

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-365 : DA 2025-26
PROPOSAL	Council Works Public Administration Building and Depot - two Lot subdivision and construction of a new Works Depot building containing office administration and depot uses, car park and vehicle parking associated with the operational functions of Muswellbrook Shire Council.
ADDRESS	Lot 1 DP 819014 - 252 Coal Road MUSWELLBROOK 2333
APPLICANT	Hisham Noori - CCG Architects
OWNER	Muswellbrook Shire Council
DA LODGEMENT DATE	22/04/2025
APPLICATION TYPE	Integrated Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 3 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: "Council related development over \$5 million."
CIV	\$14,666,000 (excluding GST)
CLAUSE 4.6 REQUESTS	NA
KEY SEPP/LEP	• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Muswellbrook Local Environmental Plan 2009</i> <i>Muswellbrook Development Control plan 2009</i>
TOTAL & UNIQUE SUBMISSIONS KEY	Nil submissions - Notified 9 May to 6 June 2025

ISSUES SUBMISSIONS	IN	
DOCUMENTS SUBMITTED CONSIDERATION	FOR	• Acoustic Report • Air Quality Assessment • Architectural Plans • Biodiversity development Assessment Report • Bushfire Assessment Report • Contamination and/or Remediation Action Plan • Geotechnical Report • Landscape Plan • Proposed Subdivision Plan • Site Plans • Statement of Environmental Effects • Survey Plan • Traffic report • Waste Management Plan • Landfill Gas Risk Assessment EnRisks • Town Planning Advice • Legal Advice (permissibility) • Landfill Gas Assessment (methane) Presna • Avoid and Minimise summary – supplementary ecology correspondence • Biodiversity Report Sewer Line Construction (subject to REF approval pathway)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)		NA
RECOMMENDATION		Approval subject to recommended conditions
DRAFT CONDITIONS TO APPLICANT		Yes
SCHEDULED MEETING DATE		1 September 2026
PLAN VERSION		11 March 2025 Version No D
PREPARED BY		Hamish McTaggart
DATE OF REPORT		24 August 2026

EXECUTIVE SUMMARY

- **Proposed development summary** - The proposed development involves a new Public Administration Building and Works Depot to be operated by Muswellbrook Shire Council. The facility will have capacity to accommodate 82 staff and is proposed on Council land adjacent to the Muswellbrook Shire Waste Facility (Lot 1 DP 819014, 252 Coal Road Muswellbrook).
- **Muswellbrook Waste Facility & EPL** - The proposed development is located on the same land title and directly adjoining the Muswellbrook Waste Facility (landfill). The waste facility is owned and operated by Muswellbrook Shire Council, who will also be the owner and operator of the proposed depot. The Environmental Protection Authority is the regulatory authority concerning the operation of the waste facility. The facility has an Environmental Protection License under the Protection of the Environment Operations Act 1997 – **EPL 5980**.

This application was referred to the NSW Environmental Protection Authority. Referral comments provided by the NSW Environmental Protection Authority did not object to the proposed development and provided recommended conditions should the development be approved, including a requirement to apply for a variation of the existing waste facility Environmental Protection License. The referral comments are included as an attachment to this report.

- **Waste Facility Impacts Related to Proposed Development** – technical studies have been undertaken to consider potential impacts of the existing waste facility on proposed development noting its proximity to the project. Reports undertaken included Air Quality Impact Assessment, Contamination Assessment, Landfill Gas Assessment and Noise Impact Assessment. These reports concluded that the existing landfill would not constrain the ability for the proposed development to progress subject to the implementation of mitigation measures where recommended.
- **Permissibility** - The proposed development is permissible with consent as 'public administration' and 'depot' under provisions of the SEPP (Transport and Infrastructure (2021)). A detailed exploration of the permissibility pathway is included under the related SEPP heading and those views are informed by a related Legal Opinion which explores the intertwined relationship of the sites public administration land use (permissible with consent) and depot land use (permissible which incorporates elements permissible without consent through other SEPP pathways). Informed by the considered evaluation of the matter the following summary view has been arrived at concerning the developments permissibility and relevance of the Part 4 Development Application pathway to the proposal:
 - The proposed development requires development consent by virtue of its association with the public administration land use.
 - Development for the purposes of a public administration building is permissible with consent in relation to the SP2 land use zone under Clause 2.88(1) of the SEPP (transport and infrastructure) 2021
 - While depot elements of the proposed development may be permissible without consent, and given there is no practical way to discern any physical delineation of the parts of the site fully associated with the depot land use elements as a pose to the public administration land use, it is not possible to progress those elements of the site operation outside of this development application pathway as separate proposals permissible without consent under the EP&A Act 1979. Accordingly, development consent is sought for the facility as a whole in this application.

- **Integrated development** - The proposed development is 'integrated development under the *Environmental planning and Assessment Act 1979* and required General Terms of Approval from NSW Subsidence Advisory and NSW Rural Fire Service. NSW Subsidence Advisory and NSW Rural Fire Service have issued General Terms of approval in relation to the project.

Referral advice has also been provided by AUSGRID – concurrence authority and NSW Environmental Protection Authority concerning the Muswellbrook Waste Facility Environmental Protection License which do not raise objection to the proposed development.

- **Internal Council referrals** – the proposed development has been referred internally to Council Water and Wastewater, Roads and Drainage and Waste Facility Teams. Advice received through these referrals has informed the development assessment and recommended determination.

For the Panel's reference the referral advice from Council Waste Facility Team has been included as a report attachment. This advice does not provide an objection to the proposal, but raises points of interest from an operating perspective around how the new facility may cause for changes in the operating parameters of the existing waste facility. These matters are viewed to be suitably addressed for the progression of this application and as representations on issues around potential alterations to the existing waste facility operations are viewed to be matters for consideration of Council as the operator of the facility in managing changes to its EPL and inter-relationship with this proposed development.

- **Ecology** – A BDAR has been prepared in relation to the proposed development by Hunter Ecology. The BDAR identifies that the proposal may proceed subject to the retirement of 8 ecosystem credits.
- **Sewerage utility extension** – Sewerage servicing of the proposed development requires the extension of Council reticulated infrastructure to the site which will require an approximate 554m underground pipeline.

The proponent has advised an intention to obtain separate approval for this extension through EP&A Act Part 5 - works permitted without consent.

To support the Panel's appreciation of the work and that it would be possible to obtain approval through a REF the applicant has provided – civil design plans related to the intended works - Biodiversity Assessment Report concerning the extension (confirming proposal may progress from ecological perspective) – AHIM's search and details.

Council Officers have recommended a condition of consent requiring this part 5 project to have obtained approval prior to the issue of a Construction Certificate to commence work (condition 9).

- **Contamination and landfill gas emissions** – to inform potential risks associated with land contamination and gas emissions associated with the adjoining landfill facility the following technical reports have been undertaken:
 - *Preliminary and Detailed Contamination Assessment* – Qualtest
 - Landfill Gas Risk Assessment – EnRisks
 - Landfill Risk Assessment (methane ground gas bore monitoring) – PRESNA

As a brief summary that the site is suitable for the commercial/industrial type development proposed and that the potential for landfill gas to migrate to the proposed building footprint is considered to be very low (however the risk is likely to increase over time as the landfill ages) to ensure the facility has a required level of protection mitigation systems are recommended in the PRESNA and EnRisks reports to be adopted in the building design (these requirements are reflected in pre-construction detailed design condition 11 and 12).

➤ **Panel Briefing** – The Hunter and Central Coast Planning Panel held a preliminary briefing related to the application on 26 August 2025. Briefing Minuted Panel comments reference:

- Panel's interest in a developed understanding of a further developed understanding of potential landfill gas impacts related to the development – the proponent has provided an additional related response through the Methane gas study and Presna landfill gas report.
- The Panel recognised the legal advice accompanying the application and concerning permissibility and relevance of the part 4 assessment pathway as supporting the application assessment pathway.
- Panel requested a clear understanding of 'avoid and minimise' strategy related to managing ecology impacts related to the proposed development – related to this point additional correspondence has been provided by Hunter Ecology outlining the avoid and minimise impact measures incorporated into the proposal.
- The Part 5 approval pathway related to the reticulated sewerage extension was noted and an understanding of impacts associated with works was requested. While it is understood that the extent to which a consent authority can take into consideration environmental impacts related to works subject to a separate approval has been limited by Clause 65A of the EP&A Regulation the applicant has provided a biodiversity report and AHIMS search related potential impacts associated with the Part 5 sewerage extension project.
- Traffic and access considerations to be considered in context with timing of bypass – an updated traffic report has been provided which has regard to the proposed development traffic requirements in context with the Muswellbrook Bypass project and its proposed Coal Road interchange. At this stage there is no firm timeline for the Bypass delivery, but works are hoped to commence late 2026. The report notes that auxiliary lanes as potentially being required to accommodate changed traffic conditions in a post bypass environment, that there is sufficient road reserve width (39m) to accommodate potential related upgrades and that it would be possible for Council (as the Roads Authority) and Transport for NSW to coordinate the scope of upgrades as the Bypass project progresses and traffic environment evolves.
- An understanding of the relationship with site boundaries including height of earthworks and retaining – a cut and fill height map along with Sections through the proposal have been provided to give an overview of cut and fill works. The finished ground level would have a gentle slope from Coal Road at the site's road frontage, with no required retaining, at locations within the site retaining structures are included to provide level parking and operating areas. The architectural plans do not propose a retaining wall at the sites waste facility boundary with a batter to civil engineer's detail shown on plans. The height of the batter varies across the site and would be most extensive at the northwestern corner of the site having a height difference approximately 4m above natural ground level at a 1 in 2 grade. At this, and all points along the northern edge of the proposed administration and depot building footprint the boundary is internal to the subject property and does not adjoin any building or physical structure. Thereby, and while the architectural plans show a defined

area for the batter there is sufficient space internal to the site for the batter profile to be adjusted, if necessary, at a detailed design stage.

1. THE SITE AND LOCALITY

1.1 The Site

The site is identified as Lot 1 DP 819014, 252 Coal Road MUSWELLBROOK. Key site attributes related to the assessment of the development include:

- The site has a total area of approximately 19.343ha
- The site is partially occupied by the Muswellbrook Waste and Recycle Facility for Muswellbrook
- The site is zoned SP2 Infrastructure (Waste Management) under the Muswellbrook Local Environmental Plan 2009.
- The site has frontage to Coal Road.
- The site is identified as being:
 - Bush Fire Prone land and
 - Within the Muswellbrook Mine Subsidence District. Old underground coal mine workings exist beneath the site.
- The site contains a high voltage transmission line, running north to south via an easement benefiting Ausgrid.



Figure 1 – Aerial photo (intramaps)

1.2 The Locality

Key attributes of the sites locality include:

- Land adjoining the site is zoned a mixture of RU1 Primary Production, RE1 Public Recreation, C3 Environmental Management and SP2 Special Purpose Infrastructure.
- The site is situated outside the Muswellbrook urban area and is situated approximately 500m from residential zoned land.
- The proposed Muswellbrook Bypass road alignment is situated east of the site and Muswellbrook Waste Facility. The proposed bypass route includes an option for a bypass on/off ramp to connect to Coal Road.
- There are limited vantage points where the site may be clearly observed from adjoining land. The site is obscured by vegetation to the north, east and west. A combination of vegetation and an earthen mound obscure views of the site from Coal Road to the south.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development consists of:

- Construction of the Works Depot Building will include the following:
 - 121 space car park;
 - Wash bays;
 - Material storage bays;
 - Split level depot building with an upper and lower ground floor that includes store rooms, workshop, small offices, open plan office space, meeting room, meals room, and reception.
 - Sewerage services being extended to service the site and install a Trade Waste Management Facility to treat vehicle washdown runoff (the Waste Management Facility is currently not connected to the reticulated sewerage system).

The building will accommodate 82 staff, who will be relocated from a number of other existing work locations.

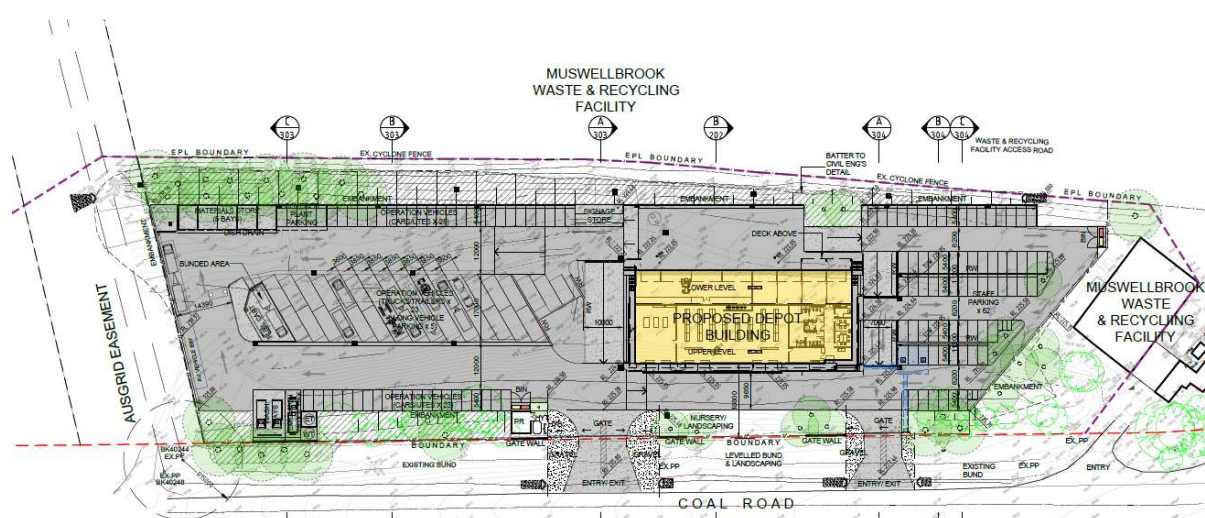


Figure 2 – extract of Site plan

The Statement of Environmental Effects and Architectural Plans provide further details in relation to site detail/context maps/site plan, elevations & street view. These can be found on the Panel Portal and will be included in the final assessment report.

- The acoustic Assessment puts forward core hours of operation for the facility between 6:am – 4:30pm all days.
- Two Lot Subdivision to create a separate lot for the existing Waste Management Facility and a lot for the proposed new Works Depot Building.

This will create:

- proposed Lot 11 having an approximate area of 17.1ha which will contain the existing Waste Management Facility.
- Proposed Lot 12 having an approximate area on 2.4ha which will contain the new Council Depot building and associated infrastructure.
- The carrying out of the development and the subdivision of the land will cause for the amendment of the existing Environmental Protection License with the NSW Environmental Protection Authority related to the site and waste facility.

SPECIALIST REPORTS & INVESTIGATIONS

The application included the submission of several specialist reports and investigations. The following represents a brief commentary in respect of each specialist report:

- **Acoustic Report**
Report concludes as follows: *“Provided our recommendations are implemented, noise emissions from the subject development will comply with the acoustic requirements of Muswellbrook Shire Council, NSW EPA Noise Policy for Industry and relevant Australian standards and guidelines.”*
- **Air Quality Assessment**
Report concludes as follows: *“Air dispersion modelling using the CALPUFF model was applied to predict the potential for odour impacts at the Project. The odour impact assessment indicates that odour from the WRMF would comply with the applicable odour criteria at the building façade during the CID standard operational times and would be above this during all hours.”*
- **Biodiversity Development Assessment Report**
Report concludes as follows: *“The proposed development would result in the removal of 0.51ha of the BC Act listed EEC Central Hunter Grey Box-Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions, resulting in a loss of 0.0034% of the remaining EEC. While the clearance of such a portion of the EEC, might have regional-scale implications, taking into consideration the site’s poor condition, limited connectivity, and overall low potential for regeneration suggests that the overall impact would be relatively minor.*

An assessment of direct, indirect and prescribed impacts was undertaken, and several mitigation measures have been proposed to address any unavoidable impacts. It is concluded that the Project will generate the following offset obligation: Ecosystem Credits: 8 Credits -

Central Hunter Grey Box-Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions.”

Supplementary Biodiversity Response Provided dated 3 November 2025 highlighting avoid and minimise undertakings to be employed during the carrying out of the development.

Biodiversity Report prepared concerning the Part 5 pathway construction of sewerage infrastructure – report advises that it would be possible to carry out this supporting infrastructure construction from an ecology perspective (the works remain subject to a separate EP&A Act Part 5 project proposal – for work permitted without consent)

- **Bushfire Assessment Report**
Report concludes as follows: *“The characteristics of the site as discussed in this report, together with the recommendations provided in this assessment, confirms that the site is suitable in terms of its intended use.”*
- **Contamination and/or Remediation Action Plan**
Report concludes as follows: *“Provided the recommendations made within this report are implemented, it is considered that the site could be rendered suitable, from a contamination point of view, for the proposed commercial/industrial development.”*
- **Geotechnical Report**
“The report includes recommendations on pavement design and construction for internal access roads and carparks, preliminary site classification in accordance with AS2870-2011, “Residential Slabs and Footings”, foundations design parameters, and earthworks including suitability of existing materials for re-use.”
- **Traffic Report**
Report concludes as follows: *“Coal Road is a low-volume, low-hazard road operating in a rural environment. The low traffic volumes generated at the new development site are not foreseeable issues. Furthermore, the surrounding road network is expected to have enough capacity to accommodate any additional traffic generated by the site. These conclusions apply to both construction and post-development traffic generation. The development will provide adequate parking for all staff members and the fleet of vehicles to be stored on-site.”*
- **Landfill Gas Risk Assessment**
Report concludes as follows: *“Based on information available in relation to the levels of methane reported, the potential consequences associated with the accumulation of methane in the proposed building and the likelihood or probability that such accumulation may occur, a Level 1 risk assessment concluded that the level of risk should be classified as moderate. Where a moderate risk is identified additional data and assessment may be undertaken to better define the risk, or risk mitigation measures implemented and incorporated into the building design to minimise or prevent methane from entering the building. As it is considered complex to collect appropriate data to undertake a more refined assessment of risk (due to the operational nature of the landfill), risk mitigation measures are recommended for the building.”*
- **Landfill Methane Gas Assessment**
Supplementary study and report prepared by PRESNA in response to request for additional information. Report concluded that the proposed building would meet required level of

protection from Methane Gas emissions provided the recommendations of the EnRisk report complied with in the carrying out of the development.

- **Site Servicing Infrastructure Strategy**
Sets out utility infrastructure connection upgrade requirements to support carrying out of development.
- **Legal Advice**
Legal advice has been received in respect of: *“Consideration of what is the correct characterisation of the proposed Coal Road Project for the purpose of determining whether all or any part of the proposed project may be assessed under Part 5 of the Environmental Planning and Assessment Act 1979 (“Act”) or requires development consent under Part 4 of the Act.”*

Table 1: Development Data

Control	Proposal
Site area	19.4 lot area – 2.4ha depot and administration building site area
FSR	NA – no control
Clause 4.6 Requests	NA
Max Height	10.4m above existing ground level
Car Parking spaces	121 passenger vehicles 5 motor cycle parking baya 28 large truck parking spaces 11 ride on mower, tractor and comparable machinery parking spaces
Setbacks	18.8m

2.2 Background

The application was lodged with Council on 22 April 2025. A chronology of the development application since lodged is outlined below:

Table 2: Chronology of the DA

Date	Event
22 April 2025	Application lodged.
9 May 2025	Public exhibition commences. Advertisement and notification letters sent. Development Application notified between 9 may to 6 June 2025.
13 May 2025	Internal referrals sent
	Referrals issued through the Planning Portal to:

	- Ausgrid - EPA - Subsidence Advisory NSW - NSW RFS
28 May 2025	Ausgrid response received
2 June 2025	EPA response received
6 June 2025	Conclusion of public notification of Development Application. No submissions received.
11 June 2025	Subsidence Advisory NSW response received
13 July 2025	NSW RFS response received
26 August 2025	Hunter and Central Coast preliminary briefing
17 September 2025	Request for Additional Information
28 October 2025	Request for Additional Information
8 July 2026	Additional Information Response

2.3 Site History

A search of Council's records and historical files identified:

- That prior to the establishment of the current extent of the Muswellbrook Shire Waste Facility the site was part of Muswellbrook Coal's Open Cut Operations.
- A search of Council's record management system identified a number of previous development applications related to its use as a waste facility.
- The site is understood to be subject to an Environmental Protection License through the NSW Environmental Protection Authority (EPL 5980) related to its operation as a waste facility.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

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

- Integrated Development (s4.46) – NSW Subsidence Advisory, NSW Rural Fire Service
- Requiring concurrence/referral (s4.13) – AUSGRID

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

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

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

The following Environmental Planning Instruments are relevant to this application

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainability) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Muswellbrook Local Environmental Plan 2009;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	• Chapter 4 – requires consideration of the development with koala habitat protection. A Biodiversity Development Assessment Report has been prepared in relation to the proposal which does not identify koalas as a species impacted by the development.	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	• Chapter 3 – prescribes environmental standards for non-residential development with an estimated development cost of \$5million , which includes this development. An Environmental Sustainable	Y

	Development Report has been submitted in relation to the proposal which concludes the design is consistent with the relevant Environmental Sustainable Development principles of the SEPP.	
State Environmental Planning Policy (Planning Systems) 2021	• Chapter 2 Clause 2.19(1) – declares the proposal regionally significant development pursuant to Clause 3 of Schedule 6 as it comprises Council related development with a total estimated cost of more than \$5-million.	Y
SEPP (Resilience & Hazards)	Chapter 3 • Hazardous and Offensive Development – the proposed depot does not comprise a type of potentially hazardous or offensive development to which related SEPP provisions would apply. Furthermore, the SEPP does not prescribe requirements related to the consideration of an existing potentially offensive or hazardous facility (in this case the waste facility), related to a new proposed development. Chapter 4: Remediation of Land • Clause 4.6 – Contamination Report has been prepared in relation to the development. A subsequent Landfill Gas Assessment has been prepared in line with recommendations of the contamination report. The Contamination and associated landfill gas assessment recommend that the proposed development may progress subject to compliance with related requirements concerning: - Construction management plan, - incorporation of protective construction civil design requirements to protect from underground gas impacts on the structure (per the gas report prepared in accordance with Contamination Report recommendation)	Y

State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Clause 2.88 – permits development for the purposes of Public Administration buildings with consent where carried out by a public authority within a prescribed zoned (which includes the SP2 Infrastructure zone. The proposed development is permissible with consent under this provision (the SEPP provisions take precedence over conflicting provisions within the Muswellbrook LEP 2009 land use table). • Clause 2.48 – requires referral of certain types of development adjacent electricity transmission lines to energy supply authority. The application was referred to AUSGRID as energy supply authority who raised no objection and provided recommendations which have been incorporated into the recommended conditions of consent (condition 4).	Y
Muswellbrook LEP 2009	Clause 4.3, 4.3 & 7.6	Y

Detailed Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4: Koala Habitat Protection 2021

This Chapter applies to non-rural zoned land including the site as land zoned SP2 Special Purpose Infrastructure under the Muswellbrook LEP 2009.

Where the Chapter applies Clause 4.9 requires a consent authority to have regard to the following:

- (2) *Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*
- (3) *If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.*

A BDAR has been carried out in relation not he proposed development and which informs Council in considering the site as a potential koala habitat. While the report noted the existence of 'koala use trees species' within the site the report did not identify any instances of koalas and did not identify any evidence that suggestive of koala populations within the site which may cause for retirement of credits or further investigation of the site as a core koala habitat against the SEPP. Accordingly, the proposed development may proceed as a development that does not require further assessment against SEPP provisions related to the management of koala habitats.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Chapter 3 Standards for non-residential development

Chapter 3.1 of this SEPP prescribes environmental standards for non-residential development with an estimated development cost of \$5million or more.

The provisions of this chapter are thereby applicable to this proposal which exceeds this estimated construction cost threshold.

In instances where the SEPP is applicable it prescribes the consent authority to consider whether the development is designed to enable achievement of the following principles:

- (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,*
- (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,*
- € a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,*
- (d) the generation and storage of renewable energy,*
- € the metering and monitoring of energy consumption,*
- (f) the minimisation of the consumption of potable water.*

An Environmental Sustainability Design Report was prepared by Sustain Erbas in relation to the proposal.

This report details the consideration of each of these prescribed matters of building design in accordance with SEPP requirements and concludes that the proposal is compatible with those provisions. After having regard to the ESD Report Council Officers are satisfied that the proposal would comply with the SEPP where carried out in accordance with report recommendations and conclusions.

Complies

State Environmental Planning Policy (Transport and Infrastructure) 2021

Permissibility Clause 2.88, 2.112, 2.19, 2.73, 2.126 and 2.159

Clause 2.88 of the SEPP is relevant to establishing the permissibility of the proposed development.

Clause 2.88 permits the carrying out of development for the purposes of a public administration building on land within a prescribed zone which includes the SP2 Infrastructure zone.

Clause 2.7 of the SEPP confers that the provisions of this SEPP prevail over any inconsistency with the Muswellbrook LEP 2009.

Provisions of Clauses 2.88, 2.112, 2.19, 2.73, 2.126 and 2.159 are relevant to exploring the permissibility of the proposed development and the assessment pathway for that proposal.

A considered evaluation of the land uses relevant to this proposal has been undertaken in the preparation of the development application.

The land uses of potential relevance to the development application are as follows:

‘Public Administration building’ - means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a courthouse or a police station.

‘Depot’ – means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

Land use evaluation – a detailed break of elements of the proposed facility has been undertaken by Blueprint Planning Consultants dated 21 June 2024. This breakdown observed facility incorporated elements of both land uses.

The summary paper was provided to Moray and Agnew who provided a further legal opinion related to the permissibility of the proposed development and its ultimate assessment pathway as a ‘development permitted with consent’ rather than a type of land use ‘permissible without consent’. This Legal Opinion is available to the Panel for review as an attachment.

Key summary as to how the view on the land use permissibility was arrived at is noted below:

- The legal Option (heading 2.8) informed by the breakdown in activities relevant to the site land use arrived at the a view that
we note that the issue of one or more of the proposed uses being “ancillary “ to other proposed uses has been raised in previous correspondence by and to Council staff. We see that it is unlikely that the proposed uses other public administration building and car parking for the workers occupying the administration building would be seen as ancillary to the public administration building use , or that the proposed use as a public administration building would be seen as ancillary to any proposed depot use, within the principles established in cases such as Foodbarn Pty Ltd v Solicitor-General (1975) 32 LGERA 157 and Botany Bay City Council v Pet Carriers International Pty Limited (2013) 201 LGERA 116; [2013] NSWLEC 147.
- The SEPP establishes pathways under which development for the purposes of ‘public administration buildings’ are ‘permissible with consent and depots associated with various operational capacities are permissible with and without consent in the SP2 Infrastructure zone. A breakdown of the relevant clauses for each type of facility potentially relevant is noted in the table below (extract from applicants SoEE).

	Permissible with consent	permissible without consent
Public administration building	clause 2.88(1)	
Public administration building ancillary to another infrastructure facility if determined at same time and carried out at same time	clause 2.88(2)(a)	
Permanent road maintenance depots and associated infrastructure (such as garages, sheds, tool houses, storage yards, training facilities and workers’ amenities)	clause 2.1112(2)(c)	clause 2.109(2)(b)
Maintenance depots - parks		clause 2.73(3)(a)(viii)
Maintenance depots - sewerage systems		clause 2.126(10)(j)
Maintenance depots - water supply systems		clause 2.159(6)(m)

A more expanded evaluation of the permissible without consent provisions concerning depots used for various purposes is included in the applicant’s SoEE, Legal Opinion and 21 June 2024 scoping correspondence.

What can be observed as a summary of that evaluation is all elements of the proposed facility correspond with land uses which are permissible with or permissible without consent.

- Informed by the Legal Opinion and its view that neither 'public administration' element of the proposed development or 'depot' land use are subservient to the other and that the proposal is rightly characterised as a 'public administration building and depot' it is not possible for the entirety proposal to be progressed through Part 5 of the *Environmental Planning and Assessment Act 1979* as a development permissible without consent – this despite various SEPP provisions concerning the availability of that pathway to various types of Council operated depots relevant to this project.

The Legal Opinion (heading 2.11) also makes comment concerning the intertwined nature of site operations between public administration and depot activities and that given the complexed interaction between the two land uses at the site it is not possible to delineate out aspects of the depot land use to be progressed separately to this development application as various land uses permissible without consent through the SEPP. The Legal Opinion provides the following related comment:

As the aspect of the proposed building that will be used for a Council administration building will require development consent under Part 4 of the Act and the Transport SEPP, and the areas of the proposed building and the wider Property used for each of the other proposed uses are mixed, cannot easily be physically delineated from each other, and cannot easily be seen as ancillary to any of the other uses, we see that the preferred course for Council should be for the Project to be addressed as a consolidated project requiring development consent.

A development application under Part 4 of the Act should be prepared by Council's external planner in respect of the whole of the Project and submitted in the usual way.

- **Having regard to the above detailed exploration of the issue and intertwined nature of the public administration building and depot land uses at the site Council Officers are of the understanding that –**
 - **The proposed development requires development consent by virtue of its association with the public administration land use.**
 - **Development for the purposes of a public administration building is permissible with consent in relation to the SP2 land use zone under Clause 2.88(1) of the SEPP (transport and infrastructure) 2021**
 - **Given there is no practical way to discern any physical delineation of the parts of the site fully associated with the depot land use elements as a pose to the public administration land use it is not possible to progress those elements of the site operation outside of this development application pathway as separate proposals permissible without consent under the EP&A Act 1979.**

Clause 2.48

Clause 2.48 – requires referral of certain types of development adjacent electricity transmission lines to energy supply authority. The development application is adjacent to electricity transmission infrastructure and an associated easement.

The application was referred to AUSGRID as energy supply authority who raised no objection and provided recommendations which have been incorporated into the recommended conditions of consent (condition 4).

Complies

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

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 3 of Schedule 6 of the Planning Systems SEPP as the proposal is development for Council related development with an estimated development cost of more than \$5-million (total estimated cost \$14,666,000). Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

Complies

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 Hazardous or offensive development

Provisions of Chapter 3 establish types of development described as potentially hazardous or potentially offensive development and prescribe assessment considerations related to these development types.

The proposed depot development does not include an industrial activity which would cause for this proposed facility to be considered as a potentially hazardous or offensive development.

At the same time that the proposed facility does not comprise a potentially hazardous or offensive development it is noted that the facility would be situated at a close proximity to the Muswellbrook Waste Management Facility – a facility which is understood to meet the criteria of a potentially hazardous or offensive development.

Under the related heading to this SEPP in their Statement of Environmental Effects the applicant has provided some contextual information that advises potential hazard related impacts of the existing waste facility on the new development have been appropriately considered through technical reports and design documentation concerning noise (Northrop Consulting Acoustic Assessment), Gas emissions (Landfill gas assessment EN Risk & Presna) and odour (Air Quality Impact Assessment). Furthermore, the EPA have provided referral correspondence concerning their requirements related to the waste facility existing EPL and requirements concerning its update.

Notwithstanding the above information, which provide some context concerning the consideration of the existing potentially hazardous and offensive facility with regard to the proposal it is relevant to note that the SEPP provisions under this Chapter do not prescribe any requirements related to the consideration of a pre-existing potentially hazardous or offensive development in the assessment of a new proposed development that does not meet the criteria of a potentially hazardous or offensive development.

Complies

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is

satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

Informed by the site history a Detailed Contamination Assessment Report has been undertaken by Qualtest in relation to the site. That report arrived at the following conclusions and recommendations

Sampling and analysis targeted the AECs identified within the proposed development area

(excluding AEC 5 groundwater and ground gases), with a targeted soil sampling pattern adopted. The soil laboratory results reported concentrations of contaminants below the adopted human health and ecological criteria.

Based on the results of the Preliminary and Detailed Contamination Assessment it is considered the site can be made suitable for the proposed commercial/industrial development, with the following recommendations:

- Completion of a ground gas assessment in the vicinity of the proposed buildings; and*
- Preparation of a Construction Environmental Plan (CEMP) which will include an Unexpected Finds Procedure (UFP). The CEMP will be implemented during vegetation clearing and earthworks.*

Provided the recommendations made within this report are carried out, it is considered that

the site could be rendered suitable, from a contamination point of view, for the proposed commercial/industrial development.

Further Landfill Gas Risk Assessment was undertaken by Presna (2026) and En Risk (2025) the Presna report arrived at the conclusion that the development could move forward from a landfill gas management perspective through the provision of mitigation measures outlined in the report and below:

This LFG Assessment included a desktop review of the Enrisks (2025) LFGRA, establishment of four LFG

bores and three rounds of LFG monitoring. The key findings of the LFG Assessment included:

- The current potential for LFG migration to the proposed building footprint was considered to be very low, however this risk is likely to increase over time as the landfill ages, additional waste is added and more gas is produced or potential migration pathways are established.*
- It is recommended that the design of the proposed building include the gas mitigation measures outlined in the Enrisks (2025) report.*

Mitigation systems recommended for the proposed building that meet the required level of protection

are as follows, as per Enrisks (2025):

- Reinforced concrete ground-bearing slab or waffle pod slab (protection value of 0.5) or reinforced concrete ground-bearing raft slab with limited service penetrations **AND** installation of a passive sub-slab ventilation system (protection value of 1.5 to 2.5 depending on the performance of the ventilation system). The passive sub-slab ventilation system would act as a break, venting any methane gas prior to methane reaching the building slab; **OR***

- *Installation of a suitable gas-resistant membrane (protection value of 2). Such a membrane needs to be suitable for the management of methane gas and be installed by a specialist with documented quality control and testing that the membrane does not leak (including around service penetrations). The membrane would need to be placed beneath all slabs and walls of the lower ground level in direct contact with the ground. A gas membrane acts as a barrier to minimise the migration of gas into the building.*

Having regard to the Contamination report findings and the subsequent landfill gas report it considered that the proposed development may move forward subject to conditions imposing requirements for compliance with provisions of either report at the relevant stages of development (condition 11 and 12).

Complies

Muswellbrook Local Environmental Plan 2009

The relevant local environmental plan applying to the site is the *Muswellbrook Local Environmental Plan 2009* ('the LEP'). The aims of the LEP include

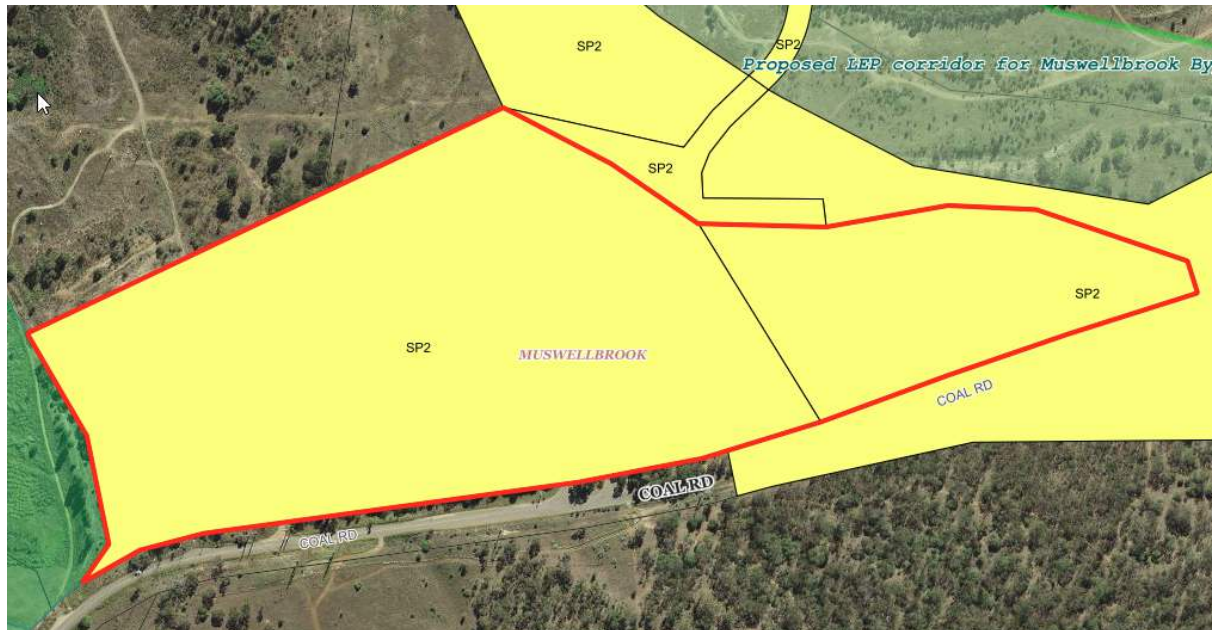
- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to encourage the proper management of the natural and human-made resources of Muswellbrook by protecting, enhancing or conserving—*
 - (i) *productive agricultural land, and*
 - (ii) *timber, minerals, soils, water and other natural resources, and*
 - (iii) *areas of significance for nature conservation, and*
 - (iv) *areas of high scenic or recreational value, and*
 - (v) *places and buildings of archaeological or heritage significance,*
- (b) *to manage the urban areas of Muswellbrook by strengthening retail hierarchies and employment opportunities, promoting appropriate tourism development, guiding affordable urban form and providing for the protection of heritage items and precincts,*
- (c) *to promote ecologically sustainable urban and rural development,*
- (d) *to manage development in flood-prone areas by ensuring any obstruction, re-direction or pollution of flood waters will not have adverse consequences for the environment or increase the risk of endangering life or property,*
- (e) *to enhance the urban amenity and habitat for flora and fauna,*
- (f) *to protect and conserve—*
 - (i) *soil stability by controlling development in accordance with land capability, and*
 - (ii) *remnant native vegetation, and*
 - (iii) *water resources, water quality and wetland areas, natural flow patterns and their catchments and buffer areas,*
- (g) *to provide a secure future for agriculture by expanding Muswellbrook's economic base and minimising the loss or fragmentation of productive agricultural land,*
- (h) *to allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests and residential amenity, and to achieve the objectives of each zone mentioned in Part 2 of this Plan.*

he proposal is consistent with these aims as the proposal is an application seeking to enable the orderly economic development of land and the application has been informed by appropriate environmental studies relevant to the land use proposed and environmental constraints.

Zoning and Permissibility (Part 2)

Permissibility

The site is located within the SP2 Infrastructure (Nominated land use - Waste Management Facility) pursuant to Clause 2.2 of the LEP



According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the land use definitions of Depot and Public Administration Building.

As describe under the expanded permissibility exploration under the SEPP (Transport and Infrastructure) 2021 heading neither land use is considered subservient to the other and are both dominant uses in their own right, while both land uses are so closely intertwined across the site it is not possible to separately identify elements of site operation attributed to either land use singularly and thereby extrapolate parts of the development that may be permissible without consent from those requiring consent.

Under the provisions of the LEP – the type of development permissible with consent on the land is restricted to the type of development identified as the purpose of the SP2 Infrastructure zoning only – in this instance waste management facility.

As the proposal does not involve a waste management facility it is not permissible against the related LEP land use table. Notwithstanding the LEP provision the proposal remains permissible with consent through the SEPP (Transport and Infrastructure) 2021 provisions which take precedence over the LEP land use table. An expanded summary of these provisions and their relationship to this development are included under the SEPP (Transport and Infrastructure) 2021 sub-heading. Through provisions of Clause 2.7 of the SEPP the proposal is permissible with consent as a depot.

Permissible pursuant to SEPP (Transport and Infrastructure) 2021

Zone objectives

Clause 2.3(2) of MLEP 2009 requires a consent authority to have regard to the land use zone objectives for the relevant land use zone, in this case SP2 Infrastructure, when determining a development application.

The land use zone objectives from the MLEP 2009 have been included below.

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To recognise existing railway land and to enable future development for railway and associated purposes.*
- *To prohibit advertising hoardings on railway land.*
- *To recognise major roads and to enable future development and expansion of major road networks and associated purposes.*
- *To recognise existing land and to enable future development for utility undertakings and associated purposes.*

Council Officers have made the following observations related to the proposed development's relationship with the land use zone objectives:

- The proposal is for a depot and public administration building to be operated by the same entity that operate the waste facility located on the site and for which the SP2 zoning reserves the use of the land for.
- The relationship with and potential impacts of the waste facility on the proposed development have been considered through technical studies prepared as part of the application assessment (noise, odour, waste facility gas reports).
- The proposal has been referred to the NSW EPA who provided comments related to the development relationship with the waste facility as an EPA licensed facility and requirement for the future variation of that license to account for the development.

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

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

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	600m ²	171,000m ² 24,000m ²	Yes
Height of buildings (CI 4.3(2))	13 metres	10.4m (above existing ground level) (Building height 6.2m)	Yes
FSR (CI 4.4(2))	NA		Yes
Earthworks (CI 7.6)		Earthworks plans indicate that the maximum site cut and fill would be in the vicinity of 4m depth and height. Largest areas of cut would be at the Coal road part of the site where an existing	Yes

		earthen bund is to be removed to make provisions for site access. Largest fill areas would be at the north western part of the site. Council Officers are satisfied that the proposed development would be compatible with the relevant assessment matters where carried out in accordance with recommended conditions of consent.	
	<i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality.</i>	The proposed development would not change the drainage profile of the land in a manner that would redirect stormwater from the site to new areas outside of the locality. The general fall of the site and drainage pattern would remain internal toward the 19ha site. The applicant has proposed stormwater to be managed via internal site dams. Recommended conditions of consent have been put forward concerning site drainage requirements (condition 21 and 58).	
	<i>the effect of the proposed development on the likely future use or redevelopment of the land</i>	The potential for the site to be used for activities not associated with the waste facility or Council operations is restricted by the land use zoning. Given the site zoning limitations it is considered that an extensive consideration of redevelopment opportunities is not required.	
	<i>the quality of the fill or of the soil to be excavated, or both</i>	A soil quality assessment has been undertaken in relation to the site from a contamination perspective. While this report concluded that the site would be suitable for commercial industrial development subject to recommendation it noted that any soils requiring offsite disposal will require waste classification in accordance with EPA guidelines. Accordingly excavated soils should be treated and disposed of as waste at the adjoining or an alternate licensed facility unless soil testing confirms the material as virgin excavated material.	

		Any soil important to the site should be appropriately sourced natural material. Related conditions of consent have been put forward concerning management of soil (condition 35).	
	<i>the effect of the proposed development on the existing and likely amenity of adjoining properties</i>	The site is isolated from adjoining properties. The proposed cut and fill works are anticipated to have a negligible impact on the amenity of adjoining properties.	
	<i>the source of any fill material or the destination of any excavated material</i>	Should the proposed development be approved it is recommended that a standard condition of consent be included in any Notice of Determination to ensure fill material is appropriately sourced.	
	<i>the likelihood of disturbing relics</i>	The site subject has previously been cleared and disturbed for use as a landfill. The likelihood of relics is considered to very be low. Where the proposed development is approved it is recommended that a standard condition of consent is included to ensure that the appropriate process is followed should there be any unexpected archaeological finds during the carrying out of works (condition 29).	
	<i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area</i>	The proposed earthworks are within the catchment area of the existing landfill. That being the case and noting that the proposed facility would drain into this landfill closed circuit environment the proposed earthworks are not anticipated to have off-site impact on watercourses. Changes to landfill water catchment management would be subject to administration by the EPA through any variation to the EPL concerning this licensed facility.	

The proposal is considered to be generally consistent with the LEP.

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

There are no draft proposed planning instruments with provisions related to the assessment of the proposed development.

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

The following Development Control Plan is relevant to this application:

The following Development Control Plan is relevant to this application:

- *Muswellbrook Development Control Plan 2009* ('the DCP')

A summary of the relevant Sections of the Muswellbrook Development Control Plan has been included below alongside an assessment of the proposed development against the related controls.

Section 3 Site Analysis

Council Officers are satisfied that the proponent has adequately considered the provisions of this Section and prepared the documentation accompanying the development application in accordance with the requirements of this Section.

Complies

Section 10 Industrial Development

This Chapter of the DCP applies to industrial development within Council E4 General Industrial land use zone. The proposed development involves SP2 zoned land and accordingly the DCP controls are not directly applicable to the proposed depot and public administration building development.

Not applicable

Section 16 car parking

The Muswellbrook DCP does not prescribe a minimum rate of off-street car parking concerning a depot facility and prescribes for parking associated with a public administration building at a rate of 1 space per 40m².

A merit based assessment of the actual car parking demand (including demand for service vehicles) has been carried out as part of the Traffic Report prepared by TAR Technologies.

Based on anticipated operating requirements that report identified requirement to provide parking to accommodate:

Administration: Total of 66 car and 5 motorbike spaces

Staff: 59 car parking,

5 motorcycle spaces Visitor:

7 car parking spaces

Operational vehicles: 69 spaces as follows

Cars, Utilities and vans: 28 spaces Trucks: 3 spaces

Trailers: 26 spaces

Other: 12 spaces

Slashers: 11 spaces

This required staff and operating car parking has been accounted for within the proposed development designed to accommodate total of

- 121 passenger vehicles
- 5 motor cycle parking baya
- 28 large truck parking spaces
- 11 ride on mower, tractor and comparable machinery parking spaces

The proposed facility would comfortably exceed relatable DCP controls and provide a suitable arrangement and rate of parking supporting the buildings intended use and complying with related DCP objectives.

Complies

Section 20 Erosion and Sediment Controls

An Erosion and Sediment Control Plan (Diversi Consulting, 6/12/2024) has been prepared in accordance with the requirements of the DCP and submitted with the application.

Complies

Section 21 Contaminated Land

The site is part of a holding operated as the Muswellbrook Waste Facility and potential site contamination has been a consideration in the application assessment. A Detailed Contamination Assessment has been carried out by Qualtest which is supportive of the proposed development being carried out as a site with soil qualities suitable for industrial or commercial type development, subject to compliance with related recommendations.

Complies

Section 24 Waste Minimisation Management

A Site Waste Minimisation and Management Plan (Rapid Geo, 6/12/2024) has been prepared and submitted with the application. This addresses the requirements of the DCP.

Complies

Section 25 Stormwater Management

A Civil and Stormwater Works Plan and Stormwater Catchment Plan (Diversi Consulting, 6/12/2024) has been prepared in accordance with the requirements of the DCP and submitted with the application. This plan details the collection of stormwater within the site area and proposes its discharge to the low point internally within the site from which the stormwater is to discharge into internal settling dams within the facility.

The applicant's engineer undertook preliminary modelling of the storage capacity of the existing dams in context with site runoff and identified that the proposed facility required approximately 300m³ of storage and this could be accommodated within the area of the existing dam which sat at approximately 2,400m².

After having regard to proposed stormwater infrastructure and the availability of on-site dam storage Council Engineers were satisfied that the proposed development could

proceed with the stormwater management arrangement proposed and in accordance with DCP provisions.

Complies

Development Contribution Plans

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

- *Muswellbrook Section 94A Contribution Plan (2010)*

Muswellbrook Section 94A Contribution Plan (2010) requires the payment of a Section 7.12 Contribution (former Section 94A) at a rate of 1% of the total estimated cost of the development.

The total estimated cost of the development is \$14,666,000

Under the provisions of Council's Section 94A Plan a Section 7.12 Contribution of \$146,660 would be applicable to the proposed development.

Should the proposed development be approved it is recommended that a condition of consent is imposed requiring the payment of the related contribution prior to the issue of a Construction Certificate (condition 17).

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

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

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- **Clause 61(3)** - Dark Sky Planning Guideline if applicable – the proposed development is not located a type of development to which the Dark Sky Planning Guideline applies. The proposed development is not located within the Local Government Areas referenced by this Clause and while the proposal is a type of Regionally Significant Development referenced by Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 measurements between the development site and the Siding Springs Observatory and the development site indicate that it would exceed the 200km radius to which this Clause and the Dark Sky Planning Guideline would apply.
- **Clause 65A** – This Clause established as part of the Planning Systems Reform Act 2025 limits a consent authority in considering environmental impacts of development for which consent is not sought as part of the related application. Applied to the proposed development it is considered to have the implication of limiting the consent

authority in giving consideration to environmental impacts related to the sewerage main extension to be utilised by the proposed development but to which the applicant has indicated that separate consent will be obtained pursuant to Part 5 of the EP&A Act 1979.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

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

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

- **Context and setting** – The proposal is considered to have no significant adverse impact on the site context and setting. The site is physically separated from Muswellbrook urban area adjoining the waste facility and undeveloped C3 zoned land. The facility will have the appearance of a modern industrial facility and improve the general aesthetic of the locality when contrasted to the existing waste facility administration structures and sheds.
- **Access and traffic** – a Traffic Report has been prepared by TAR Technologies in relation to the proposed development.
 - That report considers rate of off-street car parking required by the development relative to demand (121 light parking spaces are proposed along with additional heavy vehicle and tractor/mower parking) .
 - Anticipated traffic generation related to the facility.
 - Considers potential future traffic management requirements that the facility may require where the Muswellbrook Bypass project advances in a manner which incorporates a Coal Road interchange (as is currently proposed).

The report makes the following conclusions related to the proposed development traffic and parking requirement.

Coal Road is a low-volume, low-hazard road operating in a rural environment. The low traffic volumes generated at the new development site are not foreseeable issues. Furthermore, the surrounding road network is expected to have enough capacity to accommodate any additional traffic generated by the site. These conclusions apply to both construction and post-development traffic generation.

The development will provide adequate parking for all staff members and the fleet of vehicles to be stored on-site.

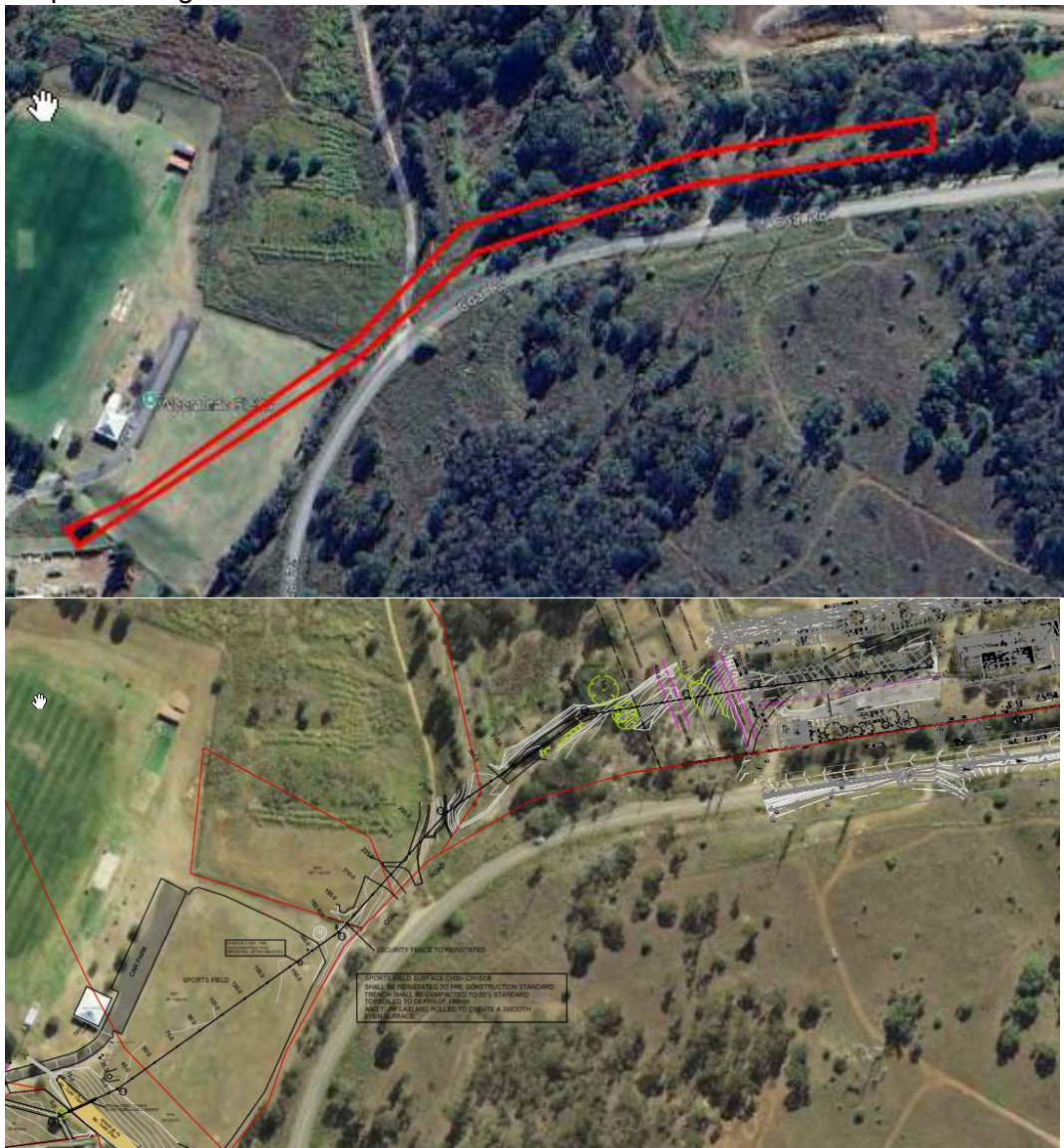
Site access is safe and effective for the current road environment and is designed to remain adaptable for future conditions with the bypass open.

After having regard to the proposed development design related to parking and the findings of this report Council Officers are satisfied that the proposal may progress from a parking and traffic impact perspective.

- **Utilities** – Servicing report has been prepared by erbas. Related to servicing requirements report notes

Water – watermain with suitable capacity to service the development is located at the site frontage. Works are required to establish a connection point and fire hydrant system in accordance with NCC requirements.

Sewerage – to facilitate the development an extension of Council sewerage infrastructure is required to provide a drainage connection point to the site. The proponent has not proposed this work as part of the scope of the application and has nominated that the works would be undertaken as a separate project to be carried out under Part 5 of the EP&A Act as work permitted without consent. Civil plans related to the intended works have been submitted as part of the application for the Panel's information and an image from those plans providing an overview of the work scope and alignment is included below.



To support the Panel's appreciation of the work and that it would be possible to obtain approval through a REF the applicant has provided – civil design plans related to the intended works - Biodiversity Assessment Report concerning the extension (confirming proposal may progress from ecological perspective) – AHIM's search and details.

Council Officers have recommended a condition of consent requiring this part 5 project to have obtained approval prior to the issue of a Construction Certificate to commence work (condition 9).

Electricity – connection point available from existing 200kVA powerline – at detailed design stage proponent will need to identify whether the pole mounted transformer requires upgrade to 400kVA system which report indicates will likely be required.

Telecommunications – existing telecommunications pits are located in coal road. Report includes diagram of location with respect to the site and notes further confirmation will be required related to servicing and service connection requirement for the development at detailed design stage.

- **Heritage** – the site is located in area that has been subject to disturbance related to previous use. Prior to the commencement of part of the sites operation as the Muswellbrook Waste Facility the site was formerly operated as part of Muswellbrook Coals Open Cut Operations. At the closure of the facility the void was repurposed to its current use as a waste facility. Noting the previous disturbance of the site as part its current and former use it was considered it was considered highly unlikely that any aboriginal artifacts would remain present at the site or effected during carrying out of work an Aboriginal Archaeological AHIMS search was undertaken as part of the project investigation works and submitted with the application this report did not identify any recorded aboriginal sites or places within the study area.
- **Ecology** - Council Officers have had regard to potential ecological impacts associated with the proposed development and additional off-site ecological impacts associated with the extension of Council sewerage through a separate REF and Part 5 Approval Process. Council Officers are satisfied that the proposal would not have a significant adverse ecological impact or conflict with provisions of the Biodiversity Conservation Act 2016 where carried out in accordance with recommended conditions
Comments related to assessment are provided under sub-headings below.

Depot development – a Biodiversity Development Assessment Report prepared by Hunter Ecology confirms that the proposal may be supported from an ecological impact and in accordance with BC Act 2016 subject to the retirement of 8 ecological credits concerning the disturbance of 0.5ha of Hunter Ironbark Grassy Woodland.

The BDAR puts forward avoid and minimise impact recommendations that are expanded on in a supplementary correspondence from Hunter Ecology. Recommendations from these reports have been adopted into recommended conditions included ecosystem credit retirement requirements (condition 10)

Sewerage main extension – as referenced elsewhere reticulated sewerage related to the development is to be provided by newly constructed sewerage main extending Council's network to the site. Development consent has not been sought for this main as part of this application and it is proposed to obtain approval separately through EP&A Act Part 5 works permitted without consent. Details of the proposed sewerage main including a design and ecological impact review have been submitted in material accompanying this application for the Panel's information. A recommended condition of consent has been put forward to require the Part 5 Approval to be in place prior to the issue of a Construction Certificate for this project (condition 9).

Supporting the ability for such an approval to be obtained a Biodiversity Assessment Report has been submitted from Hunter Ecology this report concluded:

A statutory impact assessment undertaken in accordance with the Biodiversity Conservation Act 2016 concluded that the proposal is unlikely to have a significant impact on any threatened species, populations or ecological communities. Accordingly, the preparation of a Species Impact Statement (SIS) and entry into the Biodiversity Offset Scheme are not required.

Similarly, a statutory significance assessment undertaken under the Environment Protection and Biodiversity Conservation Act 1999 concluded that the proposal is unlikely to have a significant impact on any MNES. Referral of the action to the Australian Government is therefore not required.

Accordingly, it is understood that it would be possible for a REF concerning the proposed pipeline to proceed from an ecological perspective.

- **Air Quality** – an air quality assessment has been carried out with respect to the developments proximity to the operating Muswell brook Waste Facility.

The report concluded that odour from the waste facility with respect to the proposed administration building and depot would comply with applicable odour criteria during standard operating hours. Accordingly, it is considered that the proposal may progress from an air quality impact perspective. The report put forward the following recommendations around the minimisation of potential impact of odour on the development which have been adopted through recommended conditions (conditions 13, 14 and 41)

- *Ensure the building design provides adequate air flow and encourages flow in a particular direction away from doorways and intakes. Avoid dead-ends or long narrow spaces perpendicular to the wind where air can lay dormant and stagnate.*
 - *Build continuous dense landscaping along the CID boundary between the landfill and composting operations. Tall vegetation will aid in dispersion and dilution for odour sources and also assist to minimise visual impacts and perception of odour sources.*
 - *Consider positioning of air conditioning and ventilation intakes away from odorous sources. Have non-opening windows on the odorous side of the building and duct cleaner air into the building from along the south and west of the building and out to the odorous side. If necessary, consider the use of filtration to assist with odour removal.*
- Noise and vibration – an Acoustic Assessment has been carried out with respect to the developments proximity to the operating Muswell brook Waste Facility impacts related to the carrying out of the development at adjoining sites including alterations to the waste facility visual bund.

The report concludes that

Noise from the existing waste facility was predicted to the future depot. Recommendations were provided to reduce external noise to acceptable levels. For a conservative assessment, the minimum noise emission criteria were adopted for this assessment. Noise emissions were predicted at the nearest affected

receivers and where exceedances occurred, recommendations were provided to achieve compliance.

Provided our recommendations are implemented, noise emissions from the subject development will comply with the acoustic requirements of Muswellbrook Shire Council, NSW EPA Noise Policy for Industry and relevant Australian standards and guidelines.

A summary of report mitigation recommendations is provided below. These recommendations have been adapted into recommended conditions of consent (conditions 15, 50, 49).

- **External façade** – *to minimise noise break in from the existing waste facility the façade should be designed in accordance with the recommendations provided in Section 4.3 and 4.4*
 - **Mechanical plant** – *an assessment of noise emissions from the mechanical and building services equipment should be undertaken at the detailed design stage to ensure cumulative noise does not exceed the project specific criteria at the nearest affected receivers. Indicative recommendations that can be incorporated in the design is detailed in Section 5.2.1.2*
 - **High pressure hoses and bitumen pumps** – *Sound power level of the high pressure and bitumen pumps should not exceed the sound power levels provided in Table 8. The use of the high pressure hoses should be limited to the day time (between 7am and 6pm)*
 - **Heavy vehicles** – *Utilise broadband reverse beepers where possible. Locate heavy vehicles in parking spaces that allow for forward movement to minimise reverse beeping*
- **Contamination** – *to inform potential risks associated with land contamination and gas emissions associated with the adjoining landfill facility the following technical reports have been undertaken:*
 - *Preliminary and Detailed Contamination Assessment – Qualtest*
 - *Landfill Gas Risk Assessment – EnRisks*
 - *Landfill Risk Assessment (methane ground gas bore monitoring) – PRESNA*

The contamination report arrived at a conclusion that the land was suitable for commercial/industrial use proposed subject to recommendations concerning, completion of a ground gas assessment and preparation of unexpected finds protocol to be implemented during construction (the unexpected finds protocol requirement CEMP is managed through related conditions of consent – condition 11 and 20).

The additional En Risks study undertook desktop risk assessment of potential impact of landfill gas on the proposal with the additional PRESNA study undertaking a more comprehensive field study that incorporated three LFG monitoring bores and an assessment of data outcomes.

The reports reached conclusions that it would be acceptable for the proposed development to move forward from perspective of potential impact related to landfill gas emissions subject to incorporation of building design elements to provide projection. The findings, conclusion and recommendation of the PRESNA Report is as follows:

This LFG Assessment included a desktop review of the Enrisks (2025) LFGRA, establishment of four LFG bores and three rounds of LFG monitoring. The key findings of the LFG Assessment included:

- *The current potential for LFG migration to the proposed building footprint was considered to be very low, however this risk is likely to increase over time as the landfill ages, additional waste is added and more gas is produced or potential migration pathways are established.*
- *It is recommended that the design of the proposed building include the gas mitigation measures outlined in the Enrisks (2025) report.*

Mitigation systems recommended for the proposed building that meet the required level of protection are as follows, as per Enrisks (2025):

- *Reinforced concrete ground-bearing slab or waffle pod slab (protection value of 0.5) or reinforced concrete ground-bearing raft slab with limited service penetrations **AND** installation of a passive sub-slab ventilation system (protection value of 1.5 to 2.5 depending on the performance of the ventilation system). The passive sub-slab ventilation system would act as a break, venting any methane gas prior to methane reaching the building slab; **OR***
- *Installation of a suitable gas-resistant membrane (protection value of 2). Such a membrane needs to be suitable for the management of methane gas and be installed by a specialist with documented quality control and testing that the membrane does not leak (including around service penetrations). The membrane would need to be placed beneath all slabs and walls of the lower ground level in direct contact with the ground. A gas membrane acts as a barrier to minimise the migration of gas into the building.*

The building design requirements have been adopted in recommended conditions of consent concerning building detailed design to be satisfied prior to the issue of a Construction Certificate (condition 12).

- **Natural and technological hazards** – the site is bushfire prone. A Bushfire threat assessment has been carried out in relation to the proposed development and an integrated development referral issued to the NSW Rural Fire Service who provided general terms of approval to the proposed development.
The subject site is situated adjacent the Muswellbrook Waste Facility. Potential impacts associated with the facilities proximity to the landfill operations are well document through the assessment and related technical studies (Noise Assessment, Odour Assessment, Contamination Assessment and landfill gas risk assessment). The findings of each related technical reports support the view that the proximity of the site to the existing landfill does not limit the ability for the development to be carried out subject to the implementation of mitigating measures (where recommended) outline in those reports.
- **Social and economic impact** – The proposed development will support the operational capacity of Muswellbrook Shire Council.

Council's existing Works Depot has well document operational challenges and requires significant financial investment to be fit for purpose into the future. Council reports articulate operational efficiencies and cost savings resulting from the establishment of a new consolidated depot site/facility. The proposed development will support these positive social and economic outcomes associated with the operating efficiencies of the Local Authority for the Muswellbrook Shire.

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

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

Council Officers raise no objection to the suitability of the site for the proposed development.

Council Officers are satisfied that the documentation submitted including technical studies associated with the potential impacts of the adjoining Muswellbrook Waste Facility on the proposed development indicate it would be possible for the proposed facility to be operated in context with this existing facility.

While the submitted documentation and NSW Environmental Protection Authority correspondence reflect this view Council Officers are mindful that the carrying out of the project and potential alterations to the waste facility EPL is likely to have operational implications for Council concerning how the waste facility needs to be operated moving forward pursuant to the Protection of Environment Operations Act 1997 licensing and operational requirements for that facility. Given the NSW Environmental Protection Authority advice concerning the proposal and requirement for the EPL to modified these potential implications are not considered to limit the carrying out the development and are viewed as matters Council as the operator of the waste facility may need to adapt into its operations moving forward where the project goes ahead.

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

These submissions are considered in Section 5 of this report.

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

The proposed development is compatible with the public interest.

The proposed development would provide a consolidate depot and public administration building to support the efficient operation of the Local Council Authority.

The documents submitted support the proposal as being compatible with relevant Environmental Planning and Assessment Act 1979 heads of consideration and a development that would not have any significant adverse environmental impact limiting the ability to carry it out under related planning assessment provisions.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/	Comments	Resolved
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	referral trigger	(Issue, resolution, conditions)	
Referral/Consultation Agencies			
NSW Environmental Protection Agency (EPA)	Referral – The Muswellbrook Waste Facility is an EPA licensed facility. The proposed new works depot does not require EPA Licensing and thereby does not trigger a concurrence or integrated referral. The NSW EPA in their correspondence note S 6(2)(c) of the PoEO Act causes them to be the appropriate regulatory authority for a non- POEO Act scheduled activity where the activity is carried out by a local public authority who would otherwise be the regulator (which is the case in this instance.) Given proximity and subdivision involving the EPA licensed facility and potential for the new use to impact on the existing NSW EPA operating license the EPA have been referred the matter with an opportunity to provide comment.	NSW EPA have provided comment on the proposal to consider its relationship with the EPA licensed waste facility. NSW EPA correspondence is included as an attachment. The EPA recommended conditions in Attachment A to their correspondence (these have been reviewed and incorporated into the recommended determination). An individual additional condition has been imposed informed by the recommended conditions which require Certifying Authority to receive confirmation of the EPL variation or that an application to vary the EPL is suitably advanced prior to the issue of a CC (condition 5 and 8). Attachment B – to the NSW EPA letter sets out matters for consideration of MSC as the operator of the adjacent concerning matters to consider related to the management of reverse amenity impacts from that facility on the proposed development. Informed by comments in Attachment B related to landfill gas an additional landfill gas assessment has been undertaken by Presna related to potential methane emissions. This report recommends that the proposal may proceed subject to additional detail design requirements setout in the document to and related Enrisks report to ensure the proposed building is suitably constructed to achieve the required level of structural protection. Should it proceed it is anticipated that matters outlined in Attachment B will be matters that the waste	Y

		facility operator will need to address or have additional requirements imposed into their amended EPL to ensure that potential environmental impacts associated with the existing facility are appropriately managed in context with the development.	
Electricity supply authority (AUSGRID)	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Referral comments provided by AUSGRID related to works in the vicinity of energy transmission line. Requirements have been incorporated into recommended conditions of consent (condition 4).	Y
Integrated Development (S 4.46 of the EP&A Act)			
Subsidence Advisory	Development within A Subsidence District pursuant to S 22 Coal Mine Subsidence Act 2017	General Terms of Approval issued by NSW Subsidence Advisory in two correspondence (an individual correspondence for building work and the subdivision) dated 11 June 2025.	Y
NSW Rural Fire Service	<i>S 100B Rural Fires Act</i>	General Terms of Approval issued by NSW RFS dated 13 July 2025. Requirements have been incorporated into recommended conditions (condition 3 and 40).	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Roads and Drainage	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y
Waste Services Team	The proposed development was referred to Council's Waste Manager of Operations – as the operator of the Muswellbrook Landfill located on part of the site. Council's Waste Team provided referral comments highlighting concerns with the potential for the depot location to impact on the waste facility operations.	Y (partly internal matters for Council operational)

	These concerns are not fully resolved and are partly operational matters for Council concerning potential conflict and site operating challenges concerning the co-location of the two facilities. A copy of the correspondence has been attached. Relating to the Planning consideration of the matters raised. Council Officers note: - Environmental noise, odour and underground gas studies carried out suggest that the environmental conditions are such that the two facilities can be co-located subject to recommended conditions - Landfill gas risk studies indicate that an appropriate design can be progressed with to mitigate the facility against potential underground landfill gas impacts - NSW Environmental Protection Agency has provided a referral response related to the proposal. That response does not object to the proposed development so far as it relates to the EPL licensed waste facility. Included in the referral recommended conditions is a requirement for the EPL to be updated. Council Officers consider it probable that an EPL license update may see additional operational limitations or conditions imposed on the waste facility to manage its scope and potential to impact on the new receptors to the facility established in the carrying out of the development.	decisions related to existing facility operation and any EPL alterations associated with project operations)
Water and Wastewater	The proposed facility was referred to Council Water and Wastewater Team. The proposed development relies on an extension to Council's sewer main infrastructure which is not included in the scope of works for which consent is being sought and is instead proposed as work for which a Part 5 approval of work permitted without consent is being sought through a REF. A recommended condition has been put forward concerning the Part 5 Approval to be in place prior to a Construction Certificate being obtained for the project. A requirement is also put forward for sewerage connection to be in place prior to an Occupation Certificate. The site fronts existing Council Water Mains infrastructure, Council Officers consider that it would be possible for the utility service to be altered to provide a connection point and hydrant to the site, subject to completion of detailed design through the Water Authority Notice of Requirement – Compliance Certificate process.	Y

	Related recommended conditions have been put forward in Council's recommendation (condition 18 and 42).	
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The application was notified from 9 May until 6 June 2025 to all adjoining neighbors. No submissions were received. The application was also notified on Council's website page and Council's Facebook page.

In addition, the application was notified to the following community groups:

- Aboriginal Native Title Elders Consultants - no submissions were received.
- Wanaruah Local Aboriginal Land Council - no submissions were received.

5. CONCLUSION

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

In forming this view Council Officers note:

- The proposed development is permissible with consent through the SEPP (Transport and Infrastructure) 2021 and that permissibility supported by a related legal opinion.
- General Terms of Approval have been provided to the proposal as integrated development by the NSW Rural Fire Service and NSW Subsidence Advisory
- The proposed development has been referred to the NSW Environmental Protection Authority, concerning its proximity to the Muswellbrook Waste Facility, EPL licensed activity, referral comments make no objection to the proposal and provide recommended conditions.
- Through the assessment of the application Council Officers have had regard to potential impacts to the proposed development arising from its proximity to the existing Waste Facility, related to these potential impacts a Noise Impact Assessment, Odour Impact Assessment, Contamination Assessment and Landfill Gas Assessments have been provided. The conclusions and recommendations of these studies are supportive of the proposed development.
- A Biodiversity Development Assessment Report has been prepared in relation to the proposal, this report is supportive of the development subject to the retirement of 8 ecosystem credits.
- The proposed development is in accordance with relevant provisions of the Muswellbrook LEP 2009 and Muswellbrook DCP.
- Environmental impacts related to the proposed development have been considered through this assessment. It is anticipated that the proposed development would not have a significant adverse environmental impact.

As outlined in the Executive summary all key issues are suitably resolved and it is considered that the proposal may be supported subject to the recommended draft conditions at **Attachment A**.

6. RECOMMENDATION

That the Development Application DA No 2025/26 for public administration building and depot at 252 Coal Road Muswellbrook (Lot 1 DP 819014) be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Legal Opinion, permissibility advice
- Attachment D: Planning Advice concerning land use breakdown (Legal Opinion Reference Material)
- Attachment E: NSW EPA Referral Advice
- Attachment F: Council Waste Facility Operations Manager Referral Advice
- Attachment G: Landfill Gas Assessment, Presna, 2026