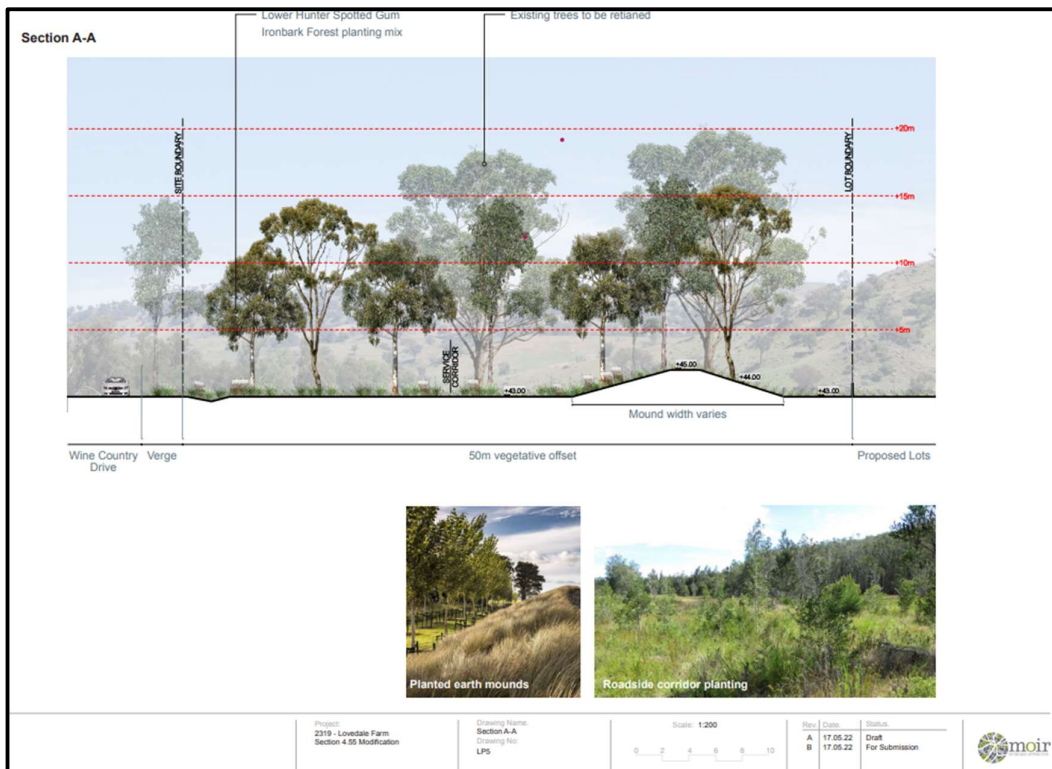


Figure 11: Perspective of landscape buffer

In addition to the 50m landscape buffer, the proposed lots in this part of the site (which abut the landscape buffer), will incorporate restrictions as follows:

- A dwelling can only be constructed within 40m of the internal road.
- No structures are to be constructed within 20m of the rear boundary of the lot.
- Development on the remaining part of the lot (50m), will have the following building restrictions:
 - I. Only non-habitable structures are permitted to be constructed.
 - II. Such non-habitable structures are to have a maximum height of 3.1 metres.
 - III. Such structures are to be screen planted in accordance with the Design Guidelines.

This is illustrated in the plan below.

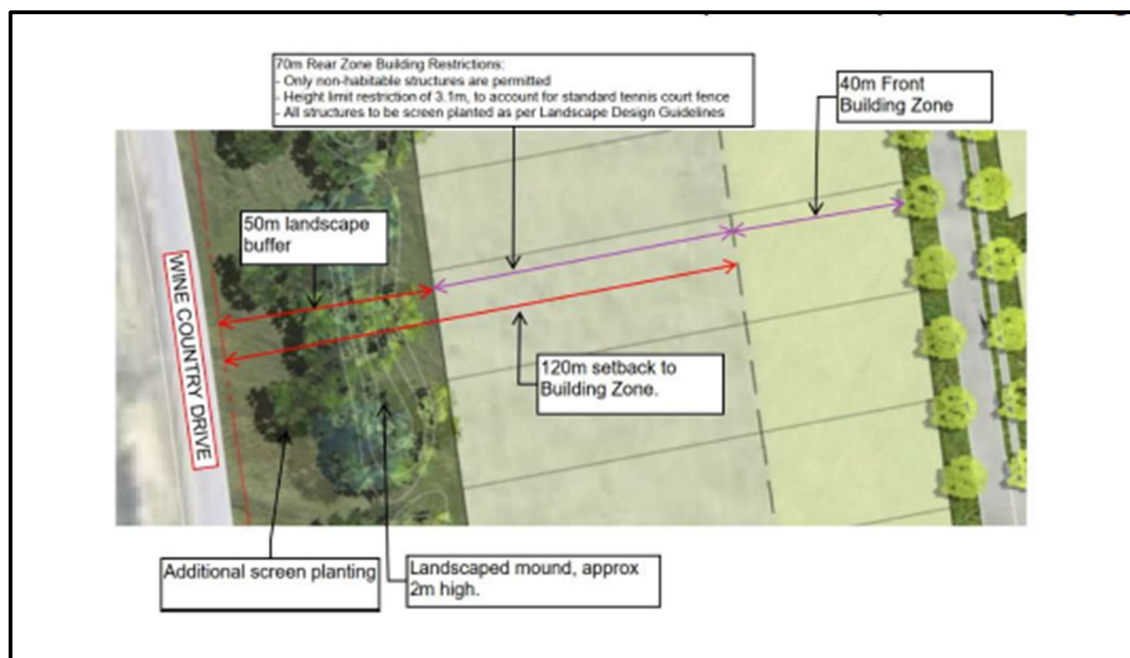


Figure 12: Detail of permitted development for the lots that abut the Wine Country Drive frontage

These restrictions are confirmed in a specific section of the Community Management Strategy, dated 31 January 2024, which is contained in Enclosure M.

A plan was also submitted in support of the Section 4.55(2) Application, comparing the previously approved setbacks of the residential lots to Wine Country Drive with the setbacks proposed in conjunction with the amended proposal. This plan confirms that a setback of approximately 120m to Wine Country Drive was initially proposed; and consistent with Figure 13, this setback will be generally unchanged as a result of the Section 4.55(2) Application, as illustrated below.



Figure 13: Comparison of setback of residential lots to Wine Country Drive

The primary components of the overall development, are as follows:

1. Tourist area
2. Residential area
3. Golf course

Plans identifying a comparison between the previously approved areas (in accordance with the initial approval), and the proposed areas (under the Section 4.55(2) Application) were submitted in conjunction with the application.

The comparisons are illustrated below:

1. Tourist Area

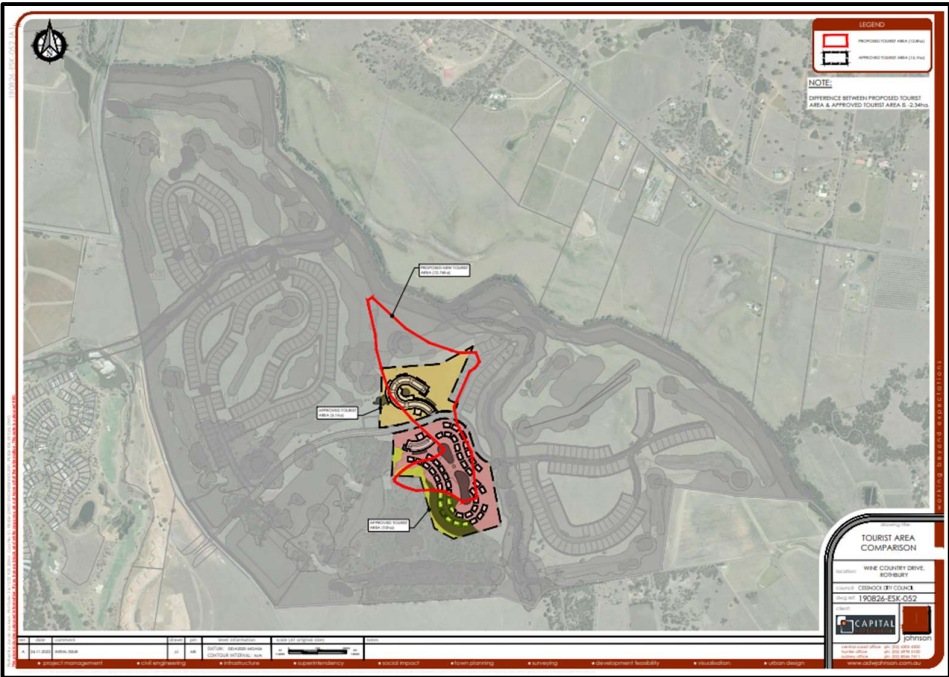


Figure 14: Tourist area comparison (prepared ADW Johnson, 24 November 2022)

With respect to the tourist area, the following is identified:

Existing/approved area	Proposed area	Difference
15.1ha	12.8ha	Reduced by 2.34ha

2. Residential Area

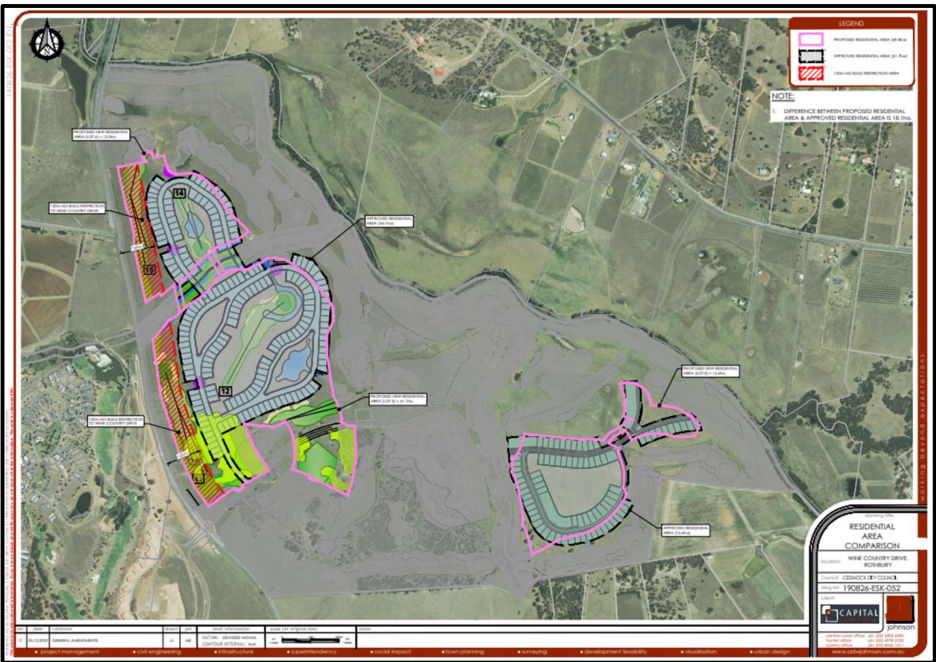


Figure 15: Residential area comparison (prepared ADW Johnson, 5 December 2022)

With respect to the residential area, the following is identified:

Existing/approved area	Proposed area	Difference
51.7ha	69.8ha	Increased by 18.1ha

3. Golf Course

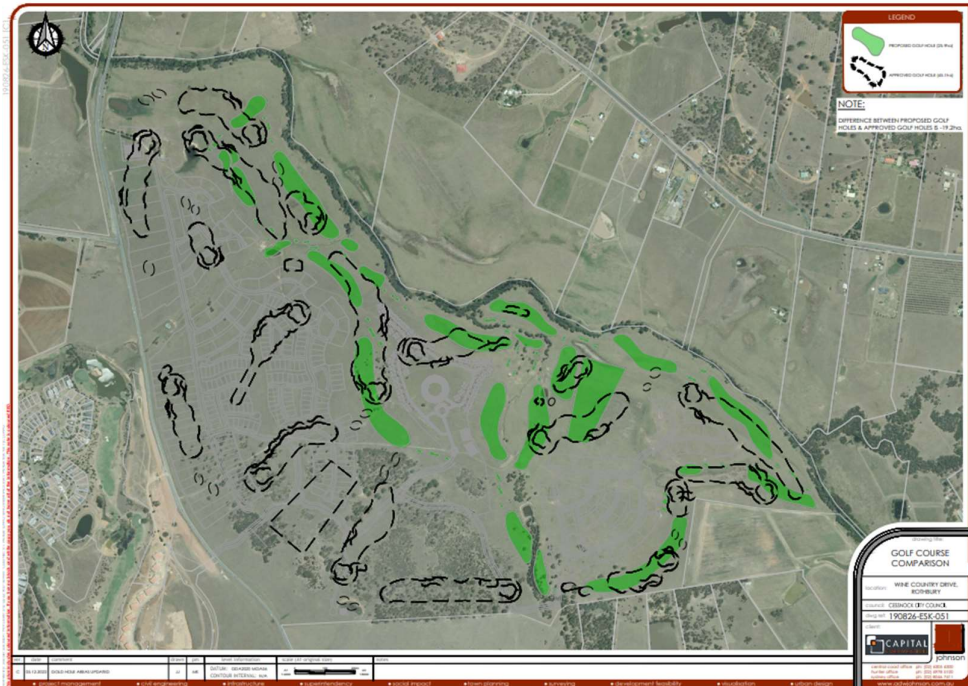


Figure 16: Golf course comparison (prepared ADW Johnson, 5 December 2022)

With respect to the golf course, the following is identified:

Existing/approved area	Proposed area	Difference
45.1ha	25.9ha	Reduced by 19.2ha

The applicant submitted photomontages and built form diagrams in support of the Section 4.55(2) Application to demonstrate the visual impact of the proposal, and these are contained in Enclosure R.

Three (3) locations for the photomontages were chosen, all of which are located along the Wine Country Road frontage of the site. Photomontages were created using the existing view as a baseline; adding the proposed/envisaged built form; and then incorporating one (1) year and three (3) year growth to the proposed built form.

The photomontages identify that whilst the built form on the site is visible from the Wine Country Drive frontage, the proposed development is not intrusive and, in some cases, for example, Photomontage 3, existing vegetation contributes to the final setting.

Overall, whilst the three (3) distinct components of the proposal have been modified and the layout of the ultimate development has been reconfigured, it is considered that the rural and scenic character of the locality will not be adversely affected as a result of this.

The redesigned golf course is more compact and it could be argued that its relocation away from the Wine Country Drive frontage is a positive outcome in that the existing rural nature of that frontage will undergo less change than if manicured fairways/greens were to be located alongside it.

In summary, the amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to settings and context.

Flooding Considerations

The site is identified as being affected by flooding, as illustrated below:

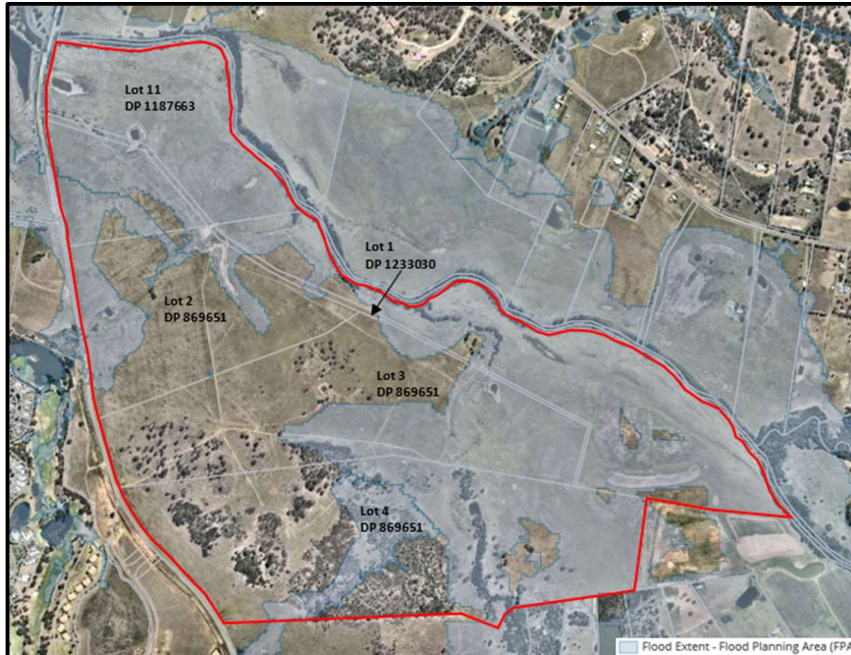


Figure 17: Flood Planning Area (FPA)

Overall, the development footprint has been designed to consider and accommodate the flood affected portions of the site. From a review of the revised layout and staging, it is considered that the revised proposal results in an improved layout with respect to impact from flooding, i.e., the development footprint is more reflective of the available flood free land. This is particularly important with respect to the residential components of the site due to the fact that residential development is habitable. In respect of this matter, all residential lots are located above the 1% AEP which is consistent with the requirements of the CLEP 2011, Chapter C9 of the CDCP 2010, and relevant NSW floodplain guidelines.

The amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to flooding.

A large portion of the site is impacted by the PMF event. As part of future applications, a flood evacuation strategy will be required to address the PMF event. It is noted that Council's flood mapping indicates that Wine Country Drive is, in the most part, located above the PMF and can be utilised as the main flood evacuation route from the site.

It is noted that the existing development consent contains a condition of consent requiring that future development applications for subsequent stages be supported by a flood assessment

report. Such condition is proposed to be retained under the conditions of consent associated with the Section 4.55(2) Application.

Bushfire Considerations

The site is identified as bush fire prone land, as illustrated below:

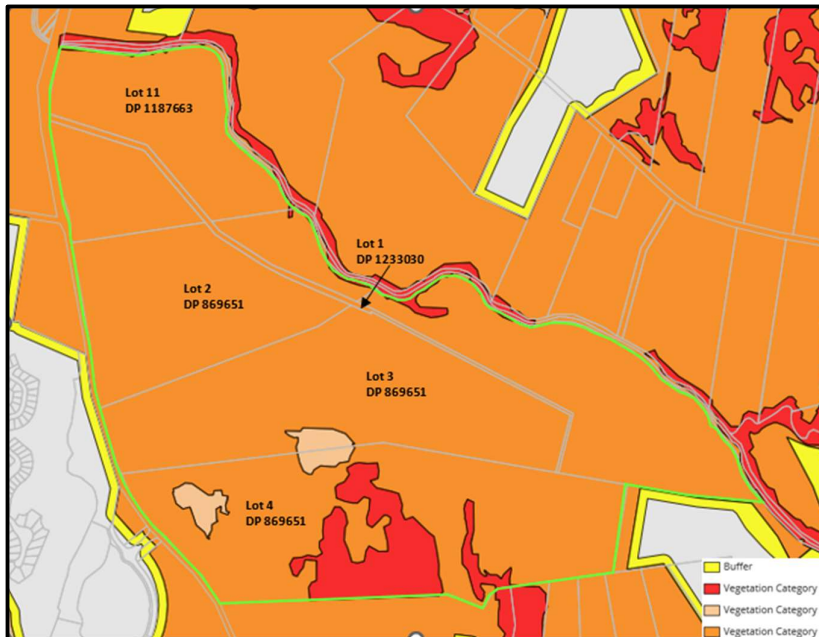


Figure 18: Bushfire prone land

The Section 4.55(2) Application was accompanied by a Bushfire Assessment Report, (prepared by MJD Environmental, final version dated January 2023), which is contained in Enclosure K.

The report considered and assessed the bushfire hazard and associated potential threats relevant to the proposal. In addition, the report outlined the minimum mitigative measures which would be required in accordance with *Planning for Bush Fire Protection 2019*.

As previously outlined, the initial DA was identified as Integrated Development as it proposed a subdivision of land that could lawfully be used for residential purposes. Accordingly, the Section 4.55(2) Application was required to be referred to the relevant concurrence authority (RFS) for consideration pursuant to Section 109(2) of the *Environmental Planning and Assessment Regulation 2000*.

The below table summarises this matter:

Approval required	Relevant legislation	Relevant authority	Response
Bush Fire Safety Authority Section 100B	<i>Rural Fires Act 1997</i>	RFS	Response provided on 10 August 2023, GTA's re-issued

Table 9: Concurrence authorities

As outlined above, the RFS have re-issued the GTA's in respect of the Section 4.55(2) Application.

All matters relating to bush fire have been satisfactorily addressed. The GTA's dated 10 August 2023 have been incorporated into the draft notice of determination in respect of the Section 4.55(2) Application.

Traffic Considerations

A revised Traffic Impact Assessment (prepared by Intersect Traffic, dated January 2022), was lodged in conjunction with the Section 4.55(2) Application, and is contained in Enclosure L.

The assessment details current traffic volumes on Wine Country Drive; estimates traffic generation resulting from the proposed development; considers traffic generated by the adjacent site (being 'The Vintage'); models trip distribution; and assesses and models intersection capacity.

It is noted that the initial development application was not categorised as 'traffic generating development' pursuant to Clause 2.122 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, as no physical works were proposed in conjunction with Stage 1. On this basis, concurrence from TfNSW was not required.

The proposed development the subject of the Section 4.55(2) Application does not result in any change to this situation, i.e., physical works are not proposed in connection with Stage 1.

Notwithstanding the above, Council sought comment/advice from TfNSW in respect of the both the initial development application and the Section 4.55(2) Application due to the site's frontage and future connection to Wine Country Drive.

In respect of the Section 4.55(2) Application, TfNSW reiterated their previous advice and confirmed that the preferred access arrangement to the site requires the provision of a four (4) way, single lane circulating roundabout on Wine Country Drive servicing both the subject site and 'The Vintage' development, prior to lodgement of a DA for Stage 2 works.

This requirement had initially been imposed on the approval as Condition No. 39, as follows:

39. Vehicular Access

Prior to lodgement of a development application for stage 2, the applicant is to consult with Roads & Maritime Services (RMS) regarding future access arrangements from Wine Country Drive. Evidence of consultation is to be provided to Council.

Access to development proposed under stage 2 of the development shall be via a four (4) way, single lane circulating roundabout on Wine Country Drive servicing both the subject development and the proposed development of the 'The Vintage' balance land (located to the west of the subject land on Wine Country Drive). The roundabout design shall be approved by Council in consultation with the RMS in conjunction with any development application for stage 2.

No residential development shall access Wine Country Drive prior to satisfactory arrangements having been completed under Stage 2 of the development proposal.

The draft notice of determination retains this condition, inclusive of an updated reference to TfNSW (as opposed to the RMS).

It is noted that the applicant has been in discussions with both TfNSW and the adjacent property (being 'The Vintage') in respect of the roundabout/connection to Wine Country Drive. Such infrastructure will be delivered in conjunction with Stage 2 of the development.

It is further noted that the existing development consent contains a condition of consent requiring that future development applications for subsequent stages be supported by a detailed Traffic and Parking Impact Assessment. Such condition is proposed to be retained under the conditions of consent associated with the Section 4.55(2) Application.

Social and Economic Considerations

Overall, it is considered that, notwithstanding the amendments to the layout and staging of the proposed development, the same components are ultimately being provided on site.

Consistent with the initial proposal, it is likely that the development will attract tourism to the area, particularly those drawn to the golf course on the site. Furthermore, it is likely that those same people will also visit other attractions/businesses in the locality, resulting in positive economic impacts.

The Section 4.55(2) Application proposes to introduce a variety of residential lot sizes (rather than only 700m² lots), and this will assist in providing housing diversity on the site.

During construction, which will occur over many years, the development will result in job creation and ongoing employment opportunities.

4.15(1)(c) *The suitability of the site for the development*

It is acknowledged that the comparative sizes/areas of the various components of the development (being golf course, residential and tourist), have been modified as a result of the Section 4.55(2) Application. In addition, the timing of delivery of various components will be different to that initially approved. Notwithstanding this, the overall development retains the same components as that initially approval, albeit in different locations and configurations.

A detailed assessment of the amendments proposed has identified that the impacts associated with the overall development are consistent with those impacts initially identified by Council.

On the basis of the above, it is considered that the site remains suitable for the proposed development.

4.15(1)(d) *Any submissions made in accordance with this Act or the regulations*

The Section 4.55(2) Application was publicly exhibited in accordance with the provisions of Council's adopted Community Participation Plan on three (3) separate occasions, as follows:

- between 21 February and 7 March 2023
- between 24 July and 7 August 2023
- between 14 August and 28 August 2023

In total, 16 submissions objecting to the proposal were received by Council, 10 of which are considered unique.

The following table outlines the issues raised in the submissions lodged with Council, along with a response to each matter:

Issue	Comment
Visual/Built Form	
Increase in size of development	<p>The comparative sizes/areas of the various components of the development (being golf course, residential and tourist), have been modified, as detailed previously in this report.</p> <p>Whilst the timing of delivery of various components will be different to that initially approved, the overall development remains the same as the original approval.</p>
Proposes a higher density	<p>The density is consistent with the initial approval and no changes have been made to approved densities on the subject site.</p>
Development moved closer to Wine Country Drive/more visible from Wine Country Drive	<p>It is acknowledged that the golf course component of the development has been separated from the residential component and relocated into the eastern and north-eastern portions of the site. As a result of this, the golf course is no longer located along the frontage of Wine Country Drive.</p> <p>Notwithstanding this, a combination of a 50m landscape buffer and 'no build zone' within the affected residential lots, has been proposed to mitigate any visual impacts.</p> <p>This issue has been discussed in detail, previously in this report.</p>
Visual amenity is compromised due to separation of the golf course from the residential component	<p>It is considered that visual amenity has not been compromised because of this redesign. Rather, the modification seeks to establish a 50m landscape buffer along Wine Country Drive which will be incorporated into community property and maintained accordingly.</p> <p>There will be no opportunity for the setback area to be built in/on due to the ownership of that portion of the site, thereby ensuring it is protected from future development.</p> <p>In addition, further controls are also proposed to restrict building works on the lots that abut the landscape buffer, as outlined previously in this report.</p>
Residential component is not integrated with the golf course, thereby reducing visual benefit	<p>Whilst the golf course is no longer proposed to meander throughout the residential component, this does not result in a negative outcome. The proposal has been designed to incorporate high-quality design elements to improve the visual benefit.</p>
Should include architectural standards/guidelines	<p>When initially approved, the development application was accompanied by a Concept and Management Plan, dated 2 October 2019.</p> <p>This document has been amended in conjunction with the Section 4.55(2) Application and is now referred to as the Concept and Management Plan, Revision 5, dated 20 March 2024 (a copy of which is contained in Enclosure H).</p> <p>In addition, the applicant has prepared the following document in association with the 4.55(2) Application:</p>

	<p>Design Guidelines, Revision C, dated 13 September 2023 (a copy of which is contained in Enclosure I).</p> <p>The Design Guidelines contain controls relating to:</p> <ul style="list-style-type: none"> • site design • building design • fencing • landscaping <p>It is acknowledged that a site specific DCP does not exist for the site, however the approval comprises a concept development application pursuant to Section 4.22(1) of the <i>Environmental Planning and Assessment Act 1979</i>. This effectively means that the Concept and Management Plan and Design Guidelines take the place of an adopted site specific DCP.</p> <p>The Design Guidelines prescribe that an applicant must obtain a design approval from the Lovedale Farm Design Review Panel (DRP) prior to submitting a development application to Cessnock City Council for consideration.</p>
Blocks are located directly on Wine Country Drive	As outlined above, residential lots are not located directly on Wine Country Drive. Rather, a 50m landscape buffer is proposed between residential lots and Wine Country Drive, and this area will be designated as community property.
Lots along Wine Country Drive result in visual pollution	<p>The residential lots in question will be screened by a vegetated buffer, and additional controls imposed in respect of building on these lots.</p> <p>No visual pollution is envisaged.</p>
Residential lots will be developed as 13 dwelling 'layers', rather than 2 dwelling 'layers' as approved in the initial plans; resulting in a change to the residential character and the development of a standard residential housing estate found in new urban release areas	<p>Whilst it is acknowledged that the proposed golf course will not meander through the residential areas under the amended plans, and this results in the residential lots being located closer together, it is not considered that this automatically means that the outcome will be inferior.</p> <p>The site is not a typical housing estate in that it contains a variety of development and uses, as envisaged under Clause 7.11 of the CLEP 2011.</p>
Urban form of development which is not in keeping with rural viticulture character; and impacts on scenic quality of the locality	<p>The development proposed under the Section 4.55(2) Application is substantially the same as the development initially approved.</p> <p>It is acknowledged that the proposal will result in a change to the rural character of the area, however this was envisaged when the site was rezoned to SP3 Tourist.</p> <p>The proposal has been designed in such a way to ensure that it complements the rural character rather than detracts from it. Substantial landscaping is proposed throughout the site, including the retention of significant areas of vegetation along the creek and in the southeastern portion of the site.</p>

Landscape buffer to Wine Country Drive is inconsistent with viticulture character	<p>The site contains existing vegetation, including a particularly significant area of vegetation in the southeastern portion of the site.</p> <p>The establishment of a landscape buffer along the frontage of Wine Country Drive will be an extension of this existing vegetated area.</p> <p>It is considered that the landscape buffer is consistent with the character of the site and general locality of the area.</p>
Landscape buffer will take 10-15 years to properly establish	<p>As outlined previously in this report, the 50m landscape buffer will be established in conjunction with the golf course (Stage 2) which will ensure it has adequate time to establish/grow before any residential component of the development is occupied.</p> <p>Furthermore, the area set aside for the buffer will be incorporated into Lot 1, which will remain as community property.</p> <p>A detailed landscape plan in respect of the buffer has been submitted.</p>
Environmental Impacts	
Should include a comprehensive landscape plan	<p>The Section 4.55(2) Application has been supported by Design Guidelines which have been prepared to guide and control future development on the site.</p> <p>The Design Guidelines contain controls relating to landscaping.</p> <p>In addition, a detailed landscape plan has been submitted in respect of the 50m vegetated buffer.</p>
Should include landscape design guidelines	<p>As outlined above, the Concept and Management Plan and Design Guidelines include requirements relating to landscaping.</p> <p>Purchasers will be required to obtain a design approval from the Lovedale Farm Design Review Panel (DRP) prior to submitting a development application to Cessnock City Council for consideration.</p>
Flooding issues around the creek	<p>The amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to flooding, rather the amended layout results in an improved outcome on the site.</p> <p>This issue has been discussed in detail, previously in this report.</p>
The lots will be affected by flooding	<p>The amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to flooding, rather the amended layout results in an improved outcome on the site.</p> <p>This issue has been discussed in detail, previously in this report.</p>

Adverse impact on wildlife	The amendments proposed in conjunction with the Section 4.55(2) Application do not present any additional concerns with respect to the impact of the development on wildlife as the ecological impact has been reduced.
Aboriginal Heritage	
No details submitted regarding Aboriginal heritage impacts. Issue not dealt with rigorously	<p>An Aboriginal Cultural Heritage Assessment (ACHA), prepared by McCardle Cultural Heritage Pty Ltd dated 14 December 2022, was submitted in support of the Section 4.55(2) Application (a copy of which is contained in Enclosure N).</p> <p>Appendix A of the ACHA contains all correspondence issued to relevant stakeholders in respect of the project, and all input provided, including all responses and any information regarding the cultural heritage of the project area/local area.</p>
Detailed sub surface considerations are required	<p>The ACHA recommended archaeological subsurface test excavations, and these will be carried out in conjunction with future applications.</p> <p>This approach is consistent with Section 4.22(1) of the <i>Environmental Planning and Assessment Act 1979</i> and Planning Circular PS 21-024 dated 2 December 2021.</p>
Lack of consultation with PCWP (Plains Clans of the Wonnarua People)	<p>The applicant's Forensic Archeologist has confirmed that the PCWP were contacted and asked if they would like to register their interest in the assessment.</p> <p>The ACHA identifies that the PCWP opted not to register their interest (refer to Appendix A), and therefore, were not provided with further information.</p>
Previous report was not considered	The previous report is discussed in Section 5.5 of the ACHA.
Not Substantially the Same Development	
Modification is substantially/profoundly different	<p>It is considered that that the development (as modified), will be substantially the same development as the development for which consent was originally granted.</p> <p>This issue has been discussed in detail, previously in this report.</p>
The number of lots/housing density has been increased	<p>The number of lots/housing density remains as per the original approval.</p> <p>Whilst it is acknowledged that the layout of development within the site has been modified under the Section 4.55(2) Application, it is confirmed that there has been no increase in either the number of lots or the resultant number of dwellings that will be developed on the site in accordance with the subject concept approval.</p>
Increase in residential density, i.e., not supportive of 600 lots	Refer to above comments.
Application of case law to 'substantially the same development' issue, proposal fails	Council has carefully considered relevant case law in respect of the changes proposed under the Section 4.55(2) Application and has also sought legal advice in respect of this issue. In addition to this, the applicant has submitted

having regard to <i>Hunter Development Brokerage P/L trading as HDB Town Planning and Design v Singleton</i> (2022) NSWLEC64.	<p>independent legal advice in support of the Section 4.55(2) Application.</p> <p>It is considered that the proposed development is substantially the same as that development originally approved, taking into account both a qualitative and quantitative assessment.</p> <p>This issue has been discussed in detail, previously in this report.</p>
A landscape buffer should not be used to justify the proposed development, consistent with case law.	<p>In this case, the landscape buffer is not being used to screen development which is considered unacceptable or unsuitable for the proposed site.</p> <p>As outlined previously in this report, it could be argued that the relocation of the golf course away from the Wine Country Drive frontage is a positive outcome in that the existing rural nature of that frontage will undergo less change than if manicured fairways/greens were to be located alongside it.</p> <p>In any event, both proposals (being either a golf course or vegetated buffer), would result in a change to the visual appearance of the existing Wine Country Drive frontage.</p>
Traffic	
300 additional residential lots will result in an increase in traffic and congestion	<p>There is no increase in densities on the site.</p> <p>Total traffic generation will remain the same as initially assessed/approved.</p>
A roundabout servicing 'The Vintage' and the subject site should be approved rather than a seagull intersections to ensure traffic safety	<p>A seagull intersection is not proposed.</p> <p>In their response provided on 3 August 2023, TfNSW confirmed that their previous advice in respect of the initial DA, remains relevant.</p> <p>In this regard, the preferred access arrangement to the site requires the provision of a four (4) way, single lane circulating roundabout on Wine Country Drive servicing both the subject site and 'The Vintage' development, prior to lodgement of a DA for Stage 2 works.</p> <p>The draft notice of determination retains this condition.</p>
Other	
Amended/updated Social Impact Assessment should be submitted	<p>Overall, the development remains as initially approved, i.e., an integrated tourist development. On this basis, an amended SIA was not required to be submitted, as it was considered that the social impact of the proposal would not change as a result of the modifications to the layout and staging/delivery of the development.</p> <p>It is noted that future development applications will need to be supported by a Social Impact Comment and/or SIA depending on the specific development proposed.</p> <p>In addition, a current condition of consent requires submission of a formal crime risk assessment (Crime Prevention Through Environmental Design) for each stage with a particular emphasis on publicly accessible areas, including at night.</p>

	The draft notice of determination retains this condition.
Amended/updated Visual Impact Assessment should be submitted	<p>The Section 4.55(2) Application has been supported by detailed documents in respect of visual impact, including:</p> <ul style="list-style-type: none"> • Photomontages and built form diagrams • Landscape plan relating to green corridor <p>It is considered that the issue of visual impact has been adequately addressed by the applicant.</p> <p>A detailed assessment in respect of context/settings is contained in this report.</p>
Amended Noise Assessment should be submitted	<p>An Acoustic Report was not submitted in conjunction with the initial application as specific details in respect of noise generation will only be available when future applications are confirmed, and noise generation sources, identified.</p> <p>Future applications will be required to lodge Acoustic Reports, depending on the use proposed.</p> <p>In addition, a current condition of consent requires that future development applications for subsequent stages provide a report from a suitably qualified acoustical consultant assessing the impacts of existing noise levels on the buildings proposed in the respective stage. The report must include acoustic measures to ensure internal noise levels within the proposed buildings are in accordance with Australian Standard 'AS 2107 – 2000 Acoustics – Recommended design sound levels and reverberation times for building interiors'.</p> <p>The draft notice of determination retains this condition.</p>
Hotel on the site will increase competition in the locality	This is not a valid planning consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Defer consideration of this application until a place strategy is completed	<p>The application does not propose a re-zoning of the site.</p> <p>There is no requirement for a place strategy to be prepared.</p>
Development does not align with strategic objectives of the area, and should be restricted	<p>The site is being developed for the purpose intended when the site was rezoned to SP3 Tourist.</p> <p>The proposed development is consistent with the provisions contained within Clause 7.11 of the CLEP 2011.</p>
New homes should not be built in this location and should be kept near the towns	<p>The site is being developed for the purpose intended when the site was rezoned to SP3 Tourist.</p> <p>Furthermore, the Section 4.55(2) Application does not propose any increase on the site with respect to residential density.</p>
'Airbnb' will be impacted because of hotel	This is not a valid planning consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .
Too many hotel rooms are proposed	There is no increase in the number of hotel rooms proposed.

Proposed golf course is not of a championship standard	<p>The applicant submitted correspondence from the golf course designer advising as follows:</p> <ul style="list-style-type: none"> the golf course will measure 5,600m and play to a par of 70. the golf course does not predominantly feature 'chip and putt' holes. the golf course will be longer than Royal Melbourne West (ranked #1 in Australia), Cape Wickham Links (ranked #3 in Australia), Barnbougles Dunes (ranked #4 in Australia) and Royal Melbourne East (ranked #8 in Australia). The total course length will be similar to Newcastle Golf Club and between 50-100m shorter than 'The Vintage' golf course. The golf course incorporates a number of challenging hazards such as bunkers, water hazards and out-of-bounds areas. Specifically, the golf course as designed incorporates 50 bunkers and holes that run alongside, or access, 3 creeks and 2 ponds; and water comes into play on 10 of the 18 holes. The site incorporates a full length, professional standard driving range on site and a full short game warm up area. <p>Whilst acknowledging the comments provided by the golf course designer, it is also noted that the design of the golf course, and whether it is of championship standard, is not a relevant matter for consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
General concern regarding the design of the golf course	<p>Refer to above comments.</p> <p>The golf course designer has advised that the proposed design responds to the environment; utilises natural landforms and natural features; utilises existing features such as the silos on holes 2 and 4 and the old dairy building on hole 18; showcases the natural attributes of the site; and is more walkable and disturbs less vegetation and mature trees than the previous design.</p> <p>Whilst acknowledging the comments provided by the golf course designer, it is also noted that the design of the golf course, and whether it is of championship standard, is not a relevant matter for consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

Table 10: Summary of issues raised during public exhibition period, and response to each

4.15(1)(e) The public interest

The public interest is served through the detailed assessment of this Development Application under the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and Council policies.

The proposed development will provide increased housing within the locality; along with employment opportunities during its construction phases, and ultimately its operational phase once the tourism aspects of the proposal are developed.

The proposal satisfies the provisions contained within the Cessnock LEP 2011 and is consistent with Council's adopted planning controls. No adverse impacts are envisaged, and it is considered that the proposal will contribute positively to the vineyards district.

On balance, the Section 4.55(2) Application is considered to be in the public interest.

Section 4.55(3)

S4.55(3) of the *Environmental Planning and Assessment Act 1979*, prescribes (in part), that *'the consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified'*.

In summary, the provision requires the consent authority, when assessing and considering a Section 4.55 Application, to consider the reasons initially given by the consent authority for the granting of consent.

The initial development application was approved by the Hunter and Central Coast Regional Planning Panel on 4 December 2019.

The following table outlines the reasons given by the Hunter and Central Coast Regional Planning Panel when development consent was initially issued for the proposal, along with consideration of each of those reasons:

Reason	Consideration
The Panel agreed with the assessment of environmental impacts as contained in the report by Council	The proposal remains substantially the same as that initially approved. Environmental impacts have been assessed and found to be acceptable.
The site is suited to the use and the proposed siting was rational and logical for the site	The Section 4.55(2) Application does not propose any changes to the overall development, albeit the delivery/staging of the development will be modified., along with the overall layout of the development. Ultimately, the siting of the proposal remains rational and logical.
The matters identified as requiring additional details and consideration from previous Panel deferrals have been appropriately and adequately addressed, including an appropriate framework for future assessment of DA's	The information lodged by the applicant in support of the initial application to provide a framework for the assessment of future DA's has been updated as part of the Section 4.55 (2) Application. Overall, whilst an adopted DCP does not exist for the site, the Concept and Management Plan, Design Guidelines and Community Management Statement provide an adequate framework to guide the assessment of future DA's lodged in respect of the site.
The proposal would have positive social and economic impacts and would be an asset for the area and region	The proposal remains substantially the same as that initially approved. Accordingly, the proposed development's positive social and economic impacts remain unchanged.
The proposal would be in the public interest, with the benefits outweighing the impacts from the proposal.	The proposal remains substantially the same as that initially approved. Accordingly, the proposed development remains in the public interest.
The use is permissible with consent and consistent with the objectives of the zone.	The amended proposal remains permitted with consent and is consistent with the objectives of the SP3 Tourist zone.
Bushfire risk has been addressed and GTA's received from RFS	The RFS have re-issued GTA's in respect of the Section 4.55(2) Application. Accordingly, bush fire risk has been appropriately addressed.

There are limited and acceptable impacts upon neighbours	The proposal remains substantially the same as that initially approved. Accordingly, the impacts on neighbours are unchanged and remain acceptable.
Impacts have been reasonably mitigated by the design and conditions of consent, as amended	Noted. Relevant conditions of consent have been updated, and new conditions imposed where relevant. It is considered that the conditions of consent will mitigate impacts associated with the proposed development.

Table 11: Assessment of reasons initially given by the RPP

6. SECTION 7.11/7.12 CONTRIBUTIONS

No contributions were levied on the initial development consent as contributions are not relevant to Stage 1 works as no individual residential allotments and/or tourist facilities/buildings are proposed in conjunction with Stage 1.

Contributions will be levied for future stages in accordance with Council's adopted contributions plan.

7. INTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following Council officers for comment:

Officer	Comment
Ecologist	Comments provided, refer to assessment contained in Section 5 of this report.
Development Engineer	Comments provided, refer to assessment contained in Section 5 of this report.
Heritage	Comments provided, refer to assessment contained in Section 5 of this report.

Table 12: Summary of internal referrals

8. EXTERNAL REFERRALS

The Section 4.55(2) Application was referred to the following external agencies for comment/concurrence:

Agency	Comment or concurrence?	Outcome
Rural Fire Service	Concurrence	Response provided on 10 August 2023, GTA's re-issued.
TfNSW (RMS)	Comment	Response provided on 3 August 2023, confirming that the advice provided by TfNSW in respect of the initial DA, remains relevant. The preferred access arrangement to the site requires the provision of a four (4) way, single lane circulating roundabout on Wine Country Drive servicing both the subject site and 'The Vintage' development.

		<p>Condition 39 of the existing approval contains a condition of consent in respect of the above.</p> <p>The draft notice of determination retains this condition.</p>
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Table 13: Summary of external referrals

9. CONCLUSION

The Section 4.55(2) Application has been assessed in accordance with s4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979*.

As outlined within this report, it is considered that the development proposed in conjunction with the Section 4.55(2) Application remains consistent with the provisions of relevant environmental planning instruments and associated planning controls. The proposal is considered worthy of support, noting the following:

- The proposal remains a permitted land use in the SP3 Tourist zone and is consistent with the zone objectives in that the proposal comprises an integrated tourist development which is specifically envisaged by the zone objectives. The proposed development is consistent with the provisions contained within Clause 7.11 of the CLEP 2011.
- Future development applications for Stages 2-5 (inclusive) must be consistent with the concept approval, as required by Section 4.24(2) of the *Environmental Planning and Assessment Act 1979*, thereby ensuring a level of certainty in respect of the future development of the site.
- Impacts associated with Stages 2-5 (inclusive) will be comprehensively assessed at time of lodgement of those applications. Notwithstanding, Council has assessed the overall impacts associated with the amendments proposed in conjunction with the Section 4.55(2) Application and concluded that the modified site configuration addresses matters of relevance relating to ecology, heritage, context and setting, flooding, bushfire, traffic, and social and economic considerations.
- It is considered that the proposal will contribute positively to the vineyards district and that the subject site is suitable for the proposed development, as modified. The site has been zoned specifically to permit an integrated tourist development, and the resultant development will be consistent with the strategic vision for the site.
- Issues raised during the public exhibition periods have been addressed in this report, and it is considered that the issues raised do not warrant refusal of the application.

Having regard to s4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979*, the amended proposal is, on balance, considered to be substantially the same development as the development for which consent was originally granted.

On the basis of the above, it is recommended that the application be approved.