

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-82 DA 2021/55
<b>PROPOSAL</b>	Waste Transfer Station
<b>ADDRESS</b>	Lot 10 DP 1131270 32 – 36 Glen Munro Road, Muswellbrook
<b>APPLICANT</b>	Central Waste Plant Pty Ltd
<b>OWNER</b>	Glen Munro Road Pty Ltd
<b>DA LODGEMENT DATE</b>	27 May 2021
<b>APPLICATION TYPE</b>	Designated Development and Integrated Development
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 5(a) Schedule 6 of the SRD SEPP: (Private infrastructure Facility)
<b>CIV</b>	\$7,259,197 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	NA
<b>KEY SEPP/LEP</b>	SEPP (Infrastructure and Transport) 2021, SEPP (Resilience and Hazards) 2021, SEPP (Planning Systems) 2021, Muswellbrook Local Environmental Plan 2009
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	One (1)
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>• Attachment A: Recommended Conditions of consent</li> <li>• Attachment B: Response to Additional Information Request 24 March 2022 (including current plan set)</li> <li>• Attachment C – Road Safety Assessment dated 28 April 2022, prepared by EMN on behalf of the applicant</li> <li>• Attachment D – Road Safety Review dated 23 June 2022, prepared by SMEC Consulting for Muswellbrook Shire Council</li> <li>• Attachment E – NSW Environmental Protection Authority GTA</li> <li>• Attachment F – NSW Natural Resource Access Regulator GTA</li> <li>• Attachment G – NSW Rural Fire Service Referral Response</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	NA
<b>RECOMMENDATION</b>	Approval subject to recommended conditions
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes (circulated 21 July 2022)
<b>SCHEDULED MEETING DATE</b>	28 July 2022

<b>PLAN VERSION</b>	21 July 2022 Version No
<b>PREPARED BY</b>	Hamish McTaggart, Development Coordinator Muswellbrook Shire Council
<b>DATE OF REPORT</b>	21 July 2022

## EXECUTIVE SUMMARY

- The proposed development involves the construction and operation of a waste transfer station at 32 Glen Munro Road, Muswellbrook (Lot 10 DP 1131270). The proposed facility would receive and process construction non-putrescible solid waste to a maximum capacity of 98,500 tonnes per annum. Once sorted waste would be transferred to designated covered bays before transferred off-site to the operators Kurri Kurri facility for further processing. The applicant has applied for approval to operate the premises on a 24 hour basis 6 days a week. The operation of the proposed facility would support approximately 25 full time employees.
- The site subject to the proposed development is Lot 10 DP 1131270, 32 Glen Munro Road. The land is zoned IN1 General Industrial and is located within an established industrial precinct. Part of the land is identified as bushfire prone and is located within a 'vegetation buffer area' by NSW Rural Fire Service (RFS) bushfire information mapping, a Bushfire Threat Assessment was prepared in relation to the proposed development which has been reviewed by NSW Rural Fire Service.
- While all operational components of the proposed development are located on Lot 10 DP 1131270 the proposed development would involve the carryout of some work on Lot 9 DP 1131270 to replace Council stormwater infrastructure. Council is the owner of Lot 9 DP 1131270 and has granted landowners consent to the carrying out of related stormwater work on this land. Council Roads and Drainage Engineers have provided comments confirming their acceptance of the works proposed to Council stormwater infrastructure.
- The proposed development has been referred to the Hunter and Central Coast Regional Planning Panel for determination pursuant to Clause 5(a) of Schedule 6 of State Environmental Planning Policy (Planning Systems) as a private infrastructure development (waste or resource management facility) with a CIV in excess of \$5-million.
- The proposed development is 'designated development' under the *Environmental planning and Assessment Act 1979* an Environmental Impact Statement has been prepared by the applicant which is generally in accordance with the Secretary's Environmental Assessment Requirements provided in relation to the project.
- The proposed development is 'integrated development under the *Environmental planning and Assessment Act 1979* and required General Terms of Approval from NSW Natural Resource Access Regulator and the NSW Environmental Protection Authority. Both Agencies have issued General Terms of approval in relation to the project.
- A summary of key dates in the development assessment has been included below:
  - 27 May 2021 development application lodged
  - June – August 2021 development application publicly exhibited and notified
  - 26 July Natural Resource Access Regulator issued General Terms of Approval
  - 18 August 2021 Panel Briefing No1
  - 24 September 2021 Council Request for additional information
  - 2 November 2022 NSW Environmental Protection Authority issued General Terms of Approval
  - 29 October & 11 November 2021 amended plans and additional information lodged
  - 17 November 2021 Panel Briefing No2

- 17 November 2021 request for additional information
  - 21 December 2022 Council received an offer from the proponent to enter into an agreement for the voluntary payment of \$0.11 per tonne of material delivered to the facility to offset the operational impact of the proposed development on the operation and maintenance of the local road network.
  - 23 December 2021 submission of additional information
  - 20 January 2022 Panel Briefing No3
  - 7 February 2022 request for additional information
  - 24 March submission of additional information
  - 28 April 2022 submission of additional information (Road Safety Assessment)
  - 23 June 2022 Council commissioned Road Safety Review received from SMEC Consulting
  - 20 July 2022 Council received an offer from the proponent for the payment of a voluntary contribution of \$135,000 + GST for the construction of a BAR improvement to the Thomas Mitchell Drive/Glen Munro intersection.
- Council Officers have completed an assessment of the proposed development against the relevant heads of consideration of Section 4.15 of the Environmental Planning Assessment Act 1979. This assessment recommends that the development application be approved subject to recommended conditions of consent. Key findings of the Section 4.15 Assessment which inform this recommendation include:
- The proposed development would be in accordance with the relevant provisions of the Muswellbrook LEP 2009.
  - The proposed development would be compatible with the requirements of relevant State Environmental Planning Policies (SEPPs), including SEPP (Planning Systems) 2021, SEPP (Resilience and Hazards) 2021 –, SEPP (Transport and Infrastructure) 2021.
  - The proposed development would be in accordance with the relevant provisions of the Muswellbrook LEP 2009.
  - The proposed development is compatible with the requirements of the Muswellbrook DCP and conditions of consent have been recommended to ensure the development is carried out in accordance with certain relevant DCP requirements.
  - The proposed development involves the carrying out of alterations to Council's stormwater system through the removal of a concrete v-drain and the installation of a new overland stormwater drainage channel to run adjacent the sites northern property boundary. The proposed stormwater work has been considered by Council Roads and Drainage Engineers who have provided their consent to the proposed development and the carrying out of works to alter Council's infrastructure.
  - Council Engineers have reviewed the impact of the proposed development on Council's road network and are satisfied that:
    - The entering into of a Planning Agreement requiring the proponent to contribute \$0.11 per tonne of material transported to the facility would be a suitable to off-set the impact of additional heavy vehicle movements related to the development on Council's local road network and any related increased wear on the road pavement.

- The entering into of a Planning Agreement for the payment of a one of contribution to the value of \$135,000+GST by the proponent to support Council's construction of a Basic Right Turn Treatment (BAR) at the Thomas Mitchell Drive/Glen Munro Road intersection would a suitable, reasonable and proportionate contribution from the proponent to off-set their impact on the functionality of that intersection. The intersection suitability and safety has been principally informed by Road Safety Review prepared by SMEC on behalf of Council dated 23 June 2022. Council Roads and Drainage Engineers have prepared a budget for the carrying out of the BAR intersection works and propose to carry out the BAR works where the proposed development is approved, and contribution paid.
- The height, bulk, scale and proximity of the proposed development to neighbouring boundaries has been a key assessment consideration. The relationship with the proposed development with adjoining properties is discussed in detail under the 'Likely Environmental Impacts' 'Context and Setting' sub-heading of this report. Noting that limitations to the development potential of land adjoining the bulkier components of the proposed development (which includes a Council Drainage Reserve and Mining off-set land) Council Officers have formed the view that the height bulk and scale is unlikely to have a significant adverse impact on the environment or adjoining land and thereby may be supported.
- A Noise Impact Assessment, Air Quality Assessment and Surface Water Assessment have been prepared in relation to the proposed development. The findings of each report are supportive of the proposal and suggest the proposal is unlikely to have a significant environmental impact or polluting effect in these areas that may require its refusal. The NSW Environmental Protection Authority have issued General Terms of Approval to the proposed development which is supportive of the proposed development from an environmental impact/emissions perspective.
- An Aboriginal Cultural Heritage Assessment has been prepared in relation to the proposed development. This investigation did not identify any sites or items of Aboriginal cultural significance that may affect the carrying out of the proposed development.
- A flora and fauna survey has been carried out in relation to the proposed development. This study did not identify any impacts on ecological communities that may affect the carrying out of the proposed development.
- A traffic Impact Assessment, Preliminary site contamination Investigation, Visual Impact Assessment and Bushfire Assessment were also prepared in relation to the proposed development. These technical studies have been considered through the assessment of the proposed development and informed Council findings in related areas. The findings of these reports and the assessment of related issues by Council Officers is supportive of the proposed development.

## **1. THE SITE AND LOCALITY**

### **1.1 The Site**

The principal site subject to this development application is 32 Glen Munro Road, Muswellbrook (Lot 10 DP 1131270). The land has an area of 1.175ha and is affected by two (2) 88B Instruments registered on the property title relevant to the assessment

of this development application. Relevant details related to each of these instruments have been included in the table below.

**Table 1: Site Easement Details**

<b>Instrument</b>	<b>Location/width</b>	<b>Benefited Lots/Authority</b>	<b>Person/authority empowered to release vary or modify the instrument</b>
Easement to Drain Water 20m wide	Adjacent the full length of the lands northern boundary adjoining Lot 9 DP 1131270. The width of the easement is 20m wide.	Muswellbrook Shire Council	Muswellbrook Shire Council
Right of Carriageway 5m wide	Adjacent the full length of the lands northern boundary adjoining Lot 9 DP 1131270. The width of the easement is 20m wide.	Owner of Lot 23 (Council is the owner of Lot 23)	Owner of Lot 23 (Council is the owner of Lot 23)

A concrete V drain is located centrally within the easement to drain water and below ground 100mm stormwater line. The V-drain and stormwater pipeline conveys from Glen Munro Road to a stormwater detention basin located on Lot 23. Under the proposal alterations to this drainage arrangement are proposed with the V-drain to be removed and a new overland drainage path created.

Alterations to the drainage infrastructure will see some stormwater drainage works carried out on Lot 23 DP 1131270. Council is the owner of Lot 23 and through its Property Section has granted consent to the work and the lodgement of the development application as the owner of this land.

The subject site, Lot 10 DP 1131270, is zoned IN1 General Industrial under the Muswellbrook Local Environmental Plan (MLEP) 2009. Part of the land is identified as bushfire prone and is located within a 'vegetation buffer area' by NSW Rural Fire Service (RFS) bushfire information mapping.

The site is serviced by Council's reticulated water and sewerage network.

Vehicle access to the site is via Glen Munro Road which, which connects to Thomas Mitchel Drive, a local road which in turn connects to the New England and Golden Highway classified state roads.

The land is vacant of any existing development. A search of Council did not identify any previous development application related to the land since its creation in 2008 as the result of a 22 Lot subdivision approved by Council under DA 266/2005.

The image below is an excerpt from the Environmental Impact Statement (EIS) submitted with this development application and shows the site in context with the surrounding locality.



Image.1 (Source: EMM EIS page 11).

## 1.2 The Locality

The subject site is located within an industrial precinct known as the Thomas Mitchel Drive Industrial Area. The site, and industrial area are located a short distance (approximately a 5-minute drive) west of the Muswellbrook township. The industrial area is well established and developed for a variety of industrial and industrial retail purposes.

Vehicle access to the area is via Thomas Mitchel Drive which connects to the Golden Highway to the north and the New England Highway to the south.

The industrial area and site is zoned IN1 General Industrial under MLEP 2009, while the site as a site located on the edge of the industrial area adjoins land zoned C3 Environmental Management to the south and east.

The immediately adjoining C3 Environmental Management zoned land to the south is Lot 9 DP 121588. This land is subject to a Conservation Agreement with the former NSW Office of Environment and Heritage registered under the provisions of the *National Parks and Wildlife Act 1974*. This Conservation Agreement restricts the opportunity for the land to be developed and requires its owner to manage it to restore and protect Conservation Values in accordance with the Agreement's terms.

The development potential of C3 Environmental Management zoned land to the east is also restricted. The immediately adjoining lot, Lot 23 DP 121588, is owned by Council and contains stormwater drainage infrastructure that services the subdivision. The land further east of Lot 23 is included in the Mount Arthur Coal Mine Conservation Agreement.

## THE PROPOSAL AND BACKGROUND

### 1.3 The Proposal

The proposed development involves the construction and operation of a waste transfer station at 32 Glen Munro Road, Muswellbrook (Lot 10 DP 1131270).

Waste received by the facility would be limited to waste classified as General Solid Waste (non-putrescible) as defined by the Waste Classification Guidelines – Part 1: Classification of Waste (EPA 2014a).

The establishment of the facility would involve the construction of the following buildings and works:

- Site establishment and cut and fill work. The maximum cut and fill proposed is -1.94m cut and +1.19m fill.
- A 1,733m<sup>2</sup> shed with a height of 14.416m. This shed would include office and operation areas.
- A 1,941m<sup>2</sup> shed with a height of 13.806m, This shed would include an operational area.
- A 15m by 62m covered and partly enclosed 4 bay material sorting bay area spanning between the two sheds.
- A weigh bridge.
- The realignment of Council's stormwater drainage and the construction of a new concrete drainage channel adjacent the sites northern property boundary and the construction of related stormwater discharge infrastructure on Lot 23 DP 1131270.
- Hardstand vehicle manoeuvring and parking areas. A base of heavy-duty concrete is to be installed in the sites manoeuvring and operational areas.
- Site fencing and screening Site fencing proposed would be as follows:
  - 11 m high section (~69 m long) and 8 m high section (~15.5 m long) along the eastern boundary.
  - 11 m high section (~123 m long) and 2.4 m high section (~16 m long) along the southern boundary.
  - 8 m along the northern boundary.
  - 3.9 m fence along the western boundary.
- Site landscaping

The image below provides an overview of the proposed site layout.



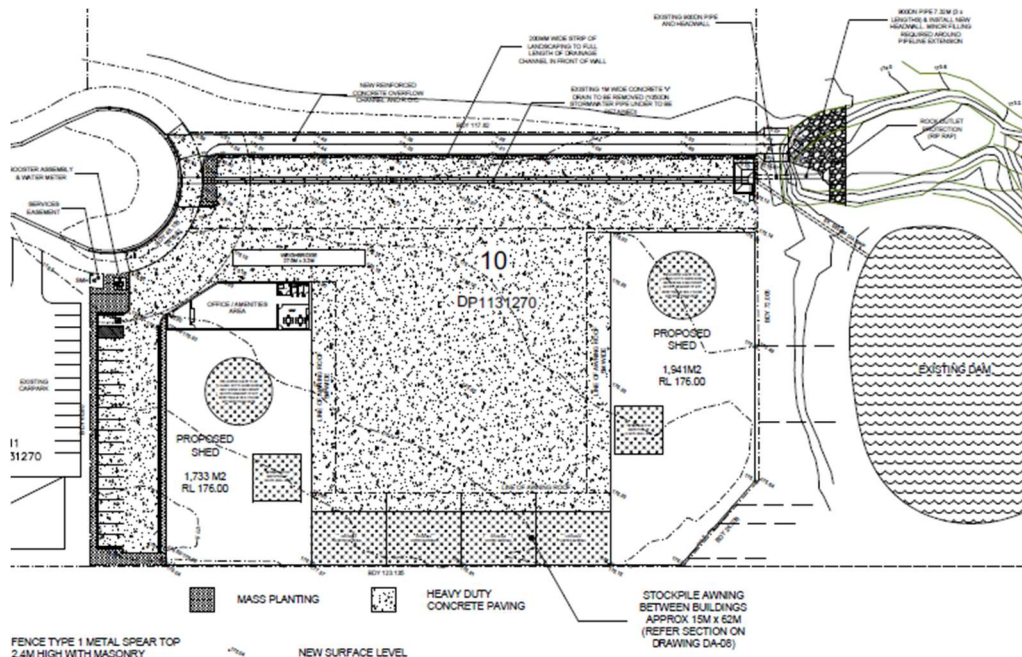


Image.2 (Source: Proposed Site Plan).

Operationally the proposed development would:

- Process non-putrescible solid waste.
- The site would have a maximum throughput capacity of 98,500 tonnes per annum.
- All waste delivered to the site would be weighed and inspected for asbestos and other non-accepted wastes prior to being unloaded, sorted and managed within the enclosed sheds. Section 2 of the EIS submitted with this development application includes further details related to the waste receipt and sorting process.
- Once sorted waste would be transferred to the designated covered bays based on material type. After being sorted the waste would be transferred to the operators Kurri Kurri facility for further processing.
- The storage capacity of the premises would be 10,000 tonnes of waste at any one time.
- The facility is proposed to operate 24 hours a day 6 days a week with no operation Sundays and public holidays.
- The proponent has advised that during operation the facility would support approximately 25 full time employees including on-site staff and truck drivers transporting goods between their facilities.

Waste streams accepted and processed by the facility would be limited to those currently processed at the proponents existing Kurri Kurri facility and would include:

- construction and demolition waste – from building, demolition and renovations; from sources such as new high-rise developments, new home builds, medium to large demolition projects (including public buildings) and home renovation;
- commercial and industrial waste – waste from manufacturing of wood products, tiles, mining, warehousing and logistics; and
- municipal solid waste (non-putrescible) – predominantly from privately hired skip bins filled with household waste from periodic clean-ups (food or putrescible waste is not to be placed in these bins).



Waste received on site would include:

- paper and cardboard;
- vegetation or garden;
- wood, trees or timber (treated and untreated);
- asphalt;
- bricks and concrete;
- ceramics;
- soil;
- ferrous metals (iron or steel);
- non-ferrous metals (such as aluminium);
- plasterboard;
- paper and cardboard;
- plastics;
- textiles;
- glass; and
- mixed waste (comprised of two or more waste types).

Table 2 includes additional related to the scope of the proposed development and its assessment. information related to aspects of the proposed development relevant to its assessment.

**Table 2: Development Data**

<b>Control</b>	<b>Proposal</b>
Site area	11,750m <sup>2</sup>
GFA	3,674m <sup>2</sup>
FSR (retail/residential)	0.313:1 (NA
Clause 4.6 Requests	NA – The proposed development complies with all relevant development standards
No of apartments	NA
Max Height	14.8m (15m control)
Landscaped area	Total Area not specified
Car Parking spaces	19
Setbacks	10m (street setback) 15.7m (north boundary) 0m (south boundary) 0m (east boundary) 16m (west).

## 1.4 Background

A pre-lodgement meeting was held prior to the lodgement of the application with representatives of GEM Planning Consultancy in September 2020 (the proponent has since appointed EMM Creating Opportunities).

A summary of the key issues raised by Council has been included below:

- Land use classification for the proposed development
- Development Assessment pathway and State, Regional, Designated and Integrated Development thresholds
- General discussion around intended operations and need to set out how waste management to occur in any application
- Building height
- Traffic generation and requirement for traffic impact assessment
- Stormwater easement and drainage

Following the pre-lodgement meeting the applicant engaged further with the Department of Planning Industry and Environment to obtain Secretary's Environmental Assessment Requirements for the proposal as a Designated Development application.

The development application was lodged on **27 May 2022**. A chronology of the development application 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>
<b>27 May 2021</b>	DA lodged
<b>June – August 2021</b>	Exhibition of the application
<b>1 June 2021</b>	DA referred to external agencies
<b>18 August 2021</b>	Panel briefing
<b>24 September 2021</b>	Request for Information from Council to applicant
<b>29 October &amp; 11 November 2021</b>	Amended plans & Additional Information lodged
<b>17 November 2021</b>	Panel Briefing No2
<b>17 November 2021</b>	Request for further information
<b>21 December 2022</b>	Council received an offer from the proponent to enter into an agreement for the voluntary payment of \$0.11 per tonne of material delivered to the facility to offset the operational impact of the proposed development on the operation and maintenance of the local road network.
<b>23 December 2021</b>	Submission of additional information

<b>20 January 2022</b>	Panel briefing No3
<b>7 February 2022</b>	Request for additional information
<b>24 March 2022</b>	Submission of additional information (excluding intersection investigation)
<b>28 April 2022</b>	Muswellbrook Waste Transfer Station Road Safety Assessment
<b>23 June 2022</b>	Council commissioned Road Safety Review SMEC Consulting
<b>20 July 2022</b>	Council received an offer from the proponent for the payment of a voluntary contribution of \$135,000 + GST for the construction of a BAR improvement to the Thomas Mitchell Drive/Glen Munro intersection.

## 1.5 Site History

- The land subject to this development application was created in 2008 as the result of a 22 Lot subdivision approved by Council under DA 266/2005. At the time Council was also the owner and developer of the land.
- The land has remained vacant since being created in 2008. A search of Council's record system did not identify any other development application lodged in relation to the site.

## 2. STATUTORY CONSIDERATIONS

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

- the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- the suitability of the site for the development,*
- any submissions made in accordance with this Act or the regulations,*
- the public interest.*

These matters are further considered below.

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

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Concurrence Development (s4.13)

## 2.1 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 (Transport and Infrastructure) 2021*;
- *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- *State Environmental Planning Policy (Planning Systems) 2021*;
- *Muswellbrook Local Environmental Plan 2009*.

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

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

EPI	Matters for Consideration	Comply (Y/N)
SRD SEPP	• <b>Clause 2.19</b> declares the proposal as regionally significant development pursuant to Clause 5(a) of Schedule 7.	Y
SEPP (Resilience and Hazards)	• <b>Chapter 4</b> - Contamination and remediation has been considered in the Contamination Report submitted and the proposal may progress subject to recommended conditions of consent.	Y
Infrastructure SEPP	• <b>Clause 2.21</b> - Traffic-generating development	Y

### *State Environmental Planning Policy (Planning Systems) 2021*

*State Environmental Planning Policy (Planning Systems) 2021* applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19 of the SEPP (Planning Systems) 2021, the proposal is a regionally significant development as it satisfies the criteria in Clause 5(a) of Schedule 6 of the SEPP. The proposal is development for *a waste or resource management facility* with a CIV over \$5 million. Accordingly, the Hunter and Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

### *State Environmental Planning Policy (Resilience and Hazards) 2021*

The provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021* have been considered in the assessment of the development application. Clause 4.6 of the SEPP requires consent authorities to consider whether the land subject to an application is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared by Hunter Civilab for the site.

The report made the following conclusions in relation to site contamination.

*The detailed desktop review of available information and thorough site inspection including targeted soil sampling of stockpiled material, have enabled the development of a preliminary conceptual site model allowing assessment of potential health and environmental issues relating to the site. Key findings were:*

- 5. Potential contamination sources at the site are limited based on historical land use;*
- 6. Visible signs of gross contamination were not observed during site inspection and intrusive works; and*
- 7. Contamination above Commercial/Industrial (HIL-D/HSL-D) land use criteria was not identified at any of the sampling locations within stockpiled material.*
- 8. One sample (S8) returned a concentration for Benzo(a)Pyrene in exceedance of ESLs. This exceedance is not considered to be a concern due to the commercial land use of the site and lack of sensitive receptors. No vegetative distress or signs of ecological impact were noted during site investigation. In summary, based on the desktop study and limited intrusive sampling conducted on the Site, no indication of gross contamination has been identified which would constrain the development of the Site for its proposed land use as a commercial/industrial development.*

In view of the findings of the PSI, observations made by Council Officers inspecting the site and desktop assessment of its historic development and land use information Council Officers are satisfied that the subject site is unlikely to be subject to any contamination requiring remediation under SEPP should the development application be approved.

#### State Environmental Planning Policy (Transport and Infrastructure) 2021

*State Environmental Planning Policy (Transport and Infrastructure) 2021* applies to the proposal. The proposed development is identified as a 'traffic generating development' pursuant to Clause 2.121 and Schedule 3 of the ISEPP as a development involving a waste or resource management facility.

Pursuant to the Clause 2.121 requirements for 'traffic generating development' Council Officers referred the development application to Transport for NSW (TfNSW) as a concurrence authority. TfNSW provided a referral response that did not raise objection to the proposed development and specified matters for Council's consideration and management through conditions of consent. Further commentary on the TfNSW comments is included under the Referrals heading of this report.

Where relevant recommended conditions of consent have been put forward to address TfNSW comments.

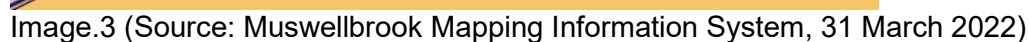
#### Muswellbrook Local Environmental Plan 2009

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

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to encourage the proper management of the natural and human-made resources of Muswellbrook by protecting, enhancing or conserving—*
  - (i) productive agricultural land, and*
  - (ii) timber, minerals, soils, water and other natural resources, and*
  - (iii) areas of significance for nature conservation, and*
  - (iv) areas of high scenic or recreational value, and*
  - (v) places and buildings of archaeological or heritage significance,*
- (b) to manage the urban areas of Muswellbrook by strengthening retail hierarchies and employment opportunities, promoting appropriate tourism development, guiding affordable urban form and providing for the protection of heritage items and precincts,*
- (c) to promote ecologically sustainable urban and rural development,*

- The proposal is consistent with these aims as the proposal would support the expansion of Muswell brook's economic base and the orderly development within the planning framework related to the location of the proposed development within the Muswellbrook's core industrial precinct.

The site is located within the IN1 General Industry Zone pursuant to Clause 2.2 of the LEP



The IN1 General Industrial zone Clause 2.3 land use table specifies waste or resource management facilities as a type of development permissible with consent within the zone.

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the land use table as a type of development prohibited, development for the purposes of Waste or resource transfer stations is viewed as a type of development permissible with consent.

In summary development for the purpose of waste or resource transfer stations is a type of development permitted with consent as development for the purpose of waste or resource management facility is permitted with consent and the LEP 2009 dictionary identifies waste or resource transfer stations as a sub-category of this land use.

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

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To recognise existing industries and to encourage the establishment of new industries so as to expand the local employment base, and to minimise any adverse effects of industry on residential communities.*
- *To accommodate larger industries or those which potentially could create nuisance in locations separated from residential areas but accessible to the workforce.*
- *To enable development that is associated with, ancillary to, or supportive of industry or industrial employees.*

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

- The proposed development would generate additional employment opportunities
- The proposed development is compatible with industrial enterprise and processing activities encouraged through the land use objectives.
- The subject site is physically separated from residential zoned land and other land uses that may not be compatible with the waste transfer station proposed.

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

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

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

<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
Height of buildings (CI 4.3(2))	15 metres	14.8m	Yes
FSR (CI 4.4(2))	1:1 (11,750m <sup>2</sup> )	0.313:1 (3,674:11,750)	Yes

The proposal is considered to be generally consistent with the LEP.  
*Newijets14*

## **2.2 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. During the period that this development has been under assessment some of these draft instruments have been

gazetted. As instruments not gazetted at the time the application was lodged these instruments have been considered as draft environmental planning instruments.

The provisions of the relevant draft instruments do not significantly affect the proposed development. Relevant draft instruments include:

- *Draft Remediation of Land SEPP – the relevant controls put forward by this SEPP are compatible to the provisions of SEPP-55*
- *Draft Transport and Infrastructure SEPP 2021 – the relevant controls put forward by this SEPP are compatible to the provisions of ISEPP.*

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

The following Development Control Plan is relevant to this application:

- ***Muswellbrook Development Control Plan 2009***

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

### Section 10 Industrial Development

This section of the DCP relates to the development of land in the IN1 General Industrial land use zone.

The table below measures the proposed development against the DCP controls specified by this Section of the DCP.

**Table 6 – DCP Section 10 Industrial Development**

<u>MUSWELLBROOK SHIRE COUNCIL DCP SECTION 10 INDUSTRIAL DEVELOPMENT</u>		
<u>DCP REQUIREMENTS</u>	<u>COMPLIES</u>	<u>PLANNING COMMENT</u>
<p>10.1 Setbacks</p> <p>This section of the DCP sets a minimum setback requirement of 10m for an industrial development from a front building boundary. The DCP provision also provides for circumstances under which Council may consider the variation of the</p>	<b>Yes</b>	All proposed buildings would be setback a minimum of 10m from the sites Glen Munro Road frontage.

10m standard.		
<p>10.1.2 Building Design (i) &amp; (ii)</p> <p><i>(i) The façade of the building to the primary road frontage shall be constructed in a contrasting material to a height of 2.5 metres and returned along the side for a distance of 2 metres. (A change in the colour of the material is not adequate).</i></p> <p><i>(ii) Council will consider deletion of the 2.5 metre brick or masonry wall along the frontage of the building as required above, if the applicant provides satisfactory relief and contrast materials within the front façade to soften its visual appearance and form and reduce its bulk.</i></p>	<b>Yes</b>	<p>The design of all proposed sheds and larger compound fencing includes the use of contrasting building material.</p> <p>Elevation plans submitted indicate that these structures would include a concrete wall to a minimum height of 4m at which height materials would transition to metal cladding.</p> <p>To inform Council in considering the suitability of the building design and its height bulk and scale a Visual Impact Assessment was submitted in relation to the proposed development. Council Officers are satisfied that the proposed buildings would not have an incongruous appearance or significant visual impact within the sites industrial setting.</p>
<p>10.1.2 Building Design (iii)</p> <p><i>(iii) External walls of buildings shall be profiled factory colour treated cladding or masonry material,</i></p>	<b>Yes</b>	<p>The external walls of the proposed development would be clad in metal sheeting. Details of the proposed colour schemes have been provided to Council. To ensure that the development is carried out in accordance with the proposed plans and that non-reflective material is used in the construction of the facility it is recommended that a standard Council condition of consent is imposed on any development consent restricting the use</p>

<i>or a combination of both with low reflective properties.</i>		of materials that contravene this DCP provision.
10.1.2 Building Design (iv) & (v)	<b>Yes</b>	The provisions of this section relate to developments in prominent positions and the installation of signage. The proposed development is not located in a prominent position and the installation of advertisement signage at the premises has not been proposed. Accordingly, these provisions are not considered to be relevant to the assessment of this development application.
10.2.1 Drainage and Stormwater  This section sets minimum provisions for stormwater management and drainage design.	<b>Yes</b>	<p>A stormwater management plan has been prepared in relation to the proposed development and submitted by the applicant. Council's Community Infrastructure Department have reviewed the stormwater management plan.</p> <p>Referral comments from Council's Community Infrastructure Department in relation to the proposed development and its stormwater management plan have been included under the referrals heading of this section 4.15 assessment report.</p> <p>After reviewing the stormwater design and information submitted Council Engineers advised that they had no objection to the proposed development from a stormwater management perspective. Accordingly, Council Officers are satisfied with the proposed developments relationship to this Section of the DCP.</p>
10.2.2 Landscaping	<b>Yes</b>	This section of the DCP requires a development landscaping to be provided to a depth of 3m within a sites road frontage (excluding driveway areas). Given the location of the proposed development at the end of the cul-de-sac the site has a limited road frontage and the majority of that frontage is taken up by the site access. A landscaped area with a depth of 3m would be provided in parts of the site frontage not comprised into the driveway and adjacent parking areas.
10.2.3 Visual amenity with regard to car	<b>Yes</b>	This section of the DCP prescribes general car parking requirements that relate to the siting of car parking and construction

parking and operational areas		requirements.  Council Officers are satisfied that the proposed car parking would comply with the siting requirements prescribed by this Section of the DCP.
10.2.4 Vehicle Movements and Access	<b>Yes</b>	This section of the DCP specifies general requirements in relation to vehicle access and egress throughout the site.  The proposed development is considered to be compatible with the requirements of this section. The proposed development would have suitable vehicle access and adequate area would be available at the site for road base to be constructed so to allow for vehicle manoeuvring and vehicles to exit the site in a forward direction.
10.3.1 Water and Sewer	<b>Yes</b>	The proposed development would be connected to Council's sewage and water infrastructure.
10.3.2 Services	<b>Yes</b>	The applicant has advised that the site will be connected to electrical services required to support the development in accordance with the requirements of this DCP Section.

#### Section 16 – Car Parking and Access

This Section of the Development Control Plan requires off-street car parking to be provided for materials recycling or recovery centres at a rate of 1 space per 100m<sup>2</sup> of gross floor area or 1 space per 2 employees.

Based on the number of employees proposed (25) a total of 13 off-street car parking spaces are required to comply with the DCP. A total of 19 off-street car parking spaces have been proposed, the suitability of the rate of off-street parking provided has been re-enforced by the findings of the Traffic Impact Assessment submitted in relation to the proposed development. The proposed development would comply with this Section of the DCP.

#### Section 20 – Erosion and Sediment Control

This section of the DCP requires the preparation of an erosion and sediment control plan for development applications involving a disturbance area greater than 250m<sup>2</sup>.

A sediment and erosion control plan has been prepared for the proposed development in accordance with the requirements of this part.

Council Officers are satisfied that the proposed development would comply with the provisions of this section where it is carried out in accordance with the provisions of the sediment control plan and conditions of consent are impose relating to the provision of a Water Management Plan.

#### Section 24 – Waste Minimisation and Management

This section of the DCP imposes a requirement for industrial developments to submit a site waste minimisation management plan in accordance with the provisions of 24.4.5.

Council Officers have recommended a standard condition of consent for a Waste Minimisation Management Plan to be submitted in accordance with this Section of the DCP for the management of construction waste related to the development.

#### Section 25 – Stormwater Management

The proposed development was referred to Council's Community Infrastructure Department Roads and Drainage team to consider the adequacy of the proposed stormwater management plans against Council requirements. Comments provided by this section of Council have indicated that they are generally satisfied with the proposed stormwater management plan and have guided the recommended conditions of consent related to stormwater infrastructure and plans.

- **Contributions Plans**

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

- ***Muswellbrook Shire Council Section 94A Development Contributions Plan***

The provisions of this contribution plan have been considered by Council Officers through the assessment of the development application to determine any relevant Section 7.12 Contributions applicable to the proposed development.

Clause 1.5 of this plan sets out circumstantial exemptions to where contributions can be levied under this plan. These exemptions include development

*'that has been the subject of a condition under section 94 under a previous development consent relating to the subdivision of the land on which the development is to be carried out'.*

The land subject to this development application meets this exemption criteria as a contribution under Council's Section 94 (7.11) Plan was levied on its development at the time its subdivision was approved under DA 266/2005. Consequently, Council's Section 94A Plan prevents Council from levying a Section 7.12 (formerly Section 94A) Contribution on this development application.

- ***Muswellbrook Shire Council Section 94 Development Contributions Plan***

This contribution plan does not specify any developer contributions relevant to the type of development proposed. Contributions payable under this plan relate to development applications for subdivision and residential unit development.



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

The proponent for the development formally put forward two offers to enter into a Planning Agreement in relation to the proposed development. The offers relate to a Planning Agreement for the payment of an operational contribution for the development to off-set impacts on Council's road network related to additional vehicle movements and a contribution for the payment of a contribution related to the developments impact and the upgrade requirements for the Thomas Mitchell/Glen Munro Road intersection.

The particulars of each offer have been expanded on under the sub-headings below.

### Operational haulage contribution

Council received an offer to enter into a Planning Agreement related to operational haulage in correspondence dated 21 December 2021. The Planning Agreement proposed put forward a monetary contribution to be paid to Council to compensate the Council as the road authority for the impact of heavy haulage related to the development on its road network and road maintenance.

The offer to enter into a Planning Agreement proposed that an annual monetary contribution be paid to Council and that the contribution be calculated at a rate of \$0.11 per tonne of waste delivered to the facility in the prior 12-month period.

The offer to enter into a Planning Agreement was reviewed by Council's Road and Drainage Engineers who provided advice indicating that the monetary contribution proposed would be acceptable to off-set the impact of the heavy haulage related to the proposed development on the road network. The offer alongside advice from relevant Council Officers was reported to Council's 1 February 2022 Ordinary Meeting where the offer was agreed to in principle. The related Meeting Minute has been included below:

## **10.3 DA 2021-55 ESTABLISHMENT OF WASTE TRANSFER STATION: OFFER TO ENTER INTO A PLANNING AGREEMENT**

*1 RESOLVED on the motion of Crs Woodruff and Drayton that:*

*Council:*

- A. Agrees to the offer to enter into a Planning Agreement for DA 2021/55 for the payment of a contribution of \$0.11 per tonne of material delivered to the proposed development; and*
- B. Request a condition of consent that the proponent enter into a Planning Agreement generally in accordance with the terms specified in the offer included as an attachment to this report.*

Noting Council's acceptance of the offer to enter into a Planning Agreement a recommended condition of consent has been put forward requiring the proponent to enter into a Planning Agreement with Council generally in accordance with the terms set out in their 21 December 2021 correspondence and the related Council resolution.

The entering into of this Planning Agreement is considered to be an acceptable measure to address the impact of increased heavy haulage associated with the proposed development on Council's road network.

#### Thomas Mitchell Drive/Glen Munro Road Intersection Upgrade Contribution

Council received an offer to enter into an agreement related to the impact of the proposed development on the Thomas Mitchell/Glen Munro Road intersection dated 20 July 2022. The offer put forward the payment of a one-off monetary contribution of \$135,000+GST to Council toward Council's improvement of this intersection.

The offer was reviewed by Council's Road and Drainage Engineers who have provided advice that the contribution amount would be acceptable, reasonable and proportionate contribution from the proponent to off-set their impact on the functionality on the Thomas Mitchell Drive/Glen Munro Road intersection.

A late report is being prepared by Council Officers for the 26 July 2022 Council Meeting to allow the elected Council to consider and accept or reject the principle of entering into a Planning Agreement in accordance with this offer. This Council Meeting will be held after the finalisation of this report, but prior to the 29 July 2022 Panel Meeting. Council Officers will be able to advise the Panel of any outcomes from that Meeting.

Council Roads and Drainage Engineers have prepared a budget for the carrying out of the BAR intersection works and propose to carry out of BAR upgrade works to the Thomas Mitchell Drive/Glen Munro Road intersection where the proposed development is approved, and contribution paid. Council

## **2.5 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.

Pursuant to Schedule 3 Clause 45 of the Regulation the proposed development meets the criteria for designated development as a 'waste management facility or works' with a processing capacity greater than 30,000 tonnes per annum. As a designated development application, the proposed development has been prepared and lodged in accordance with the relevant requirements under the Regulation and EP&A Act 1979 for designated development, which includes the preparation and submission of an Environmental Impact Statement.

In reviewing the proposed development against the Regulations Council Officers have also had regard to the matters for consideration set out in Part 4 Division 1 of the Regulation related to the determination of development applications. Council Officers are satisfied that the provisions and matters for consideration set out in this Part of the Regulation do not have any bearing on the assessment of the development proposed. In considering the matters for consideration Council Officers observed that the proposed development did not involve the demolition of any buildings, land subject to a subdivision Order or the development of land subject to the *Dark Sky Planning Guideline*.

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

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

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

- **Context and setting** – The proposal is considered to be compatible with the local site context and setting. The subject site is located in an established industrial area. The type of development proposed, and its physical form is compatible with other industrial development in the locality.

While the proposed development is compatible with the industrial character of the area Council Officers note the height, bulk and scale of the complex would be noticeable when compared to immediately adjoining industrial premises. The height and bulk of the proposed facility has been reviewed in detail through the assessment of the application and a Visual Impact Assessment was prepared in relation to the proposal. The recommendations of this document report supportive of the proposed development and its visual impact.

In response to further enquiries regarding this point the applicant provided and updated landscaping plans and additional information dated 24 March 2022. The information provided included reasoning informing their design choices related to building and fencing height. The Reasoning provided re-enforced that design choices had been informed by practical operational and screening requirements and included details about the height of plant included in the facility. While the updated landscaping plans set-out landscaping and screening adjacent the sites road frontage and climbing plants along the premises northern elevation.

While Council Officers acknowledge the practical requirements for the compound's height, bulk and scale they have remained interested in its relationship with immediately adjoining properties. In relation to this issue Council Officers have made the following observations regarding the height of the height and bulk of the proposed development at each adjoining property boundary (the image below has been included for reference when reviewing the assessment commentary for the boundary treatment at each direction):



Image 4 (Source Council GIS Information)

**Northern boundary** – At its northern boundary the proposed compound fencing would be set 15.7m in from the property boundary and constructed adjacent the new proposed overland drainage channel with climbing vines planted adjacent/along the wall to mitigate its visual impact. The height of the fence at this location would be 8m. Council Officers are satisfied that the height and bulk of the development adjacent the northern boundary can be supported after having regard to its setback from the boundary, its height at this location and the breakup of the walls visual bulk through the incorporation of landscaping,

**Southern boundary** – the proposed sheds and storage bays would be constructed adjacent the premises southern boundary with a typical building height of 11m (the apex of shed 1 would extend to 14.6m and shed 2 13.8m). The proposed shed and fencing would be constructed immediately adjacent the site boundary. In considering the impact the height bulk and scale of the proposed facility may have on this adjoining site Council Officers have had regard to its current use and opportunity to be developed in the future. When investigating this issue Council Officers identified that the adjoining land, Lot 9 DP 121588 is subject to a Conservation Agreement that restricts the opportunity for the land to be developed and requires its management as an environmental off-set for the Mount Arthur Coal Mine. Considering the opportunity for this adjoining land to be developed is inhibited by this agreement Council Officers are satisfied that the height bulk and scale of the proposed development at this boundary would not have a significant impact on this adjoining property or its development potential.

**Eastern Boundary** – adjacent this boundary the proposed Shed 2 would be constructed at a height of 11.5m and fence at 8m. When considering the impact of the height and scale of proposed development in this direction Council Officers have again had regard to the development potential of the adjoining land. In this instance the adjoining land is zoned C3 Environmental Management and owned by Council and managed as a drainage reserve for the collection and dispersal of stormwater from Glen Munro Road. In view of this information Council Officers are satisfied that the height bulk and scale of the proposed development would have negligible impact on this adjoining land and its ongoing use as a drainage reserve.

**Western Boundary** – the fence and retaining proposed adjacent the sites western boundary would have a maximum height of 3.9m and would increase in height toward the rear of the site with the natural ground level. The property adjoining the site to the west is developed for an industrial use. The height bulk and scale of the proposed development at this boundary would not have a significant adverse impact on the adjoining property.

- **Access and traffic** – a traffic impact assessment was submitted to Council in relation to the proposed development. This assessment included the following key findings related to the projected peaks of peak hour traffic movements:
  - *‘all intersections operate within capacity for all scenarios for both AM and PM peak hours;*
  - *the mid-block capacities of Glen Munro Road and Thomas Mitchel Drive operate with LOS A and D or better respectively;*
  - *the number of car spaces provided meet the proposed development requirements; and*

- *public transport services, pedestrian and cycling infrastructure will not be significantly impacted.*

*Based on the results of this TIA report, it is concluded that the construction and operational traffic generated by the development will not have significant traffic impacts on the nearby road network.'*

After reviewing the proposed plans, the Traffic Impact Assessment and related documentation Council Officers were satisfied that issues related to on-site parking and vehicle manoeuvrability had been satisfactorily addressed. However, and notwithstanding the findings of this document, Council Roads and Drainage Engineers noted the increase of heavy vehicle movement related to the proposed development and its potential to affect Council's road network and maintenance obligations and remained interested in the safety/suitability of the Thomas Mitchell Drive intersection and the impact of the proposed development on that intersection. The assessment of these two key development issues have been detailed under the bullet points below:

- **Road maintenance** – to off-set the increase in heavy vehicle traffic and related impact to the maintenance and upkeep of Council's road network the proponent has made an offer to enter into a Voluntary Planning Agreement with Council for the payment of a road maintenance contribution of \$0.11 a tonne of material delivered to the development site. This offer was considered suitable by Council Roads and Drainage Engineers to off-set the related impact of the proposed development and has been reported to and endorsed at Council's 1 February 2022 Ordinary Meeting.
- **Thomas Mitchell Drive/Glen Munro Road Intersection** – Council Officers requested additional information in relation to this issue through the assessment of the development application which culminated in the applicant's submission of the EMM Muswellbrook Road Safety Assessment dated 28 April 2022. After reviewing this document Council Traffic Engineers remained unstratified with the consideration of this issue and commissioned their own independent review of the issue by SMEC Consulting. The report prepared by SMEC Consulting in relation to the intersection has been attached for the Panel's information. This report noted safety issues with the intersection and recommended that a Basic Right Turn Treatment (BAR) be constructed as a minimum to support the safety of the intersection.

The report and its findings were considered by Council Traffic Engineers who recognised the need for the general need for intersection improvement and that the proposed development (should it be approved) would generate additional traffic increasing the level of risk to traffic and intersection users. While recognising the nexus between the proposed development and the intersection safety issue Council Officers recognised that the proposed development was not the single intersection user and contributor to the intersection safety and function. After having regard to both the SMEC Report and increased usage of the Thomas Mitchell Drive/Glen Munro Road intersection related to the proposed development Council Engineers formed the view that the BAR intersection improvement recommended was required at this intersection and that noting the relationship between traffic related to the proposed development and usage of that intersection it would be fair and reasonable to apportion a value in the vicinity of 1/3 of the overall cost of the BAR improvement work to the proponent.

Council engaged with the applicant in their team in relation to this issue. These discussions culminated in the applicant submitting an offer to Council on the 22 July 2022 to make a contribution to Council to the value of \$135,000 +GST as a contribution to be dedicated to the Thomas Mitchell Drive/Glen Munro Road intersection improvement. Following the preparation of this report Council Officers are taking steps to report this offer to Council's 26 July 2022 Meeting for their consideration of the offer as an offer to enter into a Planning Agreement. This report will have been considered by the Council at the time the matter goes before the Panel for determination. This notwithstanding, the offer has also been endorsed by Council Roads and Drainage Engineers as an acceptable offer having regard to the nexus between the development and traffic and safety demands on the intersection. Council Roads and Drainage Engineers have advised their intention to carry out the intersection works following the payment of this contribution and have indicated that they have organised a budget for the works separately to the assessment this application.

In view of the above considerations and noting the offset of anticipated impacts of the proposal through the entering into of Planning Agreements it is considered that any impact of the proposed development on the local road network would be suitably mitigated. Recommended conditions of consent have been put forward to ensure that the relevant Planning Agreements are entered into, and that the Thomas Mitchell Drive Glen Munro Road intersection contribution is received by Council to enable Council to progress the BAR treatment work to be progressed alongside the construction of the development. Where these recommendations are adopted Council Officers are satisfied that the proposed development would not adversely impact Council's local road network.

- **Utilities** – the site subject to this development application is located within an established industrial precinct. The subject site has access to public utility services including reticulated water, sewer, electrical and telecommunications services necessary to service the proposed development.

To carryout the proposed development and maximise the development potential of the site the applicant has proposed alterations to Council stormwater infrastructure located on the land. These works involve the relocation of an existing overland stormwater flow path to run adjacent the property boundary.

The proposed works have been reviewed by Council Roads and Drainage Engineers referred the development application as the asset manager for Council stormwater infrastructure. In their final referral comments and following the submission of additional information Council Officers advised that they were satisfied with the design of the new stormwater infrastructure proposed and that they could support the development and re-routing of the Council infrastructure subject to related conditions of consent.

- **Water, Soil, Air & Noise Impact/Pollution** – the proposed resource recovery facility has the potential to have polluting impacts that may have adverse air, water and soil impacts where the site and waste management process is not appropriately managed and controlled.

To inform the design of the proposed development and the assessment of these issues the applicant has prepared and submitted:



- Surface water assessment
- Air quality impact assessment
- Noise impact assessment

In considering issues related to the potential polluting impacts related to the proposed development it is relevant to note that the type of development proposed is an activity that requires licensing by the NSW Environmental Protection Authority (EPA) under the Protection of the Environment Operations (POEO) Act 1997, and thereby qualifies as integrated development under the EP&A Act 1997.

In accordance with this legislation the proposed development has been referred to the NSW EPA to consider and provide General Terms of Approval or Refusal, following their review of the application in context with the POEO Act 1997 licensing requirements.

Following their review of the proposed development and additional information provided by the applicant the NSW EPA issued General Terms of Approval to the proposed development in correspondence received 2 November 2022. Given that the NSW EPA as the authority required to license the facility and proposed activity under the POEO Act 1997 has provided General Terms of Approval, acknowledging that the facility where operated in accordance with those requirements could be operated in way that does not result in an adverse environmental impact that would be incompatible with this legislation Council Officers are also satisfied that the proposed development where carried out in accordance with recommended conditions and in accordance with any future Environmental Protection License is unlikely to have a significant adverse environmental impact in terms of air, water, noise or soil pollution that would substantiate a decision to refuse development consent to this application.

- **Heritage** – the site subject to this development application is not located in a heritage conservation area or in a close proximity to any identified item of European heritage significance. Accordingly, Council Officers are satisfied that the proposed development would have a negligible impact on items of European heritage significance.

To consider potential aboriginal cultural heritage impacts related to the proposed development an Aboriginal Cultural Heritage Assessment was prepared in relation to the proposed development by Insite Heritage. This investigation did not identify any aboriginal artifacts within the subject site and recommended that ‘the project proceed without the requirement for any further assessment’.

- **Flora and fauna impacts** – a flora and fauna survey and assessment was carried out in relation to the proposed development by General Florea and Fauna. This report identified that:
  - The site is already cleared of any native vegetation community
  - The site did not contain any hollow bearing trees
  - A threatened species, the Greater Broad nosed bat was recorded on the site during the survey, however this is a highly mobile species that roosts and breeds in tree hollows.
  - According to the **Test of Significance** (5 Part Test) (**App E**), the proposed development (action) is unlikely to have an adverse effect on the life cycle of a threatened species such that a viable local population of these species is likely to be placed at risk of extinction.
  - No Endangered Ecological Community (EEC) is found on the site and no EEC will be disturbed by the proposed development.

- The proposed development is unlikely to have a significant impact on any EPBC Act listed Matters of National Environmental Significance.

In view of this report and its findings Council Officers are satisfied that the proposed development is unlikely to have any significant impacts on endangered ecological community or involve land clearing requiring further investigation under the Biodiversity Conservation Act 2016. Thereby, Council Officers are satisfied that the proposed development can be supported from an ecological impact perspective.

- **Natural environment** – The proposed development would involve site leveling and the carrying out of cut and fill across the site. A heat map has been provided by the applicant showing the extent of the site leveling.

The maximum cut proposed would be cut of -1.94m in the southwestern corner of the site and the maximum fill would total 1.19m in its north eastern corner. The cut and fill would be held in place across the site by the proposed retaining walls. Plans and information have been provided to consider the extent of the cut and fill as well as the visual impact of the proposed facility. Stormwater drainage information has also been submitted to Council detailing measures to control stormwater from within the facility and manage potential erosion and stormwater issues related to the works and alterations to natural ground level. The stormwater drainage design has been reviewed and endorsed by Council Roads and Drainage Engineers.

In view of the information and above considerations Council Officers have no objection to the cut and fill proposed or its impact on the existing natural contours and stormwater management provided the development is carried out in accordance with the proposed plans and conditions related to stormwater management.

- **Natural hazards** – the site subject to this development application is located on land identified as being located within a bushfire prone land buffer area by Council's and the NSW Rural Fire Service (RFS) bushfire mapping information.

To inform Council and the NSW RFS considering the sites bushfire risk a Bushfire Assessment Report was prepared and submitted by Cool Burn Fire & Ecology in relation to the proposal. This report concluded that the proposed facility had demonstrated compliance with the acceptable salutations of the NSW RFS document Planning for Bushfire Protection 2019, a mandatory assessment consideration for the development of bushfire prone land.

In accordance with assessment provisions for designated development applications, Council also undertook to refer the application to the NSW RFS for consideration and comment. The response received by Council to this referral raised no objection to the proposed development or recommended requirements/bushfire protection measures beyond those put forward in the EIS submitted.

Noting the information provided and the NSW RFS referral advice Council Officers are satisfied that the proposed development may be supported from a bushfire risk management perspective.

Council mapping information does not identify the subject site as being subject to any other natural hazards that may affect the carrying out of the proposed development or site suitability.

- **Safety, security and crime prevention** – Council Officers are satisfied that the proposed development would not pose any significant issue in relation to crime

related issues and site security. The site subject to this development application is located within an established industrial area with facilities that operate on a 24-hour basis. The related passive site surveillance coupled with security fencing and regular operational safety measures would be effective deterrents against potential offenders who may consider the risk/benefit of attempting unlawful entry or the carrying out of criminal activities in relation to the site and its operation.

- **Site design and internal design** – Council Officers are satisfied that the proposed development has been designed to minimise the opportunity for recycling materials to escape the site and cause pollution and that reasonable controls have been put in place through the site compound, retaining walls and fencing proposed. Council Officers are also satisfied that the site layout provides suitable vehicle manoeuvring areas and material stockpile and sorting locations required to support the operation of the development.
- **Social & economic impacts** – the proposed facility would create additional employment opportunities in the Muswellbrook locality. The information provided indicates that the facility once operational would support a total of approximately 25 local full time jobs. This additional employment opportunities and the income generated would have a positive social and economic impact for the community.

Additionally, the entry of a recycling sorting facility into the Muswellbrook LGA has the potential to have additional strategic longer term economic and social benefits related to the diversification of the areas economic base. The regions heavy dependence on mining and electricity generation for its economic base has been heavily reported and documented, particularly in context with anticipated market changes and the impact of mining and coal fired energy production on climate change. The diversification of the regions industrial and employment base outside these core established industries is likely to be of medium-long term strategic importance as the global community seeks to limit the effects of climate change.

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

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

Council Officers are satisfied that the site characteristics are conducive to the development proposed. In forming this view Council Officers note that:

- The site is zoned IN1 General Industrial and is located within an established industrial precinct. The proposed development is permissible with consent within this land use and is considered to be compatible with the related land use objections.
- The proposed development is compatible with sites industrial locality and is in keeping with the type of development within the Thomas Mitchel drive Industrial area.
- Suitable road and utility connections and utility services are available to support the proposed development, where the proposal is carried out in accordance with the recommended conditions of consent.
- With the exception of the identification of the site as bushfire prone the subject site is not identified as being subject to any natural hazards that would affect the opportunity for the site to be developed for the proposed use. While the site bushfire risk has been considered through the assessment of the development application and in view of the information provided including the submitted bushfire threat

assessment Council Officers and the NSW RFS are satisfied that the proposed development may be supported from a bushfire risk perspective.

- The technical studies carried out in relation to the development site including a flora and fauna assessment and aboriginal cultural heritage assessment did not identify any site attributes or limitations prohibitive to the carrying out of the proposed development.

## **2.8 Section 4.15(1)(d) - Public Submissions**

The proposed development was publicly notified and advertised in accordance with the requirements for Designated and Integrated development under the provisions of council's Community Consultation Plan.

The proposed development was notified between 23 June 2021 and the 6 August 2021.

Through the notification period one (1) public submission was received by Council.

The submitter raises concerns related to the proposed opening hours and that the proposed hours do not include Saturday afternoons and Sundays. The submitters relays that they are concerned that these hours will limit public access to dispose of waste during weekend hours and thereby community access to a licensed facility to dispose of waste potentially leading to more illegal dumping and pollution issues.

After reviewing this submission it appeared to Council Officers that the submitter may not have been aware that the proposed facility was a private facility intended to collect and sort construction, demolition and commercial waste. The proposed facility and development application would not affect the availability and operating hours of existing landfill facilities available to the Muswellbrook Community including the council operated landfill which provides a regular waste collection and disposal service for the community. As a private waste facility orientated toward the management of commercial waste there is no planning based reason to require the operation of the premises for additional hours on Saturday and Sunday.

## **2.9 Section 4.15(1)(e) - Public interest**

It is considered that the carrying out of the proposed development would be compatible with the public interest. The proposed development would provide additional employment opportunities, contribute to the diversification of the Muswellbrook economic base. Where the proposed development is carried out in accordance with the submitted documentation and the recommended conditions of consent the proposal would comply with relevant development standards, would not negatively impact Council's roads and drainage infrastructure and is unlikely to have a significant adverse environmental impact where carried out in accordance with the NSW EPA General terms of Approval.

# **3. REFERRALS AND SUBMISSIONS**

## **3.1 Agency Referrals and Concurrence**

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

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 2: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements</b> (s4.13 of EP&A Act) (N/A)			
<b>Referral/Consultation Agencies</b>			
Transport for NSW	CI 104 – Infrastructure SEPP Development that is deemed to be traffic generating development in Schedule 3.	TfNSW referral response dated 12 August 2021 advised that they had no concerns regarding the proposed development and put forward matters for consideration and conditioning by Council when determining the development related to: <ul style="list-style-type: none"> <li>- Ensuring the processing capacity of the development is limited in line with the proposed capacity.</li> <li>- Requirement to maintain an on-site weighbridge and its recorded data made available to Council or TfNSW</li> <li>- A recommendation that a traffic Management Plan is prepared and implemented prior to the commencement of the facilities operation</li> </ul> These referral comments have informed the recommended conditions of consent.	Y
NSW Department of Planning Industry and Environment	CI 56(2)(b) of the EP&A Regulation 2000 requires a consent authority to give Notice of a Designated Development application to public authorities who the consent authority considers may have an interest in the determination of the application.  The Department of Planning Industry and Environment was duly notified of the development as an authority consulted	Comments provided by the Department noted that there were no state or regional issues of significance that applied to the project and offered no further comment in relation to the application.	Y

	through the preparation of the SEAR's that informed the drafting of the EIS		
Heritage NSW	<p>CI 56(2)(b) of the EP&amp;A Regulation 2000 requires a consent authority to give Notice of a Designated Development application to public authorities who the consent authority considers may have an interest in the determination of the application.</p> <p>Heritage NSW was duly notified of the development as an authority consulted through the preparation of the SEAR's that informed the drafting of the EIS</p>	Comments provided by Heritage NSW made no objection to the proposed development and observed that the subject site did not contain any archaeological relics or know aboriginal places or objects.	Y
NSW RFS	<p>CI 56(2)(b) of the EP&amp;A Regulation 2000 requires a consent authority to give Notice of a Designated Development application to public authorities who the consent authority considers may have an interest in the determination of the application.</p> <p>NSW RFS was duly notified of the development as an authority consulted through the preparation of the SEAR's that informed the drafting of the EIS. The NSW RFS referral also informed to consult with the NSW RFS regarding the bushfire risk for the development as a substantive development located on bushfire prone land.</p>	Comments provided by NSW RFS raised no objection to the proposed development where carried out in accordance with the commitments outlined in the EIS.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
NSW Natural Resources Access Regulator (NRAR)	<p>S4.46 of the EP&amp;A Act 1979 and S89-91 – <i>Water Management Act 2000</i></p> <p>Pursuant to the above the proposed development requires a Controlled Activity Approval from the Natural Resource Access Regulator as development located on</p>	<p>In accordance with the integrated development assessment requirements the proposal was referred to the NSW NRAR as an approval body for the proposed development.</p> <p>Following their review of the proposed development NSW NRAR issued General Terms of</p>	Y



	waterfront land (within 40m of a river, Ramrod Creek)	Approval to the development application.  NSW NRAR requirements have been incorporated into the recommended conditions of consent in accordance with the EP&A Act 1979 integrated development requirements.	
NSW Environmental Protection Authority	S4.46 of the EP&A Act and S48 of the protection of the Environment Operations Act 1997.  Pursuant to the above and Clause 42 Schedule 1 of POEO Act 1997 the proposed development is a Scheduled activity requiring an Environmental Protection License from the NSW EPA.	In accordance with the integrated development assessment requirements the proposal was referred to the NSW EPA as an approval body for the proposed development.  Following their initial review of the development application the NSW EPA requested additional information which was provided by the applicant. After receiving and reviewing this information the NSW EPA issued General Terms of Approval to the proposed development.  NSW EPA requirements have been incorporated into the recommended conditions of consent in accordance with the EP&A Act 1979 integrated development requirements.	Y

### 3.2 Council Referrals (internal)

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

**Table 3: Consideration of Council Referrals**

Officer	Comments	Resolved
Community Infrastructure Engineers Roads/Access & Traffic	The proposed development was referred to Council's Roads and Drainage Engineers regarding road, access and traffic management impacts. A detailed discussion of these and related impacts has been included under the Likely Environmental Impacts, Access and Traffic sub-heading of this report.  The key issues for Council Engineers in considering	Y

	<p>these matters related to the impact of the heavy haulage associated with the proposed development on the maintenance of Council's local road network and the safety of the Thomas Mitchell/Glen Munro intersection and related impacts</p> <p>To manage impacts related to these issues the proponent made offers to Council to enter into a per tonnage maintenance contribution of \$0.11 and make a contribution of \$135,000+GST for the improvement of the Thomas Mitchell Drive/Glen Munro Road intersection to a BAR standard to be constructed by Council. Council Roads and Drainage Engineers have advised that they consider both offers suitable to mitigate the related impacts of the proposed development on Council's road network.</p>	
<p>Community Infrastructure Engineers</p> <p>Stormwater</p>	<p>The proposed development was referred to Council's Chief Engineer. In correspondence dated 4 February 2022 Council Engineering Officers advised of their support for the stormwater control measures proposed including the removal of the existing V-drain and construction of new stormwater channel.</p> <p>Council Officers have put forward recommended conditions of consent related to the approval of civil plans for the drain construction prior to the issue of a Section 68 Permit for the construction of this infrastructure.</p>	Y
<p>Building Surveyor</p>	<p>The proposed development was referred to Council's Building Surveyor to advise on any building certification issues requiring consideration ahead of the determination of the proposed development.</p> <p>The referral comments provided noted that the proposed sheds would be situated within the 3m Building Code of Australia Deemed to Satisfy provisions and thereby were require a fire rating construction. The applicant was requested to consider this issue in a request for additional information issued by Council.</p> <p>Details regarding the proposed fire rating of walls constructed within 3m of adjoining boundaries was provided to Council in a response to this requested dated 10 November 2021.</p> <p>Council's Building Surveyor recommended that the development application be approved subject to standard conditions of consent related to a Construction Certificate, Occupation Certificate and</p>	Y

	Building Code of Australia requirements.	
Environmental Health Officer	<p>The proposed development was referred to Council's Senior Environmental Health Officer to provide any advice related to noise, odour and pollution.</p> <p>After reviewing the proposed development Council's Senior Environmental Health Officer raised no objection to the proposed development subject to any comments and requirements provided by the NSW EPA being incorporated into any consent.</p>	Y
Water and Waste Engineers (Water and Sewer)	<p>The proposed development was referred to Council's Water and Sewer Engineers to provide advice related to the water and sewer servicing requirements for the proposal.</p> <p>Comments provided raised no objection to the proposed development or Council's capability to service the facility and standard conditions related to the connection of the facility to water and sewer services have been put forward.</p>	Y
Trade Waste Officer	Council's Trade Waste Officer was referred the development application to advise on any trade waste requirements related to the connection of the proposed development to Council's sewerage infrastructure. Council's Trade Waste Officer was satisfied that the proposed development would not require the discharge of trade waste into the sewer system and thereby not require a Trade Waste Agreement and	Y

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

### 3.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 23 June 2021 until 6 August 2021. The notification included the following:

- An advertisement was placed on Council's website and Facebook.
- A sign placed on the site;
- Notification on a website;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

The Council received a total of one (1) unique submission raising an objection to the proposal related to the limited weekend operating hours proposed.

Commentary has been provided in relation to the consideration of this submission under the previous public submissions heading of this report.

Council Officers are satisfied that the issue raised by the submission related to weekend operating hours does not require the imposition of a condition of consent to require the more expansive operation of the facility or the refusal of the proposed development. The proposed development is not intended to be open for the disposal of non-commercial waste and the operation of Council's existing landfill will not be altered as a result of the proposed development and will continue to provide a service for the disposal of domestic waste in the LGA.

#### **4. CONCLUSION**

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

In forming this view Council Officers have noted:

- General Terms of Approval have been provided from the NSW EPA and NSW NRAR as relevant approval bodies for the proposed development.
- The proposed development would be in accordance with the relevant provisions of the Muswellbrook LEP 2009.
- The proposed development would be compatible with the requirements of relevant SEPPs.
- The proposed development is compatible with the requirements of the Muswellbrook DCP and conditions of consent have been recommended to ensure the development is carried out in accordance with certain relevant DCP requirements.
- The assessment report has considered potential environmental impacts related to the proposed development. Based on this assessment Council Officers are satisfied that the proposed development is unlikely to have a significant adverse environmental impact.
- While the height bulk and scale of the proposed development would be notable Council Officers are satisfied that it would not have an adverse environmental impact and the development design has been informed by the facility's operational requirements. The impact of the proposed structures and compound fencing being built adjacent the site boundaries would not have an adverse impact on the development potential of adjoining land.
- Council Roads and Drainage Engineers are satisfied with the design plans and information provided in relation to the carrying out of works for the realignment of Council's stormwater infrastructure which is required to support the proposed development.
- The impact of the proposed development on the maintenance of Council roads and the functionality and safety of the Thomas Mitchell Drive intersection would be suitably offset through the proponents offers to enter into Planning Agreement(s) for the payment of a regular road maintenance contribution of \$0.11 per tonne of material transported to the facility and the one of payment of \$135,000+GST to Council to be used for the upgrade of the Thomas Mitchell/Glen Munro Road intersection to a Basic Right Turn Treatment (BAR) standard.
- The Environmental Impact Statement submitted has been prepared generally in accordance with the Secretary's Environmental Assessment Requirements and suitable additional information to inform the development assessment provided where requested.

- A suitable offer to enter into a Planning Agreement has been made to Council to offset the impact of the proposed development and increased heavy haulage on Council's local road network.
- The proposed development is considered to be compatible with public interest and it would have positive social and economic impacts for the Muswellbrook LGA.

It is considered that the key issues assessment issues have been resolved satisfactorily and the proposed development is recommended for approval subject to the Recommended Conditions of Consent included in Attachment A.

## **5. RECOMMENDATION**

That the Development Application DA No 2021/55 for a waste transfer station at 32 – 36 Glen Munro Road, Muswellbrook (Lot 10 DP 1131270) be approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the recommended conditions of consent included as Attachment A to this report.

The following attachments are provided:

- Attachment A: Recommended Conditions of consent
- Attachment B: Response to Additional Information Request 24 March 2022 (including current plan set)
- Attachment C – Road Safety Assessment dated 28 April 2022, prepared by EMN on behalf of the applicant
- Attachment D – Road Safety Review dated 23 June 2022, prepared by SMEC Consulting for Muswellbrook Shire Council
- Attachment E – NSW Environmental Protection Authority GTA
- Attachment F – NSW Natural Resource Access Regulator GTA
- Attachment G – NSW Rural Fire Service Referral Response