

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-55 – DA2020/00641
<b>PROPOSAL</b>	Community Facility - Pathway - "Richmond Vale Rail Trail" – (RVRT)
<b>ADDRESS/OWNERS</b>	<ul style="list-style-type: none"> <li>• Hunter Water Corporation – Lot 1 DP 805274- 81 King St Shortland</li> <li>• Hunter Water Corporation – Lot 1 DP 611441- 83 King St Shortland</li> <li>• Hunter Water Corporation – Lot 2 DP 611518 – 4A Anderson Drive, Tarro</li> <li>• Hunter Water Corporation – Lot 148 DP 840897 – 29 Woodford St Minmi</li> <li>• Hunter Water Corporation – Lot 147 DP 1143414 – 292A Minmi Rd Fletcher</li> <li>• National Parks &amp; Wildlife Service – Lot 3-4 DP 171105 50A Sparke St Hexham</li> <li>• Department of Lands – Lot 1 DP90465 12A Railway St Hexham</li> <li>• Minister Administering the <i>National Parks &amp; Wildlife Act 1974</i> – Lot 1 DP 1007615 33 Lenaghans Drive Minmi</li> <li>• Coal &amp; Allied Operations P/L – Lot 10 DP1194449 67C Maitland Road Hexham</li> <li>• Coal &amp; Allied Operations P/L – Lot 1 DP877233 52A Lenaghans Drive Minmi</li> <li>• Minister Administering the <i>National Parks &amp; Wildlife Act 1974</i> – Lot 21 DP1195619 52A Lenaghans Drive, Minmi</li> <li>• City of Newcastle – Lot 324 DP 1175558 50 Kural Crescent Fletcher</li> </ul>
<b>APPLICANT</b>	City of Newcastle (CN)
<b>DA LODGEMENT DATE</b>	23 June 2020
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clauses 3 & 5, Schedule 7 of the SRD SEPP <i>Council related development over \$5 million and Private infrastructure and community facilities over \$5 million as a community facility.</i>
<b>CIV</b>	\$21.4 million approximately (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Not applicable
<b>KEY SEPP/LEP</b>	<b>Environmental planning instruments: s4.15(1)(a)(i)</b> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> </ul>

	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State Significant Precincts) 2005</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy No. 44 – Koala Habitat Protection</li> <li>• Newcastle Local Environmental Plan 2012 (NLEP 2012)</li> </ul> <p><b>Development Control Plan: 4.15 (1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012 (NDCP 2012)</li> <li>• City of Newcastle's Community Participation Plan 2019</li> </ul>
<b>TOTAL UNIQUE SUBMISSIONS – KEY ISSUES IN SUBMISSIONS</b>	<p>150 unique (118 in support and 32 objecting). Key Issues raised: -</p> <ul style="list-style-type: none"> <li>• Amenity impacts</li> <li>• Potential impacts on Aurizon operations</li> <li>• Flora/Fauna impacts</li> <li>• Waste Impacts</li> <li>• Fencing</li> <li>• Horse Riders</li> <li>• Hunter Wetlands Centre</li> <li>• Cycleway Grade</li> <li>• Ownership</li> </ul>
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<p>Attachment A: Draft conditions of consent Attachment B: Plans</p>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	Not applicable
<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	No
<b>SCHEDULED MEETING DATE</b>	10 November 2021
<b>PLAN VERSION</b>	See 2.1 - Table 2 below
<b>PREPARED BY</b>	City of Newcastle (CN)
<b>DATE OF REPORT</b>	2 November 2021

## EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN's') assessment of a development application (DA2020/00641) for a Community Facility – Pathway. City of Newcastle is the applicant and seeks consent to construct and operate a cycleway/pathway to be known as the 'Richmond Vale Rail Trail' – (RVRT).

The proposed RVRT, is predominately located on the now disused historic embankments of the former Richmond Vale railway line and Chichester Pipeline. The cycleway will form an essential part of the overall cycleway strategy for the Newcastle Local Government Area (LGA) and wider environs allowing future connections to Lake Macquarie and Cessnock LGA's as far as Kurri Kurri.

The proposal is permitted with consent under a combination of the NLEP 2012 and the *National Parks and Wildlife Act, 1974*. The site is affected by six different land use zones under NLEP 2012.

The proposal is both:

- *Designated development* under State Environmental Planning Policy (Coastal Management) 2018 and
- *Integrated development* under Parts 7 and 7A of the *Fisheries Management Act 1994*.

The original proposal was notified in accordance with CN's Community Participation Plan 2019 (CPP) from 5 August to 2 September 2020. An amended proposal altering the design of the King Street Trail portion at Shortland was re-notified to the owners and occupiers of nearby properties from 25 August to 8 September 2021. During the exhibition period, CN received a total of 150 unique written submissions, comprising 32 objections and 118 submissions in favour of the proposal.

The application is referred to the Hunter Central Coast Regional Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Clauses 3 & 5, Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2013* which states '*Council related development over \$5 million and Private infrastructure and community facilities over \$5 million*'.

Briefings to the Panel were held on 18 November 2020 and 10 March 2021 where the following key issues were discussed:

1. Land contamination,
2. Flora/fauna & BDAR/biodiversity/NPWS issues,
3. Heritage issues (Aboriginal/European),
4. Cycleway grades (over 13% on King Street Trail),
5. Amenity impacts,
6. Parking/amenities design,
7. Waste management,
8. Ownership issues,
9. Compliance with the SEARs for the EIS,
10. Strategic value of the cycleway,
11. Construction impacts,
12. Flooding impacts,
13. Removal of Hunter Wetlands Centre leg to address conflicts with centre,
14. Removal of Tarro leg to address conflicts with M1 Motorway extension.

The detailed assessment of the development, has considered all relevant matters under Section 4.15) of the *Environment Planning and Assessment (EP&A Act) Act 1979* and concludes the impacts of the development can be mitigated and/or managed to ensure an acceptable level of environment, subject to the recommended conditions of consent. Accordingly, DA 2020/00641 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The development site comprises multiple allotments traversing an overall length of approximately 15.6 kilometres within the Newcastle LGA. The proposal consists of several trail 'legs' being:

- Shortland to Hexham Junction (approximately 5.35kms) – This leg starts at King Street Shortland and extends along the route of the historic Chichester Pipeline (now removed) towards Hexham. The route will then turn to the south west towards Minmi.

The development has been amended to remove the leg which was proposed to continue north west towards Tarro ending on the Newcastle side of the new England Highway. The intersection of these three legs joining Hexham is referred to as 'Hexham Junction' on the design plans.

A second short leg, which was proposed through the Hunter Wetlands Centre, Shortland (HWC), to join with the main trail at Ironbark Creek (Shortland), has also been removed from the application.

The King Street Trail portion of the cycleway contains the only length of the proposal which is more than 1-3% grade, reaching a grade of 13% for a length of approximately 60 metres. Design amendments to address this grade have been assessed within this report.

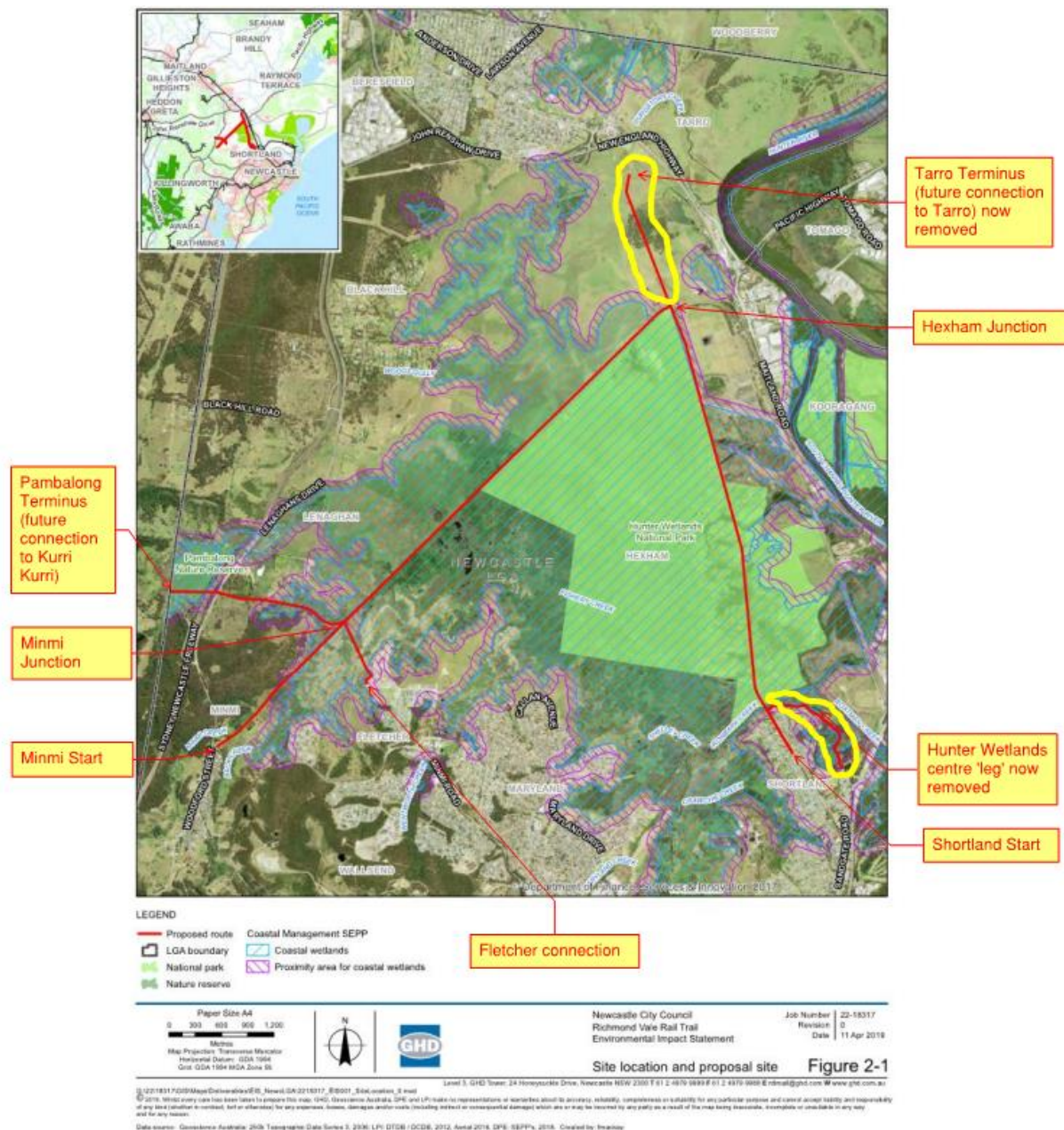
- Hexham Junction to Minmi (approximately 7.5 kms) – Located near the Aurizon rail stock maintenance facility site is the T-intersection with the previous 'Shortland to Tarro' leg which forms the Hexham Junction. The trail proposes to head south west from Hexham Junction to Minmi on the historic former Richmond Vale railway corridor.
- Minmi Junction to Pambalong Reserve (approximately 2.15 kilometres) - Adjoins to the Cessnock LGAs - Along the Hexham Junction to Minmi leg is an intersection (Minmi Junction) of two additional connection 'legs'. The Minmi Junction to Pambalong leg is an essential connection which allows the trail to be extended to the west under Lenaghans Drive and the M1 motorway to the Pambalong reserve. This connection will allow the future extension of the trail to Kurri Kurri which is being considered separately to this development application by Cessnock City Council.
- Minmi Junction to Fletcher (approximately 700m) - This is a shorter extension from Minmi Junction to Fletcher (i.e. at Kural Crescent/Mitti Street) which will provide a link to the existing paths connecting to the community centre and the broader Fletcher area. A portion of this proposed section will be on raised boardwalks.

Please refer to **Figure 1** - Aerial Photograph of Site/SEPP (Coastal Management) 2018/Locational Map.

The amended development site subject to a variety of land constraints including:

- Coastal wetlands

- Bushfire risk
- Acid sulfate soils
- Land contamination
- Flooding risk
- Heritage (Aboriginal & European)



**Figure 1 - Aerial Photograph of Site/SEPP (Coastal Management) 2018/Locational Map**

Source: Extracted from GHD EIS Oct 2019, with notes added.

## 1.2 The Locality

The proposal, being a cycleway, is linear in nature and travels from Shortland to Hexham and then to Minmi, with side legs toward the west (Pambalong Reserve) and Fletcher.

The cycleway is largely proposed on the existing embankments that were previously used by the Chichester Pipeline and the former Richmond Vale rail corridor.

The lands through which the proposed cycleway will traverse and/or adjacent are varied including:

- Coastal Wetlands (i.e. under the State Environmental Planning Policy (Coastal Management) 2018).
- Nature Reserves (. under National Parks and Wildlife Service - NPWS).
- Rural lands (majority of this land has environmental zonings, E2 – Environmental Conservation, but has been historically disturbed by agricultural uses such as grazing, the former railway line use and water pipeline).
- Disturbed bushland.
- Residential suburban areas (small portion located at Shortland and Fletcher).

The Minmi end of the proposed cycleway will be north of the proposed 'Winten Subdivision'. The larger south western portion of the subdivision, proposed under DA2018/01351 and currently under assessment comprises approximately 900 lots. The southern portion, under DA 2015/10393 – 'Stage 1B', for 314 lots was approved by orders of the Land and Environment Court on 14 December 2017. DA2018/01351 and a proposal to modify DA2015/10393 will be considered by the Panel later this year/early next year.

### **'Connectivity with the proposed Winten subdivision'**

A proposed residential subdivision under assessment (known as the 'Winten subdivision') under DA2018/01351 and DA2015/10393 is located south and south west of the Woodford Street trailhead.

#### **'Winten – South Western link'**

The amended RVRT proposal will provide an on street connection, approximately 90 in length, to the south western portion of 'Winten subdivision' at a future pedestrian refuge and then link to an off road pathway.

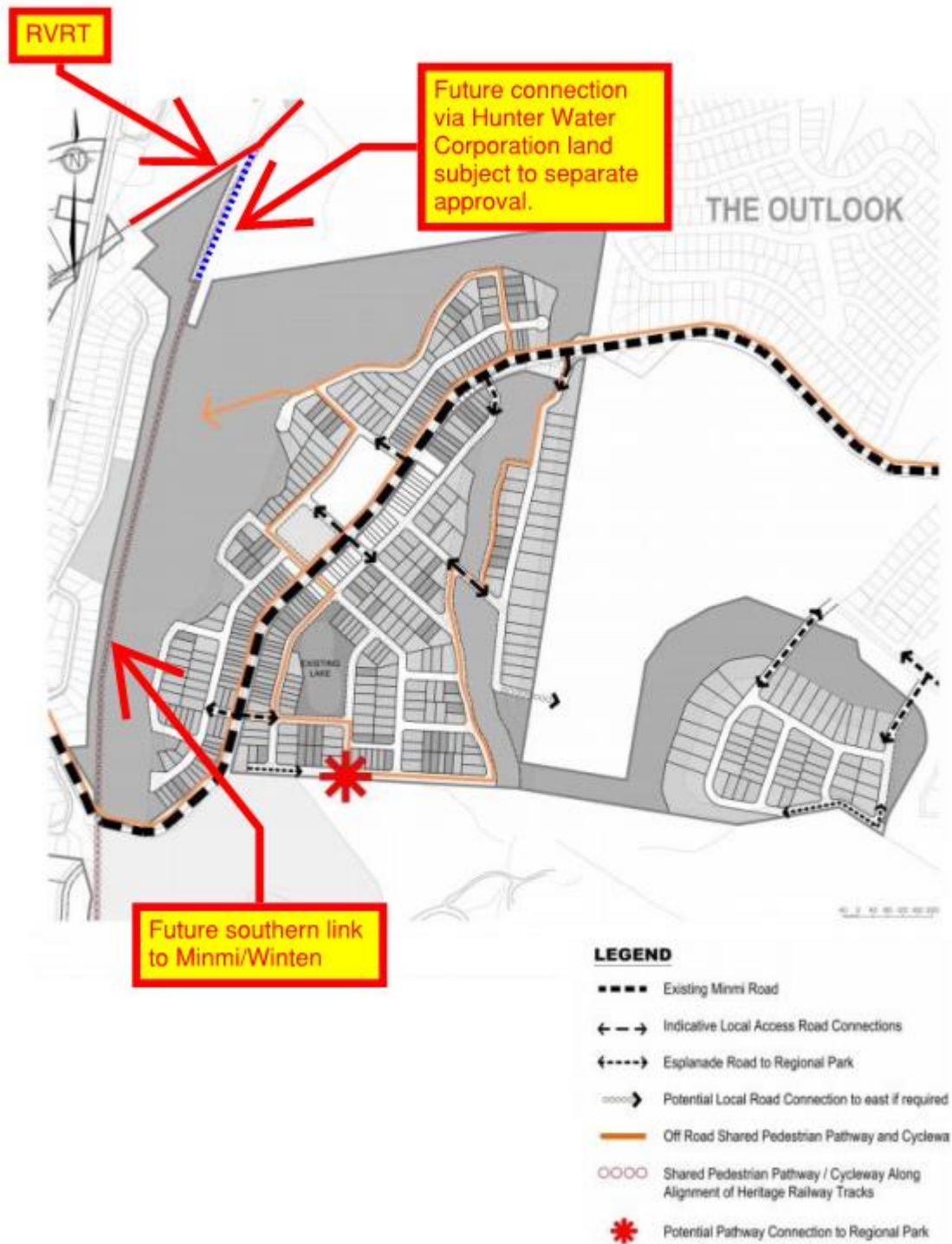
Under the concept plan Minmi Precinct Development Guidelines, which covers the Winten proposal, it intends a direct pathway from a location directly south west of the Woodford Street trailhead, through an isolated triage of land owned by Winten to the Woodford Street pedestrian refuge and then onto the off road pathway within the proposed Winten subdivision (See **Figure 2** below).

#### **'Winten – Southern link'**

The amended RVRT proposal will also be able to connect, in future, to Minmi and southern portion of the Winten subdivision. A shared pathway/cycleway is required under the Minmi East Precinct Development Guideline which has been previously approved under DA2015/10393. A remaining portion of cycleway, approximately 220 metres in length, via Hunter Water Corporation land, will be subject to a separate future development application (See **Figure 3** below)







**Figure 3 - Minmi East Precinct Development Guideline**



## **2. THE PROPOSAL AND BACKGROUND**

### **2.1 The Proposal**

The proposal, due to the interaction with coastal wetlands under Clause 10 of *State Environmental Planning Policy (Coastal Management) 2018*, constitutes designated development and the applicant has submitted the required Environmental Impact Study ('EIS') with the application.

The proposed cycleway to be known as the Richmond Vale Rail Trail (RVRT) consists of several 'legs' on the historic Chichester Water Pipeline and the former Richmond Vale rail corridor (as outlined above). The proposal involves the establishment of a pathway four metres wide on an existing cleared water main corridor and disused rail corridor, and includes the following works:

- Removal of unsuitable subgrades and the construction of pavements using imported gravel, asphalt and concrete.
- Construction of a new seven metre wide, three-span concrete girder bridge across Ironbark Creek within the Hunter Wetlands National Park.
- Construction of a new four metre wide, single-span truss bridge across Fishery Creek within the Hunter Wetlands National Park.
- Replacement of existing dilapidated timber bridges with concrete bridges on six existing bridges along the former railway alignment.
- Construction of 230 metre long and four metre wide fibre reinforced composite (FRC) boardwalk through the Hexham Wetlands (in Hunter Wetlands National Park), along lengths of the alignment where the existing embankment is subject to frequent inundation.
- Construction of 125 metre long and three meter wide FRC boardwalk along and existing pipeline easement to connect the trail into Fletcher.
- Construction of two new parking facilities at various entry points to the proposed shared pathway one at King Street Trail, Shortland and the other at Woodford Street, Minmi.
- Once constructed, use of the cycleway for non-motorised travel between the suburbs of Shortland, Fletcher, Minmi and Lenaghan (Pamablong Reserve/Lenaghan Drive 'leg'), with the latter connection providing connectivity to Kurri Kurri following completion of the western section of the RVRT (to be assessed under separate development application).
- Car parking and amenities (toilets, water taps, seating, shelters). It is noted that the amenities are now limited to only those proposed adjacent to Ironbark Creek on King Street Trail, Shortland and Woodford Street trailhead, Minmi. All of the facilities originally proposed at other locations have been removed from the amended proposal.
- The proposal will involve associated construction activities including temporary offices, soil stockpiles, traffic controls, surveys, soil and sedimentation controls, associated tree removal, earthworks, construction of broad walks, retaining walls, rest areas, pavement, culverts and bridges.

The development, as proposed, forms part of the CN's Cycling Plan 2021-2030 connecting Shortland to Minmi/Fletcher and allowing further connections to Kurri Kurri and Tarro into the future.

Due to the historic nature of the pipeline and rail corridor routes the proposed cycleway would largely be developed on existing embankments. Additional works will involve replacement of culverts where required and in several instances longer bridges are proposed. As outlined above, there are also sections which will be constructed as new raised boardwalks (i.e. instead of embankments) to minimise any flooding or environmental issues in these areas.

**Table 1: Development Data**

<b>Control</b>	<b>Proposal</b>
Site area	Approximately 15.6km long cycleway as amended.
GFA	47m <sup>2</sup> Total (two small amenities buildings).
FSR	The majority of the land on which the cycleway is proposed has no FSR under the NLEP 2012.  King Street Trail and small portion at Woodford Street trailhead have a 0.6:1 FSR but neither proposed amenities buildings are within the mapped 0.6:1 FSR areas.
Clause 4.6 Requests	No
Max Height	Shelter & Amenities Buildings – 4.0 metres or less (approx.)
Car Parking spaces	The parking associated with the developed is proposed as several locations: <ul style="list-style-type: none"> <li>• King Street, Shortland: 33 spaces (including 6 disabled)</li> <li>• Woodford Street, Minmi: 13 spaces (including 2 disabled)</li> </ul>

## 2.2 Background

The development application ('DA') was lodged on **23 June 2020**. A chronology of the DA since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 3: Chronology of the DA**

<b>Date</b>	<b>Event</b>
23 June 2020	DA lodged
5 August to 2 September 2020	Exhibition of the application
28 July 2020	DA referred to external agencies
17 August 2020	Request for Information from CN to applicant
21 October 2020	Additional Information received
22 October 2020	Request for Information from CN to applicant
18 November 2020	Panel briefing
10 March 2021	Panel briefing
20 September 2021	Additional Information received including amended plans

### **3. STATUTORY CONSIDERATIONS**

#### **Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act)**

The development was assessed by the Australian Government Department of Agriculture, Water and Environment under s68(1) *Environment Protection & Biodiversity Conservation Act 1999* (EPBC), due to the potential to significantly impact of on matters of national environmental significance, including Listed Threatened Species, and it was determined that the proposed action (i.e. proposal development) *'...is not a controlled action. This means that the proposed action does not require further assessment and approval under the EPBC Act before it can proceed.'*

#### **Designated Development**

The proposal constitutes *designated development* under the provisions of Clause 10(2) of SEPP Coastal Management, requiring the preparation of an Environmental Impact Study ('EIS').

The development involves works under Clause 10(1), as extracted below:

- '(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—*
- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) the carrying out of any of the following—*
    - (i) earthworks (including the depositing of material on land),*
    - (ii) constructing a levee,*

- (iii) *draining the land,*
- (iv) *environmental protection works,*
- (d) *any other development."*

### Secretary's Environmental Assessment Requirements SEARs

The applicants sought the Secretary's Environmental Assessment Requirements (SEARs) and have submitted an EIS for the proposal which assess the impacts of the development in accordance with the criteria outlined within the SEARs (as detailed within Table 1-1 of the EIS).

### Notification of submissions to the Secretary of the Department of Planning, Industry and Environment ('the Department')

An application which constitutes designated development cannot be determined until 21 days after the Planning Secretary has been provided copies of submissions received during both public notification periods of the development. in accordance with Clause 4.16(9)(b) of the EP&A Act 1979).

The Secretary of the Department was provided copies of the submissions and has not objected or provided any further requirements within the required 21 day period, allowing the Panel to determine the application.

### Integrated Development

The proposal constitutes 'integrated development' under Parts 7 and 7A of the *Fisheries Management Act 1994*. The Department of Primary Industries (Fisheries) has assessed the proposal and has no objections subject to the issued General Terms of Approval, including:

1. *'The proponent must apply for and obtain a Part 7 permit for dredging, reclamation and to harm marine vegetation under the FM Act from DPI Fisheries prior to any works on site. Permit application forms are available from the DPI Fisheries website at: <http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit> ; and*
2. *Environmental safeguards (sediment fences, silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and*
3. *The boardwalk design must not obstruct overland flow paths.'*

The General Terms of Approval have been incorporated into the recommended conditions of consent held at **Attachment A**.

### **3.1 Matters for Consideration**

When determining a DA, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act 1979. These matters as are of relevance to the DA include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*

- (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.

Consideration of these matters is set out in the following sections of this report.

### 3.2 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 (State and Regional Development) 2011* (SRD SEPP).
- *State Environmental Planning Policy (State Significant Precincts) 2005* (SEPP SSP).
- *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP).
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP).
- *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55).
- *State Environmental Planning Policy (Coastal Management)* (Coastal Management SEPP).
- *State Environmental Planning Policy No. 44 – Koala Habitat Protection*.
- *Newcastle Local Environmental Plan 2012* (SEPP 44).

A summary of the key matters for consideration arising from these State Environmental Planning Policies (SEPPs) are outlined in **Table 4** and considered in more detail below. The relevant provisions of the NLEP2021 are detailed in below the assessment of the SEPPs.

**Table 4: Summary of Applicable State Environmental Planning Policies**  
(Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
SRD SEPP	<ul style="list-style-type: none"> <li>• Clause 20(1) declares the proposal as regionally significant development pursuant to Clauses 3 &amp; 5, Schedule 7 of the SRD SEPP <i>Council related development over \$5 million and Private infrastructure and community facilities over \$5 million</i> as a community facility.</li> </ul>	Yes
SEPP SSP	<ul style="list-style-type: none"> <li>• The proposal and subject land do not trigger the requirements of this SEPP</li> </ul>	Yes
ISEPP	<ul style="list-style-type: none"> <li>• <b>Clause 45</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> <li>• <b>Clause 100</b> Development on proposed classified road</li> </ul>	Yes



Vegetation SEPP	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 does not apply in this instance as consent is being sought for removal of vegetation</li> <li>•</li> </ul>	Yes
SEPP 55	<ul style="list-style-type: none"> <li>• <b>Clause 7</b> - Contamination and remediation has been considered in the Contamination Reports and the proposal is satisfactory subject to conditions.</li> </ul>	Yes
Coastal Management SEPP	<ul style="list-style-type: none"> <li>• SEPP (Coastal Management) 2018. The proposal, being a cycleway, travels through various areas of coastal management and accordingly is affected by the following provisions Clauses: -</li> <li>• <b>Clause 10 &amp; 11</b> – Coastal wetlands &amp; Littoral rainforests area</li> <li>• <b>Clause 13</b> – Coastal environment area,</li> <li>• <b>Clause 14</b> – Coastal use area</li> </ul>	Yes
SEPP 44 - Koala Habitat Protection	<ul style="list-style-type: none"> <li>• <b>Clause 7</b> – Impacts on potential koala habitat.</li> </ul>	Yes

#### State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 ('SRD SEPP') applies to the proposal as it identifies if development is 'regionally significant development'. In this case, pursuant to Clause 20(1) of SRD SEPP, the proposal is a regionally significant development as it satisfies the following criteria of Schedule 7 of the SRD SEPP: -

- Clause 3 - Council related development over \$5 million (CIV),
- Clause 5 - Private infrastructure and community facilities over \$5 million (CIV) as community facilities.

Accordingly, the Panel is the consent authority for the application. The proposal is consistent with this Policy.

#### State Environmental Planning Policy No. 55 – Remediation of Land

The relevant provisions of State Environmental Planning Policy 55 - Remediation of Land ('SEPP 55') have been considered in the assessment of the DA. Clause 7(1) of SEPP 55 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A preliminary site investigation ('PSI') and detailed site investigation ('DSI') has been undertaken incorporating a Contaminated Site Assessment including soil sampling and analysis was undertaken and a Remedial Action Plan prepared by GHD Pty Ltd 15 September 2021 and reviewed by Ramboll Australia Pty Ltd 16 September 2021 an NSW Environment Protection Authority accredited site auditor.

The Contaminated Site Assessment (CSA) supersedes the '*Phase 1 Contaminated Site Assessment*' prepared in March 2019 originally submitted with the proposal and includes the results of additional soil sampling and analysis. The report concludes that the overall risk of contamination being encountered that would require remediation is considered to be unlikely, however notes that '*...to manage any potential impacts to sensitive environments or groundwater during construction, Council has requested that soils are managed in accordance with a Remediation Action Plan (RAP)*'.

The RAP describes its purpose as '*...reviewing remedial options, approaches and methodologies applicable/feasible to address any soil contamination that may be identified during either additional investigations along the route or during the construction phase of the RVRT.*'

Section 10 of the RAP presents a review of the remedial options for the project ,should it be found that remediation is required through additional investigations or as unexpected finds during the construction. This analysis determined that the feasible and most appropriate remedial options would be for excavation and disposal of any contamination, or on-site capping.

The RAP includes a 'Remediation Works Plan' which describes the works steps and procedures that may potentially be required. Validation of any required remediation is described in Section 12 of the RAP. The conclusion of the RAP is that with implementation of the plan as required, the site will be suitable for the proposed development.

An Interim Advice Letter, prepared by Ramboll Australia Pty Ltd a NSW EPA accredited site auditor, and dated 16 September 2021, confirms the following in respect to the RAP and CSA:

- The data set used for the CSA is considered of sufficient completeness, comparability, precision and accuracy for the purpose of the Audit. Some areas of the site have a low sample density which may impact on the representativeness of the data for these areas. Management controls are proposed in the RAP to address this uncertainty.
- The soil analytical results are consistent with the site history and field observations. Sufficient soil investigations have been conducted to conclude that there is low risk of contamination present. As there is some uncertainty, GHD has prepared a RAP to address potential variability and contamination that may be identified during construction works.
- The conceptual site model presented in the RAP was a reasonable representation of the contamination at the site and considers that uncertainties would be effectively managed under the RAP during construction.
- The site auditor has assessed the RAP by comparison with the checklist included in EPA 'Guidelines for Consultants Reporting on Contaminated Land' (2020). The RAP was found to address the required information, and
- The proposed remediation works outlined in the RAP are appropriate should contamination be identified at the site during the additional investigations or during construction works. If adequately implemented, it is anticipated the RAP should be able to ensure that the site is suitable for the proposed recreational land use. Successful validation will be required to confirm this.

Following review of all information, the site auditor considers that the site can be made suitable for the proposed development by following the RAP, and subject to the following:

- An acid sulphate soils management plan should be developed and implemented

- Further soil investigations are reported for review by the Auditor. A revision of the RAP is completed and reviewed by the Auditor if required
- A Validation Sampling and Analysis Quality Plan is prepared and provided for review by the Auditor prior to investigation and remediation, and
- Validation works outlined in the RAP are documented to be successful. at the completion of the site development works a site audit assessing the implementation of the RAP is to be completed which will conclude on the suitability of the site for the recreational land use.

The implementation of the RAP can be imposed by way of a consent condition, and each of the auditor's conditions has been addressed by:

- An Acid Sulfate Soils Management Plan is to be included in the Construction Environmental Management Plan, as described in the EIS and to be required by condition of consent
- Reporting additional soils investigations to the auditor will be a condition of consent
- The preparation of a Validation Sampling and Analysis Plan and its reporting to the auditor will be a condition of consent, and
- The success of any validation will be confirmed through the Site Audit Statement, which will be required through a condition of consent and must be completed before use of the facility

The applicant has provided a detailed land contamination assessment. The land contamination reporting indicates that overall risk of contamination being encountered that would require remediation is considered to be unlikely.

Notwithstanding this and having regard to the nature of the proposal presenting a very limited soil exposure scenario for future users, the assessment has taken a conservative approach to ensure further sampling is undertaken during construction (and an unexpected finds protocol) adopted to further assess and confirm the nature of the materials.

In this respect the applicant has demonstrated that the site can be made suitable for the proposed development by following the RAP and subject to conditions. Relevant conditions of consent have been recommended and are detailed at **Attachment A**.

The provisions of Clause 7 of SEPP 55 have been satisfied and subject to the recommended conditions of consent, the land is suitable for the development.

State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal Management)

The proposal constitutes designated development under the provisions of Clause 10(2) of SEPP Coastal, requiring the submission of an Environmental Impact Study (EIS).

The development will involve works under Clause 10(1), as extracted below,

- “(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—*
- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*

- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following—*
  - (i) *earthworks (including the depositing of material on land),*
  - (ii) *constructing a levee,*
  - (iii) *draining the land,*
  - (iv) *environmental protection works,*
- (d) *any other development.”*

Additionally, Clause 11 is also applicable due to proposed works in proximity to coastal wetlands as extracted below:

- “(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*
  - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*
- (2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.”*

A comprehensive assessment of the proposal has been undertaken, and as outlined within this assessment report it has been determined that the development is acceptable, subject to conditions recommended in **Attachment A**, in terms of fauna/flora, biophysical, hydrological, ecological, heritage, social, economic, traffic and water quality aspects. The majority of the land which forms part of the proposal is highly disturbed and the cycleway is predominately located on top of an existing man-made embankments.

#### State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The iSEPP applies under both the following clauses:

- Clause 45 – Development near substations or within 5m of power lines,
- Clause 100 – Development on proposed classified road (due to the works underneath M1 Motorway and originally Maitland Road/New England Highway)

The proposal was considered by Ausgrid under Clause 45 and is considered acceptable subject to standard conditions regarding construction safety and investigation of easements as address in the recommended conditions within **Attachment A**.

Transport for NSW (TfNSW) have also assessed the proposal and raised concerns regarding the Hexham Junction to Tarro leg due to potential conflict with planned M1 Motorway extension to the Pacific Highway. The proposal was modified to remove this leg at this stage. It is understood further negotiations are continuing with TfNSW to allow this leg into the future as a separate application.

Overall, the proposal is considered to be acceptable in terms of the ISEPP.

#### State Environmental Planning Policy 44 – Koala Habitat Protection

The proposal has been assessed, having regard to Clause 11, as partly extracted below:

**"11 Development assessment process—no approved koala plan of management for land**

- (1) *This clause applies to land to which this Policy applies if the land—
  - (a) has an area of at least 1 hectare (including adjoining land within the same ownership), and
  - (b) does not have an approved koala plan of management applying to the land.*
- (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."*

The submitted EIS details that there is not sufficient native vegetation which qualifies as koala habitat within the area affected by the current proposal. It is further advised that no evidence of resident koala population was found within the area of the proposal.

It is considered that the proposed development is acceptable in terms of the provisions of SEPP 44.

*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

Clause 7 of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* – Clause 7 provides that a person must not clear vegetation in any non-rural area of the State without the authority confirmed by a permit granted by the council. The application proposes tree removal and the granting of development consent subject to conditions would satisfy the provisions of this clause.

*Newcastle Local Environmental Plan 2012*

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

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



(f) to facilitate the development of building design excellence appropriate to a regional city.

The proposal is consistent with these aims as the proposal will contribute to the provision of community facilities, support alternative forms of travel, support and complement natural and cultural heritage.

### *Zoning and Permissibility (Part 2)*

The site is within the following multiple zones pursuant to Clause 2.2 of the NLEP 2012 (see **Figure 4** below):

- R2 - Low Density Residential.
- E1 - National Parks and Nature Reserves.
- E2 - Environmental Conservation.
- E3 - Environmental Management.
- E4 - Environmental Living.
- SP2 - Infrastructure (Sydney Newcastle Freeway).

The majority of the proposal is within land under the first three zones listed above with the R2 zone limited to near the suburbs of Shortland, Fletcher and Minmi.

The remaining zones are very limited in terms of the overall proposal as follows:

- E3 - Environmental Management – west of the M1 Motorway through the Pambalong Reserve (the zone is so narrow it is hidden under the red line detailing the RVRT in the **Figure 4** below).
- E4 - Environmental Living – is only the width of Lenaghans Drive.
- SP2 - Infrastructure – from western side of Lenaghans Drive to western side of M1 Motorway.

### Permissibility assessment

<b>Zone</b>	<b>Permissibility</b>	<b>Comment</b>
R2 - Low Density Residential	Yes – <i>Community Facilities/Recreation Areas/Roads</i>	Satisfactory.
E1 - National Parks and Nature Reserves	Yes – Uses authorised under the NPW Act, 1977 are permitted without consent.	The proposal is not as yet an authorised use within an adopted plan of management but has been identified within a draft plan of management. Approval from OEH would be required until the plan is adopted under S151 of the NPW Act, 1974.
E2 - Environmental Conservation	Yes – <i>Recreation Areas/Roads</i>	Satisfactory.
E3 - Environmental Management	Yes – <i>Community Facilities/Recreation Areas/Roads</i>	Satisfactory.
E4 - Environmental Living	Yes – <i>Community Facilities/Recreation Areas/Roads</i>	Satisfactory.

SP2 - Infrastructure (Sydney Newcastle Freeway)	Yes – Roads (including any development that is ordinarily incidental or ancillary to development for that purpose)	Satisfactory.
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### Objective assessment

Zone	Objectives	Comment
R2 - Low Density Residential	<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.</li> </ul>	Consistent - It is considered that the cycleway constitutes a facility that contributes to the day to day needs of the residents of the Newcastle LGA.
E1 - National Parks and Nature Reserves	<ul style="list-style-type: none"> <li>To enable the management and appropriate use of land that is reserved under the <i>National Parks and Wildlife Act 1974</i> or that is acquired under Part 11 of that Act.</li> <li>To enable uses authorised under the <i>National Parks and Wildlife Act 1974</i>.</li> <li>To identify land that is to be reserved under the <i>National Parks and Wildlife Act 1974</i> and to protect the environmental significance of that land.</li> </ul>	Consistent - As noted above the cycleway is included in a Draft plan of management under the NPWS Act, 1974. It is further noted that access trails of various types including fire trails, mountain bikes tracks and walking trails are all consistent with uses readily allowed by NPW Act which the proposed cycleway is comparable to.
E2 - Environmental Conservation	<ul style="list-style-type: none"> <li>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>To provide for the management of the majority of the Hunter River floodplain by restricting the type and intensity of development to that compatible with the anticipated risk to life and property.</li> <li>To provide for the conservation, enhancement and protection of the Hexham Wetlands.</li> </ul>	Consistent - It is considered that proposal will contribute to the management and restoration of areas of cultural/heritage value. The proposal is of a nature consistent with the Hunter River flood environment.
E3 - Environmental Management	<ul style="list-style-type: none"> <li>To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.</li> <li>To provide for a limited range of development that does not have an adverse effect on those values.</li> <li>To provide for the conservation of the rural and bushland character of the land that forms the scenic edge of and the gateway to urban Newcastle.</li> </ul>	Consistent - It is considered that proposal will contribute to the management and restoration of areas of cultural/heritage value. The proposal is consistent with the rural or bushland character of the area
E4 - Environmental Living	<ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special</li> </ul>	Consistent - The proposal is consistent with the rural or bushland character of the area.

	<p>ecological, scientific or aesthetic values.</p> <ul style="list-style-type: none"> <li>• To ensure that residential development does not have an adverse effect on those values.</li> <li>• To conserve the rural or bushland character and the biodiversity or other conservation values of the land.</li> <li>• To provide for the development of land for purposes that will not, or will be unlikely to, prejudice its possible future development for urban purposes or its environmental conservation.</li> </ul>	
SP2 - Infrastructure (Sydney Newcastle Freeway) (known as the M1 Motorway)	<ul style="list-style-type: none"> <li>• To provide for infrastructure and related uses.</li> <li>• To prevent development that is not compatible with or that may detract from the provision of infrastructure.</li> </ul>	<p>Consistent - It is considered that proposal cycleway is compatible with the M1 Motorway infrastructure by promoting alternative forms of transport and safe routes. Notably, the overall intended cycleway strategy will allow safe alternative routes to Maitland Road, New England Highway and Hunter Expressway which is consistent with the zone objectives.</p>

The proposed cycleway, which will also allow pedestrian access, can constitute several land uses concurrently. It is considered that the development meets all of the following definitions under the NLEP 2012:

**community facility** means a building or place—

(a) owned or controlled by a public authority or non-profit community organisation, and  
(b) used for the physical, social, cultural or intellectual development or welfare of the community,  
but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

**recreation area** means a place used for outdoor recreation that is normally open to the public, and includes—

(a) a children's playground, or  
(b) an area used for community sporting activities, or  
(c) a public park, reserve or garden or the like,  
and any ancillary buildings but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

**road** means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.

It is considered that the proposal best aligns with the definitions of *road* and *community facility* considering the cycleway will be used for '*..the physical development or welfare of the community*' and the transportation role it forms linking different areas of the Newcastle Local Government Areas (and other LGAs into the future). The development has been assessed on this basis.

Figure 4 – Zoning Map Extract

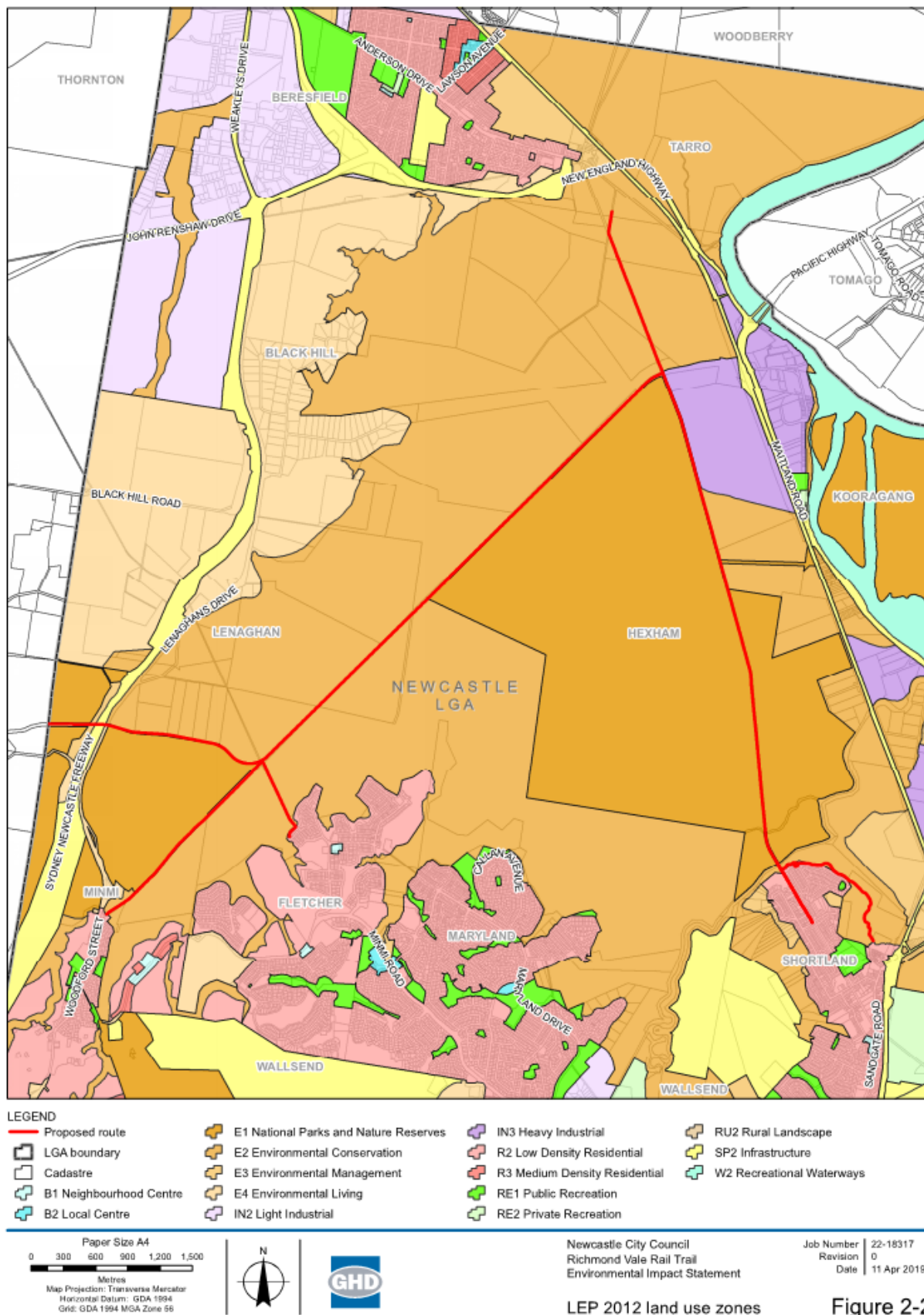


Figure 2-2

Source: GHD EIS Oct 2019

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

The NLEP 2012 also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

**Table 5: Consideration of the LEP Controls**

Control	Requirement	Proposal	Complies
Minimum subdivision Lot size (CI 4.1)	450m <sup>2</sup> /40,000m <sup>2</sup>	No subdivision proposed	Yes
Height of buildings (CI 4.3(2))	8.5 metres	4.0 metres	Yes
FSR (CI 4.4(2))	The majority of the land on which the cycleway is proposed has no FSR under the NLEP 2012.  King Street Trail and small portion at Woodford Street trailhead have a 0.6:1 FSR but neither proposed amenities buildings are within the mapped 0.6:1 FSR areas.	47m <sup>2</sup> Total (two small amenities buildings).	Yes
Land acquisition (CI 5.1/5.1A)	Small portion of the RVRT is affected by land acquisition between Minmi Junction/M1 Motorway & Minmi Junction/Woodford Street. All this land is zoned E1 National Parks & Nature Reserves	Under CI5.1(2) the <i>Authority of the State</i> to acquire the land is <i>Minister administering the National Parks and Wildlife Act, 1974</i> who already owns the land.  Clause 5.1A does not apply as the land has been acquired.	Yes
Heritage (CI 5.10)	The proposal involves various heritage items and items of archaeology including Aboriginal and European	A detailed assessment of the proposals impacts has been detailed under Clause 5.10 below.	Yes
Flood planning (CI 5.21)	<i>Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</i>	The proposal is acceptable subject to the conditions of consent proposed regarding the preparation and implementation of the Flood Risk Management Plan and the additional modelling work to be done to ensure no significant change to flows and	Yes



	<p><i>(a) is compatible with the flood function and behaviour on the land, and</i></p> <p><i>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p><i>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</i></p> <p><i>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</i></p> <p><i>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</i></p> <p><i>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</i></p> <p><i>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</i></p> <p><i>(b) the intended design and scale of buildings resulting from the development,</i></p> <p><i>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i></p>	<p>velocities around proposed bridge structures.</p>	
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	<i>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i>		
Acid sulphate soils (Cl 6.1)	Requires acid sulphate soils to be addressed by preparation of management plan	An acid sulphate soils management plan has been provided.	Yes
Earthworks (Cl.6.2)	Provides several matters that the consent authority must consider prior to granting development consent to earthworks.	The matters listed under cl.6.2(3) have been considered during the assessment and the proposed works are acceptable.	Yes

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

#### *Clause 5.1/5.1A Land acquisition*

The affected land acquisition has already occurred and no further land acquisitions apply to the proposal.

#### *Clause 5.10 Heritage conservation*

The subject site is identified as a heritage item and within the vicinity of other heritage items. The site is not located within a heritage conservation area. It is noted that as the the RVRT project spans the Newcastle, Cessnock and Lake Macquarie LGAs. Supporting documents for the development application have addressed impacts relating to the whole of the project area. The following assessment is limited to those aspects of the proposal that are within the Newcastle LGA and the provisions of the NLEP 2012 – Clause 5.10 and the Newcastle Development Control Plan (NDCP) 2012.

#### Newcastle LEP2012

#### Objectives Cl 5.10(1)

The objectives of Clause are extracted below:

- "(a) to conserve the environmental heritage of the City of Newcastle,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance."*

It has been assessed that while some aspects of the proposal will have a moderate adverse impact on the heritage significance of the Minmi to Hexham Railway (I332), the proposed development will also result in positive benefits to the community and to ongoing conservation and management of the heritage item.

Currently the heritage item is inaccessible, and the public are not able to interpret the significance of the heritage item. Significant fabric associated with the former railway has experienced a decline in physical condition as the railway corridor is not used nor maintained. The original use of the railway is now redundant. Should the proposed development not occur, the railway will continue to deteriorate further, which will be detrimental to the significance of the heritage item.

Adaptive reuse of disused railways as community cycleways is an established practice around NSW and the world (i.e. 'Rail Trails'). The Fernleigh Track in the Newcastle and Lake Macquarie LGAs is a good example of this, where the former railway corridor is used daily by members of the public and its history as a railway is able to be interpreted.

Although the proposed development will necessitate some removal of significant heritage fabric to facilitate the cycleway, on balance it is considered that the proposed development is overall a positive outcome for the Minmi to Hexham Railway due to the community benefits and the opportunity to provide quality heritage interpretation along the track. As the trail is opened to the community, more people will visit the heritage item and have the opportunity to learn about the significance of the Minmi to Hexham Railway. This will also flow on to other listed heritage items in the vicinity of the former railway. Due to the benefits of the project, and the interpretative opportunities it presents, together with retention of significant fabric, it is considered that the proposed development will enable the significance of the heritage item to be conserved.

The supporting documents for the development have identified there may be two areas of archaeological potential within the study area. These areas are not listed archaeological sites. However, it is recommended that preparation of an archaeological assessment and application to Heritage NSW for a Section 140 Excavation Permit is included as a condition of consent.

To ensure that the heritage significance of Aboriginal objects is conserved, it is recommended that preparation of an Aboriginal Cultural Heritage Assessment and application to Heritage NSW for an Aboriginal Heritage Impact Permit is included as a condition of consent.

Overall, it is considered that the proposed cycleway is acceptable, on balance, having regard to the objectives of Clause 5.10.

#### Effect of the proposed development on heritage significance CI 5.10(4)

The effect of the proposal on the heritage significance of the Minmi to Hexham Railway (I332) has been assessed. It is considered that the proposed development will result in cumulative adverse heritage impacts to the Minmi to Hexham Railway. The adverse heritage impacts relate to the extent of significant fabric to be removed and the visual impact of the proposal on the setting of the heritage item.

The concept design has been amended several times throughout the design process to better resolve the adverse heritage impact of the proposal. Elements of high value (timber bridges) are now to be retained where the previous design sought to remove them.

It is considered that on balance, the adverse heritage impacts of the proposed development are acceptable with regard to the positive benefits of the proposal to the public and to the ongoing management of the heritage item.

#### Heritage assessment CI5.10(5)

A Statement of Heritage Impact (SoHI) prepared by Artefact was submitted with the development application. This has been supported by several addendum statements of heritage impact as the concept design has been amended through the assessment process.

#### Heritage conservation management plans CI5.10(6)

A conservation management plan is not been required prior to determination of this application.

#### Archaeological sites CI5.10(7)

One listed archaeological site, 'Duckenfield Colliery relics' (A17) is located approximately 80m from the project area. Part of this site is proposed to be utilised for temporary access from Woodford Street. The SoHI found that there would be negligible impact to this site.

The SoHI notes that there is potential for archaeological material to be present relating to the former Minmi to Hexham Railway and the remains of a control cabin. It is recommended that prior to any works commencing on the site, a Section 140 application is made to Heritage NSW. The Section 140 application must be accompanied by an Archaeological Assessment.

#### Aboriginal places of heritage significance CI5.10(8)

An Aboriginal Archaeological Survey Report (AASR), prepared by Artefact (March 2019) was provided with the application when first submitted in June 2020.

One AHIMS recorded site and eight additional new sites were recorded in a visual inspection of the project area. The AASR found that the proposed development would cause ground disturbing impacts to all nine sites.

Additional information was requested during the assessment of the application, including design amendments to avoid ground disturbance impacts to any identified Aboriginal sites, and preparation of an Aboriginal Heritage Management Plan (AHMP) including an unexpected finds procedure.

An Aboriginal Heritage Management Plan (AHMP) and amended concept design were submitted on 2 July 2021. The AHMP includes archaeological management measures to be implemented prior to and during the construction of the proposed development. The concept design was amended to reduce the ground disturbance impacts to two Aboriginal sites.

The AHMP found that an Aboriginal Heritage Impact Permit (AHIP) is required to proceed with the works due to unavoidable impact to two known Aboriginal sites. An Aboriginal Cultural Heritage Assessment (ACHA) will be required to be submitted with the application for an AHIP, including community consultation.

An appropriate condition requiring an application to Heritage NSW for an AHIP prior to any works commencing is in the schedule of recommended conditions (see **Attachment A**)

## NDCP 2012 – Section 5.04 Aboriginal Heritage

### *5.04.01 - Due diligence and development assessment*

An Aboriginal Archaeological Survey (AAS) was provided with the application. The AAS recommended that an Aboriginal Heritage Management Plan (AHMP) be prepared to delineate the location of Aboriginal sites and provide management measures for the development. CN requested the AHMP be provided prior to determination.

The AHMP was submitted in June 2021. The AHMP includes archaeological management measures to be prior to and during the construction of the proposed development. The AHMP finds that an Aboriginal Heritage Impact Permit is required to proceed with the works due to unavoidable impact to 2 known Aboriginal sites.

An appropriate condition requiring the preparation of an Aboriginal Cultural Heritage Assessment and application to Heritage NSW for an AHIP prior to any works commencing is included in the schedule of recommended conditions

## NDCP Section 5.05 – Heritage Items

### *5.05.01 - General Principles*

The proposed development follows the alignment of the Minmi to Hexham Railway (I332), a heritage item of local significance on Schedule 5 of the NLEP 2012.

The project area also contains three other listed heritage items of local significance:

1. John Brown's Model Farm (I337)
2. Remains of Railway Siding—John Brown's Model Farm (I338)
3. Former Railway Cuttings—John Brown's Model Farm (I340)

The proposed works will include construction of a path on the former Minmi to Hexham Railway. It is one of the oldest rail lines in Australia, established in 1856. The heritage item consists of specially built sand embankments that cross Hexham Swamp. The embankments are still visible within the landscape today, although much of the railway infrastructure, including rails and sleepers are no longer extant. Much of the original fabric is gone or unrecognisable and the majority of remaining physical fabric dates from 1909 and later.

The SoHI states that 'due to the continual reworking of the railway line with repeated phases of infrastructure improvement (in particular, the duplication of the line in 1909) the heritage



item does not significantly demonstrate or represent the phase of its earliest history in the 1850s. Rather, the item is representative of early twentieth century private railway systems, much of which has been retained including its original route and evolution over time. Elements of the heritage item graded as having high significance include the sand embankments and the 5 timber bridges within the Hexham Swamp section of the former railway."

The removal of residual rails, culverts, timber bridges and cuttings would have largely moderate impacts on the heritage item. Cumulatively, the removal of these portions of the former railway would however have a significant impact on the physical fabric of the heritage item.

During the assessment CN requested an amended concept design that included retention of a greater proportion of heritage fabric. Design amendments have been proposed to address CN's request for a greater proportion of remnant rail heritage fabric to be incorporated into the development. These amendments include a redesign of the treatment of the interface between the proposed trail and the bridges within Hexham Swamp and a realignment of the cycleway in some locations.

The proposed solution is to restore 2 of the 5 existing dilapidated timber bridges and adjacent rail lines using reclaimed heritage fabric from the trail. The trail will traverse these areas via a new concrete bridge adjacent to the former heritage bridges. A viewing platform will be constructed at these locations to provide a breakout space where users of the trail can observe the restored bridges.

Reusing the existing girders and sleepers was considered. However due to the loading requirements associated with emergency vehicles and safety requirements for users, it was not feasible to adapt the existing bridges for trafficable use. The revised design would avoid impacting the c1909 timber bridges, an element of high significance in the context of the former railway. This is a positive outcome and the proposed break out spaces will provide an opportunity for effective heritage interpretation for visitors.

Although the proposed development will necessitate some removal of significant heritage fabric to facilitate the cycleway, on balance it is considered that the proposed development is overall a positive outcome for the Minmi to Hexham Railway due to the community benefits and the opportunity to provide quality heritage interpretation along the track. As the trail is opened to the community, more people will visit the heritage item and have the opportunity to learn about the significance of the Minmi to Hexham Railway. This will also flow on to other listed heritage items in the vicinity of the former railway. Due to the benefits of the project, and the interpretive opportunities it presents together with retention of significant fabric, it is considered that the proposed development will enable the significance of the heritage item to be conserved.

#### *5.05.03 Changing the use of a heritage item*

The heritage item (Minmi to Hexham Railway) is not being used for any purpose. The proposed cycleway is considered to be appropriate for its heritage significance. Adaptive reuse of former railways as cycleways is an established practice and provides an opportunity for the public to experience the former railways where their original use is redundant.

The development presents the opportunity for high-quality interpretation along the cycleway. An appropriate condition requiring a Heritage Interpretation Plan is included in the schedule of recommended conditions.

#### *5.05.06 Development in the vicinity of a heritage item*

There are a number of heritage items in the vicinity of the project area (see **Figures 5 & 6**) . This includes:

1. Tarro Substation (I551)
2. Tarro Pump Station (I550)
3. Tarro Valve House (I546)
4. Tarro Historic Site (A18)
5. Duckenfield Colliery Relics (A14)
6. Duckenfield Railway No. 1 Colliery Branch Lines (I325)
7. Stone Ford (I329)
8. John Brown's Model Farm (I337)
9. Remains of Railway Siding—John Brown's Model Farm (I338)
10. Former Railway Cuttings—John Brown's Model Farm (I340)
11. Dairy Cool Room (I339)

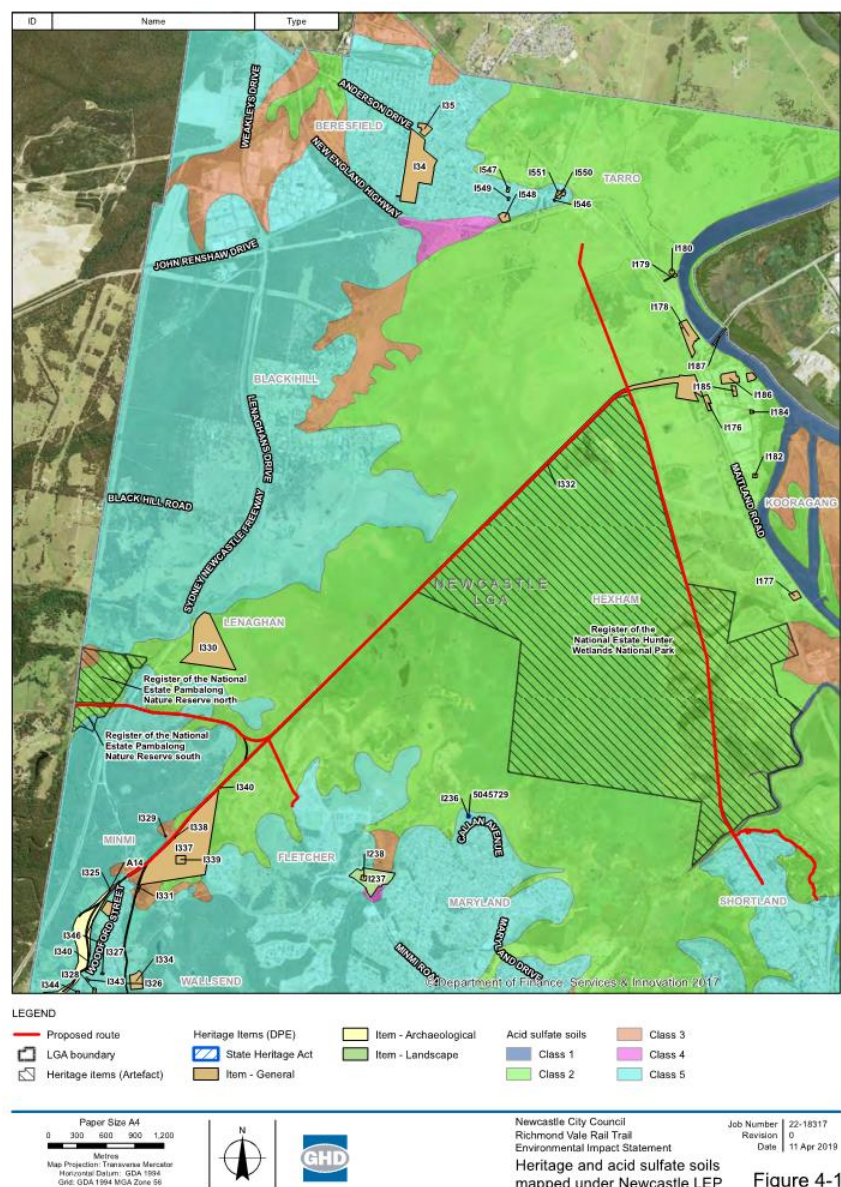
A temporary laydown and stockpiling area is proposed in the vicinity of Tarro Substation, Tarro Pump Station, and Tarro Valve House during the construction phase. The laydown and stockpiling area will have a minor adverse visual impact on the setting of these heritage items however this is a temporary measure and there will be nil long-term heritage impact.

A temporary access road is to be constructed in the vicinity of John Brown's Model Farm, Former Railway Cuttings, and Remains of Railway Siding. No physical impact to these heritage items would occur. The potential visual impact of the temporary access road is considered to be negligible.

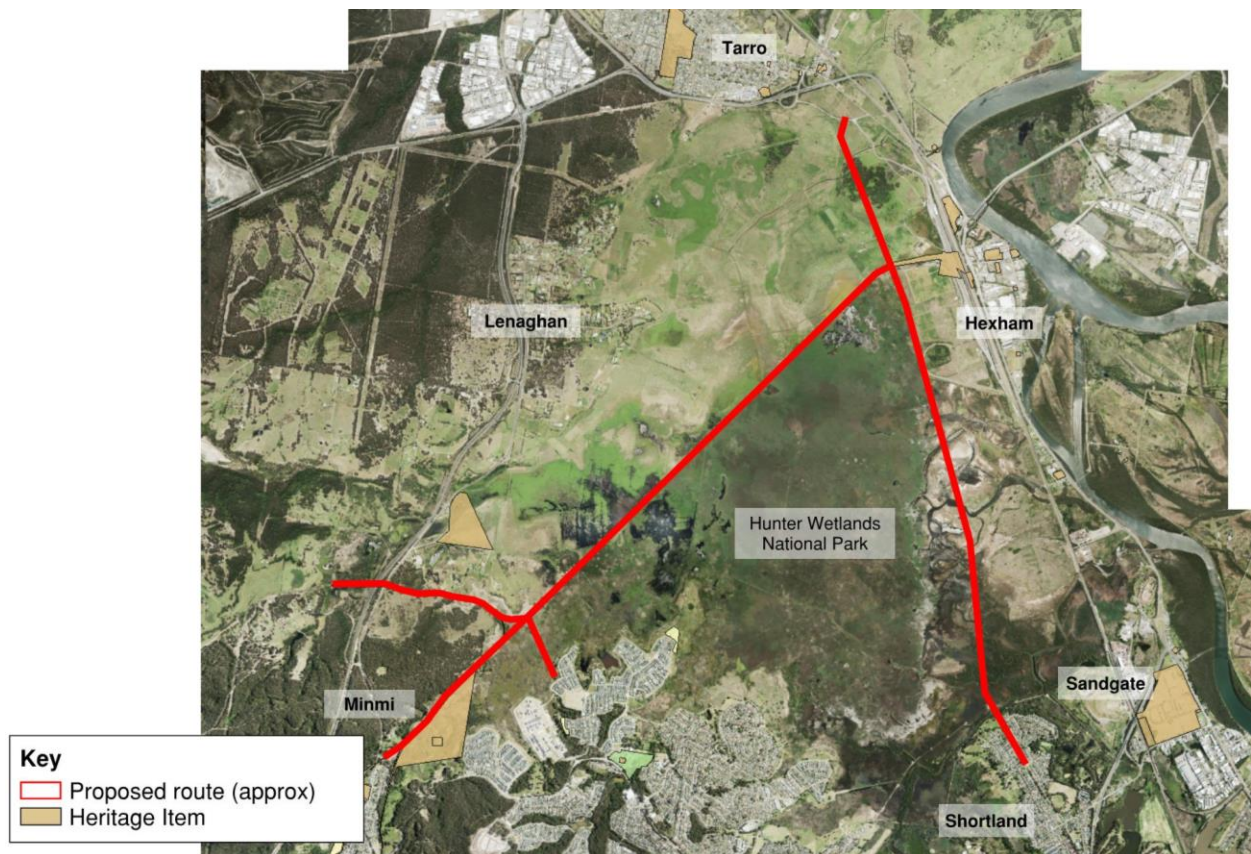
The study area is in the vicinity of archaeological site Duckenfield Colliery Relics (A14), approx. 80m southwest of the study area. The curtilage of this heritage item is adjacent to Woodford Street, which will be used as an entry point for the proposed works. It is considered that the heritage impact of accessing the study area via Woodford Street is negligible. However, an Archaeological Assessment and Section 140 application will be required as a condition of consent to ensure that any area of archaeological potential is protected in accordance with the relevant approvals.

The development is in the vicinity of potential archaeological relics associated with John Brown's Model Farm. The area of potential is located 157m from the study area boundary and will not be impacted by the proposal. To ensure there is no inadvertent impact, it is recommended that temporary protective barriers are set up to protect this area. An Archaeological Assessment will be required as a condition of consent to assess the potential of this area in detail and other areas within the study area boundary prior to any ground disturbance works.

It is considered that the proposal is acceptable and has met the overall provisions of the NLEP 2012 and NDCP 2012 in terms of heritage and archaeological aspects.



**Figure 5 – Applicant’s EIS - Acid Sulphate Soils Map/Heritage Map (Source: GHD EIS Oct 2019)**



**Figure 6** Indicative project area. (Source: CN, OneMap, 7/8/2020)

#### *Clause 5.21 Flood planning*

Clause 5.21(2) of NLEP provides that development consent must not be granted to development on land the consent authority considers to be within the flow planning area unless the consent authority is satisfied as to the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

In deciding whether to grant development consent on land to which the clause applies, the consent authority must consider:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*



The proposal is acceptable subject to the conditions of consent proposed regarding the preparation and implementation of the Flood Risk Management Plan and the additional modelling work to be done to ensure no significant change to flows and velocities around proposed bridge structures.

#### *Clause 6.1 Acid sulphate soils*

Clause 6.1 seeks to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within cl.6.1(2) is noted as requiring development consent when carried out on land shown on the Acid Sulfate Soils Map. The subject site is affected by Acid sulphate soils covering classes 1-5 but predominately Class 2 (see **Figure 5** above).

Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. However, cl.6.1(4) provides that despite subclause (2) where consent under the clause is not required if: (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

An acid sulphate soil management plan has been submitted in accordance with the provisions of Clause 6.1 and the development is considered to be acceptable in regard to these provisions.

#### *Clause 6.2 Earthworks*

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The clause specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

The proposed development involves extensive bulk earthworks, inclusive of regrading works, retaining walls and building of bridges and culverts.

Clause 6.2(3) provides several matters that the consent authority must consider prior to granting development consent as outlined below.

<b>Matter</b>	<b>Comment</b>
Disruption/detrimental effect on drainage patterns and soil stability.	The proposal has been designed to have little impact on drainage patterns and soil stability. The majority of works are located on existing embankments and will no have impacts in these regards.,
Effect on future use or redevelopment of the land.	The current proposal has been a long planned reuse and adaption of predominately disused Richmond Vale railway line and Chichester pipeline embankments. The proposal does not impact on any redevelopment of the land.
The quality of fill and/or soil to be excavated.	The soil has been tested and assessed in terms of land contamination and acid sulphate soils and it is considered that the proposal can provide without unacceptable impacts. Appropriate mitigation measures have been development in relation to land contamination and acid sulphate soils. Conditions have been

	imposed regarding any soil to be imported to ensure it is virgin excavated natural materials (VENM)
The effect of the development on the existing and likely amenity of adjoining properties.	The proposal will have minimal impact on neighbouring properties in terms of earthworks. Proposed works is suitable distant from neighbouring properties to have negligible impacts.
The source and any fill material and destination of any excavated material	<p>Appropriate conditions have been imposed on the removal and importation of any fill.</p> <p>Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.</p> <p>Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the <i>Protection of the Environment Operations Act 1997</i> and the <i>Protection of the Environment (Waste) Regulation 2014</i>.</p>
The likelihood of disturbing relics.	The impacts on European and Aboriginal heritage has been assessed in detail under Clause 5.10 of the NLEP 2012 and is considered to be acceptable.
Impact to any watercourse, drinking water catchment or environmentally sensitive area.	The proposal has involved a detailed assessment of impacts on watercourses/environmentally sensitive areas due to the developments position relative to <i>coastal wetlands</i> . The proposal does not impact a drinking water catchment. It is considered that the proposal is acceptable in this regard.
Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	The proposal is considered to be acceptable subject to the comprehensive conditions of consent recommended at <b>Attachment A</b> .

Consideration has been given to the matters prescribed under cl.6.3(3) and the proposed earthworks are acceptable.

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

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and which may be relevant to the proposal, including the following:

#### *Draft Remediation of Land SEPP*

The draft SEPP, based on the Explanation of Intended Effect (EIE), is aimed at improving the assessment and management of land contamination and its associated remediation practices. The submitted proposal is consistent with the draft provisions and is considered to be acceptable in terms of the current SEPP 55 - Remediation of Land

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

#### **Newcastle Development Control Plan (NDCP) 2012**

The most relevant considerations arising from the NDCP 2012 in respect of the proposed development are as follows:

### **Section 3.11 Community Services**

The proposal is considered to be a community facility. The design of the proposed cycleway and associated structures is considered to be acceptable in terms of:

- (a) location and use of surrounding buildings
- (b) views to and from the site
- (c) access to the site
- (d) existing vegetation and topography of the site.

The impacts on nearby buildings have been assessed and is considered to be acceptable, especially having regard, on balance, to the public benefits offered by the facility.

The proposal will enable the general public to experience the broad open vistas through the coastal wetland areas from Shortland to Minmi while having minimal visual impacts itself.

Access to the site and the proposal has been the subject of comprehensive assessment and redesign to ensure that the best practicable combination of parking, cycle grades and disabled access can be achieved having regard to the restrictions and constraints of the subject land and design options. This has been further detailed under Section 7.03 below.

The proposal has relatively limited impacts on existing vegetation due to large portion being proposed on top of a historic railway/pipeline embankment that was originally man made. The proposed impacts on vegetation has been assessed in detail under the biodiversity assessment.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 4.01 Flood Management**

A hydrology and hydraulics assessment has been prepared by GHD (March 2019). Constructing the Trail will involve new waterway crossings and the upgrade or replacement of existing waterway crossings (i.e. culverts and bridges).

Construction of the works will require sediment controls to protect the local waterways from pollution. A Soil and Water management plan will need to be implemented to ensure that the risk of pollution is minimised. A water quality monitoring program is recommended to assist in pollution control. This will need to be setup before the works commence and remain in place until the works are completed and the sediment controls can be removed.

The proposal is not expected to result in any changes to Hunter River flooding, however changes to the formation height and cross drainage structures have the potential to impact local creek flow volumes and velocities. During the detailed design phase detailed hydraulic modelling will be required to design watercourse structures that, as far as practical, provide a comparable hydraulic performance to the existing arrangement. It is recommended that the detailed design allows for potential future reduction in the proposal's flood immunity by assessing the impact of predicted sea level rise and increased rainfall due to climate change.

The study identified 18 major crossing structures on the Trail route in the City of Newcastle LGA. The calculated flood immunity for the structures identified 7 structures above the 1% Annual Exceedance Probability flood level with 2 structures having a flood immunity less than of the 50% AEP flood event. To cater for this wide range of flood immunity it will be necessary for the applicant to develop a flood risk management plan to control usage of the cycleway

during flood events either local catchment flooding or Hunter River flooding. Required control measures will range from closure of the Trail based on flood warnings to signage and flood level markers.

Conditions are proposed to address the water quality and flood management issues identified in the assessment process, as included in **Attachment A**. The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

#### **Section 4.02 Bush Fire Protection**

The majority of the proposal is within Vegetation Category 3 Bushfire Prone Land. The proposal was referred to NSW Rural Fire Service (RFS) for advice but does not constitute a *special fire protection purpose* under the 100B of the Rural Fires Act, 1997.

The RFS indicated that the proposal was acceptable subject to conditions for an emergency management plan which required preventing access ‘*..on days declared to be of an extreme or catastrophic fire danger rating*’ An appropriate condition in this regard is included within the schedule of recommended conditions (see **Attachment A**).

It is also advised that NPWS have required that the cycleway maintain suitable width for their Category 9 ‘Striker’ fire fighting vehicles (i.e. converted Landcruiser used to respond to spot fires) needing a clear 3.0 metre wide clearance inclusive of fencing. In the assessment of the application this has been clarified and confirmed it is achieved by the design. An appropriate condition in this regard is included within the schedule of recommended conditions

#### **Section 4.03 Mine Subsidence**

The proposal is not affected by mine subsidence.

#### **Section 4.04 Safety and Security**

The development is considered to be adequate in terms of Crime Prevention Through Environmental Design (CPTED) principles: surveillance, access control, territorial reinforcement and space management.

Lighting, signage, emergency access, fencing and parking considered to be appropriate to the nature of the proposal has been incorporated into the development.

Within the existing tunnels at the M1 Motorway and Lenthans Drive, motion activated lighting will be utilised to minimise the impacts on any microbats while ensuing these relatively short tunnels are appropriately lit. The M1 Motorway tunnel has existing recesses which will be enclosed by security fencing/doors to ensure there are no spaces available to hide.

Lighting was not considered necessary or appropriate throughout the remaining parts of the cycleway. The cycleway, while somewhat isolated, is considered to be comparable to a quiet country road, in that it does not generally have lighting yet is accessible at all hours but would have limited use during hours of darkness. It is further noted that the introduction to permanent lighting throughout the coastal wetland would not be acceptable in terms of the existing fauna/flora environment due to impacts on these sensitive areas.

Overall, it is considered that the level of safety and security of the proposal, on balance, is better in terms of the general public than the alternatives of existing routes along Maitland Road and New England Highway.



Appropriate conditions to address signage and lighting are included within the schedule of recommended conditions (see **Attachment A**). The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

#### **Section 4.05 Social Impact**

The majority of the cycleway is located away from residential property travelling through coastal wetlands. The trailheads at Shortland, Minmi and Fletcher are near existing residential properties. The design of the cycleway, and associated disabled access, at Shortland is located at the rear of the properties and the cycleway will be partially cut into the slope for part of the trail. It is considered that the level and nature of the use of the cycleway by bicycles and pedestrians does not unreasonably impact on the amenity of the neighbouring residents having regard to the setbacks, fencing and in many instances the relative height. It is considered that the trailheads at Minmi and Fletcher are also acceptable being further separated and distant from the proposed cycleway by their respective designs.

The construction of the cycleway will have temporary construction impacts but the majority of these will be away from residential areas, of a limited timeframe (12-18 months) and subject to limitation on hours, dust, soil and sedimentation controls, appropriate conditions to address these aspects are included within **Attachment A**.

The social and economic benefits of the proposed cycleway are significant. The improved safety for cyclists compared to alternative routes (e.g. Maitland Road/New England Highway) and potential to allow cycling as an alternative transport option to cars for commuting.

The availability to the public of an additional facility for physical activity providing additional health benefits. The creation of an access to enjoy the coastal wetland environment and heritage elements of the historic railway (via interpretative features) where access is currently very limited.

Finally, it is estimated that the total cost of the cycleway to Kurri Kurri is approximately \$46 million and will result in benefits to the value of \$77 million (it is noted that the Newcastle portion is approximately \$23.5 million including GST). The overall proposed route to Kurri Kurri has significant potential to increase tourism revenue directly (as seen in other locations with developed 'rail trails') and indirectly with other existing tourism offerings in the area.

Overall, it is considered that the proposal is acceptable in terms of social and economic impacts.

#### **Section 5.01 Soil Management**

Most of the cycleway is to be constructed on the existing embankment originally used for the historic railway line and water pipeline and does not involve major earthworks. All works will be subject to conditions in regard to dust, soil erosion and sedimentation controls. Additionally, an acid sulphate soil management plan has been prepared to address any potential issues in this respect. Finally, land contamination has been investigated and is considered suitable as detailed under SEPP 55 within the report above.

Appropriate conditions to address these aspects are included within **Attachment A**. The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

#### **Section 5.02 Land Contamination**

Land contamination has been investigated and is considered suitable as detailed under SEPP 55 within the report above.

### **Section 5.03 Vegetation Management**

The impacts on existing vegetation have been considered as part of the biodiversity assessment within Section 4.15(1)(b) below.

### **Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items & Section 5.06 Archaeological Management**

These matters were addressed under Clause 5.10 of the NLEP 2012 above.

### **Section 6.12 Minmi**

The current proposal is affected by this section of the NDCP 2012 at the Woodford Street trailhead. The proposal is consistent with the provisions under this Section of the NDCP 2012. The proposal will enhance the existing and future development of Minmi and the positioning of the proposed cycleway is in accordance with the concept plan for Minmi's urban structure (Figure 1).

### **Section 7.02 Landscape, Open Space and Visual Amenity**

The proposal, having regard to its nature and positioning, does not generate requirements for landscaping. It is noted that limited additional landscaping is proposed at the King Street trailhead.

It is considered that the proposal has very low to low visual impacts due to its overall low profile and limited associated structures. On balance, the benefits gained by the proposal outweigh any visual impacts and is considered to be acceptable.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

### **Section 7.03 Traffic, Parking and Access**

#### Access locations and general design

Originally, the development application included four proposed connections for public access, excluding the future western extension toward Kurri Kurri. As a result of concerns raised over potential conflicts with the preliminary design investigations associated with the M1 Motorway to Raymond Terrace project by Transport for NSW (TfNSW) the application has been amended to remove the Shortland to Tarro leg from the current proposal. The project is therefore left with three primary locations, discussed below, which the public may use to access the Trail.

#### **King St, Shortland**

This connection has been the subject of multiple reviews and iterations to determine the optimum means of access for persons with a disability balanced with the longitudinal gradient for cyclists. The report titled '*Shortland Connection to Hexham Wetland*' (GHD - Aug 2021) assessed five primary options, each with multiple sub-options, and assessed each sub-option against the anticipated Capital Cost, Operating Cost, Accessibility, Safety,

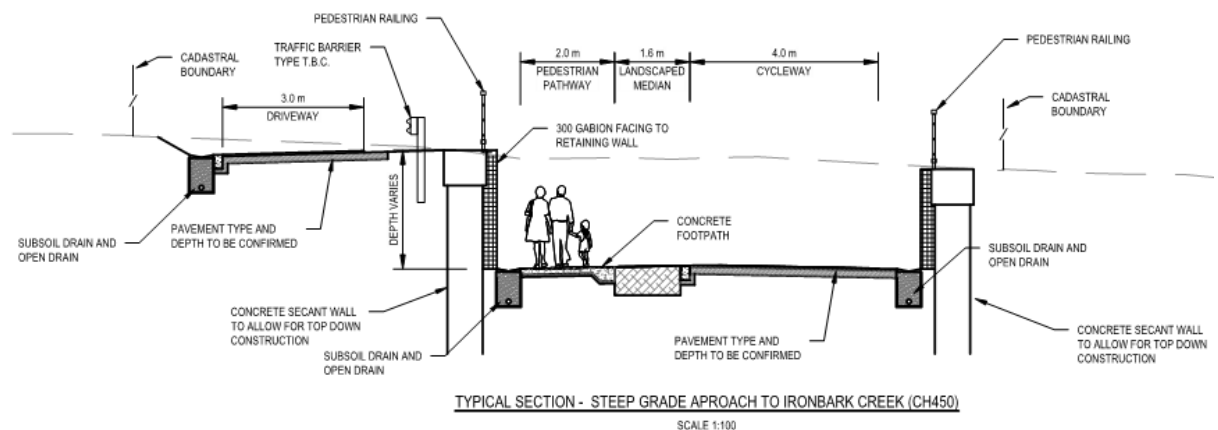
Functionality, Environmental and Social factors. The report concludes that on balance of each of these factors Option 4C is preferred.

Option 4C entails lowering the maximum longitudinal grade of the cycleway from 13% (existing) to a maximum of 10.6%, separation of pedestrian and cyclists onto parallel pathway elements and the provision of a further separate driveway access to four disabled car parking bays located at the bottom of the slope and adjacent to the Ironbark Creek bridge and proposed amenities structure (see **Figure 7** below).

While the proposed longitudinal grade does not comply with Austroads guidelines for cycleways for either uphill or downhill conditions (noting that typically a maximum grade of 5% would need to be achieved) Option 4C is supported as, on balance of the factors identified above, it offers a reasonable and practically achievable outcome.

An alternate option to provide Disability Discrimination Act (DDA) compliant access from Blanch Street to the Trail was also investigated and involved construction of an accessible pathway behind No.s 107 to 115 Blanch Street and 133 King Street. This option required works and the establishment of legal rights of access over Lot 5 DP 233520 owned and operated by the Hunter Wetlands Centre (HWC). This option would have also negated the need for the separate driveway and disabled parking included in Option 4C and this, in turn, would have given more flexibility to how the cycle/pedestrian pathways and associated batters could have been designed. However, the HWC were not supportive of this option at this time and therefore further investigations of this option were discontinued by the proponent.

**Figure 7** – Indicative cross section of 10.6% cycleway grade design (Source GHD)



### **Kural Crescent, Fletcher**

The connection to Kural Crescent, Fletcher will provide a convenient location for residents in the wider Fletcher/ Maryland area to access the Trail. These suburbs are provided with and are connected by a network of on and off-road shared paths and cycleways that can be used to access the Kural Crescent connection without reliance on car travel. This connection, as proposed, is supported.

### Woodford St, Minmi

The Trail connects to Woodford St, Minmi at the northern extent of the existing village of Minmi and commences/terminates at the western extremity of Lot 148 DP840897. The Trail is shown (refer GHD Dwg 22-18317-C3003 Rev. A dated 23/06/2021) to connect to Woodford St via a continuation of the pathway through Lot 3 DP1111997 owned by Sterling Property Group (See **Figure 8** below).

The alignment of this path extension is not shown to be contained within the existing rights of way (refer Easements C and E on DP1111997) that benefit the Hunter Water Corporation and Lot 148 in DP 840897 on which the connecting part of the Trail is proposed. A condition of consent has been recommended requiring that the part of the Trail extension that passes through Lot 3 DP1111997 is to be realigned so as to remain within the bounds of the respective easements.

**Figure 8** – Indicative future cycleway connection option.

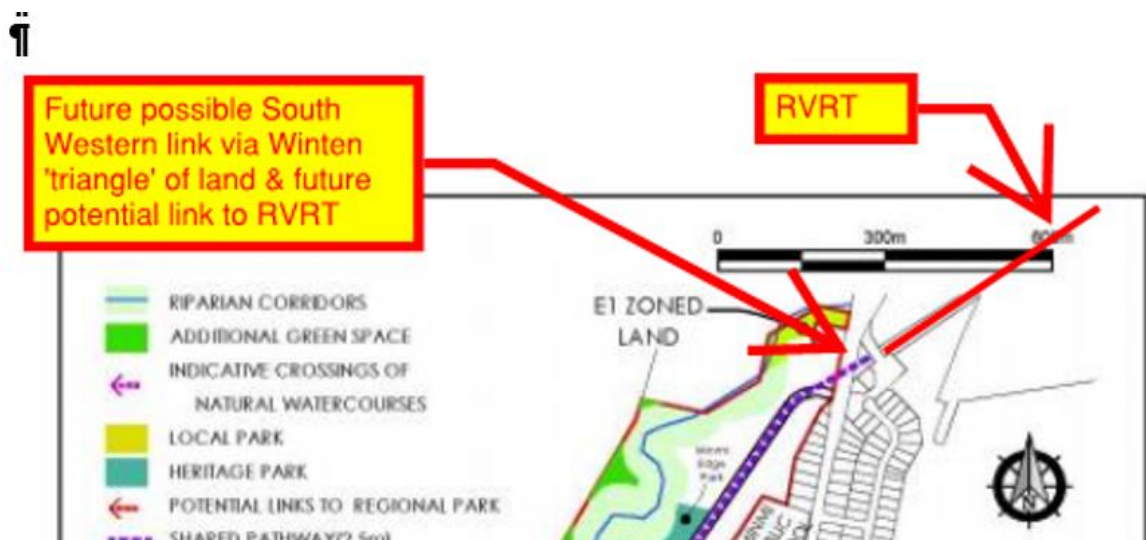


Figure 6 of the [Minmi Precinct Development Guidelines](#) (MPDG) (see **Figure 2** above), approved on 16 November 2018 by the Director, Regional Assessment at the Department of Planning, Industry and Environment in accordance with Condition 1.13 of the Concept Approval (Part 3A) for MP10-0090 issued by the Planning Assessment Commission on 6 August 2013, shows an intention for a further extension of the proposal via a 2.5m wide shared pathway within the approved Concept Plan generally along the alignment of the former Duckenfield Colliery No. 1 Branch Line. While not a part of the RVRT project, this future connection will provide access to the sporting precincts, playgrounds and the existing Minmi Public School as part of the implementation of the Concept Plan. In this regard, DA2018/01351 (Minmi Precincts 3, 4 and 5) is currently under assessment and will be reported to the Panel for determination in the coming months.

Similarly, Figure 3 of the [Minmi East Precinct Development Guidelines](#) (see **Figure 3** above) approved on 18 December 2014 by the Manager, Industry Assessment of the Department of Planning and Environment and the subsequent approved DA2015/10393 (Minmi East Precinct 1B) makes provision for another future connection of the Trail to the Concept Approval via the former Duckenfield Colliery No. 2 Branch Line and which will also

provide a connection to other sporting fields, playgrounds, commercial land and the Blue Gum Hills Regional Park. Again, this connection does not form part of the current proposal.

Notwithstanding the two abovementioned future connections to the approved Concept Plan for Minmi, it is considered appropriate for the Minmi trail head to also be connected to the existing pathway on Woodford St to enable existing and future residents to safely access the trail by walking or cycling along Woodford Street. It is noted that the concept design for the Minmi trail head depicts '*road widening for future parallel parking*' and '*future shared pathway connection to Minmi*' and it is considered appropriate for these works to be included as part of the required works to approved under this DA to support the Minmi trail head. It is noted that there are no trees within this part of the road reserve that would be affected by these works, however some public utility adjustments may be necessary. A condition of consent has been proposed to the require construction of these facilities.

### Parking Demand

The EIS includes the following statement regarding the objectives of the proposed development.

*'The proposal addresses the following specific objectives to:*

- *Support growth by connecting local and regional users at key access points including Shortland, Minmi and Tarro.*
- *Provide commuters and recreational users with a safe alternative route to the local road network, including the New England Highway and the M1 Pacific Motorway.*
- *Provide better recreational access to the Hexham Wetlands and Hunter Wetlands National Park for stakeholders, including birdwatching groups.*
- *Generate healthier, more active lifestyles and opportunities for public appreciation and enjoyment of the local natural environment, including Pambalong Nature Reserve."*

The application proposes the following car parking provisions.

#### **King Street, Shortland**

A total of 29 spaces incorporating 27 kerb side spaces and 2 disabled spaces are proposed to be established on King Street in addition to any existing kerb side parking in the surrounding residential streets. A condition of consent is proposed to ensure these proposed parking spaces are provided with appropriate footway connections to the Trail.

An additional four disabled spaces are also proposed in a designated carpark adjacent the proposed amenities building at the bottom of the King Street slope of the proposal near Ironbark Creek.

#### **Kural Crescent, Fletcher**

No designated spaces are identified with car parking reliant on kerb side opportunities in local residential streets or in the parking facilities on Mitti Street associated with the nearby Kurraka Reserve/Community Facility. The application proposes to install bollards on the outside (swale side) of Kural Cr to discourage the parking of cars adjacent the rock lined swale drain.

#### **Woodford St, Minmi**

A total of 13 designated spaces including two disable spaces are proposed in a designated car park. This carpark will be access via a single driveway connection to Woodford Street and is proposed to include kerb or barrier fencing to prevent cars from reversing directly onto Woodford St.

The submitted plans for the current Woodford St termination of the Trail show the potential to establish additional on-road parking on Woodford St, should the need arise, and this would entail widening of the road pavement, installation of kerb and gutter and associated footway provision. As mentioned above, a condition has been proposed that will require the construction of this parking lane and associated kerb and gutter and footway as part of the Minmi trail head works.

Further, as part of the delivery of the Minmi/Link Road North Concept Plan (MP10\_0090) land on the western side of Woodford St and to the north of No. 32 Woodford Street has been identified as a suitable location for the future establishment of recreation facilities, including sporting fields and carparking. While there is no definitive timeframe for delivery of the recreation facilities it is possible it will occur in the 5 to 10 year timeframe. A future pedestrian refuge on Woodford St would provide safe means to cross Woodford St and access this carpark.

The 'Response to Request for Further Information' letter dated 24 June 2021 provides the Applicant's responses to various concerns raised by the Panel regarding parking provision and access to such parking.

The Applicant states that *'There are no guidelines that define the requirements for parking facilities associated with infrastructure such as the RVRT. Modelling of demand is unlikely to produce reliable results due to the wide ranging assumptions that would be required.'*

This statement is supported as, DCP2012 – Section 7.03 (Traffic, Parking and Access) and relevant Austroads and TfNSW guidelines, do not assist in determining an appropriate rate for parking provision for this type of development. Further, it is also acknowledged that it may be difficult to estimate an average or maximum number or type (commuter/recreational cyclist or pedestrian) of users anticipated to utilise the proposal on any given day and what percentage of these will require car parking facilities.

As was requested by the Panel, the Applicant has also undertaken a review of the parking opportunities associated with the Fernleigh Track between Adamstown and Belmont (current southern limit), as a comparison tool for the proposal. This review identifies that the primary access locations to the Fernleigh Track are serviced by between 8 to 25 on-road car parks or are reliant on existing carparks associated with other community facilities.

It should be noted that there may be instances when these carparks may be unavailable due to occupancy associated with the community facilities in which case users of the Fernleigh Track would need to find alternate parking. A similar scenario could arise for the proposal where co-location of parking provision is proposed to be relied upon.

The Applicant's letter concludes that *'...the parking proposed for the RVRT is similar to that available for the Fernleigh Track, which is a facility of similar scope and expected patronage. It is anticipated that the parking provided will be sufficient for the RVRT as proposed at this stage, with ample additional parking available in future stages, should they proceed.'*

Without means to estimate patronage numbers, the mode of transport used to access the respective 'Trail heads' or the duration of visit/use (turnover of spaces) and then make assumptions around estimated vehicle numbers and parking demand, it is not possible to dispute, with any level of certainty, the statements made by the Applicant that the proposed parking provisions are adequate.

Accordingly, the parking provisions proposed for Shortland, Fletcher and Minmi are considered reasonable.

### Traffic Generation and Road Safety

As identified above, without means to estimate patronage and car dependence, a meaningful traffic impact assessment is not considered possible. Notwithstanding, it is considered the volume of traffic seeking to access the respective Trail heads would be unlikely to have any discernible impact on the local road network and associated intersections.

Additionally, the following comments are made with regard to the King St and Woodford St trail heads.

#### **King Street, Shortland**

In terms of road safety, the provision of formalised kerb side parking on King Street, Shortland could reasonably be anticipated to have a minor positive impact on the locality by slightly reducing vehicle speeds along this length of local residential street.

The amended proposal also includes a proposed driveway connecting King Street to four proposed disabled carparking spaces adjacent the proposed amenities building near Ironbark Creek. This driveway is 3.0m wide, is generally a straight alignment and is provided with passing bays along its length to enable cars travelling in opposite directions to observe each other, yield and safely pass. This driveway also crosses the proposed Trail and appropriate treatments, in accordance with relevant Austroads guidelines, to safely manage this conflict point will be included in the detailed construction drawings. Appropriate signage will also be required at the Shortland Street connection of the driveway to alert drivers to the existence of only disabled parking spaces in this designated carpark.

#### **Woodford St, Minmi**

Access to the off-road 13-space carpark at Woodford Street, Minmi is proposed to be achieved by widening the Woodford St Road pavement to achieve a Basic Right Turn (BAR) type intersection at the location of the proposed driveway crossing entrance to the carpark.

Austroads Guide to Road Design *Part 4A – Unsignalised and Signalised Intersections* and associated TfNSW Supplement recommend Channelised Right Turn (CHR(S)) type intersections be used in preference to BAR type as they are inherently safer because they provide defined right turn storage lanes for drivers wanting to turn right. A condition of consent is proposed that will require the Applicant to provide road construction plans for the works on Woodford St that require a CHR(S) type intersection to be designed in lieu of the BAR type, with the BAR type intersection only permissible if it demonstrated that a CHR(S) type intersection cannot be reasonably accommodated.

It so also noted that the Applicant proposes to construct either kerb and/or extend the existing barrier fencing on the eastern side of Woodford St in such a manner to prevent vehicles from inadvertently reversing or driving out of a carpark bay and directly onto Woodford Street. This approach is supported in principle and will need to be included in the future detailed construction drawings.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.06 Stormwater**

The proposal is satisfactory as appropriate runoff capture and discharge controls are proposed or conditioned. For the vast majority of the project the stormwater will 'sheet' off and be filtered by the abutting vegetation.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.07 Water Efficiency**

The proposal is limited to two public toilet structures which did not warrant rainwater re-use having regard to the NDCP 2012. It is considered that the draw down of any stored water by flushing will likely be very minimal and therefore the offset use of potable water would be negligible and not required in this instance.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.08 Waste Management**

The proposal will involve very limited waste management requirements. There will only be bins located at the King Street Trail and Woodford Street trailheads. The bins at these locations will be serviced by City of Newcastle maintenance staff. No bins will be provided along the rest of the trail and users will be required to take any waste with them under 'leave no trace' principles.

The proposed cycleway is considered to be acceptable in terms of the above Section of the NDCP 2012.

## **Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020)**

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):

*Section 7.12 Newcastle Local Infrastructure Contribution Plan 2019 (Update December 2020)*

This Contributions Plan has been considered and the proposal is exempt from contributions under point 7 being:

*'An application on or behalf of Council for community infrastructure, such as but not limited to libraries, community facilities, recreation areas, recreation facilities and car parks.*

### **3.5 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

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

### **3.6 Section 4.15(1)(a)(iv) - Provisions of Regulations**



Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, comprising the following:

- If demolition of a building proposed - provisions of AS 2601;
- If on land subject to subdivision order under Schedule 7, provisions of that order and any development plan;
- Dark Sky Planning Guideline if applicable;
- *Low Rise Housing Diversity Design Guide for Development Applications* (July 2020) if for manor house or multi dwelling housing (terraces).

None of these provisions apply to the current proposal.

### **3.7 Section 4.15(1)(b) - Likely Impacts of Development**

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

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

#### **Flora and fauna impacts**

The submitted application has undertaken a Biodiversity Development Assessment Report (BDAR) in accordance with the requirements of the Biodiversity Assessment Method (BAM) under the *Biodiversity Conservation Regulation 2017*.

The submitted reports and the proposals impacts in flora and fauna have been assessed by the National Parks and Wildlife Service and CN. The proposal is acceptable subject to conditions of consent as detailed below. The majority of the proposal's area is already disturbed having historically been used for a railway line and pipeline located on manmade embankments and, as such, consists of exotic grasslands.

The NSW National Parks and Wildlife Service's (NPWS) advice on development application provided in-principal support to the application and provides recommended conditions "*should the DA be assessed favourably*".

The recommended conditions of consent relating to biodiversity included in this report represent a combination of the BDAR 'avoid and minimise' (impacts on biodiversity) recommendations, the required retirement of ecosystem credits and species credits (as calculated by the BAM calculator and presented in the BDAR) and the relevant conditions provided in the NPWS letter.

It should be noted that further formal liaison between the applicant and NPWS will be required to obtain the necessary licence(s) to authorise the development under section 151 of the National Parks and Wildlife Act 1974 (NPW Act). The NPWS will also be consulted with detailed design planning for the development.

#### **Microbats**

The details provided by the applicants are considered to demonstrate that sufficient consideration can be given to the combination of lighting and mitigation of impacts on

microbats. It is recommended that a system which ensures the tunnel is sufficiently lit on approach so that pedestrians and especially cyclists can see conditions (and people) within the tunnel before already being within the actual tunnel (e.g. CPTED aspects). This will involve the installation of a sensor system to allow low intensity lights to switch off and on, minimising the duration of lighting. Additional measures proposed include use of non- reflective, dark surfaces and shielding of lighting. Overall, the proposal is considered to be satisfactory subject to appropriate conditions included within **Attachment A**.

### **Acoustic Impacts**

The potential acoustic impacts of the proposal primarily relate to construction noise associated with the proposed development. The construction of the cycleway will have temporary construction impacts but the majority of these will be away from residential areas, of a limited timeframe (12-18 months) and subject to limitation on hours, dust, soil and sedimentation controls, appropriate conditions to address these aspects are included within **Attachment A**.

### **Wastewater (Sewer)/Utilities**

The proposal toilets at Kings Street Trail and Woodford Street trailheads are to be connected to sewer. There are now no other toilets proposed along the cycleway route which is acceptable having regard to the NPWS/environmental issues of providing toilets adjacent within coastal wetlands and sensitive environmental areas. .

A connection to sewer is consider appropriate for on-site wastewater management system for long-term environmental sustainability and is included as a recommended condition of consent within **Attachment A**.

### **Fencing**

All proposed fencing will be in accordance with requirements of NPWS and neighbouring owners and determined at the detailed design stage. Typically, standard 'stock fences' would be used with no barbwire. It is expected that any additional standard (e.g. electric fences) would be separately installed inside the boundary of the properties (even if it attaches to the boundary fencing) and not directly associated with the cycleway.

### **Ownership/Management Agreements**

The proposed cycleway will be the subject of various ownership/management agreements due to the extent and nature of land it covers (much of it being controlled by government or public agencies). The applicants have provided the following details in regard to the proposal:

Lot/ DP	Landowner	Management agreement proposed	Progress to date
1/ 1007615	Minister administering the <i>National Parks &amp; Wildlife Act 1974</i>	Licence	Liaison commenced In-principle agreement provided
1/ 611441	Hunter District Water	Lease	Liaison commenced In-principle agreement provided
1/ 805274	Hunter Water Corporation	Lease	Liaison commenced In-principle agreement provided
1/ 877233	Coal & Allied Operations P/L	Land transfer	Liaison commenced In-principle agreement provided
Lot/ DP	Landowner	Management agreement proposed	Progress to date
1/ 90465	National Parks/Crown	Temporary use only Lease	Liaison commenced In-principle agreement provided
10/ 1194449	Coal & Allied Operations P/L	Land transfer	Liaison commenced In-principle agreement provided
129/ 725084	The State of NSW	Temporary use only Lease	Liaison commenced In-principle agreement provided
147/ 1143414	Hunter Water Corporation	Lease	Liaison commenced In-principle agreement provided
148/ 840897	Hunter Water Corporation	Lease	Liaison commenced In-principle agreement provided
21/ 1195619	Coal & Allied Operations P/L	Land transfer	Liaison commenced In-principle agreement provided
3/ 1111997	Sterling Property Group Pty Limited	Acquisition	Liaison commenced In-principle agreement provided
3/ 171105	National Parks and Wildlife Service	Licence	Liaison commenced In-principle agreement provided
312/ 583724	Private landowner	Temporary use only Lease	Liaison commenced In-principle agreement provided
4/ 171105	National Parks and Wildlife Service	Licence	Liaison commenced In-principle agreement provided

The applicant's approach is considered to be acceptable having regard to the number and nature of properties affected. It is noted that Lot 312 DP 583724 has been included within the table in error and does form part of the proposal.

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

### 3.8 Section 4.15(1)(c) - Suitability of the site

The development site is considered to be suitable for the proposal.

### 3.9 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

### 3.10 Section 4.15(1)(e) - Public interest

The development is in the public interest and will allow for the orderly and economic development and adaptive reuse a heritage item and associated area which had previous been used for Richmond Vale railway line and Chichester Pipeline. The proposal will offer a facility for the general public that offers physical, cultural and health benefits and increases opportunities to experience the heritage and environmental values of the area.

## 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 6**.

**Table 6: Concurrence and Referrals to agencies**

Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
S68(1) <i>Environment Protection &amp; Biodiversity Conservation Act 1999</i> (EPBC)	The development was assessed by the Australian Government Department of Agriculture, Water and Environment under s68(1) <i>Environment Protection &amp; Biodiversity Conservation Act 1999</i> (EPBC), due to the potential to significantly impact of on matters of national environmental significance (i.e. Listed Threatened Species), and it was determined that the proposed action (i.e. proposal development) "...is not a controlled action. This means that the proposed action does not require further assessment and approval under the EPBC Act	Yes

<i>Native Title Act 1993</i>	The land within the area of the current proposal is not subject to native claims under this Act.	N/A
<b>Concurrence Requirements</b> (s4.13 of EP&A Act)		
S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	<p>The proposal is likely to significantly affect threatened species and accordingly, the proposal has provided a biodiversity development assessment report. This report has been assessed by NPWS and CN and is considered to be acceptable subject to the conditions of consent included within <b>Attachment A</b>.</p> <p>Concurrence was not required in accordance with S7.12(2).</p>	Yes
CI 86(3) - <i>State Environmental Planning Policy (Infrastructure) 2007</i>	The clause does not affect the proposal.	N/A
<b>Referral/Consultation Agencies</b>		
S4.14 – EP&A Act Development on bushfire prone land	<p>The proposal was referred to NSW Rural Fire Service (RFS) for advice but does not constitute a special fire protection purpose under the 100B of the Rural Fires Act, 1997.</p> <p>Proposal is acceptable subject to emergency management plan to address restricting access on extreme and catastrophic fire days.</p>	Yes
CI 45 – Infrastructure SEPP Development near electrical infrastructure (Ausgrid)	Ausgrid advised that the proposal is acceptable subject to standard conditions maintaining required separation distances to their mains/poles during construction and ensuring that appropriate contact is made with Ausgrid where any of their electricity easements are affected.	Yes
CI 85 – Infrastructure SEPP Development land that is in or adjacent to a rail corridor.	The proposal is not in or adjacent a rail corridor.	N/A

CI 100 – Infrastructure SEPP Development that is deemed to be development proposed on a classified road. The proposal does not constitute 'traffic generating development' under Clause 104.	<p>The City of Newcastle is the roads authority for all public roads under the proposal except for the M1 Motorway (S138).</p> <p>Concern was raised that the proposal may impact or be in conflict with the design of the M1 extension to the Pacific Highway and possible alignment of the future Lower Hunter Freight Corridor.</p> <p>The current application has been amended to remove the Hexham Junction to Tarro leg which effectively removes these possible conflicts. It is understood that separate negotiations and investigations are being undertaken with TfNSW to allow a cycleway connection into the future.</p>	Yes
Works under Section 138 of the Roads Act, 1993	See above.	Yes
CI 18 - SEPP 64 Advertisement within 250m of classified road any part of which is visible from the classified road and subject to CI 17.	The development does not propose applicable signage	N/A
CI 28(2)(a) – SEPP 65  Advice of the Design Review Panel ('DRP')	Development does not trigger SEPP 65.	N/A
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>		
<i>Parts 7 and 7A of the Fisheries Management Act 1994.</i>	<p>The proposal constitutes integrated development under Parts 7 and 7A of the <i>Fisheries Management Act 1994</i>. The Department of Primary Industries (Fisheries) has assessed the proposal and has no objections subject to the issued General Terms of Approval (GTAs):</p> <p>1. <i>"The proponent must apply for and obtain a Part 7 permit for dredging, reclamation and to harm marine vegetation under the FM Act from DPI Fisheries prior to any works on site.</i></p>	Yes

	<p><i>Permit application forms are available from the DPI Fisheries website at: <a href="http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit">http://www.dpi.nsw.gov.au/fisheries/habitat/help/permit</a> ; and</i></p> <p><i>2. Environmental safeguards (sediment fences, silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms; and</i></p> <p><i>3. The boardwalk design must not obstruct overland flow paths.”</i></p>	
<p>S100B - Rural Fires Act 1997</p> <p>bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes</p>	See bushfire assessment above	N/A
<p>S89-91 – Water Management Act 2000</p> <p>water use approval, water management work approval or activity approval under Part 3 of Chapter 3</p>	<p>Under Clause 41 ‘Controlled activities—public authorities’ of the Water Management (General) Regulation 2018 a public authority exempt as follows:</p> <p>“</p> <p><i>A public authority is exempt from section 91E(1) of the Act in relation to all controlled activities that it carries out in, on or under waterfront land.”</i></p>	N/A
<p>S90 National Parks &amp; Wildlife Act, 1974 – Impact on Aboriginal heritage object or site</p>	<p>The applicant did not elect to undertake integrated development on the basis of Section 90. Notwithstanding this, potential impacts on aboriginal archaeology has been assessed under Clause 5.10 NLEP 2012 above and appropriate conditions recommended at <b>Attachment A</b></p>	Yes

	Consent will be separately required under S151 of the NPW Act, 1974 for licence/lease within their reserve areas.	
S57, Heritage Act, 1977	There are no items or places listed on the State Heritage Register affected by this proposal.	N/A

#### 4.2 Council Referrals (internal)

The development application has been referred to various CN officers for technical review as outlined **Table 7**.

**Table 7: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	CN's Principal Development Officer (Engineering) reviewed the submitted proposal including flooding aspects and considered that there were no objections subject to conditions.	Yes
Environmental	CN's Senior Environment Protection Officer reviewed the proposal including land contamination, biodiversity and overall environmental aspects and considered that there were no objections subject to conditions	Yes
Traffic	CN's Principal Development Officer (Engineering) reviewed the proposal in relation to traffic, car parking and cycleway (e.g. grades) and these issues are considered in more detail within Section 7.03 Traffic, Parking and Access of this report.	Yes
Heritage	CN's Development Officer (Heritage) has undertaken a comprehensive assessment of the applicant's heritage reports, including a Heritage Impact Statement ('HIS') and preliminary aboriginal heritage management plan, as detailed under Clause 5.10 of the NLEP 2012 above. It is considered that the proposal is acceptable subject to conditions of consent.	Yes
Recreation Planner	The proposal was assessed and it was considered that the development would be advantageous to the community and provides connection between community parcel of land and the residential areas of Shortland. We fully support this development.	Yes

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



### 4.3 Community Consultation

The original proposal was notified in accordance with the CN's Community Participation Plan from 5 August to 2 September 2020. An amended proposal altering the design of the King Street Trail portion at Shortland was re-notified to those nearby properties from 25 August to 8 September 2021. The notification included the following:

- A sign placed on the site at multiple locations;
- Notification letters sent to adjoining and adjacent properties (224 letters were sent during the original notification period and 139 letter during the additional notification period for the Shortland amendment);
- Notification on the Council's website.

CN received a total of 150 unique submissions, comprising 32 objections and 118 submissions in favour of the proposal (79% support). The issues raised in these submissions are considered in **Table 8**

**Table 8: Community Submissions**

Issue	Council Comments
<b>Amenity Impacts</b>  Objection to the cycleway section within the Hunter Wetland Centre, especially backing onto the rear of residential properties.  Concerns relate to security, privacy and enjoyment of private property. Concern regarding the location of the toilet block and carpark at Minmi and its impact on residential properties.	<p>The amended proposal has removed the Hunter Wetlands Centre 'leg' of the proposal significantly reducing the perceived 'new' amenity impacts arising from the development.</p> <p>It is considered that the amenity impacts of the proposal along the Kings Street Trail, at the Woodford Street trailhead and at Fletcher trailhead are acceptable having regard to the relative position and separation proposed.</p> <p>The location of proposed parking is acceptable and at each location forms an extension of the existing roadways as types of kerbside parking. The disabled parking located near Ironbark creek is suitably distant from neighbouring properties to be considered acceptable in terms of amenity impacts.</p>
<b>Aurizon Operations</b>  The proposal conflicts with land owned by Aurizon (i.e. the proposal is partly on their land).  The proposal relies partly on the use of the Aurizon's access road for construction which would have conflicts with Aurizon's operations.  The proposed RVRT will be potentially within 50 metres of operational locomotives (i.e. 'TSF Turning Angle').	<p>The Tarro leg of the proposal has been removed in the amended development and, as such, the potential vehicular access conflicts have been removed.</p> <p>The proposal will be conditioned to have permanent fencing near Turning Angle track to ensure not potential conflict with Aurizon's operations can occur.</p>

<p>The Tarro end terminates in the middle of a paddock which leads to the Aurizon access road raising concerns with potential trespass issues.</p> <p>Concern that the RVRT will be pose an unacceptable security and safety risk for Aurizon's operations (esp. due to issues of trespass). The future Tarro extension and associated connection point needs to be resolved.</p>	
<p><b>EIS/BDAR (Flora/Fauna)</b></p> <p>Concern that the assessment of the avifauna is inadequate and has not comprehensively assessed the birdlife within the proposal's area.</p> <p>The EIS has relied on out of date data/literature regarding birdlife, in particular the significance of the Hexham Swamp for birdlife.</p>	<p>The proposal has been assessed by NPWS and CN's Senior Environment Protection Officer and is considered to be adequate as detailed within the report above.</p>
<p><b>Wildlife</b></p> <p>Concern that the cycleway running through the Wetlands Centre will negatively impact on the wildlife within the Centre.</p> <p>Further, submissions raised that the RVRT should have a 20km/h speed limit to protect the environment of existing birdlife.</p> <p>Concern regarding the impact of lighting and dogs on wildlife (especially birds).</p>	<p>The proposal has been assessed by NPWS and CN's Senior Environment Protection Officer and is considered to be adequate as detailed within the report above.</p> <p>The Hunter Wetlands Centre leg has been removed from the amended proposal.</p> <p>Comments on speed limits are noted. Practically or need for posted speed limits would be difficult and impractical to enforce. Typically, speeds are better controlled by surface materials and design.</p> <p>No additional lighting proposed except for M1 tunnel as assessed above.</p> <p>Comment on dogs noted. It is advised that dogs are to be prohibited altogether due to environmental issues in context of interaction with wetlands/NPWS lands.</p>
<p><b>Waste</b></p> <p>Concern regarding the potential for waste to be spread particularly</p>	<p>It is advised that the waste receptables only be positioned at the 'entries to the RVRT' such as Minmi, Shortland and maybe the Fletcher community centre just SE of the Kural Street location. This places the</p>

towards the Hexham section of the RVRT.	waste bins at locations for easy collection and removes the chance that bins may 'overflow' into environmental areas otherwise along the RVRT (and limits possible anti-social behaviour).
<b>Stock Fencing</b> Concern regarding conflict between stock grazing on area of the proposal trail and future users.	The proposed fencing is considered to be acceptable as discussed within the report above.
<b>Horse riders</b> The proposal will not allow for the use by horse riders which already use the trail. Submissions suggest that crossing points should be allowed for horse riders.	Horse riders are to be prohibited altogether due to environmental issues in context of interaction with wetlands/NPWS lands.  Discussions with NPWS indicate that horse riders enjoy no rights to the area's covered within the Newcastle LGA portion of the cycleway and would be a concern on environmental grounds.
<b>Hunter Wetlands Centre (HWC)</b> Concern how cyclists will be able to access the HWC route considering it's not a publicly open site (i.e. need to pay fees and enter via visitor centre).  Concern that petrol powered bicycles or similar (i.e. that create additional noise) should not be allowed within the HWC. A swipe card system may be an appropriate management option to access the Ironbark Creek link to the HWC.  Concern that cyclist using HWC will not understand the sensitive nature of the site in terms of wildlife. A link through to Tuxford Park should also be included as part of the proposal.	The Hunter Wetlands Centre leg has been removed from the amended proposal.
<b>Cycleway Grade</b> The grade of the RVRT between Mort Lane and Ironbark Creek should include a cutting to improve the grade of the cycleway and remove the need for the link through the Hunter Wetlands Centre.	The Hunter Wetlands Centre leg has been removed from the amended proposal.  The grade of the King Street leg of the proposal has been redesigned to best practicable outcome achievable considering the existing topographic constraints.

<p><b>Ownership</b></p> <p>Concern that owners consent and issues were not resolved prior to the lodgement of the DA.</p>	<p>CN as a public authority can utilise Cl.49 of the <i>Environmental Planning and Assessment Regulations, 2000</i> such that that written consent for a DA is not required if the applicant (CN) is a public authority and gives written notice of the DA to landowners. It is confirmed that this has occurred in accordance with the provisions of the Regulations.</p> <p>It is confirmed that these provisions only allow the lodgement of a development application and owners consent is still required to undertake the proposal (e.g. to enter land and start construction).</p>
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## 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.

## 6. RECOMMENDATION

That the Development Application 2020/00641 for Community Facility - Pathway - "Richmond Vale Rail Trail" – (RVRT) at various addresses as detailed above be APPROVED pursuant to Section 4.16(1)(a) or (b) 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